

**ENDING CORPORAL PUNISHMENT OF CHILDREN IN THE HOME: RWANDA AS  
A CASE STUDY**

Mini-Thesis submitted in partial fulfilment of the requirements for LLM degree in the  
Faculty of Law of the University of the Western Cape

By

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## DECLARATION

I, Chantal RUSHEMA, hereby declare that this is my original work that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

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Date: 10 May 2013

Signature: \_\_\_\_\_



## **DEDICATION**

To the Almighty God to whom I owe everything,

To my parents, brothers and sister.



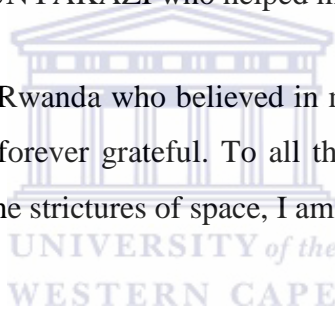
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## **KEYWORDS**

Children

Civil Code

Corporal punishment

Discipline

Family

Home setting

Legislation

Rwanda

Rights

Parents



## LIST OF ABBREVIATIONS

ACERWC:	African Committee of Experts on the Rights and Welfare of the Child
ACHPR:	African Charter on Human and Peoples' Rights
ACRWC:	African Charter on the Rights and Welfare of the Child
CAT:	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CRC:	Convention on the Rights of the Child
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
MIGEPROF:	Ministry of Gender and Family Promotion
NICCYP:	Northern Ireland Commissioner for Children and Young People
NGOs :	Non-governmental organisations
OIC	: Organisation of the Islamic Conference (OIC)
UDHR :	Universal Declaration of Human Rights
HRW :	Human Rights Watch
UNDP :	United Nations Development Program
UK:	United Kingdom
UN:	United Nations
US:	United States

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## CHAPTER ONE: INTRODUCTION

### 1.1 Background

Corporal punishment has been perceived as a way to educate and correct bad behaviour of children<sup>1</sup>. That is why Saint Augustine once said that:

*'If anyone in the household opposes the domestic peace through disobedience, he is disciplined by word or by whip or by any other kind of just and legitimate punishment, to the extent that human society allows. Such discipline is for the profit of one being disciplined so that he is readjusted to the peace from which he had departed'<sup>2</sup>.*

The Committee on the Rights of the Child (CRC Committee) 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 (smacking, slapping, spanking) children with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, 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'<sup>3</sup>.*

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<sup>1</sup> O'Reilly A *Encyclopaedia of Motherhood* Volume 2 (2010) 292.

<sup>2</sup> Breen C *Age Discrimination and Children's Rights: Ensuring Equality and Acknowledging Difference* 3ed (2006)109.

<sup>3</sup> Committee on the Rights of the Child, General Comment No. 8, Para. 11.

In most countries worldwide, many children, even babies continue to be subjected to corporal punishment in their homes, with significant numbers suffering death or serious injury<sup>4</sup>. This is due to the fact that traditional defences to physical punishment give parents and others rights to administer *reasonable punishment* or *lawful correction* to children. Those justifications or defences are in certain countries written into the law; in some others, the law remains silent. In such circumstances corporal punishment is accepted except when it causes severe injury<sup>5</sup>, only extreme assaults are prosecuted<sup>6</sup>.

It is significant that there is an international move towards abolishing all forms of corporal punishment in all settings including the home and school. This area of law reform dates back to 1979 when Sweden took the lead on this issue and became the first country to abolish all forms of corporal punishment. As at the time of writing, 32 countries had abolished all forms of corporal punishment of children including its administration in the home or by parents<sup>7</sup>.

It should be noted that various strategies and steps were used to bring about this change in these countries. Some initiated change by abolishing corporal punishment in the public sphere. With regard to corporal punishment in the home, a first step included removing the defence of reasonable chastisement which was available to parents. This was then followed by a more explicit prohibition being included in civil legislation<sup>8</sup>.

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<sup>4</sup> Save the Children Sweden 'Hitting people is wrong and children are people too', A practical handbook for organizations and institutions challenging corporal punishment of children' available at <http://resourcecentre.savethechildren.se/content/library/documents/hitting-people-wrong-and-children-are-people-too-practical-handbook-organi> (accessed 15/11/ 2011).

<sup>5</sup> Save the Children Sweden 'Hitting people is wrong and children are people too', A practical handbook for organizations and institutions challenging corporal punishment of children' available at <http://resourcecentre.savethechildren.se/content/library/documents/hitting-people-wrong-and-children-are-people-too-practical-handbook-organi> (accessed 15/11/ 2011).

<sup>6</sup> Inter-Parliamentary Union and UNICEF 'Handbook for Parliamentarians N° 13 – 2007: Eliminating Violence against Children' available at [http://www.ipu.org/PDF/publications/violence\\_en.pdf](http://www.ipu.org/PDF/publications/violence_en.pdf) (accessed 07/05/2013).

<sup>7</sup> Global Initiative to End All Corporal Punishment of Children 'Research in countries which have prohibited all corporal punishment' <http://www.endcorporalpunishment.org/pages/frame.html> (accessed 31/03/2013).

<sup>8</sup> Global Initiative to End All Corporal Punishment 'States with Full Abolition' available at [http://www.endcorporalpunishment.org/pages/progress/prohib\\_states.html](http://www.endcorporalpunishment.org/pages/progress/prohib_states.html) (accessed 1/04/2013).

In other countries of the Common Law system such as Israel, corporal punishment in the home was abolished by court decisions when cases involving parental violence against children were brought before the courts; and children have now equal protection under laws on assault as adults<sup>9</sup>.

However, in almost all African countries<sup>10</sup> and in Rwanda in particular, corporal punishment in the home setting is still a practice and legally allowed<sup>11</sup>.

## 1.2 Statement of the Problem

Corporal punishment in most countries is a practice in schools and homes where children's rights are violated on a regular basis<sup>12</sup>. For instance, Gershoff, demonstrates the negative consequences of parental corporal punishment, including higher levels of immediate compliance, aggression and lower levels of moral, mental health and school performance<sup>13</sup>.

In Rwanda, corporal punishment targeting children at home is widespread and has been cited in various documents as a notable challenge facing the family institution. According to a study conducted on violence against children in and around schools in Rwanda, in December 2005:

*There is a great deal of physical violence in the home. Fathers punish children by beating them, children fear the wrath of step mothers, and many children but particularly children in rural communities commented on the heavy work they are required to do in the fields, fetching water and firewood. Children also commented on*

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<sup>9</sup> Baxamusa B N 'History of Corporal Punishment' available at <http://www.buzzle.com/articles/history-of-corporal-punishment.html> (accessed 3/03/2013).

<sup>10</sup> Save the Children Sweden, An Advocacy Paper 'Corporal Punishment and the African Children's Charter' available at <http://www.againstcorporalpunishment.org/phocadownload/Corporal%20Punishment%20and%20the%20African%20Children%27s%20Charter..pdf> (accessed 20/05/2012).

<sup>11</sup> Article 347 of the Civil Code, 1988 of the Republic of Rwanda.

<sup>12</sup> Sajkowska M & Wojtasik L (2004) 7.

<sup>13</sup> Gershoff E L 'Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review' (2002) available at <http://www.endcorporalpunishment.org/pages/pdfs/Gershoff-2002.pdf> (accessed 27 /01/ 2012). See further Talwar V, Carlson S M & Lee K, 'Effects of a Punitive Environment on Children's Executive Functioning: A Natural Experiment' (2011) 20 *Social Development* 806.

*being hit or beaten by neighbours and other young people who might be older than them. The lack of food may also be regarded as physical violence and in some cases children had food withheld as punishment. Children also spoke about being burnt by a relative (father, uncle) as a punishment<sup>14</sup>.*

The existence of legislation<sup>15</sup> which grants parents the right to use disciplinary measures including corporal punishment makes the situation worse. Rwanda, as a country that went through one of the worst human tragedies, the tremors of the 1994 genocide against the Tutsi are still felt among parents who were young or teenagers during the genocide. This consequently impacts on their parenting style and contributes to the prevalence of corporal punishment of children in the home setting<sup>16</sup>.

It is argued that the magnitude of the problem is worsened by the fact that the government of Rwanda does not acknowledge corporal punishment at home as a problem that requires state intervention. For example, the Initial Report on the implementation of the African Charter on the Rights and Welfare of the Child (ACRWC) of 2005 did not recognise corporal punishment at home as a significant challenge necessitating state intervention. The presentation from the Minister on the said Report dwelt on the responsibility of the parents, parental upbringing, family reunification, periodic evaluation of the child's placement and abuse, neglect, exploitation. However, she failed to address the protection of children from corporal punishment at home<sup>17</sup>.

Moreover, the reform of both the Penal Code and the Law on Protection of the Child undertaken by Rwandan government in 2008, which was expected to provide more details on forms of domestic violence including corporal punishment and impose strict penalties for both the culprits

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<sup>14</sup> Mitchell C & Kanyangara P ' Violence against children in and around schools in Rwanda through the eyes of children and young people' available at <http://payson.tulane.edu/gsd/2.73/collect/mohnonve/index/assoc/HASH966b.dir/doc.pdf> (accessed 15/11/ 2011).

<sup>15</sup> Article 347 of the Civil Code 1988.

<sup>16</sup> UNICEF and MIGEPROF 'Stop Violence Against Children' available at [http://www.unicef.org/rwanda/events\\_11686.html](http://www.unicef.org/rwanda/events_11686.html) (accessed 10/04/ 2013).

<sup>17</sup> See the Report: Republic of Rwanda: Minister at the Office of the Prime Minister Responsible for Family and Gender Affairs 'Initial Report of the Government of the Republic of Rwanda on the implementation of the African Charter on the Rights and Welfare of the Child' available at <http://www.acerwc.org/wp-content/uploads/2011/03/ACERWC-State-report-Rwanda-initial-English.pdf> (accessed 21/03/2012).

and accomplices of the abuse is discouraging, considering the efforts made to domesticate children's rights.

Since the passing of the new Penal Code and the new Law on Protection of the Child into law, there are provisions explicitly prohibiting corporal punishment.

Indeed, Article 218 of the Penal Code punishes the infliction of severe suffering on or severe punishment of a child. It does not punish the parents, teachers or any person having authority over a child who gives him or her slight corporal punishment<sup>18</sup>. The Law on Protection of the Child has aggravated the problem by the fact that it seems to admit corporal punishment against children. Under the Law, the offence is only to inflict excessive physical punishment, inhuman or degrading treatment, sexual violence, tortures, physical or mental violence, negligence, exploitation or negligent treatment of the child. Mild corporal punishment is not an offence<sup>19</sup>.

Article 25 of the Law on Protection of the Child states that during the education of the child, the reprimand must not result in traumatising him or her; it must be done with humanity and dignity. The problem presented by this article is that it does not define the terms "humanity and dignity" perhaps because those terms are too broad or subjective. The same article gives power to the Minister in charge of children to specify by an Order, disciplinary measures as well as other forms of non-violent corrective punishments, treatment and care for children<sup>20</sup>. The said provision may be moot because as the Law itself does not ban all kinds of corporal punishment, the Ministerial Order cannot do so by simply proposing alternatives.

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<sup>18</sup> Organic law N° 01/2012/OL instituting the Penal Code of 02/05/2012, *O G* N° Special of 14 June 2012, article 218.

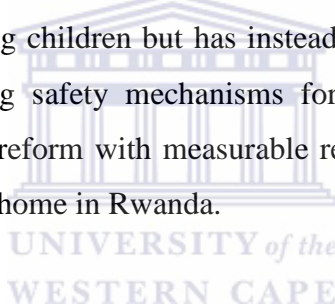
<sup>19</sup> Law N°54/2011 of 14/12/2011 Relating to the Rights and the Protection of the Child, *O G* n°26 of 25/06/2012, Article 3.

<sup>20</sup> Law N°54/2011 of 14/12/2011 Relating to the Rights and the Protection of the Child, *O G* n°26 of 25/06/2012, Article 25.

The extent of the problem is also noted in the report of the Global Initiative to End All Corporal Punishment of Children where the gaps in law prohibiting corporal punishment are mentioned as an area of concern<sup>21</sup>.

