

## **CORPORAL PUNISHMENT – A GLOBAL TREND TOWARDS CHILD’S RIGHTS PROTECTION IN NIGERIA\***

### **Abstract**

The paper examined the constitutionality or otherwise of corporal punishment on Nigerian children, often imposed by adults and institutions that take care of children. It analyses and synthesizes the jurisprudence and legal frameworks that supports or does not support this sensitive global issue. The paper finds that corporal punishment is a deprivation and a gross human right violation of children to life, health, dignity and integrity. The paper also looks on how the international community view this problem and makes a case for urgent legislative reforms in Nigeria banning excessive corporal punishment on children.

### **Introduction**

Article 4(1) of the African Charter on the rights and Welfare of a child<sup>1</sup> provides that “in all actions concerning the child undertaken by any person or authority, the best interests of the child shall be primary consideration” This provision has been entrenched in our law by section 1 of the Childs ‘ Rights Act<sup>2</sup> which says “in every action concerning a child, whether undertaken by an individual, public or private body, institutions of service, court of law, r administrative or legislative authority, the best interest of the child shall be primary consideration” A replica of the provision is also found in Article 3 (1) of the convention on the Rights of the Child<sup>3</sup> (CRC).

Bearing in mind the fact that the CRC has been ratified by almost all the member states of the United Nations organization, the “best interest of the child” principle would appear to be the norm presently, both internationally and otherwise. However, a consensus on the phrase is one thing but how to actualize it is the more important other. It involves all of determining what is in the best interest of the child in every<sup>1</sup>

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<sup>1</sup> African Charter on the Rights and Welfare of the Child, July 1999

2. Child’s Rights Act 2003.

3. Convention on the rights of the Child 1989, ratified by Nigeria in 1991. Hereinafter referred to as CRC

conceivable situation, entrenchment through positive legislation and the colossal issue of enforcement. More so, the fact that the best interest of the child “shall be a primary consideration” in decision affecting the child is an indication that the best interest of the child will not always be the single, overriding factor to be considered<sup>4</sup>; but in the administration of justice, there may be competing or conflicting human rights interest; for instance between individual children, between different groups of children and between children and adults.<sup>5</sup>

### **History of Child Protection**

There has never been a time when children were completely benefit protection; even before the era of legal protection, adults were aware when a child was being maltreated and tried to help. In America, criminal prosecution has long been used to punish flagrant abusers of children. In 1807, for example, a New York shop keeper was convicted of sadistically assaulting his slave and her three year – old daughter.<sup>6</sup> In 1869, an Illinois father was prosecuted for confining his blind son in a cold cellar in the middle of winter.<sup>7</sup> Organized child protection emerged from the rescue of nine-year-old Mary Ellen Wilson. She lived with her guardians in one of New York’s worst tenements. Mary Ellen was routinely beaten and neglected. A religious missionary named Etta Wheeler learned of the child’s plight and determined to rescue her. Wheeler consulted the police, but they declined to investigate. She sought advice from Henry berg, the influential founder of the American society for the prevention to cruelty to animals. Bergh asked his lawyer, El bridge Gerry, to find a legal mechanism to rescue the child. Gerry employed a variant of the writ of habeas corpus to remove Mary Ellen form her guardians<sup>8</sup>.<sup>2</sup>

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<sup>4</sup>. Human Rights in the Administration of Justice: manual on Human rights for Judges, Prosecutors and Lawyers UN.

<sup>5</sup>. Implementation Handbook for the Convention on the Right of the Child (New York, UNICEF, 1980 p. 681

<sup>6</sup>. Myers E.B, A Short History of Child protection in America, family law Quarterly, 2008, Volume 42, No 3.

<sup>7</sup>. *Fletcher v People* (1869) 52111. 395

<sup>8</sup>. Myers E.B, A Short History of Child protection in America, family law Quarterly, 2008, Volume 42, No 3.

Following the rescue of Mary Ellenberg and Gerry decided to create a non-governmental charitable society devoted to child protection, and thus was born the New York Society for the Prevention of Cruelty to Children (NYSPCC), the world's first entity devoted entirely to child protection.<sup>9</sup>

In Nigeria, the issue of child protection was non-existent for a long time. Due to rule by colonial government, the welfare of the Nigerian child was not particularly a major concern to the colonial masters. The first attempt at legislation geared towards child protection in Nigeria was in 1943, when the Children and Young Persons' Act (CYPA) was promulgated for application in any part of the protectorate of Nigeria on the order of the Governor-in-Council.

