

# Discipline and punishment of children: a rights-based review of laws, attitudes and practices in East Asia and the Pacific

Save the Children Sweden Southeast Asia and the Pacific,  
regional submission to the UN Secretary General's  
Global Study on Violence against Children



**Save the Children**  
Sweden

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We deliver immediate and lasting improvements to children's lives worldwide.

Save the Children works for:

- a world which respects and values each child
- a world which listens to children and learns
- a world where all children have hope and opportunity

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# Foreword

Research based on children's own experience demonstrates that various forms of violence against children, including corporal punishment, are a harsh reality for many children throughout the world.

Corporal punishment is an unacceptable violation of the human rights of children: to dignity, protection from violence, equality under the law, physical survival, and development and education in the widest sense, including raising them in a spirit of understanding and peace, as laid down in the United Nations Convention on the Rights of the Child and other international human rights instruments.

It goes without saying that any form of violence – physical or psychological – is unacceptable for Save the Children, which works in partnership with many other organisations in the international movement against violence to children, focusing on physical and humiliating punishment. Save the Children recognizes that the physical and humiliating punishment of children:

- violates children's human rights to physical integrity, human dignity and equal protection under the law
- causes serious and long lasting harm to children
- teaches children that the strong are allowed to practice violence against the weak
- is an obstacle to realising full protection of children
- is an ineffectual way of disciplining children.

This rights-based review of laws on, attitudes to, and practices in, the discipline and punishment of children in the East Asia and Pacific Region, was commissioned by Save the Children Sweden to contribute to knowledge about corporal punishment in the region, to facilitate understanding of the issue so that plans can be made to address and eliminate corporal punishment, as well as to make a contribution to the UN Secretary General's Global Study on Violence against Children (UN Study).

The review first provides a state-of-the-art account of the legal situation in the following 19 countries: Australia, Cambodia, China (including Hong Kong), Fiji, Indonesia, Japan, Lao PDR, Malaysia, Mongolia, Myanmar, New Zealand, Papua New Guinea, The Philippines, Republic of Korea, Singapore, Solomon Islands, Thailand, Vanuatu and Viet Nam, primarily through state party reporting to the Committee on the Rights of the Child, but also through current legal changes and implementation of legislation in all situations in which corporal punishment is used to discipline children – including families, schools, institutional care and juvenile justice. Following this, a description and evaluation of the social-science record, with emphasis on research methods as well as research results, concentrates on the 10 countries in which the research record is substantial. The review ends with reflections on both legal and social-science records, paying particular attention to the implications for making policies and planning programmes.

While this review is intended to be an input to the UN Study, it also provides a useful overview for laypeople, as well as being a tool for regional policy makers and planners at all levels. It will also be the background for regional comparative research implemented by Save the Children on the subject, and a companion volume to *Childrearing for peace: a search for solutions – Family life without corporal punishment in East Asia and the Pacific* (Ennew and Plateau, 2005).

It is my sincere hope that this publication will go a long way towards opening the eyes of adults – be they parents, teachers, police officers, policy makers, decision makers, anyone who works with children or whose decisions affect them – to understand that corporal punishment does long-lasting harm to the lives of children and that it is a practice that must be stopped now!

*Herluf G. Madsen  
Regional Representative  
Save the Children Sweden  
Regional Office for Southeast Asia and the Pacific*

# Acknowledgments

This desk review is a contribution from Save the Children Sweden Regional Office for Southeast Asia and Pacific to the UN Secretary General's Global Study on Violence Against Children (UN Study). Concentrating on corporal punishment, it reviews available information on legislation and practice, providing a state-of-the-art account of what is known and also identifying knowledge gaps in 19 nations of the United Nations East Asia and the Pacific region. These countries were selected because of the presence of Save the Children: Australia, Cambodia, China (including Hong Kong), Fiji, Indonesia, Japan, Lao PDR, Malaysia, Mongolia, Myanmar, New Zealand, Papua New Guinea, The Philippines, Singapore, Solomon Islands, Republic of Korea, Thailand, Vanuatu and Viet Nam.

As far as possible, the review roots this information in history, political and economic realities and culture, exploring differences and explaining commonalities. In addition, this secondary data analysis provides the essential background for understanding and using new data collected in the Save the Children Comparative Research Project on the physical and emotional punishment of children in nine countries in the region.

We are indebted to many colleagues who generously provided information, including especially Batkhashig Adibish, Irshad Ali, Yolande Armstrong, Eva Maria Cayanan, Do Hai Dang, Terry Dobbs, Khat Ty Ekvisoth, Jessica O. C. Ho, Sonya Hogan, Tran Ban Hung, Mi-sook Kim, Cindy Kiro, Kelly Leung, Priscilla Lui, Carmen K. M. Liu, Glenn Miles, Lynette Petueli, Anne B. Smith, Yuichi Tanada, Nichola Taylor, Khounkham Thammalangsy, Mom Thany, Lynn Thompson, UNICEF EAPRO, Billy Wong and Zhou Ye. Carole Henderson from Save the Children Sweden Headquarters in Stockholm supported the production process. We take full responsibility for any mistakes and/or omissions.

While the main target for this review is the UN Study, we also hope it will provide a useful overview for laypeople, as well as being a tool for regional policy makers and planners at all levels. Above all we hope that the review will contribute to the elimination of corporal punishment of children in the region and worldwide.

*Natsu Nogami: Research and drafting  
Judith Ennew: Academic advice and editing  
Dominique Pierre Plateau: Project Manager  
Bangkok, August 2005*

# PART I: INTRODUCTION



## ***1. A rights-based review***

Discipline and punishment are often confused. Discipline refers to the process by which children learn the attitudes, values and behaviours of their society and culture, and does not necessarily include any kind of punishment. Yet punishment is often regarded as a normal, and even necessary, tool for discipline. This review of existing data on laws, attitudes and disciplinary practices in 19 countries of the East Asia and Pacific region shows that corporal punishment of children is widespread, but barely acknowledged to be a problem, especially in families. The assumptions on which this attitude is based can be challenged by the fundamental premise of this review – that corporal punishment of children is a violation of their human rights. Our goal is to provide not only a record of this form of violence against children in East Asia and the Pacific but also a basis for moving towards a more general acceptance that corporal punishment is one of the foremost manifestations of violence against children, which children themselves want addressed.

Recognition that corporal punishment of children is unacceptable follows from new ideas about children and childhood. Children are human beings, and subjects of human rights, whose dignity must be recognized and respected. They are not adult possessions but people who have opinions that must be respected. Childhood is not just a transition to adulthood; it is an important life stage in itself, as well as being the entire, current reality of children (James and Prout, 1997; Van Bueren, 1995).

Focusing on corporal punishment, Save the Children works in partnership with many other organisations in the international movement against violence against children. In the East Asia and Pacific region, Save the Children has established a regional strategy and examined national needs for, and challenges to, carrying out this strategy. This desk review, in combination with comparative primary research in nine countries (Beazley et al, 2006) and a review of nonviolent childrearing practices in the region (Ennew and Plateau, 2005) contributes to improved knowledge, so that plans can be made to address and eliminate corporal punishment in the region. Thus it should be of service beyond its primary aim of contributing to the UN Secretary General's Global Study on Violence against Children (UN Study).

### ***1.1. Defining the corporal punishment of children***

As will be seen later, and in accordance with the Save the Children approach, the definition of 'corporal punishment' employed in the review includes a wide range of physical and emotional punishments exercised by adults on children in a variety of settings. The word 'corporal' can cause misunderstandings as well as problems in translation in the East Asia and the Pacific region because 'corporal punishment' is associated in many countries with the police, army and penal system. People do not in general associate it with homes and schools. 'Corps', which is the basis for 'corporal', means 'body'. A more helpful universal term in English would be 'physical'. Emotional – sometimes called 'psychological' or 'humiliating' – punishment is integral to this definition, not least because children say that it hurts more, but also because psychological research is beginning to reveal that the negative effects of emotional punishment often last longer than those caused by physical punishment.

The contexts of corporal punishment are different for adults and children. Punishment of adults, in whatever form, is likely to occur as legal penalty for a crime, as illegal action taken by agents of the state (such as the police) or as illegal revenge taken by other community members. Punishment of children, on the other hand, is associated with the idea of discipline.

Discipline is the essence of childhood and integral to childrearing in every culture; it is directly related to the status of 'child'. If children are perceived negatively, as being in need of management, control and supervision in order to become moral members of society, the techniques used for discipline are likely to be punitive. Thus corporal punishment and childhood are usually (although not inevitably) inseparable.

The current Save the Children definition of corporal punishment identifies two categories of punishment that can occur separately or together: physical punishment and humiliating/degrading punishment. Physical and humiliating/degrading punishment consist of punishment or penalty for an offence, and/or acts carried out for the purpose of discipline, training or control, inflicted on a child's body, by an adult (or adults) – or by another child who has been given (or assumed) authority or responsibility for punishment or discipline.

Physical punishment includes:

- direct assaults in the form of blows to any part of a child's body, such as beating, hitting, slapping or lashing, with or without the use of an instrument such as a cane, stick or belt;
- other direct assaults on a child's body, such as pinching, pulling ears or hair, twisting joints, cutting and shaving hair, cutting or piercing skin, carrying or dragging a child against his or her will;
- indirect assaults on a child's body, through using adult power, authority or threats to force a child to perform physically painful or damaging acts, such as holding a weight or weights for an extended period, kneeling on stones, standing or sitting in a contorted position;
- deliberate neglect of a child's physical needs, where this is intended as punishment;
- use of external substances, such as burning or freezing materials, water, smoke (including from smouldering peppers), excrement or urine, to inflict pain, fear, harm, disgust or loss of dignity;
- use of hazardous tasks as punishment or for the purpose of discipline, including those that are beyond a child's strength or bring him or her into contact with dangerous or unhygienic substances; such tasks include sweeping or digging in the hot sun, using bleach or insecticides, unprotected cleaning of toilets;
- confinement, including being shut in a confined space, tied up, or forced to remain one place for an extended period of time;
- any other act perpetrated on a child's body, for the purpose of punishment or discipline, which children themselves define as corporal punishment in the context of their own language and culture; identified through scientific participatory research with children;

- witnessing any form of violent conflict resolution;
- threats of physical punishment.

Humiliating/degrading punishment includes:

- Verbal assaults, threats, ridicule and/or denigration intended to reduce a child's confidence, self esteem or dignity.

This definition is independent of whether the intention (whether implicit or explicit) is a 'benevolent' desire to improve a child's morals or behaviour, or designed to cause harm. It is the acts themselves that define corporal punishment – and violate children's rights.

### *1.2. Emotional punishment of children*

'Emotional punishment is the term we use in this review to refer to the last three types of punishment in the Save the Children definition, as well as to the psychological harm that is frequently associated with what appear to be simple physical acts. In Viet Nam, research on child abuse concluded that 'shouting at' and 'publicly blaming' are viewed by children as 'verbal abuse' or 'humiliation' (UNICEF Viet Nam, 2003). In this respect, David Y. H. Wu's research in Taiwan in the late 1970s led him to surmise that negative emotional expressions by parents (especially mothers), which appear to be used to strengthen parent-child bonding, might be 'a kind of emotional abuse which is not found in Western cultures' (Wu, 1981, p. 158). Wu wrote that:

For years I have observed Chinese parents freely express or display their negative emotions towards children (anger, rage, disgust, frustration), but then hesitate to show affection or pleasure. Mothers in particular are prone to demonstrate (or mock) pain, frustration, sufferance, or sadness as a means to elicit children's sympathy and, consequently, submission to parental control in order to alleviate the parent's suffering (Wu, 1981, p. 158).

Nevertheless, such contrasts with an imagined 'West', while thought-provoking, do not necessarily hold up – as we shall show with respect to cultural relativism arguments on various aspects of discipline and punishment in East Asia and the Pacific. Discussions of the image of the *mater dolorosa* (suffering mother) in Latin America, for example, also show a similar complex of ideas functioning to intensify parent-child bonds so that they become, as Wu says, unconscious, long-lasting and profound attachments (see for example, Stevens, 1973).

Emotional punishment is intended to cause mental pain, harm or discomfort, or incidentally causes such pain in the course of punishment that is assumed to be purely physical. It can take a variety of forms, such as blaming, scolding, shaming, ridiculing and denigrating, and also depends for its effect on the context of punishment. Several factors affect the definition and determine the type and severity of effects on a particular child, including culture, context, age, perspectives and relationship with the person who carries out the punishment (Elliott et al, 2002; Ennew, 2003; Krug et al, 2002; Lewthwaite, 2000). Sometimes the form of physical punishment, or the way it is administered, may be

shaming or undignified, so that it is difficult to say whether the act is physical or emotional punishment; the net result is that it is both. The enigma of the link between physical and emotional punishment can only be solved by taking into account what children say about corporal punishment, using children-friendly research techniques.

Save the Children is putting considerable emphasis on emotional punishment in its campaign against corporal punishment. Until recently, emotional punishment did not attract as much attention as physical punishment. This parallels the historical trend of awareness raising and research on child abuse, which began in the 1960s by focusing on physical abuse, then swung towards attention on sexual abuse, virtually ignoring emotional abuse. In recent years, however, there has been a growing recognition that emotional violence can be equally or more harmful to a child (Save the Children Sweden, 2003).

A research monograph produced by the Children's Society of Singapore compared the legal definitions of Australia, Canada, England and Wales, Hong Kong, India, Malaysia and Singapore, as the basis for defining emotional abuse. First the researchers distinguished between emotional abuse and neglect; the former being defined as 'overtly rejecting behaviour of carers' involving 'active parental hostility, verbal or emotional assaults, threatened harm, or close confinement', while emotional neglect refers to 'omission of parental psychological nurturing, availability, lack of interest in the child, and absence of attention and stimulation'. Yet the authors admit that these 'distinctions ... often break down in the face of reality' and that the 'active/passive and abuse/neglect distinctions may obscure the multifaceted nature of emotional maltreatment' (Elliott et al, 2002, pp 7-8). Although the term 'emotional abuse' is used in international discourses, it clearly has different meanings for individuals, and groups from different cultures – which is related to its relative absence from the UN Study.

### *1.3. A violation of children's human rights*

Despite the widespread use of corporal punishment in childrearing, this adult behaviour is neither encouraged nor condoned by international law. Corporal punishment of children violates international human rights law, in particular the basic principles of dignity, physical integrity and fundamental freedoms, which have been established in the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), as well as in specific instruments such as the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). It also breaches United Nations rules and guidelines on juvenile justice (Appendix 1). For children, these rights are stated in greater detail in the 1989 UN Convention on the Rights of the Child (CRC), which explicitly protects them from all forms of physical violence (Article 19) and inhuman and degrading treatment or punishment (Article 37), and requires school discipline to be 'consistent with the child's human dignity' (Article 28). Corporal punishment can have negative effects on children's attendance and learning experiences, violating Article 28 by causing irregular school attendance and drop out (Article 28.1.e). Article 29 (1) of the CRC, which has been called 'the aims of education' by the Committee on the Rights of the Child ('the Committee'), refers to children's right to be prepared 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 people of indigenous origin'.<sup>1</sup> Corporal punishment of children is

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<sup>1</sup> Committee on the Rights of the Child, 2001, General Comment No. 1, The aims of education, Article 29 (1) CRC/GC/2001/1, 17 April 2001.

thus a violation of children's rights in the broad sense that it teaches them that it is acceptable to resolve conflicts by using violence, to believe that it is acceptable for strong people or groups to use violence against the vulnerable and powerless.

The provisions of the CRC have been specifically interpreted by the Committee to indicate that corporal punishment of children is unacceptable. The Committee has considered violence against children in three of its 'general discussion days'; The administration of juvenile justice (1995), State violence against children (2000), and Violence against children within families and in schools (2001). The Committee has repeatedly made clear in its concluding observations on states parties reports that the use of corporal punishment respects neither the inherent dignity of children nor the strict limits that should be placed on school discipline. Such punishment often reaches the level of 'cruel, inhuman or degrading treatment' in violation of article 37 of the CRC and, in cases that are sadly not infrequent, it may lead directly to death. Thus it is not surprising that the Committee has called for public education so that parents, teachers and other carers understand the harmful effects of corporal punishment and learn to use other modes of discipline.<sup>2</sup>

Other major international human rights treaty-monitoring bodies, such as the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee against Torture, have also condemned corporal punishment of children, particularly in schools and institutions (Save the Children, 2001, p.21). The Special Rapporteur on Torture of the Commission on Human Rights has referred to corporal punishment as falling within the 'grey zone' between torture and other forms of cruel, inhuman and degrading treatment or punishment and, along with the Human Rights Committee, has given his support to the view that the prohibition on torture and cruel, inhuman or degrading treatment or punishment contained in article 7 of the International Covenant on Civil and Political Rights extends to corporal punishment.<sup>3</sup>

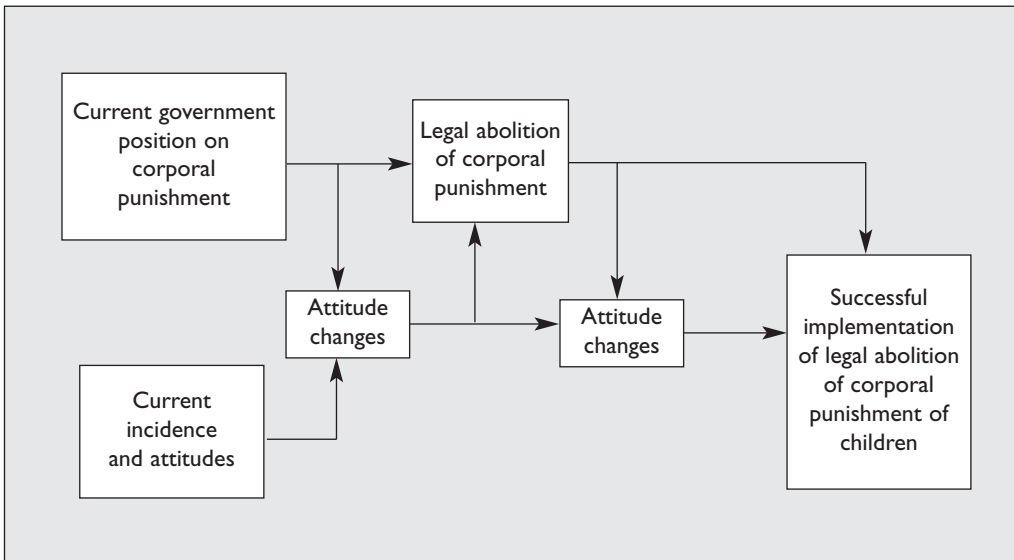
#### *1.4. Report structure and content*

Although this review examines legal provisions, it is intended to be complementary to the detailed legal review carried out for East Asia and the Pacific by the Global Initiative to End All Corporal Punishment of Children (Global Initiative, 2005). Information is required about laws, but also about attitudes and practices, if the goal of eliminating corporal punishment is to be achieved. For this reason, the review begins by examining not only existing laws but also the current priority corporal punishment has on national children's agendas, through a systematic reading of states parties' reports to the Committee on the Rights of the Child since 1992. Following this, existing research about practices of, and attitudes towards, corporal punishment is examined. This approach has been taken on the assumption that is easier to move towards legal abolition of corporal punishment, and the successful implementation of the consequent laws, if attitudes are transformed to provide an enabling environment for legal changes, and then further attitude changes promoted to ensure successful implementation of laws and regulations. Thus the overall objective of this review is to consider, on the one hand, social environments that permit (and perhaps even favour) corporal punishment of children as a main form of 'discipline' and, on the other, changes in attitudes and practices that promote both legal changes and their successful implementation (Figure 1).

<sup>2</sup> Committee on the Rights of the Child, 2001, General discussion day: Violence against children within the family and in schools. CRC/C/DOD/1.

<sup>3</sup> Commission on Human Rights, 1997, Report of the Special Rapporteur, Mr. Nigel S. Rodley, E/CN.4/1997/7, 10 January 1997.

**Figure 1: Flow chart: Attitude change and the implementation of legal change**



This review is divided into three sections:

- examination of the legal situation in the 19 countries, primarily through state party reporting to the Committee on the Rights of the Child, but also through what is currently happening through legal changes and implementation of legislation in all situations in which corporal punishment (in the wide definition already provided) is used to discipline children, including families, schools, institutional care and juvenile justice;
- description and evaluation of the social-science record, with emphasis on research methods as well as research results, concentrating on the 10 countries in which the research record is substantial;
- reflections on both legal and social-science records, paying particular attention to the implications for making policies and planning programmes.

One overall conclusion from this review is that information about corporal punishment in East Asia and the Pacific is extremely limited, not only in quantity but also in many cases in quality. Although some conclusions can be drawn it is not possible for these to reflect on either prevalence or incidence. Because the review refers to both legal and social-science documents, we have chosen to alternate between the customary forms of reference used in each discipline – legal references are in footnotes, but for social-science and other publications the Harvard system is used. We hope that this makes it easier for readers to follow the flow of the text.

# PART II: LEGISLATION



## 2. States and corporal punishment of children in East Asia and the Pacific

This chapter examines state parties reports to the Committee on the Rights of the Child (the Committee) from 19 countries: Australia, Cambodia, China (including Hong Kong), Fiji, Indonesia, Japan, Lao PDR, Malaysia, Mongolia, Myanmar, New Zealand, Papua New Guinea, The Philippines, Republic of Korea, Singapore, Solomon Islands, Thailand, Vanuatu and Viet Nam. States parties reports, together with concluding observations of the Committee, are interesting sources of information on national perceptions of corporal punishment in different contexts, as well as on the position of the issue on a government's children's-rights agenda. Reports and concluding observations are not the only texts available, but they provide a picture of the beginning and end points of the dialogues between states parties and the Committee, which take place through lists of issues to be discussed, states parties responses on these topics, supplementary reports and the record of discussions when the reports are considered by the Committee, as well as the 'alternative' reports submitted by non governmental organisations (NGOs).

The term 'corporal punishment' appears neither in the text of the CRC nor in the guidelines on the form and content of reports submitted under the provisions of the CRC.<sup>1</sup> Nevertheless, as already discussed, the Committee has made it clear that the corporal/physical punishment of children is indisputably covered under the definitions of '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' (article 19. 1) and 'torture or other cruel, inhuman or degrading treatment or punishment' (article 37 (a)). Moreover, in the report of a discussion day on state violence against children in 2000, the Committee recommended that:

States parties review all relevant legislation to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures), for punishment or disciplining within the child justice system, or in any other context.<sup>2</sup>

While all relevant international instruments and monitoring bodies are equally important in addressing the issue, the low rate of ratification of some human rights instruments by the countries of East Asia and the Pacific indicates that the Committee on the Rights of the Child may be the leading catalyst for addressing violence against children in this region.

### 2.1. The obligations of states

The UN Committee on the Rights of the Child was set up under the provisions of article 44 of the CRC to monitor how states parties implement their obligations. States parties must submit country reports, initially two years after ratification or accession ('first periodic' or 'initial' reports') and then every five years ('periodic reports'). In addition to the government reports, the Committee receives information from other sources,

<sup>1</sup> Committee on the Rights of the Child, 1991, General guidelines regarding the form and content of initial reports to be submitted by States Parties under article 44, paragraph 1(a), of the Convention, CRC/C/5, 30 October 1991.

<sup>2</sup> Committee on the Rights of the Child, 2000, Report on the twenty-fifth session, CRC/C/100, 14 November 2000, para 696.

including NGOs, United Nations and other intergovernmental organisations, academic institutions and the press. In the light of all information provided, the Committee examines a state party report in session with government representatives and others (including children in some cases). Based on this dialogue, the Committee publishes its concerns and recommendations, referred to as 'concluding observations.' In concluding observations, the Committee has repeatedly recommended states parties to address corporal punishment as a violation of children's rights. The recommendations made by the Committee to states parties to the CRC are of an advisory nature and do not legally bind the states parties to comply, yet these recommendations can play an essential role in bringing attention to issues that might otherwise be disregarded.

With the exception of Malaysia, by 31 July 2005 all the countries covered by this review had submitted initial country reports to the Committee. Australia, China including Hong Kong, Indonesia, Japan, Mongolia, Myanmar, New Zealand, the Philippines, Republic of Korea, Thailand and Viet Nam had submitted their second periodic reports to the Committee (Table 1). In the case of Australia, the second and third reports were combined and submitted together. The Committee has emphasised that timely reporting by states parties is important for examining the progress made in the implementation of the CRC. As many country reports have become overdue, the Committee has invited some states to submit consolidated (usually third and fourth) reports on or before the next due date as an 'exceptional measure', so that they can return to the regular five-yearly reporting schedule foreseen in the CRC.

On the whole, information about corporal punishment is included in states parties reports under articles 19, 28 and 37, although the topic occasionally appears in other parts of the reports, for example under article 40 (juvenile justice). The terms 'corporal punishment', 'punishment' and 'discipline' are not always used; generally and variously information appears within discussions of violence, torture or abuse. The following country-by-country information is taken from states parties reports as well as from Committee observations, comments and recommendations. Where the topic appears in a state party report, the words used, the attention paid (or not paid) to particular social spaces (families, schools, justice systems) all provide interesting information about state attitudes towards disciplining and punishing child citizens. This also gives some indications about the place occupied by corporal punishment in national – and regional – children's-rights agendas.

## *2.2. States that have only submitted initial reports*

Seven of the 19 countries have submitted their 'initial' (first periodic) reports. Four countries, Cambodia, Fiji, Lao People's Democratic Republic, and Vanuatu, are overdue with their second periodic reports, while three, Papua New Guinea, Singapore and the Solomon Islands, are due to submit second and third reports combined in 2007 or 2008. The Committee provided guidelines to states parties on the form in which initial reports should be submitted; guidelines that were also followed by the remaining 12 countries we reviewed, which have submitted more than one report. In general terms, initial reports were required to set the background of legislation and to concentrate more on this area than required in subsequent periodic reports.

**Table I: Countries in the review: Convention on the Rights of the Child reporting status (31 July 2005)**

Country	Report submission		
	First ('Initial') periodic report	Subsequent periodic reports	
		Second	Third/fourth
Malaysia	Due 1997	Due 2002	
Cambodia	18 December 1997	Due 1999	Due 2004
Fiji	12 June 1996	Due 2000	
Lao PDR	18 January 1996	Due 1998	Due
Papua New Guinea	23 April 2003	Due 2008 (2/3)	Due 2008
Singapore	29 April 2002	Due 2007 (2/3)	Due 2007
Solomon Islands	27 February 2001	Due 2007 (2/3)	Due 2007
Vanuatu	27 January 2001	Due 2000	
Australia	8 January 1996	2 and 3 Combined 30 September 2003	
China	27 March 1995	27 June 2003	
China (Hong Kong Special Administrative Region)	16 June 1997	2005	
Indonesia	17 November 1992	5 February 2002	Due 2007 (3/4)
Japan	30 May 1996	27 June 2003	Due 2006
Mongolia	20 December 1994	6 May 2003	Due 2007 (3/4)
Myanmar	21 September 2003	11 June 2002	Due 2008 (3/4)
New Zealand	22 September 1995	19 February 2001	Due 2008 (3/4)
The Philippines	19 September 1993	23 April 2003	Due 2007 (3/4)
Republic of Korea	17 November 1994	1 May 2000	Due 2008 (3/4)
Thailand	23 August 1996	7 June 2004	
Viet Nam	30 September 1992	11 May 2000	Due 2007 (3/4)

Source: United Nations Office of the High Commission for Human Rights ([www.ohchr.org](http://www.ohchr.org))

All states parties to the CRC – especially those that ratified and reported early in the 1990s – were faced with a novel task. States parties reports to the Committee on the Rights of the Child are a completely new genre of text. No previous national reports on children had focused on their rights, rather than their welfare, nor yet had they considered the full range of rights – civil, political, economic, social and cultural. Initial reports under the CRC thus began a process of seeking a far wider range of information about children than had previously been the case. Whereas data on health, education and demography were

relatively easily available (although not children-centred), the record in other areas – such as children in institutions, and children’s budgets – was often woefully inadequate (Ennew and Miljeteig, 1996). As will become clear in the course of this review, information about violence against children, and specifically about corporal punishment, was no exception.

Three of the 19 countries, Indonesia, the Philippines and Viet Nam were among the 25 states parties to report in the first two years (1992-3). At that time, country reports were submitted in very variable forms, and the ink was barely dry on the Committee guidelines for reporting. The discourse on children’s rights, which is now the major driving force for intergovernmental, governmental and non governmental planning for children, was then relatively underdeveloped and often considered to be an adjunct of children’s needs or welfare (Ennew, 1994). It is unlikely that any government would prioritise corporal punishment (or even violence against children) much less see this as a children’s rights issue. Thus, although child abuse, together with programmes of awareness-raising about abuse, was mentioned in the initial report of Indonesia, for example, there were no specific references to either discipline or corporal punishment in any context. In its observations on this initial report the Committee did not make specific recommendations on corporal punishment, although it did comment on the incompatibility between the administration of juvenile justice and the provisions of the CRC, a human rights concern that had, until then, been given little prominence in either national or international agendas for children, but which the Committee has raised to greater importance since 1992.

## Cambodia

The Government of Cambodia submitted its initial country report to the Committee in 1998, mentioning three contexts in which corporal punishment takes place – families, schools and detention for children in conflict with the law. The report mentions corporal punishment in family and in schools, noting that the ‘practice of striking children by way of family chastisement’ is widespread, and that there was then no law expressly forbidding parents to strike their children. The Government also stated that it ‘categorically prohibits physical persecution of all individuals, particularly children,’ and that ‘schoolteachers are forbidden to beat their children.’ However, children in ‘unsafe areas and in certain families’ were described as ‘still being ill-treated.’ The Government did not specify any measures being taken to prevent corporal punishment (although a law on domestic violence was drafted in subsequent years: Sandvik-Nylund, 2003).

Outside the boundaries of formal legislation, the report stated that although ‘the practice ... is widespread ... if the ill-treatment is excessive, the local authorities or neighbours have been known to intervene and in some cases the children are entrusted to their grandparents or transferred to the Centre for Assistance to Children.’<sup>3</sup>

The Committee examined Cambodia’s initial country report in 2000, expressing concern that some children were reportedly beaten and mistreated while in detention and recommended establishment of a juvenile justice system. Nevertheless, the Committee did not specifically mention corporal punishment in other contexts, although it did make recommendations about ‘child abuse and ill-treatment’ of children in families, at school and other institutions and in society at large.<sup>4</sup>

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<sup>3</sup> Initial reports of States parties due in 1994: Cambodia. 24/06/98. CRC/C/11/Add.16 paras 78 and 124.

<sup>4</sup> Concluding Observations of the Committee on the Rights of the Child: Cambodia. 28/06/2000. CRC/C/15/Add.128 para 43.

## Fiji

The Government of Fiji submitted its initial report to the Committee in 1996, giving extensive coverage to corporal punishment in all contexts, with the exception of children's workplaces, and locating the causes in customary acceptance of the practice as well as in adult/child power relations:

Physical punishment is widely practised and culturally acceptable within most Fiji families as a means of disciplining children, but it is apparent that this is also a common way to impose physical abuse on them. There is general agreement that parents and teachers can inflict physical punishment, and they often do so. As a result, it does not come easily to those in authority to listen to or to respect the views of children.

The deep-rooted nature of these power relationships is clearly linked to the importance of families as the foundation of Fijian society. This is referred to in the first paragraph of the report:

When Fiji people describe their society and cultures, a common theme is the importance of family. All of Fiji's ethnic communities value caring relationships among their wide networks of kin. Family events, social occasions, and religious festivals are commonly celebrated by large gatherings of relatives, close and distant. Kinship virtually defines most rural communities, be they Fijian villages or Indian settlements. For many small children, the world beyond their own homes appears to consist of aunts, uncles, cousins, and grandparents.

Beyond families, corporal punishment in schools is permitted, but only if administered by a head teacher. In addition, Ministry of Education guidelines stipulate that students should not receive corporal punishment for poor academic performance, and that girls should not be hit unless a female member of staff is present. The Government reported that both teacher training colleges and the University of the South Pacific offer courses on behaviour management and positive guidance techniques as alternatives to physical punishment.

According to this report, corporal punishment of children in institutional care is not permitted but it is occasionally practiced. The Government observed that, given the low staffing levels in institutions, it is difficult to switch the emphasis towards rewarding good behaviour rather than punishing bad behaviour. In the juvenile justice system, no juvenile can be sentenced to corporal punishment but the Government admitted that some court proceedings offer scant protection to children from exposure to continued abuse or violence. 'Serious consideration', the Government concluded, 'Needs to be given in Fiji to the issue of physical violence against children.'<sup>5</sup>

The Committee examined Fiji's initial country report in 1998, noting the initiative for the legal prohibition of corporal punishment submitted by the Coordinating Committee on Children (established in 1993) to Fiji's Law Reform Commission. The Committee recommended that corporal punishment should be prohibited by law and that measures should be taken to raise awareness about its negative effects as well as to ensure that discipline in schools, families and institutional care is administered in a manner consistent with a child's dignity.<sup>6</sup>

<sup>5</sup> Initial reports of States parties due in 1995: Fiji. 24/09/96. CRC/C/28/Add.7 paras 1, 65-68, 107, 241.

<sup>6</sup> Concluding Observations of the Committee on the Rights of the Child: Fiji. 24/06/98. CRC/C/15/Add.89 paras 16 and 36.

## Lao PDR

The Government of Lao PDR submitted its initial report to the Committee in 1996, clearly stating that, under the Penal Code, physical punishment is prohibited in general, including the physical discipline of children and (an interesting conjunction of ideas) torture of offenders in the penal system. Parents may have their parental rights revoked if they 'abuse their parental authority, or make use of violence and unethical methods.'<sup>7</sup>

The Committee examined Lao PDR's initial country report in 1997, expressing particular concern about the persistence of corporal punishment within families and its acceptance in Lao society. The Committee recommended the Government to take all appropriate measures, including revision of legislation, to prevent and combat ill-treatment within families and suggested that:

authorities initiate a comprehensive study on abuse, ill-treatment and domestic violence to improve the understanding of the nature and the scope of the problem, and set up social programmes to prevent all types of child abuses as well as to rehabilitate the child victims.<sup>8</sup>

## Papua New Guinea

The Government of Papua New Guinea submitted its initial country report to the Committee in 2003, providing particularly detailed information on state violence against children and youth in the juvenile justice system, including reports of the death of young people at the hands of private security guards and police. This was declared to be symptomatic of escalating violence throughout the country with direct impact on children in communities in which there is a 'widespread tendency to resort quickly to violence or threats of violence in situations of conflict.' Thus it is not surprising that the government reports:

Beatings and excessive punishment of children at the hands of parents or guardians, or the adults charged formally or informally with the care and protection of children, are common. Existing laws to protect children from cruel and inhuman treatment are inadequate and often not enforced. The low level of community knowledge of the law limits participation in the enforcement of the law. This combines with a lack of community consciousness regarding alternative ways of guiding and correcting a child. Many parents believe that strict corporal punishment is essential and even acceptable, in order to guide and discipline the child. Children who may be subjected to strict and severe parental discipline may suffer without any protective sanctions of such treatment.

The fact that the Government provided little information about specific measures to address corporal punishment may be related to its somewhat bleak account of human rights:

Too often the notion of human rights and freedoms are spouted as political rhetoric only, narrowly and inappropriately interpreted and pronounced as the political rights of one individual or group over another, based on race, geographical origin, education or ethnicity.<sup>9</sup>

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<sup>7</sup> Initial reports of States parties due in 1993: Lao People's Democratic Republic. 24/01/96. CRC/C/8/Add.32 paras 76 and 91.

<sup>8</sup> Concluding observations of the Committee on the Rights of the Child: Lao People's Democratic Republic. 10/10/97. CRC/C/15/Add.78 paras 20 and 44.

<sup>9</sup> Initial reports of States parties due in 2000: Papua New Guinea. 21/07/2003. CRC/C/28/Add.20 paras 171-173 and 331.

