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MASTER'S PAPER
Children as a scapegoat: Corporal
punishment of children

Yerevan 2011

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Introduction

"If we are ever to turn toward a kindlier society and a safer world, a revulsion against the physical punishment of children would be a good place to start."

Dr. Benjamin Spock

A few years ago it was the perspective of people all over the world that the only way to punish children who did a bad deed was to use corporal punishment. This is meant to enforce pain to those who have done wrong thing by beating them, strapping them or even whipping them. And these are just a few examples of corporal punishment against children. But why do we have punishment? How do we benefit from it? The most obvious reason for corporal punishment is to castigate children for doing something wrong by means of physical abuse expecting that they will learn from their own mistakes. But we must ask ourselves this question: Is the person benefiting from this or are the children being not only physically but also mentally abused? In some cases corporal punishment psychologically affects children's minds on a long-term basis that will stain their memory for a very long period of time.

Violence against children crosses borders of race, class, religion, geography and culture. It often occurs in homes, at schools, in places of work and entertainment and also in detention centers. Transgressors include parents, family members, teachers and law enforcement authorities.

"The UN Committee on the Rights of the Child defines corporal or physical punishment as any punishment in which physical force is used and intended to cause some degree of pain or

discomfort, however light. Most involves hitting children, with the hand or with a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention of the Rights of the Child. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”¹

The results of such violations against children can be different. Above all, sometimes it can result in early death. But children who survive can later have terrible physical and emotional scars. Violence places at risk not only their health, but also their ability to learn and grow. In the Republic of Armenia and in Armenian families, parents pay special attention to children. Being an important family value, the child in Armenian reality is believed to be the “keystone” of consanguinity and is constantly paid a special attention to. It is known that in the families which even live in extreme poverty, the “economized recourses” are direct to meet needs of children at the expense of the other members of the family. But despite of this positive scene, there are several reasons which make parents to use corporal punishment against their children.

Reasons such as the existing vague policy, imperfection of the adequate legislative environment and the absence of statistical data have negative effect on child protection in Armenia.

The reasons of committing violence against children are different. 2003 UNICEF Armenia survey found that poor living conditions, unemployment and the psychological stress of

¹ Committee on the Rights of the Child, General Comment No. 8, para. 11

poverty had resulted in an increase in the number of cases of abuse and neglect not only in the family but also in schools.²

Clash of interests is considered to be an important factor promoting conflicts in family, and because of this children often become a target of psychological abuse. According to the survey made by several specialists, using alcohol by parents plays a big role in using corporal punishment against children. The survey shows that physical abuse of children is especially connected with the factors mentioned.³

It is accepted that generally corporal punishment of children committed by their parents depends on the fact that they themselves in their childhood have been punished by their own parents with the same punitive measures, and this describes the reason why they find that it is quite natural to take the same measures against their own children. The study revealed that in many families slapping and beating are perceived as a "means of upbringing".

In children's institutions, such as at kindergartens and at schools corporal punishment is still a common practice. And although family plays a big role in child's life, contacts outside the family also play an important part in children's upbringing. In this context schools can especially be mentioned because children are generated and educated at schools in their early age, and they spend more time at schools than with their family, as school is considered to be "a second home". Teachers by teaching children manners of good behavior and keeping control over child's attitude development also play an important role. In case of children's misconduct, teachers often take different punitive measures, some of which can be justifiable as they can help to foster children. These measures include making the child stand in the

² "Violence against children in the Republic of Armenia" Yerevan 2003 p. 4

³ ³ "Violence against children in the Republic of Armenia" Yerevan 2003.p. 4-5

corner, turning out from classes, taking him/her to the headmaster, sending for a parent, expelling from school, etc. . But teachers also take measures which are never justifiable and are unlawful. They often pull children's ears, beat and slap them, and hurt with some objects. And all these leave a great impact on children's later life.