### **Who is a Child**

The Constitution of the Federal Republic of Nigeria<sup>10</sup> does not define "child". Therefore we have to look to the dictionary and subsidiary laws for definition. The new **Lexicon Webster's Encyclopedic Dictionary** of the English Language<sup>11</sup> define a child as a boy or girl at any age between infancy and adolescent, a newborn baby, a person of any age in relation to his parents. **Black's Law Dictionary**<sup>12</sup> defined a child as a person under the age of majority. The Encarta Dictionary defined a child as "somebody not yet of age somebody under the legally specified age who is considered not to be legally responsible for his or her actions; a young human being between birth and puberty".<sup>13</sup> Canada's Supreme court in the case of **Ogg-Moss v R**<sup>14</sup> defined a child thus: "both in common parlance and as a legal concept, the term child has two primary meanings."<sup>3</sup>

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<sup>9</sup>. Ibid

<sup>10</sup>. Constitution of the Federal Republic of Nigeria 1999, cap (C23 LFN 2004)

<sup>11</sup>. Bolaner D.O *et al* (eds), *Lexicon Webster's Encyclopedic Dictionary* Delux edition U.S.A. Lexicon Publications inc, (1990) p.281

<sup>12</sup>. Garner, B.A *Blacks Law Dictionary* 8<sup>th</sup> edn, Thomas West, (2004)p. 254

<sup>13</sup>. 1993-2008 Microsoft Corporation

<sup>14</sup>. (1984) n2 SCR 173

One refers to chronological age and is the converse of the term adult; the other refers to lineage and is the reciprocal of the term parent.” For the purpose of being definitive, we will turn to our statute books in order to achieve the application of actual figures to the definition. The factories’ Act<sup>15</sup> defines a child as a person from the age of fourteen years but under the age of eighteen years. The labour Act<sup>16</sup> defines a child as a young person under the age of twelve years, and a young person as one under the age of fourteen years. The Children and Young persons’ Act<sup>17</sup> (hereinafter referred to as CYPA) defined a child in nit’s **section 2** to mean “a person under the age of fourteen years”, it also defined a child a young person to mean “a person who has attained the age of fourteen years and is under the age of seventeen years.<sup>18</sup> The African Charter on the Rights and Welfare of the Child<sup>19</sup> defined a child as “every human being below the age of eighteen years” The United nations’ Convention on the Rights of the Child<sup>20</sup> defines a child as a person below the age of eighteen years except in the law applicable to the child the age of majority is attained earlier. The proviso to this definition renders it nothing more than a suggestion. Some statutes, while not out rightly giving definition to the term, make provisions, some for the protection of young persons, mothers to debar young persons from taking on certain responsibilities. Some of these provisions specify the age of a child to be eighteen years, other includes persons below the age of twenty one years. Assertion of Cohen J in re carlton<sup>21</sup> that the meaning of the word “child” depends on and must be taken from the context in which it appears.

According to the Child’s Rights Act which is the current authority as regards the protection of children’s rights in Nigeria, “A child is a person below the age of eighteen years.”<sup>22.4</sup>

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<sup>15</sup>. Cap FI Laws of the Federation of Nigeria 2004

<sup>16</sup>. Cap LI LFN, 2004

<sup>17</sup>. Cap 32, laws of the Federation of Nigeria and Lagos 1958

<sup>18</sup>. Except for restriction on punishment as provided in S.II of the CYPA, there is no difference between a child and a young person.

<sup>19</sup>. Article 2, ACRWC 1999

<sup>20</sup>. CRC, 1989 which Nigeria ratified in 1991 and demonstrated in 2003

<sup>21</sup>. (1945) 1 CH. 321

<sup>22</sup>. Child’s Rights Act 2003. section 277

## **What is Corporal Punishment**

The Black's Law Dictionary<sup>23</sup> defines Corporal Punishment as physical punishment which means, "Punishment that is inflicted upon the body (including imprisonment)" it is the deliberate infliction of pain, intended as correction or punishment. With regard to children, "Corporate Punishment is the use of physical force with the intention of causing the child to experience bodily pain or discomfort so as to correct or punish the child's misbehaviour."<sup>24</sup> To Dayton, Corporal Punishment is "a discipline method in which a supervising adult deliberately inflicts pain upon a child in response to a child's unacceptable behavior and/or inappropriate language."<sup>25</sup> Diana Baumrind defined spanking (an aspect of corporal punishment mostly used for children) as striking the child non the buttocks or extremities with an n open hand without inflicting physical injury with the intention to modify behaviour <sup>26</sup> Professor Muray Straus defined Corporal punishment as "the use of physical force with the intention of causing a child to experience pain but not injury, for the purpose of correction or control of the child's behaviour."<sup>27</sup>