The Committee's comments on this report recognised the difficulties of implementing the CRC in Papua New Guinea: internal armed conflict, natural disasters, geographical barriers to communication and the existence of more than 800 local languages. Concern was expressed about the violence towards children practiced by police and staff of institutions and it was suggested that detailed information should be collected so that policies might be put in place to eliminate this violence, to establish a complaints procedure, to prosecute offenders and set up rehabilitation programmes. On corporal punishment in particular, the Committee stated that it was 'extremely preoccupied' about the widespread occurrence and the absence of any legal prohibition in homes and institutions. Public education was recommended to raise awareness of the harmful effects of corporal punishment, as well as about constructive and non violent discipline.<sup>10</sup>

### Singapore

Singapore acceded directly to the CRC in 1995 without an initial signature (which means that it is bound by the treaty as if it had first signed and then ratified). 'Reservations' and 'declarations' about some articles of the CRC were made at the time of accession, most notably (indeed uniquely in the 19 countries) on corporal punishment. The text of the declaration on key reservations to articles 19 and 37 reads:

The Republic of Singapore considers that articles 19 and 37 of the Convention do not prohibit:

- (a) the application of any prevailing measures prescribed by law for maintaining law and order in the Republic of Singapore;
- (b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedoms of others; or
- (c) the judicious application of corporal punishment in the best interests of the child.

In this exceptional case, it is worth quoting the relevant parts of the text of the Initial Report of the Government of Singapore in full:

214. The Singapore Government believes that every person who commits a crime should be held accountable for his misdeeds. However, a restorative model rather than a punitive model is applied in the juvenile justice system. The rights of children and young persons are protected under the provisions of the Children and Young Persons Act, which state that they are to be tried for their offences in the Juvenile Court where a range of treatment and sentencing options are available. Juveniles are tried by the High Court for serious offences such as murder, rape, drug trafficking and armed robbery after they are deemed unsuitable for treatment in the Juvenile Court (section 33 of the Children and Young Persons Act). Juveniles may also be subjected to caning. However, under Singapore's laws, a juvenile offender will be caned with a light rattan instead of the usual rattan used for adults. Females are not liable to caning (section 231 of the Act). In 1998, there were a total of 20 juvenile offenders who were caned for committing serious offences. As at September 1999, 39 juveniles had been caned.

277. School authorities are mindful that the school is first and foremost a place to nurture the child to develop his/her fullest potential. Hence, in the administration of

<sup>10</sup> Concluding observations: Papua New Guinea. CRC/C/15/Add.229 para 7.

discipline, great care is given to the enforcement measures so that the pupils' dignity and self-esteem are not eroded. In the disciplining of pupils, counselling towards responsibility is practised as an alternative to punishment. Schools are continually encouraged to implement proactive measures, such as the teaching of life-skills in order to instil values and self-discipline in their pupils.

Corporal punishment is meted out judiciously to errant male pupils, and even then as a last resort, by the principal or a teacher authorised by him/her. Under no circumstances are female pupils subjected to corporal punishment.

278. The guidelines from the Ministry of Education (MOE) specify that corporal punishment should not be carried out in anger and should be done with a light cane on the palms or buttocks, and that other school personnel are not at all allowed to mete out corporal punishment. Parents are informed by the school of the corporal punishment meted out on the child and details of the offence. If they are of the view that the punishment has been excessive, they can report the matter to the MOE which will look into their complaints and take the appropriate action against errant school personnel.

279. In Singapore, caning may be used judiciously by parents as a mode of discipline. This form of punishment is used mainly to punish errant children for misdeeds and not meant to abuse the child. Parent education on best practices in disciplining and managing children is readily available.<sup>11</sup>

It is interesting to note that a brief NGO report submitted in 2003 – prepared by the National Council of Social Services – does not mention corporal punishment or any other discipline issues, although it does mention child abuse. This tends to indicate that corporal punishment is not perceived to be a problem in Singapore society.<sup>12</sup>

The Committee examined Singapore Government initial country report in 2003, noting with concern that corporal punishment is permitted by law in the home, schools and institutions as well as being a judicial punishment for male juvenile offenders. In addition to widespread legal changes, the Committee recommended that the Government should:

conduct well-targeted public awareness campaigns on the negative impact corporal punishment has on children, and provide training for teachers and personnel working in institutions and youth detention centres on non-violent forms of discipline as an alternative to corporal punishment.<sup>13</sup>

## Solomon Islands

The Government of the Solomon Islands submitted its initial country report to the Committee in 2002, mentioning corporal punishment in families, schools, the streets and the juvenile justice system. With respect to physical punishment by parents, the Government commented that:

There is a need for increased awareness and understanding of what actions constitute child abuse (physical, sexual, verbal, emotional) and neglect in relation to disciplinary measures imposed by parents upon their own children. Some feel that CRC's

<sup>11</sup> Initial reports of States parties due in 1997: Singapore. 17/03/2003. CRC/C/51/Add.8 paras 214, 277, 278, and 279.

<sup>12</sup> National Council of Social Services, Singapore, 2003, Non Governmental report submitted by the National Council of Social Service, Singapore, 7 April 2003.

<sup>13</sup> Concluding observations: Singapore. 27/10/2003. CRC/C/15/Add.220 para 33.

definition of child abuse or exploitation needs discussion. They feel Solomon Islands cannot, as a result of acceding to the CRC, accept all provisions of the Convention without questioning each one. Each provision must, therefore, be compared and weighed against traditional Solomon Islands family values and norms with respect to traditional disciplinary mechanisms. The family is certainly an institution wherein each member contributes to its various functions and equilibrium. Parents play the important role of being head of the family. The rights and responsibilities of parents and guardians to control and discipline their children must be considered. Lack of control or discipline can lead to disharmony and disequilibrium. Solomon Islands is one society with its own sets of values and western values are those of another society, which are sometimes seen to be in conflict with ours. What is good for western society is not necessarily good for Solomon Islands.

This is a particularly clear statement of cultural relativism, which challenges the standing of the CRC as an international treaty, a topic that we will discuss later and which is a continuous thread in this review. Here it is only important to note that, with respect to protecting children from excessive violence, the Government of the Solomon Islands makes a clear distinction between ‘Western’ or formal law (which, although not stated, would seem to be due to colonial influences) and customary, or community, law:

Most cases of cruelty and abuse – if they are discovered at all – are resolved by utilizing a combination of resources from within the community, i.e. custom law, church and extended family. ‘Western’ laws, i.e. the Constitution and Penal Code, are rarely invoked.

In seeming contradiction, the Government also appears to be critical of some traditional practices, saying that state violence against juvenile offenders ‘probably derives from the traditionally paternalist manner in which police officers view young criminals’ and that ‘traditional disciplinary habits have not prohibited violence in the interest of changing future behaviour’:

[I]t is necessary, therefore, to educate police officers about human rights and help them modify their behaviour during arrests. More training such that done by Family Support Centre in January 1998 is required to further effect positive change in pursuit of human rights for children and others.<sup>14</sup>

The Committee examined the Solomon Island initial country report in 2003, expressing concern that corporal punishment is widely practised in families, schools, and other institutions, such as in prisons and alternative care, and recommending the Government to:

- take all legislative and other measures to prohibit all forms of physical and mental violence, including corporal punishment, against children in families, schools and in all other contexts;
- conduct a study to assess the nature and extent of ill-treatment of children, and design policies and programmes to address it;
- carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment.<sup>15</sup>

<sup>14</sup> Initial reports of States parties due in 1997: Solomon Islands. 12/07/2002. CRC/C/51/Add.6 paras 195, 224 and 249.

<sup>15</sup> Concluding Observations: Solomon Islands. 02/07/2003. CRC/C/15/Add.208 paras 30 and 31.

## Vanuatu

It is not surprising that, as a Pacific Island state, the first paragraph of the Government of Vanuatu's initial report should, like Fiji and the Solomon Islands, stress the importance of family units as the political core of governance and cultural life:

In Vanuatu, family is viewed as the foundation of the society and in addition to this is the extended family system. A child is given the very best care and protection by parents, grandparents and all members of the extended family. Therefore, no child, whether in an urban or rural area, is allowed or left to be in any kind of problem or trouble unless it is beyond the reach of everyone. Children are important to everyone.

Although the Government made no specific reference to corporal punishment in any context, this initial report quotes the words of Karen Abel, a 12-year-old delegate from Vanuatu to the Thirty-Third Pacific Conference in New Caledonia, in 1993. This implies Government endorsement of Ms Abel's comments that:

... There are two things which I think are the most important for children. One is good family life and the other is a good education so that children can have good opportunities and get jobs when they grow up. It would be good if parents could help their children with their school problems instead of getting angry. They should not hit their children because children will remember it when they grow up and they may do the same thing to their own children. It is not good for children to be afraid of their parents because then they cannot be close to them...<sup>16</sup>

The Committee took up this point in its concluding observations in 1999:

While the Committee is aware that corporal punishment is prohibited by law in schools, it remains concerned that traditional societal attitudes continue to encourage the use of such punishment within the family, in schools, care and juvenile justice systems and generally in society. The Committee recommends that the State party reinforce measures to raise awareness on the negative effects of corporal punishment and ensure that alternative forms of discipline are administered in families, schools, and care and other institutions, in a manner consistent with the child's dignity and in conformity with the Convention. In this connection, the Committee recommends that the State party provide counselling and other programmes for parents, teachers and professionals working in institutions to encourage their use of alternative forms of punishment. In addition, the Committee strongly recommends that all necessary measures be taken to ensure the full and effective implementation of the ban on corporal punishment in schools.<sup>17</sup>

### *2.3. States that have submitted initial and other periodic reports*

We now turn to states that have submitted more than one periodic report, with the intention of examining whether government approaches to corporal punishment have changed over time, perhaps in response to comments and recommendations from the Committee on the Rights of the Child.

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<sup>16</sup> Initial reports of States parties due in 1995: Vanuatu. 26/05/97. CRC/C/28/Add.8 paras 1 and 49.

<sup>17</sup> Concluding Observations of the Committee on the Rights of the Child: Vanuatu. 10/11/99. CRC/C/15/Add.111 para 16.

## Australia

Australia has a federal political structure, in which legislative, executive and judicial powers are shared or distributed between the various Federal institutions, the six States and two self-governing Territories. The Government of Australia made substantial and specific coverage of corporal punishment both in its 1996 initial report<sup>18</sup> and in the two periodic reports submitted together in 2003,<sup>19</sup> providing information about the jurisdiction of different States as well as Federal law.

The initial report made a 'zero tolerance' statement (referred to later in the consolidated second and third periodic reports) under CRC article 37 (a) that 'torture, and other cruel, inhuman, or degrading treatment or punishment is not tolerated and constitutes a criminal offence and civil wrong in all Australian jurisdictions.' However, a different approach is reported with respect to punishment by parents:

At present, lawful correction or lawful chastisement by parents is a common law defence to an action for assault. The criminal legislation of Tasmania, Queensland and Western Australia each contains a version of this defence. When the issue was reviewed in Queensland in 1992 the Criminal Code Review Committee recommended that the defence be maintained.

The Government reported that this common-law provision was under consideration by the Federal Government, and that the Model Criminal Code Officers Committee (with representation from all States) was in the process of preparing a discussion paper; in addition, a discussion paper on The Legal and Social Aspects of the Physical Punishment of Children had been released in June 1995 by the Federal Department of Human Services and Health, under the auspices of National Child Protection.<sup>20</sup>

Corporal punishment in schools was prohibited in state schools in the Australian Capital Territory, New South Wales, Victoria, Queensland and South Australia. However, the law relating to punishment in schools varied in different jurisdictions and between private and state schools. Children can be physically disciplined by their teachers in independent schools in all Australian States<sup>21</sup> but, if subjected to excessive or otherwise unlawful corporal punishment, children have the right to take civil action for damages against the teacher or school. Teachers who administer unlawful corporal punishment are also liable to criminal prosecution for assault.

The laws and regulations on corporal punishment against juveniles in detention also vary between different jurisdictions. However, police officers everywhere are bound not only by common law, but also by codes of conduct. In addition:

Officers are instructed to treat those in detention with respect for their human dignity. Police training details the circumstances in which force may be used and emphasises that force is only to be applied where necessary and to the minimum extent necessary. Officer training includes training in conflict management to enable a solution to be found without requiring physical restraint. The situations where force may be used include actions in self-defence, for the prevention of injury to the detained person or other persons, in making an arrest and for preventing escape from detention.

<sup>18</sup> Initial reports of States parties due in 1993: Australia. 01/02/96. CRC/C/8/Add.31.

<sup>19</sup> Second and third periodic reports of States parties due in 1998 and 2003: Australia. 29/12/2004. CRC/C/129/Add.4.

<sup>20</sup> Initial reports of States parties due in 1993: Australia. 01/02/96. CRC/C/8/Add.31 paras, 392, 404 and 405.

<sup>21</sup> See Initial reports of States parties due in 1993: Australia. 01/02/96. CRC/C/8/Add.31 paras 406-412, for an account of State-by-State legislation.

An interesting aspect of the reported legislation of Australian States on punishment in juvenile justice systems is the recognition of the variety of forms that corporal punishment may assume in practice. In the Northern Territory, for example, while the Juvenile Justice Act 1983 allows the use of force as punishment to juveniles in detention that is ‘reasonably necessary in the circumstances in order to maintain discipline in the detention centre’, it ‘specifically prohibits’:

discipline by: striking, shaking or other forms of physical violence; enforced dosing with a medicine, drug or other substance; compulsion to remain in a constrained or fatiguing position; handcuffing or use of similar devices to restrain normal movement; isolation from other detainees except if desirable for the protection of other detainees and only then by order of the superintendent of the centre and only for a period of less than 12 hours.<sup>22</sup>

In response to the initial report of the Government of Australia, the Committee recommended the prohibition of corporal punishment at home and in private schools, coupled with ‘awareness-raising campaigns to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention.’<sup>23</sup>

Seven years later, the Government of Australia submitted combined second and third periodic reports.<sup>24</sup> The section devoted to corporal punishment is worth quoting in full because it illustrates the theme of ‘reasonable’ punishment, which is as much a continuing thread in this review as the appeal to cultural relativity. Paragraphs 184 to 188 also show one way a state party may engage with the observations and recommendations of the Committee:

184. The Committee is referred to pages 92-94 of Australia’s First Report.

185. The Committee was advised, in paragraph 405 of Australia’s First Report, that the status of the lawful chastisement by parents defence was being considered by the Model Criminal Code Officers Committee. The Committee reported on this issue in September 1998.<sup>25</sup> In doing so, the Committee considered Articles 19(1), 28(2) and 37 of the Convention. The Committee was of the opinion that “at the present, it goes too far to criminalise a corrective smacking by a parent or guardian, so long as the force used is reasonable.”<sup>26</sup> The Committee did recommend that a legislative standard of reasonableness be established and that the use of objects in such a way as to cause or risk causing injury be prohibited.

186. The model provisions developed by the Committee have been included in legislation enacted in New South Wales, which restricts the right of parents to use excessive punishment by banning the use of a stick, strap or other object, any blows to the head or neck of the child, and any force which might cause harm to the child. Only a parent, or someone acting for the parent, may apply reasonable physical force to a child. Some states are also undertaking community education programs relating to the use of corporal punishment administered by parents or carers.

<sup>22</sup> Initial reports of States parties due in 1993: Australia. 01/02/96. CRC/C/8/Add.31 paras 407, 412, 414 and 423.

<sup>23</sup> Concluding observations of the Committee on the Rights of the Child: Australia. 10/10/97. CRC/C/15/Add.79 para 26.

<sup>24</sup> Australia’s second and third reports under the convention on the rights of the child CRC/C/129/Add. 4, 29 December 2004.

<sup>25</sup> Report of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Chapter 5, Non Fatal Offences Against the Person, September 1998, pages 131-139.

<sup>26</sup> Report of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Chapter 5, Non Fatal Offences Against the Person, September 1998, page 137.

187. Corporal punishment in Australian government schools and some non-government schools has been prohibited in the Australian Capital Territory, New South Wales, South Australia, Tasmania, Victoria and Western Australia.

188. This goes some way to addressing the concern of the Committee, expressed at paragraph 15 of its Concluding Observations, about the lack of prohibition in local legislation on the use of corporal punishment in schools, at home and in institutions. The Committee suggested, at paragraph 26, that corporal punishment be prohibited in private schools and at home and that ‘awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention’.

The second and third reports of Australia are due to be considered by the Committee in its 40th session, 12-30 September, 2005. The Committee has stated that it would appreciate receiving information on intended or planned activities related to the recommendations made in its concluding observations on the initial report, including on the use of corporal punishment.<sup>27</sup>

### People’s Republic of China

The initial report of The People’s Republic of China, submitted in 1995, stated under article 37 (a) that ‘China has always taken the protection and promotion of human rights and fundamental freedoms seriously’; that ‘its Constitution and other important pieces of legislation lay down clear, detailed provisions prohibiting torture and other inhuman treatment’; and that ‘torture of children does not occur in China,’ because the ‘government, the judiciary, public organisations, schools and families have a high regard for children’s rights.’ In addition, parents or other guardians must not ill-treat minors under the Protection of Minors Act. While appreciating that the ‘overwhelming majority of children have happy and safe family and public lives’, the Government noted that ‘there are still some *extremely* rare cases of children whose parents, *owing to an imperfect understanding of the right way to bring up children or under the influence of bad traditions* (such as favouring boys and disparaging girls) do ill-treat and humiliate them’ (our emphasis). Such cases are said to be taken ‘extremely seriously’, with the Government using ‘educative and corrective action under the law or through the mass media to prevent children from coming to physical or mental harm.’

Three elements that occur in the reports of other states parties are highlighted in these statements. In the first place, there is the emphasis on the rare occurrence of ill-treatment of children. Secondly, ‘bad traditions’ are blamed. Finally, there is no definition of what constitutes ‘ill-treatment’, so that it is not certain whether or not it encompasses corporal punishment.

Corporal punishment in schools was specifically covered in this initial report, the Government stating that ‘teaching staff at schools and kindergartens must not inflict corporal punishment or disguised corporal punishment on minor pupils or children or engage in other conduct injurious to human dignity.’ The Government also affirmed that the individual dignity of juvenile offenders must be respected and their rights and interests safeguarded.<sup>28</sup>

<sup>27</sup> Committee on the Rights of the Child Fortieth Session Pre-session Working Group 12-30 September 2005, Implementation of the Convention on the Rights of the Child List of issues to be taken up in connection with the consideration of the second and third periodic report of Australia (CRC/C/129/Add.4), CRC/C/Q/AUS/3, 17 June 2005.

<sup>28</sup> Initial reports of States parties due in 1994: China. 01/08/95. CRC/C/11/Add.7 paras 7, 21, 78, 104, 106 and 216.

The Committee's concluding observations did not make specific comments on corporal punishment, other than commenting on the death sentence that could then be imposed on children between the ages of 16 and 18 years, with a two-year suspension of execution. The Committee declared that 'it is the opinion of the Committee that the imposition of suspended death sentences on children constitutes cruel, inhuman or degrading treatment or punishment.' Adding its concern that the sentence of life imprisonment may be imposed on juvenile offenders aged between 14 and 18 years, the Committee stressed that, according to the CRC, 'neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below the age of 18.' Concern for the quality of care for children in institutions was also expressed, although no mention was made of disciplinary practices.<sup>29</sup>

In its second, and far longer, periodic report, the Government of the People's Republic of China commented that it 'attaches great importance to the Committee's suggestions', and reported major revisions to the Criminal Code, through which the death penalty can no longer be imposed on offenders who were less than 18 years of age at the time of the offence. Criminal justice procedures have changed from an interrogatory to an adversarial system and juvenile courts have been established. When handling cases that involve minors, 'the use of threats, intimidation, enticement or deceit to obtain evidence is strictly prohibited', and it is also stated that 'China adheres to the principle of preferring education to punishment, treating juvenile offenders in a civilized manner' with 'Beatings and verbal abuse, ill-treatment and humiliation ... strictly prohibited.'

With respect to parents' responsibilities for discipline, these include 'using suitable, ideologically and ethically sound methods' of education. Various programmes of parental education are listed to implement this. Village committees and other public community bodies are listed as interceding to stop abuse, although cases are still stated to occur 'in very limited numbers.'

A long section on children outside family care, expressly provided in response to the concerns expressed by the Committee in its concluding observations to the initial report, does not mention either discipline or punishment.

Although corporal punishment is not explicitly mentioned with respect to child care either inside or outside families, it is given considerable space under education. Article 15 of the Protection of Minors Act 'stipulates that teaching staff in schools and kindergartens shall respect minors' personal dignity and may not inflict corporal punishment or corporal punishment in disguised forms, or otherwise wound the minors' dignity', while:

Article 16 of the Compulsory Education Act states: 'Insulting or assaulting teachers is forbidden. Inflicting physical punishment on students is forbidden.' Article 37 of the Teachers Act stipulates that teachers who inflict physical punishment on students and do not change their behaviour after education, or whose conduct is humiliating or otherwise a bad influence on students, shall be subject to administrative punishment by the school where they work, by another educational institution or by the education authorities, or dismissed. In cases serious enough to constitute an offence, they shall be held criminally liable in accordance with the law.

The rights of children in the education process thus include 'Appeal to a higher authority in case of a punishment meted out by the school that a student does not accept, and

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<sup>29</sup> Concluding observations of the Committee on the Rights of the Child: China. 07/06/96. CRC/C/15/Add.56 paras 18 and 21.

similarly to appeal for redress or bring charges against a school or teacher for violations of a student's physical integrity, property or legitimate rights and interests.<sup>30</sup>

The second periodic report of China is due to be considered by the Committee in its 40th session, 12-30 September 2005. One of the items on the list of issues to be addressed by the Committee is 'Violence against children both within the home, schools and other institutions.'<sup>31</sup>

### China (Hong Kong Special Administrative Region)

The initial report of Hong Kong, submitted by the United Kingdom, was the last before sovereignty over the Territory reverted to China on 1 July 1997, after which, under the concept of 'one country, two systems', Hong Kong continues to have its own system of laws, and its previous capitalist system and way of life remain unchanged for 50 years. The second periodic report was thus submitted by China in 2003.

The initial report, submitted in 1996, gave rise to a series of questions from the Committee that touch on corporal punishment. One member of the Committee asked whether parents were prohibited from administering corporal punishment at home for educational purposes, and whether a study had been conducted to evaluate maltreatment of children in connection with corporal punishment.<sup>32</sup> In its concluding observations in 1996, the Committee made the following recommendations about corporal punishment:

...the Committee is of the view that prevention of this violation of children's rights requires further attitudinal changes in society, not only as regards the non-acceptance of corporal punishment and physical and psychological abuse but also greater respect for the inherent dignity of the child.

...the Committee also wishes to recommend that greater priority be accorded to the participation of children in school life, in the spirit of article 12 of the Convention, including in discussions about disciplinary measures and curricula development.<sup>33</sup>

In response, the Government submitted an addendum to the initial report, which included the following:

The Hong Kong Government believes that the general public is becoming more aware of the negative effect on society of child abuse, but is, nevertheless, increasing its efforts in its public education programmes to bring the message home...A new initiative was the setting up of a Student Discipline Section in the Education Department in September 1996. One of the aims of this initiative was to promote a better understanding on the part of teachers of the role of punishment as a disciplinary measure and to develop a policy on discipline in schools. In 1996/1997, 106 secondary schools took advantage of the services of this new Section.<sup>34</sup>

<sup>30</sup> Second periodic report of the People's Republic of China on implementation of the Convention on the Rights of the Child (1996 – 2001) Part 1 CRC/C/83/Add.9, Part I paras 2, 23, 35, 122, 179, 181, 226, 280, 296, 301, 302 and 305.

<sup>31</sup> Committee on the Rights of the Child Fortieth session Pre-session Working Group 12-30 September 2005 Implementation of the Convention on the Rights of the Child List of issues to be taken up in connection with the consideration of the second periodic report of China (CRC/C/83/Add.9, Part I and Part II), CRC/C/Q/CHN/2, 15 June 2005.

<sup>32</sup> Summary record of the 330th meeting (Hong Kong): United Kingdom of Great Britain and Northern Ireland. 28/11/96. CRC/C/SR.330 para 7.

<sup>33</sup> Committee on the Rights of the Child concluding observations on the initial report of Hong Kong, paras 27 and 32.

<sup>34</sup> Initial reports of States parties due in 1994 (Hong Kong): United Kingdom of Great Britain and Northern Ireland. 16/06/97. CRC/C/11/Add.15. (State Party Report) CRC/C/11/Add.15, 16 June 1997, para 24.

The second periodic report of Hong Kong runs to some 252 pages. It includes the information that corporal punishment is prohibited in schools and all correctional and institutional homes, where discipline is 'fostered by a system of rewards and privileges with the emphasis on "positive reinforcement".' Under Child Care Services regulations, corporal punishment is also prohibited in childcare centres.

Responding to the Committee's view in its concluding observations on the initial report, the Government states that 'the prevention of [child abuse] required further attitudinal changes in society, not only as regards the non-acceptance of corporal punishment and physical and psychological abuse but also greater respect for the dignity of the child' the report refers to increased public education, which was enjoying at least a measure of success, including a campaign on 'Child discipline but not child abuse.'<sup>35</sup>

The second periodic report of Hong Kong is due to be considered by the Committee in its 40th session, 12-30 September 2005; as in the case of the People's Republic of China, one of the items on the list of issues to be addressed by the Committee is 'Violence against children both within the home, schools and other institutions.'<sup>36</sup>

## Indonesia

In 1993, the Government of Indonesia submitted an initial country report,<sup>37</sup> which was considered by the Committee in the following year.<sup>38</sup> As we discussed earlier, this was an early stage in the development of the genre of 'country reports.' The text of Indonesia's second periodic report, submitted a decade later, demonstrates the willingness of the Government to respond to comments and recommendations from the Committee. In contrast to the initial report, corporal punishment was mentioned in families, in schools and in the juvenile justice system. For example, the Government was at pains to point out that article 66 of Act No. 30 of 1999 on Human Rights provides the specific guarantee that 'Every child has the right not to be the object of oppression, torture, or inhuman legal punishment.'

The second periodic report of Indonesia demonstrates that the Committee policy of stressing 'progressive achievement' of rights, rather than violation, has developed a more open and self-critical approach in the production of periodic reports. This has distinct advantages for monitoring children's rights, because, as in the case of Indonesia, Governments set aside defensive statements and, grounding their statements as far as possible on empirical data, are able to admit that, despite efforts to improve, goals have not yet been met. Thus, with respect to family environment and parental responsibilities, this second periodic report comments that, although considerable childrearing education is now under way, it is hindered by 'A culture that tolerates parents who neglect their responsibilities and obligations to the child, and authoritarian behaviour on the part of parents, and neglect and exploitation of children due to economic difficulties.' Likewise it is openly admitted that the 'Capacity and quality of orphanages and other forms of alternative cares largely still do not conform with the minimum standards set by the Government.'

This second periodic report shows the Government of Indonesia being particularly keen to respond to the criticisms of the juvenile justice system made by the Committee in

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<sup>35</sup> Second periodic report of the People's Republic of China on implementation of the Convention on the Rights of the Child (1996 – 2001) Part 1 CRC/C/83/Add.9 Part II, paras 137, 138, 215-221.

<sup>36</sup> Committee on the Rights of the Child Fortieth session Pre-session Working Group 12-30 September 2005, Implementation of the Convention on the Rights of the Child List of issues to be taken up in connection with the consideration of the second periodic report of China (CRC/C/83/Add.9, Part I and Part II), CRC/C/Q/CHN/2, 15 June 2005.

<sup>37</sup> Initial reports of States parties due in 1992: Indonesia. 08/03/94. CRC/C/3/Add.26.

<sup>38</sup> Concluding observations of the Committee on the Rights of the Child: Indonesia. 24/10/94. CRC/C/15/Add.25.

observations on the initial report. Improvements include children-friendly court proceedings. Nevertheless, the Government admits that some external help may still be required in order to comply with the provisions of the CRC. A symptom of this is the repeated use of the word 'correction' in this, as in the initial report. In addition, the following statement appears in a paragraph on 'supervision and violence in juvenile correctional facilities':

In many cases, children feel oppressed by the supervision and negative prejudice of staff. Also, it is not unusual for children to be subjected to abuse, both from other residents in the correctional institution – generally those senior to the victim, and from staff members. Such abuse may be physical or non-physical. Abuse inflicted by other residents also includes sexual abuse.

As an example of the way states parties are moving towards reports based on empirical information, the second periodic report of Indonesia provides data that have some relevance to corporal punishment in homes, schools and communities. The report of an NGO, *Yayasan Kesejahteraan Anak Indonesia*, is cited to show that cases of child abuse are steadily increasing (although this of course may be due to increased reporting). In addition, the report mentions:

A study on three forms of abuse (physical, mental and sexual) conducted by a research team from Gadjah Mada University in cooperation with UNICEF (1999), in six provincial capitals in Indonesia, found that physical abuse was the form most commonly experienced by children, followed by mental and sexual abuse ... The study focused on three locations where abuse occurred: at home, in schools, and in public places. Physical and mental abuse in the home was most commonly perpetrated by the mother. Physical and mental abuse suffered by children in schools was reportedly most commonly perpetrated by peers, with the exception of Semarang, where teachers were the main perpetrators. Sexual abuse most commonly occurred in public places, perpetrated by third parties.

Factors contributing to this situation are identified in the second periodic report as 'strong' traditional views that there should be no interference in the privacy of the family, that parents have absolute authority, that children must be obedient at home and at school, and the idea that boys must be able to 'stand up to' physical punishment, while street children are generally viewed as juvenile delinquents. Within schools, cases in which teachers have inflicted inhumane punishment on children are mentioned, while a certain amount of blame is placed in the 'militaristic culture' of enforcing school discipline.<sup>39</sup>

While the Committee's concluding observations in 2004 on the second periodic report of Indonesia appreciated efforts made to respond to earlier comments, they also conveyed concern about 'the high number of child victims of violence, abuse and neglect, including sexual abuse, in schools, in public places, in detention centres and in the family.' The Committee recommended a national system of monitoring and investigating complaints, including prosecution, as well as access to counselling and reintegration for victims. With specific reference to corporal punishment, the Committee expressed 'deep' concern 'that corporal punishment in the family and in schools is widespread, culturally accepted and still lawful' recommending legislation to prohibit corporal punishment in all contexts and to promote 'positive, non-violent forms of discipline as an alternative to corporal punishment.' Returning to the topic later in its observations, with respect to school discipline, the Committee once again expressed concern about 'the high incidence of violence against children in the schools, including bullying and fighting among students, and that no specific law exists to regulate school discipline and protect children against

<sup>39</sup> Second periodic reports of States parties due in 1997: Indonesia. 07/07/2003. CRC/C/65/Add.23 paras 123, 140, 203, 232-233, 235-7, 245, 378, 383 and 515.

violence and abuse in the school.’ Finally, the Committee returns to the topic of corporal punishment when considering the ‘high number’ of children living on the street, and ‘the violence to which they are subject, especially during sweep operations.’ In paragraph 80, the Committee recommends that Indonesia:

take all necessary measures:

- (a) To end the violence, arbitrary arrest and detention carried out by the State apparatus against street children;
- (b) To bring to justice those responsible for such violence.<sup>40</sup>

This is endorsed in a report submitted by the NGO Coalition, which states that

the Government must put special attention on violence committed by State apparatus against street children. Cases of violent or brutal treatment by the either satuan polisi pamong praja (city police) or the national police including arbitrary arrest or detention during sweeping operations took place so widely and frequently that the children see it as ‘normal.’<sup>41</sup>

## Japan

Japan’s initial report<sup>42</sup> devoted considerable attention to corporal punishment in schools, including information about incidence, legislation, law enforcement and monitoring mechanisms, while ignoring all other contexts in which discipline and punishment take place. The second periodic report<sup>43</sup> provided extensive coverage of corporal punishment in institutional care. The implication may be that negative views of corporal punishment are associated only with contexts outside the family. Within the family, the notion of ‘a loving smack’ appears to persist, associated with the relatively late ‘discovery’ of child abuse in Japan compared to other developed nations (Goodman, 2002).

In the initial report, the Government stated that corporal punishment of children in schools is prohibited under article 11 of the School Education Law, and that official instructions were to ‘realise the principle of the provision “no corporal punishment”’ at ‘every possible opportunity.’ Nevertheless, the practice was reported to be widespread; cases of corporal punishment reported to the civil liberties organs of the Ministry of Justice numbered 89 in 1994 and 111 in 1995.<sup>44</sup> In response, the Committee recommended prevention of corporal punishment in schools, and prohibition in families, child care and institutions, as well as awareness-raising campaigns.<sup>45</sup>

The Government of Japan submitted its second periodic country report to the Committee in 2003. With respect to school punishment, the Government stated that it had strengthened preventative measures by repeating state instructions and conducting awareness-raising and training activities for teachers, to promote alternative forms of discipline. Alternative forms of discipline were also promoted in the schools themselves.<sup>46</sup> Yet reports from non-governmental organisations indicate that the situation in schools has not improved, and may even have deteriorated. The Japan Federation of Bar Association made an extensive coverage of the issue, providing figures and analyses of the government’s

<sup>40</sup> Committee on the Rights of the Child, Thirty-fifth session, Consideration of Reports submitted by States Parties Under Article 44 of the Convention, Concluding Observations, Indonesia, 26 February 2004, CRC/C/15/Add.223.

<sup>41</sup> Comments on the First Periodic Report of the Government of Indonesia to the Committee on the Rights of the Child (Covering the period from 1993 to June 2000) prepared on behalf of the “Indonesian NGO Coalition for CRC Monitoring”.

<sup>42</sup> Initial reports of States parties due in 1996: Japan. 05/08/96. CRC/C/41/Add.1.

<sup>43</sup> Second periodic reports of States parties due in 2001: Japan. 24/07/2003. CRC/C/104/Add.2.

<sup>44</sup> Initial reports of States parties due in 1996: Japan. 05/08/96. CRC/C/41/Add.1 para 228.

<sup>45</sup> Concluding observations of the Committee on the Rights of the Child: Japan. 05/06/98. CRC/C/15/Add.90 para 45.

<sup>46</sup> Second periodic reports of States parties due in 2001: Japan. 24/07/2003. CRC/C/104/Add.2 paras 210, 211 and 356.

strategies and relevant court cases, which the Government had not mentioned in the State party report, and making the following recommendations:

- Training in alternative forms of discipline for parents and communities;
- Enforcement of alternative forms of discipline in schools;
- A public complaints system;
- Harsh penalties for offenders.<sup>47</sup>

In the second periodic report, the Japanese Government also provided some information on corporal punishment in child welfare facilities and correctional institutions, yet did not deal with physical punishment by parents, except to say that it provided family support and counselling about childrearing.<sup>48</sup>

The Committee examined the second periodic report of Japan in 2004, remaining concerned that corporal punishment is still widely practiced in schools, despite being prohibited, as well as occurring in institutional care and families. The recommendations were to:

- Prohibit corporal punishment in institutions and the home;
- Carry out public education campaigns about the negative consequences of ill-treatment of children in order to change attitudes towards corporal punishment, and promote positive, non-violent forms of discipline in schools, institutions and at home as an alternative to such punishment;
- Strengthen complaints mechanisms for children in institutions and schools to ensure that they deal with complaints of ill-treatment effectively and in a children-sensitive manner.<sup>49</sup>

## Mongolia

The initial report of Mongolia, submitted in 1995, did not specifically mention corporal punishment, but there are indications in the text that the practice exists despite prohibitions in the Criminal Code and Code of Criminal Procedure. One telling observation from Mongolia's initial country report is that a key to addressing the issue is to make the public aware of legislation that prohibits the physical punishment of children.<sup>50</sup> In response, the Committee said it was concerned about the lack of data collection and preventative measures in Mongolia, in areas such as abuse and ill-treatment and recommended legislation.<sup>51</sup>

The second periodic report of the Government of Mongolia shows willingness to implement these recommendations and combat violence against children, hindered by lack of resources.