As the law remains unchanged, the exposure of children to corporal punishment, which could include physical violence at home, will continue unabated despite the fact that Rwanda is a signatory to both the Convention on the Rights of the Child (CRC) since 26 January 1990 and the ACRWC which entered into force on 29 November 1999.

The thesis therefore seeks to demonstrate that although Rwanda is a signatory to various international and regional instruments that motivate for the protection of children against corporal punishment in the home, there is little evidence in practice to substantiate the Rwanda government's commitment to banning it. On the contrary, domestic legislation has not provided effective mechanisms for protecting children but has instead worsened their plight. Further, the law has not sufficed in providing safety mechanisms for children as it is inadequate and insufficient. Hence effective law reform with measurable results is needed to combat corporal punishment against children in the home in Rwanda.



### **1.3 Research Questions**

The key research questions are as follows:

- How does the current legislation sustain corporal punishment in the home?
- How are international instruments banning corporal punishment of children domesticated in Rwanda?
- What are the factors explaining widespread corporal punishment of children in the home setting in Rwanda?
- How does corporal punishment impact children and the family as a whole?

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<sup>21</sup> 'Briefing from the Global Initiative to End All Corporal Punishment of Children', October/November 2006, p. 3, available at <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Globalinitiative.pdf> (accessed 15/11/2011).

- What are the legislative measures needed to correct the situation?

#### 1.4 Research Hypothesis

The study proceeds on the following hypotheses:

- The current legislation on the protection of children from corporal punishment in home setting does not suffice.
- The current legal reform has not abolished corporal punishment in the home in Rwanda.
- Further legal reform and alternative measures are necessary to ban corporal punishment in home setting.

#### 1.5 Literature Review

For centuries, throughout the history of the world, corporal punishment has been used by parents as a means to control and correct their children<sup>22</sup>. Many scholars and organisations have extensively debated corporal punishment, such as Caselles and Milner<sup>23</sup>; Walder, Huesmann & Lefkowitz<sup>24</sup>; McGillivray<sup>25</sup>; MacKinnon<sup>26</sup>; and McCord<sup>27</sup>, to name a few. Some scholars have deduced that corporal punishment of children should be used as a means of discipline, because it is effective and needed while some others have concluded that corporal punishment, apart from immediate compliance, does no good and is detrimental to the child<sup>28</sup>.

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<sup>22</sup>John E B Myers *on Evidence in Child, Domestic and Elder Abuse Cases is a Successor Edition to Evidence in Child Abuse and Neglect Cases* 3ed (1997) 207.

<sup>23</sup> Caselles C E & Milner J S *Evaluations of Child Transgressions, Disciplinary Choices, and Expected Child Compliance in a No-cry and Crying-Infant Condition in Physically Abusive and Comparison Mothers* (2000)*Child Abuse & Neglect* 491.

<sup>24</sup> Walder, Huesmann & Lefkowitz *Growing up to Be Violent: A Longitudinal Study of the Development of Aggression* (1977) New York: Pergamon.

<sup>25</sup> McGillivray A *'He'll Learn it on his Body: Disciplining Childhood in Canadian Law* (1997) *International Journal of Children's Rights* 242.

<sup>26</sup> MacKinnon D W *Violation of prohibitions* in Murray H A (Ed.) *Explorations in personality* (1938) 491–501. New York: Oxford University Press.

<sup>27</sup> McCord J *Parental aggressiveness and physical punishment in long-term perspective* in Hotaling G. T. et al, (Eds.) *Family abuse and its consequences: New directions in research* (1988)91–98 Newbury Park, CA: Sage.

<sup>28</sup> Saunders B J & Goddard C *Physical Punishment in Childhood: The Rights of the Child* (2010) 115.



In the Rwandan context, the subject of corporal punishment in the home setting is characterised by the absence of literature. To date, a number of studies conducted on protection of children are especially about gender based domestic violence of children and child labour whereas corporal punishment is discussed to a lesser extent.

For example, Bizumuremyi (2010) in his study on ‘The Mapping Exercise on Child Protection Programs in Rwanda’ limited himself to policies and programs concerning child protection in Rwanda<sup>29</sup>. In the same vein, in 2008 the Rwandan National Unity and Reconciliation Commission (NURC) carried out a study on ‘The Causes of Violence after the 1994 Genocide in Rwanda’. It focused on types of violence in the Rwanda post-genocide society, their causes and strategies to eradicate this violence. As far as domestic violence of children is concerned, this study dealt only with child sexual abuse and infanticide leaving out corporal punishment<sup>30</sup>

Similarly, Odhiambo who studied the perceptions around corporal punishment and the extent to which it is practiced in Rwanda<sup>31</sup>, only discussed attitudes of Rwandans to corporal punishment and the extent to which it is administered in Rwanda in general without revealing the main reasons behind corporal punishment and mechanisms that may be used to end it.

From the above literature analysis, it is clear that there is yet to be a study specifically dedicated to the discussion of ending corporal punishment of children in the home setting in Rwanda. This thesis therefore proposes to venture into that discussion. While addressing such a knowledge gap in the discourse on corporal punishment in Rwanda, the thesis focuses on whether the reform of Rwanda’s Penal Code and Law on Protection of the Child have properly addressed the banning

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<sup>29</sup> Bizumuremyi I M *The Mapping Exercise on Child Protection Programs in Rwanda* (2010) Lex Chambers Ltd: Kigali.

<sup>30</sup> The Rwandan National Unity and Reconciliation Commission *The Causes of Violence after the 1994 Genocide in Rwanda* (2008) Premier Consulting Group: Kigali.

<sup>31</sup> Odhiambo G A *Study on the Perceptions around Corporal Punishment and the Extent to which it is Practiced in Rwanda* (December 2010) P.C.E.A Jitegemea: Bukavu.

of corporal punishment against children in the home. It also recommends legislative and other measures to end corporal punishment against children in the home in Rwanda.

## **1.6 Objectives of the Research**

The present research has the following objectives:

- To identify how the current legislation has sustained corporal punishment in the home setting in Rwanda;
- To examine legislative interventions made by the Rwandan government to end corporal punishment in all settings as well as interventions by child-friendly organisations; and
- To suggest positive alternative measures to end corporal punishment in addition to legal reform.



## **1.7 Significance of the Research**

This research highlights the gaps in legislation protecting children against corporal punishment in the home setting in Rwanda. It is critical in demonstrating the extent to which Rwanda needs to align its laws on the protection of children to its pledge to international instruments to which it is a signatory. Although government efforts in addressing the problem are acknowledged, the efforts are insufficient. It is hoped that the study will guide government in fulfilling its constitutional obligation to legislate competently for the protection of children against corporal punishment in the home setting.

## **1.8 Research Methodology**

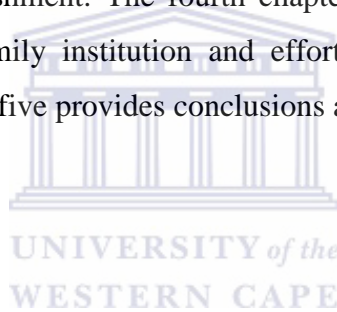
The study was conducted using extensive literature review and secondary data analysis. The information used was gleaned mainly from secondary sources such as treaties, protocols, draft laws, reports, and other published sources, particularly text books, journal articles, and online materials that were relevant to the rights of the children.

## **1.9 Limitations**

This research deals only with the practice of corporal punishment of children within the family setting within the Rwandan society. It focuses its analysis on efforts by the State to end corporal punishment against children in the home through law reform.

## **1.10 Chapter Outline**

This thesis has five chapters. The first chapter serves as an introduction; the second chapter examines the international legal framework and standards on the prohibition of corporal punishment. The third chapter deals with the current legal reform of the Penal Code and the Law on the Protection of the Child, the gaps identified, and alternative methods of positive discipline that may substitute corporal punishment. The fourth chapter examines the impact of corporal punishment on the child and family institution and efforts committed to fighting it in the Rwandan context. Finally, chapter five provides conclusions and recommendations.



**CHAPTER TWO:**

**THE INTERNATIONAL LEGAL FRAMEWORK AND STANDARDS AGAINST  
CORPORAL PUNISHMENT**

**2.1 Introduction**

The concept of human dignity plays a central role in human rights discourse. According to the Universal Declaration of Human Rights (UDHR), the foundation of freedom, justice, and peace in the world is based on the recognition of the intrinsic dignity and indisputable rights of all members of the human family.<sup>32</sup> The CRC adds a very important term, 'equal'. The CRC states:

*'Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'<sup>33</sup>.*

From this premise, the term 'equal' shows that in the protection of human rights, children cannot be the only group in society that does not have equal protection from assault as adults do. Though children in some cases may be treated differently from adults, it should be noted that that corporal punishment can cause physical harm to a child or hurt him or her emotionally and is therefore seen as opposed to the principle of the best interest of child<sup>34</sup>. Thus, giving children unequal protection in terms of corporal punishment vis-à-vis adults would not be acceptable. As

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<sup>32</sup> Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948, Preamble.

<sup>33</sup> Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, preamble.

<sup>34</sup> CRC General Comment No 8 (2006), the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), para 26.

stated in the International Covenant on Economic, Social and Cultural Rights (ICESCR) all human rights are drawn from the undeniable dignity of each person<sup>35</sup>.

Accordingly, a fundamental guiding principle of international human rights law is the respect for the dignity of each and every individual. Article 1 of the UDHR states that ‘All human beings are born free and equal in dignity and rights...’

The International Covenant on Civil and Political Rights (ICCPR) emphasises the same concept of equality before the law and entitlement to the equal protection of the law without any discrimination<sup>36</sup>. It adds that the law shall prohibit any discrimination and shall guarantee to all persons equal and effective protection against discrimination on the basis on race, colour, sex, language, or other status including freedom to practice religion, political affiliation or expression of different opinion, national or social origin<sup>37</sup>. What is stated in these provisions shows clearly that the law should not assure lesser legal protection to children than it does to adults. As far as corporal punishment is concerned, that means that any assault of children should not be allowed or tolerated as would be the case for adults.

Indeed, the foundations of the obligation to prohibit and to eliminate all forms of corporal punishment and other degrading forms of punishment has its roots in the rights of every person to respect for his or her dignity and physical integrity, and to equal protection under the law<sup>38</sup>. There is strong advocacy for a complete abolition of corporal punishment in all settings as it grossly violates the dignity and physical integrity of children<sup>39</sup>.

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<sup>35</sup> International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200A (XXI) of 16/12/1966, Preamble.

<sup>36</sup> International Covenant on Civil and Political Rights, United Nations, Treaty Series, 1976, Vol. 999, 1-14668, article 26.

<sup>37</sup> International Covenant on Civil and Political Rights, United Nations, Treaty Series, 1976, Vol. 999, 1-14668, article 26.

<sup>38</sup> UDHR Article 1, ICCPR, preamble; ICESCR, Preamble.

<sup>39</sup> UN Convention on Rights of the Child, article 37; African Charter on the Rights and Welfare of the Child, article 17 (2) (a).

Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including the home and family, in all forms of alternative care, schools and other educational institutions and justice system, it serves as a sentence of the courts and as a punishment within penal and other institutions. Corporal punishment is also meted out in the form of child labour<sup>40</sup>.

Even though corporal punishment exists, there are a number of international and regional instruments, and jurisprudence that are construed as prohibiting it. In the subsequent paragraphs, this chapter discusses these instruments and relevant jurisprudence before relating the discussion to the situation of Rwandan law on the issue.

## **2.2 International human rights instruments and standards**

This section discusses the CRC (as the key instrument), and other relevant instruments such as the UDHR, ICCPR, ICESCR, the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

### **2.2.1 United Nations Convention on the Rights of the Child (CRC)**

A total of 193 countries have ratified<sup>41</sup> and committed themselves to respect the CRC. The CRC basically requires the obligation to protect children from all forms of physical or mental violence<sup>42</sup>. Corporal punishment of children by parents is interpreted as being incompatible with

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<sup>40</sup> Committee of 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 (arts. 19; 28, Para. 2; and 37, inter alia), para12.

<sup>41</sup> United Nations Treaty Collections 'Convention on the Rights of the Child'.