The practice is generally held to differ from torture in that nit is applied for disciplinary reasons and is the therefore intended to be limited, rather than intended to totally destroy the will of the victim.<sup>28</sup>. Before now, corporal punishment has been a prominent n feature of penal sentence, both for juveniles and adults. Even now, it is still applicable in most third world countries as a judicial sentence. In Nigeria, it has been prohibited as a judicial sentence for children but it still applies for adults in certain violent or sexual offences. <sup>5</sup>

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<sup>23</sup>. Garner B.A , *Black's Law Dictionary*, eight edn. USA Thompson West Publishers, p. 1269

<sup>24</sup>. Bitensky, S.H *Corporal Punishment of Children: A Human Rights Violation*. Ardsley. New York Translational Publishers (2006) p. 26

<sup>25</sup>. Dayton J.J, *Corporal Punishment in Public Schools: The Legal and Political battle Continues*. Educational law Report (2005) p.10

<sup>26</sup>. Baumrind D, A Blanket Injunction Against Disciplinary Spanking by Parents? Address at the 109<sup>th</sup> Annual Convention of the American Relevant Research Support

<sup>27</sup>. Strauss M., "Corporal Punishment in America and its Effect on Children", vol 1 No 1 *Journal of Child Centered Practice*. ( 1996)p.56

<sup>28</sup>. Strauss M., *Corporal Punishment in America* op cit p. 57.

### **Corporal Punishment as a Penal Sentence**

Corporal punishment as a penal sentence or judicial corporal punishment (JCP) is the formal application of flogging, canning, birching, whipping, strapping or spanking as an official sentence by order of a court, as laid down for specific offences under the law of the century concerned.<sup>29</sup> During the 18<sup>th</sup> century, the concept of corporal punishment was attacked by some philosophers and legal reformers. Physical chastisement became less frequent until, in the twentieth century, corporal punishment was either eliminated as a penalty or restricted to beating with a birch rod, cane, whip or other scourge. In ordinary usage, the term now refers to such penalty punishment.<sup>30</sup> when corporal punishment is used in this work, the writer means flogging with cane or whip.

Before the advent of the child's Rights Act<sup>31</sup> the position of the law in Nigeria as it concerns corporal punishment as a sentence for juvenile offence was quite different. According to the criminal code, canning can be inflicted as a judicial punishment.<sup>32</sup> Article 11 (2) of the CYPA<sup>33</sup> states that "no young person shall be ordered to be imprisoned if he can be suitably dealt with in any other way; whether by prohibition, fine, corporal punishment,<sup>34</sup> committal a place of detention or to an approved institution or otherwise," Article 14(f) provides that where a child or young person charged with an offence is tried by a court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which under the provisions of this or any other ordinance the case should be dealt with, whether by ordering the offender to be whipped. Also, whenever a male person who in the opinion of the court has not<sup>6</sup>

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29. Judicial Corporal Punishment – wikipedia, the free Encyclopedia at [http://en.wikipedia.org/wiki/judicial\\_corpo-punishment.17/8/2010](http://en.wikipedia.org/wiki/judicial_corpo-punishment.17/8/2010).

30. Corporate Punishment, [http://en.wikipedia.org/wiki/judicial\\_corpo-punishment.17/8/2010](http://en.wikipedia.org/wiki/judicial_corpo-punishment.17/8/2010).

31. Child's Rights Act 2003

32. Criminal Code Act, Cap C38 Laws of the Federal of Nigeria, 2004

33. Children and Young Persons Act LFN 1958

34. Emphasis Mine

attained seventeen years of age has been found guilty of any offence, the court may, in its discretion, order him to be whipped in addition to or in substitution for any other punishment to which he is liable.<sup>35</sup> In addition to imprisonment, other violent and sexual offences also attract a sentence of whipping. Those provisions did not make any demarcation between child offenders and adults. The CRA however, provided in Section 221(1) (b) that no child shall be ordered to be subjected to corporal punishment. This provision is contrary to the provisions of S.295 of the criminal Code and S.55 of the penal Code, both of which endorse the use of corporal punishment as a disciplinary method for persons below the age of eighteen years. the writer wondered at the reason for such prohibition in a society like ours and saw none but pressure from the international community.