The social welfare and protection services rendered to children and families up to now have been aimed at recovery and rehabilitation, rather than at prevention of children from getting into difficult circumstances. Social welfare services consume much money and time, and have not achieved the desired outcomes. So it is an urgent task for social

<sup>47</sup> Committee for NGO Reporting on the Convention on the Rights of the Child (Japan), 2003, NGO Report on the Second Periodic Report of Japan, Advanced Summary, July 2003, paras 69-78 and 345-6.

<sup>48</sup> Second periodic reports of States parties due in 2001: Japan. 24/07/2003. CRC/C/104/Add.2.

<sup>49</sup> Concluding observations of the Committee on the Rights of the Child: Japan. 26/02/2004. CRC/C/15/Add.231 para 36.

<sup>50</sup> Committee on the Rights of the Child, 1995, Initial report of Mongolia, 3 February 1995. CRC/C/3/Add.32 paras 105, 144.

<sup>51</sup> Concluding observations of the Committee on the Rights of the Child: Mongolia. 13/02/96. CRC/C/15/Add.48.

protection domain to develop good policies and management, and to implement them accordingly.<sup>52</sup>

The extent of the problem is revealed in a report submitted by the National Coalition of NGOs for the Rights of the Child in 2004, which stated that domestic violence is seen as a family matter: 'In Mongolia, violence against the child is related to the fact that parents and children do not know about children's rights and are not aware of different methods of solving disputes and conflicts other than by force.' This report refers to research on domestic violence carried out by the National Centre Against Violence in 1998, according to which:

...58.6 percent of participating children responded that they live in a peaceful normal environment. However, almost the same 54.5 percent of children claimed that there is fighting, verbal accusations, chasing and knifing incidents in their families.<sup>53</sup>

Thus this NGO report suggests that society is avoiding, rather than addressing, the issue; 'insisting that there is no violence present in Mongolia.'

In its concluding comments to the second periodic report, the Committee continued to show its concern, mentioning that corporal punishment:

29 ... remains socially acceptable in Mongolia and it is still practiced in families and also in places where it has been formally prohibited, such as schools and other institutions, [while] Mongolian legislation does not expressly prohibit corporal punishment in the family.

30. The Committee urges the State party to prevent and combat the practice of corporal punishment of children in the family, in schools and other institutions and to explicitly prohibit by law corporal punishment in the family. The Committee recommends that the State party introduce public education and awareness-raising campaigns with the involvement of children on alternative non-violent forms of discipline in order to change public attitudes about corporal punishment and to strengthen its cooperation with the non-governmental institutions in this respect.<sup>54</sup>

## Myanmar

When the Government of Myanmar submitted its initial country report to the Committee in 1995, corporal punishment was mentioned in homes, schools, communities and the juvenile justice system. There are some apparent contradictions. For example, Section 66 (d) of the Child Law was said to prohibit the 'wilful maltreating' of a child, but it exclude 'admonitions, by a parent, teacher or guardian for the benefit of the child.' In other words it is not clear if 'admonitions' in the course of discipline include any actions that might be defined as corporal punishment. On the other hand, according to the report, Myanmar custom would 'never' permit 'excessive punishment in the form of brutal beating' to take place in the community, because only 'parent-like counselling and treatment' are tolerated. Within the justice system, the report states that a social welfare approach offering guidance and counselling is offered to children in detention, whether delinquents or in protective care.<sup>55</sup>

The Committee examined Myanmar's initial report in 1997 but made no specific comments on corporal punishment, apart from referring to 'abuse' or 'violence' against children committed by members of the armed forces.<sup>56</sup>

<sup>52</sup> Second periodic reports of States parties due in 1997: Mongolia. 15/11/2004. CRC/C/65/Add.32.

<sup>53</sup> Alternative report of the National Coalition of NGOs of the Rights of the Child of Mongolia, 2004, page 14.

<sup>54</sup> Concluding observations (unedited version): Mongolia. 03/06/2005. CRC/C/15/Add.263.

<sup>55</sup> Initial reports of States parties due in 1993: Myanmar. 18/09/95. CRC/C/8/Add.9 paras 71-2.

<sup>56</sup> Concluding observations of the Committee on the Rights of the Child: Myanmar. 24/01/97. CRC/C/15/Add.69.

When the Government of Myanmar submitted its second periodic country report to the Committee in 2003, it provided information about legislation associated with corporal punishment. However, although the need to protect children from ‘abuse and torture’ was emphasised, the report largely repeated information on parental admonition from the initial report. The Government also reported the establishment of new institutions for children deprived of their liberty and a certain amount of training for the staff.<sup>57</sup>

In contrast to the response to the initial report, the Committee made several recommendations on corporal punishment in its concluding observations on the second periodic report. In the first place it suggested a complete legal ban on corporal punishment, together with campaigns to educate both families and professionals working with children on alternative forms of discipline. It is recommended that this should be set in the context of data collection on violence against children, policy reform, the development of children-friendly procedures in judicial processes and a public campaign to promote a culture of non violence.<sup>58</sup>

### New Zealand

The initial report of New Zealand, which was submitted in 1995, devoted considerable space to corporal punishment. Stating that New Zealand ‘is fully committed to upholding the Convention and takes very seriously the obligations assumed upon ratification’, the report nevertheless admits that some children’s rights are not fully realised, including protection against abuse, which is identified as a problem. One measure of the Government’s commitment to children’s rights is the appointment of a Commissioner for Children to whom children can make direct complaints, for instance about school punishment:

An example is an inquiry the Commissioner conducted following receipt of a complaint that a number of pupils at a school had been made by teachers to remove their clothing down to their underwear in an apparent search for drugs. The Commissioner reported that the procedure used was ‘degrading’ and failed to meet the standards of the New Zealand Bill of Rights Act 1990, and recommended steps to avoid repetition.

Reporting on the implementation of article 37 of the CRC, the Government points out that the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified in 1989, and a ‘Crimes of Torture Act’ enacted so that:

The torture of a child or the cruel treatment or punishment of a child or young person is prohibited. In the family context, such behaviour by a family member against a child or young person can constitute grounds for the child to be deemed in need of care and/or protection, and therefore for the State to intervene. Children and young persons who are in the care of the Department of Social Welfare are protected by the Residential Care Regulations (1986) and the Code of Practice for Residential Care Services (1991).

Corporal punishment of children and young people is prohibited in Government institutions, early childhood centres and state-registered schools. Children have a right to special protection in the juvenile justice system, including not being subjected to judicial proceedings as far as possible.

<sup>57</sup> Second periodic reports of States parties due in 1998: Myanmar. 05/11/2003. CRC/C/70/Add.21 paras 86-88 and 90.

<sup>58</sup> Concluding observations: Myanmar CRC/C/15/Add.237.

On the other hand, parents are said to be 'legally justified in using force by way of correction towards a child provided the force used is reasonable in the circumstances.' However:

The Commissioner for Children has promoted the idea of alternatives to physical punishment for disciplining children and has advocated the repeal of section 59 of the Crimes Act. Also, as part of its activities in focusing on family relationships, the Committee for the International Year of the Family ran a campaign for a 'Smack-free Week' to show parents how to be effective in disciplining their children without having to resort to physical punishment.<sup>59</sup>

In concluding observations in 1997, the Committee reported concern at the justification provided by section 59 of the Crimes Act for the use of 'reasonable force' to discipline children within the family and recommended that New Zealand should review the legislation on corporal punishment within the family, and aim to 'ban all forms of physical or mental violence, injury or abuse.'<sup>60</sup>

During the preparation of the second periodic report, the Government received over 50 submissions from individuals and non governmental organisations. These were given to Action for Children in Aotearoa, which used them to develop an NGO report to the Committee.<sup>61</sup> Action for Children in Aotearoa had been formed as an NGO with the express purpose of reporting to the Committee with comments on New Zealand Government reports. An earlier report from this NGO, submitted to a pre-sessional working group of the Committee in 1996, had highlighted complaints from children about being searched in schools, without the provisions of the national Bill of Rights being respected, and reported that 'degrading treatment' undoubtedly occurs as well as stating that 'Violence is a serious problem in schools, although this is related to bullying as well as corporal punishment.' Examples of degrading treatment include 'children with impaired hearing being made to stand still as punishment', being made to run for an hour, isolation from other students and being suspended from school. Further complaints from young offenders in residential centres also cite degrading treatment, and one case of 'savage beating' is described.<sup>62</sup>

The New Zealand Government began the second periodic report by responding directly to the Committee's comments and recommendations, particularly justifying the retention of Section 59 of the Crimes Act, which had been reviewed but 'continues to provide a defence for parents to use force that is reasonable in the circumstances to discipline their children.' The Government stated its belief that Section 59 provides sufficient protection because it does not sanction violence or abuse. In any case, it is argued that children are further protected by the provisions of the Children, Young Persons and Their Families Act 1989. Hitting children thus continues to be widely-perceived as 'standard parental discipline', to remove which 'would lead to loss of parental control.'

The opponents of corporal punishment recognised parents do need to be 'effectively' educated and supported if the law is changed. Reference was made to educational material on alternatives to corporal punishment produced by non-government organisations ...

<sup>59</sup> Initial reports of States parties due in 1995: New Zealand. 12/10/95. CRC/C/28/Add.3 paras 98, 187-189 and 303.

<sup>60</sup> Concluding observations of the Committee on the Rights of the Child: New Zealand. 24/01/97. CRC/C/15/Add.71 paras 16 and 28.

<sup>61</sup> Children and Youth in Aotearoa 2003 CRC Session 34, 15 September - 03 October 2003 - Action for Children and Youth Aotearoa

<sup>62</sup> Action for Children in Aotearoa 1996 - The NGO Report to the UN Committee on the CRC - Long Version CRC Session 14, 6-24 January 1997 - Action for Children and Youth Aotearoa.

In October 2000, the Government directed officials to report as soon as possible on how other comparable countries (particularly in the European Union) have addressed the issue of compliance with [the CRC], including the education campaigns that preceded legislative change.

A number of parenting programmes are offered in communities throughout New Zealand, mostly run by the voluntary sector. Many programmes are supported with government funding and cover child development needs, health and well-being. They teach parents how to interact and play with their children, while helping them understand the developmental needs of the child. They provide ideas on how to discipline children without smacking.

In September 1998, Child, Youth and Family launched the 'Alternatives to Smacking' campaign, the fourth stage in the Breaking the Cycle programme that commenced in 1995. The main objectives are to raise awareness of the alternatives to smacking and encourage parents and caregivers to think about using them. This campaign focused on television as the key medium, supported by posters, an 0800 freephone help line and pamphlet distribution.

Results show the campaign was successful in raising awareness of the alternatives to smacking. It also found a positive attitudinal shift and a significant behavioural shift from pre-contemplation to contemplation of the alternatives to smacking.<sup>63</sup>

Nevertheless, the Committee stated, in its concluding observations on the second periodic report, that it was 'particularly concerned' that some recommendations made after the initial report had been 'insufficiently addressed', including those on corporal punishment. In particular, the Committee stated that it was 'deeply concerned' that section 59 of the Crimes Act had still not been amended, despite public education to 'promote positive, non-violent forms of discipline within the home.' The Committee thus reiterated its previous recommendations.<sup>64</sup>

## The Philippines

The initial report of the Philippines in 1993 made no mention of discipline or punishment in any context.<sup>65</sup> The Committee's concluding observations, in 1995, after considerable communication with the Government of the Philippines and in the light of two NGO reports,<sup>66</sup> stated remaining concerns that national legislation did not conform to the CRC on several topics, including prohibition of torture and the criminalisation of vagrancy. The Committee was also 'preoccupied' by the level of violence against children.<sup>67</sup>

The second periodic report, submitted in 2004, covered the period 1995 to 2000. With respect to prohibition of torture, it referred to an Act prohibiting the use of torture to 'extract information', and to Presidential Decree (PD) 603, The Child and Youth Welfare Code, which 'stipulates criminal liability of a parent who inflicts cruel punishment to the child.' In such cases 'parent' is interpreted as including guardians, directors of child-care institutions and head teachers of schools. The report recalled that the Supplementary Report made to the Committee in 1995 stated that 'The Service Manual for Teachers specifies that slapping, jerking or pushing a student, imposing tasks as penalty, and

<sup>63</sup> Second periodic reports of States parties due in 2000: New Zealand. 12/03/2003. CRC/C/93/Add.4 paras 79-81 and 502-3

<sup>64</sup> Concluding observations: New Zealand: New Zealand. 27/10/2003. CRC/C/15/Add.216 para 29.

<sup>65</sup> Initial reports of States parties due in 1992: Philippines. 03/11/93. CRC/C/3/Add.23.

<sup>66</sup> Remarks by OMCT/SOS-Torture Concerning the Report of the Government of the Philippines, CRC Session 8, January 1995; Supplementary Report to the Philippine Report on the Implementation of the UNCRC, CRC Session 8, January 1995, Philippine NGO Coalition on the CRC.

<sup>67</sup> Concluding observations of the Committee on the Rights of the Child: Philippines. 15/02/95. CRC/C/15/Add.29 paras 8 and 14.

meting out cruel and unusual punishment constitute a cause for dismissal of a teacher' and that residential care agencies may have their licences revoked if corporal punishment is used on the children in their care. Practical measures of prevention are described:

The Commission on Human Rights maintains a Child's Desk to ensure that children are not subjected to torture or any inhuman punishment by adults, while human rights groups monitor the situation.. Further preventative measure include cooperation with NGOs I training legal professionals, community leaders, teachers and police.

Parents are also subject to penalties for inflicting 'cruel and unusual punishment, or subject the child to indignities and other excessive chastisement that embarrass or humiliate him/her.' Further legislation defines corporal punishment as abuse. In addition:

To promote non-violent forms of discipline and parent effectiveness in preventing abuse, a module on "Appropriate Approaches to Discipline at Home" under the Parent Effectiveness Service (PES), was implemented at village level by NGOs and [local government]. PES also includes the modules on Child Development, Keeping Your Child Safe from Abuse, Building Children's Positive Behaviour, Challenges of Parenting, among others as deterrents to child abuse and neglect.

In schools:

If a complaint is filed against a public school teacher for allegedly inflicting a cruel, physically harmful punishment on any student or pupil, the school authority shall immediately cause the conduct of an investigation to determine the existence of a '*prima facie*' evidence against the respondent teacher. A formal charge would be filed and formal investigation follows if there is evidence, unless the respondent-teacher waives his right for the formal investigation, in which case the same will be resolved on the basis of the documents available.<sup>68</sup>

The Committee's concluding observations on the second periodic report comment both on punishment under article 37 of the CRC and specifically on corporal punishment. With respect to the former, the Committee acknowledges the prohibition of torture in the Constitution of the Philippines, and yet expresses itself 'deeply concerned by a number of reported cases of torture, inhuman and degrading treatment ... particularly faced by children in detention.' The Committee says that it is 'of the view that the existing legislation does not provide children with adequate level of protection.' The Committee specifically asks for a review of legislation and also for information about cases of torture, inhuman and/or degrading treatment of children to be included in the next periodic report.

With reference to corporal punishment, the Committee expressed 'serious concern' about its social occurrence as well as the fact that it is neither included in the Child and Youth Welfare Code nor prohibited in homes. As in concluding observations to other states parties reports, the Committee reiterates the 2001 General Comment No 1 on the aims of education, as well as recommendations after the day of general discussion on violence within the family and in schools that 'corporal punishment is not compatible with the provisions of the [CRC] and .... Not consistent with the requirement of respect for the child's dignity. One recommendation to the Government of the Philippines is the complete legal prohibition of corporal punishment, together with a 'comprehensive study' of its nature and extent, public education about the harm it causes, and promotion of alternative, non violent forms of discipline.<sup>69</sup>

<sup>68</sup> Second periodic reports of States parties due in 1997: Philippines. 05/11/2004. CRC/C/65/Add.31 para 230(a).

<sup>69</sup> Concluding observations (unedited version): Philippines. 03/06/2005. CRC/C/15/Add.258.

## Republic of Korea

The Government of the Republic of Korea submitted its initial country report to the Committee in 1994, beginning by providing the text of the national Children's Charter, which includes reference to children's dignity and declares that 'Children should never be subjected to abuse or neglect.'<sup>70</sup> The report continued by remarking that:

Despite this endeavour it is hard to say that children's rights presented in the Convention are fully exercised in the Republic of Korea. Many non-governmental child agencies suggest that, in order to realise children's rights, comprehensive and intensive effort must be made and that special measures are required to solve many evolving problems resulting from the rapid changes today's Korean society is experiencing.

As in many other reports from the 19 countries, the context in which corporal punishment is mentioned in the initial report of the Republic of Korea is the topic of abuse. Claiming that the typical national form of child abuse is abandonment, the report links ideas about abuse to national culture:

There is no standardized definition of child abuse in Korea. [In] Confucian culture and tradition ... corporal punishment is considered as educational discipline and even called the 'spanking of love', there has been confusion between abuse and discipline.

The report maintains that this confusion is the underlying reason for lack of public awareness about child abuse, despite evidence from 'small-sized surveys' that it is 'much more serious than had been generally assumed.' There is no mention of school discipline under articles 28 and 29, despite reporting elsewhere that 'in 1990 the Parents Cooperation for Realising of Humane Education created the "Horuragi (whistle) Hotline" as a part of the campaign to banish violence in schools.' Other details in this report of relevance to corporal punishment occur with respect to torture and juvenile justice. Children are protected from being forced to confess crimes through 'torture, violence, intimidation, unduly prolonged arrest, etc' under legal provisions for all citizens. There is a separate juvenile justice system, which includes reformatories, training and education.<sup>71</sup>

In concluding observations on the initial report, the Committee recommends the Republic of Korea to address child abuse by developing systems of early detection, surveillance and referral to appropriate facilities for physical recovery and social reintegration.<sup>72</sup>

The second periodic report of the Republic of Korea once again mentions the Children's Charter; indeed much of the report repeats information from the initial report. Nevertheless some legal changes had taken place in the period between reports, including protection for children from domestic violence through the Special Act for the Punishment of Domestic Violence, which came into effect in 1998:

... intended not only to punish offenders, but also to separate and treat the child victims, taking into consideration the serious impact of repeated and chronic domestic violence on the formation of the child's personality.

In addition, the Child Welfare Act of 1997 not only prohibits violence, cruelty and exploitation of children but also indicates that childrearing is the responsibility of the

<sup>70</sup> Initial reports of States parties due in 1993: Republic of Korea. 30/11/94. CRC/C/8/Add.21 para 3.

<sup>71</sup> Initial report of the Republic of Korea, paras 17, 100-2, 171, 180.

<sup>72</sup> Concluding observations of the Committee on the Rights of the Child: Republic of Korea. 13/02/96. CRC/C/15/Add.51.

whole society 'all citizens, the State and local government.' With respect to discipline in the home, the second periodic report provides an interesting discussion of the notion of parental authority:

The Civil Act of the Republic of Korea (article 909, para 1) stipulates that 'minors should obey parental authority', which may be misunderstood to mean that it gives parents the right to dominate their children. In 1999, the Ministry of Justice amended the Civil Act to provide that 'parents have parental authority over minors', to make it clear that the essence of parental authority is not control over their children, but protection and concern for children. The amended Civil Act (article 912, para. 2) reflected the shift from the parental authority system to concern for children; it also explicitly stipulated the principle of the best interest of the child contained in the Convention, by including the new clause that 'parental authority should place priority on the welfare of the child.'

A 'Safe Schools Initiative', which began in September 1997, emphasises 'the prevention and investigation of school violence and [promotes] a new and forward-looking campaign in which Government and civil society are collaborating. The Korea Citizen's Foundation of the Safe Schools Initiative was established in May 1999.<sup>73</sup>

Despite this willingness to address violence against children, an NGO supplementary report raises some concerns about corporal punishment. It reports strict regulations in schools about appearance and dress, which 'have become the main source of corporal punishment or other disciplinary action' much of which can be included as corporal punishment in the definition we use in this review:

Strict enforcement of these regulations have given rise to and are accompanied by customs such as teachers using offensive language, forced cutting of students' hair, inspection of personal possessions, and underwear inspection. Students' opinions are not reflected in the appearances and dress regulation, and it is enforced through the arbitrary and ambiguous standard of being 'unbecoming of a student'. In various studies, students have pointed to hair regulations as the most representative of human rights infringement against them. There was a massive petition drive and the announcement of Declaration of School Democratisation Against Hair Policy in the year 2002.

According to this NGO report, children are 'regularly subjected to corporal punishment at school and in the home.'

According to the Year 2000 Report on Parliamentary Inspection, 51.2% of 10,009 surveyed schools allowed corporal punishment. According to the same report, seven out of ten teachers in Korea have given out corporal punishment. 69 junior high and high school students out of 503 students surveyed (13.7 %) had received corporal punishment higher than the number of students beaten up by upper classmen, 41 students (8.8 %).

The report claims that corporal punishment is not only customary in society but also government policy in schools. To address what it regards as a serious problem, the report suggests that banning corporal punishment in schools would be the first step towards its elimination in homes.

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<sup>73</sup> Periodic reports of States parties due in 1998: Republic of Korea. 26/06/2002. CRC/C/70/Add.14 paras 18,25,49,81, 94-5, 104-7 and 110.

Despite the Government statement in the second periodic report that children are protected as citizens from corporal punishment in the justice system, the NGO report claims this is a 'textbook-level' assertion. An investigation carried out by the Korean Bar Association, apparently found that:

The actual criminal justice system relies heavily on suspect's confessions. Putting aside torture, beating, threats, imprisonment of unjustified duration, long hours of interrogation and barring attorneys from interrogations represent the current status of due process in Korea.

Moreover, lack of state supervision of childcare facilities is claimed to lead to abuse remaining undetected.<sup>74</sup>

The Committee's concluding observations on the second periodic report of the Republic of Korea repeated some recommendations from the observations on the initial report, including recommending the prohibition of all forms of corporal punishment. Concern is once again expressed that corporal punishment is still permitted in schools, including:

The fact that the Ministry of Education guidelines leave the decision on whether to use corporal punishment in schools to the individual school administrators suggests that some forms of corporal punishment are acceptable and therefore undermines educational measures to promote positive, non-violent forms of discipline.<sup>75</sup>

## Thailand

The Royal Thai Government submitted its initial country report to the Committee in 1996, stating that the current laws and practices 'regrettably' condoned corporal punishment, in schools in observation and protection centres and in child and youth welfare centres; where caning was allowed on condition that it was a measure to punish misconduct or to maintain the institution's discipline. Parental discipline through corporal punishment was authorised by the Civil and Commercial Code 'to a reasonable extent or for the purpose of admonition or instruction', but the Government noted that the law did not detail the type or extent of the punishment allowed, and it was left to law enforcement officers to interpret. The Government provided an example of the way social and cultural attitudes may hinder the implementation of mechanisms to protect children from corporal punishment. In schools, even if a child is caned, there will usually be no complaints 'out of respect and consideration for the offenders or because the child or his/her parents do not expect fairness from the authorities.'<sup>76</sup> A 17 year-old pupil at a girls' high school in Bangkok, in testimony to the Committee, stated that

The use of violence against children was in some aspects sanctioned by Thai culture, which accepted corporal punishment as evidence of care for the child. However, perceptions were changing and alternative forms of school discipline were being introduced, whereby unacceptable behaviour was punished by lower marks, notification of parents and ultimately where necessary expulsion of the child. The key issue was education and particularly overcoming the inadequate awareness resulting from the generation gap.<sup>77</sup>

The Committee examined the Thailand initial country report in 1998, noting the Government's efforts to prohibit the use of corporal punishment in schools, but still

<sup>74</sup> Supplementary Report to the Republic of Korea's Second Periodic Report on the Implementation of the Convention on the Rights of the Child CRC Session 32, January 2003 - Sarangbang Group for Human Rights.

<sup>75</sup> Concluding Observations: Republic of Korea. 18/03/2003. CRC/C/15/Add.197 para 38.

<sup>76</sup> Initial reports of States parties due in 1994: Thailand. 30/09/96. CRC/C/11/Add.13 paras 183, 187, 253.

<sup>77</sup> Summary Record of the 491st meeting: Thailand. 05/10/98. CRC/C/SR.491 para 6.

concerned that it was practiced and that legislation did not prohibit its use within families, the juvenile justice and alternative care systems. The Committee recommended the Government to 'take all appropriate measures' to eliminate corporal punishment from Thai society, as well as suggesting that 'awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention, especially article 28.2.'<sup>78</sup>

The second periodic report of Thailand, submitted in 2004, is due to be examined in the Committee's forty-first session in January 2006, although a list of issues to be discussed has not yet been drawn up. In this report, the Government not only provides a matrix showing responses to the Committee's comments and recommendations on the initial report, but also adds sections on 'problems' and solutions' to each entry under the headings in the Committee's reporting guidelines. During the period between the two reports, the Government of Thailand established a Human Rights Commission and enacted a number of key pieces of legislation on children's issues, including the Education Act of 1999, and the Criminal Procedure Amendment Act, in the same year. More widespread measures for child protection, including prohibition of corporal punishment in all contexts, have been established in the Child Protection Act of August 2003, which came into force in the same year as the submission of the second periodic report, so that its implementation is not discussed in the report. In addition to including children and young people among stakeholders involved in preparing the second periodic report, a separate, independent report prepared by 'representative' Thai children (in fact 19 were children and 12 aged 18-19 years) with the support of UNICEF was submitted alongside the second country report.<sup>79</sup>

In response to the Committee's comments and recommendations on the initial report about corporal punishment, the Government states that the Ministry of Education has issued regulations on the promotion of children's rights in schools, and on punishment – the latter prohibiting caning in schools. With respect to corporal punishment in families, training in alternative forms of discipline is said to be in preparation.<sup>80</sup> The information on discipline in the children's report is based on data gathered through a very brief questionnaire (presumably drawn up by adults), used with 637 Thai children, which deals only with discipline in schools. Children were asked two questions about school regulations and also if they thought the 'means of punishment' in their schools were 'appropriate.' This is a relatively meaningless question unless the 'means of punishment' are known, but the report states that 50.23 percent of respondents responded that they were 'suitable', although 'in some cases, punishments should be less severe' and teachers should find out about the reasons for breaking rules before administering punishments.<sup>81</sup>

## Viet Nam

The Government of the Socialist Republic of Viet Nam submitted its initial country report to the Committee in 1992, without referring to corporal punishment of children except in the juvenile justice system. Although physical punishment by parents was not mentioned, the Government did comment on child abuse, stating that, while 'traditional attitudes to children and recent publicity campaigns have resulted in fierce denunciations of maltreatment of children when it occurs ... injuries to the children's body and human dignity still occur and are left unpunished, despite the universal repugnance with which such acts are viewed.'<sup>82</sup>

<sup>78</sup> Concluding observations of the Committee on the Rights of the Child: Thailand. 26/10/98. CRC/C/15/Add.97 paras 21 and 30.

<sup>79</sup> Working Team for Child Rights and Children's Issues in Thailand, 2003, Children's report on child rights and children's issues, Bangkok, UNICEF office for Thailand.

<sup>80</sup> Second periodic report, Thailand: 7 June 2004, CRC/C/83/Add.15.

<sup>81</sup> Working Team for Child Rights and Children's Issues in Thailand, 2003, Children's report on child rights and children's issues, Bangkok, UNICEF Office for Thailand.

<sup>82</sup> Initial reports of States parties due in 1992: Viet Nam. 11/08/93. CRC/C/3/Add.21 paras 110 and 141.

The Committee examined the government's initial country report in 1993, with no recommendations on discipline and punishment other than commenting on the 'long periods of imprisonment for delinquent children.'<sup>83</sup>

The second periodic country report of Viet Nam was submitted to the Committee in 2002. In contrast to the initial report, punishments in schools, in the community and in the juvenile justice system were mentioned. The Government claimed that corporal punishment of children is 'traditional in the countryside and reflected in the traditional proverb "Spare the rod and spoil the child".' To address this issue, the Government had established public education schemes, training courses for legal professionals and complaints procedures. As a result, the Government claimed that 'social awareness on this problem has been raised, contributing to the reduction of maltreatment of children in detention and reform institutions and in the family.'<sup>84</sup>

The Committee examined the government's second periodic report in 2003, expressing concern that children are subject to various forms of violence and ill-treatment, including corporal punishment. The Committee recommended:

- explicit prohibition of corporal punishment in the home, schools and all other institutions;
- public education campaigns about the negative consequences of ill-treatment of children;
- promotion of positive, non-violent forms of discipline as an alternative to corporal punishment.<sup>85</sup>

## 2.4. Summary

Examination of the states parties reports from the 19 countries, together with the concluding observations of the Committee, reveals many similarities even between 'developed' and 'less-developed' nations. It is far from being the case that the elimination of corporal punishment is a 'Western' concern. On the contrary, appeals to traditional family values and the importance of the belief that hitting children is essential to maintain parental authority (and may even be a necessary part of parental love) appear in the reports of countries as different as Australia, the Republic of Korea and the Solomon Islands. The underlying values that sanction corporal punishment are claimed to be due to a range of value systems, from Christianity to Confucianism, which may even be conflated as in the Vietnamese claim that 'spare the rod and spoil the child' is an old Vietnamese proverb, whereas it is in fact from the ancient tradition shared by Christians, Jews and Muslims. 'He who spares the rod hates his son, but he who loves him is careful to discipline him' (Proverbs: 13: 24) is cited in the country reports of the Democratic People's Republic of Korea<sup>86</sup> as well as that of Viet Nam<sup>87</sup> to explain the prevalence of corporal/physical punishment of children. Yet the appeal to tradition is often contradicted, even in the same report, through blaming violence against children by parents and others, on adherence to outdated tradition. One of the basic problems of arguments about cultural relativity is that both good and bad practices can be attributed to tradition, depending on who is making the judgments.

<sup>83</sup> Concluding observations of the Committee on the Rights of the Child: Viet Nam. 18/02/93. CRC/C/15/Add.3 paras 6-7.

<sup>84</sup> Periodic reports of States parties due in 1997: Viet Nam. 05/07/2002. CRC/C/65/Add.20 paras 115 and 117.

<sup>85</sup> Concluding Observations: Viet Nam. 18/03/2003. CRC/C/15/Add.200 paras 3-4.

<sup>86</sup> Second periodic report of the Democratic People's Republic of Korea: 5 November 2003, CRC/C/65/Add.24 para 108.

<sup>87</sup> Second periodic report of Viet Nam, 5 July 2002, CRC/C/65/Add.20 para 115.

Although corporal punishment is generally permitted in the privacy of the family, there is far less concern with retaining it in schools. While it is by no means clear that the countries are talking about the same actions, and there is a constant elision between violence, abuse and punishment, it is significant that the recognition of violence/corporal punishment against children in homes and schools is far greater than when they are in state care (unless one sums together the two contexts, in which case this becomes the most significant context – and of course the schools referred to are all state schools). Families and schools are the contexts most frequently mentioned in these states parties reports as the locations for corporal punishment, but there is far greater willingness to legislate for prohibition in the latter than in the former. Punishment in the justice system is another frequently mentioned topic, about which legislation is relatively easily contemplated, with considerable advances in many of the 19 countries, although in this (as other) contexts, NGO reports seem to indicate a wide gap between law and implementation.

The least mentioned locations – institutional care, child care and the streets – are those in which children are least protected because their lives are not supervised by either families or state agencies (even in the case of state-run or licensed institutions). States parties provide so little information about either the relevant legislation and regulations, or living conditions of these children that the implementation of all their rights under the CRC must remain a topic of concern, including the likelihood that corporal punishment is used.

Other terms that are regularly mentioned but never defined are ‘alternatives to corporal punishment’, ‘positive’ and ‘non violent’ discipline. This could be worrying. While the punishments referred to by states parties are almost always physical in nature, and emotional punishment remains so low in the agenda, it might be that ‘alternative’, ‘positive’ and ‘non violent’ discipline could be misunderstood so that verbal abuse, denigration and humiliation simply replace hitting, confining and other physical acts.

Committee recommendations depend on the information provided in the reports as well as the dialogue with government representatives before and during the session in which the reports are considered. Taken together, the reports of the 19 countries demonstrate the strong influence the Committee has exerted regionally on national attitudes, legislation and practices with respect to corporal punishment by adopting and consistently promoting a specific interpretation of the CRC within the overall human rights agenda. The reports we have examined here reveal increasing awareness of the topic of corporal punishment between initial and second periodic reports in direct response to the concluding comments and recommendations of the Committee. This is reflected not only in legislative changes, but also in the way many of the 19 countries have taken up the Committee’s recommendations about public education and awareness-raising campaigns, often with respect to making sure the public is aware of the harm that can be caused. The single recommendation consistently made by the Committee that is not adopted by states parties is the suggestion that comprehensive data on corporal punishment in all contexts should be collected. This is a serious deficit, because it means campaigns, legislation and policies are not being made on the basis of adequate information.

### **3. Current laws and regulations**

Country reports to the Committee on the Rights of the Child do not always provide a complete listing of the laws and regulations affecting discipline and punishment of children. A complete review of all existing laws and legal changes in the 19 countries is outside the scope of our review. In this chapter we consider the status of legislation on corporal punishment in the 19 countries across five broad areas of legislation:

- protection as citizens;
- family discipline;
- school discipline;
- children outside family care;
- children's workplaces.

Then we discuss the problems of implementation and the challenges of promoting legal change.

As our examination of states parties reports to the Committee on the Rights of the Child has already demonstrated, legislation may not use the term 'corporal punishment'. Not one of the 19 countries covered in this review has an overall prohibition of physical (corporal) punishment of children. Emotional punishment is either disregarded or insufficiently defined. In addition, in common with the rest of the world, the legal status of corporal punishment is multifaceted. The relevant laws and regulations may be found in constitutional provisions, assault laws, laws on domestic violence, education regulations, the law on juvenile offenders and family law, as well as in laws on child welfare and protection (Newell, 2003).

The tendency is for existing legal definitions to be vague, allowing several different interpretations, depending on the jurisdiction or culture. Sometimes terms such as 'cruel' or 'inhumane' may be employed, fitting corporal punishment within the legal framework against torture. But the danger of this is that it may set a higher threshold of prohibited forms of discipline than when excessive punishment is included in definitions of 'abuse' and 'ill treatment.' Whatever the case, all are imprecise terms, difficult to define and harder still to employ in either civil or criminal cases. Frequently it is necessary to demonstrate injury in order to make a prosecution effective. Law in itself cannot do the job of eliminating corporal punishment unless backed up by public education that really does change attitudes and behaviours.

#### **3.1. What legislation is in place?**

##### **Protection as citizens**

Children are citizens of their nations, which means constitution of the state in which they live should adequately protect them from assaults against their physical integrity and fundamental freedoms. Constitutional protection to a child as a citizen is particularly important, because the chronological ages marking the end of childhood for different purposes are defined differently both among countries and within national legislations. This section begins by examining the constitutions of the 19 countries, to see whether these fundamental human rights are guaranteed to all citizens, regardless of age.

Most states parties reports claim that children have this protection, through the constitutional provisions for all citizens for dignity, fundamental freedoms and the prohibition of torture and cruel punishment. To take just one example, the second periodic report of the Republic of Korea is explicit about these provisions and their extension to citizens less than 18 years of age:

The Constitution of the Republic of Korea (art. 10) ensures children's dignity and fundamental human rights by legislating that 'all citizens shall be assured dignity and value as human beings and have the right to pursue happiness. It is the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals'.