<sup>42</sup> Article 19 of the CRC.

the CRC. The Committee on the Convention on the Rights of the Child, monitoring body of the CRC<sup>43</sup>, in the report of its seventh session in November 1994, stated for example that:

*'In the framework of its mandate, the Committee has paid particular attention to the child's right to physical integrity. In the same spirit, it has stressed that corporal punishment of children is incompatible with the Convention and has often proposed the revision of existing legislation, as well as the development of awareness and educational campaigns, to prevent child abuse and the physical punishment of children'<sup>44</sup>.*

The CRC obliges states to develop and implement all appropriate legislative, administrative, social and educational measures to protect the child from all forms being physical or mental violence. Injury or abuse, treatment, maltreatment or any exploitation, whether sexual abuse, or otherwise is prohibited, while the child is in the care of parent(s), or legal guardian(s)<sup>45</sup>. It also requires that states ensure the respect of children's human dignity even in other settings such as schools. Simply put, the children should not be subjected to torture or other cruel, inhuman or degrading treatment or punishment<sup>46</sup>. Article 28 obliges States to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention<sup>47</sup>. In June 2006, the CRC Committee adopted General Comment No. 8 on the right to protection from corporal punishment and other cruel or degrading forms of punishment.

In General Comment No. 8, the CRC Committee gave a clear definition of corporal or physical punishment as '...any punishment in which physical force is used and intended to cause some

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<sup>43</sup> Global initiative to end all corporal punishment of children 'Ending legalized violence against children, prohibiting and eliminating corporal punishment in all alternative care and day care settings' available at <http://www.endcorporalpunishment.org/pages/pdfs/GI%20Alternative%20Care%20and%20Day%20Care%20Report%202012.pdf> (accessed 20/06/2012).

<sup>44</sup> Committee of the Rights of the Child, General Comment N° 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia).

<sup>45</sup> United Nations Convention on Rights of Child, article 19.

<sup>46</sup> Global initiative to end all corporal punishment of children 'Ending legalized violence against children, prohibiting and eliminating corporal punishment in all alternative care and day care settings' available at <http://www.endcorporalpunishment.org/pages/pdfs/GI%20Alternative%20Care%20and%20Day%20Care%20Report%202012.pdf> (accessed 20/06/2012).

<sup>47</sup> United Nations Convention on the Rights of the Child, article, article 28 (2).

degree of suffering or discomfort, however light...'. It added that '... most of that involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement a whip, stick, belt, shoe, wooden spoon, ... .' The categorisation of punishment is widened to include extreme violence such as kicking, shaking or throwing children, even boxing ears, and forcing children to stay in uncomfortable positions, among many others<sup>48</sup>. The Committee, left no doubt that corporal punishment is invariably degrading no matter how minor it is. Furthermore, the Committee added other non-physical forms of punishment that are equally cruel and degrading. These include, for example, punishment which does not use hands but words such as humiliation, threats, neglect and ridicule<sup>49</sup>.

The CRC is linked to the Convention on the Rights of Persons with Disabilities (CRPD). This Convention requires States to ensure that persons with disabilities are protected from torture or cruel, inhuman or degrading treatment or punishment. Persons with disabilities shall be protected from exploitation, violence and abuse and that their physical integrity is respected<sup>50</sup>. Therefore, any child, with or without disabilities, should be protected against corporal punishment because such punishment constitutes an abuse to his mental and physical integrity. However, corporal punishment that undermines the dignity of a child does not necessarily mean that it amounts to torture and degrading treatment. Hence, ... corporal punishment does not automatically result in torture. For example corporal punishment meted out by lashing children on their bare backs, publicly is considered as torture<sup>51</sup> or that done by causing physical or mental suffering but less severe than torture is treated as inhuman or degrading treatment and violates the physical

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<sup>48</sup> Committee of 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 (arts. 19; 28, Para. 2; and 37, inter alia), Para. 11.

<sup>49</sup> Committee of 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 (arts. 19; 28, Para. 2; and 37, inter alia), Para. 11.

<sup>50</sup> Global Initiative to End All Corporal Punishment of Children 'Ending legalized violence against children, prohibiting and eliminating corporal punishment in all alternative care and day care settings' available at <http://www.endcorporalpunishment.org/pages/pdfs/GI%20Alternative%20Care%20and%20Day%20Care%20Report%202012.pdf> (accessed 22/08/2012).

<sup>51</sup> Committee on Civil and Political Rights *Osbourne v Jamaica*, Communication 759/1997, 15 March 2000.



integrity of the child<sup>52</sup>. Likewise corporal punishment that arouses a feeling of fear, anguish and inferiority and humiliates and debases a child or simply when he or she feels humiliated is treated as degrading treatment or punishment and consequently, is a violation of his/her right to human dignity and undermines self-esteem.<sup>53</sup>

### ***2.2.2 Other International Human Rights Instruments***

Before the adoption of the CRC, other important international human rights instruments namely, the UDHR and the two international covenants on civil and political rights and on economic, social and cultural rights upheld everyone's right to respect for his or her human dignity and physical integrity and to equal protection of the law<sup>54</sup>.

The UDHR states that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'<sup>55</sup>. This is similar to what is provided in article 7 of the ICCPR which stipulates that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'.

The UDHR, ICCPR and ICESCR provide for the equality of all human beings. For instance, article 1 of the UDHR provides that all human beings are born free and equal in dignity and rights. Based on article 26 of the ICCPR and article 2(2) of the ICESCR it is argued that a child has the same right as adult not to be subjected to torture or to inhuman or degrading treatment. Importantly, treaty bodies of those conventions have interpreted them as prohibiting corporal punishment and have relatedly condemned all corporal punishment, including in the home<sup>56</sup>.

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<sup>52</sup> Council of Europe 'Children and corporal punishment: "The right not to be hit, also a children's right"' available at <https://wcd.coe.int/ViewDoc.jsp?id=1237635&Site=CM> (accessed 09/05/2013).

<sup>53</sup> *Tyrer v. the United Kingdom* (5856/72) ECHR 1978.

<sup>54</sup> Committee of 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 (arts. 19; 28, Para. 2; and 37, inter alia), para. 16.

<sup>55</sup> Universal Declaration of Human Rights, article 5.

<sup>56</sup> Newell P 'United Kingdom Briefing for the Human Rights Council Universal Periodic review' available at [www.together.scotland.org.uk/pdfs/global\\_Campaign\\_to\\_End\\_All\\_Physical\\_Punishment.pdf](http://www.together.scotland.org.uk/pdfs/global_Campaign_to_End_All_Physical_Punishment.pdf) (accessed 10/04/2013).

The above-stated international human rights instruments imply prohibition against corporal punishment in all settings. By ratifying these instruments Rwanda is under an obligation to give effect to them by banning corporal punishment in all settings.

## **2.3 Regional Human Rights Instruments and Standards**

All regional human rights instruments indirectly prohibit corporal punishment against children. In the ensuing paragraphs, the chapter discusses human rights instruments and standards under the European system, inter-American system, African system, and Arab system.

### ***2.3.1 European Human Rights System***

The prohibition of corporal punishment in the European system may be deduced from the European Convention on Human Rights. Article 1 of this Convention states, ‘The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section I of this Convention.’ The section further provides *inter alia* the right to life<sup>57</sup> and the right not to be subjected to torture and inhuman or degrading treatment or punishment<sup>58</sup>.

Referring to the European Court of Human Rights, one may conclude that the jurisprudence of the Court is clear about banning any form of corporal punishment. This Court has, in a series of its judgments, progressively condemned corporal punishment of children, first in the penal system, then in schools, including private schools, and most recently in the home<sup>59</sup>.

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<sup>57</sup> European Convention on human rights, Article 2.

<sup>58</sup> European Convention of Human rights, Article 3.

<sup>59</sup> *Tyler v. UK*, 1978 cited by the Committee of the rights of the Child, Comment no 8(2006) , the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), para.23.

In 1998, the European Commission of Human Rights and European Court of Human Rights questioned UK domestic law for its permission of corporal punishment in the case of *A. v The United Kingdom*<sup>60</sup>. The brief facts of the case are as follows:

*'A young English boy, known as 'A', to protect his anonymity, made an application to the European Human Rights Court. The boy had been beaten repeatedly by his stepfather with a garden cane. The stepfather was prosecuted in English Court, but used the common law defence of "reasonable chastisement" and was found not guilty by the jury'.*

The trial judge had directed the jury as follows:

*'If a man deliberately and unjustifiably hits another and causes some bodily injury, bruising or swelling, he is guilty of actual bodily harm. What does unjustifiably mean in the context of this case? It is a perfectly good defence that the alleged assault was merely the correcting of a child by its parent, in this case the stepfather, provided that the correction be moderate in the manner, the instrument and the quantity of it. Or, put another way, reasonable. It is not for the defendant to provide it was lawful correction. It is for the prosecution to prove it was not. This case is not about whether you should punish a very difficult boy. It is about whether what was done here was reasonable or not...'*

Based upon that direction, the jury found that the accused stepfather was not guilty. It could therefore be concluded from this direction of the trial judge that in the United Kingdom, corporal punishment was permissible, provided that such punishment was moderate or reasonable, i.e. it is slight.

Not satisfied with the decision, the boy brought his case before the European Commission on Human Rights. The Commission unanimously held that A's rights had been breached and referred the case to the Court. At the conclusion of the hearing in September 1998, The European Court of Human Rights also unanimously held that the punishment meted out to A amounted to "inhuman or degrading treatment or punishment" which was prohibited under article 3 of the

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<sup>60</sup> *A. v The United Kingdom*, 23 September 1998, Reports of Judgments and Decisions 1998-VI.

European Human Rights Convention<sup>61</sup> and further, that UK law had failed to provide adequate protection. The Court stated in its judgment as follows:

*'The Court considers that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals... Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity<sup>62</sup>'.*

As a sanction, the Court ordered the UK to pay the boy £10,000 damages and his legal costs<sup>63</sup>.

Following the above case, the Government promised a review. In 2004, Parliament passed the Children Act in which Section 58 removed the reasonable chastisement defence for parents or adults acting *in loco parentis*<sup>64</sup> except when they are charged with wounding, causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to children<sup>65</sup>. In other words, it is argued, the defence of reasonable chastisement for parents was maintained as long as no mark whatsoever was left on the child.

It should be noted that Northern Ireland Commissioner for Children and Young People (NICCYP) had repeatedly called for action to introduce an outright ban on the physical discipline of children. From this perspective, a public consultation on physical punishment in the home was carried out by the Office of Law Reform (OLR) in 2003, but no clear consensus on the issue of

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<sup>61</sup> The article 3 of European Convention of human rights states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

<sup>62</sup> *A. v The United Kingdom*, 23 September 1998, Reports of Judgments and Decisions 1998-VI.

<sup>63</sup> *A. v The United Kingdom*, 23 September 1998, Reports of Judgments and Decisions 1998-VI.

<sup>64</sup> *Loco parentis* refers to an individual who assumes parental status and responsibilities for another individual, usually a young person, without formally adopting that person. See Encyclopaedia 'In loco parentis' available at <http://legal-dictionary.thefreedictionary.com/In+loco+parentis> (accessed 9/4/2013).

<sup>65</sup> Child Act 2004 of the United Kingdom available at [http://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga\\_20040031\\_en.pdf](http://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga_20040031_en.pdf) (accessed 11/04/2013).

legal reform emerged and the majority of individual respondents remained unconvinced of the need for change<sup>66</sup>.

The articles of the European Social Charter and Revised Social Charter oblige States to protect children from violence<sup>67</sup>. From this perspective, the European Committee of Social Rights, monitoring compliance of member States of the Council of Europe with the European Social Charter and Revised Social Charter, has found that compliance with the Charter requires prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere<sup>68</sup>. It is thus clear that there is a firm commitment to protect children against violence, abuse and all forms of corporal punishment through establishing bodies and enacting legislations in European States.

