



Human rights

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This paper takes a look at the chronological development of UN human rights bodies promoting and protecting human rights, including the mechanism which encourages States to submit their reports to the Human Rights Council. It then focuses on children rights and the problem of corporal punishment and in this context, the UK government position is taken into account, as well as the recommendations from scientific research on corporal punishment.

I Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948. For the first time in human history basic civil, political, economic, social and cultural rights that all human beings should enjoy were set out. It represents 'a common standard of achievement for all peoples and nations' and it has over time been widely accepted as the fundamental norms of human rights that all Governments should respect. December 10, the day of its adoption, is observed worldwide as International Human Rights Day.

The Universal Declaration, together with the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the "International Bill of Human Rights."

II Office of the United Nations High Commissioner for Human Rights (OHCHR)

In the 1940s, the United Nations human rights programme had started as a small division at United Nations Headquarters and later it moved to Geneva.

In 1980s, it was upgraded to the Centre for Human Rights.

In 1993, at the World Conference on Human Rights, the international community decided to establish a more robust human rights mandate with stronger institutional support.

Accordingly, Member States of the United Nations created The Office of the United Nations High Commissioner for Human Rights (OHCHR) by a General Assembly Resolution that same year.

III Human Rights Council

Over the years the international human rights movement has been growing in strength and scope of its activities. Alongside the development of international human rights law, a

number of United Nations human rights bodies have been established to respond to changing human rights challenges.

Until 2006 the United Nations Commission on Human Rights, established in 1946 and reporting to the Economic and Social Council, was the key United Nations intergovernmental body responsible for human rights. In 2006 it was replaced by the Human Rights Council.

The newly created Council is reporting directly to the General Assembly and it has expanded mandates. These include making recommendations to the General Assembly for further developing international law in the field of human rights, and undertaking a Universal Periodic Review of the fulfilment of each State of its human rights obligations and commitments.

“All victims of human rights abuses should be able to look to the Human Rights Council as a forum and a springboard for action.”

- Ban Ki-moon, UN Secretary-General, 12 March 2007, Opening of the 4th Human Rights Council Session

The Human Rights Council is made up of 47 States, elected by the UN General Assembly. It is responsible for the promotion and protection of all human rights around the globe and for addressing situations of human rights violations and make recommendations on them.

In 2007 the Council adopted the "Institution-building package" which set up its procedures and mechanisms. Among them were the **Universal Periodic Review** mechanism which serves to assess the human rights situations in all United Nations Member States, the **Advisory Committee** which serves as the Council's "think tank" providing it with expertise and advice on thematic human rights issues and the **Complaint Procedure** which allows individuals and organizations to bring human rights violations to the attention of the Council. The Human Rights Council also works with the **UN Special Procedures**. These are made up of special rapporteurs, special representatives, independent experts and working groups that monitor, examine, advise and publicly report on thematic issues or human rights situations in specific countries.

The Human Rights Council has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year. It meets at the UN Office at Geneva. A list of human rights issues can be found by following this link:

<http://www.ohchr.org/EN/Issues/Pages/ListOfIssues.aspx>

IV Civil society actors and the Human Rights Council

Non-governmental organizations (NGOs), national human rights institutions (NHRIs) and other civil society actors are an integral part of the Human Rights Council, as observers. NGOs with ECOSOC consultative status and NHRIs can address the Council during interactive discussions and debates thus highlighting human rights situations around the globe.

NHRIs and NGOs, regardless of ECOSOC status, can also contribute to the Universal Periodic Review process by providing written information about the State under review to be

summarized in one of the three documents which serve as a basis for the review process (together with information prepared by the State under review and a compilation of UN contributions).