Under the Constitution (art. 12, para 2), torture and cruel punishment are prohibited. The Criminal Code (art. 125) states that anyone who uses violence and/or brutality during an inquiry is subject to five years' confinement or up to 10 years' forfeiture of occupational status. When a confession is determined to have been made against a defendant's will by means of torture, violence, intimidation, unduly prolonged arrest, deceit, etc., such a confession shall not be admitted as evidence in court nor shall punishment be meted out on the basis of such a confession. By forbidding confessions obtained by torture to be admitted as evidence, obtaining legal evidence by means of such acts is prevented. As specifically stated in paragraph 75 of the initial report, the Criminal Procedure Act defines proper examination and judgement procedures. In 1995, the Republic of Korea joined the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Government will not allow torture or other cruel or inhuman treatment by the State.<sup>1</sup>

Given that all 19 countries report on torture and cruel punishment to the Committee on the Rights of the Child, making reference to constitutional provisions, it is surprising that 10 of the 19 have taken no action towards signing, ratifying or acceding to the United Nations Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (Fiji, Lao PDR, Malaysia, Myanmar, Papua New Guinea, Singapore, Solomon Islands, Thailand, Vanuatu and Viet Nam).<sup>2</sup> Thus constitutional protection may be ineffectual. Interpretations of the provisions of a constitution may not provide sufficient grounds in themselves for a total abolition of physical punishment for all citizens, or even for those less than 18 years old.

### Family discipline

The concluding observations of the Committee frequently include reference to concern that corporal punishment in families and homes is lawful, widely practised and culturally-acceptable. One obstacle to effective legislation in this sphere is that it is difficult to produce legal definitions of 'home' and 'family' even within a single culture. Homes may be solid, permanent structures or shifting, impermanent constructions, serving many purposes and sheltering a variety of social groups. From statistics to social-science, through various ideological and religious rules and practices, 'family' describes an almost infinite number of structures, practices and links between human beings. A New Zealand NGO report sums up some typical variations and, by implication, the challenges these present to lawmakers and policymakers:

Government policies and agencies still assume that the norm of a family is the western nuclear family model. Many Asian people have a different perspective – placing

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<sup>1</sup> Periodic reports of States parties due in 1998: Republic of Korea. 26/06/2002. CRC/C/70/Add.14 para 49 and 79.

<sup>2</sup> www.unhchr.ch accessed 2 September 2005.

considerable value on extended families, not necessarily seeing the family as a finite group, and regarding childrearing practices as involving family consultation, especially in family breakdown situations where the best interests of the child are seen as being the highest priority. There are some family situations which may cause special difficulties for Asian children and youth in New Zealand, including ‘parachute kids’ where young people are left in New Zealand while their parents return to their home country and visit New Zealand periodically; ‘astronaut families’ when one parent stays in New Zealand with the children and the other works in their homeland.<sup>3</sup>

From a legal perspective, homes and families have two important characteristics. In the first place they are private: state legislation and provision are never more than partial, even when the form of governance allows considerable state supervision of childrearing as in Australia and New Zealand. Thus implementation of existing family law and new legislation for family life are usually both difficult and controversial. In the second place, families are the customary locations for childrearing, which implies discipline in the sense of teaching children culturally-correct behaviour. This often carries the assumption that parents have the right (and, indeed, the responsibility) to use corporal punishment as a tool for raising children. States can usually only intervene when ‘discipline’ crosses a (variably defined) line and becomes ‘abuse’, which explains some of the ambiguity in the use of these terms within states parties reports. In addition, a variety of caretakers are responsible for disciplining/rearing children at different stages in their lives. This is not always recognised in law. Fostering, for example, may be customary as well as state-regulated. Children may not always live with their biological parents (even if both are alive) and may be under the guidance of a variety of persons to whom they are related by kinship or marriage. In rural communities and among some ethnic groups, discipline of any child may be the responsibility of all adults – which is reflected in the now-familiar observation that ‘it takes a village to raise a child.’

With these considerations in mind, the Committee on the Rights of the Child urged in the report on the twenty-eighth session:

... that references ... to ‘family’ (or to ‘parents’) must be understood within the local context and may mean not only the ‘nuclear’ family, but also the extended family or even broader communal definitions including grandparents, siblings, other relatives, guardians or care providers, neighbours ...<sup>4</sup>

In order to ensure that not a single child is unprotected from physical and emotional and psychological punishment in private homes and families, states need to redefine the way ‘homes’ and ‘families’ appear in statistics and legal documents. The Republic Act No. 7610 of the Philippines, for example, is not limited to offences perpetrated by parents and persons providing alternative care, but also includes members of the extended family.

By July 2005, none of 19 countries had explicitly and unconditionally prohibited the corporal punishment of children in homes by parents. Nevertheless, all had at least one legal provision to prohibit certain treatment of, or acts against, children in homes and families, for example:

- ‘maltreatment’ (China);
- ‘inhuman treatment’ of children (Indonesia);

<sup>3</sup> Action for Children and Youth in Aotearoa 2003 CRC Session 34, 15 September-3 October 2003 - Action for Children and Youth Aotearoa, p. 36.

<sup>4</sup> Committee on the Rights of the Child, Report on the twenty-eighth session (Geneva, 24 September-12 October 2001), CRC/C/111, 28 November 2001, para 701.

- ‘voluntarily causing hurt’ (Myanmar);
- ‘when a child is physically injured other than by accident’ (Singapore);
- ‘abuse’ of a child as specifically defined by the law (Japan).

Nevertheless, parents are widely permitted to ‘chastise’ or punish children provided that ‘reasonable’ means are used. ‘Reasonable chastisement’ of children, which usually means hitting them in the course of punishment intended to teach them good behaviour, is a right awarded by many legislations to parents (as it was in some historical legislations to ‘householders’ for disciplining slaves, servants and wives). This is derived from ancient common law and can be found particularly in countries where the legal system is the outcome of colonisation by England, or other influence of the law of England and Wales. As frequently argued by those who wish to abolish corporal punishment, this right is an obstacle. In both Australia and New Zealand, case law shows recent attempts to contest this provision and court practices show that some modern judges have lowered the threshold for corporal punishment that can be considered ‘reasonable’ (Ludbrook and Wood, 1999, p.10). In the Australian State of New South Wales, the right of parents has been restricted by banning the use of a stick, strap or other object, or blows to the head or neck.<sup>5</sup> Nevertheless, some past court rulings have been criticised as being problematic or, in themselves, ‘unreasonable.’<sup>6</sup>

To take another example, the relevant laws of the Philippines can be interpreted to mean that the physical punishment of children by parents may be allowed, unless the punishment is ‘cruel’, ‘unusual’ or ‘excessive’ (all of which are undefined terms). According to Presidential Decree 603, ‘Parents have the right to discipline the child as may be necessary for the formation of his good character, and may therefore require from him obedience to just and reasonable rules, suggestions and admonitions’;<sup>7</sup> This is modified by criminal law: ‘Criminal liability shall attach to any parent who: (8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignities and other excessive chastisement that embarrass or humiliate him.’ The Republic Act 7610 of 1992 provided increased protection for children against all forms of abuse and battering, but a clear prohibition of any form of corporal punishment in homes and families does not exist.

## School discipline

Discipline is at the core of school life, not only in the sense that the function of schools is to teach but also because this includes developing specific behaviours, work ethics and attitudes to time, in order to prepare children for employment. Thus schools typically impose a structured assortment of petty rules about behaviour, appearance, and timing (none of which are related to knowledge acquisition) backed up by corresponding graded punishments. Different laws or regulations apply to state schools, religious schools and private schools, or to schools with different ages of pupil. Informal schooling – for example in projects initiated and run by NGOs – may not be covered by legislation of any kind. Day care and pre-school facilities, especially if they are private, may have no legislative provision whatsoever.

<sup>5</sup> Second and third periodic reports of States parties due in 1998 and 2003: Australia. 29/12/2004. CRC/C/129/Add.4. para186.

<sup>6</sup> See, for instance: for Australia, Ludbrook, 1995, and for New Zealand, Ludbrook and Wood, 1999.

<sup>7</sup> Presidential Decree 603, otherwise known as the Child and Youth Welfare Code (as amended), article 45 Rights to Discipline Child.

Only 10 of the 19 countries have a direct legal prohibition of corporal punishment in schools: Cambodia (in a draft law that is not yet in force), China (including Hong Kong), Japan (since 1879), Mongolia, New Zealand, Papua New Guinea, the Philippines, Thailand and Vanuatu. In some other cases, an effective ban is not backed up by legal prohibition: Myanmar, for example has government decrees against corporal punishment in schools, but no legal prohibition. In Fiji a High Court ruling made in 2002 stated that corporal punishment is unconstitutional, which has effectively prohibited its use in schools – where it had previously been permitted if administered by head teachers, as stated in the initial state party report. In Australia, as state party reports show, the situation varies from State to State, as well as between state and private schools. In other countries – Singapore and Malaysia for example – corporal punishment in schools is permitted (Global Initiative, 2005).

While there is a certain degree of debate within the region about the use of corporal punishment in schools, defined as hitting or caning, other forms of punishment do not seem to have attracted the same attention. There is always the danger that hitting children will be banned while verbal insults and assaults on dignity and self-esteem continue. The existing legal definitions of the forms of punishment to be used or prohibited in schools vary significantly among countries:

- ‘corporal punishment’ permitted for boys only (Singapore);
- limited or specific forms of corporal punishment such as ‘beating’ (China);
- physical punishment using ‘reasonable force’ (Papua New Guinea);
- physical punishment that is not ‘cruel, or physically harmful’ (the Philippines);
- widely defined forms of physical punishment such as ‘physical abuse of any kind including all deliberate actions undertaken with the intention of causing physical pain or discomfort as a form of punishment of a student’ (Australia).

### **Children outside family care**

With the exception of pupils at boarding schools, children outside family care fall into three broad categories:

- state-licensed, extra-familial care, in residential institutions such as orphanages or establishments for children with disabilities (run by states or civil society), together with state-licensed alternative family care, with related or unrelated adults;
- justice and penal system, which includes police stations, court processes, sentences, pre- and post-trial detention;
- outside state or family control, in urban environments, so-called ‘street children’, who are the responsibility of states but frequently left to the care of local communities and civil-society organisations.

### **Residential care outside the family**

A range of residential institutions caring for children may be run by the state, voluntary welfare organisations, religious organisations and private individuals or foundations.

Children are nearly always placed in institutions after being categorised according to a 'label', such as 'orphan' or 'disabled.' Institutions include residential children's homes, orphanages, welfare facilities for child abused, neglected, abandoned or HIV/AIDS-affected children, as well as for juvenile offenders under the age of criminal liability who may be referred to these facilities. Other institutions are more health-oriented and include psychiatric institutions, homes for children with disabilities, rehabilitation facilities and state-licensed alternative care, such as foster homes.

The picture provided for the 19 countries in the Global Initiative report for the UN Study on East Asia and the Pacific, shows that when children are outside family care they are orphans indeed, because legislation prohibiting any form of violence against them – including corporal punishment – is almost non-existent. 'Outside family care' effectively means outside legislative provision. Children deprived of family protection can be extremely vulnerable to ill-treatment and abuse, which may be permitted by the law or simply condoned as appropriate discipline. Worldwide, the information available indicates that institutionalisation often involves repressive, authoritarian regimes in which violence is endemic (UNICEF International Child Development Centre, 1997). Violence in institutions can take the forms of physical punishment, physical restraint, solitary confinement and other types of isolation, obligations to wear distinctive clothing, reduction of diet, restriction or denial of contact with family members and/or friends, verbal abuse or sarcasm (*ibid.*, p.10). The report from the Children's Forum to the East Asia and Pacific Regional Consultation under the UN Study underlines that violence is a problem for institutionalised children. Children said that priority issues in this context are:

- Staff are saying bad hurting words to children;
- Sometimes when children do not do their work, they are punished and not allowed to eat;
- Older children make younger children act as personal servants.<sup>8</sup>

Rules for treatment of institutionalised children may fall under the provisions of either the constitution or general civil and criminal law. Even special child protection and welfare laws may not cover private or non-formal institutions. For example, in Australia, authorised institutions are likely to have regulations and guidelines for the management of children's behaviour, permitting disciplinary measures, including physical restraint of children. The Children and Young Persons (Care and Protection Act) 1998 of Australia allows authorised carers 'to correct and manage the behaviour of the child or young persons, subject to the regulations.' It also provides for the use of physical restraint of children and young people in out-of-home care. However, it is possible that there is no explicit guidance to delineate appropriate and inappropriate behaviour-intervention strategies (Community Services Commission, 2001).

Institutional care brings with it a further rights-based concern. Lack of attention to CRC article 25 is notable for all forms of alternative care, in institutions or in families, whether run by states or by civil society. Even if a state does not support an institution, and it is financed and run by an international organisation, the state still has the responsibility to monitor both the operation of a facility and the progress of individual children placed in its care.

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<sup>8</sup> Children's Forum East Asia Pacific Regional Consultation for the UN study on Violence against Children, 14 June 2005, Bangkok, Under 18 Delegates' Keynote Address, p. 3.

The same consideration applies to children in foster care, which is a cheaper option than institutional care. This puts children back into the private arena of family life, where adults share responsibilities with states. Family law, and parental rights of chastisement may apply, but there are few (if any) mechanisms of complaint available to children.

Children who come in conflict with the law, out of sight and mind like children in institutional care, are also extremely vulnerable to physical and emotional violence, by various agents of the state or by other inmates – including adults when children are held in the same detention facilities as adult offenders. The harmful or degrading conditions and treatment of children in conflict with the law seems to be a common issue of concern among the 19 countries (Emmons, 2000). In this respect we prefer to think of ‘the law in conflict with children.’ An NGO report from the Philippines, which provides testimonies from children with a history of being in conflict with the law, presents many cases in which children describe beatings, other painful treatment and degrading conditions (Puzon, 2003). As our review of states parties reports showed, some countries either have no specific juvenile justice system or have a system that is in the early stages of development.

Detention and imprisonment of children was a major topic of discussion during the Committee’s general discussion day on state violence against children, acknowledging that ‘preventing the placement of children in institutions was one of the most effective measures to prevent violence against children and to ensure the best possible environment for children in need of care.’ At the same time, however, there are dangers to unthinking promotion of alternatives to a formal criminal law system, particularly with respect to the institutionalisation of children (both pre-trial and after-trial):

Discussion of traditional methods of justice as a possible alternative to involving children in the formal criminal law system emphasised the need for such traditional methods to respect fully international human rights standards on the treatment of children alleged to have or recognised as having committed criminal offences. Such methods, and the sense of their ‘ownership’ by the community, can help to promote respect for human rights and to prevent violence against children as well as unnecessary detention.

While it is acknowledged that ‘emphasis must be placed on providing support to parents to obviate the need to remove children from their families’, it has also been pointed out that:

there is a risk that placement in families may come to be considered as automatically preferable to placement in institutions, without due attention to the characteristics of the families and the institutions being considered. Thus, placement in an institution that incorporates all the necessary safeguards and can provide an appropriate environment for the fullest development of a child can be preferable to allowing a child to remain or to be placed in a harmful family environment.<sup>9</sup>

Twelve of the 19 countries (Cambodia, Fiji, Indonesia, Lao PDR, Malaysia, Myanmar, Papua New Guinea, the Philippines, Solomon Islands, Thailand, Vanuatu, and Viet Nam) make provision for alternative forms to institutionalisation for juveniles. But we found little information about whether or not these conform to international standards. For instance, in Fiji, the Juveniles Act of 1973 stipulates alternatives such as fines, care

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<sup>9</sup> Committee on the Rights of the Child, 2000, Outline for the Day of General Discussion (22 September 2000) on ‘State Violence against Children’, CRC/C/97 (24th Session, 2000), paras 680, 681 and 684.

orders or probation, but community work orders are seldom used because it is difficult to find suitable supervisors (UNICEF, 2001, p. 20).

Physical and emotional punishment of children may take place in several different locations and process of law administration:

- police stations;
- courts – including interrogation, court hearings and sentencing;
- detention centres for children deprived of liberty, including juveniles on remand before trial, children in ‘observation centres’, children who are illegal immigrants, trafficked children, and children seeking asylum or refugee status;
- prisons, correctional institutions, rehabilitation centres or any other institutions after sentencing.

Corporal punishment is largely prohibited in the 19 countries either as sentence for a crime, or as a disciplinary measure for children who are detained in penal systems (Table 2). In some jurisdictions, courts can impose sentences of physical punishment on juvenile offenders. Court-administered physical punishment of children is allowed in Malaysia and Singapore.<sup>10</sup> Article 34 of the Penal Code of Fiji (1978) allows for a ‘sentence of corporal punishment.’ In detention or prisons in many countries, corporal punishment is reported to be used as disciplinary measures against young offenders. In Lao PDR, one of few countries where a study has been undertaken, 30 percent of the detained children reported receiving some form of physical or mental punishment – including beating, crawling, sitting in the sun and withholding meals (Sandvik-Nylund, 2003, p. 64). Capital punishment of minors has been abolished in all 19 countries. However, it has been reported that, in spite of the legal provisions, child offenders have been sentenced to death in the Philippines (Sandvik-Nylund, 2003).

Children’s initial confrontations with the law are likely to be personal – with individual police who take them into custody for an alleged infringement of the law, after a complaint by family or neighbours about a child’s behaviour, or for their own safety (for example removing a child from an abusive home).

Violence against children (particularly street children) at police stations has been widely reported. But the information is too anecdotal, and information about the laws that apply in police stations too limited, to identify whether such violence is inflicted upon children in the form of punishment or as a disciplinary measure. For example, it is reported that children may be whipped at police stations in Vanuatu and not be put before the courts (Global Initiative, 2005, p. 49 fn. 28). Although many states parties reports referred to the prohibition of violence or torture to obtain confessions from any citizens, little or no data are provided about how such constitutional rights are implemented. An NGO alternative report to the Committee, from the Federation for Protection of Children’s Human Rights in Japan, did claim to know of cases in which physical and mental violence were used by members of the police force to obtain confessions when neither parents nor lawyers were present.<sup>11</sup>

Institutional facilities for children in conflict with the law include prisons, correctional institutions and rehabilitation centres. Several of the 19 countries have specialised detention centres. For instance, Hong Kong has assessment centres for children awaiting trial, to assist formulating of future plans, with options available for the courts to order

<sup>10</sup> (s.37(3)), World Corporal Punishment Research website at: [www.corpun.com](http://www.corpun.com), accessed on 24 January 2005.

<sup>11</sup> Federation for Protection of Human Rights, 1997, Japan, para 49.

**Table 2: Prohibition of corporal punishment of children in penal systems of the 19 countries, 2005**

Country	Corporal punishment of children prohibited in the penal system	
	As a sentence for crime	As a disciplinary measure in penal institutions
Australia	Yes	No
Cambodia	Yes	Yes
China	Yes	Yes
Hong Kong	Yes	Yes
Fiji	Yes	Yes <sup>1</sup>
Indonesia	Yes <sup>2</sup>	No
Japan	Yes	Yes
Lao PDR	Yes	Yes
Malaysia	No	No
Mongolia	Yes	Yes
Myanmar	Yes	No
New Zealand	Yes	Yes
Papua New Guinea	Yes	Yes <sup>3</sup>
The Philippines	Yes	Yes
Republic of Korea	Yes	Yes
Singapore	No	No
Solomon Islands	Yes	Yes
Thailand	Yes	Yes <sup>4</sup>
Vanuatu	Yes <sup>5</sup>	Yes
Viet Nam	Yes	Yes
<b>Totals</b>	<b>17/19</b>	<b>12/19</b>

Source: *Global Initiative, 2005, p49*

Notes:

1. Almost

2. Except in Aceh

3. Draft

4. Proposed

5. Sentence of corporal punishment may be ordered by traditional chiefs in rural areas.

them to training centres, detention centres, drug addiction treatment centres, reform schools, or approved facilities as well as probation.<sup>12</sup>

Stateless children are an especially vulnerable group. The laws and jurisdictions applicable to the protection of the rights of these children differ between countries. In Hong Kong, for instance, treatment accorded to young illegal immigrants who are held in places of detention is the same as for local children and juveniles detained in a place of refuge under the Protection of Children and Juveniles Ordinance (Chapter 213).<sup>13</sup> In Thailand, they are generally treated separately under immigration legislation.

<sup>12</sup> Second periodic report of States parties due in 1997: Hong Kong (China). 24/09/2004. CRC/C/83/Add.9 (Part II) para 422.

<sup>13</sup> Committee on the Rights of the Child, n/d, Second periodic country report of Hong Kong, CRC/C/84/Add.9 para 47.

Children in the streets, and children from the streets who come in conflict with the law, have been identified as the most vulnerable victims of the most extreme forms of violence at the international level, and the phenomenon has also been reported within East Asia and the Pacific.<sup>14</sup> The justice system may be used inappropriately to remove them from the streets (West, 2003). Street children are outside both civil society and state systems, often having no official existence in the form of birth or registration certificates, so that their access to fulfilment of the rights belonging to all children is nil. Their social image at best is as victims and objects of pity, at worst as a threat to respectable, law-abiding citizens and even to national security (Ennew and Kruger, 2004). A general complaint made by street-living children worldwide is that they suffer from violence by police and members of the public (For Indonesia, see for example Beazley, 2003). But defining this undoubted violence as 'corporal punishment' or even as discipline may not be correct. Generally violence is practiced on these children simply because they are there, or to make them go away. The violence is clearly punitive and physical but it is a special case often unrelated to disciplining children in the course of childrearing. Indeed these children are often thought of as vermin rather than as children. Any consideration of corporal punishment of street children should therefore also consider the overlapping contexts of families, institutions and justice systems.

According to a literature survey carried out for the Asian Development Bank 'even conservative figures indicate that there are millions of street children in [Asia]' and 'Each State offers different opportunities and dangers for life on the street' (West, 2003, pp. 1 and 11). They may be bullied by other children or by adults, summarily dealt with and beaten by police, shopkeepers, or other adults. Vagrant children and street activities are by their very nature visible, which to a certain extent explains the negative constructions of adults and the connection with public (dis)order, for (in the widest sense) street space is criminal space, especially at night (Connolly and Ennew, 1995).

It is not possible to make a general image of 'the street child' from girls and boys, children living in the street and those who go home at night, drug users and drug refusers, ragpickers and newspaper sellers, eight year old beggars and adolescent porters. Nor is it possible to make a composite regional street child to represent children from countries as different as China, Cambodia, Thailand, Philippines and Papua New Guinea. One solution linking research and policy is to ignore international attempts at a universal definition for street children and develop instead a practical definition of the target group of vagrant or street children according to national priorities. Thus, Mongolia defines three categories, corresponding more or less to international classifications of street working, street living and abandoned children, but refers to seasonal differences in the numbers of children living on the street, according to the weather. The official Vietnamese definition is similar, but classifies children according to where, or with whom, they sleep in order to take into account children who sleep on the streets with parents or guardians. The People's Republic of China is more specific, referring to children living 'a vagabond life for more than 24 hours without safeguard for basic survival with the result of falling into dire straits' (Ennew, 2003; Lauter 1988, quoted in West, 2003, p. 9).

Street children's co-residential groups are sometimes referred to as 'surrogate families'. Sharing resources and information is vital and a group is often a means of protection from violence and police harassment. Because vagrant children usually feel that people in authority such as social workers and the police cannot be trusted, the group is often the

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<sup>14</sup> Committee on the Rights of the Child, 2000, Outline for the Day of General Discussion (22 September 2000) on 'State Violence against Children', CRC/C/97 (24th Session, 2000).

only source of support and care when members are ill and injured. Street lifestyle and networks develop a subculture that provides both reference group and collective identity (Beazley, 2003). These tend to have a broader reach than nuclear, or even extended, families; members of a street child subculture draw newcomers into the fold, teach them survival skills and socialise them. Yet they can be violent hierarchies - such as the *bong tom* (big brother) gangs in Cambodia (Ennew, 2003; West, 2003, p. 7).

Institutions for street children 'tend to perceive and treat children as social deviants.' This is one reason why states are willing to allow the operation of an uncounted number of NGOs working with street children, which amount to the majority of provision within the 19 countries (West, 2003, p. 28). There is no information, other than occasional media reports, about the extent to which physical and humiliating punishments are used by these projects, but this does not mean such inexcusable harm to children whose life experience has consisted largely of abuse, does not occur.

### Children's workplaces

Workplace violence is defined by the International Labour Organisation (ILO) as 'any action, incident or behaviour that departs from reasonable conduct in which a person is assaulted, threatened, harmed, injured in the course of, or as a direct result of, his or her work' (ILO, 2003). Violence at work is reported to be widespread and to include moral harassment, ill-treatment, gender-based harassment and threats (ILO, 2004). No definition of workplace violence against child workers has been developed, although they may require different and special attention and care over their health and welfare compared to their adult counterparts. As is so often the case, children seem not to be statistically differentiated from adults (Qvortrup, 1991).

Asia has more working children than any other continent – partly because it is home to the largest number of children. Child work in itself may be regarded as a form of abuse, and forced labour (which includes bonded labour) may be regarded as a form of violence that includes the broader definition of corporal punishment of children used in our review (ILO, 2002; 2003). From children's perspectives, the workplace has many of the characteristics of schooling, having sets of rules with punishments for infringements from deduction of wages to confinement, refusal of food and water, verbal assaults, humiliation and beatings. Evidence for these particular forms of violence against children tends to be anecdotal, and often appears as adjuncts to other concerns about child workers. There are almost no data about corporal punishment at work, because the focus of ILO and other agencies is on the *hazards of particular kinds of work*, rather than *hazards for particular children* (Ennew, Myers and Plateau, 2005). There is thus very little information about either corporal punishment of under-aged children in the workplace, or corporal punishment being practiced on workers aged 16-18 years, even though corporal punishment in itself may be a hazard in the workplace for some children with some employers. In this respect, child domestic workers are often considered to be especially at risk:

A number of factors conspire to make a child domestic worker particularly vulnerable to violence, and these relate mainly to the inequality of the relationship that she has with members of the employing household. Significant power inequalities exist between child domestic workers and their employers. ... Even if their relationships with members of the household are good, these are not on equal terms. ... The child domestic worker has limited freedom of movement. She lives in her employer's house

and is subject to their rules. She is dependent upon her employer for her well-being and basic necessities. Commonly child domestic workers are told not to leave the house by their employers, who frighten them with stories of what they will face on the outside. A girl may not have the resources to leave (even if she is paid, she may not handle her wages or have enough money to escape). While most employers do not employ child domestic workers with the express intention of perpetrating violence against them, research from across the region indicates that employers take on child domestic workers because they perceive them to be more 'submissive' and 'easier to control' (Blagbrough, 2003, pp. 57-58).

Most interventions on children's work – as well as most research and legislation – focus on the minimum age for employment (ILO Convention 138, 1973) and/or the hazards of child work (ILO Convention 182, 1999). The suggested minimum age for entry to most kinds of employment is 15 years. Interpretations of minimum age by the ILO InFocus Programme on the Elimination of Child Labour (ILO-IPEC) tend towards a zero tolerance of work by persons less than 15 years of age. By July 2005, Australia, Myanmar, New Zealand, Republic of Korea, Singapore, Solomon Islands and Vanuatu had not ratified ILO Convention 138; while Australia, Cambodia, Myanmar, Republic of Korea, Solomon Islands and Vanuatu had not ratified ILO Convention 182. Accordingly, minimum ages of admission to employment and conditions of work for children differ significantly among the 19 countries. Furthermore, even in the ratifying countries, domestic applicability as well as the enforcement status of the provisions of these Conventions constitute another significant problem, which is not limited to developing countries. For instance, in Japan, 115 persons were arrested in 2000 under the Labour Standards Law for employing juveniles under the minimum age, in night work and in hazardous occupations (see also ILO, 2002 for other examples of child work in developed economies).<sup>15</sup>

A number of the 19 countries have no legal provision for protecting workers of any age against violent or inhuman treatment. Some have constitutional protection of workers, such as the 1997 Constitution of Fiji, which states under Article 33 (3) Labour Relations that '[E]very person has the right to fair labour practices, including humane treatment and proper working conditions.' Others have labour standards, such as the Labour Code of Viet Nam which states under Article 5 that 'Maltreatment of workers and the use of forced labour are prohibited'. China is one of the few countries to have established comprehensive labour standards that take violence into account. The Labour Laws of the People's Republic of China of 1995, in Article 96, state that:

[W]here an employing unit commits one of the following acts ... criminal responsibilities shall be investigated against the person in charge according to law if the act constitutes a crime: (1) to force labourers to work by resorting to violence, intimidation or illegal restriction of personal freedom; or (2) humiliating, giving corporal punishment, beating, illegally searching or detaining labourers.<sup>16</sup>

Under this legislation, sanctions include warnings, fines, and compensation for damages caused to the employees but criminal charges can also be made (Amparita, 2002, p.10).

The Philippines appears to have developed the most advanced laws in this area. In 2004, it became the first of the 19 countries to adopt a national law interpreting ILO

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<sup>15</sup> Committee on the Rights of the Child, 2003, Second periodic report of Japan, CRC/C/104/Add.2, 24 July 2003, para 453.

<sup>16</sup> 2005 Sohu.com Inc., available at: <http://english.sohu.com/2004/07/04/80/article220848039.shtml>, accessed on 25 January 2005.

Convention 182: The Republic Act No.9231 amended relevant provisions of Republic Act No.7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. The new Act prohibits the worst forms of child labour – defined in terms very similar to ILO Convention 182 – but makes no specific reference to corporal punishment. This Act covers employment in both formal and informal sectors, which means that it can be applied to domestic workers. Moreover, with respect to child domestic workers, the Magna Carta for Domestic Workers (2004) contains the following provision under Article 5, Section 2: ‘Standard of Treatment’:

The homeowner, as well as the members of the household, shall treat the household helper in a just a humane manner. In no instance shall abusive language, physical violence or any act which debases, degrades or demeans the intrinsic worth and dignity of the household helper as a human being be used upon the latter.

In addition, because a large number of children in the Philippines work within family enterprises, the Magna Carta on Child Workers includes in the definition of employer ‘any parent, legal guardian or producer acting (2004) as employer who hires or engages the services of any child below 15 years of age.’

### 3.2. Implementation

Even if a state were to prohibit all corporal punishment in all contexts, it would still be important to establish systems to enforce the law, including independent inspection, complaints procedures and advocacy. The mere existence of a law does not mean that physical and emotional punishments are no longer used. In addition, the 19 countries are characterised by considerable diversity of ethnicity and/or religion, which means that the enforcement mechanisms of customary and religious laws or local legislation may also need to be taken into consideration: For example. the legal systems of the Pacific nations are ‘diverse and pluralistic and customary law remains a central feature of many societies within the region on a day-to-day basis, different from country to country and village to village.’<sup>17</sup> Likewise, in the Philippines, the right of indigenous peoples to use their own commonly-accepted justice systems, conflict resolution institutions, peace-building processes or mechanisms and other customary laws and practices within their respective communities is recognised under Section 15 of the Republic Act No. 8371 or the Indigenous Peoples Rights Act of 1997.<sup>18</sup> Thus local communities may be the most powerful movers in either preventing or endorsing the corporal punishment of children.

#### Family discipline

Legislation about corporal punishment of children in homes and families is the most difficult to enforce. The aim should not be to criminalise parents or other caretakers, but to prevent the use of corporal punishment as a mode of discipline. Parents who would be horrified to think of themselves as child abusers still consider that they are behaving correctly by disciplining their children with a ‘loving smack.’

In order to prevent the practice of physical (corporal) punishment and emotional and psychological punishment in homes and families, it is crucial that everyone concerned,

<sup>17</sup> Port Vila Presse Online Vanuatu website, available at: [www.news.vu/en/news/judicial/vanuatu-to-host-the-16th-.shtml](http://www.news.vu/en/news/judicial/vanuatu-to-host-the-16th-.shtml), accessed on 13 January 2005).

<sup>18</sup> BALAOD Mindanaw, Inc., 2004, p. 22).

including children, knows the law. In Mongolia, for instance, criminal law has already set out a comprehensive definition of corporal punishment: 'all forms of physical violence against children shall be considered as crime'. But parents and children often do not know about children's rights and may not be aware of ways of solving disputes and conflicts other than by using violence (National Coalition of NGOs of the Rights of the Child, 2004). Parents are reported to have a 'deep-rooted habit' of raising their children with a 'harsh hand'; in one survey 89% of parents and 74% of children agreed that violence is practised against children in families (Sandvik-Nylund, 2003).

As the Government of Hong Kong claimed in its initial report to the Committee on the Rights of the Child, the most effective means of prevention of corporal punishment in homes appears to be public education:

Ultimately, we can only hope to prevent such occurrences by addressing the socio-psychological dynamics – the complex interaction of individual, familial, and societal factors – that give rise to them. We consider that, given adequate legal 'teeth' and administrative support, educational measures are likely to be the most effective means of achieving that.<sup>19</sup>

Where the law fails to deter parents from using corporal punishment, reporting systems as well as independent complaint procedures, need to be either introduced or strengthened. It goes without saying that these should be accessible to children and children-friendly. Specific reporting of corporal punishment is currently nonexistent, other than occasionally in school or institutional records. 'Abuse' and 'maltreatment' tend to be the general headings under which corporal punishment is reported. However, reporting child maltreatment, by the child victims themselves or third parties, does not seem to be easy. Child victims of abuse and their families tend to fear stigmatisation and shame. As the Government of Australia stated in its initial report to the Committee:

... offences of this kind against children may remain undetected because of reluctance or inability of the children concerned to reveal injuries or because those persons who become aware of cases of child abuse do not wish to become involved. Sometimes this may be because they consider this to involve problems of respect of privacy and the integrity of the family unit.<sup>20</sup>

Few of the 19 countries have established clear-cut legislation or regulations for reporting child abuse. In Hong Kong, for example, article 25 of the Child Welfare Law and article 6 of the Child Abuse Prevention Law provide that cases of child abuse must be notified to child guidance centres. Article 5 of the Child Abuse Prevention Law also provides that professionals working with children, such as teachers, social workers, doctors, and nurses, should be alert to identifying child abuse at an early stage. Likewise, in the Philippines, under the Child and Youth Welfare Code (Presidential Decree No. 603, 1974; amended in 1990), article 166. 'All hospitals, clinics and other institutions as well as private physicians providing treatment shall, within forty-eight hours from knowledge of the case, report in writing to the city or provincial fiscal or to the Local Council for the Protection of Children or to the nearest unit of the Department of Social Welfare, any case of a maltreated or abused child, or exploitation of an employed child contrary to the provisions of labour laws.' One concern, however, is that the Code does not define 'abuse' and 'maltreatment' of the child; thus, it is necessary that this provision is also enforced

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<sup>19</sup> Second periodic report of States parties due in 1997: Hong Kong (China). 24/09/2004. CRC/C/83/Add.9 (Part II) para 218.

<sup>20</sup> Initial reports of States parties due in 1993: Australia. 01/02/96. CRC/C/8/Add.31 para 403.

under the Republic Act No 7610 of 1992, An Act for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for Its Violation, and for Other Purposes (1992), which reinforces the corresponding provisions of the Code and clarifies what constitute the abusive acts, but does not contain the provision of mandatory reporting;

Information on traditional, community-oriented cultures and social structures of the 19 countries shows that it may not always be Government agencies that intervene in cases of child abuse and maltreatment resulting from corporal punishment. In Cambodia, the 'local authorities or neighbours have been known to intervene and in some cases the children are entrusted to their grandparents.'<sup>21</sup> In addition to such informal mechanisms, NGOs have established services such as hot lines and temporary shelters for the victims of child abuse. In Hong Kong, for instance, the Child Protective Services Units of the Social Welfare Department receives referrals from many sources: hospitals, clinics, NGOs, schools, child care centres, professionals working with children, the victims themselves, and others – all referrals are reported to be acted on promptly and treated in strict confidence.<sup>22</sup> In the Philippines, to prevent torture or other cruel, inhuman or degrading treatment or punishment of children, the Special Committee for the Protection of Children in cooperation with NGOs, organised children-focused training activities, which emphasised children's rights as well as national laws and policies for the protection of children, especially the right not to be subjected to torture.<sup>23</sup> The State Government of Western Australia has developed an approach to child protection characterised by:

a move from the concept of one agency with sole responsibility for child protection to an approach whereby a continuum of services is provided with other Government agencies and NGOs to address the needs of children at risk of abuse; building strong relationships with communities, particularly indigenous communities.<sup>24</sup>

Measures available for rehabilitating parents who have abused or punished their children differ significantly between countries but show an overall lack of trained professionals. On the one hand, Papua New Guinea currently has no services available for rehabilitation and social integration of offenders.<sup>25</sup> On the other hand, in the Philippines, social reintegration of children is undertaken by a team of doctors, social workers, residential caregivers and psychiatrists, and offending parents also have to be treated.<sup>26</sup> In Cambodia, the Government is in close cooperation with the NGOs to help vagrant children by provisionally housing them in reception centres where they receive schooling or are returned to their families, while some NGOs have sent representatives to try to persuade them to stop ill-treating their children so that they can return home.<sup>27</sup>

### School discipline

The enforcement of laws prohibiting corporal punishment in schools appears to be weak; schoolchildren in many countries continue to be hit or otherwise physically punished, as well as subjected to the particular humiliations that are habitual with many teachers.

