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2009 Janusz Korczak Lecture

“Respect means stopping hitting children today – not tomorrow or the day after”

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¹ The lecture was given in the framework of an event dedicated to Janusz Korczak and organised by the Polish Permanent Representation to the UN in Geneva.

The purpose of the Korczak lectures is to promote the child, as Janusz Korczak himself did, long before the Convention on the Rights of the Child, as a rights holder who is due equal respect for her or his human dignity and physical integrity. The persisting legality and adult defence of corporal punishment and other cruel or degrading forms of punishment of children is the most symbolic reflection of the low status of the child as possession or object, not person, in far too many states around the world.

The underlying philosophy of Korczak's children's republic was that children are not the people of tomorrow, but are to be treated as people today. This theme was echoed by Professor Paulo Sérgio Pinheiro, who led the recent UN Secretary-General's Study on violence against children; when he reported to the General Assembly in 2007, he concluded: "Children are sick of being called 'the future'. They want to enjoy their childhoods, free of violence, now."

I am quite sure that Korczak would be excited to hear that his country, Poland, played such a major role in developing the first binding international legal instrument on children's rights; that it now has a children's ombudsperson with legal powers to safeguard and promote the rights of the child; and that it is one of the growing number of states committed to introducing in the very near future explicit prohibition of all corporal punishment of children, including in their homes.

This issue is not simply about prohibiting and eliminating one particular, very common – in fact the most common – form of violence against children. It is about challenging the very idea that adults have a unique right to hit, hurt and humiliate children, when their violence is disguised as discipline or control.

It is still proving extraordinarily difficult to achieve for children the right not to be hit and humiliated – to achieve equal legal protection of their human dignity and physical integrity. It has so far proved too difficult in my country, the UK, and in many other countries across Europe and the world. The resistance echoes traditional adult attitudes to children through the ages – childhood is a nightmare, as one of the rather few historians of childhood² characterised it, from which we are only just beginning to emerge.

It should be a simple issue – hitting people is wrong – and children are people too. But in fact it is hugely difficult and controversial still in many states in all regions. The difficulty comes from the personal dimension. It is still true in almost every country to say that most people were hit as children by their parents.

Most parents have hit their own growing children. None of us likes to think badly of our parents, or of our own parenting. This makes it very difficult to move on and perceive this issue clearly as one of fundamental equality and human rights.

Whatever audience one is addressing on this issue, whether it is politicians, or human rights experts, or child protection practitioners, you can be fairly sure that the first responses will be personal responses, not professional ones.

Another difficulty in many countries is that some adults still believe their religion gives them a right or even a duty to use corporal punishment; there are minority groups of Christians who are among the most passionate defenders of violent discipline in my country, the UK, and in

² The History of Childhood, ed. Lloyd de Mause, Bellew Publishing, London, 1991.

many others. Sharia law is still being used by some to justify the most barbaric punishments of children from puberty, including stoning and amputation. We all enjoy freedom of religious belief. But belief cannot be allowed to lead to practices which breach others' rights, including their rights to respect for their human dignity and physical integrity. Globally, faith leaders are increasingly speaking out against all violence against children, and supporting law reform to prohibit all corporal punishment.

The Eighth World Assembly of Religions for Peace, in Kyoto, Japan in 2006, brought together more than 600 faith leaders from all regions and agreed a resolution calling on governments to "adopt legislation to prohibit all forms of violence against children, including corporal punishment". Individual leaders including Archbishop Desmond Tutu and His Holiness the Dalai Lama are strong supporters of this prohibition.

In the Islamic Republic of Mauritania, following research showing the very high prevalence of corporal punishment in Koranic schools as well as in the home, the Network of Imams recently carried out a study to assess whether corporal punishment is allowed in Islam. Their conclusion was that violence against children has no place in the Koran. And this has led to the first fatwa (religious edict) barring physical and verbal violence against children, both in the educational system and in the home.

We cannot continue to allow adults to continue to in effect preach violence against children, nor to administer extreme violence in religion-based penal systems for young offenders.

Laws authorising corporal punishment of children have a long history in Europe. Under Roman law until 365 AD, fathers had the right to kill their children and when they lost that right, it was replaced by a right to use physical discipline. The English law allowing "reasonable chastisement" developed from this, as did similar defences of "lawful correction" in French, Spanish and Portuguese law.