### **2.3.2 Inter-American Human Rights System**

This system is based on the American Convention on Human Rights (ACHR) ratified by some states in the Caribbean and by all Latin American states apart from Cuba. Canada and the United States of America (USA) have signed but not ratified the ACHR<sup>69</sup>. One of the key treaties of the inter-American system is the Additional Protocol of San Salvador to the American Convention on Human Rights in the Area of Economic, Social and Cultural rights of 1988. Article 16 states that:

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<sup>66</sup> Global Initiative to End All Corporal Punishment of Children ‘Ending legalized violence against children, prohibiting and eliminating corporal punishment in all alternative care and day care settings’ available at <http://www.endcorporalpunishment.org/pages/pdfs/GI%20Alternative%20Care%20and%20Day%20Care%20Report%202012.pdf> (accessed 20/06/2013).

<sup>67</sup> Global Initiative to End All Corporal Punishment of Children ‘Ending legalized violence against children, prohibiting and eliminating corporal punishment in all alternative care and day care settings’ available at <http://www.endcorporalpunishment.org/pages/pdfs/GI%20Alternative%20Care%20and%20Day%20Care%20Report%202012.pdf> (accessed 20/06/2013).

<sup>68</sup> European Committee of Social Rights, general observations regarding article 7, paragraph 10, and article 17 cited by the Comment no 8 (2006), the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para 2; and 37, inter alia).

<sup>69</sup> Glock C ‘Inter-American Human Rights System Reform Faces Deadline’ available at [www.ipsnews.net/2013/03/Inter-american-human-rights-system-reform-faces-deadline/](http://www.ipsnews.net/2013/03/Inter-american-human-rights-system-reform-faces-deadline/) (accessed 09/04/2013).

‘Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State...’

In addition, the American Declaration of the Rights and Duties of Man (ACHR) proclaims the fundamental human rights and freedoms in article 5 that:

- 1. Every person has the right to have his physical, mental, and moral integrity respected.*
- 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person’.*

Furthermore, article 1 of the ACHR provides for equality before the law. It states that the States Parties to the ACHR:

*‘... must undertake to respect the rights and freedoms recognised therein and to ensure to all persons subject to their jurisdiction, the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition’.*

From this article, one may conclude that children are equally entitled to protection of their rights in general and freedom from discrimination in particular.

Importantly, an Advisory Opinion of the Inter-American Court of Human Rights, on the *Legal Status and Human Rights of the Child* (2002) holds that the States parties to the American Convention on Human Rights “are under the obligation ... to adopt all positive measures required to ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities”<sup>70</sup>. The Court quotes provisions of the CRC, conclusions of the CRC Committee and also judgments of the European Court of Human Rights relating to States’ obligations to protect children from violence, including within the family. The Court concludes that “the State has the duty to adopt

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<sup>70</sup> Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 of 28 August 2002, paras 87 and 91.

positive measures to fully ensure effective exercise of the rights of the child<sup>71</sup>”. That Advisory Opinion of the Court is a significant contribution to the prohibition against the mistreatment (corporal punishment) of children.

As noted earlier, Canada like the USA has signed but not ratified the ACHR and that means both States expressed the intention to become parties to the ACHR<sup>72</sup> that implies the prohibition of corporal punishment. As a result, this section cannot be concluded without a discussion of the famous Canadian case which failed to abolish corporal punishment in the home.

In 2003, the Canadian Foundation for Youth, Children and the Law filed an appeal before Canada’s Supreme Court to strike down as unconstitutional section 43 of Canada’s Criminal Code. This section provides that:

*‘Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances’.*

However, on 30 January 2004, Canada’s Supreme Court rejected the application and only limited the legality of parental corporal punishment and ruled out school corporal punishment. The court ruled that Section 43:

*‘...is not unduly vague or overbroad; it sets real boundaries and delineates a risk zone for criminal sanction and avoids discretionary law enforcement. The force must have been intended to be for educative or corrective purposes, relating to restraining, controlling or expressing disapproval of the actual behavior of a child capable of benefiting from the correction. While the words ‘reasonable under the circumstances’ on their face are broad, implicit limitations add precision. Section 43 does not extend to an application of force that result in harm or the prospect of harm. Determining what is ‘reasonable under the*

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<sup>71</sup> Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 of 28 August 2002, paras 87 and 91, cited by the Committee of the rights of the child, Comment no 8 (2006) , the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para 2; and 37, inter alia), para 24.

<sup>72</sup>See articles 14 (c) &18 (a) of Vienna Convention on the Law of Treaties adopted in Vienna on 23 May 1969 and entered into force on 27 January 1980 United Nations, *Treaty Series*, vol. 1155, p. 331. (accessed 10/04/2013).

*circumstances' in the case of child discipline is assisted by Canada's international treaty obligations, the circumstances in which the discipline occurs, social consensus, expert evidence and judicial interpretation. When these considerations are taken together, a solid core of meaning emerges for 'reasonable under the circumstances', sufficient to establish a zone in which discipline risks criminal sanction<sup>73</sup>.*

As the ACHR is interpreted as prohibiting corporal punishment, all State parties thereto are under obligation to undertake legal measures in their respective domestic legislation to abolish corporal punishment of children in the home setting including Canada and USA to some extent on the basis of being signatory to the Convention.

### **2.3.3 African Human Rights System**

This system is mainly based on the African Charter on Human and Peoples' Rights (ACHPR). The treaty most relevant to this research is the African Charter on the Rights and Welfare of the Child (ACRWC). Article 4(1) of the ACRWC states that: 'In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be primary consideration'.

In the same vein, article 18 the ACHPR provides that States parties should ensure the protection of the rights of the child as stipulated in international declarations and covenants.

Based on the above provisions, it is clear that the ACHPR effectively endorses internationally accepted obligation on children's rights including the CRC obligation to protect children from all forms of physical or mental violence including corporal punishment in the home setting<sup>74</sup>.

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<sup>73</sup> Ontario Consultants on Religious Tolerance 'Corporal punishment of children – spanking A Canadian lawsuit: The Canadian Foundation for Children, Youth and the Law v. The Attorney General of Canada' available at <http://www.religioustolerance.org/spankin12.htm> (accessed 11/04/2013).

<sup>74</sup> Committee of the Rights of the Child, General Comment N° 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia).

<sup>74</sup>United Nations Convention on Rights of Child, Article 19.



The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is charged with monitoring the compliance of African states with the ACRWC<sup>75</sup>. In this mandate, it receives reports of states on measures taken to give effect to the ACRWC<sup>76</sup>. The ACERWC also considers communications alleging violations of child rights by virtue of article 44 of the ACRWC<sup>77</sup>. The Charter also asserts in article 20 that the best interests of the child should be the basic concern of all parents at all times. However, interpretation of the best interest of the child principle must be consistent with the whole Charter, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity<sup>78</sup>.

### ***2.3.4 Arab Human Rights System***

The implied prohibition of corporal punishment of children is confirmed in the Cairo Declaration on the Convention on the Rights of the Child of 2009 and in Islamic jurisprudence, which includes a recommendation by a global initiative, constituting Islamic member states (OIC), to prohibit corporal punishment in the family and other settings<sup>79</sup>.

The Arab Charter on Human Rights protects all persons from cruel, inhuman or degrading treatment or punishment<sup>80</sup>. Article 13(a) of this Charter states:

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<sup>75</sup> African Charter on the Rights and Welfare of the Child, article 32 and 42.

<sup>76</sup> African Charter on the Rights and Welfare of the Child, article 43.

<sup>77</sup> African Charter on the Rights and Welfare of the Child, article 43 and 44.

<sup>78</sup> CRC General Comment No 8 (2006) , the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), para 26.

<sup>79</sup>Global initiative to end all corporal punishment of children 'Ending legalized violence against children, prohibiting and eliminating corporal punishment in all alternative care and day care settings' available at <http://www.endcorporalpunishment.org/pages/pdfs/GI%20Alternative%20Care%20and%20Day%20Care%20Report%202012.pdf> (accessed 20/06/2012).

<sup>80</sup>Global Initiative to End All Corporal Punishment of Children 'Ending legalized violence against children, prohibiting and eliminating corporal punishment in all alternative care and day care settings' available at <http://www.endcorporalpunishment.org/pages/pdfs/GI%20Alternative%20Care%20and%20Day%20Care%20Report%202012.pdf> (accessed 20/06/2012).

*'The States parties shall protect every person in their territory from being subjected to physical or mental torture or cruel, inhuman or degrading treatment. They shall take effective measures to prevent such acts and shall regard the practice thereof or participation therein, as a punishable offence'.*

This article implies the prohibition against corporal punishment of children by their parents. The Charter also recognises the right to equality. By ratifying the Charter, Arab States recognise 'the eternal principles of brotherhood and equality among all human beings which were firmly established by the Islamic Shari'a and the other divinely-revealed religions'<sup>81</sup>.

From the instruments cited and discussed above, one may affirm that children should be accorded the same protection as that accorded to adults. Therefore, the penal law of every country should expressly prohibit parents and caregivers from administering corporal punishment to their children on the basis of correcting them. Corporal punishment violates children's rights on its own accord and should be prohibited as such. The child rights discourse seeks to affirm that children are rights-holders in themselves and should be protected as such.

#### **2.4 Domestic human rights law and jurisprudence on the prohibition of corporal punishment.**

National child protection systems are necessary in order to prevent and respond to all forms of violence against children, including sexual abuse and exploitation, neglect, corporal punishment, children in hazardous work, recruitment of children into armed groups, early marriage and other harmful traditional practices<sup>82</sup>. In the absence of those systems, no international or regional human rights instrument can be effectively enforced.

In this section, the researcher briefly highlights some countries which have either abolished corporal punishment by court decisions or law reform. Israel is one the countries which has abolished all forms of corporal punishment of children, including in the home by the decision of

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<sup>81</sup>Council of the League of Arab States, Arab Charter on Human Rights, September 15, 1994, *reprinted in* 18 Hum. Rts. L.J. 151 (1997), preamble.

<sup>82</sup> Save the children, the role of national child protection systems: child protection initiatives (2011) 1.

the Supreme Court of Israel in the case of *State of Israel v. Ploni*, in 2000. The case is briefly summarised as follows.<sup>83</sup>

The case originated from a mother who routinely struck her two minor children on the face and buttocks over the course of 1994 to 1995. In one instance she punched her son in the face, breaking one of his teeth, and struck her daughter with a vacuum cleaner. She was also known to throw shoes at her son and strike him with a slipper. The mother was sentenced to one year imprisonment (suspended) and 18 months' probation. The mother appealed her conviction and sentence to the Supreme Court, claiming her actions did not constitute abuse, and that a parent may use reasonable force to discipline his or her child<sup>84</sup>.

While ruling, the Court reasoned that:

*'A child is not the property of his or her parents and even "light" punishment may lead to more severe violence over time. Psychological and educational research indicates that parental punishment that causes hurt and humiliation may also cause mental and physical damage to children. Moreover, such punishment violates children's human rights and the CRC and conflicts with the goal of a violence-free society<sup>85</sup>'.*

The Court upheld the mother's conviction for the crime of abuse and held that parents are forbidden from using corporal punishment.

Furthermore in Africa, only Togo, South Sudan, Republic of Congo, Tunisia and Kenya have attained full prohibition of corporal punishment of children.<sup>86</sup>

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<sup>83</sup>A v. Israel, Supreme Court of Israel, Case N°. 4596/98, Jan. 25, 2000 available X 'A v. State of Israel' [http://elyon1.court.gov.il/files\\_eng/98/960/045/N02/98045960.n02.pdf](http://elyon1.court.gov.il/files_eng/98/960/045/N02/98045960.n02.pdf) (accessed 1/04/2013).

<sup>84</sup>Global Initiative to End All Corporal Punishment 'States with Full Abolition' available at '[http://www.endcorporalpunishment.org/pages/progress/prohib\\_states.html](http://www.endcorporalpunishment.org/pages/progress/prohib_states.html)' (accessed 1/04/2013).

<sup>85</sup>A v. Israel, Supreme Court of Israel, Case N°. 4596/98, Jan. 25, 2000 available X 'A v. State of Israel' [http://elyon1.court.gov.il/files\\_eng/98/960/045/N02/98045960.n02.pdf](http://elyon1.court.gov.il/files_eng/98/960/045/N02/98045960.n02.pdf) (accessed 1/04/2013).