<sup>21</sup> Initial reports of States parties due in 1994: Cambodia. 24/06/98. CRC/C/11/Add.16, para 124.

<sup>22</sup> Second periodic report of States parties due in 1997: Hong Kong (China). 24/09/2004. CRC/C/83/Add.9 (Part II) para 224.

<sup>23</sup> Second periodic reports of States parties due in 1997: Philippines. 05/11/2004. CRC/C/65/Add.31 para 138.

<sup>24</sup> Second and third periodic reports of States parties due in 1998 and 2003: Australia. 29/12/2004. CRC/C/129/Add.4 para 236.

<sup>25</sup> Initial reports of States parties due in 2000: Papua New Guinea. 21/07/2003. CRC/C/28/Add.20 para 222.

<sup>26</sup> Second periodic reports of States parties due in 1997: Philippines. 05/11/2004. CRC/C/65/Add.31 para 138.

<sup>27</sup> Initial reports of States parties due in 1994: Cambodia. 24/06/98. CRC/C/11/Add.16 para 127.

Corporal punishment of children is considered an acceptable, or even desirable, form of discipline in schools, reinforced by the subordinate status of children. Teachers are strong authority figures. Both children and parents are hesitant to intervene or complain unless punishment has caused serious injury. Moreover, teachers who inflict violence on students may be defended by communities, even including the parents of the children involved. This illustrates that, whenever a teacher raises a hand, cane or anything else to inflict punishment, the full weight of the state, society and the family falls on the child who is hit.

A crucial element is the extent to which parents delegate disciplinary authority to teachers. In 1998, this issue was considered by the Model Criminal Code Officers Committee of Australia, which concluded, that:

it is important that the mind of each parent be brought to bear on the question whether they desire physical force, even reasonable physical force, to be used on their children. Therefore, the Committee recommends that it be possible to delegate that authority to teachers and those having care and control of the child, but that *it must be done expressly* (Model Criminal Code Officers Committee, 1998, p.137, our emphasis).

Fortunately, it is reported from several of the 19 countries that the traditional perception of corporal punishment of children in schools is changing. In Thailand, the number of parents who file a complaint with the police and demand that a teacher is charged with physical assault is increasing significantly. Wanchai Roujanavong, the Director-General of the Department of Juvenile Observation and Protection, Royal Thai Ministry of Justice, attributed this changing public's attitude to the high awareness of children's rights and of new ways of childrearing within Thai society, claiming that that the 'risk of being charged with assault makes teachers think very carefully and they are more reluctant to use corporal punishment because they are liable ... under the criminal law on assault' (Roujanavong, 2004, p.15).

### **Children outside family care**

There is very little information available in English about the implementation of legislation on corporal punishment for children outside family care. In Australia and Japan, cases of abuse and maltreatment of the children in state institutions have been exposed through official inspectors and court appeals filed either by children or a third party. Yet reporting may not result in action. In the New South Wales (Australia) Supreme Court in 1995 a worker at a residential centre for children with disabilities was charged with assaulting or ill-treating an 11-year-old, developmentally-delayed, autistic child. The worker apparently pulled the child 'aggressively' by the ear across the centre grounds for a distance of between seven and 10 metres, in breach of the management plan for the child, which stated 'Do not attempt to physically restrain.' The Court, however, viewed the incident as 'trivial, insubstantial or a mere lack of nicety' and dismissed the charges (Ludbrook, 1995). But prevention is more important than reporting. Clear guidelines for behaviour management are required for all institutions, as well as for alternative care.

Law enforcement appears to be weak within juvenile justice systems, even in countries with comprehensive laws and regulations. The absence, or poor functioning, of monitoring and complaint mechanisms and prosecution procedures (both of which are unlikely to be children-friendly) seems to be a major contributing factor. In some countries, these

functions are supplemented by civil society. In the Philippines, for instance, human rights groups and other NGOs actively monitor the situation of children in detention to ensure that reports of illegal detention and torture of children are immediately investigated.<sup>28</sup> Such initiatives are important, but states bear the primary responsibility for putting effective mechanisms in place.

In Cambodia, some serious obstacles have been reported with respect to complaint and prosecution procedures. In the relatively few cases of victims of torture filing complaints, the standard response of the accused is to attempt to buy them off, or to offer 'reconciliation', which they may not be able to refuse; or to threaten complainants or their families. Even the judiciary may be accomplices to this perversion of the law, and prosecutors may refer the matter to the police for 'resolution' or 'reconciliation.' Both the Constitution and the 1993 Law on Criminal Procedure explicitly require a prosecutor who has received a complaint of a crime or misdemeanour to open a preparatory investigation, prepare an introductory indictment and forward the case to an investigating judge. In 1998, a 17-year-old boy was falsely accused and beaten by police. The victim filed a complaint, but the prosecutor referred the case to the chief of the police station involved, asking that the matter be 'resolved.' The prosecutor's request to the police led to negotiation over financial recompense for the boy and his family, but no money was ever handed over (Barber, 2000).

In East Asia and the Pacific, as elsewhere in the world, the low professional status, poor working conditions and inadequate training of law enforcement officials, including the police, judges, lawyers, staff at the detention and correctional centres, are amongst the most serious obstacles to effective prevention of violence against children and to the appropriate protection and rehabilitation of children within the juvenile justice system.

### Children's workplaces

The effective enforcement of laws, regulation or policies on the treatment and working conditions of child workers may need to begin with the compulsory registration of all workers less than 18 years of age. This would enhance the inspection and monitoring functions of labour laws, which are crucial for prevention and early identification of maltreatment of children in the workplace. This is particularly so for child domestic workers. Even in the Philippines, where some laws are in place for child domestic workers, inadequate enforcement remains a widespread problem. Inspection of private households to monitor compliance with such law is not only impractical but also may contravene constitutional provision on the inviolability of the home and its protection against unlawful State invasion (Amparita, 2002). The Government is constrained to take a reactive, rather than pro-active, role in the prevention of abuse and exploitation of child domestic workers.

This predicament highlights the need to institutionalise community surveillance systems. NGOs in the Philippines appear to be taking an active role in detection and rescue. For example, Visayan Forum provides a telephone hotline for domestic workers and, in conjunction with another NGO (SUMAPI Association and Linkage of Domestic Workers in the Philippines) has developed strategies to attract other domestic workers as allies in detecting and monitoring the situation of child domestic workers in their communities (Amparita, 2002).

<sup>28</sup> Second periodic reports of States parties due in 1997: Philippines. 05/11/2004. CRC/C/65/Add.31 para 138.

A further block on implementation of legislation is the lack of appropriate provision for children-friendly labour inspection. National labour laws may not prohibit certain forms of punishment such as forced labour, imposition of extra working hours, deprivation of wages or basic needs such as food and water. Alternatively, it might be possible to prosecute employers using criminal or child-protection legislation; but only when injury to a child is so severe that the act amounts to a criminal offence. Moreover, the likelihood of successful prosecution is probably low: For example, according to recent anecdotal information ‘... a child domestic worker from Myanmar, who was suspected of theft, was apparently beaten and burned, by her employers, with the result that she died. But the employers were not prosecuted’ (Bureau of Democracy, Human Rights, and Labour, 2003). It is highly unlikely that mild forms of physical punishment (and least of all emotional punishment) will be detected, the child victims protected and the offenders prosecuted. Therefore, it is vital that labour laws to enable the monitoring and inspection of employers and workplaces should be in place to protect child workers against all forms of abuse and maltreatment. This applies in particular to workers aged between 15 and 18 years, who usually cannot join trades unions and therefore have no legitimate means for making complaints about violence to which they may be subjected in the workplace from either employers or adult workers.

### 3.3. Promoting legal change

Following the general discussion day on violence against children in families and schools in 2001, the Committee on the Rights of the Child urged that states parties:

... enact or repeal their legislation as necessary in order to prohibit all forms of violence, however slight, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention and in particular articles 19, 28 and 37 (a) and taking into account articles 2, 3, 6 and 12, as well as articles 4, 5, 9, 18, 24, 27, 29 and 39.<sup>29</sup>

As our examination of states parties reports showed, general changes in children’s codes and specific child protection acts, and legislation on domestic violence, tend to result from direct attempts to implement a state party’s obligations under the CRC by bringing domestic law in line with international provisions. To take just four examples: Japan (Revision of Child Welfare Law of 1947), Cambodia Draft Law on Domestic Violence, Papua New Guinea Child Welfare Act Review (completed in 2004 and incorporating articles of the Convention on the Rights of the Child, and Thailand Child Protection Act 2003.

Nevertheless, there is considerable opposition to an outright ban on corporal punishment, which focuses especially on childrearing in families. Strong resistance to banning corporal punishment of children can be based on negative arguments such as the simple assertion that ‘the law is no use or not effectively enforced, and thus a legal ban on corporal punishment is not significant’ (International Save the Children Alliance SEAP region, 2003). In Cambodia, for instance, the law enforcement system has been described as being in a ‘state of crisis’, and meaning little or nothing to the victims, despite unequivocal prohibition of torture contained in both the Cambodian Constitution and criminal law (Barber, 2000).

<sup>29</sup> Committee on the Rights of the Child, 2001, Report on the twenty-eighth session, CRC/C/111, 28 November 2001, para 715.

Other resistance takes the stance of cultural relativity, as in the clear statement by the Government of the Solomon Islands in its initial report to the Committee on the Rights of the Child that ‘What is good for Western society is not necessarily good for Solomon Islands’,<sup>30</sup> a comment repeated in a plenary intervention by the Solomon Islands Government Representative at the Regional Consultation on the UN Study in Bangkok, 15th June 2005. Unlike most cultural relativity objections, the application to corporal punishment is not exclusive to ‘developing countries’. In New Zealand, at a conference on children’s rights held at the University of Otago in July 1999, a similar objection was raised in a session discussing the possibility of abolishing section 59 of the Crimes Act 1961, which enshrines the parental right to reasonable chastisement. When one advocate stated that New Zealand law forbids citizens to hit animals but allows parents to hit children, a workshop participant countered that ‘extensive research into the cultural aspect of punishment should be done before attempts are made to change the law’ (Gallaway, 1999, p. 6).

Legal change can indeed be a blunt instrument when used against the hard wood of entrenched social attitudes about the nature of human beings. At the core of resistance to eliminating corporal punishment is the relationship between parents and their immature offspring; in other words the social status of ‘child’, which is the first key to understanding personhood and ‘being a human being’. The justification for parents to use corporal punishment is, as we have already discussed, that loving children is demonstrated by disciplinary smacking, often backed up by the assertion that it is abusive *not to* punish children in this way. We will return to this topic in our examination of the social-science research record. Here it should be noted that a related common objection is that banning corporal punishment might criminalise otherwise upright and loving parents or good teachers. Yet, as Peter Newell argues, criminalisation does not necessarily mean automatic prosecution in all or even most cases, which would certainly not be in the interests of children or society; changing the law should not lead to more prosecution (Newell, 2003, p.1). On the contrary, Newell suggests that:

because of the special status of children, there should be guidance to ensure that charging parents with offences and proceeding to prosecute them is a very exceptional measure; that prosecution should only proceed when it appears to be the only way to provide the child with effective protection and other supportive interventions have failed. Detailed guidance may be required for all those involved in child protection, including for example social workers, health workers, teachers and police ... The real purpose of law is education and deterrence to achieve protection, rather than prosecution. Prosecution is always a sign of the failure of the law effectively to deter. (Newell, 2003, p. 2).

In this respect, the persistent reminders to states parties by the Committee on the Rights of the Child have clearly had effects. It is worth noting that in most cases the Committee’s recommendations include public education, data collection and the establishment of complaints mechanisms. As our review of states parties reports revealed, several countries have clearly followed up the recommendation about public education. The Director-General of the Department of Juvenile Observation and Protection of the Royal Thai Ministry of Justice, Wanchai Roujanavong, commenting on the ban on corporal punishment in the Thai Child Protection Act of 2004, has suggested that laws are the result of changing norms in society rather than a means of stimulating change in themselves: ‘If the majority does not agree, the law will not be enacted.’

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<sup>30</sup> CRC Initial report, para 244.

... society cannot be changed through passing a single law. How the law is interpreted depends on the perceptions or values of society as a whole. There [has] been considerable debate in Thailand, over a period of at least a decade, with some claiming that hitting children is wrong, while others advocated traditional forms of physical punishment as the only way to ensure discipline. Such public discussions were duplicated in parliamentary debates about the best means of protecting children. Eventually public opinion was swayed towards a new vision of child protection.

In the past, when parents hit children excessively and caused injuries, officials would attempt to remove the children from parental care. However, parents would cite their custody rights and children had to be returned to their families. The new Child Protection Act takes precedence over parental rights to custody. But, even though this law is good it cannot cover all issues; it can give direction, but people can usually find ways to get around a law. If a society is not ready, it will not be possible for any law to be enforced. (Roujanavong, quoted in International Save the Children Alliance SEAP region, 2004, p. 8).

### 3.4. Summary

Any comparison between legislations in the 19 countries we have reviewed has to take into account differences of history, legal system and governance. Thus it is striking that similarities are often more notable than differences. One common feature is the progressive achievement of rights in the region as states parties effect changes, in response to the Committee's comments and recommendations – a consequence, we would suggest, of the Committee's stress on supporting progressive achievement rather than denouncing violations. It would be useful if this greater state willingness to respond positively to recommendations on human rights could be used to encourage further ratification in the region of human rights treaties other than the CRC.

Despite some persistence of legalised corporal punishment, as in Malaysia and Singapore, the following description provided in a Hong Kong's NGO supplementary report might represent a typical status of corporal punishment of children in the 19 countries:

Corporal punishment has been abolished in the courts and in schools but is still widely accepted in the community and amongst some professionals, so much so that children with dozens of bruises are often considered to have been unduly disciplined rather than maltreated. The lack of intent to harm, the fact that the child's behaviour was provocative, the notion that defining someone as an abuser stigmatises and leads to further abuse – are all used as reasons for not identifying a case as one of abuse, and can leave children unprotected. Parents, guardians and adults rights carry more weight than those of children.<sup>31</sup>

Public education about the harmful effects of corporal punishment has been stepped up, often in the content of raising awareness about children's rights, and usually including reference to 'alternative' or 'non violent' forms of discipline (although the forms these take are seldom specified). It seems to be widely recognised that professionals working with children also require training, in which case police and justice officials are most likely to be mentioned more frequently than teachers and far more often than staff in institutions,

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<sup>31</sup> Hong Kong Committee on Children's Rights, 1995, Report on the Rights of the Child in Hong Kong, para 6.17.

whose standards of professional qualification receive scant consideration. The virtual silence on discipline and punishment of children in institutions indicates an area of deep concern.

The Committee's persistence has borne fruit in raising the issue of corporal punishment to at least some visibility on children's rights agendas in the 19 countries. Yet states are reluctant to see corporal punishment as abuse. In this respect, both states and 'public opinion' seem to use the notion of 'tradition' in two ways: to blame and to condone. Tradition blaming occurs when states refer to 'outdated practices', which are still used by 'ignorant' parents. Thus parents are blamed alongside tradition. This occurs particularly in countries that have undergone recent changes in regime and/or ideology.

Tradition condoning occurs, as in the case of the Solomon Islands, with the concomitant resort to cultural relativity and the claim that Western values are being imposed. Quite apart from the fact that states parties have ratified the CRC without making reservations on corporal punishment (with the exception of Singapore) the key question is 'To what extent can it be claimed that there is a unitary 'Western culture'. There are other 'traditions' of childrearing in the region, which do not use corporal punishment (Ennew and Plateau, 2005). Indeed there are ambiguities about the traditions claimed to be indigenous, as for example in the attribution of the Jewish canon to Vietnamese 'tradition', mentioned in the last chapter.

Much of the cultural relativity argument hinges on 'family' – the private area in which tradition is reproduced, rather than on state cultural practices (schools, institutions, justice systems) where the present and the future are produced. What we see in this review of policies and laws are some general trends in each area:

- Family – refusal to give up tradition
- Schools – willingness to change
- Institutions – the state as a reluctant parent for children who are out of sight and out of mind
- Justice systems – fairly rapid changes, complicated by the lack of specific, children-friendly justice
- Workplaces – hindered by focus on minimum age and 'hazard' as well as by the non-acceptance of child domestic work as a concern – almost certainly because this takes place within what remains defined as a private and traditional social context.



# PART III: SOCIAL RESEARCH



#### **4. Current practices of, and attitudes towards, discipline and punishment**

Corporal punishment is both a medium and a message – a means of imparting values about society and a statement about social positions, behaviours and values. Statistical and anecdotal evidence shows that corporal punishment is practised in almost every society. Throughout the world, millions of children are being physically and emotionally punished by those who are charged with their care (see for example, Straus, 1994; Save the Children, 2001, Youssef et al, 1998). As will be seen in this chapter on research on discipline and punishment, the East Asia and the Pacific region is no exception to the general tendency. In their responses to a questionnaire survey with almost 10,000 children and adolescents from the region, aged nine to 17 years in 17 countries and territories, 14 percent of all children reported ‘my parents beat me when I do something wrong’, while the regional average for this response was 23 percent (Sandvik-Nylund, 2003, p. 37).

In the 19 countries we reviewed we found very little research that focused directly on corporal punishment – even using our broad definition. Nevertheless, some information can be found in studies of childrearing in early childhood as well as in studies of punishment and abuse at home and at school for children in middle childhood (five to 12 years). The information related to discipline and punishment during adolescence tends to deal with prevention of social problems such as substance abuse and teenage pregnancy, or accounts of juvenile justice, so that the emphasis is on offences, policing, court processes and legal sanctions.

As the data we discuss will reveal, these three levels of research correspond to different attitudes towards children in three broad age-sets. In infancy, sometimes only until weaning but in other societies until the age of six or seven years, children are largely indulged and not punished – because they are not expected to understand. Once it is believed that they can learn, and particularly during the years of elementary school, harsher punishments are used. Adolescents, however, present problems (at least in societies in which this Western notion of a life-cycle stage has taken hold). Although technically ‘children’ needing to be disciplined, teenagers may be too physically large and strong for parents to punish physically – and yet (especially in urban areas) their moral training is an increasing cause for concern for the adults who seek to control them.

Accurate data on corporal punishment of children are difficult to obtain. Parents, other caretakers, teachers and other adults who are responsible for disciplining children are not necessarily the most reliable informants. Few researchers have asked children for their views and experiences, despite the fact that asking children themselves, using appropriate research techniques, has produced the most revealing data (Ennew, 2003). Very young children and babies, who are the most easily injured and the least able to protest, cannot provide direct information (Newell, 2003). For the record of their experience of corporal punishment it is necessary to search medical records for ‘non accidental injury’ and ‘failure to thrive’, which can provide indicative evidence of prevalence and trends (Ennew, 1986).

Most information concerns childrearing practices in families and disciplinary practices in schools. Few accounts are recent and, as will be discussed later, all are limited by the sampling and research techniques used. In general, the most favoured research methods are participant observation, interviews, questionnaires (usually directed at adults) and psychometric tests of children, depending to a large extent on the research discipline (anthropology or psychology). Many studies use only one method, which in itself is an inadequate research strategy.

#### 4.1. *Rights-based research*

Our review is rights-based, which means that the framework within which it analyses information is based on the human rights of children, as set out in various international charters and treaties. Rights have as much to do with action as they do with law. Rights-based policies must be based on rights-based research. Thus this chapter examines the research record, not only to see what it says about corporal punishment of children in the region, but also to explore the extent to which the research that has taken place thus far is based in the principles of rights-based research.

There are several principles at stake. Data must be scientifically collected and analysed in order to be a reliable basis for action. One vital question is therefore ‘How adequate is existing information?’ According to article 3 of the CRC, children should be guaranteed the best possible standards of research on their lives, opinions and experiences. This means, among other things, that:

- definitions of the terms used – such as ‘corporal punishment’ and ‘abuse’ must be clear. This does not mean that researchers must seek a ‘once-for-all’ definition, but that they should clarify (and adhere to) an operational definition for their research
- research questions, definitions and research methods must be culturally sensitive, meaning that methods and models should not be imposed from external cultures but derived from, or adequately adapted to, local cultures
- samples are adequate – and that data gathered from very small samples are not generalised to cover large, national populations
- research does not rely on anecdotes, or descriptive ‘case studies’ of individual children bereft of context and comparability
- more than one method is used in a research project, and the results are compared properly (‘triangulation’ according to social-science terminology)
- researchers are transparent about their methods, samples and the limitations of their research
- conclusions and recommendations for policy are based on the data gathered, and not on preconceived ideas.

Above all it is necessary for research subjects – principally children – to be conceived as subjects of rights, which means that children should be seen as human beings rather than human becomings (Qvortrup, 1991). In other words, the appropriate focus of research is less the effects on children in adult life (when they have become adults) and more the effects on them now (their current experience of being). We are interested to ask ‘How much of this research focuses on the outcomes of corporal punishment (aggressive behaviour for example) rather than on the simple record of the violation of children’s rights?’ For this purpose it is necessary not only to seek the experiences and opinions of children on corporal punishment (article 12 CRC) but also find techniques of ensuring that they can give those opinions in ways that are easy for them and do not cause further harm (article 13 CRC) (Ennew and Plateau, 2005; Morrow and Richards, 1996).

Finally, research with any population must be ethically sound, but this applies with greater force to vulnerable groups, such as children. This means that researchers should demonstrate that research participants voluntarily gave their consent to taking part in the research; that they could withdraw this consent at any time; and that researchers take every possible means of ensuring that the research methods, analysis and dissemination will not cause harm to the people (including children) who take part.

#### *4.2. Existing research*

In this part of our review, for reasons of comparability and validity, we map currently-available social scientific data on discipline and punishment of children from countries selected among the 19 countries that provide published material in English from scholarly sources, although unpublished research carried out by NGOs in Cambodia and Indonesia is also considered because of the focus on gathering information directly from children. The data are sparse – even from other sources – so examples from Republic of Korea, Lao PDR, Mongolia, Myanmar, Malaysia, Singapore, Solomon Island, Vanuatu and Viet Nam are not discussed. In the cases of China, Hong Kong and Fiji, the exploration has been enhanced to a certain extent by reference to evidence from research on other, culturally-related groups. In addition, we have concentrated more on childrearing using corporal punishment rather than on non-violent discipline, which has been described in another submission to the UN Study (Ennew and Plateau, 2005).

Certain characteristics of the countries of East Asia and the Pacific should be taken as a background to this assessment of social-science research. In the first place, there are wide differences between countries in terms of population size, wealth and economic development, as well as forms of governance. The region as a whole is marked by ethnic and religious diversity, both between and within countries. The dominant culture may depend on the moral certainties of Buddhism, Christianity, Islam or Socialism to provide guidance for parents when they discipline (socialise) their children. Yet each country also contains minority religious groups or sub-groups, as well as minority ethnic groups with their own languages and cultures and religions. This means that the tendency of users of research reports to generalise from the results of small-scale research to national patterns and characteristics is to be deplored.

Despite these notable differences, there are also common tendencies. The most recent wave of the modern process of globalisation, beginning in the eighteenth century, has brought with it specific notions of past and present, east and west as well as new forms of economic development, social reproduction and information. There is thus a general shift in values in all societies – to a greater or lesser extent, but always present – as the location of social-cultural reproduction moves from the household to the state. States now take increased responsibility for childrearing, including supervision of discipline and punishment, most particularly in schools, but also in relatively novel forms of institutional care, policing and justice as they apply to children. The last of these were not well-established in many countries until relatively recently and are undergoing changes everywhere in the light of new ideas about children's rights and their place in society.

## Australia

Much of the information available on the corporal punishment of children in Australia is directly related to policy considerations in one or other of the States, and is in fact related to attempts to modify parent behaviour. This is a reflection of a relatively well-developed welfare state, in which state agents police behaviours within the private arena of the family, setting up a series of values and standards for good childrearing (Donzelot, 1977; Meyer, 1978). For example Anne-Claire Larsen discusses the progress in Western Australia of a specific focus on alternatives to punishment as parental-management strategies, which is part of State policies in which 'community child health nurses ... scrutinize and modify parent/child interactions with the view to ameliorating social and health problems produced by undisciplined parents and unruly children' (Larsen, 1999, p. 281). In 1993, the Western Australian Institute for Child Health Research conducted a large-scale epidemiological survey of the health and well-being of Western Australian children and adolescents, which reported that approximately 30 percent of parents smack children in the four-to-11 age group. As Larsen comments, 'Medical and nursing involvement in issues of corporal punishment is unique to the second half of the twentieth century and became unavoidable once [C Henry Kempe and his colleagues] published their 'landmark' work on the "Battered-Child Syndrome"' (Larsen, 1999, p. 281). In 1998, Western Australia the Community Child Health Service 'produced an official or normative position on discipline in child-rearing', which recommended techniques of positive reinforcement or 'time out' as alternatives to physical punishment, but did not rule out an occasional 'painless "attention catching" smack'. Parents were required to teach children rather than punish them, and to exercise self control, as well as to 'avoid smacking if possible' (Larsen, 1999, pp. 281-2). A leaflet for parents from community child health nurses reads:

In the old days some thought smacking helped children learn ... An 'attention catching smack' (the only acceptable smack) however, is never meant to hurt. Other means of disciplining – a couple of words, a look or a frown are recommended (CHS leaflet 1983, our emphasis).

Nevertheless, as Larsen points out, 'This compromised position reinforces the dichotomy between acceptable corporal punishment and that which is illegal or abusive' and is necessary because there is no absolute ban on corporal punishment (Larsen, 1999, p. 283).

Paul Amato's analysis in the 1980s of data from the Children in Families Study, (designed by Gay Ochiltree and Don Edgar of the Australia Institute of Family Studies) reported parents using largely 'coercive' measures including shouting, confinement to bedroom and restricting television access (Amato, 1987, p. 59). Despite this, Australian parents seem to be ambiguous about whether smacking is effective as a disciplinary measure. Noel Wilson recounts that:

When I asked parents whether smacking did any good, half said yes, twenty percent sometimes, and twenty percent said no. They were then asked in what way does smacking do no good. Sixty percent of parents made specific comments. Twenty-five percent said it was a deterrent to further bad behaviour, and ten percent mentioned its immediate effects in stopping bad behaviour. Ten percent mentioned its use as a last

resort was understood by children so they realised the extent of parental displeasure, whilst five percent thought it was good for parents, because they felt better, or could release their anger (Wilson 1991, p. 57).

He adds that the purpose of punishment is to reassert adult power; 'and any method of punishment that is accepted by the child will do that'. Wilson's Australia-focused literature review of popular childrearing texts concluded that the majority of these manuals 'cling to the hierarchical authority structure, even though they may wish to moderate its effects by turning it into a benevolent rather than malevolent dictatorship, and misrepresent it as a democracy based on love' within a social system characterised by structural violence (Wilson, 1991, pp. 53 and 81).

With respect to punishment in schools, a comparative study of China and Australia by Jianguo Wu and Michael Singh studied classroom dynamics in two schools in the State of Victoria (one private and one state). Using focus group discussions, interviews and observation, the researchers found that disciplinary power was expressed in various ways, including forbidding children to talk, policing entry and exit to classrooms and showing impatience when children appeared not to be paying attention. They related this exercise of power to the function played by schools in preparing children to contribute to conform to and contribute to global and local capitalist development (Wu and Singh, 2004). A much earlier comparison between Australian and Japanese schools selected 209 children aged between 10 and 12 years in suburban Queensland. Only 9.1 percent of children said that their teachers had praised them in the week before the study, while 23 percent reported being scolded 'once', and 7.2 percent 'many times' (Ban, 1989).

## Cambodia

Cambodia is more notable for the activities of non governmental organisations than academic institutions, so that it is not surprising that research on violence against children has been carried out within the former sector. Nor is it surprising that violence is a focus of attention, because the reason for the presence and activities of NGOs is the recent history of violence within the country, although at least one study warns that it is not wise to base analyses entirely on blaming Pol Pot (Miles and Varin, 2005).

Glenn Miles and Sun Varin, from the international NGO Tearfund, carried out a comprehensive study of the prevalence of violence against children and children's own perceptions of this violence. This research, which was conceived in part as a contribution to the UN Study, was commissioned by a network of 30-40 local and international NGOs. The second section of the research report deals with children's perceptions of domestic violence against them, while the third concentrates on corporal punishment. The survey used focus group discussions and questionnaires with a sample of 1,314 schoolchildren aged 12 to 15 years, with more or less equal numbers of boys (639) and girls (671).

Previous studies of corporal punishment in Cambodia are virtually non-existent. Miles and Varin refer to the results from one question in research on children's views of the CRC, by the NGO Child Rights Foundation, in 2004: 'When you do something wrong, would you be punished by your teacher?'

More than nine out of ten respondents answered yes to this question. However, when asked to list what kinds of punishments they would receive, nine out of ten said the teacher would 'advise me'. However, one in five listed 'Beat me', 'Insult me' or 'Shout at me', although boys were twice as likely to list one of these options. Also 12-14 year olds were almost twice as likely to cite 'Beat me' as 15-18 year olds (Miles and Varin, 2005, p. 16).

In response to the Tearfund questionnaire, 36.4 percent of girls and 50.5 percent of boys said they had been beaten by their parents at some time. Slightly less than half of all children (44.5 percent) thought that beating could sometimes be right as well as wrong. The researchers comment, 'While a large proportion of children believe this, it is likely that they are more vulnerable to being beaten' (Miles and Varin, 2005, 58). Focus group discussions with children also showed that children believed parents had a right to beat them if they had done something wrong, mentioning beatings with sticks, limbs being twisted and being kicked. Some thought their fathers should be educated as a preventative measure; educating parents that violence is wrong and harms children was the means over 65 percent suggested for prevention, in response to an open-ended question. Domestic violence against children was reported from this questionnaire to occur in all economic groups, but children living with single mothers appear to be more likely to be beaten.

There were 'lively discussions' in the focus groups '[a]bout the merits and de-merits of teachers using violence'. When asked about prevention, these schoolchildren seemed more interested in what they could do personally (apologise, cry, plead...) than what might be done by a higher authority. In the questionnaire, 24 percent of girls and 35 percent of boys said they had been beaten by a teacher, despite memorandums from the Ministry of Education that this is forbidden, although more often 'sometimes' (73 percent) than 'every day' (4.2 percent).

It was of concern in the focus groups that teachers did not appear to be discriminatory in physical discipline between a student who was not clever and those who were disruptive. However, this table appears to indicate children felt that most corporal punishment with students should be given to those who did not listen (40.8%) or the lazy students (34.8%) and they were a little more lenient on the students who disturbed other students (25.5%) and more so with those late for class (9.3%) or those who were not clever (6.1%) (p. 71).

Children were also asked what punishments teachers normally use, and what they thought teachers should do to punish them (Table 3). Although, as the researchers comment, it is good to see that teachers explain mistakes rather more often than they hit children, it is less satisfactory that they resort more often to caning than to smacking. In addition, nearly 20 percent of children consider caning to be appropriate. However, when they were asked to suggest a form of punishment in an open-ended question, rather than to respond to closed categories, only 2.6 percent proposed that teachers should use a cane while 86.9 percent recommended teachers should give positive advice such as studying hard, providing a good example to others, behaving well and acknowledging their mistakes (Miles and Varin, 2005, p. 73).

**Table 3: Punishments teachers do use and punishments they should use, according to Cambodian schoolchildren aged 12 to 15 years**

<b>Response</b>	<b>Punishment children say teachers <u>do</u> use (%)</b>	<b>Punishment children say teachers <u>should</u> use (%)</b>
Beating with a cane	46.8	19.8
Smacking with the hand	27.1	17.9
Explaining to children about their mistakes	83.5	91.4
Other	66.9	69.4

*Based on 2,915 responses. (Percentages do not add up to 100 because children gave more than one response)*

*Adapted from Miles and Varin, 2004, pp. 72-3.*

The category of 'other' is clarified by children's comments in focus group discussions according to which, teachers 'very often':

- Beat them with sticks and on their backs;
- Force them to stand on one leg, kneel down, stand on the spiny skin of durian fruit, stand outside in the heat or run around the school;
- Pull their ears, pin their ears or lips with clothes pegs, twist and pull their hair;
- Push and pin their heads to the wall or whiteboard;
- Throw things at them;
- Cut their hair or nails if they are 'too long' (Miles and Varin, 2004).

Given that the research on punishment at home showed that children living with single mothers were more likely to be the victims of corporal punishment, it is of particular concern that they also may be more likely to be beaten at school. Table 4 shows that children who are not living with both their parents appear to be more vulnerable to being beaten by teachers, although the sub-samples of children not living with both parents are too small to be reliably significant. Nevertheless, this raises the kind of question about children and violence that would be worth further investigation in a variety of cultures.

**Table 4: Responses by family status of Cambodian schoolchildren aged 12-15 years to the question 'Have you ever been beaten by your teacher?'**

<b>Living with</b>	<b>Number of children in this category</b>	<b>Percentage of children in this category who replied that they have ever been beaten by their teacher</b>
Both parents	1,054	28.4
Grandmother only	36	38.9
Mother only	100	35.0
Older sister	16	31.3
<b>Totals</b>	<b>1,206</b>	<b>29.3</b>

*Adapted from Miles and Varin, 2004, Table 12.*

## Chinese societies

Although far from complete, the data available from Chinese societies is the most satisfactory in this review largely because it is possible to place data from studies using epidemiological surveys and psychometric tests within the context of a significant literature on Chinese childrearing attitudes, values and practices. However, the data are largely focused on physical punishment in the home and often seem to veer off into discussions of physical abuse rather than corporal punishment – which was frustrating for our purposes.

There are many ‘Chinese societies’: in the People’s Republic of China, Hong Kong and Taiwan, as well as (within the East Asia and the Pacific region) significant Chinese diasporas in countries such as Australia, Hawaii, Malaysia, New Zealand, Singapore and Thailand. Considerable attention has also been paid over the past century by North American anthropologists, educationalists, psychologists and sociologists to comparative studies of childrearing in the People’s Republic of China and the United States of America. It is interesting that researchers do not seem to have identified major differences between Chinese and Taiwanese parenting. Rather, the research on Taiwanese parents often shows cultural perspectives identical to those of mainland China. Nevertheless, in the case of Hong Kong, it is common for researchers to use the term ‘hybridization’ to refer to ‘the ways in which [Chinese] forms become separated from existing practices and recombine with new [Western] forms in practices’ (Rowe and Schelling, 1991, p. 231). In much of this literature a distinction is made between ‘individualist’ and ‘collectivist’ approaches to life and childrearing. However, just as ‘individualist’ cannot be applied as a blanket term to all ‘Western’ cultures, the ‘collectivist’ approach is by no means unique to Chinese or other Asian cultures as occasionally seems to be suggested.

Whatever the case, almost all the research on Chinese childhoods emphasises the importance of ‘filial piety’, by which is meant respect for and obedience to parents, consequent on the Confucian foundation of Chinese cultural values in family and childrearing:

At the core of the traditional Confucian value system is a set of behavioural principles enforcing vertical hierarchies of dominance. In this system, seniority and parental authority were greatly respected. Hence, obedience, unselfishness, responsibility, hard work, and thrift are highly emphasised in Confucian teaching for the purpose of cultivating oneself and honouring the family name (Ho 1994, cited in Xiaou, 2001).