.United Nations Secretary-General's Study on Violence against Children confirms that violence against children happens in all parts of the world. The study states that family units are the best providers of physical and emotional care for children. Schools also have a fundamental role in ensuring the development of children's potential while protecting them. But it is Governments that have the responsibility to build a solid legal framework and to provide the support needed by families, schools and communities to adequately fulfill their role.⁴

In many countries, the law fails to prohibit corporal punishment in all settings, sending the message that it is an acceptable means of controlling or punishing children. In the places outside the home, such as schools, the law often states exactly how the punishment should be caused, by whom and using which kind of implement. Within the family, corporal punishment is in most countries explicitly accepted in the law, giving parents active rights and legitimacy in using it in bringing up their children. In some countries where the law is silent on this issue, according to traditions hitting children is acceptable. And only in the countries where the law expressly bans its use there is a clear message to parents and others that slapping, hitting, strapping or any kind of corporal punishment is wrong. Violence against children is never justifiable. If its underlying causes are identified and addressed, violence against children can be partly preventable.

⁴ United Nations Secretary-General(2006) . Report of the Independent Expert for the United Nations Study on Violence against Children. Promotion and protection of the rights of children. United Nations General Assembly, Sixty-first session. A/61/299

Chapter 1: Corporal punishment of children in Armenia-Does the state have sufficient measures and regulated legislation in this field to protect children?

There exist numerous articles in the Convention of the Rights of the Child which relate to child abuse, such as article 19- child's right to protection from all forms of violence, "physical or mental, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse". It outlines the obligations of the State to take appropriate protective measures in order to ensure this right. Nowadays, a comprehensive child-protection law is considered essential for good governance, and to meet international human rights obligations, including the duties in the Convention on the Rights of the Child.

The Republic of Armenia ratified the UN Convention on Child' Rights in June 1992, which was followed by the adoption of the RA Law on Child's Rights (1996). The problem of cruel treatment of children in the Armenian society is largely ignored. There is no official structure in place to monitor or control cases of child abuse, and there is also no place with easy access where people can report cases of child abuse. Speaking about the corporal punishment of children is not accepted in the society because it completely contradicts the high value placed on children in Armenia.⁵

Children in Armenia are sometimes subjected to cruel treatment or humiliating punishment by teachers which play an important part in children's socialization. Physical punishment is used in cases of not only bad behavior, but failure to understand the subject matter and poor progress. Article 28 (2) of the Convention states that school discipline methods should be "consistent with the child's human dignity and in conformity with the present Convention". The Committee on the Rights of the Child, which monitors implementation of the

⁵ Government of Armenia, UNICEF, SCF(2002). Situation Analysis of Children and Women in Armenia

Convention, has consistently interpreted this article as requiring prohibition of corporal punishment in schools.

The monitoring bodies of other treaties have also emphasized that international and regional human rights law requires prohibition of school corporal punishment. Children are also abused by their parents, because most parents feel that children should be punished because it is a method of child-rearing. The closed nature of the Armenian family prevents the problem of child abuse from being openly discussed. Family is considered to be the important environment, which has a great impact on the main processes of child socialization. And this describes why family atmosphere is more than important for children's further upbringing. It is good when a child even at his early age feels the existence of normal family relations. The lack of such relations may cause children extreme emotional stress, feeling of fear and their guilt of family conflicts. And besides all of these, they gain norms of conduct and manners, which are mainly conditioned by the contact with parents. It is obvious that family atmosphere and relationship within the family are very important for children's normal upbringing.

It should be noted that there is no common methodology of registering data about child violence in Armenia and this is the reason why there is no concrete statistical data about the matter. The imperfection of the adequate legislative environment, the absence of statistical data and also the existing obscure policy has negative effect on child protection in Armenia. In families parents are the first to abuse children.⁶

When discussing this problem a special attention should be paid to the question whether parents in their childhood have been abused. Parents to whom this refers are considered to be potential "abusers", and they have developed an inclination for abuse or violence against their

⁶ "Violence against children in the Republic of Armenia" Yerevan 2003, p. 5

own children. Very often the abuse is applied by parents quite instinctively and is considered “a way of upbringing”. Thus parents’ persuasions about upbringing are transferred from generation to generation and are believed to be the right ways of bringing a child up.