<sup>86</sup>Global Initiative to End All Corporal Punishment 'States with Full Abolition' available at [http://www.endcorporalpunishment.org/pages/progress/prohib\\_states.html](http://www.endcorporalpunishment.org/pages/progress/prohib_states.html) (accessed 1/04/2013).

The full prohibition of corporal punishment, including in the home was achieved on 27 August 2010 when the new Constitution of the Republic of Kenya (Constitution) came into force and repealing the then existing defenses of corporal punishment such as *reasonable punishment*<sup>87</sup>.

The Bill of Rights, in the Constitution, protects the right of every person not to be subjected to corporal punishment by any person in any setting. Article 29 states:

‘Every person has the right to freedom and security of the person, which includes the right not to be: e) Subjected to corporal punishment...’

The rights enshrined in the Bill of the Rights apply to all persons and all settings, public and private<sup>88</sup>.

Some other African countries are making positive steps towards full prohibition of corporal punishment. One can mention Zambia which is going through a constitutional review process which intends to abolish legal provisions that allow corporal punishment such as section 46 of the Zambian Juveniles Act (1956, amended 1994) that punishes cruelty to juveniles, but states:

*‘Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer lawful punishment to him’<sup>89</sup>.*

However the author is of the view that the prohibition will only become legally operational once the process is completed and the new Constitution has come into force.

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<sup>87</sup>Article 2 of the Constitution of the Republic of Kenya, 2010 provides that: This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government and Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.

<sup>88</sup> Article 20 of the Constitution of the Republic of Kenya, 2010.

<sup>89</sup> Briefing from Global Initiative to End All Corporal Punishment of Children, Briefing for the human rights Committee pre-session working group (2006) p 2-3.

Though the above-mentioned legislative measures adopted in the fight against corporal punishment are good, there are some other countries retaining corporal punishment in the home and in some cases amended the law to enhance the administration of corporal punishment.

For example, in Zimbabwe, corporal punishment is still prevalent in the home, schools, penal system and alternative care settings. In 1990, article 15 of the Constitution of Zimbabwe (1979) on protection from inhuman treatment was amended so as to allow corporal punishment, including in the home setting and today it reads as:

*'1. No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.*

*2. No treatment reasonably justifiable in the circumstances of the case to prevent the escape from custody of a person who has been lawfully detained shall be held to be in contravention of subsection (1) on the ground that it is degrading.*

*3. No moderate corporal punishment inflicted:*

*(a) in appropriate circumstances upon a person under the age of eighteen years by his parent or guardian or by someone in loco parentis or in whom are vested any of the powers of his parent or guardian; or*

*(b) in execution of the judgement or order of a court, upon a male person under the age of eighteen years as a penalty for breach of any law; shall be held to be in contravention of subsection (1) on the ground that it is inhuman or degrading.'*

Since 2012, the draft of a new Constitution has been under discussion which would protect the rights of all persons to respect for and protection of their human dignity and physical integrity, including the rights to freedom from all forms of violence from public or private sources. The above mentioned provision in article 15 of the current Constitution explicitly allowing corporal punishment of children is still retained in the draft new Constitution<sup>90</sup>.

The following discussion focuses on the Rwandan legal system in the context of the obligation to prohibit the corporal punishment of children in home.

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<sup>90</sup>Zimbabwe Draft Constitution' available at [http://www.copac.org.zw/index.php?option=com\\_content&view=section&id=7&Itemid=154](http://www.copac.org.zw/index.php?option=com_content&view=section&id=7&Itemid=154) (accessed 8/04/2013)

Rwanda is party to almost all major international and African regional instruments discussed in this chapter namely, the ICCPR<sup>91</sup>, ICESCR<sup>92</sup>, CRC<sup>93</sup>, CAT<sup>94</sup>, ACHPR<sup>95</sup> and ACRWC<sup>96</sup>. As stated above, all these instruments have been seen as prohibiting corporal punishment, even if the Rwandan Civil Code, in its article 347 grants parents the right of correction (including corporal punishment) over their children.

Nevertheless, article 190 of the Rwandan Constitution states:

*'Upon their publication in the official gazette, international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws except in the case of non-compliance by one of the parties'.*

This article means that the international conventions stated above are binding on Rwanda and any domestic law which is in contradiction with them is void. However, despite the fact that in the Rwandan legal system, treaties ratified acquire the force of domestic law, Rwanda has regularly legislated on the issues contained in treaties to give effect to the provisions of the treaty in question<sup>97</sup>. That is because some treaty provisions are not specific in terms of content and nature which makes it difficult for the courts to rely on them on the basis that they are not sufficiently precise and detailed, or do not provide punishment<sup>98</sup> and therefore require additional action to be implemented.

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<sup>91</sup> Decree-Law no. 8/75 of 12/02/1975, Official Gazette 1975, p. 230 ((F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 39).

<sup>92</sup> Decree-Law no. 8/75 of 12/02/1975, Official Gazette 1975, p. 230 ((F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 44).

<sup>93</sup> Presidential Order no. 773/16 of 19 September 1990, Official Gazette 1990, p.1160 (F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 54).

<sup>94</sup> Presidential decree N°42/05 of 30 May 2001 in *O.G.R.R.* N° 39, 2005, p. 58

<sup>95</sup> Decree-Law no. 23/84 of 15/07/1983, Official Gazette 1975, p. 230 ((F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 44).

<sup>96</sup> Presidential Decree N°11/01 of 30 May 2001 in *O.G.R.R.* N° 22, 2001, p. 58.

<sup>97</sup> The Republic of Rwanda 'Rwanda National Report Submitted in Accordance with Paragraph 15 (a) of the Annex to the Human Rights Council Resolution 5/1 in the Framework of the Universal Periodic Review' available at [http://www.minijust.gov.rw/moj/img/pdf/rapport\\_human\\_right.pdf](http://www.minijust.gov.rw/moj/img/pdf/rapport_human_right.pdf) (accessed 9/4/2013).

<sup>98</sup> 'The Nature and Development of International Law' available at [http://www.cambridge.org/servlet/file/1886\\_227567.pdf?ITEM\\_ENT\\_ID=5948329&ITEM\\_VERSION=1&C](http://www.cambridge.org/servlet/file/1886_227567.pdf?ITEM_ENT_ID=5948329&ITEM_VERSION=1&C) (accessed 12/4/2013).

In implementing the ratified conventions relating to the protection of the child, Rwanda has passed Law N° 27 of 2001 on the Protection and Rights of the Child. Article 20 of this law prohibits the torture of the child. It states that no child should be subjected to torture, inhuman and degrading treatment. The same law adds that the necessary administrative, legal measures and those concerning social welfare and education must be taken in order to reinforce protection of the child against any kind of violence, psychological or physical brutality, abandonment, neglect, mistreatment, or exploitation.

However, the drawback of this law is its failure to explicitly ban corporal punishment. It may be argued that this failure is due to the lack of political will on the part of the government of Rwanda that does not acknowledge corporal punishment at home as a problem that requires State intervention. This may be exemplified by the Initial Report on the implementation of the African Charter on the Rights and Welfare of the Child (ACRWC) of 2005 did not recognise corporal punishment at home as a valuable challenge necessitating state intervention. The presentation from the Minister on the said Report dwelt on the responsibility of the parents, parental upbringing, family reunification, periodic evaluation of the child's placement and abuse, neglect, exploitation. However, the issue of protection of children's rights from corporal punishment at home was not quite explicit in this presentation<sup>99</sup>.

The Minister for Social Affairs in charge of child protection in Rwanda though is empowered to take necessary measures to assist and support children who are victims of violence as well as to ensure that the perpetrators of violence are apprehended by the relevant authorities<sup>100</sup>.

The punishment of one who assaults a child is very difficult if one considers the Rwandan Civil Code Book One. Article 347 of this Code gives parents the power to 'correct' (*inter alia* to punish) their children. The same Code does not establish the limits or extent of that correction. It

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<sup>99</sup> See the Report: Republic of Rwanda: Minister at the Office of the Prime Minister Responsible for Family and Gender Affairs 'Initial Report of the Government of the Republic of Rwanda on the implementation of the African Charter on the Rights and Welfare of the Child' available at <http://www.acerwc.org/wp-content/uploads/2011/03/ACERWC-State-report-Rwanda-initial-English.pdf> (accessed 21/03/2012).

<sup>100</sup> Law 27 of 2001 relating to the Rights and Protection of the Child against Violence, article 22.

does not prohibit corporal punishment. As a result one may conclude that under Rwandan law, corporal punishment of children by their parents is lawful.

## 2.5 Conclusion

This chapter discussed the legal framework and standards on the prohibition of corporal punishment. On the one hand, it was demonstrated that various international and regional human rights instruments implicitly prohibit the use of corporal punishment by parents on their children. On the other hand, the chapter found that there are many states, including Rwanda, which render such punishment lawful.

It is important to remember that when the government of Rwanda ratify treaties such as the ICCPR<sup>101</sup>, ICESCR<sup>102</sup>, CRC<sup>103</sup>, CAT<sup>104</sup>, ACHPR<sup>105</sup> and ACRWC, whether or not they are incorporated into the domestic laws, they become legally-binding on the State and are above the ordinary laws<sup>106</sup>.

Although most parents are keen to use corporal punishment on their children, it is very important to take into consideration the best interest of the child as enshrined by articles 4(1)<sup>107</sup> of the ACRWC and 3(1)<sup>108</sup> of the CRC. Under the ACRWC, the best interest of the child principle is declared to be paramount over the other underpinning principles, and is the primary

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<sup>101</sup> Decree-Law no. 8/75 of 12/02/1975, Official Gazette 1975, p. 230 ((F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 39).

<sup>102</sup> Decree-Law no. 8/75 of 12/02/1975, Official Gazette 1975, p. 230 ((F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 44).

<sup>103</sup> Presidential Order no. 773/16 of 19 September 1990, Official Gazette 1990, p.1160 (F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 54).

<sup>104</sup> Presidential decree N°42/05 of 30 May 2001 in *O.G.R.R.* N° 39, 2005, p. 58

<sup>105</sup> Decree-Law no. 23/84 of 15/07/1983, Official Gazette 1975, p. 230 ((F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 44).

<sup>106</sup> Article 190 of the Constitution of the Republic of Rwandan, 2003.

<sup>107</sup> It reads: in all actions concerning the child undertaken by any person or authority the best interests of the child shall be *the primary consideration*. while the latter provides

<sup>108</sup> It states that: In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be *a primary consideration*.



consideration in all actions concerning the child, whereas the CRC provision states that in all actions concerning children, the best interests of the child shall be *a primary consideration*. It is also argued that the ACRWC goes further than the CRC by ensuring that all its provisos must be interpreted, first and foremost, in the best interest of the child.<sup>109</sup> Despite this debate, the researcher is of the view the ACRWC is not contradictory to the CRC; rather it strengthens the rights of the African child, already provided for under the CRC as far as the best interest principle of the child is concerned.

Therefore, the principle has to apply throughout all actions concerning children. That is to say that is necessary to consider the best interest of the child who may suffer the consequences of the action taken by persons in charge of that child. Accordingly, these instruments place an obligation on parents to make the best interest of the child their basic concern no matter what the situation is.

States are obliged to protect all the rights of the child - economic, social and cultural as well as civil and political. States are not only responsible for the violations committed by their own state officials, but they are also obliged to take positive measures to prevent abuses against children by private individuals, whether in the community or in the family. This can go beyond the family setting and be reflected in institutions where most children are abused in the name of being educated or guided.

The next chapter will discuss the Rwandan situation on the complete prohibition of corporal punishment.

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<sup>109</sup> Ugochi N 'Integrating Rights and Duties: Achieving Children's Autonomy Rights in a Culturally Diverse World' available at [http://digitool.library.mcgill.ca/webclient/StreamGate?folder\\_id=0&dvs=1368147889569~154](http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1368147889569~154) (accessed 07/05/2013).

## CHAPTER THREE:

### CRITICAL STUDY OF THE LEGAL REFORM IN RWANDA AND METHODS OF POSITIVE DISCIPLINE AS ALTERNATIVES TO CORPORAL PUNISHMENT

#### 3.1 Introduction

As noted previously, the Rwandan Civil Code appears to legalise corporal punishment through the parents' rights of correction<sup>110</sup>. That right is also given to any other person who educates a child, such as a teacher. The article does not provide any guidance on the extent or mode of correction. As a result one may conclude that the Civil Code on the face of it grants a *carte blanche* to parents and others persons responsible for bringing up the child, the right to use corporal punishment.