V Children issues

Children issues are included on the list of the human rights issues and are addressed through four mechanisms:

1) The Committee on the Rights of the Child (CRC) has 18 independent experts. It monitors the implementation of the Convention on the Rights of the Child by its State parties and of a new treaty that came into force in 2014. The new treaty is called the **Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure** and it allows children or their representatives to submit complaints to the CRC about specific violations of their rights under the following convention and optional protocols:

- a. Convention on the Rights of the Child
- b. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict
- c. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Children or the representatives can submit a complaint only if:

- a. they have exhausted all the legal mechanisms in their own country
- b. their country has ratified the Optional Protocol on a Communications Procedure

2) OHCHR Thematic reports on children rights

In a resolution in 2008, the Human Rights Council affirmed "its commitment to effectively integrate the rights of the child in its work and that of its mechanisms in a regular, systematic and transparent manner, taking into account specific needs of boys and girls". It also decided "to incorporate into its programme of work sufficient time, at a minimum an annual full-day meeting, to discuss different specific themes on the rights of the child, including the identification of challenges in the realization of the rights of the child, as well as measures and best practices that can be adopted by States and other stakeholders, and to assess the effective integration of the rights of the child in its work, beginning in 2009".

3) Special Rapporteur on the sale of children, child prostitution and child pornography

In 1990, international awareness about the commercial sexual exploitation and the sale of children led to the appointment of a United Nations Special Rapporteur on the sale of children, child prostitution and child pornography through a resolution of the United Nations Commission on Human Rights. The Special Rapporteur was given the mandate to investigate the exploitation of children around the world and to submit reports to the General Assembly and the Commission on Human Rights, making recommendations for the protection of the rights of the children concerned.

It is the only mandate of the UN Special procedures system with an exclusive focus on children.

4) The United Nations Study on Violence against Children

In overseeing the implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child held two days of general discussion on the issue of violence against children within the family and in school (2001) and state violence against children (2000). The request for an international study on the question of violence against children was an outcome of these days of discussion. In 2001, acting on the recommendation of the Committee, the UN General Assembly called for a Study on Violence against Children. The Study process was supported jointly by OHCHR, UNICEF and WHO. In 2006, the final report was presented to the UN General Assembly. The Study analyses violence against children in five settings: the home and family; schools and educational settings; care and justice institutions; the work-place; and the community. The Study contains 12 over-arching recommendations and a number of setting specific recommendations that represent a comprehensive framework for follow-up action. The Study process also resulted in a more detailed World Report on Violence against Children and in child friendly publications.

VI Universal Periodic Review

The Universal Periodic Review "has great potential to promote and protect human rights in the darkest corners of the world." – Ban Ki-moon, UN Secretary-General

The Universal Periodic Review (UPR) was created in 2006 through the UN General Assembly and it involves a review of the human rights records of all UN Member States. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. No other universal mechanism of this kind currently exists.

The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. By 2011, the UPR has reviewed the human rights records of all **193 UN Member States**.

From 18 to 29 January 2016, the Human Rights Council's Universal Periodic Review Working Group held its twenty-fourth session in Geneva.

VII UPR Mid-term reports

On 3 February 2016, **60 States** submitted, on a voluntary basis, UPR mid-term reports. The reports submitted to the OHCHR can be found by following this link:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>

In the UPR mid-term reports it is possible to see whether a State has accepted or rejected recommendations made by other States.

VIII UK government statement about corporal punishment

The Mid Term Report submitted by UK includes a recommendation (110.78) from Sweden which asks that UK reconsiders its position about the continued legality of corporal punishment of children. The report further states that this recommendation does not enjoy the support of the UK and goes on to explain the UK government position as follows:

Keeping children safe is a top priority for the UK Government, which is absolutely clear that no child should be subjected to violence or abuse. The law in the UK only permits physical punishment of children in very limited circumstances. Corporal punishment is unlawful in state and full-time independent schools, in nursery and childminding settings, children's homes and secure establishments. In any setting, an assault on a child that results in injuries that are more than transient or trifling would normally be charged as an assault occasioning actual or grievous bodily harm. Where that is the case, the assault cannot be defended on the basis that it is reasonable punishment. Research shows that fewer parents now use physical punishment, and we hope that trend continues. We encourage the provision of evidence-based parenting programmes as they promote alternatives to physical punishment to manage children's behaviour.

The UK Government does not accept that it is in breach of the UNCRC with regard to physical punishment; and believe that UK is compliant with Articles 19 and 37 in relation to abuse and violence towards children.