Naughty children, who mostly promote conflicts in the family, shall be taken into account. These children are often being “the scapegoat” after every childish action and bad deed and are usually strictly punished. The active behavior of these children often causes stresses among parents and the first thing they do is they punish children by different punitive measures. In such situations the degree of parents’ knowledge of legal rules, as well as their parental skills have a great impact and importance. The survey shows that the parents, who commit violence against their children, have somewhat obscure ideas about child’s behavior and wrong expectations from his/her abilities. They very often compare their child’s behavior and character with that of another’s and qualify them as extremely bad thus giving way to child’s disobedience and unacceptable manners not adequate of his/her age. Violence is also conditioned by the nature of parent-child relationship, attachment and mutual trust.

The next group of factors, which directly promote violence against children, is connected with family crisis during which parents find themselves in extremely stressful situations, and here children become the “target” of violence.⁷

The Constitution of the Republic of Armenia has two Articles that lay the foundation for a child-protection system: Article 35: “The family is the natural and fundamental unit of society.” And the Article 48: “The basic tasks of the state in the economic, social and cultural spheres are: (1) to protect and support the family, motherhood, and childhood;”

The international norms recognize violence against children as a violation of fundamental human rights of the child. As mentioned before, Article 19 of the Convention on the Rights of

⁷ “Violence against children in the Republic of Armenia” Yerevan 2003.p. 19-21

the Child guarantees protection from violence and exploitation. Therefore the government's responsibility is to extend all possible protection to children in the nation and to ensure that they enjoy their basic human rights such as the rights to personal security and bodily integrity is obvious. When these rights are violated, the government must respond accordingly. Thus, in accordance with Convention on the Rights of the Child Article 19, para 2, the State Party is obligated to go further than prevention and prosecution and should establish comprehensive social programs to provide, inter alia, treatment for child victims.

In 1992 The Republic of Armenia ratified the Convention on the Rights of the Child. According to the Constitution of the Republic of Armenia, international treaties with the participation of Armenia are incorporated into the domestic law. When there is a contradiction between domestic and international norms, the norms of the treaty supersede⁸. In 1996, a national Law on the Rights of the Child was passed in Armenia as a follow-up to the ratification of the Convention. The Law on Children's Rights has a number of provisions that pertain to the promises in the Constitution that were just quoted. For example:

With respect to protection from abuse and neglect at home:

Article 9: "The child has the right to be protected from all types of violence (physical, psychological, etc.). It is prohibited for every person, including the parents [...] to make the child a victim of violence or humiliating punishment [...]. ... The state and appropriate agencies ensure the protection of the child from all kinds of violence and abuse"

At first glance, these article looks like legal guarantee or entitlement. But when examined more closely, the Law on Children's Rights seems to be more like a declaration of intentions

⁸ RA Constitution, Article 6 "...The international treaties shall come into force only after being ratified or approved. The international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. The international treaties not complying with the Constitution can not be ratified"

or ideals, or an incomplete legal framework, since additional legislation will be necessary to actually do the things referred to in those articles. However, gaps still remain that need to be addressed in order to ensure adequate protection of children from violence in Armenia.

The parental use of physical discipline or corporal punishment is covered by the civil and the criminal law in Armenia. However, it is worth to mention, that the legislation in both branches of the law is too ambiguous. The Criminal Code of the Republic of Armenia does not include a specific provision prohibiting all forms of physical and mental violence, injury or abuse, neglect, exploitation or deliberate humiliation. But it must be mentioned that it includes prohibitions of related offences such as rape (Article 112), forced sexual contact (Article 113), beatings and torture (Article 110), child sexual abuse (Article 114, 115), willful failure to pay alimony or provide child support (Art. 124), abuse of guardian's rights (Art. 126), and humiliation of dignity and honor (Article 132).

The Criminal Code of Armenia places more emphasis on creating proper safeguards for child protection. Thus, it is very important that it includes a whole chapter (Chapter 20) on "Crimes against the interests of family and child," criminalizing failure to fulfill the duty of rearing the child (Article 170), failure to fulfill or improper fulfillment of one's duties to provide for the child's safety or health (Article 171), abuse of the custodian's or guardian's rights (Article 172), willful failure to support one's child by the parent (Article 173).