According to David Y. H. Wu, ‘Filial piety ... embraces the entire Chinese cultural system and functions as the foundation of Chinese personality as well as of political organisations’ (Wu, 1981, p. 151).

In the past, Chinese writing about and for children concentrated on rules for children’s behaviour from the Confucian classics. After the indulgences of infancy, childish traits and playfulness were discouraged or even forbidden within Confucian norms (Bai, 2005). Chinese parents remain more likely to encourage children to view themselves as part of the integrated wholes of their family, community, and society, rather than to emphasise their differences from others (Markus and Kitayama, 1991, cited in Jose et al, 2000). In an early overview of child abuse and neglect in China, Jill Korbin contrasted the situation of

children before 1949 with childhood at the beginning of the 1980s. Although she commented that physical punishment is 'strongly disapproved' she also reported that Chinese parents continued to resort to spanking. But, according to Korbin, abusive punishment was 'easily detected by community committees and health care checks' (Korbin, 1981).

Since the turn of the century, the influence of Confucianism, patriarchy, and traditional culture is reported to have declined, due partly to the impact of several campaigns attacking Confucian doctrines and partly to social and economic transformations (Chen, 1987; Smith, 1991). Yet it is also argued that Confucianism remains a strong influence so that, in the ideology of the Communist Party of China, society is viewed as a large family, the maintenance of which depends on each individual's contribution (Pye, 1984). Nevertheless, the value accorded to filial piety has tended to diminish in the face of over two decades of the 'single child family policy'. It cannot be denied that, since 1949, the patterns of Chinese childhood have undergone a dramatic change: children are now 'high yield investments' both economically and emotionally (Fong, 2004). Urban Chinese parents now seem to believe that their 'only' children can achieve anything with enough effort, which means they are likely to put pressure on them with respect to school performance, and may even encourage teachers to use corporal punishment in the belief that this will increase school grades.

This has not ended the fascination of social-scientists with the Chinese diaspora, particularly comparisons of Chinese populations in People's Republic of China and Taiwan with Chinese 'Americans', although there are few comparisons between these communities of origin and Chinese communities in European countries; in addition 'Research that directly assesses parenting style similarities between European Americans and Chinese Americans is lacking' (Jose et al, 2000, p. 677). Hong Xiaou, for example has used data from the World Values Survey to compare 'American' and 'Chinese' values (Xiaou, 2001). Distinctions made between childrearing in 'individualist' and 'collectivist' cultures, have been summed up by Paul E. Jose and his colleagues in their comparative study of Taiwanese and United States' parental values and practices:

European and American parents are more likely to encourage a child to develop a self that is more autonomous from the family and reflects the child's uniqueness, whereas Chinese parents are more likely to encourage children to view themselves as part of the integrated wholes of their family, community and society, and not to emphasise their differences from others (Jose et al, 2000, p. 677).

It is possible that such 'individual/collectivist' differences might be mapped onto mother-child bonding in early infancy – as suggested by C.L. and Richard Baum. In the United States, this is (expected to be) a one-to-one bond between infant and mother, whereas in Chinese societies it is a bond between the individual child and the group – by which is meant the entire extended family; 'Only to a certain extent has the filial duty owed by a child to the family been superseded by the subordination of self-interest to the collective or state' (Baum and Baum, 1979, p. 103).

During infancy and early childhood, shaming and threat of withdrawal of love have been reported to be the most common disciplinary techniques. Young children are not subject to parental discipline and correction because it is believed that they are unable to 'tell right

from wrong'. Chinese parents are said to act responsively; making accommodations to their children's behaviour until they are around six or seven years of age, but becoming more punitive as the children grow (Ho, 1986; Jose et al, 2000). However, respondents in a Taiwanese study, when asked how old a child must be before being able to tell right from wrong, provided varied answers: 20 percent said one to three years; 42.5 percent four to six years, and 20 percent seven to nine years, while 10 percent answered 10 years and above and 7.5 percent did not give any precise answer (Wu, 1981).

Physical violence may not always be associated with punishment, but conceived more as a form of discipline or training in the ways of the world. Charles Stafford's ethnography of childrearing in Angang, Manchuria, describes pinching and slapping in 'rough-and-tumble' games between children, and between children and adults (including children hitting adults). Stafford suggests this is intended to motivate children to be 'strong enough' to 'take punishment'. Children are expected to 'do wrong' because they have not yet developed moral and spiritual understanding, but this does not prevent parents from punishing them – and punishment can be quite severe (Stafford, 1995).

Likewise, Margery Wolf's anthropological research in rural Taiwan in the 1970s, led her to claim that parents believed 'The only way to encourage desired behaviour is to punish *undesired* behaviour severely.' At that time, Wolf wrote:

A beating administered by a [rural] Taiwanese parent is often severe, leaving the child bruised and in some cases bleeding. Parents prefer to use a bamboo rod to discipline children, but they will use their hand or fist if there is no bamboo available, and if they are really angry they will pick up whatever is at hand, crueller forms of physical punishment are also used by a few parents, such as making the offending child kneel on the ridged surface of an abacus or tying the child in a dark corner ... The most frequent physical punishment is simply an irritated slap (Wolf, 1972, pp. 69-70).

Most parents in Wolf's small-scale study felt that 'physical punishment is necessary to motivate learning' although she commented on changes attitudes because of 'national television ... spreading information about other people's values' (Wolf, 1972, p. 69).

Some time later, David Y.H. Wu conducted a study of childrearing and discipline in Taiwan. Based on his research results, Wu disagreed with the general picture of Chinese infancy as a 'golden age', and claimed that harsh discipline was used to 'maintain parental authority and children's obedience ... discipline is a mechanism to establish filiality in children' (Wu, 1981, p. 151). Wu's research, which included psychology students among the respondents, led him to conclude that a highly punitive attitude was prevalent. Data were collected during brief field trips in the summers of 1977 and 1978. Initial visits to health agencies and major hospitals in Taipei yielded no statistics on 'battered children' nor yet 'non-accidental injuries'. Social workers, health practitioners and parents alike denied even the possibility of child abuse in Taiwan, even though the newspapers were then publishing stories about mothers who beat or tortured their children until they died.

Wu's methods included anthropological fieldwork, interviews, questionnaires and library research. Field interviews were conducted with eight families in Taipei and five in southern Taiwan. Additionally, a questionnaire concerning punishment, attitudes toward children, and observed techniques of childrearing was administered to 10 working parents

(aged between 25 and 56 years) and to 30 psychology students (mostly single and aged between 21 and 28 years). The respondents were asked to indicate their own approval or disapproval of various types of punishment for children in two age categories, one category involving children under three years, and the other involving children between five and 10 years old (the one-year gap was intentional, in order to make a clear distinction between the two groups). Respondents were asked to think about a family (their own, a neighbour's, a friend's, or a relative's) and decide whether or not they had observed such punishments being administered (Table 5).

**Table 5: Observed occurrence of, and attitudes towards, different punishments of children less than three years of age and five to 10 years of age: Taiwanese adults 1977/8**

Punishment	Age of children (years)							
	Less than 3				5-10			
	% of adults who				% of adults who			
	Approve	Disapprove	Observed	Not Observed	Approve	Disapprove	Observed	Not Observed
Ignore	55.0	37.5	45.0	55	60	32.5	42.5	57.5
Scold	62.5	22.5	60.0	40.5	82.5	5.0	62.5	37.5
Kneel	25.0	60.0	37.5	62.5	62.5	22.5	55.0	42.5
No meal	5.0	82.5	27.5	72.5	15.7	75.0	37.5	62.5
Lock up	12.5	75.0	31.5	70.0	20.0	62.5	35.0	52.5
Spank*	72.5	20.0	62.5	37.5	85.0	5.0	62.5	35.0
Twist ear, pinch face	2.5	85.0	32.5	67.5	15.0	70.0	52.5	45.5
Kick and beat	0	87.5	20.0	80.0	10.0	75.0	42.5	57.5
Hit head	2.5	85.0	27.5	72.5	7.5	77.5	42.5	57.5

*Based on 40 responses.*

*Adapted from Wu, 1981, p.155*

Note: \*Includes beating on buttocks or palms or with a stick.

These are interesting data despite the small sample size and the fact that Wu does not make it clear how the categories of punishment were derived. Children less than three years of age were not treated as indulgently as the ideal of a 'golden age' might suggest. Spanking, scolding and ignoring were the most approved methods and also the most frequently recalled observations. Among the most highly disapproved methods of punishment, no one agreed that kicking and beating would be appropriate for children of this age. There also appears to have been strong disapproval of ear twisting, face pinching, head hitting and refusal of food. Approval of all forms of punishment increased for children aged between five and 10 years. Although in most cases this was only a small increment of between five and 10 percent, scolding had gone up by 20 percent and kneeling had an increase of 37 percent. The latter case was presumably influenced by the fact that children less than three years of age cannot usually balance for long in a kneeling position. Wu comments that 'Punishment by kneeling apparently causes psychological humiliation along with pain, although physically it is less painful than beating' (Wu, 1981, p. 156). Hitting children on the head was the least acceptable punishment, presumably because blows to the head in Chinese (and other Asian) society are insult as well as an assault. The most highly-approved methods were also the most highly-observed (spanking, scolding, kneeling, ignoring), and yet around one third to one half also reported observing the least approved punishments.

A further indication of parental discipline amounting to abusive behaviour was found in the answers to one of Wu's questionnaire items, asking if the respondents had seen children beaten so severely that they bore marks, bruises, or other injuries. Seven point five percent of the respondents reported seeing 'many cases', 35 percent 'some cases', and 27.5 percent 'one or two cases', while on the other hand, 30 percent of respondents maintained that they had 'never' seen or heard of such incidents (Wu, 1981, p.156).

Despite this evidence, Wu comments that in both Taiwan and some overseas Chinese communities, parents use the technique of intimidation much more frequently than actual beating. Other anthropologists make similar comments about non physical disciplinary techniques. Barbara Ward carried out longitudinal research in Kau Sai, a village to the east of what was then the colony of Hong Kong, comparing 1952-53 and 1962. During that period the population increased, a school was built and the fishing industry was modernised, while greater geographical mobility brought understanding of city ways. Nevertheless, Ward reports that in both her periods of fieldwork, she found it common to see public tantrums, especially in boys aged between five and 10 years, with no one taking any notice. She analyses this as being part of a pattern of disciplining children to accommodate feelings of frustration. In this village, she noted that violent behaviour was deliberately avoided and aggression played down in both instruction and everyday life. Yet, like Stafford, she comments that, as they grow older, children learn not to expect sympathy or support (Ward, 1970).

The record of psychological research is more notable for tests and questionnaires than the longer-term, ethnographic approach of anthropologists. There have been several abuse-focused studies in Hong Kong using psychological frameworks (in most cases, with relatively small samples), as well as measures of causality and behaviour outcomes, and biomedical prevalence models (for example Lieh-Mak et al, 1983, Lau et al, 1999 ). Joseph T.F. Lau and his colleagues carried out prevalence survey of 3,355 secondary school children in Kwai Tsing District, showing a relatively low rate (4.9 percent) of corporal punishment being reported among adolescents (Table 6).

**Table 6: Prevalence rates of corporal punishment by parents of secondary school students in the past three months, Hong Kong**

<b>Punishment/injury</b>	<b>Prevalance (%)</b>
Corporal punishment	4.9
Beaten for no apparent reason	2.0
Beaten to injury by family members	1.1
Any one of the above	6.6

*Based on 98% of 3,355 responses.  
Adapted from Lau et al, 1999*

Hong Kong Christian Service explored parents' feelings when they discipline their children through an interview with 2,956 parents of adolescents from 17 secondary schools in 2003. Approximately 10 percent of the parents in the survey said they would resort to corporal punishment 'frequently' or 'periodically' (Hong Kong Christian Service, 2003). In partial contrast, research carried out in Tien Mun new town in Hong Kong New Territories, by social workers from the NGO Against Child Abuse, showed what actually happens in young families where mothers were alone with children. Of the 173 adult respondents, nearly a quarter said they had conflicts with their children. Nearly half of these respondents reported that the result of conflict was that they hit children with objects and over half said they hit them with their hands. A few other methods of corporal punishment were reported, such as pushing children and throwing things at them. Only 14.9 percent of mothers said they never used corporal punishment despite the fact that 63.6 percent said corporal punishment is 'unacceptable' (Against Child Abuse, 1996, p. 4). Scolding was reported by a fairly high percentage (60.2), but parents did not perceive this to be abusive.

In a telephone survey of a random sample 1,019 households (359 fathers and 660 mothers of child aged 0-16 years), Catherine So-kum Tang examined patterns of parent-child 'battering' in Chinese families in Hong Kong, based on the idea that the pattern would be different from 'Western societies' because of filial piety. Contrary to her hypothesis, the results showed lower rates of minor violence but higher rates of severe violence. Tang followed this with an analysis by gender of children and parents, which (once again against hypotheses) revealed more boys than girls being victims and more violent mothers than violent fathers. However, accurate self-reporting of violent behaviour is unlikely, and children were not asked for their opinions (Tang, 1998a; 1998b).

Fu-mei Chen and her colleagues studied a group of Chinese mothers of second grade children aged eight years in Beijing and found that parents with higher educational and occupational levels were less likely to use power-assertive or punitive strategies, and more likely to use inductive reasoning (Chen et al, 1997). Paul E. Jose and his colleagues examined culture and parenting of preschool children among three ethnic groups, Chinese in Taiwan, first generation Chinese in the United States and European Americans in the United States. In this research, both adults (parents and teachers) and children were involved and the research design included more than one method: questionnaires and interviews with parents; videotaping of the parent-child interactional behaviour; and another questionnaire with teachers. However, it should be noted that children were not asked for their opinions. The target samples were small: 20 preschool children and 20 kindergarten children (equal numbers of boys and girls) in each ethnic group (Jose et al, 2001).

According to parents' reports, the researchers classified disciplinary techniques into 'punitive' (withholding privileges; time-out; verbal punishment; spanking), and 'positive' (positive reinforcement; modelling; explanation). Corporal punishment was least used by Chinese in Taiwan compared with both European and or Chinese Americans. Differences were found for the positive techniques: European American parents reported using the techniques of time-out and withholding privileges more than Chinese American parents, who in turn reported using them more than Taiwan Chinese parents. Positive reinforcement (using rewards) was reported as being used more by Taiwan Chinese parents. In general, Taiwan Chinese parents reported the highest average use of positive techniques (71 percent), and the reverse was noted for punitive techniques (Jose et al, 2001).

The researchers concluded that Chinese parents are not punitive in disciplining children; but that they exercise greater control over their children, through daily timetables for example; their approach being characterised by 'keeping order' rather than 'punishing mistakes' (Jose et al, 2001). This is related to another study, which emphasised the tendency of Taiwan Chinese parents to explain rather than punish (Miller et al, 1997). More recently, Fu-mei Chen and Tom Luster concluded from a study of parenting practices in Taiwan that Chinese mothers set clear rules and restrict behaviour using reasoning instead of simply demanding compliance. Harsh verbal or physical punishment may only be used when children continue to disobey their parents (Marshall, 2004, p.100). Although this does not agree with Wu's results, this cultural tendency was recorded some time ago in urban areas of mainland China: 'A child who burned himself or herself would not be held accountable with the chastisement that he or she was old enough to know better. The experience might be used as a concrete lesson to point out the danger to the injured child and the other children' (Korbin, 1981, p. 174). However, Against Child Abuse workers in Hong Kong, after recording that 80 percent of mothers approved of 'discussion' as a method of discipline, observed that 'parents often think they are "reasoning" with children when they are, in fact, belittling them' (Against Child Abuse, 1996, p. 5).

Research in Chinese schools indicate that punishment is an integral part of the daily life of children in what Wolf described as a 'harsh environment' (Wolf, 1972, p. 67). Stafford describes schools in Manchuria, where some parents 'think that children learn better if hit from time to time' (Stafford, 1995, 65):

Teachers also often told me that punishment is an important part of learning; it encourages students and helps to maintain discipline in the school. But they were surprised at how little children in Angang responded to punishment. They also seemed to resent very much the policy on these matters (corporal punishment is technically forbidden), seeing it as the result of a Western view of education, imported by Taiwanese alumni of American graduate schools. ... They characterised this anti-disciplinarian approach as something distinctly un-Chinese and as a failed policy in Angang (Stafford, 1995, pp. 65-6).

Data derived from interviews with 50 refugee Tibetan children who had previously attended schools in Tibet also show not only that corporal punishment is common and can be brutal, but also that other rights (article 2 non-discrimination and article 30 cultural rights) may be violated. Corporal punishment was reported by these children to be less prevalent in *mangstug* schools (locally sponsored primary schools), which employ mainly Tibetan teachers, than in *zhungtsug* schools (Government sponsored primary schools), which rely more on Chinese teachers. These children also reported that Tibetan students were punished more harshly than Chinese students.<sup>1</sup>

Nevertheless, these data contradict Jill Korbin's conclusion from literature review and school visits around 1980 that physical punishment was strictly prohibited in Chinese schools, reflecting the belief that spanking or physical sanctions are not effective methods for changing children's behaviour (Korbin, 1981, p.170). This probably relates to the fact that Korbin seems to have visited only nurseries, kindergartens, and elementary schools, where the pupils were perhaps regarded as too young to understand and thus too young to punish.

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<sup>1</sup> Tibetan Centre for Human Rights and Democracy, 1997, *The Next Generation – The state of education in Tibet today*, Dharamsala, India, available at: [www.tibet.com/Humanrights/EduToday/intro.html](http://www.tibet.com/Humanrights/EduToday/intro.html), accessed on 11 April 2005.

To understand school discipline in Chinese societies, it may not be sufficient to cite the 'modern' pressures on only children. It is possible to remove the Confucian content, but not to change the overall concept of education (Bai, 2005):

Unlike in the West, where the teaching of knowledge is the primary goal of education, in China, moral development is the focus of formal education. Confucian education, which has dominated the Chinese curriculum for more than 2,000 years, considers the cultivation of the person (*xiu shen*) as the top priority in education. In Confucian ethics, loyalty (*zhong*) occupies a central place ...People who failed to possess loyalty were characterized as 'lacking education' (*Shao jiao*) (Xiaou, 2001, p. 108).

When Wu and Singh conducted their comparative study of primary schools in China and Australia, they selected one school from Chengdu, the capital city of Sichuan Province, and another from the neighbouring small city Deyang. Using the same mixture of research techniques as they did in Australia, they found the Chinese schools to be stricter than those in Australia – involving more pain than pleasure. Wu and Singh suggest that studying in China has traditionally meant suffering and is not associated with comfort or pleasure – let alone play (Wu and Singh, 2004). This surely adds to the social acceptance of corporal punishment as a 'means to an end' by teachers, parents and children.

Although Chinese orphanages have been the subject of considerable concern from foreign activist organisations, this is related largely to poor standards of care, especially in infancy, and provides little or no information about corporal punishment. Punishment of older children in a Shanghai orphanage in the early 1990s was described in an NGO report to Committee on the Rights of the Child, including 'elaborate punitive practices which in many cases amounted to torture', such as children being forced to maintain extremely uncomfortable positions for longer periods of time and being hung upside-down with their heads submerged in water.<sup>2</sup> Yet Jill Korbin, writing in 1981, claimed that state orphanages are 'highly valued for their excellent care' (Korbin, 1981, p. 180). Lack of evidence about corporal punishment does not mean this does not happen. As we stated earlier, the only possible 'statements' from very young children consist of observable damage to their bodies and delays in their development. As yet, there seems to have been no scientific research published in English on the topic of corporal punishment in Chinese institutional care.

## Indonesia

Early studies of childrearing in Indonesian societies were the product of the 'culture and personality school' in cultural anthropology, resulting in a considerable body of data that recorded and compared childrearing practices (See for example, Whiting, 1963). The underlying assumption of this approach is that 'beginning in infancy individuals internalise the concepts and precepts of their culture, assimilating them into a world view that explains and drives their personal emotions' (Ennew and Plateau, 2005, p. 48).

Possibly the best known researchers in Indonesian childrearing studies, Gregory Bateson and Margaret Mead, developed innovative research techniques to study childrearing in Bali, following from the research of colleagues on children's drawings and music (Bateson and Mead, 1942; Belo, 1955; McPhee, 1955). The focus of Bateson and Mead's research

<sup>2</sup> Human Rights Watch Asia, *Elimination of unwanted children in Chinese orphanages: A policy of inhumane treatment*, NGO report presented to pre-sessional meeting of the Committee on the Rights of the Child, 12th Session: May-June 1996.

was non violence in childrearing, which was believed to produce the famed harmony and balance of Balinese society. Bateson and Mead experimented with visual methods of data collection, using photographs and motion picture film as data, rather than solely as illustrations to written ethnographies. The later work of Hildred Geertz, in *The Javanese Family* echoed the harmonious, self-controlled characteristics of the Balinese; she reported that shaming techniques, rather than physical punishment, were used for child discipline. In terms of our broad definition of corporal punishment, however, 'shaming' would count as humiliating punishment. Moreover, as the rural Javanese children she observed grew up they were punished verbally, with threats and through pinching and slapping, although only rarely beaten (Geertz, 1974). A later study in rural Java, by Helen Jaspan mentions only pinching and 'flicking' if children do not obey adults, while a raised adult voice will usually be sufficient to ensure children obey adults, and smacking almost never occurs (Jaspan and Hill, 1987). Harald Beyer Broch's more recent ethnographies of childhood on the Indonesian islands of Bonerate and Timpaus show non violent childrearing that relies more on example than instruction (Broch 1991; 2002). We will touch on further ethnographic information from the Indonesian State of Irian Jaya in a later section on Pacific Islands.

Other than these ethnographies (most of which are decades old) published, scientific material in English on childrearing, and particularly corporal punishment, in Indonesian families seems not to be available. Given that this is one of the most populous states in the world, with many ethnic and language groups scattered through a huge array of small and large islands, this must be regarded as a major information gap. Given the diversity of this nation, any future research on corporal punishment should bear in mind Indonesian researcher Saya Shiraishi's query 'What kind of family is it ... that singularly represents this multi-ethnic nation as family?' and the related question 'Was there such a thing as the Javanese family before Hildred Geertz invented it?' (Shiraishi, 1997, p. 11).

While there is no quantitative data on violence against children in schools in Indonesia, corporal punishment has been reported to be frequent in schools, especially in eastern parts of Indonesia (UNICEF/Gadjah Mada University, 1998). According to the UNICEF questionnaire survey of 17 states and territories in the East Asia and Pacific Region that we cited earlier, about 50 percent of Indonesian children find it less than easy to talk to their teachers because teachers scream at them or beat them (UNICEF, 2001). As the second periodic report of Indonesia to the Committee on the Rights of the Child admitted, discipline in schools tends to be based on a militaristic model,<sup>3</sup> in which according to Shiraishi, the school has become a 'colony' of the state (Shiraishi, 1997, p. 13). Likewise, in contrast to the islanders described by Beyer Broch, inhabitants of other outlying islands apparently cultivate a stereotypical image of *kasar*, or 'rough islanders who believe in violence as a way of overcoming problems' (Brown, 2004).

It is generally understood that physical punishment of children in schools and homes is culturally accepted as an appropriate form of discipline: 'the school environment in Indonesia is considered an extension of the home. Therefore violence in the classroom is indicative of the violence that exists in the community' (Brown, 2004). Children are to a large extent seen as the property of their parents and subordinate to all adults, which of course includes teachers (UNICEF, 2000).

Although systematic, large-scale research is lacking, a small study carried out by Save the Children UK in schools in North Maluku, is interesting, not least because it focused on

<sup>3</sup> Second periodic reports of States parties due in 1997: Indonesia. 07/07/2003. CRC/C/65/Add.23. para 327.

children. A total of 541 boys and girls were surveyed in schools in two sub districts. The survey was part of a project on developing non violent forms of classroom management and took the form of a follow up to classroom discussions on discipline. Children completed survey forms at the end of a normal school day. Nearly a quarter of these children reported that they had been hit by teacher on their legs, hands, ears, cheeks and buttocks, once or more than once. Their teachers had used their hands, a stick, a ruler or a bamboo swathe (Save the Children UK, 2004).

## Japan

Research in East Asia and the Pacific that takes the ‘culture and personality’ approach we described with respect to Indonesia, was strongly influenced by Ruth Benedict’s pioneering book on Japan, *The chrysanthemum and the sword* (Benedict, 1946). Nevertheless, the main research on Japanese childrearing over the past 60 years has been carried out by psychologists and educationalists, often from the United States and tending to concentrate either on mother-child relationships or on pre-school education (Ben Ari, 1997). One enduring theme has been the phenomenon of ‘well-behaved’ Japanese children – who appear to require little discipline – often associated with the assertion that there is no child abuse in Japan (Lanham, 1966; Azuma, 1986). Other research, however, revealed that parents employed violence to discipline children (see for example Wagatsuma, 1981). Historian Kathleen Uno claims that corporal punishment was always an option used by parents:

In the early modern period, adults encouraged very young and older children to learn social and vocational skills. They believed that imitating good models was important, and used patient persuasion, cajoling, moral lecturing, and silent example to train children, but also resorted to harsher means, such as scolding, physical punishment, confinement in dark storehouses or cages, locking children out of the house, and, for extremely intractable children, moxa cauterisation (burning dried vegetable powder on the child’s skin) (Uno, 1991, p. 395).

More recently, the phenomenon of child abuse was recognised in Japan, with the result that:

Parents were no longer seen as being ‘naturally’ and unquestionably good and it was no longer unthinkable that they might, in certain circumstances, resort to abusing their children. Families were no longer considered sacrosanct. The stability of families – seen by many in the 1980s as one of Japan’s greatest strengths in comparison with many Western nations – was no longer seen as necessarily superior to the rights of its individual members, particularly women and children (Goodman, 2003, p. 149).

It is now increasingly accepted that corporal punishment has always been an integral part of turning Japanese children into adult members of Japanese society (Field, 1995), although this is often tempered by the assertion that such acts are ‘loving smacks’ that are ‘good for’ children (Goodman, 2003).

Sometimes the existence of child abuse is said to be the result of contact with Western individualist values, especially since the Second World War, although it is also claimed that

Japan has 'preserved its own uniqueness' (Ban, 1995, p. 78). A 2005 government opinion poll of 10,000 adults found only 20 percent regarded family as a place for disciplining children, while 60 percent said family was a place for family conversation, 50 percent said it functioned to strengthen family ties and 40 percent thought it was for the personal development of parents and children (Japanese Cabinet Office, 2004).

In many ways, the childrearing goal of developing interdependence in Japanese children is similar to that of Chinese childrearing (Azuma, 1986). Yet there is a special texture given to the Japanese approach by the ideal mother-child relationship, which both creates and maintains attachment as well as promoting the value of interdependence between family members. Parents tend to feel that they and their children are a single 'unit', and distinctions between individuals often become blurred. Children are sometimes described as extensions of their parents, rather than as independent subjects (Matsushima, 1996; Yamamura, 1986, cited in Goodman, 2003).

This strong parent-child emotional attachment is reported to affect disciplinary practices. Parents may experience any misbehaviour on the part of their children as if it were their own and feel particularly responsible (Wagatsuma, 1982, p.135). Mothers especially may suffer from feelings of failure, so that they hit or otherwise punish their children (Azuma 1986; Ohinata 1995a; 1995b, Wagatsuma, 1982). This may be why mothers have been identified as the major perpetrators of child abuse. A telephone survey, commissioned by the Ministry of Education, Science and Culture and conducted during 2000-2001, suggested that 75.8 percent of children's violent behaviour was caused by inappropriate childrearing attitudes at home, such as over-control; over-protectiveness and excessive interference or demands.<sup>4</sup>

In today's Japan, mothers share the task of socialisation, not as they once did with older family members, but with teachers. The competitive educational system appears to have increased corporal punishment in schools, for example through disciplinary regimes intended to help children pass the elementary level entrance examination interview (Ban, 1995). Corporal punishment of children by teachers has been a topic of public debate for quite some time. According to the Ministry of Education, two percent of Japanese public schools used corporal punishment in 1995; over 40 percent of cases of corporal punishment in the same year resulted in legal sanctions against teachers.<sup>5</sup> The Japan Federation of Bar Associations' NGO report to the Committee on the Rights of the Child in 2003 also reported corporal punishment of children with disabilities in schools.<sup>6</sup>

The Benesse Education Research Centre conducted two retrospective surveys, in 1997 and 1998, on the socialisation of pre-school and school-age children (aged between three and 12 years). In the first survey it was found that parents think both home and school should be responsible for socialisation, although home is considered to bear the primary responsibility. Parents expected schools to motivate children to study, to teach them about relationships with peers and about values, as well as how to behave correctly (Benesse Educational Research Centre, 1998). The later survey examined children's experiences of and opinions about being praised or scolded. Overall, it was found that more than 80 percent of children had been hit by their parents. Other punishments reported by the children included making them stay outside, reprimanding them, restricting their activities and ignoring them. Looking back at their experience of being severely scolded, less than 25 percent thought that they were scolded too harshly. Moreover, approximately

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<sup>4</sup> [http://www.nier.go.jp/homepage/kyoutsuu/seika0206\\_01.htm](http://www.nier.go.jp/homepage/kyoutsuu/seika0206_01.htm), accessed on 7 April, 2005.

<sup>5</sup> 'Corporal Punishment in the Schools and Homes of Japan', online document available at: [www.childresearch.net/CYBRARY/KOBY/KORNER/CORPO.HTM#FIG1](http://www.childresearch.net/CYBRARY/KOBY/KORNER/CORPO.HTM#FIG1), accessed on 11 April 2005.

<sup>6</sup> Committee for NGO Reporting on the Convention on the Rights of the Child (Japan), 2003, NGO Report on the Second Periodic Report of Japan, Advanced Summary, July 2003.

15 percent felt that their punishment was justified because they were wrong (Benesse Educational Research Centre, 1999).

Tsunenobu Ban's comparative survey 1989 (already discussed in the section on Australia) also examined children's experiences and opinions about praise and scolding in school. Data were collected from 1,224 Japanese children, aged between 10 and 12 years, in Tokyo, Osaka and Tokushima. Ban found that Japanese teachers scold rather than praise children. He comments that discipline in Japanese schools is oriented more explicitly towards preparing children to conform to their expected roles in society (Ban, 1995). The general perception seems to be that teachers are expected to play a major role in the discipline of children. In a 1996 survey, undertaken by the All Japan Parents and Teachers Association, only 25.6% of respondents said that corporal punishment should never be administered by a teacher (Goodman, 2003, p.137). Roger Goodman cites what appears to be an extreme example of such an attitude:

During the 1980s, at the Totsuka Yacht School in Aichi Prefecture, Totsuka, a former Olympic yachtsman, reigned over a regime of extreme discipline that was intended to 'improve' the anti-social behaviour of children with emotional problems who had been placed by their families in his care. Three children died and two went missing presumed dead as a result of treatment received at the home ... in 1992, the Nagoya District Court ... handed down suspended sentences to Totsuka ... on the grounds that they had acted not for profit but in what they believed were the best interests of the children. Soon afterwards, Totsuka re-opened the school and had no problem finding parents willing to entrust children to his care in the belief that his extreme regime of socialisation, which included beating and confining children, was in the best interests of their children (Goodman, 2003, pp.142-3).

### Islands of the Western Pacific

This section includes Papua New Guinea and Fiji together with other island nations in the Western Pacific (see Figure 2, p. 84). We have chosen this structure in order to enrich the record on corporal punishment of children in the Pacific, an area that is all too frequently 'represented' by one or two islands. Thus, in the first subsection, we have included data applying to the whole of New Guinea, instead of focusing only on Papua New Guinea, and in the second, we have included relevant research about other Polynesian islands rather than simply concentrating on Fiji.

#### *New Guinea*

The Independent state of Papua New Guinea shares the tropical island of New Guinea – the second largest island in the world – with the Indonesian territory of Irian Jaya, and also includes numerous smaller islands and atolls in the Pacific, including Bismarck Archipelago, New Britain, New Ireland and the North Solomons. Irian Jaya is the largest province of Indonesia, with a population of around 2.1 million, while Papua New Guinea is home to 5.5 million more. The total of around 7.5 million comprises more than 800 living language groups, most of which have distinct cultural practices that apply to

**Figure 2: Map of Islands of the Western Pacific, showing the limits of Polynesia**



children. Action-oriented literature from Papua New Guinea reveals almost no studies of violence (Sandvik-Nylund, 2003). But taking the whole island of New Guinea and the historical ethnographic record into account we found an extensive literature. Moreover, as anthropologist L. L. Langness suggests, ‘with several hundred distinct languages, and with a huge number of autonomous and often small and isolated political groups and cultures’, New Guinea would ‘appear to be a particularly fruitful area for the study of human variation’ (Langness, 1981, p. 13).

While there has been very little research focusing on corporal punishment, we have already shown that the Initial Report to the Committee on the Rights of the Child stated that beatings and excessive punishment of children at the hands of adults were common, and related to a general culture of violence.<sup>7</sup> The UNICEF survey of children’s opinions in the region showed 29 percent of children in Papua New Guinea saying ‘My parents beat me when I do something wrong.’ About 73 percent of school-going children said they found it easy or very easy to talk to their teachers, but among those who did not, 39 percent said the reason was that teachers ‘beat them’ (UNICEF, 2001).

Langness noted that, with some rare exceptions, most New Guinea cultures seem to be extremely permissive, indulgent or non-violent in childrearing practices, which may seem to be remarkable, considering the ethnographic record of incessant raiding and fighting (see for example, Sorenson, 1978). Margaret Mead also linked childrearing practices with outcomes in either ‘violent’ or ‘peaceful’ societies, in a classic comparative ethnography using data from New Guinea (Mead, 1935).

A multitude of traditional practices, such as infanticide, initiation rites, child mutilations,

<sup>7</sup> Initial reports of States parties due in 2000: Papua New Guinea. 21/07/2003. CRC/C/28/Add.20 para 173.

sale of infants for both marriage and sacrifice, or forced homosexuality would be seen as abusive or neglectful by Western standards. Nevertheless, ethnographies emphasise the pride children express at taking part in, for example, initiation rituals (See Ennew, 1995 for a discussion of this). Langness writes that 'None of the [initiation] practices I have mentioned would be seen by the practitioners as abusive.' Yet one wonders if this would be the position taken by children, or if (to put it another way) the justification by cultural relativity is just an adult-centric pretext for continuing to inflict physical and emotional harm on children. 'Strange as it may seem,' Langness continues, 'Child abuse in the sense that parents deliberately or even accidentally harm a child while punishing or disciplining it, as in Western groups, is virtually unknown' (Langness 1981, p. 23).

According to the ethnographic record, parents – particularly fathers – had virtually unlimited authority over their own children and could, in principle, treat them any way they saw fit with little or no fear of outside interference other than gossip and shaming. Nevertheless, throughout New Guinea, children appeared to be desired and highly valued, and having children was the most important cultural goal. Group strength depended upon having many children, especially sons.

After the first few days of infancy, childrearing was in many respects a public activity, and there was always an alternate caretaker available to the mother. Indeed, this attitude, of regarding children as belonging to the community despite the parents' almost absolute authority over the children, appeared to have served as a deterrent to excessive punishment. New Guinea provides widespread examples of the custom we have described elsewhere, in which children are seldom punished until they are around seven years old and thought to be capable of learning. Among Kapauku Papuans, it was said that 'a mother may be reprimanded by her husband for even minor punishment of her children' (Pospisil, 1971).

Physical punishment was not absolutely forbidden but seldom occurred, being more 'a result of frustration or disgust than an act of actual punishment.' Langness says that 'It is not uncommon for adults to strike children but the blows are seldom very hard. There is no such thing as a formal spanking' (Langness, 1981, p. 27). If parents became too violent, other community members would intervene, but acceptable behaviour in the community might appear somewhat rough to outside observers. Referring to her own publication of 1972, Langness says that:

Among the Bena Bena, young boys are sometimes given sticks and encouraged to chase and beat girls, the adults urging them to 'stick it up her vagina' or 'go and hit her hard'. Both boys and girls are threatened 'in fun' with axes and knives and they run crying in terror ... Teasing of and threats to children are commonplace throughout much if not most of New Guinea, and even when done in play can reduce the youngsters to tears (Langness, 1981, p. 6).