The UK position on corporal punishment of children is summarised in the UK 5th periodic report under the CAT¹, the UK 7th periodic report under the ICCPR², and the UK 5th periodic report under the CRC³.

In summary, the UK has clear laws that deal with violence towards children, regardless of the setting in which it may take place and regardless of who administers it. The UK's view is that a mild smack does not constitute violence and that parents should not be criminalised for giving a mild smack to their child. The UK therefore remains of the view that it is not in breach of the CRC with regard to physical punishment of children, and believes that the UK is compliant with Articles 19 and 37 CRC in relation to abuse and violence towards children.

All schools in England, Northern Ireland, Scotland, and Wales are banned by law from using any form of corporal punishment. There are some unregistered independent settings, providing part-time education, that are not covered by this ban. However, work is underway to develop a code of practice which will send a clear message about the expected standards that all settings should meet, and to highlight that assault of children is unlawful in any setting. Physical punishment has also been banned in child minding, other early years provision, local authority foster care and children's homes, either by statute or through codes of conduct. The UK is taking a variety of action to promote positive parenting and caring relationships. Examples are included in Northern Ireland's "Families Matter Strategy", Scotland's "National Parenting Strategy" and the "Help at Hand; A Positive Approach to Parenting publication" in Wales.

IX Research about corporal punishment

¹ Page 98 (and following pages) of [CAT/C/GBR/5](#)

² Page 98 of [CCPR/C/GBR/7](#)

³ Page 21 of [CRC/C/GBR/5](#)

Parental use of corporal punishment is a controversial topic in parent–child relationships that has given rise to much debate and disagreement surrounding the topic.

In 2002, Gershoff produced a review of 88 studies by using meta-analyses to evaluate the outcomes. Link to this review: <http://www.endcorporalpunishment.org/assets/pdfs/reference-documents/Gershoff-research-2002.pdf> . The weight of the available evidence is clearly on the side of the negative effects of customary corporal punishment.

But a quandary remains should corporal punishment be outlawed, like Sweden, Norway and 9 other nations have done?

In some countries, particularly in Africa, Asia but also in USA parents feel entitled to use corporal punishment and it is a deeply embedded child-rearing practice. Rather than legislating change, a more successful long term strategy would be to focus on educating parents about the problems associated with corporal punishment.

Effective education needs to prompt parents to reflect about their use of punishment, to provide them with substitutes to corporal punishment, and to redirect them to a reward-based discipline orientation so they can feel successful in managing their children.

X Concluding remarks

According to research spanking tends to be most frequent when children are 3- to 5-year-old. Corporal punishment is likely to induce one or more particular emotions, i.e. fear, anger, humiliation, sadness. However, very few studies investigated corporal punishment from the child’s perspective (rather than the adult’s) and there is a need for more such studies.

The main effort of our NGO (called the International Child Development Programme, ICDP) is directed towards avoiding imposition of power on children. ICDP work is focused on helping the development of empathy, care, sensitivity, cooperation and dialogue between adults and children from an early age. Our basic premise is that when good quality relationship (based on loving, compassionate, friendly and yet firm value based guidance) is established early on in life, the outcome will be caring children who respect others, accept social boundaries and have self-control - and that this can be achieved without resorting to corporal punishment.

Despite evidence from research against corporal punishment, many States have not shifted their position about the continued legality of corporal punishment of children. Hopefully, this may change if more pressure is put on these States by governments, NGOs and other civil society actors. Further research about corporal punishment may bring new insight in the future that may lead to corporal punishment becoming illegal all over the world.

In 1948, the Universal Declaration of Human Rights set out basic human rights that all human beings should enjoy, and since then the human rights movement has been growing, increasing our sense of responsibility towards fellow human beings. Acknowledging human rights and providing mechanisms to protect them is indubitably an impressive historical achievement, nevertheless, even more important challenge remains, that of making sure that the human rights become a reality for all. Will humanity as a whole ever manage to commit to a life based on human values? Perhaps not, but is there anything more worthy of our aspiration?