As it is mentioned in the UNICEF report despite these positive developments, Armenia's criminal law system continues to address violence against children in a separated manner, focusing on individual explosions of the phenomenon rather than on the "bigger picture." Neither the Criminal Code currently in force nor the draft code contains definitions of child abuse and neglect.⁹

⁹ "Violence against children in the Republic of Armenia" Yerevan 2003.p. 36-37

It is also worth to mention that in the Criminal Code, Article 117 makes the “Infliction of willful light damage to health” a criminal offense. And Article 118 makes “battery” and “other violent acts” a criminal offense. These provisions leave open the question of the minimum degree of force that is required to constitute the crime. Moreover, even if an act constitutes a crime under these provisions, Article 46 allows the defense of justification when a person acts to “achieve [a] socially useful goal.” But since parents can claim that discipline is socially useful, indeed, is essential to the welfare of the child, the relation between the prohibitions and the defense of justification is too ambiguous.

The Family Code of the Republic of Armenia also has provisions concerning the protection of children. The whole Chapter 10 of the Code states different rights of children such as the right of a child to live and be reared in a family(Art 41),Right of a child to communicate with parents and other relatives (Art 42), Right of a child’s protection(Art 43), Right of a child to express personal opinion (Art 44), Right of a child to have first name, Right of a child to have Family and patronymic (Art 45), Property rights of a child (Art 47). The Family Code also says that parents should not treat their children in ways that are “ignorant, cruel, violent,” or that “humiliate” them or offend their “human dignity” (Article 53(1)). But all of these terms are abstract and are open to interpretation.

On April 14, 1999 the National Assembly adopted the Law “On Education”. This Act, which is based on constitutional provisions, shapes main goals and courses of action while reforming the national system of education. The Provisions of the Act on Education are focused on democratization of education and its integration into the international system. Even so, from time to time, this law has undergone some adjustments and amendments,

depending on the educational priorities so that to solve arising problems.¹⁰

According to the Article 20 of Law on General education of RA:

The student has the right:

“To be protected from any physical and psychological pressures, exploitation, such actions or inactions of pedagogical and other the workers and student by which is violated the rights of learner”

And also Article 27 of RA Law on Secondary education says: “The pedagogical worker is obliged: To respect and protect the rights and freedoms of learner, the honor and dignity.”

Safe schools are schools without violence, and schools without violence need to be developed and fostered by governments, teachers, pupils, parents and the community. In Armenia corporal punishment is reportedly unlawful in schools, but we have no applicable law. Prohibition is still to be achieved at home and at schools.

The state has a duty to protect children from abuse and neglect in the family, but it is not able to take actions unless the police or social workers have information that corporal punishment is taking place. Children often come into contact with various professionals who have the opportunity to see signs of abuse or neglect. One of the most powerful ways to protect children is to require these professionals to report suspected cases to the authorities. Family Code of Armenia has two provisions on reporting: Article 43(3): “The officials and other citizens who become aware of threats to the life or and health of a child, or cases of violation

¹⁰ Inclusive education in Armenia: Inclusive Education: The way of the future Third Workshop of the IBE Community of Practice, Commonwealth of Independent States (CIS) Minsk, Belarus, 29 – 31 October 2007 UNESCO International Bureau of Education
http://www.ibe.unesco.org/fileadmin/user_upload/Inclusive_Education/Reports/minsk_07/armenia_inclusion_07.pdf

of a child's rights and interests, should inform the departments of custody and guardianship of that and of the virtual residence of the child.", and Article 110(1): "The establishment officials (preschool educational, educational, medical and other organizations) who have information [that a child's parents have died, or are incapable of raising the child, or are otherwise not taking care of the child or protecting the child's rights], are obliged to inform the departments of custody and guardianship of that and of the virtual location of the child....."