Agitations are ongoing to have corporal punishment totally banned as a means of discipline or correction in penal institutions, schools, homes and alternative care centres all over the world.<sup>36</sup> It has been proved that Nigeria is far from immune to these pressures and agitations from the international community. Nigeria's periodic 2005 report to the UN Committee on the Rights of the child contained some protest to the import that the minister of education has sent a notice to all Nigerian schools intimating them of the fact that corporal punishment in Nigerian schools is no longer acceptable. Again as at August 2010, there was a bill before the Lagos House which sought to punish corporal punishment of children in Lagos State both in school and in the home.

### **Forms of Corporal Punishment**

Past forms of corporal punishment included branding, birching, mutilation, amputation,<sup>37</sup> and the use of the pillory<sup>38</sup> and the stock<sup>39</sup>. Leather straps have been used, wooden<sup>7</sup>

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<sup>35</sup>. Criminal Code op cit, Section 18

<sup>36</sup>. See Global Initiative to End All Corporal Punishment of Children . Global Progress. Available at <http://www.endcorporalpunishment.or/pages/frame.htm> accessed on 10 01 2011(follow" Global Progress" hyperlink

<sup>37</sup>. This is no longer used as a form of punishment either judicially nor in educational setup except for states practicing Sharia law or as contained in Sharia Penal Code

<sup>38</sup>. A wooden frame with holes into which somebody's head and hands could be locked formerly used as a means of public punishment

<sup>39</sup>. A wooden frame in which an offender was secured by the hand and feet or by head and hands

spoons, belts, slippers, hairbrushes. This punishment meant beating a person across the backside with birch twigs; once a common punishment in schools, it could also be imposed by the courts for minor offences. The ruler was a punishment commonly used in primary schools in the 20<sup>th</sup> century. The teacher hits the child on the hand with a wooden ruler. The bamboo cane was, and is still being used. Methodical and premeditated ceremony. The punishment is usually administered either on the hands or across the buttocks with an implement specifically kept for the purpose.

### **CORPORAL PUNISHMENT AND THE GLOBAL TREND: ANALYZING THE EFFECTS OF A BAN**

Psychology and behaviour science have become very important issues in the handling of children, especially juvenile offenders<sup>40</sup>. For instance, the CRA encourages research as a basis for policies concerning children. Section 206(2) of the CRA also provides that “every judge, magistrate and other judicial officers, appointed to the court shall be trained in sociology and behavioural sciences to ensure effective administration of the child justice system. While other nations base their policies on research, up till now we have just followed suit. No on-going or concluded research that portrays the dangers or ills of whipping is locally available, yet the CRA already contains a provision that bans corporal punishment as a judicial sentence for juvenile delinquents. The likelihood of such research being carried out locally in the near future is very slim, yet the international community is pressing closer, intent on forcing every nation to dance to their tune. The research results of internationally acclaimed experts in the field are incorporated to help in shaping our decision and the resultant policy on this all important issue.

Opponents of corporal punishment of children are highly critical of its extensive use and the severity with which it is inflicted. They have been at pains to show that corporal punishment is not used merely as a last resort but is inflicted regularly and<sup>8</sup>

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40. Section 238, Child’s Right Act, 2003

for the smallest of infractions. They have also recorded the extreme harshness of many instances of corporal punishment<sup>41</sup>. The most well-known case that was brought before the United state courts is that of *Ingraham V Wright*<sup>42</sup>. The facts of the case are that on 6<sup>th</sup> October 1977, a group of pupils at Drew Junior High School in Florida were slow in leaving the stage of the school auditorium when a teacher asked them to do so. The principal, Willie Wright, jr. took the pupils to his office to be paddled one pupil, 14-year-old James Ingraham, refused to accept the punishment. An assistant principal and an assistant to the principal held Ingraham prone across a table while Wright hit the child over twenty times with a paddle. The beating caused a hematoma, from which fluid later oozed. A doctor had to prescribe painkillers, laxatives, sleeping pills and ice packs. The child had to rest at home for over ten days and could not sit comfortably for three weeks. Though there was a public outcry of abuse, the court rightly held that the boy did not receive cruel or unusual punishment.