One reason for the comparative lack of physical punishment was that it was beneath an adult's dignity to attempt to discipline a child. When children behaved badly or refused to obey an adult's orders, the dignified response was to ignore them. This cultural history makes it necessary to take seriously the claim (from for example the Solomon Islands) that if children's rights are to be implemented the first must be re-visioned in local contexts.

### *Polynesia*

'Polynesia' is the name given to a culture area that includes the many islands of the Pacific lying within a triangle formed by drawing lines between New Zealand, Hawaii, and Easter Island. James and Jane Ritchie, writing in 1981, claimed that after 50 years of ethnographic research it was possible to provide a 'definitive description of the Polynesian child-rearing style', in which child abuse and neglect had traditionally been prevented – although 'eroded' by culture change and migration, for example to New Zealand or Hawaii (Ritchie and Ritchie, 1981, p.186). The Ritchies blame increased harshness of early childrearing on the development of nuclear family structures after migration:

... in all the discussion of cultural preservation we have never heard the central role of childrearing acknowledged. Instead, the emphasis is on preservation of language, community ceremonial facilities, traditions, oratory, and song and dance. All these are important, but none of them will prevent disorganisation from reaching down into the heart of family relationships.

It is easy to accept the thesis that an increase in child abuse and neglect is a natural concomitant of sociological disturbances created by migration, rapid urbanisation, and other cultural changes. To do so is to admit helplessness. In the Polynesian context a pre-existing child-rearing tradition is a major resource upon which people can draw to handle culture change constructively.

Many agencies and forces are pressing Polynesian families to switch to European childrearing practices because they are considered to be better, easier to implement, more modern, or divinely ordained .... The high frequency of child abuse among Polynesians in New Zealand suggests that when Maoris do follow the European model, the consequent strain is intolerable and children become the victims (Ritchie and Ritchie, 1981, p. 201).

Interestingly enough, although Ritchie and Ritchie refer to the work of Ernest and Pearl Beaglehole in Pukapuka, Tonga and among New Zealand Maoris in the 1930s and 1940s, they make no comments about the 'frequent child beating' mentioned in the Beaglehole fieldnotes, which include terms such as 'fury', 'pure sadism' 'bullying and terrorism' (see Kavapalu, 1993). On the contrary, Ritchie and Ritchie seem to be at pains to claim that 'It is obvious ... that child abuse was virtually absent from the Polynesian scene. The whole ethos and ecology of childrearing precluded it' (Ritchie and Ritchie, 1981, p. 193).

This claim is based on a description of community-based childrearing in which 'Polynesians have many, many parents', and children only spend most of their days and nights with biological parents during the first two years of life or until weaning, a period that – as in some many contexts – is referred to as the 'Golden Age of Childhood'. After this, when children 'understand' and are 'trainable' they become involved with peer groups, so that 'the world of adults and the world of children, are really two separate cultures inhabiting the same space'. The Ritchies are at pains to explain that this separation does not mean that children are rejected as a form of punitive discipline, but rather that it reinforces the important cultural value of independence (Ritchie and Ritchie, 1981, pp. 190-1).

The communal nature of everyday Polynesian traditional culture was again emphasised by John J. D'Amatao and Kristina Inn in 1993, describing Hawaiian childrearing as involving peer groups of children experiencing 'joint responsibility, joint rewards and joint punishments' (D'Amatao and Inn, 1993, p. 23). Far from being a conglomeration of parent-child units, they describe Hawaiian society as a 'generationally-organised' social structure, with avoidance practices between age groups:

Adult caretakers are often not in face-to-face interaction with children. To ensure the well-being of children, adults make certain strict rules about the things that children can and cannot do and require children to be responsible for one another ... The other side of the coin is that all children of a set may be punished if the well-being of one is neglected or if someone is allowed to misbehave (D'Amatao and Inn, 1993, p. 24).

As reported in some of the Chinese examples we have mentioned, Hawaiian children are supposed to be able to handle pain from an early age.

Much teaching of the rules of behaviour to children proceeds through their exposure to harsh consequences, and adults feel little compunction about swatting children for misbehavior. Rather than as abuse, corporal punishment – within reason – is viewed as a sign of concern and thus of love for children (D'Amatao and Inn, 1993, p. 31).

Once again, the notion of 'reasonable punishment' emerges. In this case, D'Amatao and Inn describe what passes as 'reasonable' in Hawaiian society as a rapid adult response, leading to equally rapid rapprochement between adult and child – once an adult has hit a child, anger vanishes.

The absence of abusive discipline described by Ritchie and Ritchie to be true of the whole of Polynesia is somewhat contradicted by more recent ethnographies, which place greater emphasis on the violence noted by the Beagleholes. Cristina Toren, for example describes, for Fiji, the rationalisation of inter-gender, sexual violence as 'love'. She states that intergenerational hierarchies are also characterised by 'disciplinary beating', in which love is 'inscribed' as the 'most powerful explanation for the specific nature' of Fijian hierarchy (Toren, 1994, pp. 34 and 36). Although Toren was writing largely about violence between adult men and women the equation of violence and love is clearly deep-rooted in all relationships.

Helen Kavapalu (who published later as Helen Morton) worked in Tonga in the late 1980s and early 1990s, providing one of the few ethnographies of childhood available in the modern era for this region, and also almost the only one that focuses on discipline and punishment. She describes the context of childhood and culture, as well as the relationship between beliefs and practices – what people do as well as what they say they do (Kavapalu 1993; Morton, 1996). Kavapalu herself finds it 'interesting' that 'despite their advocacy against physical punishment the Ritchies skirted this issue in their accounts of Polynesian socialisation and focused instead on "abuse" as a social problem for urban Maori and Polynesian immigrants' (Kavapalu 1993, p. 316), blaming the influence of 'fundamentalist Christianity' (Ritchie and Ritche, 1989). Indeed, Kavapalu herself comments that it is worth examining how European/Christian ideas and practices have 'been incorporated within the category of [Tongan] "tradition"' (Kavapalu, 1993, p. 317).

Kavapalu/Morton's account of childrearing on Tonga endorses the descriptions made by the Beagleholes almost half a century earlier: 'like [them]' she writes, 'I found physical punishment to be a central feature of socialisation':

Although there is considerable variability within and between Tongan households in the frequency and intensity of punishment directed at children, there is also a remarkable degree of similarity in methods and motives for punishment.

... Children are most often hit, with an open hand, fist, stick, belt, broom, coconut spathe, rope, electric flex, or other object, but other common physical punishments include pinching, and pulling the hair or ear. Much less common are other forms of punishment, such as making the child work, restricting play, or withholding food. Reprimands, scolding, and shouting are often not directly perceived as an aspect of 'punishment', since they make up a significant proportion of adults' verbal interactions with people ...

A great deal of emphasis is placed on actively teaching children correct values and behaviour, and physical punishment is regarded as the most effective teaching method ... Children may be punished by anyone older than them within their extended family (Kavapalu, 1993, pp. 313, 316, 317 and 318).

Corporal punishment at school is 'strongly supported by most parents'. Love is the 'central justification for punishment' but 'punishment is sometimes perceived by children as a withdrawal of love.' There is 'an ambivalence felt about punishment' and, through implication, about social hierarchy, because of the association between punishment, power and status:

The pattern of pausing between blows, with hand or object raised threateningly or speaking to the child (to threaten, order to be silent, or say something about the child's misdemeanor), or both, is widely practiced. In none of the incidents of punishment that I observed were more than one or two blows dealt out without this brief interval, even when the person administering them appeared extremely angry (Morton, 1996, pp.189-90).

Kavapalu was herself a schoolteacher in 1979, and also carried out a survey of adolescents in schools during a later period on Tonga. She says that, although corporal punishment was forbidden, 'some of the Tongan teachers openly carried lengths of wood to class. In Holonga primary school in 1988 one female teacher carried a piece of garden hose and an Australian teacher at another school told me ... that a male teacher had beaten a boy with an electric cord' (Morton, 1996, p. 192).

According to this ethnography, the reasons for hitting a child seem to be legion: they are it when they cry – even if they are crying because they are ill. And if they cry when they are punished they may be hit repeatedly until they are quiet – as a lesson in emotional self-control. In this and other respects, Morton makes frequent comparisons with Samoa, although with one contrast 'There is no logic [in Tonga] as in Samoa, of a lack of punishment indicating a lack of love' (Morton, 1996, p. 196).

The ambiguity at the core of beliefs about corporal punishment is revealed in the replies of teenagers to Morton's questionnaire. On the one hand they explain punishment as being 'because of [parents] love', and justifiable because they deserved it and because it was to teach them. But, on the other hand, some children claimed that they experienced punishment as withdrawal of love. In other words whereas the logic may be love, the feeling may not. The students were asked 'How do you feel when your parents punish you?' After 'repentance' and 'guilt' the two most common responses were anger (23.8 percent) and sadness (22.9 percent). Despite comments about punishment being a sign of love, the overwhelming majority of responses were negative. Teenagers said that they felt lonely, unwanted, and afraid, not wanting to eat or talk; others said they wanted to run away or even to die. Some claimed that they hated their parents, wanted to punish them, and wished they could die. In a poignant comment one teenager wrote that she felt 'as if everything is turned inside out' (Morton, 1996, p. 197).

Finally it is worth noting that one of the keys to the high quality of Morton's account is her careful exploration of the lexicon of punishment and perceptions of punishment in children's replies to her survey. For example:

*Mamahi*, a term that was used by nearly a quarter of the respondents, is a complex and ambiguous term. It can indicate both physical and mental pain and also 'to be sorry, to feel sorrow or regret; to feel hurt (take offence); to be annoyed or angry, to harbour ill-feeling' ... When used alone *mamahi* most often refers to physical pain; a more specific term for this is *ongo'i mamahi*. *Ongo'i* means 'to feel or perceive' and is commonly used for the emotional as well as the physical sense of 'feel'. Thus, *ongo'i mamahi* incorporates both senses of pain, as well as the other connotations of *mamahi*. Some respondents mentioned both *ongo'i mamahi* and *loto mamahi*, the latter being more specifically associated with the emotional aspect of *mamahi*, as it means 'inner *mamahi*'. As such it has connotations of both anger and sadness. Another response, closely associated with *loto mamahi* was '*ongo'i oku tautea hoto loto*'; my heart and mind (my 'inside') feel punished. On describing the intended effects of punishment, adults often cited *mamahi*, as both physical pain and inner sorrow or regret, as important. Again, the ambivalence toward punishment is indicated in this term, which can indicate the more favourable response of regret (implying guilt) while also encompassing a range of other, more negative, responses including anger (Morton, 1996, p. 198).

## New Zealand

When Action for Children and Youth Aotearoa made a second NGO submission to the Committee on the Rights of the Child in 2003, it pointed out that:

there is a lack of good data in New Zealand about the incidence and prevalence of child abuse and neglect and trends over time. Existing statistics must be interpreted with caution. There are inconsistencies in what is reported or how it is interpreted over the years.<sup>8</sup>

Certainly, as is common in countries with social welfare systems (which see children as costs rather than investments) some research has been oriented towards outcomes – based, as we have pointed out before, on the idea that children are human becomings, rather than human beings. The focus is on predicting the results of violent punishment on children's future behaviour, rather than on establishing the incidence of current violations of their

<sup>8</sup> Children and Youth in Aotearoa 2003 CRC Session 34, 15 September-3 October 2003 - Action for Children and Youth Aotearoa, p. 221.

rights. One example of this tendency is David Fergusson and Michael Linskey's analysis of data collected by the Christchurch Health and Development Study, during the course of an 18-year longitudinal study of a birth cohort of 1,265 New Zealand-born children. The data used by Fergusson and Linskey concerned punishment before the age of 16 years, recalled at the age of 18 years, with the objective of linking harsh physical punishment (abuse) with later antisocial behaviour (Table 7). According to these data, not all young people recalled being physically punished before they reached their sixteenth birthday; 10.8 percent of the sample reported that both their parents never used physical punishment; 77.7 percent said that both parents seldom used physical punishment; but 7.6 percent answered that at least one parent used physical punishment methods regularly; while 2.0 percent reported that at least one parent used physical punishment methods too often and too severely; and 1.9 percent described at least one parent treating them in a harsh and abusive way. Those recalling 'too frequent', 'harsh', or 'abusive' punishment most frequently came from demographically disadvantaged homes, experienced a higher rate of other childhood and family adversities, and were more likely to have been sexually abused (Fergusson and Linskey, 1997). This suggests a link with the Cambodian research we reported earlier, which found children who were punished at home were more likely to be punished at school.

**Table 7: Eighteen-year-olds in Christchurch, New Zealand recalled punishment by parents before age 16**

<b>Recalled rate of punishment (predetermined categories)</b>	<b>Percentage</b>
Both parents never used physical punishment	10.8
Both parents seldom used physical punishment	77.7
Regularly (at least one parent)	7.6
At least one parent too often and too severely	2.0
At least one parent harsh and abusive	1.9

Based on 1,025 responses.

*Adapted from Fergusson and Linskey, 1997*

Another example of an approach focusing on outcomes (in this case related to the cycle of violence theory that abused children themselves become abusers) asked 99 parents of schoolchildren to respond anonymously from their computers at home, to 12 written scenarios about disciplining a child aged eight years or younger. The levels of discipline ranged from mild (slap on the hand, poking) through moderate (spanking, pulling a child by the arm) to borderline abusive (hitting a child with an object), according to child protection social workers. The parents were asked to rate the punishment in each scenario according to severity and then according to the frequency they used them on their own children (Rodriguez and Sutherland, 1999).

Fergusson and Linskey's research did not focus on culture and ethnicity, which were not included among the variables they used for analysis. Nevertheless, a further characteristic of the social science discourse on corporal punishment in New Zealand is that it tends to focus on differences between attitudes and practices of Maori culture, Pacific Island groups and *Pākehā* (Europeans), in which respect at least one researcher suggests that support for the use of 'reasonable' corporal punishment probably reflects European public opinion rather than the attitudes of other groups (Marshall, 2005). This trend in research seems to be a direct legacy of the early research concerns of the Beagleholes and Ritchies, which we described in the section on Islands of the Western Pacific. Like all research focusing on ethnic comparisons, considerable caution should be used interpreting results. To take one recent example, Philipa Biddulph conducted a study with children and young people, in mixed ethnic groups and various parts of New Zealand, using focus group discussions. The research centred on home environments, and discipline was only one topic of the discussions. Comments made by the research participants are presented in the research report by ethnic group (such as 'Maori', 'Pacific', 'Indian') as well as by category ('rural', 'with intellectual disabilities', 'in care' for instance). Some comments are interesting, for example:

- *'You should be allowed to say what you want without getting a punch.'* *'Home can be improved by sending the parents to a course about understanding teenagers';*
- Young people with intellectual disabilities: These young people said that spending time with parents and family is important and there should be *'nice people in our homes'*. They also said that they *'should feel loved'* and *'should not be punished, but may be guided'*;
- there should be *'no violence against other adults in front of children'* and *'more family bonding time'*;
- home could improve a lot by *'talking with us, understanding and listening, putting in everyone's ideas, giving everyone a bit of trust, letting us be who we are and trying to understand why we do what we do'*;
- *'instead of smacking they belittle with words'*.

Nevertheless, it distorts meaning somewhat to group these comments according to characteristics, such as ethnicity, given the composition of the focus groups (Table 8). An essential methodological consideration of focus group discussions when they are used in research is that groups should consist of people with the same characteristics (decided according to the hypothesis being explored). Thus for Maoris to be compared with Europeans, or Pacific Islanders, for example, each group should have consisted of children and young people from one group only, which as Table 8 shows was not the case, with the exception of the all-Maori group from Rangatahi. As our discussion of the Islands of the Western Pacific showed, there are both differences and similarities between islands. Yet in this research the 'Pacific' group contains not only children from different island nations but also the offspring of parents from two different islands. This can only produce interesting comments, which cannot be used for scientific comparison. The children in the category groups are still defined by their ethnicity, while distinguishing factors of their category are not provided: the degrees of 'intellectual disability' are not specified, for example. 'Results' or 'findings' about differences in discipline and punishment between ethnic groups from such vague research might be seriously misleading, if not damaging, if they find their way into policy – or even into the media (Biddulph, 2004).

**Table 8: Composition of focus group discussions with young people in New Zealand**

	Rangatahi	Pacific	'Asian'		'Intellectual disabilities'	'Rural'	'Youth Justice system'	In Care	
			'Asian'	NZ Indian				Group 1**	Group 2 ***
Number	15	24	14	10	10	Two groups total 33	10	13	8
Age (year)	13-19	12-17	14-17	13-18	17-20	12-13 14-16	15-18	12-15	13-15
Ethnicity	Maori	6 Tongan 5 Samoan 4 Cook Islanders 3 Fijian 1 PNG 1 Nuiean 1 Tuvaluan 1 Samoan/Maori 1 Samoan/Nuiean 1 Samoan/Tongan	12 Chinese 1 Malay 1 Korean	7 Indian 3 Anglo-Indian	6 Pakeha 2 Maori 1 Maori/Pakeha 1 Pakeha/German (???)	Maori Pakeha Pacific/ Maori	8 'New-Zealander'* 1 African 1 Samoan	12 Pakeha 1 Cook Islander	6 Pakeha 2 Maori
Gender	11 male 4 female	13 male 11 female	9 male 5 female	8 male 2 female	3 male 7 female	14 male 19 female	6 male 4 female	6 male 7 female	

*Notes*

\* *Self-description*

\*\* *Included foster children and children of social workers and caregivers*

\*\*\* *Living in a group home in a rural area*

The background against which we make this statement, in New Zealand as elsewhere, is that structural violence practised against ethnic groups causes them to be over-represented in statistics for disciplinary action by authorities. One example occurs in a New Zealand Ministry of Education Report on 'stand-downs', or formal removal of a student from school for a period of up to five school days. In the 19,858 stand-down cases reported during 2003, Maori students were over-represented (Ministry of Education, 2004).

A further feature of New Zealand research on this topic is that, like most existing studies elsewhere, it tends to reflect only the views of adults; with little research recording and reporting on children's views about discipline and punishment. A notable exception is a small-scale study carried out by Terry Dobbs, which is particularly significant because the children were younger than those usually asked about their opinions and experiences (between five and seven years old), as well as for the care taken by Dobbs to obtain informed consent and use an appropriate research method. She adapted a visual stimulus technique, using a cartoon character as a 'naïve questioner' to facilitate open dialogues with groups of children. The data show that children of this age can express considerable understanding and insight into their own and other people's behaviour and feelings about physical punishment, provided they are given a concrete context in which to express their opinions. The 10 children in Dobbs' study connected smacking with adult anger, identifying parents as the people who more frequently smack them, most often on the buttocks but also on their hands, arms and faces. When they were asked, 'Adults smack children, how come children don't smack adults?', five children described the fear of additional smacking by adults as the main reason for not smacking back. One child said that adults do not behave badly so should not be punished. Another believed that her small size prevented her from being able to smack adults. None of the children mentioned adults getting into trouble for smacking children, nor did they refer to any other means used by adults to resolve conflict (Dobbs, 2002).

## Philippines

The many dispersed islands of the Philippines comprise another complex nation in the East Asia and Pacific region, with eight major dialects, several different religions – although Christianity is dominant overall – and a number of indigenous groups in addition to Filipino, Malay, Chinese and European populations. Yet small-scale social studies of Philippine sub-groups are often generalised to ‘Filipino’. Urban areas in particular share with other countries in East Asia and the Pacific the effects of rapid social change on inter-generational relationships, especially in families. Comments made by parents during an evaluation of an NGO project showed they were concerned that their children were growing up on a totally different world; the old certainties and social norms are rapidly changing, making discipline different in a number of bewildering ways (Balanon and Yacat, 2003). Yet discipline – defined as physical punishment – is effectively synonymous with responsible parenting (De la Cruz et al, 2001).

The parents remember a childhood wherein they never considered contradicting their elders because they either got beaten up or simply accepted what has been said ... [they] said that they have learned to listen to their children but if and only if what they are saying was relevant or if it made sense. *‘Depende sa sinasabi ng bata.’* (It depends on what the children are saying). They shared the children sometimes say things that do not make sense or are far from the topic being discussed. In these circumstances, they stressed that the children do not ‘deserve’ the right to express themselves. *‘Hinidi dapat sila pakinggan.’* (Balanon and Yacat, 2003, p.124)

The social science approaches pressed into use in the Philippines over the past 60 to 70 years to try to understand this complex situation are familiar from the examples we have already discussed. ‘Culture and personality’ research was much used in the Philippines after the Second World War, in the first place by anthropologists from the United States. But, as an analysis of this school in the Philippines points out:

Often ... comparisons seem to be between American *norms* and Philippine *behaviour* – a scientifically invalid comparison ... after ... months of being away from his native culture and in a strange land with strange customs, the fieldworker begins to idealise his own culture and imagines that its norms are actually its behaviour pattern (Lawless, 1969, p. 15).

Research carried out in the 1960s by William and Corinne Nydegger, with the Tarong, Ilocano ethnic-linguistic group on the island of Luzon, recorded many of the family and community disciplinary techniques described elsewhere in the region: threats about supernatural beings, scolding, slapping, pinching, group teasing, ostracism as well as rewards for ‘good’ behaviour:

Transgressions of clear prohibitions will result in a sharp slap with a twig, slipper, or hand, and now the child will be left to scream away his rage: ‘Whipping is the helpmate of your mouth.’ As one mother put it: ‘Candy in the first hand, a whip in the other’ (Nydegger and Nydegger, 1963, p. 840).

Once children enter school around the age of six years, ‘Punishments are for misbehaviour rather than for failure to perform adequately and range from slap to tongue-lashings. In either case they are invariably public, shaming, and effective, resulting in head-hanging,

frequent tears, and at least momentary improvement in behaviour.’ At home, when children become more mature, disciplinary techniques become gendered and ‘spankings give way to ridicule, slaps to sharp comments, lavish praise and goodies to sparser but carefully evaluated compliments’. For adolescents (people between puberty and marriage), shaming is used as they are now too big to hit (Nydegger and Nydegger, 1963, pp. 845 and 854).

In an ethnographic study of a Muslim group of the Sula Archipelago, Enya Perez Flores provided similar information about punishment embedded in childrearing observations. After weaning, children are disciplined using threats of danger from imaginary/supernatural figures. Older children may be scolded or teased, but also praising for good behaviour. As in the village described by Ward, in Hong Kong, tantrums meet with appeasing techniques, or ignoring or ridicule in the case of older children. As children grow older, more negative sanctions are applied, while praise decreases. But punishments are only mild – harsh parents are compared to Christians. Usually only parents punish, punishment from nonfamily members is seen as an aggression not only to the child but also to his/her family (Flores, 1967).

Robert Lawless’ analysis of the culture and personality discourse in the Philippines refers to the Nydeggers’ research as ‘written like the “space ship” ethnography characterised by Mead, with no reference to methods ...’ (Lawless, 1969, pp. 18-19). Meanwhile Filipino scholars, mainly from Ateneo University, developed an indigenous version of the approach, based not only on the early work of Ruth Benedict but also on the approach of United States sociologist Talcott Parsons. It is a specifically Filipino approach and critique. This is described as not entirely successful, however: ‘...the comparative method (Americans-Filipinos) is rather too simple, the American samples are unqualified, the source of data on Filipinos is confusing and gross generalisations are made out of ‘meagre and scattered data’ (Lawless, 1969, p. 27).

Psychological studies also tend to reflect on The Philippines in relation to world literature, rather than focusing on the Philippine context – and in any case research may be carried out by researchers from elsewhere. The Philippines appears to be a particular example of a tendency in which the East Asia and Pacific region represents a space for experiment, comparison and reflection from an external perspective, often only for the purpose of providing a counter example. The common tendency to concentrate on outcomes is also evident. Much of the literature does not target corporal punishment, punishment or discipline, but concentrates in wider issues of ‘violence’ or abuse (Maxwell and Maxwell, 2003) or to ‘abuse’.

All these problems in the research relating to corporal punishment in the Philippines highlight the difference in method and perspective in research carried out by the Psychosocial Trauma and Human Rights Program of the University of the Philippines. In the course of wider research into violence against children, this home-grown research discovered, by listening to what children say, that corporal punishment regarded as ‘reasonable’ by parents is perceived as abuse by children. Among the examples children cited were:

- Spanking (*Pagpalo sa anak*). The children added that spanking is abusive when one faints because of the pain (*hinimatay sa sakit*); when they are spanked without reason (*pag pinalo nang walang kasalanan*); when they could die from the spanking (*maaring ikamatay*); when the beatings are too much (*sobra ang pagpalo*); and when spanking hurts the child (*nasasaktan ang bata*).
- Being beaten up or mauled (*Pagbugbog sa bata*). The children offered explicit

descriptions of what they consider as *'pagbugbog'*: When a parent uses a stick of wood, belt, bat or broom to beat the child (*'kapag gumamit ng dos por dos, sinturon, batuta, o walis tingting'*); incessant beatings (*'hindi paghintong ng palo'*); slaps on the face (*'Sampal'*); punching (*'Suntok'*); and being burned with a flat iron (*'pinapaso ng plantsa'*).

- Being scolded or punished when a child did nothing wrong (*'Napapagalitan/napaparushanan nang walang kasalan'*). There were situations when the parents hurt the children without the latter knowing or understanding what they did wrong.
- Humiliating the child in public (*'Ipinapahiya ang bata sa publik'*). Parents should not scold or berate their children in public. You must not scold a child in front of other people, this should be done at home (*'Hindi dapat ipahiya sa harap ng ibang tao, dapat sa bahay lang'*). Some children disagreed and said they would prefer to be scolded even in public, than be beaten up.
- Being shouted and cursed at (*'Sinisigawan at minumura ng putang ina'*). Some of the children said their parents shouted obscenities at them. The children said this hurt them most especially when they were berated for small mistakes (De la Cruz et al, 2001, pp. 82-83).

Another piece of research from the same institute reports that teachers are referred to as the 'second parents' and children's moral teaching comes as much from school as from home. In the name of discipline, many children have been hit, humiliated, slapped, or had things thrown at them everyday of their school lives. Even if punishment is excessive, there appears to be considerable reluctance among both children and parents to report abuse. Parents sometimes look the other way, convinced that this is for their child's good. Or the reluctance to come forward could stem from the high status of a school in its community (Yacat, 2001).

However, it seems to be difficult to distinguish abuse and discipline in the Philippines. For instance, one teacher stated that, 'if a teacher uses tactics that inadvertently embarrass the child in class to make him behave more properly, then it is okay'; while a parent said 'We may know children's rights, but then the reality is that teachers are tasked to discipline children, and they are overloaded and underpaid. How does one keep from hurting a child (whether verbally, emotionally or physically) when he or she is under chronic stress?' (Yacat, p.14).

Religious institutions such as church, mosque, shrine or temple may also serve as a place of socialisation for children. One study on the disciplinary practices in church as well as social attitude towards church discipline is reported from the Philippines, where church, as a formal institution, occupies the position of power defined by the functions it fulfils (Yacat, 2001, p. 5).

### 4.3. Evaluation of research

We began our review of social-science literature with the aim of charting the incidence of corporal punishment of children in 19 countries of the East Asia and Pacific region, in order to provide a definitive knowledge base for both current strategic programming and advocacy plans. Our intention was also that this mapping would enable us to identify ethical, effective research models, together with gaps in the research record where such methods would be useful. Examining existing literature, however, led us to change our objectives, which we very quickly realised could not be achieved. The data simply are not there in sufficient quality or quantity. Although we collected a large amount of information of various kinds – published and unpublished from many different sources – there was no way they could be analysed together to provide a meaningful regional overview of how children are disciplined and what punishments they undergo. As a result, our objectives became to:

- describe the general features of the social-science discourse relative to corporal punishment in East Asia and the Pacific;
- draw some conclusions about the corporal punishment of children in East Asia and the Pacific;
- examine the extent to which the collection and analysis of data are rights-based;
- make recommendations about future research on this topic.

This approach also led us to narrow the review to a smaller number of countries and to abandon the idea of making a comprehensive appraisal of all available information in favour of describing a selection of largely-established accounts of research focusing on published academic work.

#### The social-science record

The ethnography of childhood in East Asia and the Pacific is limited, and this is reflected in the relatively sparse information on discipline and punishment. Few studies focus precisely on discipline, and there are few comprehensive accounts of childrearing techniques. Information is usually collected by anthropologists, psychologists and children's rights activists. Most data relate to families and schools; there have been almost no studies of children in institutions and justice systems.

Systematic information about violence against children, let alone specifically on corporal punishment, is rare in the region. Accounts of punishment usually occur in research on child abuse, often concentrating on incidence or prevalence, rather than context and meaning. Information is largely embedded in two kinds of social-science text, which are historically distinct. Before the 1970s a large number of ethnographic accounts in the 'culture and personality' school of anthropology collected data on childrearing techniques, or on socialisation through stages in the life cycle – infancy, post-weaning, young child/elementary school, older child, adolescent (puberty to marriage) – sometimes including detailed accounts of rites of passage if the researcher was an anthropologist. To a large extent this should be regarded as historical – describing rural ways of life that no longer exist. Nevertheless, it provides the basis for understanding current expectations about

childhood and disciplinary methods used in childrearing, as well as providing evidence against which appeals to ‘tradition’ can be judged. In most cases, the researchers in the ‘culture and personality’ school were from outside the region and consciously or unconsciously making comparisons with their own culture (mostly United States). This may cast some doubt on the conclusions:

To use questions evolved in an alien milieu is to run the risk of receiving only the answer that the investigator expects, for the choice and formulation of the question determine the range of the answer (Lawless, 1969, p. 47).

Nevertheless, long term ethnographic research provides the best basis for understanding the contexts in which discipline and punishment takes place, as recent ethnographic monographs about childrearing, such as those by Helen Morton in Tonga and Charles Stafford in Manchuria, amply demonstrate. Effective programmes to eliminate the corporal punishment of children cannot be designed without understanding the social and cultural meanings of different types of punishment. Categorising and counting different ways of hitting children is simply not a sufficient basis for designing policies – or even legislation.

The other major source of information is psychology, which tends to collect data focused on the occurrence of punishment together with its individual meaning and pathological outcomes. Because little trouble is taken to understand the social meanings of disciplinary acts, the assumptions underlying research design and methods used (often direct questioning) leave little room for research respondents to respond within their own set of cultural understandings. Analysis may compound the consequent errors by a heavy reliance on quantification: ‘to collect answers to ambiguous questions, then as quickly as possible quantify the data so that the actual responses (whose meanings are so elusive) need not be considered, and then expound on the meaning of the *numbers*’ (Lawless, 1969, p. 40, emphasis in the original).

Indeed this discourse is inclined to concentrate on the pathological rather than the normal. There are two reasons for this. One was the development of a discourse within international programme work on children with problems such as street children, child workers and child soldiers – stimulated by UNICEF’s categorisation of ‘Children in Especially Difficult Circumstances’ in the mid-1980s. This had been preceded by the ‘discovery’ of child abuse in the writing of C. Henry Kempe (who popularised the Battered Child Syndrome) in the 1960s. Jill Korbin’s work on cross-cultural studies of child abuse in the 1970s and 1980s, on which we have drawn heavily in our review, was directly related to this new awareness. One unforeseen result, which is very clear in both the social-science and the legal debates we have covered, is that physical violence against children is defined as ‘abuse’ and linked with the idea of pathologically ‘abusive’ parents. Corporal punishment in the course of everyday discipline of children by normal parents then tends to be defined as not crossing over an invisible line into the territory of ‘abuse’. Normal parents cannot be ‘abusive’; they have a duty to punish their children, in private by administering ‘loving smacks’ and ‘reasonable chastisement’. Nevertheless, the exposure of child abuse has greatly affected the way parenting and childrearing are thought about. Philosopher Ian Hacking summed this up at a personal level, when he wrote that the movement against child abuse,

may have effected the most valuable, albeit most discouraging, heightening of awareness that has taken place in my lifetime. It has switched on lights and held up mirrors to ourselves. The distortion has not been all that great.

... Although we are if anything over-confident in our litany of the bad things that can be done to children, all of which will be placed in the category 'child abuse', some of those things were not even counted as especially bad three decades ago (Hacking, 1991 p. 7).

Unfortunately the pathological approach also led to largely non-scientific data collection, which we decided to exclude from our review. This focuses on stories of severe abuse and violence, so that ultimately these become regarded as 'normal'. The police hitting street children, employers physically or emotionally punishing child workers, clients physically abusing child sex workers, are taken for granted, located in media and campaigning discourse, appearing occasionally in the social-scientific literature as strong but untypical anecdotes. It cannot be denied that this is important in the first instance to raise awareness. The East Asia and Pacific region is not short of what might be called 'campaigning research', which gathers information about children's wrongs that have not yet entered the scientific research spectrum. In the case of corporal punishment, a considerable number of disturbing accounts of violence against street children, children in detention and children in institutional care have reached the public arena – for example graphic information about street children in custody in the Philippines (Puzon, 2003) and the report on children in institutions in China (submitted to the Committee on the Rights of the Child in 2003). The research style of these reports, however, tends to be similar to investigative journalism. While it is vitally important to expose any situation in which children's rights are being violated or not met, policy cannot (or should not) be made on the basis of anecdote. Once a situation of concern is exposed the social-science community is obliged to investigate it using all the means at its disposal. It should not be necessary for researchers to wait for a concerned NGO or government agency to commission short-term, often unscientific research. Sadly the social-science community has very largely failed to incorporate this function within its perceived responsibilities.

### **What the social-science record tells us**

Despite the extreme differences in social life and culture in the East Asia and Pacific region, the most striking feature of the social-science research record with respect to corporal punishment of children is the number of commonalities. We have already remarked on some of these in our account of the legal situation. With respect to childrearing some further notable similarities emerge at least in a significant number of social groups that have been studied:

- Many cultures treat very young children with indulgence and prefer not to use any form of instruction or punishment in infancy. The reason given is that at this age they do not understand or have sufficient capacity for moral reasoning to make it worthwhile to punish them. The age at which understanding has developed sufficiently for moral discipline to begin varies from around two years (or weaning) to about six or seven years of age. Although some researchers have referred to this as the 'golden age' of childhood, Wu's research in Taiwan leads to the realisation that this is an ideal, and may not be what small children experience in practice.

- Shaming, teasing and ignoring are much used techniques for teaching correct social behaviour, and may be the only techniques used after puberty.
- After infancy, children may be released into the care of relatively-autonomous peer groups, which are to a certain extent left to develop rules of social interaction and moral behaviour.
- There is some evidence that children become victims by being punished harshly at home, so that those who suffer in this way are more likely to be victims of corporal punishment at school. It may also be the case that children from vulnerable families are at risk in this way.
- Women are largely responsible for social and cultural reproduction, which means that they do most of the punishing and appear to have the greatest problems with anger management in childrearing. Nevertheless, men are seen as having the greatest responsibility for punishment; they are distant, objective and less-frequent punishers – but more feared than mothers. Inevitably this says much about power – and the role of corporal punishment in transmitting messages about power.
- Teachers and parents often connive in ensuring that corporal punishment of children is justified.
- Children use the same justifications for corporal punishment as the adults who punish them. This is not surprising because punishment is intended to teach them, and one of the things it teaches is that physical violence is justified. Yet children also say that punishment hurts them, they do not like it, they regard it as abuse and it produces negative feelings.
- There are many more ways of hurting a child than simply smacking or hitting with a stick. How could legislation against corporal punishment list them all? Who would have thought of making a child stand on the spines of durian fruit? But an adult once did – and had the power to enforce it. Abolishing corporal punishment requires not just legal changes but a complete change in the way power over children is used, which in its turn means recognition that this is an issue about the human rights of children, not simply about their health and welfare.