Under Article 43, the duty to report includes everyone ("officials and other citizens"), and it is very broad as to problems covered, going beyond abuse and neglect to include nearly everything by the all-encompassing "interests". This article is very broad, and the level of duty is very weak, and it is doubtful that the Article will have a major influence on the people who have special opportunities to spot signs of abuse. Under Article 110, the duty appears to be compulsory, and it is also quite wide, although it is placed on a narrower range of people. However, since the Article lacks positive and negative incentives to report, the reward of immunity, and threat of punishment, it is doubtful that it will motivate people to make reports.

It should be noted that in the case of Armenia, the establishment of mandatory reporting procedures is necessitated by the virtual nonexistence of voluntary reporting. The explanation of why cases of voluntary reporting are extremely rare may be rooted in the closed nature of the Armenian family unit. In Armenian reality nobody thinks they can intervene in the relationships of other families. For example, if one sees his neighbor beating his child he just does nothing considering it their problem, and does not report to police or the departments of custody and guardianship about this phenomenon. It is widely accepted in the society that in the case of reporting, the person is considered to be a "snitcher".

As the above research shows although the legislation in the Republic of Armenia somehow regulates the corporal punishment of children, but some new mechanisms should be amended and also some changes in the legislation must be made.

Chapter 2 Comparison of Armenian law with international Child-protection legislation: What changes and what mechanisms are necessary for Armenia to regulate the protection of children from corporal punishment?

Globally, less than 20 of the 190-plus states have prohibited all corporal punishment, including in the family. So only 52 million children out of the world's 2,195 million live in countries where the law gives them equal protection from being assaulted. In about 90 states worldwide, corporal punishment is still not prohibited in schools.¹¹

Throughout the world, many states have a system to protect children from abuse and neglect in the family and in schools. There is quickening and welcome progress across Europe to prohibit corporal punishment of children explicitly in the family and all other settings. The Parliamentary Assembly of the Council of Europe has called for Europe to become a corporal-punishment-free-zone. But there is still much to be done: less than a third of the children in this region have been accorded the same protection as adults from being hit.¹² Everybody, adults and children alike, has an equal right to respect for their human dignity

¹¹ End All Corporal Punishment of Children: www.endcorporalpunishment.org

¹² Abolishing corporal punishment of children, Council of Europe Publishing,2009

and physical and mental integrity. The 47 member states of the Council of Europe under international and regional human rights instruments have human rights obligations, to reform their laws and take some measures to prohibit all corporal punishment of children, including within the family. The UN Secretary-General's study on violence against children sought universal abolition by 2009. "No violence against children is justifiable; all violence against children is preventable": this is the key message of the report on the study, submitted to the UN General Assembly in October 2006.¹³ ”.

193 states, including all member states of the Council of Europe respect the United Nations Convention on the Rights of the Child. This convention includes the obligation to protect children from all forms of physical or mental violence while in the care of parents and others (Article 19). The monitoring body of the Convention, the Committee on the Rights of the Child, sequentially interprets the convention as requiring the elimination of all corporal punishment. UN Convention on the Rights of the Child sets the standards and provides legal obligations for states to protect children from all forms of violence, including all corporal punishment. This international law is increasingly referred to in national and regional courts in cases concerning children. It is important to remember that when governments ratify international treaties, whether or not they incorporate them into state law, they become legally bound to implement them.¹⁴ This means that governments must prohibit all corporal punishment of children in all settings, including the home by law.

Case law of the European Committee of Social Rights, monitoring compliance with the European Social Charter and revised European Social Charter, requires all member states to prohibit all corporal punishment and other humiliating treatment or punishment of children and to promote other energetic administrative and educational measures to recognize and

¹³ Report of the independent expert for the United Nations study on violence against children: Introduction, paragraph 1. See: <<http://www.violencestudy.org/IMG/pdf/English.pdf>>.