The old Law on Protection of the Child<sup>111</sup> and the old Penal Code<sup>112</sup> did not explicitly prohibit corporal punishment. However, as discussed in the second chapter, Rwanda has ratified international human rights instruments that are interpreted as prohibiting corporal punishment and which are applicable in Rwanda by virtue of article 190 of the Constitution. Accordingly legislative reform was needed in order to put the Law on Protection of the Child and Penal Code in conformity with those instruments. On this point, in 2004, the CRC Committee noted that Rwandan legislation did not include an explicit prohibition of corporal punishment and was concerned at the persistent practice of corporal punishment by parents, teachers and law enforcement officers. As a result, the Committee recommended that Rwanda introduce legislation explicitly prohibiting corporal punishment<sup>113</sup>. The law reform process in Rwanda

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<sup>110</sup> Civil Code Book I, Article 347.

<sup>111</sup> Law no 27/2001 of 28/4/2001 relating to rights and protection of the child against violence.

<sup>112</sup> Decree -Law n° 21/77 of 18/08/1977 instituting the Penal Code.

<sup>113</sup> Committee on the Rights of the Child, Consideration of reports submitted by states parties under article 44 of the Convention, Thirty-sixth sessions, concluding observations: Rwanda, CRC/C/15/Add.234, 1 July 2004, paragraph 34 and 35).

needed to introduce alternative methods of discipline to ensure that children have the best care as required by article 3 of the CRC<sup>114</sup>.

The first part of this chapter critically analyses the new Penal Code and new Law on Protection of the Child and assesses their compliance with the international instruments and standards on the protection of the child. The analysis is also done against the background of the gaps on the old laws and the reforms that were necessary. The second part discusses alternative methods of discipline that could be considered as part of the new legislative measures.

### **3.2 Critical analysis of legal reform under way with regard to corporal punishment.**

The Rwandan Constitution states that every person has the right to moral and physical integrity<sup>115</sup>. It further prohibits acts of torture and other cruel or inhuman degrading acts<sup>116</sup>. The amendments to the Penal Code and Law on Protection of the Child seek to give effect to these constitutional rights and freedoms.

Indeed, the former Penal Code<sup>117</sup> and Law on Protection of the Child<sup>118</sup> did not provide any sanctions for parents who applied corporal punishment to their children. This started a debate in Rwanda on improving the law on protection of children's rights before the enactment of the amendments to these two laws. Those debates happened during a town hall meeting held at Telecom House and broadcast live on both Radio Rwanda and Rwanda Television<sup>119</sup>. The debates concluded that the Government should speed up the passage of a law that prevents and punishes violence against women and children in order to reduce cases of gender-based violence and those related to abuse of child rights. In the same meeting, human rights activists continued

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<sup>114</sup> The best care of children implies the ban of corporal punishment.

<sup>115</sup> Rwandan Constitution of 4 June 2003, article 15(1).

<sup>116</sup> Rwandan Constitution of 4 June 2003, article 15(2).

<sup>117</sup> As stated above, it is Decree -Law n° 21/77 of 18/08/1977 instituting the Penal Code.

<sup>118</sup> As mentioned above, it is Law N° 27/2001 of 28/4/2001 Relating to Rights and Protection of the Child against Violence.

<sup>119</sup> Kwibuka E 'Activists push for speedy publication of GBV law' available at <http://www.newtimes.co.rw/news/index.php?i=15064&a=11293> (accessed 10/8/2012).

to advocate that new laws would highlight the different forms of domestic violence and impose strict penalties for both the culprits and any person involved in the abuse<sup>120</sup>.

Since those debates, the new Penal Code<sup>121</sup> and new Law on Protection of the Child<sup>122</sup> have been enacted. This section discusses the amendments introduced.

### ***3.2.1. Penal code***

In this section, the discussion starts with the old Penal Code by focusing especially on the provisions which would lead to the possibility of abuse, and therefore needed reform. Next, the discussion focuses on the new penal code in order to find whether that problem has been solved.

#### **3.2.1.1. Old Penal Code**

This Code was passed in 1977 through the Decree - Law n° 21/77 of 18/08/1977. The analysis will be focused on article 323 which was related to assault committed against a child. This code, contrarily to the old one, punishes the one who assaults a child to an imprisonment of one to three years. This implies that the new penal code has made the situation worse as far as the protection of child's rights is concerned. The best protection would have been to provide for severe penalties in new penal code compared to those that were provided for in the old one.

Article 152 of the new penal code punishes anyone who intentionally inflicts battery on a child of less than 14 years old to an imprisonment of one to five years and the fine of twenty thousand or one of those penalties. When the culprit is the parent the imprisonment increases to ten years. This article has two main loopholes in terms of the child protection from abuse: At first it does not protect all children, but only those of less than 14 years were concerned. The second gap is

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<sup>120</sup> Kwibuka E 'Activists push for speedy publication of GBV law' available at <http://www.newtimes.co.rw/news/index.php?i=15064&a=11293> (accessed 10/08/2012).

<sup>121</sup> Organic law no 01/2012/OL of 02/05/2012 relating to Penal Code of the Republic of Rwanda.

<sup>122</sup> Law N° 54/2011 of 14/12/2011, Relating to the Rights and the Protection of the Child the Republic of Rwanda.

related to its lack of implementation<sup>123</sup>, especially for the case where the parent gave slight corporal punishment against his child. In effect the code is in conflict with the old law on protection of the child<sup>124</sup>. For instance, the article 32 stated:

*'Any sadistic torture including disproportional punishment; ill-treatment; inhuman or degrading punishment inflicted on a child is sentenced to between four months and three years' imprisonment and a fine of between fifty thousand and two hundred thousand francs. If the crimes referred to in the preceding paragraph cause disability to a child, the sentence shall be between three years' imprisonment and life imprisonment'.*

According to the law on protection of the child, only disproportional punishment or sadistic torture could be prosecuted. This implies that any other form of punishment was allowed. Therefore, what was needed in the reform was to sanction explicitly any form of corporal punishment of children by their parents, regardless of the severity of such a punishment.

### **3.2.1.2. New penal code**

This code was established by the organic law N° 01/2012/OL of 02/05/2012. Unfortunately, it has aggravated the situation rather than alleviating it. For instance, its article 218 states:

*'Any person, who inflicts severe suffering on a child, harasses or imposes severe or degrading punishments on him/her shall be liable to a term of imprisonment of six (6) months to two (2) years and a fine of one hundred thousand (100,000) to three hundred thousand (300,000) Rwandan francs'.*

From the above-quoted article, one may observe that the new Penal Code punishes only severe suffering. This strongly suggests that any other form of punishment is allowed. Furthermore, the

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<sup>123</sup> On this point, it is worthy to note that basing on the principle of strict interpretation of a criminal law, the term assault differs from the term corporal punishment (to punish does not mean to assault). For this, it was too difficult to prosecute a parent on a crime of assault, basing on the sole fact that he gave corporal punishment against his child.

<sup>124</sup> Law no 27/2001 of 28/4/2001 relating to rights and protection of the child against violence.

term 'severe' remains rather vague. Thus it may be interpreted in favour of the suspects, i.e. the parents or caregivers<sup>125</sup>. One may therefore conclude that the amendment to the Penal Code has not done much to protect children from corporal punishment by the weak sanctions it imposes.

### ***3.2.2 The Law on Protection of the Child***

Law No 27/2001 of 28/4/2001 covers children's rights and their protection from violence. The articles in the Law relevant to this research are articles 20 and 32 relating to the protection of children from violence.

Article 20 states that no child should be subjected to torture, inhuman and degrading treatment. According to various definitions of the term 'torture', to prosecute a parent who would have committed torture to his child by way of corporal punishment is not easy. Black's Law Dictionary defines torture as 'the infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure'<sup>126</sup>. It may be argued that while many instances of corporal punishment (not as severe as torture but nevertheless equally damaging to the child) may be found, it may be difficult to find a case in which a parent or caregiver inflicted 'intense pain' on his or her child. Besides, from the CAT, it may be difficult to prosecute a parent for the crime of torture, based on the sole fact of corporal punishment to his child. CAT defines torture as:

*'...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is*

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<sup>125</sup> This is in line with the principle *In dubio pro reo*, which requires that any interpretation of a criminal law should be done in favour of the suspect. For this, it would be very rare to prosecute a parent for the crime of severe punishment against his child. To qualify punishment as severe is not simple and is too vague.

<sup>126</sup> Bryan A. Garner, *Black's Law Dictionary*, Eight Edition, (2004) 4648.

*inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*<sup>127</sup>.

According to this definition, torture may only be committed in complicity with a public official. Therefore, it can be deduced that a parent who beats his or her child cannot be prosecuted for torture as long as they are ‘connected’.

Article 32 states:

*‘Any sadistic torture including disproportional punishment; ill-treatment; inhuman or degrading punishment inflicted on a child is sentenced to between four months and three years’ imprisonment and a fine of between fifty thousand and two hundred thousand francs. If the crimes referred to in the preceding paragraph causes disability to a child, the sentence shall be between three years’ imprisonment and life imprisonment. If those crimes result in a child’s death, the death sentence shall be applicable’.*

Rwandan courts have punished some parents for very serious punishments of their children. A case in point is that of *NYAKURAMA Chantal* rendered by the Primary Court of Ruhango<sup>128</sup>. The accused person, Nyakurama, was prosecuted for burning her 7 year-old girl, Nyiransengiyumva Annonciata. The Court based its decision on articles 20 and 32 of the old law stated above and sentenced the accused person to 3 years imprisonment and a fine of one hundred thousand Rwandan francs<sup>129</sup>. The Court punished Nyakurama for the disproportionate and grave punishment she meted out to her child. Had the punishment been slight, Nyakurama may only have been cautioned.

Thus from the example above, the old Law on Protection of the Child appears to only prohibit severe corporal punishment. Looking to the views and recommendations of the CRC Committee

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<sup>127</sup> Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, article 1.

<sup>128</sup> Prosecutor v. Nyarurama Chantal, RP no 0061/011/TB/RHGO, 22/12/2011.

<sup>129</sup> Prosecutor v. Nyarurama Chantal, RP no 0061/011/TB/RHGO, 22/12/2011, paragraph 9.

given to Rwanda in 2004, the reform of that law should have completely banned any form of corporal punishment, even a slight one. In its Concluding Observations, the Committee stated:

*‘...notes that the Rwandan legislation does not include an explicit prohibition of corporal punishment and is concerned at the persistent practice of corporal punishment by parents, teachers and law enforcement officers<sup>130</sup>’.*

Consequently the CRC Committee recommended that Rwanda introduce legislation explicitly prohibiting corporal punishment. The ensuing discussion examines the extent to which the new Law on Protection of the Child addresses the Committee’s recommendation.

The new Law on the Protection of the Child is Law n° 54/2011 of 14/12/2011. The articles relevant to this research are 3, 25 and 65.

Article 25 states that parents, guardians or other persons legally responsible for the child have responsibility to ensure that the child has appropriate guidance, education, learns respect and love for others, and serves the country for the full development of his or her capacities, according to the national culture. It further provides that during the education of the child, the reprimand must not consist in traumatizing him or her; it must be done with humanity and dignity.

This article seems to put more emphasis on children’s education in regard to his developmental capacity, but does not expressly prohibit corporal punishment as mode of reprimand in the course of the child’s education and upbringing.

Article 25 also directs the Minister in charge of children to specify by an Order, the necessary educational measures and other forms of non-violent disciplinary actions, care and treatment for the child. As at the time of writing, this Order is yet to be developed and promulgated. One may however interrogate whether the said Order will have a very strong legal basis to abolish

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<sup>130</sup> Committee on the Rights of the Child, Concluding observations: Rwanda, CRC/C/15/Add.234, 1 July 2004, paras 34 and 35.



corporal punishment, considering that the Law itself lack clarity on the prohibition of corporal punishment.