While it seems likely that corporal punishment in one form or another has always existed in human societies, as it does in some animal societies, there is attractive anthropological research suggesting that in original hunter-gatherer societies – rare now – and in societies where child-rearing was widely shared, there was little or no use of pain in child-rearing. What is certain is that my country, the UK, had a substantial influence in its colonial period, institutionalising corporal punishment in developing school and penal systems and so-called "care" institutions for children and promoting it through much missionary teaching. The legal defence of "reasonable chastisement" has found its way into at least 70 legal systems worldwide (the French, Spanish, Portuguese and others played their part too, with their concept of "lawful correction").

There is quite a lot of documentation on the extent and severity of corporal punishment in the early school system in England. I recently came across one story of what could be seen as natural justice at work, in 1301: Hugh Cunningham's *The Invention of Childhood* records that in December that year, the body of John Newshom, an Oxford schoolmaster, was found in the River Cherwell, near the present Magdalene Bridge over the River Thames. He had fallen out of a willow tree while cutting rods with which to beat his pupils, and drowned.³

The first recorded campaign by children to try to persuade our English Parliament to ban school corporal punishment was in 1669, when a "lively boy" presented a petition "on behalf of

³ Hugh Cunningham, *The Invention of Childhood*, BBC Books, 2006.

the children of this nation”, to protest against “that intolerable grievance our youth lie under, in the accustomed severities of the school discipline of this nation”.⁴

Another three centuries passed before the UK finally prohibited all corporal punishment in all its schools, state and private, following a series of judgments of the European Court of Human Rights. And in 2009, my government is still enabling parents and some other carers to justify common assault as “reasonable” when the target is a child; Scotland even introduced the unattractive legal concept of “justifiable assault” on children a few years ago. The UK Government argues that a majority of parents do not want “smacking” banned (most countries have these soft words like “smacking”, “spanking” to make adults feel more comfortable when they hit – assault – their children). But governments cannot excuse themselves from human rights obligations on the basis of public, or parental opinion. Anyway, this is the equivalent to asking men whether they think domestic violence against women should be banned. The UK Government also argues that the “smacking” which can still be legally justified as “reasonable punishment” is not violence. This is classic adult double-talk, insulting and disrespectful to children, and their testimony emphasises just how much smacking hurts, and not just physically, it hurts “inside”. It hurts you inside was the title of a very upsetting report⁵ of research with 5 to 7-year-old children in the UK a few years ago, on their experience and views on smacking.

Our government says it does not want to “criminalise” loving parents. But of course respecting children’s equal rights requires that assaults on them are criminalised to the same degree as assaults on adults. That does not mean that in any normal circumstances parents are going to be prosecuted and dragged off to court for minor assaults, any more than adults are for minor assaults on other adults.

The purpose of banning all corporal punishment in the family is not to prosecute more parents because it would not be in the best interests of children, nor in the public interest, to do so. But the purpose must be to send the only just and safe message into the so-called “privacy” of the family – that it is no more legal or acceptable to hit a child than to hit anyone else.

Without that clarity, attempts to educate parents on from corporal punishment are fatally undermined. Some argue that we should first educate parents, and then change the law. But would they argue that before prohibiting all violence against women, we should wait for full employment and universal anger-management courses for men? Echoing Korczak, we must insist that children have the right to full respect for their physical integrity and human dignity today, not tomorrow or next year.

The UK is not of course alone in obstructing the inevitable path to respecting children’s right to full protection, but it is sad to see a country which has been in the forefront of establishing human rights standards producing such silly excuses.

Globally, there are still some quite extreme and shocking examples of legal frameworks justifying even extreme violence against children. Just two examples: in Tuvalu in the southern Pacific, one of the world’s smallest nations, an island court can order a parent or guardian of a male child or young person to cane their child in lieu of any other sentence (up to six strokes

⁴ C. B. Freeman, “The children’s petition of 1669 and its sequel”, *British Journal of Educational Studies*, vol. 14 (May 1966), p. 216.