¹⁴ The Vienna Convention on the Law on Treaties, at www.worldtradelaw.net/misc/viennaconvention.pdf

realize children's rights to protection. The European Committee of Social Rights has found a number of European states to be not in conformity with the European Social Charter and the Revised European Social Charter because they have not prohibited all corporal punishment at home and other settings.¹⁵ In 2001, in a general observation, the Committee stated that Article 17 of the Charter: require a prohibition in legislation against any form of violence against children, whether at school, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law. The committee comments that it does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence.¹⁶

In 2006, the Committee adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment".¹⁷ The Comment manifests the Committee's interpretation of the Convention as requiring prohibition of all corporal punishment, underlining "the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children" and outlining "the legislative and other awareness-raising and educational measures that States must take" (para. 2).

The dignity of each individual is the fundamental principle of international human rights law. "All human beings are born free and equal in dignity and rights ..." begins Article 1 of the UN Universal Declaration of Human Rights. Building on this foundation, there is now a

¹⁵ The Committee's website is at www.coe.int/T/DGHL/Monitoring/SocialCharter/

¹⁶ Council of Europe: European Committee of Social Rights, General Observation regarding Articles 7 (paragraph 10) and 17, Conclusions XV-2, Vol. 1, General Introduction, p. 26.

¹⁷ International Human Rights Instruments, Volume II, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.9 (Vol. II)

clear consensus that international and regional human rights instruments demand abolition and elimination of all corporal punishment of children.

Judgments of the European Court of Human Rights have progressively criticized corporal punishment, first in schools and more recently at home since the 1970s. Other decisions have also made clear that prohibiting all corporal punishment of children does not breach family privacy or religious rights. The European Court of Human Rights has challenged the concept of “reasonable” chastisement by parents. In September 1998, the Court unanimously found that corporal punishment of a young English boy by his stepfather was degrading punishment in breach of Article 3 of the European Convention on Human Rights (*A v. United Kingdom*, 1998).¹⁸ Prosecution of the stepfather in a UK court had failed on the grounds that the punishment was “reasonable chastisement”. The European Court found that the United Kingdom Government was responsible because the domestic law allowing “reasonable chastisement” failed to provide children with adequate protection, including “effective deterrence”. The Court ordered the UK to pay £10 000 compensation to the boy, who had been repeatedly hit with a garden cane. The *A v. United Kingdom* judgment cites articles of the UN Convention on the Rights of the Child, including Article 19 which requires states to protect children from “all forms of physical or mental violence” while in the care of parents and others.

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture all prohibit inhuman or degrading treatment or punishment. The International Covenant on Economic, Social and Cultural Rights states that educational institutions have an obligation to promote the dignity of the individual (article 13). The Committee on the Elimination of Discrimination against Women,

¹⁸ European Court of Human Rights, *A v. United Kingdom*, 1998. See <<http://www.echr.coe.int/echr>>.

the Committee against Torture, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have all condemned corporal punishment of children and recommended explicit prohibition in law and other measures to eliminate it.¹⁹

International standards which relate to the administration of justice are clear that corporal punishment should be strictly prohibited within the justice system and other settings. Rule 17.3 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) states that “juveniles shall not be subject to corporal punishment”.

The UN Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”) state that “No young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions” (article 54). They also require education systems to devote special attention to the “avoidance of harsh disciplinary measures, particularly corporal punishment”(article 21).

In July 1979, Sweden became the first country to explicitly prohibit all forms of physical punishment of children, including in the home, when it banned corporal punishment in the Children and Parents Code Chapter 6, Section 1 which now states: “Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment”.²⁰ The purpose of prohibiting all corporal punishment was not to punish or criminalize parents. The Children and Parents Code does not contain any penalty. The purpose was to ensure that children’s human rights were realized by protecting in law their physical integrity and human dignity. The law gives a clear message that hitting children is wrong and unacceptable.

¹⁹ www.endcorporalpunishment.org

²⁰ Children and Parental Code of Sweden. Chapter 6, Custody and Access, Introductory Provisions, Section 1

The prohibition of corporal punishment or any other humiliating treatment against children in Sweden had three objectives:

1. It was intended to change attitudes towards the use of physical force against children. It was expected that the law would produce a shift in social norms so that a “good” parent would be seen as one who does not use physical punishment. This was viewed as the first step in eliminating physical punishment from Swedish society.