Children need to be protected, but they also need to be disciplined. Therefore, the opponents of corporal punishment are wrong in saying that physical punishment should never be inflicted. A consideration of various standard arguments that are advanced against corporal punishment will be made here and we will try to show why they fail to establish the conclusion in defence of which they are usually advanced – that such punishment should be entirely abandoned. Though corporal punishment can be used to refer to a wide spectrum of punishments ranging from forced labour to mutilating torture, the pivotal area of controversy seems to be ‘the infliction of physical pain without injury’<sup>43</sup>, we will concentrate on that. The infliction of pain without injury appears to be the variety of corporal punishment that is at stake in the debate, even though opponents of corporal punishment make frequent reference to those instances of corporal punishment that result<sup>9</sup>

in injury. There are a number of settings in which corporal punishment has been used but we will focus on homes and schools. These settings share a number of important features

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41. Benatar, D. Corporal Punishment: Philosophical Study. Available at <http://www.corpum.com/benatar.htm>

42. (1977) US vol . 430, P. 657.

43. Benatar D. , op cit , p2

that together set them aside from other possible settings for corporal punishment. In both homes and schools, children are punished by adults – either parents or teachers. Similarly, in both contexts, punishment is often inflicted without formal trials and often for non statutory offences – offences that are not prescribed by some home or school stature, but that are rather deemed to be moral wrongdoings. There are some significant differences between the home and school settings. Parents are more likely to have their children's interests close to heart and to love and care for them. Parents are also more likely to know their children better than teachers know their pupils. Teachers after all, have relatively little contact with their pupils and the little they do have is usually in large classes. While some people are opposed to corporal punishment anywhere, even by parents in the home, others oppose only its practice outside the home. They might suggest that the differences between the home and the school are morally relevant and show why corporal punishment would be acceptable in the home but not in the school.

The difference between home and school does not support the above argument. Institutional punishment can never replicate the close connections of the family situation. That has some disadvantages and some advantages. One of the advantages is that the judgment of behaviour and decision about punishment will not be blinded by love. (How many parents would sentence their homicidal offspring to capital punishment or even lengthy prison term?) Moreover, not all institutional settings are equally impersonal. Schools are much more impersonal than courts. Teachers know their pupils better and are likely to care more for them than judges do for the accused that stand before them. Punishment in schools can thus be seen as serving a useful educational purpose. It facilitates the move from the jurisdiction of the family to the jurisdiction of the state, teaching a child that punishment is not always inflicted by close people who know one and love one.

### **Arguments Against Corporal Punishment**

Those who oppose corporal punishment do not always do so on the basis of a single argument. They usually muster a barrage of reasons to support their view. The arguments raised by those who believe that corporal punishment should never be inflicted are that corporal punishment (1) leads to abuse; (2) is degrading; (3) is psychologically damaging;

(4) is sexual abuse; (5) teaches the wrong lesson; (6) arises from and causes poor relationship between teachers/parents and children; and (7) does not deter. These points will be considered in turn.

### **Corporal Punishment Leads To Abuse**

Opponents of corporal punishment make regular reference to the frequency and severity of physical punishments that are inflicted upon children. They suggest that corporal punishment “escalates into battering,” or at least increases the chance that those who punish will “cross the line to physical abuse.”<sup>44</sup> clearly there can be instance of abuse and of abusive physical punishment, but that is insufficient to demonstrate even a correlation between corporal punishment and abuse. Research into possible links between corporal punishment and abuse has proven inconclusive so far. The fact that there are some teachers and parents who inflict corporal punishment the wrong way does not entail the conclusion that corporal punishment should never be inflicted by any body. If it does, then the fact that some drivers are reckless will also entail that nobody should ever drive. It is like saying that using knife to cut vegetables can lead to stabling, therefore nobody should cut vegetable with knife . most people handle the knife responsibly, just like most parents and teacher cane responsibly.

### **Corporate Punishment is Degrading**

One argument that is intended as an attack on both mild and severe cases of corporate punishment makes the claim that physically punishing people degrades them. Degrading involves a lowering of somebody’s standing, where the relevant sense of standing has to do with how others regard one and how one regards oneself. The question is whether corporal punishment involves an unacceptable lowering of somebody’s standing. I do not believe it does, especially where children are concerned. Furthermore, as was stated earlier, the correlation between “right’ and ‘duty’ presupposes that when one fails in his duty, he loses his right.<sup>10</sup>

He only receives the right after he has been corrected otherwise he begins to view the wrong as the norm. This correction often comes in the from of punishment,. The

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<sup>44</sup> Murray A., Straus, *Beating the Devil out of them: corporal Punishment in American families*, New York Lexington Books 1994, p.18Books 1994,p.18

severity of which is dependent on the circumstances of the case. In the words of an eminent jurist, “to count act the imprisonment that the violated norm is insignificant, this violation should not remain without consequences. Even if only through a formal expression of disapproval of the violation, there must, at very least, be affirmation appears to be all the more effective , the faster and more publicly the sentencing takes place”<sup>45</sup> caning is most probably the fastest form of punishment , it is best because by the time it is administered, the child has not forgotten what he is being punished for.