Article 3 of the Law defines the terms ‘domestic violence and mistreatment’ as:

*‘Excessive physical punishment, inhuman or degrading treatment, sexual violence, tortures, physical or mental violence, negligence, exploitation or negligent treatment of the child done by his/her parents, legal guardian or any other person who has his/her legal care<sup>131</sup>’.*

The CRC Committee 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 (smacking, slapping, spanking)...<sup>132</sup>,

From a close reading of article 3 of the Law on Protection of the Child quoted above, it may be concluded that other light corporal punishment like slight smacking, slapping or spanking is allowed; only excessive or grave corporal punishment can be prosecuted.

Article 65 provides that any person who infringes the Law on Protection of the Child shall be prosecuted and punished in accordance with the Penal Code. As previously discussed, the Penal Code only punishes cases of severe punishment.

Indeed many parents and caregivers could be afraid of the idea of criminalising any form of corporal punishment because of the perception that they could be prosecuted. This author is of the humble view that the point is not necessarily to advocate for their prosecution; instead, the intention is to dissuade parents from beating their children. Furthermore and from the same perspective, banning corporal punishment should go hand in hand with educating parents and

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<sup>131</sup> Law n° 54/2011 of 14/12/2011 relating to the rights and the protection of the child, article 3, 2°.

<sup>132</sup> General Comment No. 8, Para 11.

caregivers about the negative effects of such punishment<sup>133</sup> so that they may abandon the use of corporal punishment voluntarily, without pressure of the law.

Though the Law on Protection of the Child has introduced amendments to improve the rights and welfare of children in Rwanda, it remains to be answered why the reforms do not abolish corporal punishment in totality in the face of Rwanda's obligations under regional and international child rights instruments.

To answer this question, it is important to make the argument that any form of corporal punishment is against the principle of equality due to the fact that any kind of assault or corporal punishment, even slight, committed against an adult person is punishable whereas if it is committed against children, it usually goes unpunished. This violates the right to moral and physical integrity and the principle of always taking into consideration the best interests of the child.

In regard to the right to equality, the term "equality" must be well understood. Black's Law Dictionary defines the term *equality* as the *quality or state of being equal; especially, likeness in power or political status*. It goes further by saying that equality before the law means the *status or condition of being treated fairly according to regularly established norms of justice*<sup>134</sup>; and the term *justice* means *the fair and proper administration of laws*<sup>135</sup>. From these definitions one may affirm that treating children differently from adults by allowing or tolerating corporal punishment against children contradicts what *justice* stands for. As persons in their own right like adults, they are entitled to the same treatment as adults in similar circumstances. The ICCPR in its article 2(1) states:

*'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the*

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<sup>133</sup> A. Nicholson, "Choose to Hug, not Hit", [January 2008] 12 *FAMILY COURT REVIEW*, Vol. 46 No. 1, 11–36.

<sup>134</sup> Garner B.A., *Black's Law Dictionary*, Eighth Edition, (2004) 1627.

<sup>135</sup> Garner B.A., *Black's Law Dictionary*, Eighth Edition, (2004) 2528.

*present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*<sup>136</sup>.

The UDHR similarly guarantees the right to equality and equal protection of the law to all persons without any discrimination. Consequently, it may be strongly argued that beating a child would constitute a human rights violation (and in some cases a criminal offence), as would be the case where an adult is concerned<sup>137</sup>.

The African Charter on Human and Peoples' Rights (ACHPR) guarantees the right to physical integrity by stating that 'human beings are inviolable, every human being shall be entitled to respect for his life and the integrity of his person'<sup>138</sup>. Thus to beat a child violates his moral and physical integrity and such practice should be banned.

The CRC provides that:

‘...in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a *primary* consideration’<sup>139</sup>.

This is similar to the ACRWC, which states that ‘in all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration’<sup>140</sup>. In the same perspective, the CRC Committee has given an interpretation of the term ‘best interests’ as follows:

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<sup>136</sup> ICCPR, 19 December 1966, United Nations, Treaty Series, 1976, article 2(1).

<sup>137</sup> Art.7 of U.N. Declaration of Human Rights

<sup>138</sup> African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986, article 4.

<sup>139</sup> Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, article 3.

<sup>140</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999, article 4.

*'The child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity'<sup>141</sup>.*

Upon careful examination of the above statement, one may conclude that corporal punishment is against the best interests of the child<sup>142</sup>. It is from this perspective the CRC Committee has recommended that all states parties to ban any form of corporal punishment in their legislations because apart from violating the child's right to equality and physical integrity, it also infringes his or her best interests<sup>143</sup>.

Indeed as discussed above in the different legal instruments, particular attention to the child's rights must be appreciated. As the law intends to resolve the current problems in a given society, reform is necessary. According to John Rawls, justice is a *virtue of social institution*, and it is also a *system of thoughts*, so even if a given theory is attractive, graceful and economical, it must be rejected or revised if it is wrong. Likewise the laws and institutions, no matter how efficient and well-arranged they may be, must be reformed or abolished if unjust<sup>144</sup>.

John Rawls continues by affirming that each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. Therefore, he argues that justice refutes the notion that the loss of freedom of some is made right by a greater good shared by

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<sup>141</sup> Committee on the Rights of the Child, Forty-second session, General Comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para 2; and 37, inter alia), para 26.

<sup>142</sup> Save the Children, Ending corporal punishment of children : making it happen [September 2001] 25.

<sup>143</sup> Committee on the Rights of the Child, Forty-second session, General Comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), paragraph 21.

<sup>144</sup> Rawls J., *A Theory of Justice* Revised Edition, Harvard University Press (2003) 3.

others<sup>145</sup>. This statement strongly supports the argument that every individual, including a child, should not be deprived of his or her rights<sup>146</sup>.

However, even though that statement advocates for the total ban of any form of corporal punishment, in Rwanda the child continues to suffer such punishment as the relevant laws discussed in this thesis do not provide such an express ban. This puts Rwanda's domestic laws in conflict with its obligations under the instruments discussed above implicitly prohibit corporal punishment in all settings.

The laws discussed in this study are also not in line with the National Integrated Child Rights Policy which was adopted by the Ministry of Gender and Family Promotion in August 2011. That policy states:

*'Physical abuse, including torture and cruelty against children and corporal punishment of children is prohibited in all settings and defines all settings as including "homes, communities, schools, all centres and institutions that have children, prisons and detention centres, etc'<sup>147</sup>.*

Given that the policy is in line with the relevant international instruments ratified by Rwanda, it should have at least been taken into consideration in developing the amendments to the Penal Code and Law on Protection of the Child.

### **3.3 Methods of positive discipline as alternatives to corporal punishment in Rwanda**

It is worthy to highlight the concern of the Committee on Rights of Children in educating children. It stated:

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<sup>145</sup> Rawls J., *A Theory of Justice* Revised Edition, Harvard University Press (2003) 3.

<sup>146</sup> As stated above, those rights are for instance the right to equality and the right to moral and physical integrity.

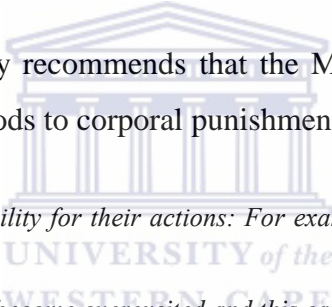
<sup>147</sup> National Integrated Child Rights Policy.

*'The healthy development of children depends on parents and other adults for necessary guidance and direction, in line with children's evolving capacities, to assist their growth towards responsible life in society'<sup>148</sup>.*

The Committee recognises the necessity to use force in strictly limited circumstances; to protect children. It states that parenting and caring for children, especially babies and young children, demands frequent physical actions and interventions to protect them. However, it rejects the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation<sup>149</sup>.

In that same vein, in Rwanda, the Minister for Gender and Family Promotion is empowered by law to specify by an Order, the necessary educational measures and other forms of non-violent disciplinary punishment, care and treatments for the child<sup>150</sup>, however the Order has not been developed.

In developing the Order, this study recommends that the Minister take into consideration, the following positive alternative methods to corporal punishment:

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- 1. Make children take responsibility for their actions: For example, if the child breaks something, he or she must fix it.*
  - 2. Time out: Sometimes children become overexcited and this can lead to bad behaviour. It can be effective to take the child out of the room to calm down, sit quietly and think about what he or she has done wrong.*
  - 3. Denial of what they (children) cherish: The punishment could be not watching television, not being allowed to visit friends or not receiving pocket money*
  - 4. Verbal warning.<sup>151</sup>*

These measures are progressive, do not traumatise the child and are in line with human rights standards and most important, are the most preferred alternatives to corporal punishment by

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<sup>148</sup> Committee on the Rights of the Child, Thirty-sixth Session, Consideration of reports submitted by states parties under article 44 of the Convention, Concluding observations: Rwanda, CRC/C/15/Add.234, 1 July 2004, para13.

<sup>149</sup> Committee on the Rights of the Child, Thirty-sixth session, Consideration of reports submitted by states parties under article 44 of the Convention, Concluding observations: Rwanda, CRC/C/15/Add.234, 1 July 2004, para14.

<sup>150</sup> Article 25(3<sup>0</sup>) of law n<sup>o</sup> 54/2011 on Protection of the Child.

<sup>151</sup> Odhiambo G A *Study on the Perceptions around Corporal Punishment and the Extent to which it is Practiced in Rwanda* (December 2010) 41.

Rwandan parents against corporal punishment.<sup>152</sup> They should therefore be preferred to corporal punishment.

Alternatives suggested by the Council of Europe are similar to the above. They range from calming down young children with humour, asking older children to repair damages, or making amends for wrongdoings. Further, it advises that if the parents have much emotion, depending on the gravity of the fault, they are to take an immediate break from the situation and discuss it later. On this point, it added that most corporal punishment is due to the stress of the parents who have lost control<sup>153</sup>. Therefore, it is advised that parents to also measure their emotions before punishing their children.

### 3.4 Conclusion

This chapter analysed the current legal reforms to protect children in Rwanda. This follows the recommendations of the CRC Committee to Rwanda on 1 July 2004<sup>154</sup>. Those reforms concerned the old Penal Code of 1977 and the old Law on the Protection of the Child of 2001. Those old laws did not expressly prohibit corporal punishment in the home and reform had become necessary. However the reforms have not done enough as both the new Penal Code and the new Law on Protection of the Child are silent on prohibition of any form of corporal punishment in the home. Rather, they only prohibit severe or disproportional or grave corporal punishment.

This study therefore recommends further amendments to the Civil Code, Penal Code and Law on Protection of the Child. The new provisions should explicitly criminalise corporal punishment of

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<sup>152</sup> Odhiambo G A *Study on the Perceptions around Corporal Punishment and the Extent to which it is Practiced in Rwanda* (December 2010) 41.

<sup>153</sup> Council of Europe, *Abolishing corporal punishment of children: questions and answers* (2007) 23.

<sup>154</sup> In its Consideration of reports submitted by States parties under article 44 of 1 July 2004, in the observations regarding Rwanda, the Committee encouraged Rwanda to take all necessary measures to ensure that its domestic legislation conforms fully to the principles and provisions of the Convention on the Rights of the Child and is fully implemented. In that respect, the Committee also encouraged the State party to expedite the enactment of a comprehensive children's code (CRC/C/15/Add.234, 1 July 2004), para 6.

children in the home. In addition, the Government should increase sensitisation of the public on positive alternative methods to corporal punishment and include these methods in the Order to be developed by the Minister for Gender and Family Promotion.





## CHAPTER FOUR:

### THE IMPACT OF CORPORAL PUNISHMENT ON THE CHILD AND FAMILY INSTITUTION AND EFFORTS IN FIGHTING IT IN THE RWANDAN CONTEXT

#### 4.1 Introduction

Corporal punishment has a great impact on the child's well-being as well as on the family institution. In Rwanda, beating with chains/sticks, kneeling down and pulling ears is the main methods of corporal punishment. The other methods include slapping with the hand, knocking the head and burning fingers<sup>155</sup>. These two methods could be more excruciating and leave debilitating and longer term emotional and physical scars in children<sup>156</sup>. Besides they represent flagrant violations of international human rights law, especially the right not being subjected to torture and other cruel, inhuman and degrading treatment or punishment and right to dignity and physical integrity. Within the family context, the child who has been physically abused may develop anti-social attitudes that can result in criminal behaviour, isolation from the society, and even become susceptible for various diseases<sup>157</sup>.