One caveat that must be made about these similarities is that a critical aspect of research is the set of assumptions on which is based, which partly follow from definitions. For example, if studies of punishment view children as unruly or delinquent then research assumptions will lead researchers to study aspects of ‘bad behaviour’ such as drug use. If children are thought of as victims, then psychological methods will test their mental health. If they are perceived as resilient and resourceful, researchers will concentrate on their strengths. Such differences also influence research questions about the discipline and punishment of children. Nevertheless, the commonalities we have noted here are the product of different research approaches and disciplines.

Further commonalities occur in the research questions about punishment itself, which we think of as falling into three main groups:

- ‘Smack counting’, which takes the form of listing punishments and their frequency, sometimes associated with the reasons for punishment and who carries it out;

- ‘Symptom chasing’, which is usually psychological research aimed to make a link between corporal punishment (sometimes conceived as physical abuse) and later social problems ranging from different types of delinquency to behaviour problems;
- ‘Parent blaming’, which is associated with child abuse research on the one hand and the development of parent education programmes on the other, but rests on the assumption that if children are hurt in the course of punishment the fault lies with the individual who administered the punishment and not with a society that regards corporal punishment of children as normal and acceptable.

Finally, it is necessary to address the explicit assertions of Langness and the Ritchies that child abuse as found in the West is impossible in Western Pacific cultures, particularly as this is claimed in the face of contrary evidence from, for example, Morton’s descriptions from Tonga. One comment that might be made is that this assertion is made from the perspective of adults rather than children. More detailed information is needed about children’s opinions on the discipline they receive.

In addition, it is worth noting that ‘traditions’ (in any society) may be both positive and negative, as is made explicit in the African Charter on the Rights and Welfare of the Child. The CRC has reactivated the cultural relativity debate within human rights circles. It is particularly common to find this brought up, as in the initial report of the Solomon Islands, with respect to private family life, together with a dichotomy that contrasts ‘Western’ and ‘non-Western’ childhoods. While these contrasts may be deeply felt and believed in, they are, as Edward Said pointed out with respect to European and North American views of ‘the Orient’, false constructions (Said, 1979). In some cases, relatively recent and imposed ideas are ascribed to ‘our traditional culture’. There are other cases of a Biblical proverb being referred to as traditional in the People’s Democratic Republic of Korea and Viet Nam. Japanese also have a customary saying ‘Spare the rod, spoil the child’: *kawaii ko niwa tabi o saseru*. Thus we are forced to ask ‘Whose culture/tradition is this?’ To which the answer is surely that culture is not a ‘bounded and essentially changeless and seamless web of customs, rituals and practices...’ but ‘always contains inherent contradictions and uncertainties and is always discursive and struggling...’ (Penn, 2001, p. 87). In our final chapter of reflections we shall return to a consideration of some of these discursive struggles.

### Children’s rights in research

Unfortunately, our review of the social-science literature on corporal punishment of children in selected countries of East Asia and the Pacific leads us to conclude that this is not, in general, rights-based research. To be specific:

1. Data used to develop rights-based programming must be grounded. But analyses of psychological studies of specific (usually small) samples are seldom grounded in corresponding literature on childhood and childrearing – where this exists at all.
2. Research instruments are designed without prior ethnographic investigation of the ways people think about and talk about discipline, punishment and childrearing.

3. Research protocols rarely include more than one method so that there is no cross-checking of results. Analysis of results in psychological research in particular amounts to little more than analysis of numbers, with little consideration in many cases of what numbers mean and the contexts in which they were obtained.
4. Children are beings rather than human becomings, yet a considerable body of policy-related research concentrates on the negative social outcomes of corporal punishment, rather than on current violations of children's rights.
5. Very little research asks children for their opinions and experiences. Typically parents and teachers are asked about the frequency and force with which they use corporal punishment, which is tantamount to believing a thief's list of the items he has stolen. Another research strategy purporting to gather data on 'children's views' is to ask young people to recall past events and experiences, and categorise them according to whether they were, for example, abusive, severe or mild. Once again the accuracy of data gathered in this way must be in considerable doubt.
6. Even research that does ask children usually fails to use appropriate research methods that make it easy and non-threatening for them to provide information. With the notable exception of Dobbs' work in New Zealand, few researchers seem to feel it necessary to ask children for informed consent to take part in research, and even fewer provide a description of their ethical strategy.

Improved conceptual frameworks have influenced both methodologies and methods of research focusing on children. The development of childhood studies within the academic field has led to greater recognition of differences in childhoods, as well as to the active position of children in the research process. Both the realisation that children construct meaning and that they have a right to be involved in research have led to the development of new techniques that enable researchers to collect data accurately *with* children, as opposed to *about* children from adults such as parents and teachers.

In the past, information about children often relied entirely on information gathered from adults, which violates CRC Article 12 by not taking children's perceptions and opinions into account. Frequently researchers simply targeted vulnerable children, without comparison with control groups of children from similar backgrounds. This practice invalidates research results but has been the basis for many 'conclusions' about children.

In violation of Article 13 of the CRC, researchers still continue to use methods that are unsuitable with children, such as questionnaires and surveys. But increasingly they are developing better research frameworks, using more than one method, so that results can be cross-checked and verified. In addition, better methods of allowing children to bear witness to the realities of their lives are being used systematically, including within Asian countries. Research tools using drawings and other visual methods, focus group discussions, role play have been successfully used to develop better information upon which to base policies and programme interventions.

### **Recommendations for future research**

One of our original objectives was to identify gaps in research. But we have been forced to conclude that the research on corporal punishment of children in the 19 countries of East Asia and the Pacific that we included in our review is largely empty space. Far from

providing a complete map of research on the corporal punishment of children in this region, it is as if we have explored a set of scattered and highly disparate islands. The research is not complete, consistent nor comparable. On our voyage of discovery, we decided not to stop off at every atoll, nor to collect examples of every type of artefact. This should be regarded as a first exploration, upon which future research plans might be laid.

The research record on children and childhood in East Asia and the Pacific is woefully inadequate in general – let alone on any specific aspect of children's lives. Ethnic and cultural diversities in these disparate nations are quite simply not adequately covered. There is no bank of information on which to rely. We had no choice but to examine texts well over half a century old, to place greater emphasis than we should otherwise have wished on old information or on specific texts (for example, Korbin, 1981).

Thus one major recommendation from our review is that social scientists should be more proactive in developing:

- a regional, comprehensive discourse on the discipline and punishment of children, using rights-based approaches;
- contextualising this, and other policy-oriented research on children, in a developed ethnography of normal childhoods, including understanding change and continuity in the way children are viewed and reared;
- a network of specialists in child research in the region, which exchanges information on both methods and results, in order to develop both a responsible discourse on childhood and a shared database;
- ways of educating those who work with or make policies for children in commissioning and using research;
- ways of communicating research results that are neither sensational nor focused only on sharing with other academics.

Those who make policies and design interventions should insist on and financially support grounded research, which:

- carries out a full analysis of existing data – an analysis not a 'literature review';
- designs research so that information about a specific aspect, such as corporal punishment, is set within an adequate account of childhood experiences and contexts;
- is based primarily on children's perspectives;
- uses appropriate methods that make it easy for children to provide information;
- uses more than one method, scientific data collection, good principles of analysis.
- develops and uses an ethical strategy.

Above all, we would advocate specific research on childrearing, in other words, the means used to discipline (teach) children about morals and behaviour, rather than research that is narrowed down to smack counting, symptom chasing and parent blaming.

# PART IV: REFLECTIONS



## 5. Regional trends

Corporal punishment of children is prevalent in all the 19 countries of East Asia and the Pacific we included in our review, irrespective of culture, religion and level of economic development. The main differences are the level of public awareness and the degree of intervention by civil society agencies – although it has to be said that most interventions are relatively weak and slow to take effect. The violations of rights involved in the corporal punishment of children are barely recognised even among campaigners against the practice, many of whom rely on the damage done to children and to society as the major thrust of their argument.

In most countries, corporal punishment has long been regarded as a ‘traditional’ and ‘normal’ part of childrearing (at least among dominant social groups). By contrast, in a few other countries, the issue has attracted both public and state attention and is a continuous subject of public debate. The UN Committee on the Rights of the Child has been the leading voice and catalyst for the abolition of corporal punishment of children in the region. Although its recommendations are not binding to the states parties to the Convention on the Rights of the Child, they have served to bring states’ attention to the issue, and motivated some positive changes.

### 5.1 *‘But it is part of our culture’*

Similar justifications for using corporal punishment are found in different cultures and contexts. The main arguments advocated in its favour are:

- children need physical punishment in order to learn discipline, to adhere to social rules and correct behaviours, and to be respectful towards authority;
- the way children are brought up is a private, family issue, which should not be subject to public scrutiny or sanction;
- corporal punishment is traditional (and may be sanctioned by interpretations of religious texts). It has always taken place, without harming children.

Comparative studies indicate wide variations in what is thought to be either beneficial or harmful treatment in childrearing. Few actions can be taken for granted as intrinsically good or bad. Thus ‘Western’ practices of putting babies to sleep alone in their own bedrooms are seen as uncaring or even abusive by people in other cultures. In some societies a swift, quickly-forgotten slap may be regarded as less disruptive to the bonds between parents and children than a scolding would be (Korbin, 1981).

Reliance on ‘cultural relativity’ in human rights discussions is a double-edged sword. On the one hand, tradition may be used to justify hitting and verbally abusing children in the name of discipline. On the other, parents may be blamed for adhering to ‘outdated tradition’. We would suggest that a more productive approach than simply pointing to ‘tradition’ as a trump card in cultural relativity debates would be to stimulate discussion of which traditions are harmful, and which have a positive effect on both child development and the development of non violence in societies. Attempts to ‘revise’ or ‘rewrite’ the CRC

by individual states parties are not possible, unless states parties wish to make retrospective reservations. We suggest that certain issues need to be discussed well before a state party might consider such a drastic step:

- Whose tradition is the national ‘tradition’, when several ethnic and religious groups co-exist?
- What non violent traditions of childrearing might be found (and learned from) within a multicultural polity?

When both ‘Eastern’ and ‘Western’ cultures make the same appeal to an undefined ‘tradition’ it is not logically possible to maintain that ‘tradition’ is a viable and sufficient excuse for hitting children.

## 5.2. Reasonable is relative

Nowhere is the appeal to tradition stronger than in the ‘private’ arena of families and homes. None of the 19 countries covered in our review have explicitly and unconditionally prohibited corporal punishment of children in homes and by family members. Indeed the opposite may be the case. Some families in all these countries would agree with the statement in the initial country report of the Government of Papua New Guinea that ‘Many parents believe that strict corporal punishment is essential and even acceptable, in order to guide and discipline the child.’<sup>1</sup> Disciplining children using corporal punishment is widely regarded as evidence of ‘good parenting’.

Family life often entails confusion between love and punishment, which is reflected in law. In the words of a Vietnamese girl, Vu Thanh Quyen, ‘With these two hands my mother holds me, cares for me, – this I love’, But, she continued, repeating the same drawing, ‘With these two hands, my mother hits me – this I hate’.<sup>2</sup> Love is not an excuse for hitting or hurting children.

Six of the 19 countries have laws providing a defence for parents who use corporal punishment to discipline their children, allowing children to be hit, provided that the act is ‘reasonable’. But ‘reasonable’ is a very relative term (and children seem not to have been permitted to assist in drawing up definitions). For example, the Civil Code of Japan stipulates that ‘[A] person who exercise parental rights can, in so far as it is necessary, personally chastise his or her child’, which should be read alongside article 14 of the Civil Code that ‘[A] person who exercise parental rights shall consider the appropriate exercise of discipline’. Nothing in this law provides a definition of ‘appropriate’. Following the increase of child abuse reporting over the past decade or so, this particular legal provision has been criticised as constituting an obstacle to prevention, but neither removed from legislation nor amended.

Australia, Myanmar, New Zealand and Japan have not removed these provisions despite recommendations to do so from the Committee on the Rights of the Child. The rationale can be interesting and related to civil society activism. In New Zealand, campaigns to repeal the relevant legislation (Section 59 of Crimes Act 1961) have generated considerable public interest and debate. Case law shows that judges have lowered the threshold of ‘reasonable’, without any repeal of the relevant legislation. In Australia, the enquiry of the

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<sup>1</sup> Initial reports of states parties due in 2000: Papua New Guinea, 21/07/2003. CRC/C/28/Add.20 para 173.

<sup>2</sup> Drawings in archives of Save the Children Sweden regional office for Southeast, Asia and the Pacific.

Model Criminal Code Officers Committee did not seem to have questioned such factors as the necessity or effectiveness of physical punishment of children, let alone the possible harmful impacts of the practice. However, the Officers Committee decided the evidence that corporal punishment is harmful is inconclusive.

It seems that some damage (usually physical) must be visible in any case brought to the courts; a simple violation of human rights – which would apply to an adult hitting an adult – does not apply in the case of adults hitting children.

The need for injury to be visibly proven explains in part the gloss between corporal punishment and abuse, which permeates the legal and social-science records we examined. A further complication in this respect is the overwhelming association between ‘child abuse’ and ‘sexual abuse’, since the World Congress against the Commercial Exploitation of Children (Stockholm, 1996). Although we have not discussed this in our review, we found during research that this tendency confuses the issue of corporal punishment in much of the discourse on abuse, and to a large extent seems to have hijacked the abuse agenda.

### *5.3. Parents are more powerful than children*

Adults are more powerful than children, particularly when adults are parents, although reports from various societies indicate that community members may intervene if corporal punishment of a child appears to be becoming abusive. Children appear to be aware of this power dynamic, to the extent of taking responsibility for being smacked, because of their bad behaviour. Dobbs, among others, has suggested that children internalise strong messages from adults that they are punished because of their own actions rather than any responsibility resting with their parents (Dobbs, 2002). Nearly half the children studied by Miles and Varin in Cambodia said they thought that beating a child was wrong but a large number (over 40 percent) still felt it was sometimes right and sometimes wrong (Miles and Varin, 2004). Whatever the case, children are being given the message that – as far as the powerful are concerned – hitting weaker people is acceptable and justifiable.

### *5.4. Only in schools?*

Parent power is related in many ways to teacher power. A number of the social-science accounts of schooling suggest that relationships between teachers and pupils in societies in East Asia and Pacific region are hierarchical and authoritative, with children being ‘passive’ or ‘obedient’ learners. However, there appears to be little research on differences or similarities between schools and/or teachers in attitudes toward discipline and class management. Information about incidence (which mainly takes for the form of what we call ‘smack counting’) is often the only information available.

Available social-science research also provides some accounts and observations about teacher-parent relationships. Teachers take over parental roles within classrooms, including responsibility for discipline. Parents seem to be reluctant to intervene when their children are punished: because teachers are more powerful in society than parents, or for fear of

being shamed by publicising their children's 'bad behaviour' in the community, or (in countries where education is becoming increasingly competitive) because of the belief that corporal punishment encourages children to work harder and get better school results.

Schooling is the only context of children's lives in which legislation appears to be viewed as acceptable. Indeed it sometimes appears to be the case that corporal punishment only becomes problematic when it takes place in schools. It is almost as if school corporal punishment is allowed to be a hostage to fortune in order to protect the sanctity of domestic beatings.

### *5.5. Not high on government agendas*

In general, the issue of corporal punishment of children tends to be lower on the state agenda in developing countries where other serious problems – such as malnutrition, child labour and armed conflict – threaten children's rights and welfare. A statement of the Government of Viet Nam in its initial report is indicative of this perspective:

Low standards of living affect both ways of life and attitudes, and the first priority for many families is increasing income, rather than making sure that children receive the maximum of attention and care.<sup>3</sup>

Yet poverty is not a valid justification for hitting children, even though there seem to be some correlations in research between corporal punishment of children and low economic security. There are no derogation clauses in the CRC and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states, in Article 2(2), that 'No exceptional circumstance whatsoever, whether a state of war, internal political instability or any other public emergency, may be invoked as a justification of torture.' Measures against corporal punishment of children should be incorporated into the overall national strategies for children, regardless of the level of national development and any other possible conditions and circumstances.

It is more likely that adults' persistent acceptance and use of corporal punishment can be attributed to an absence of information on alternative methods of discipline. For instance, a survey in the Australian State of New South Wales on physical punishment of children in residential care, concluded that:

The findings from the survey ... reinforced the need for centralised policy guidance to service providers on behaviour intervention and the use of restraint. In the context of legislation that allows physical restraint but says little about other forms of behaviour intervention, and a lack of state-wide policy and practice guidance, there is potential for the rights of children and young people to be abused (Community Services Commission, 2001, p.iii).

The Committee on the Rights of the Child consistently includes public education about corporal punishment among its recommendations alongside the recommendation that corporal punishment must be legally banned in all contexts.

States parties reports revealed that lack of political will may be a crucial element. All the 19 countries need to support data collection for comprehensive research on corporal punishment, including non-violent ways of child discipline and rearing.

Despite awareness-raising campaigns, which are often run by NGOs, knowledge of the human rights of children remains patchy – with many misunderstandings. The CRC may be referred to incorrectly as ‘the UNICEF Charter’. Children’s rights may be mistaken to mean ‘complete freedom for children’, or ‘children’s welfare’ or something to do with vulnerable children but not with survival and development. Our review reveals that there is considerable further work to be done to promote the CRC and what it means in everyday practice. This raises the question ‘What impacts NGO and UNICEF advocacy and rights-awareness projects have had on government (especially perhaps local government), government employees (from teachers to social workers) and the public – including children?’

### *5.6. When states are parents*

Corporal punishment of children in institutional care has been reported by activists and the media on many occasions. But social-science research in this context is as scarce as explicit legislation to protect children in institutions from violence. One reason is that children in institutions represent only a relatively small proportion on the national child population (although the actual numbers are rarely either available or accurate partly because so many such children are in the care of private or foreign charitable agencies). Another is that these children are effectively invisible (especially if they are not living in state-run institutions). Moreover, they cannot represent their own interests and have no adults who advocate on their behalf or protect them from abuse. They are thus particularly powerless and, in consequence, particularly vulnerable to corporal punishment and other forms of abuse. In addition, institutions caring for children outside their families tend to close their doors to researchers, while opening them to potential charitable donors.

States tend to be reluctant parents, if only because parenthood is expensive. It is far more cost-effective for children to be cared for in their families, which also explains why many states are reluctant to intervene in family matters. State investment in institutional care for children is a burden on taxpayers, and it is thus in the interests of government to keep expenditure to a minimum. The same applies to provision for delinquent children, who should not become a financial burden on society, on top of being disruptive of the social order.

### *5.7. The little we know*

On the evidence we examined, countries in East Asia and the Pacific lack data on the corporal punishment of children. This is a serious obstacle to both policy and programme development, as well as for advocacy – especially given the Committee’s frequent calls for public education about the negative consequences for children. While information on families and schools is inadequate, information on children in institutions and in justice systems is so poor that this itself constitutes a violation of their rights.

## **6. Main messages**

The Committee on the Rights of the Child has made it clear that corporal punishment violates the human rights of children: their rights to human dignity, protection from violence, equality under the law, physical survival and development and education in the widest sense, including raising them in a spirit of understanding and peace. Nevertheless, our review of discipline and punishment of children in 19 countries of East Asia and the Pacific shows that corporal punishment is a reality of children's lives throughout the region, a main form of violence against children, practised daily by a variety of adults, legally permitted and socially accepted.

What will be the consequences of not responding to children and abolishing this violation of their human rights? A future of continued violence for everyone at all levels, because corporal punishment of children sends two messages to the next generation. The first is that violence is acceptable as a means of childrearing and conflict resolution. The second is that it is acceptable for strong people to practice violence on weak and powerless people; the strong are allowed to hit the weak. This means that eliminating corporal punishment of children is a key move in improving the world for everyone – a means of establishing a culture of peace and non violence, not only for children but for each one of us.

Our review examined corporal punishment of children in:

- homes, families and communities;
- schools and other educational contexts, including private schools and informal education projects;
- institutional care;
- streets;
- children's workplaces.

We found that either there are no laws about corporal punishment of children, or parents have the legal right to use corporal punishment on their children, as long as it is 'reasonable'. But what is seen as 'reasonable' depends on people's values and experiences – which makes the law impossible to enforce. In addition, laws almost never take emotional punishment into account – nor even mention it – even though children say they find verbal abuse and humiliation more hurtful than being hit.

Laws on corporal punishment of children in families face obstacles to enforcement such as family privacy, family reputation and other people's reluctance to intervene in family life. Corporal punishment in homes and families is accepted, allowed, encouraged and favoured as a means of childrearing and discipline, and happens in all countries in the region, in almost all groups and all social classes.

Turning to the context of schools and other places of education, it is very clear that, although legislation on corporal punishment is relatively common, it tends to focus on state schools only. Many private and religious schools, as well as informal education schemes run by non governmental organisations, fall outside the law. In any case, where

legislation exists, it is weakly enforced or not used at all. Physical and emotional punishment of children in schools is widespread, taking many forms, and involving total humiliation and loss of dignity. Corporal punishment in schools is used because teachers have strong authority over children and over parents – who are reluctant to intervene and may even encourage teachers to punish their children to make them learn or behave better. Every time the cane is used to punish a child in school, the full weight not only of the teacher's power, but also of the state, parents and community, is brought to bear on a single child.

When families cannot or will not care for children, the state has special responsibilities. Children outside direct family care may be found in:

- institutions, such as orphanages;
- alternative families – for example in foster care;
- the custody of police, judicial systems and detention centres, where they are often referred to as 'children in conflict with the law', although it often seems more as if the law is in conflict with children;
- the street, where they are often the victims of violence from community members, vigilante groups and police, although ironically many have left home because of family violence.

In all these contexts, the legal situation is usually unclear. Legislation may be absent, or not take children's developmental needs into consideration, which is reflected in the frequent absence of juvenile justice law, and the fact that legal provisions are scattered in different parts of national legislation. An overall impression is that state employees, from orphanage staff to police, have social permission to use corporal punishment on children. They are often not accountable for their actions and legislation is poorly monitored and weakly enforced.

Attitudes to children outside family care reflect the low priority given to their rights and needs. The way they are treated shows discrimination, prejudice and inadequate resources (including information). These children are out of sight and out of mind. Very often, states are only too pleased to hand over care of these children to civil society – national and international non governmental organisations – whose activities are not supervised or monitored, violating Article 25 of the Convention on the Rights of the Child. Thus there is very little detail available about children outside family care in the region. The conclusions of the review are depressing however. These children are particularly powerless and largely invisible, which opens the door for those who care for them to abuse their authority with impunity. Thus such children are vulnerable to violent forms of punishment, physical and emotional, and it is reported that punishments take severe forms.

One problem in finding out more about practices with children outside family care is that information is lacking, especially about children detained in penal systems. This is because these are closed institutions to which researchers are given little or no access.

Working children are not protected against violent punishment because legal provision focuses on the age of the child (ILO Convention 138) or the hazards of work (ILO

Convention 182). For the same reason, there is very little information about workplace punishment of children. Child domestic workers – the majority of whom are girls – are thought to be particularly at risk because they are isolated and also because so many are treated as if they are family members.

In summary, our review leads to the realisation that corporal punishment is a widespread, main form of violence against children, which is legally sanctioned, publicly permitted, a violation of human rights and of concern to children. Emotional punishment must be taken seriously because, according to children it hurts more, and, according to psychologists, it lasts longer. The damage caused by emotional punishment is invisible – but lasts a lifetime.

Research on cultural attitudes towards discipline in other contexts outside home, in schools, in community/streets, juvenile justice system and in institutional care, is extremely limited. This may be partly due to the social or cultural climate, which does not allow research to be carried out within these contexts. Most often, relevant accounts, if any, are related to child abuse or maltreatment and do not distinguish them from discipline:

- the data are not adequate, more and better data are required;
- there is considerable public acceptance of the idea that corporal punishment is effective;
- adults are frustrated by the lack of information about alternative forms of discipline;
- existing legislation needs to be reviewed, laws are not adequate and/or not implemented;
- there is misunderstanding and lack of dissemination about the recommendations of the Committee on the Rights of the Child;
- the issue is not ‘Western’ versus ‘traditional’ values, and even if it were, States are obliged to fulfil their obligations under the Convention on the Rights of the Child.

Finally, legal change is important because, in addition to protecting children, it would transmit a clear message that violence against children is unacceptable and a violation of their human rights. Thus a major recommendation is an explicit and immediate ban on physical and emotional punishment of children in all contexts:

- families and homes;
- schools and all other places of education;
- institutions;
- alternative family care;
- penal systems;
- workplaces.

What should society in East Asia and the Pacific do to ensure that attitude changes provide an enabling environment for legal changes and implementation of laws?

Four levels of activity should be integrated:

- public education – so that corporal punishment is recognised as a violation of the human rights of children, and people begin to want changes to take place. This would include information about positive discipline that does not use physical punishment;
- rights-based research to provide better information about the incidence and prevalence of physical and especially emotional punishment;
- putting the research to work to monitor the effects of public education and legal changes;
- advocacy, based on research and monitoring, which makes sure change really takes place and lasts.

Who should do what? What are the responsibilities of different social actors? Governments must fulfil their responsibilities under the Convention on the Rights of the Child by initiating public education, legal changes and implementation of laws. Civil society can motivate governments to act – and to keep on acting.

But combating violence against children is the responsibility of each adult individual – requiring reflection, inner changes and commitment. There is no quick fix. This is a serious commitment, and must be long term because it must persist within all future generations. So change must be sustainable and it requires adequate funding; adequate trained and committed human resources; and communication and training materials that are appropriate to the varied cultural contexts of East Asia and the Pacific.

We can make it happen – each one of us can and should play a part in changing violence against children into an environment of non violence as the reality in which children live and grow.



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# APPENDICES



# Appendix I: International legislation and monitoring bodies

## **International legislation**

Corporal punishment of children is a violation of their human rights according to international human rights law, in particular the basic principles of dignity, physical integrity and fundamental freedoms, as well as the right not to be subjected to torture, cruel or other inhuman and degrading treatment, which have been enshrined in, *inter alia*, the United Nations (UN) Universal Declaration of Human Rights (1948); and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987).

### ***Universal Declaration of Human Rights (1948)***

#### **Preamble**

... 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.

#### **Article 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### **Article 3**

Everyone has the right to life, liberty and security of person.

#### **Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### ***International Covenant on Civil and Political Rights (1966)***

#### **Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading punishment ...

#### **Article 10. 1**

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

*UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)*

**Article 1**

... the term '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 ... it does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

With respect to children (human beings less than 18 years of age), international human rights law gives special provisions in the UN Convention on the Rights of the Child (1989).

*UN Convention on the Rights of the Child (1989)*

**Preamble**

... 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.

**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.

**Article 28.2**

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.

**Article 37(a)**

States Parties shall ensure that ... no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

**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.

## Monitoring bodies

Committees are set up, under international law to monitor how states parties implement their obligations under certain human rights treaties.

*The UN Committee on the Rights of the Child* was set up under the provisions of the CRC to examine reports from governments. The Committee has repeatedly recommended states parties to address corporal punishment as a violation of children's rights. The Committee has also shown a consistent interest in violence against children in discussion days on *Juvenile Justice* (1995), *State Violence against Children* (2000) and *Violence against Children in Families and School* (2001). In the report of the Discussion Day in 2000, the Committee recommended that:

States parties review all relevant legislation to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures), for punishment or disciplining within the child justice system, or in any other context.<sup>1</sup>

In its outline for this discussion day, the Committee had made it clear that:

Protection from violence should also cover violent treatment allowed under domestic law (e.g. flogging as a penalty, violent disciplinary measures, etc.). The right of children to be protected from such violence must extend to their contacts with police officers, as well as to custodial institutions and any other place of detention, and to children participating in any 'diversionary' programme or subject to 'alternative' measures.<sup>2</sup>

Furthermore, in 2001, the Committee urged:

States parties, as a matter of urgency, to enact or repeal their legislation as necessary in order to prohibit all forms of violence, however slight, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention and in particular articles 19, 28 and 37 (a) and taking into account articles 2, 3, 6 and 12, as well as articles 4, 5, 9, 18, 24, 27, 29 and 39.<sup>3</sup>

Other international human rights treaty bodies have condemned the practice of corporal punishment of children. In its general comment on 'The Right to Education' in 1999, the Committee on Economic, Social and Cultural Rights stated that:

In the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and Covenants: the dignity of the individual. Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food. A State Party is required to take measures to ensure that discipline which is inconsistent with the Covenant does not occur in any public or private educational institutions within its jurisdiction.<sup>4</sup>

<sup>1</sup> Committee on the Rights of the Child, 2000, Report on the twenty-fifth session, CRC/C/100, 14 November 2000, para 696.

<sup>2</sup> Committee on the Rights of the Child, 2000, Outline for the Day of General Discussion (22 September 2000) on 'State Violence against Children', CRC/C/97 (24th Session, 2000).

<sup>3</sup> Committee on the Rights of the Child, 2001, Report on the twenty-eighth session, CRC/C/111, 28 November 2001, para 715.

<sup>4</sup> Committee on Economic, Social and Cultural Rights, 1999, General Comment No.13: The right to education (Art.13), E/C.12/1999/10, 8 December 1999, para 41, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ae1a0b126d068e868025683c003c8b3b?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?Opendocument), accessed on 19 January 2005.

The Human Rights Committee, which is the monitoring body of the International Covenant on Civil and Political Rights, said in General Comment No. 20, adopted in 1992, that:

The prohibition on torture in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.<sup>5</sup>

### ***International rules and standards***

Although the following rules and guidelines are not legally binding, they have been adopted unanimously by the United Nations and therefore are considered to be 'universal'.

#### ***United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (The Beijing Rules)***

Article 17.2: Capital punishment shall not be imposed for any crime committed by juveniles;

Article 17.3: Juveniles shall not be subject to corporal punishment.

#### ***United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990***

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person;

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

#### ***United Nations Guidelines for the Prevention of Juvenile Delinquency of 1990 (the Riyadh Guidelines)***

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

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<sup>5</sup> Office of the High Commission for Human Rights General Comment 20, Replaces General Comment 7 concerning prohibition of torture and cruel treatment or punishment, para 5.

- (g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;
- (h) Avoidance of harsh disciplinary measures, particularly corporal punishment.



## ***Appendix 2: International definitions relevant to corporal punishment***

It is difficult to establish universal definitions of physical (corporal) and emotional and psychological punishment where children are concerned. Although ‘torture and other cruel, inhuman and degrading treatment or punishment’, is internationally recognised as applying to the corporal punishment of children, it is not always interpreted as prohibiting *all* physical punishment of children. Global approaches ‘must take into account the differing standards and expectations for parenting behaviour in the range of cultures around the world’ (Krug et al, 2002, p.59) and yet ‘cultural specifications and local traditions should never be used to justify derogations to basic human rights principles’ (Muller, 2002).

### ***Defining violence***

There is no universally accepted definition of violence. Some human-rights activists prefer a broad-based definition that includes ‘structural violence’ such as poverty, and unequal access to health and education. Others have argued for a more limited definition in order not to dilute the term. In any case, it is necessary to develop an operational definition for research, monitoring and implementation of international laws and standards.

The United Nations Declaration on the Elimination of Violence against Women (1993) defines violence as ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’ This broadens the definition of violence by including both physical and psychological harm, and acts in both private and public life.

According to one UNICEF publication, domestic violence includes violence perpetrated by intimate partners and other family members, and manifested through:

Physical abuse such as slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder. It also includes traditional practices harmful to women such as female genital mutilation and wife inheritance (the practice of passing a widow, and her property, to her dead husband’s brother).

Sexual abuse such as coerced sex through threats, intimidation or physical force, forcing unwanted sexual acts or forcing sex with others.

Psychological abuse which includes behaviour that is intended to intimidate and persecute, and takes the form of threats of abandonment or abuse, confinement to the

home, surveillance, threats to take away custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation.

Economic abuse includes acts such as the denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to health care employment, etc.

Acts of omission ... that discriminates in terms of nutrition, education and access to health care amounts to a violation of women's rights. It should be noted that although the categories above are listed separately, they are not mutually exclusive. Indeed, they often go hand in hand (Hawke, 2002).

In defining violence against children, UNICEF takes a broad, rights-based approach:

... violence is defined as deliberate behaviour by people against people liable to cause physical or psychological harm, borrowing and adapting a definition used by various national commissions set up to consider violence and its prevention. The definition could, of course, range wider to include societal forms of violence – the effects of poverty, exploitative child labour, and lack of adequate health care and education, and non-deliberate neglect by the state, parents and others. But the focus here is on interpersonal violence to and by children. Sexual abuse and exploitation are included because, although (as defined in most countries) they do not necessarily involve violence or coercion, the vast majority of evidence indicates their generally harmful effects. Children's involvement in armed conflict and its effects on them also have strong links to the forms of violence considered here. The focus is not simply on the widely used term 'child abuse', because its definition in policy and practice differs so greatly from country to country, culture to culture. Many forms of violence that are harmful to children lie outside common definitions of child abuse. The Convention on the Rights of the Child, on the other hand, now almost universally ratified, emphasizes all children's right to physical integrity – to protection from 'all forms of physical or mental violence' (Hawke, 2002).

The WHO definition of 'violence' is similar, but based on considering consequences for health:

The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation.

WHO has identified three main categories of violence:

Self-inflicted violence refers to intentional and harmful behaviours directed at oneself, for which suicide represents the fatal outcome. Other types include attempts to commit suicide and behaviours where the intent is self destructive, but not lethal (e.g., self mutilation).

Interpersonal violence is violent behaviour between individuals and can best be classified by the victim-offender relationship, either among acquaintances or among persons who are not acquainted. Interpersonal violence may also be specified according to the age or sex of the victim. Violence against women is an important

example and is occurring worldwide, often unrecognised. Such violence may occur in the family or within the general community, and may be perpetrated or condoned by the state. Other types of interpersonal violence include child abuse, bullying, harassment and criminally-linked violence such as assault and homicide.

Organised violence is violent behaviour of social or political groups motivated by specific political, economic or social objectives. Armed conflict and war may be considered the most highly organised types of violence. Other examples include racial or religious conflicts occurring among groups and gang or mob violence (WHO, 2002).

Although this general definition does not focus on children as a special group, WHO has elsewhere defined 'child abuse', 'neglect' and 'emotional abuse', once again concentrating on health outcomes:

Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power.

Neglect is the failure to provide for the development of the child in all spheres: health, education, emotional development, nutrition, shelter and safe living conditions, in the context of resources reasonably available to the family of caretakers and causes or has a high probability of causing harm to the child's health or physical, mental, spiritual, moral or social development. This includes the failure to properly supervise and protect children from harm as much as is feasible

Emotional abuse includes the failure to provide a developmentally appropriate, supportive environment, including the availability of a primary attachment figure, so that the child can develop a stable and full range of emotional and social competencies commensurate with his or her personal potentials and in the context of the society in which the child dwells. There may also be acts towards the child that cause or have a high probability of causing harm to the child's health or physical, mental, spiritual, moral or social development. These acts must be reasonably within the control of the parent or person in a relationship of responsibility, trust, or power. Acts include restriction of movement, patterns of belittling, denigrating, scapegoating, threatening, scaring, discriminating, ridiculing or other non-physical forms of hostile or rejecting treatment (in Elliott et al, 2002).

The International Labour Organization definition of 'workplace violence' in the service sector is:

Any action, incident or behaviour that departs from reasonable conduct in which a person is assaulted, threatened, harmed, injured in the course of, or as a direct result of, his or her work.

- Internal workplace violence is that which takes place between workers, including managers and supervisors.
- External workplace violence is that which takes place between workers (and managers and supervisors) and any other person present at the workplace.

## **Corporal punishment**

The Committee on the Rights of the Child has specified the following as falling within the definition of corporal punishment:

- 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. (Article 19 (1));
- School discipline in a manner inconsistent with the 'child's human dignity (Article 28 (2));
- Torture or other cruel, inhuman or degrading treatment or punishment (Article 37 (1)).

The definition provided by the Committee on Economic, Social and Cultural Rights is:

Corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and Covenants: the dignity of the individual. Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food.

The definition provided by the Human Rights Committee refers:

... not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.



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