### **Corporal Punishment is Psychologically Damaging**

It is claimed that corporal punishment has numerous adverse psychological effects, including depression, inhibition, rigidity, lowered self-esteem and heightened anxiety.<sup>46</sup> Most of the psychological data available are woefully inadequate to the task of demonstrating that mild and infrequent corporal punishment has such consequences. One opponent of corporal punishment who has provided data on even mild and infrequent physical chastisement is Murray Straus. His paper suggests that even infrequent non injurious corporal punishment can increase one’s chances of being depressed. In fact, in Straus’ own words, “corporal punishment is associated with an increase of the child experiencing major, and often life-long, social and psychological problems...such as delinquency and adult crime, low educational attainment, physical assaults on spouse, and mental illness.”<sup>47</sup> However, for two reasons this paper is inadequate to the task of demonstrating that corporal punishment is wrong. First, the studies are not conclusive. The main methodological problem is that the studies are not experiments but post facto investigations based on self-reports. Murray Straus recognizes this but nevertheless thinks

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45. George P. Fletcher C, “The Grammer of Criminal Law”: vol 1 No 2 (2007) *American Comparative, international p. 9*

46. Straus M, op cit, p.5

47. Straus M, op cit p.7

that the studies are compelling. The second point is that even if Professor Straus's findings are valid, the nature of the data is insufficiently marked to justify a moral condemnation of infrequent corporal punishment. For instance, the increase of depression, according to his study, is not substantial for infrequent physical punishment.

### **Corporal Punishment is Sexual Assault**

Those who want to outlaw corporal punishment often argue that there are disturbing sexual undercurrents in the practice. The argument is that corporal punishment stems from some sexual perversity (on the part of the person inflicting the punishment) and can in turn cause sexual deviance (in the person punished). It is no accident, the argument goes, that the buttocks are often chosen as the site on the body to which the punishment is administered.<sup>48</sup> If this were the concern, surely the fitting response would be to place limitations on the use of the punishment and at least in schools, to monitor and enforce compliance. There are other instances that might raise the same issue. For example, given the intimacy of a medical examination, the doctor-patient relationship is one that is prone to sexual undercurrents. The response is to lay down guidelines to curb any abuse that might cause and not to abrogate medical examination.

### **Corporal Punishment Teaches the Wrong Lesson**

It is often said that punishing a wrongdoer by inflicting pain conveys the message that violence is an appropriate way to settle differences or to respond to problems.<sup>49</sup> One teaches the child that if one dislikes what somebody does, it is acceptable to inflict pain on that person. If we suggest that hitting a wrongdoer imparts the message that violence is a fitting means to resolve conflict, then surely we should be committed to saying that detaining a child or imprisoning a convict conveys the message that restricting liberty is an appropriate manner to deal with people who displeases one. We would also be required to concede that fining people conveys the message that forcing others to give up<sup>12</sup> some of their property is an acceptable way to respond to those who act in a way that one

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<sup>48</sup> Benar D, "Corporal Punishment", vol 3 2008 *American Law Review* p. 29

does not like. Those who want to replace punishment with therapy would not be immune to the absurd conclusion either. Providing therapy would convey the message that people with whom one disagrees are to be viewed as sick and serving of treatment. Apart from the absurd conclusion that would arise from the argument, there is a world of difference between legitimate authorities- the judiciary, parents, or teachers – using punitive powers responsibly to punish wrongdoing, and children or private citizens going around beating each other, locking each other up, and extracting financial tributes. There is a vast moral difference here and there is no reason why children should not learn it.

### **Corporal Punishment Causes Aggression**

In most cultures , parents have historically been regarded as having the duty of discipline their children, and the right to spank them when appropriate.<sup>50</sup> among all ethnic/racial; groups, the prevalence rate of corporal punishment with regard to toddlers is almost 100% .<sup>51</sup> On the other hand, differences between ethnic/racial groups have been found when focus is on more specific aspects than the overall incidence rate. These include the frequency of use, the age it is continued to, the purpose for which it is used and whether the parents express much greater approval for spanking and other corporal punishment because they believe it is necessary to teach obedience, respect and right from wrong. To the extent that use of corporal punishment remains an element of afro-American culture, the children of parents who do not use it may perceive the parents as not caring or not loving, with all the negative consequences that flow from feeling neglected or rejected.<sup>13</sup>

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<sup>49.</sup> Hyman, I. et al “Paddling , Punishing and Force: Where do We go from here? Children “ Today, 6 Sept-Oct, 1997, p.20.