⁵ *It hurts you inside, young children talk about smacking*, National children’s Bureau and Save the Children UK, London, 1998.

for a child under 14 years, 10 strokes for a young person aged 14-16). If a parent fails to carry out the order, they are committing an offence.

On a larger scale, Singapore – considering itself as a modern democracy and in 2010 hosting the first Youth Olympics – was the only state to openly defend what it termed the “judicious” use of corporal punishment of children when the General Assembly was debating the report of the UN Secretary-General’s Study on Violence against Children in 2006. And in Singapore (and also Malaysia and a number of other countries), the criminal code states: “Nothing, which is done in good faith for the benefit of a person under 12 years of age ... by or by consent ... of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person.” And in these countries, the law makers felt it was necessary to go on and state: “Provided that this exception shall not extend to (a) the intentional causing of death, or to the attempting to cause death; (b) the doing of anything which the person doing it knows to be likely to cause death ...”. In other words, as long as you think you are benefiting the child, it is not a criminal offence to beat them right up to the point of killing them.

There is still a long way to go to achieve universal legal respect for children’s human dignity and physical integrity. But there is now real and exciting progress across the world. The major context for progress over the last 20 years has been the almost universal acceptance – by 193 states – of the Convention on the Rights of the Child (CRC). The particular task of the Convention is to confirm that children are holders of human rights alongside adults, including the right to equal protection of their human dignity and physical integrity.

The Committee on the Rights of the Child has paid particular attention to violence against children since it started to examine reports from states in 1993. It systematically recommends prohibition of corporal punishment of children in all settings, including the home and family.

In 2006, the Committee issued its first General Comment on violence – on the right of the child to protection from corporal punishment.⁶ The Convention is the first international human rights instrument expressly to require the protection of children from “all forms” of physical or mental violence, in Article 19. As the Committee writes in its General Comment: “There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.”

In its General Comment, the Committee provides a broad definition of corporal, or physical, punishment: “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light ...”. And the Committee emphasises that while corporal punishment is invariably degrading, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention – punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.

The Committee highlights that rejecting violent and humiliating punishment does not mean rejecting discipline – which, as Korczak emphasises, is about leading children to good behaviour. Hitting children is an obvious lesson in bad behaviour. And prohibiting violent punishment does not limit the protective use of reasonable force: with babies and young

⁶ Committee on the Rights of the Child, General Comment No. 8, 2006, “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”.

children, parents use protective physical actions the whole time – but these are quite distinct from deliberately hitting and hurting children to punish them.

In addition to the Committee on the Rights of the Child, the other relevant UN human rights treaty bodies – the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee against Torture and the Committee to Eliminate Discrimination against Women – have all condemned corporal punishment and recommended prohibition. In the new Human Rights Council process of Universal Periodic Review of states' overall human rights records, recommendations to ban all corporal punishment are frequent.

Also, regional human rights mechanisms are increasing pressure on governments, including the European Court of Human Rights, the Inter-American Commission and most recently the African Committee of Experts on the Rights and Welfare of the Child. There have also been judgments from high-level domestic courts – constitutional courts and supreme courts in many states in all regions, some condemning corporal punishment in penal systems and schools, including in Fiji, South Africa, Namibia and Zimbabwe, some relating to corporal punishment in the home as well, including in Costa Rica, Italy and Nepal.⁷

An additional, recent context for progress has been the human-rights-based UN Secretary-General's Study on Violence against Children. The study, proposed by the Committee on the Rights of the Child, was the first comprehensive global review of violence against children. It was also the first UN exercise of this kind to seek to involve children and to learn directly from children's experiences and views; for example, children played a very visible and vocal role in the nine regional consultations held as part of the study process. This had a profound impact, because children focused not only on the severe forms of violence, against which there is already a global consensus, but also on the daily, routine violence so many of them suffer in their homes and in many states also in schools, other institutions and penal systems. Their presence and their testimony made it very hard for the adults, politicians and others, to remain in denial.

By June 2009, 24 states had completely prohibited all corporal punishment in all settings – Moldova was the most recent. At least another 26 across all regions have publicly committed themselves to do so. In Africa, the interim constitution and legislation in Southern Sudan includes complete prohibition and the Kenyan and Zambian governments are committed to full reform. In East Asia and the Pacific, there is a bill introduced in the Philippines and a clear governmental commitment in Vietnam. New Zealand became the first English-speaking state to achieve full prohibition in 2007.