2. The prohibition was intended to set clear guidelines for parents and professionals, ending debates about “acceptable” and “unacceptable” physical punishment. Nurses, social workers, teachers and other professionals could now state clearly that physical force was not permitted.

3. Earlier identification was expected to result in earlier intervention. Professionals could now feel comfortable in recommending alternative disciplinary strategies, providing supportive and educational materials to families, and acting quickly when identifying families at risk.

The law includes an obligation on professionals and authorities to report suspected violations. The change in the law made clear that violence is never a private matter. No Swedish law gives adults the right to use any forms of violence against children and no law allows parents’ needs and interests to take precedence above children’s. All legal gaps have now been closed and no longer can any person justify the use of violence by claiming that it was necessary or reasonable.²¹

Compared with international practice in Armenia it is infamous to speak aloud about corporal punishment in schools. But just three years ago we had a case²². During April-June 2008, a group of young people worked as volunteers in one of the Special Schools. This school was a

²¹ Ending corporal punishment – campaigns manual, PUBLISHED 2010 BY:
Global Initiative to End All Corporal Punishment of Children www.endcorporalpunishment.org
Save the Children Sweden <http://resourcecentre.savethechildren.se>

²² <http://www.mariamsukhudyana.info/thecase.php>

beneficiary of the UN's Ten Best Schools project. The young volunteers were engaged in renovating the computer room, teaching schoolchildren various subjects and skills, recording audio-books, etc. Through their work and interaction with children the young people observed and heard about multiple problems and abuses taking place at that school, including the following:

- Though the mentioned school is an establishment intended exclusively for children with special needs, in fact, it enrolled a number of healthy children, who at times of medical checks were instructed to pretend to have disabilities.
- Quality of food was bad and children were constantly underfed often preferring a piece of bread over the proposed meals. Leftovers were used to feed the school principal's pigs, turkeys and dogs being kept on the school grounds.
- Sanitary situation was unsatisfactory. Children were taking bathes once in a week or even once in every two weeks.
- Child labor was used by the school principal and other personnel in their housework.
- Children were often treated brutally, sometimes being subject to corporal punishment by school personnel.
- Several cases of sexual abuse of children by one of the school's teachers were reported.

The young volunteers made the above-mentioned information public. In November 2008, there were a number of video materials broadcasted by the Public Television about problems revealed at the school. As a result, some of the raised issues were addressed – children started taking bath more frequently and the quality of meals was improved. The teacher blamed for sexual abuse chose to leave the school “...to engage in creative work” – writing. Nevertheless, the issue of sexual harassment of children was not tackled. In summary, since raising the issue of ill-treatment and sexual harassment in Special School

there has been no proper reaction by Armenian state institutions, in spite of the fact that similar situation exists in similar boarding schools. Instead, authorities have endeavored to cover up the real issues and blame those who dared to speak out about them. The police opened a probe into student claims after a civil activist alerted media about alleged abuse at the school in late 2008. The teacher of boarding school charged with sexual harassment, to two years of imprisonment.

Taking into consideration all above mentioned, in order to regulate the protection of children from corporal punishment, the Republic of Armenia should make some changes in its legislation, and have some implementing measures which will help the state to succeed in this field.

The National Assembly should enact a law that expressly prohibits the use of corporal punishment by parents, and that the scope of the prohibition is written in clear terms that the public can understand. The current laws do not provide sufficient legal framework for protecting children from abuse and neglect in the family. The act should contain all of the essential elements from the international practice, with the details tailored to the needs and capacities of Armenia. Nearly each law contains a provision which states the scope and defines the subject of that law. So it will be favorable that the law prohibiting corporal punishment of children also contains a provision which will define what corporal punishment is. An example can be the definition given by the International Save the Children Alliance Position on corporal punishment on April 2003 which states: "Corporal or physical punishment is the use of physical force intended to cause some degree of pain or discomfort for discipline, correction, and control, changing behavior or in the belief of educating/bringing up the child. Physical pain can be caused by different means such as hitting the child with a hand or other object, kicking, shaking or throwing the child, pinching

or pulling the hair, ears, caning or whipping”²³. In particular, the legislation should ensure that children are protected in the holistic sense of the word by helping the family to stay together.