<sup>50.</sup> Corporal Punishment in the Home. available at [http://en.wikipedia.org/wiki/corporal\\_punishment\\_in\\_the\\_home](http://en.wikipedia.org/wiki/corporal_punishment_in_the_home) accessed on 21 11 2010

<sup>51.</sup> Robert R. Eleanor S. MacCoby C and Levins H, *Patterns of Child Rearing* (New York White Plains, Row , Patterson and co. 1957) p. 58

### **Policy to Safeguard our Future**

The convention on the Rights of the child has no provision prohibiting the use of corporal punishment as a means of disciplining children either in school or at home. There is also no provision in the said convention which prohibits corporal punishment as a judicial sentence for juvenile offenders. Therefore the pressure mounted on nations by the committee on the Committee is on a frolic of its own. Nigeria has no obligation under the convention to an corporal punishment of children on any sphere. The dignity of the been an aspect of our law. The suggestion that corporal punishment is an infringement on the dignity of the child is very strange to the African ideology.

For child offenders, treatment is acceptable because immaturity is a handicap, division and mother tactics meant to ensure that such children are not visited by the full wrath of the law are commendable; however, there must be a consequence for crime or misbehaviour (a sanction, without which the law is nothing but a huge joke), and for children, nothing serves that purpose better than the adequate number of strokes, depending on the seriousness of the offence and then age of the child. Jack Donnelly said "it is impossible to have rights respected without a special force, which can justify the claims to such right"<sup>52</sup> the same can easily be said of laws and rules ; it is impossible to have laws obeyed without sanctions.

The perverse understanding of rights have human rights activists agitating for the abrogation of capital punishment, abrogation of imprison and corporal punishment as consequences of breaking the law. The rights of children are becoming too overrated as it is and it is not certain how much further we can go without becoming - a nation of fools. I believe it is in the best interest of the child to be prepared for the future, to be acquainted with the realities of life and to be taught societal values. He needs to learn the value of responsibility without mortgaging his future. He needs to learn that some actions are unacceptable, more importantly, he needs to learn that such actions are attended by consequences, when he can still learn that without attracting the full wrath of the law<sup>14</sup>

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<sup>52</sup>. Donely, J *Universal Human Rights in Theory and in Practice* ( London Ithaca and Cornell University Press 1989), p.9

Nothing tells him that better than the adequate number of strokes. To forbid even corporal punishment for a child offender regardless of the gravity of his offence, and then spring the knowledge of consequence on him with the maximum punishment for whatever offence he might commit a few months or years later when he has turned eighteen, is to my way of thinking, the more cruelty.

The view that corporal punishment is historically outdated may seem harmless, the agitation to ban corporal punishment may even seem commendable but as we have seen, data indicates that a ban on corporal punishment is a grave mistake. With such bans have come increased rates of child abuse, aggressive parenting and youth violence. Criminal records suggest that children raised under a ban of corporal punishment are much more likely to be involved in crime than are other children. To function well in society, children need to learn that misbehaviour has negative consequence and not every child learns this the same way. If one child learns best about consequences through physical punishment, he should he should receive a good whipping. If another learns this best through mental punishment, he should get a timeout. To keep any helpful discipline method from a child may restrict his ability to mature, and could make him an unnecessary burden on society.

Sweden, which in 1979 became the first country to ban corporal punishment by parents, did so only after a fourteen year campaign in which successive governments carried out massive public education efforts to inform parents concerning alternative methods of discipline, while the parliament gradually amended family law to place increasing restrictions on corporal punishment. In spite of the effort and dedication that went into that venture, it turned out to be a complete failure (as we have seen from the research). I do not see any Nigerian government continuing with a project left behind by the preceding government. In view of this, we are certainly not ready to take the gamble of banning corporal punishment in Nigerian schools and homes.