In Latin America, Uruguay, Venezuela and Costa Rica have achieved complete prohibition of corporal punishment and recently the Inter-American Court of Human Rights confirmed the obligation of all Organisation of American States member states to prohibit, quoting the Convention on the Rights of the Child and the Committee on the Rights of the Child's 2006 General Comment No. 8 on the right of the child to protection from corporal punishment.

The Council of Europe has become the first intergovernmental organisation to campaign for universal prohibition of all corporal punishment of children across its 47 member states – just as it achieved universal abolition of the death penalty. It is almost half-way to achieving its

⁷ See www.endcorporalpunishment.org for details of human rights recommendations and relevant judgments of high-level courts.

goal. A formal campaign was launched in Zagreb in 2008 and materials including a TV spot have achieved massive circulation across the continent.

The progress is indeed exciting. But now that the scale of this daily, routine violence against children is visible, now that the human rights consensus against it is established, there must be no further delay. We cannot go on being tolerant of adult excuses. Of course it is understandable that individual parents have been influenced by long-held traditional attitudes to children and punishment, passed from generation to generation. But understanding it does not make it right.

It is particularly upsetting, in the context of the human rights consensus, when governments and parliaments miss opportunities for achieving this iconic reform for children. For example, in Switzerland last year, a parliamentary initiative which would have explicitly prohibited all corporal punishment in the family was defeated. It seems inexplicable that parliamentarians should still feel able, in the new millennium, in the face of this now visible daily adult assault on children, to in effect vote for violence against children.

It is not, of course, a convenient or easy issue for governments to see through parliaments. Public opinion, voter opinion, lags behind. In countries which have achieved a complete ban, the legislation has been passed well ahead of public opinion, with governments correctly fulfilling their human rights obligations and also listening to majority professional advice on the dangers of corporal punishment.

So – finally, what is needed to speed universal acceptance of children's equal right to protection, to achieve universal prohibition and elimination?

First – more visibility of the reality of the daily assault on children. Once visible, it is unacceptable. For example, almost 40 states still authorise their courts to sentence children to whipping or flogging. More than 90 still authorise caning or belting of children in schools (in several states recently, students have used mobile phone cameras to make visible the reality of teacher violence within otherwise “private” classrooms). It is only through interview research, in conditions of confidentiality and trust, with children (and with parents to capture the experience of babies and very young children) that the true level of violence against them can be revealed. Statistics of reporting of violence, investigations and prosecution of perpetrators may be useful, but tell us nothing whatsoever about the real level of violence.

There is a great deal of research, of varying quality, much of it from the US and the UK, into the harmful effects of corporal punishment – identifying it as a significant factor in the development of violent attitudes and actions in childhood and adult life, its links with low self-esteem, depression, delinquency and all the things we do not want for our children. But I am not sure how valuable this research is, because it misses the point and is in a sense disrespectful to children. Women would find it insulting these days if we looked for evidence of the ill-effects of male violence to justify prohibiting it: there is an immediate human rights imperative to prohibit and eliminate all such violence.

The growing inter-faith movement supporting prohibition and elimination needs to strengthen itself to actively combat all religion-based justifications of violent or humiliating punishment of children.

Where states refuse to recognise their human rights obligations to reform the law, legal advocacy is needed, seeking to enforce children's right to protection, asserting the Convention

on the Rights of the Child as the legal instrument which it is, and using either national courts or, where there is no effective national remedy, international or regional human rights mechanisms.

We have to point to the absurdity of states pretending that they have effective child protection systems while their law simultaneously authorises direct violence against children. Ending all legalised violence is the only safe foundation for child protection.

The world is moving inevitably towards respecting children's equal right to protection. But from a children's perspective, it is taking an awfully long time. As Korczak wrote in *How to Love a Child*:

A hundred children – a hundred individuals who are people – not people-to-be, not people of tomorrow, but people now – right now – today.

It is not complicated, and every adult owes it to children to work urgently – individually and collectively – to end legalised violence and assert and practise full respect for the child's human dignity.