The judicial and the administrative bodies can somehow, fill in some of the gaps in the present law. The courts have a degree of authority to create rules of procedure that could provide some safeguards, and the national government can issue decrees, and the local government authorities could perhaps issue directives. If such judicial and administrative rules were created and carefully followed, it would be possible to close some of the gaps, such as ambiguity, abstract definition of terms, incomprehensibility, vagueness in the Family Code and other laws. But good governance requires that all of the important rules are contained in a child protection code. For one thing, comprehensive legislation will make sure that all of the important rules are integrated into a unified whole. For another, these rules are based on fundamental policy decisions, and legislators are usually seen as the appropriate authorities to make these decisions. Legislation needs to give substantive and procedural rights to children and parents in all of the stages of state intervention.

The National Assembly also needs to set down clear rules about corporal punishment in the family. The current law does not give sufficient guidance to parents, and it fails to protect children.

The Armenian law does not establish a mandatory procedure for reporting cases of child abuse by sufficient professionals. In the cases of violence against children in the home or at school, reporting by designated individuals will be the only effective mechanism for child protection. It should be mentioned that in the case of Armenia, the establishment of

²³ Corporal Punishment Position - Save the Children International Alliance Position, www.savethechildren.net/alliance/resources/corporal_punish.pdf

mandatory reporting procedures is very important because here voluntary reporting does not exist. The reason for this is the closed nature of the Armenian family unit. A good “duty to report” law will have four core elements: it will (i) specify the professions that must report the cases of corporal punishment of children, (ii) specify the agencies of the state that reports must be made to, (iii) set down the penalty for not reporting, and (iv) give immunity to the person who makes the report. Moreover, the law can go beyond this core and require the state to train the state workers who must report so they can identify signs of corporal punishment. A legislative review in existing law is needed to regulate the protection towards all forms of violence against children and to set up adequate protection mechanisms. The Armenian legislator has not seriously considered the issue of corporal punishment as a violation of the child’s right to physical integrity and this is incompatible with the Convention on the Rights of the Child. Additional efforts are also needed to efficiently address the matter of domestic violence.

Adequate mechanisms to receive complaints, monitor, investigate and prosecute instances of corporal punishment should be established to ensure effective protection under the Law on the Rights of the Child – otherwise its provisions will remain mere declarations.

Conclusion

The rights of children to respect for their human dignity and physical integrity and to equal protection under the law require that the law effectively and equally protects them from all forms of corporal punishment and other humiliating punishment or treatment.

Although Children's Rights Act and the Criminal Code of the Republic of Armenia include provisions which protect children against violence and abuse, but our state has not yet introduced legislative and other measures which specifically address the issue of violence against children, particularly corporal punishment. It is connected with the lack of data on cases of abuse and corporal punishment which occur in schools and families. It is also connected with the lack of complaints mechanisms to which children could have recourse and the fact that only medical professionals are responsible for reporting cases of abuse and neglect.

Armenia must adopt specific legislation and take other measures to prevent violence against children. Armenia should strengthen programs for the recovery and reintegration of abused children and establish adequate procedures and mechanisms to receive complaints and to monitor investigate and prosecute cases of ill-treatment. The authorities must ensure that all people working with children, such as teachers and care personnel, are made responsible for reporting cases of abuse and neglect. Armenia should launch awareness-raising campaigns on the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment, especially in the family, schools and other institutions and ensure that all people working with children, including law enforcement officials, judges and health professionals, undergo training in how to identify, report and manage cases of ill-treatment." It must be promoted positive, non-violent forms of discipline as an alternative to corporal punishment, especially in the schools.

Without delay explicitly it must be prohibited by law corporal punishment and all other inhuman or degrading treatment or punishment of children. This requires removal of any legal defenses or justifications for violent or degrading punishment and implementation of explicit prohibition. Children have a right to equal protection on assault and it is essential that the law should send a clear message that assaulting a child is as unlawful as assaulting anyone else.

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