It must be noted that Sweden is a very small country of about 8 million people; it is also a historically non violent nation until the effects of the 1979 ban began to be seen in the early

1990s. Since then, youth violence became a daily affair. As one of the least violent countries in the world (before the ban) perhaps Sweden can afford a six-fold increase in youth violence, some nations cannot. It cannot be said that Nigeria is a non-violent nation, and a population of almost 200 million people compared to Sweden's 8 million will ensure that a ban of corporal punishment in Nigeria unleashes an unprecedented wave of youth violence in the nation. Considering also the cultural diversity of Nigeria which is sure to add fuel to the fire, the price of such an experiment in Nigeria will be staggering. It is easy to talk about the ban of corporal punishment as a disciplinary method in Western nations because there, parents have to deal with a child or two children in Nigeria where the average is four, how will parents maintain order in the home if they are divested of authority? In cases of bullying or fights between siblings, should parents be rendered helpless to do anything but stand and watch?

As we see from the paper, most nations and institution that have experimented with a ban on corporal punishment eventually realized their mistake and tried to retrace their steps by repealing such laws. Most were not able to do so. If we must learn from experience, let us learn from the experience of those nations and institutions. We do not have to see before we believe because the price may be too much.

It took Sweden over 50 years to extend the ban on corporal punishment to all areas of life including the home. Well, we do not have that much time. The Child's Rights Act of 2003 banned corporal punishment as a judicial sentence for juveniles, and Nigeria's 2005 periodic report to the Committee on the Rights of the Child asserted that a ministerial note has been sent to Nigerian schools notifying them of the prohibition of corporal punishment in schools. That is to say that within just two years. We have banned physical punishment both as a judicial sentence for delinquent children and as a disciplinary method in schools. The effect of these policies will soon be felt, and the United Nation is not done with us yet, not until corporal punishment is banned in Nigerian homes or we stand up and say "No"

Two African nations have already succumbed to the pressure (apart from southern Sudan which was the first African state to adopt a total ban of corporal punishment, though the ban has not been recognized by the United Nations due to the continuing political instability in that state). In July 2010, Tunisia adopted a total ban of corporal punishment and in August 2010, Kenya followed suit. What these Africa nations seem to ignore is the fact that due to differences in culture and orientation, what is best for the European child may not be good for the African child. We have to find our what works for us what is best for the Nigerian child. It is in the child's best interests to allow him to learn from a discipline method that he understands. It is in his best interests to allow his parents and teachers to take misbehaviour. Therefore, it is in the best interests of the child, the family and ultimately the society to allow corporal punishment. Anything less will be a grave mistake and a risk at leaving the Nigerian people feeling as helpless as those marching on the streets of Sweden.

### **Recommendations**

Section 221(1) (b) of the CRA which prohibits the use of corporal punishment judicial sentence for juveniles should be repealed with immediate effect. Preserve the provisions of the CYP A and the criminal Code that provide for the use of corporal punishment as a judicial sentence for young offenders and as a disciplinary method by parents, teachers and masters to young children.

The ministerial note, purporting to ban the use of corporal punishment in schools should be withdrawn. Instead, there should be provision for an elaborate and specific form of application, for instance, who should do the caning , for what offences, the maximum number of strokes and the site on the body where it should be inflicted. Such a strategy should preclude or at least minimize the incidence of abuse.

As a sovereign nation, Nigeria should protect her sovereignty by not allowing international bodies to intrude into domestic affairs. How we raise our children is most certainly a domestic affair, more than that, it is private.

States that have not yet adopted the Child Rights Act are advised to jettison the provision of S.221(b) of the CRA in the event of a decision to adopt that Act.

Any state House of Assembly that has gone so far as to begin to consider banning corporal punishment in schools and homes should retrace their steps with immediate effect.

### **Conclusion**

In the face of overwhelming evidence that the road towards the ban of corporal punishment is the road into confusion and the death of civil society as we know it is flabbergasted that the agitation for the ban of corporal punishment is still on. Is it a case of an automaton which once it is set off, finds it difficult to stop? Is it the case of agitation for its own sake? Is it a job that has to be maintained? whatever it is, the nation will do well to guard itself against falling for such a ruse, that is, if we are still focused on the goal of safeguarding the future by raising responsible children. We should heed the warning of that great historian of Roman affairs, Jerome Carcopino, describing the Roman Empire at the height of its prosperity and decadence, just before it embarked on its 350-year decline.

*The laws have once more adapted themselves to public feeling which, condemning the atrocious severity of the past, asked nothing more of paternal authority than natural affection. but unhappy, the Romans failed to strike the happy mean and Nigerian may too also. They were not content to lessen the old severity; they yielded to the impulse to become far too complaisant. The result was that they were succeeded by a generation of idlers and wastrels.*

**CORPORAL PUNISHMENT – A GLOBAL TREND TOWARDS CHILD’S RIGHTS PROTECTION IN NIGERIA**

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