In Rwanda, there are many factors which make corporal punishment persist. These are the design of current legislation with regard to child protection against violence; for instance, article 347 of Civil Code gives to the parents the right to correct their children but fails to fix the limits of such correction.

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<sup>155</sup> Odhiambo G A Study on the Perceptions around Corporal Punishment and the Extent to which it is Practiced in Rwanda (December 2010) 31.

<sup>156</sup> Save the Children, ending corporal punishment of children, A handbook for working with and within religious communities (2011) 13.

<sup>157</sup> Save the Children, Awareness Campaign against corporal punishment of children in Families, First Session (1999)2-3.

The Law relating to the Rights and Protection of the Child allows ‘light’ corporal punishment but only condemns severe physical punishment<sup>158</sup>. Besides, the penal code, as the law on protection of the child, condemns only brutal or exaggerate punishment<sup>159</sup>. The lack of commitment of policy makers, the persistent poverty in the country, and the specific history of the Rwandan society complicate further the predicament of children. Traditionally corporal punishment is a norm for guiding children’s manners, bad school performance, or simply to establish parental dominance.

Indeed, there is an expectation that corporal punishment will be completely banned in the country. This is based for instance, on emerging raising awareness among child friendly-organisations on the negative effects of corporal punishment, changing societal attitudes towards corporal punishment in Rwanda, empowering the institutions charged to protect child’s rights, and hearing voices and views of children on corporal punishment.

Child friendly-organisations in this context could include faith-based organisations, civil society, and child led groups among others. Those organisations are very important because they play a great role in campaigning against violence against the child, and their re-integration into the society given the history the country experience especially after the genocide of 1994.

As far as the attitude of the Rwandan community is concern, it is easy to find that the society still believes that corporal punishment is necessary for disciplining children; that if children are not given such punishment, they would develop bad behaviours, jeopardising their performance in school and success in future as adults. This belief has been strongly engrained in the Rwanda society for many generations. In some instances, competition between parents is portrayed through the performance of their children in school. Parents project themselves through their children who become a field for personal and even family comparisons. For example, a child who places third in class may be severely punished because a neighbour’s child was first in the

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<sup>158</sup> Law n° 54/2011 of 14/12/2011 relating to the Rights and the Protection of the Child, articles 3 and 25 (2).

<sup>159</sup> Organic Law N° 01/2012/OL of 02/05/2012 instituting Rwandan the Penal Code, Article 218.

same class. The parents of the latter then think themselves to be 'superior' to the former. This chapter will analyse that notion and try to provide a remedy for it.

Rwanda has a lot of institutions in child rights protection. Those institutions include the Parliament, the National Human Rights Commission and the National Commission of Children. The question is, are those institutions capable of effectively protecting the rights of the child given the history of deep-rooted belief in the use of corporal punishment in Rwanda?

In this chapter, the author shed light on the role of each institution with regards to child's rights, their weaknesses in combatting corporal punishment and makes recommendations for strengthening them. The voices of children constitute a hub of useful information in the fight against corporal punishment. This should be done by involving the children in various campaigns which advocate a total ban of corporal punishment. Their point of view is of great importance to any sustainable solution because it comes from those who are affected by the violence and whose lives are physically and emotionally changed because of it. Their involvement can be made through various forms, from individual experience to group representation at high-level government and international meetings; from one-off actions<sup>160</sup> to long-term sustained campaigning; from adult-initiated programmes of activities to child-initiated and child led groups<sup>161</sup> combat for their rights<sup>162</sup>.

In order to make this chapter well understood, the researcher first discusses the factors that sustain the use of corporal punishment and thereafter examines methods to ban it.

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<sup>160</sup> An example of one-off action of campaigning against corporal punishment is the manifestation or protest organized against corporal punishment.

<sup>161</sup> An example of child-led group is the youth clubs whose purpose is to advocate for the child's rights.

<sup>162</sup> Milne E., *Guide to children and young people's participation in actions against corporal punishment* (2011) 2.

## 4.2 The factors sustaining the use of corporal punishment

Many States place language relating to corporal punishment of children in the context of ‘justifications for the use of force’<sup>163</sup>. The use of force by parents is justified and is comparable to the actions taken by the police to restore and/or maintain order in the society to maintain public safety. In many instances, when such public safety is compromised severe actions are taken. Another case in point is the recourse to use force in a psychiatric hospital, football stadium, bars against drunken and troublesome individuals, and generally in any form of harm either against oneself (suicidal behaviour) or against the general public, in the extreme case, terrorism.

Apart from the legal justification for corporal punishment, noted above, there are other factors accounting for the prevalence of corporal punishment in the home in Rwanda. This chapter discusses some of the key factors in this regard.

### 4.2.1 *The design of current legislation with regard to child protection against violence*

Under Rwandan law, there are many factors which permit the use of corporal punishment. Among those factors there are various laws such as penal law, law on protection of the child which allow the use of light corporal punishment.

With regard to the Penal Code, there are a number of provisions that criminalise and punish assault. In the third chapter, examples are the articles 152 and 155. As stated in the same chapter, all those articles condemn assault against a minor. Then, the problem is that it is very difficult for parents to be prosecuted for assaulting their children because they would base their defence on their right of correction contained in the Civil Code<sup>164</sup>. Since the limits of this right are not well defined, those parents are not likely to be prosecuted or punished. This is based on the principle of strict interpretation of a criminal law. According to this principle, the criminal laws should not be interpreted extensively. The same principle adds that the criminal laws ‘must be construed

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<sup>163</sup> Lucien X. Lombardo, Karen A. Polonko *A Comparative Analysis of the Corporal Punishment of Children* An Exploration of Human Rights and US Law Old Dominion University, International Journal of Comparative and Applied Criminal Justice, Fall 2005, Vol. 29, No 2, p. 183.

<sup>164</sup> Article 347 of Civil Code.

strictly and that the courts are not allowed to pronounce sentences by analogy'.<sup>165</sup> Therefore, according to that argument, if the term “assault” is interpreted differently from the term “punish”, it may be concluded that a parent cannot be prosecuted for the offence of assault when the act carried out by him was punishment of his or her child.

After having talked about the Penal Code, let us analyse the Law on Protection of the Child. This Law holds some loopholes because it is not clear about the extent of education that a parent should accord to his child. That law states that:

*‘Parents, guardians or other persons legally responsible for the child have responsibility to ensure appropriate direction and guidance, education as to respecting others and loving and serving the country for the full development of capacities of the child, according to the national culture. During the education of the child, the reprimand must not consist in traumatizing him/her; it is done with humanity and dignity’<sup>166</sup>.*

To say that the reprimand must be done with humanity and dignity is vague. The unclear situation present in the article is subject to different interpretation because many Rwandese parents are convinced that corporal punishment is for the ‘good of the child’. Therefore, it would be better for the legislature to explicitly ban *all forms* of corporal punishment in order to prevent misinterpretation of the law.

It may also be argued that the Civil Code gives parents the power to inflict corporal punishment on their children. That Code gives parents and other persons responsible for educating the child, the right of correction<sup>167</sup>. The Code however does not determine the extent of such correction. This loophole may give to parents the opportunity to use corporal punishment. As a result, it may be argued that the Civil Code, Penal Code and the Law on the Protection of the Child contribute significantly to the prevalence of corporal punishment in Rwanda.

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<sup>165</sup> Organic law n° 01/2012/OL instituting the penal code of 02/05/2012, *O G* n° Special of 14 June 2012, article 4.

<sup>166</sup> Law n° 54/2011 of 14/12/2011 relating to the rights and the protection of the child. *O G* n°26 of 25/06/2012, article 25.

<sup>167</sup> Civil code, article 347.

## ***4.2.2 Lack of commitment of policy makers***

Among the institutions charged to protect the child's rights, the Parliament, the National Human Rights Commission and National Youth Council are discussed below.

### ***4.2.2.1. Parliament***

The Rwandan Parliament has the mission to protect children from violence as it is done for any other class of people. Concerning children, this is evidenced by the fact that the Constitution requires the youth (children) be represented in it. Article 76 of the Constitution states that the Chamber of Deputies one of the two chambers of Parliament<sup>168</sup> shall consist of 80 Deputies in total, 53 elected by popular vote, 24 being women elected by specific councils, two by the National Youth Council and one by the National Council of Persons with Disabilities. Thereafter, one may conclude that the idea behind this Constitutional requirement is to allow the Chamber of Deputies to know the problems or protect the rights of the youth, including children. Article 117 of the Constitution makes the Government answerable to Parliament<sup>169</sup>.

Then comes the crucial question of how Parliament can contribute to the banning of corporal punishment. The answer to this question may be found in its intrinsic power to overseeing governmental action and its power to initiate and enact laws<sup>170</sup>. Through its power to oversee the Government, it may conduct an inquiry into the state of corporal punishment of children in Rwanda and thereafter make recommendations to the Government to protect children from such punishment. Those recommendations should include among others, sensitization of people about the short and long term negative effects of corporal punishment and prosecuting anyone who uses it when it is clear that such prosecution is in the interest of the child victim. Through its power to initiate and enact laws, the Parliament has clear legal authority to explicitly abolish any

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<sup>168</sup> According to article 62 of the Constitution of Rwanda, Parliament is composed of 2 chambers: the Chamber of Senate and the Chamber of Deputies.

<sup>169</sup> article 117 of the Constitution

<sup>170</sup> Article 90 of the Constitution gives Parliament the power to initiate and enact laws.

form of corporal punishment by further amending the Civil Code, the Penal Code and the Law on Protection of the Child. The fact that till now children are still being beaten may be explained in part by Parliament not using its powers.

#### ***4.2.2.2. National Human Rights Commission***

By law, the National Human Rights Commission has the mandate to protect the rights of citizens, including those of children. One of the objectives of the Commission is to investigate and follow-up on human rights violations committed by anyone<sup>171</sup> on the territory of Rwanda. This is especially true for State organs and individuals working under the authority of State organs, as well as any national organisation working in the country<sup>172</sup>.

The law further mandates the Commission to receive and examine claims relating to human rights violations, either on its own initiative or upon request. Upon review of the claim the Commission may request that the person committing human rights violations be prosecuted<sup>173</sup>. This responsibility is very important. From this author's point of view, apart from sensitising parents about the unlawfulness of corporal punishment of children and the effects it has on children the Commission would also request the prosecution of those who still beat their children. However, the reality is that it does not yet implement it, and therefore it fails to its responsibility to protect children against violence.

Besides, the Commission has the responsibility under its enabling law in article 4 to promote child's rights and to sensitize people about them. In order to reach a great number of people, despite insufficient human and financial means of the Commission<sup>174</sup>, it should be able to

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<sup>171</sup> The term anyone implies that the Commission may investigate the crimes committed by private individuals, i.e. corporal punishment committed by parents against their children.

<sup>172</sup> Law n° 04/99 of 12/03/1999 establishing the National Human Rights Commission (O.G. n° 6 of 15/03/1999) modified and completed by Law n° 37/2002 of 31/12/2002 (O.G. n° special of 16/01/2003), article 3.

<sup>173</sup> Law n° 04/99 of 12/03/1999 establishing the National Human Rights Commission (O.G. n° 6 of 15/03/1999) modified and completed by Law n° 37/2002 of 31/12/2002 (O.G. n° special of 16/01/2003), article 4.

<sup>174</sup> Committee on Rights of the Child, Observations on States Reports of 2004 (CRC/C/15/Add.234, 1 July 2004), Paragraph 11.

organise meetings and awareness raising campaigns at the local level with the support of the media. Government should therefore provide adequate resources to the Commission to enable it carry out this mandate effectively<sup>175</sup>.

Furthermore, the law obliges the Commission to sensitise government institutions as regards ratification of international conventions relating to human rights and ensure that they are integrated in internal laws<sup>176</sup>. Rwanda has ratified the CRC which prohibits corporal punishment. Therefore, the fact that the Commission has not requested the Parliament to amend the Penal Code and Law on Protection of the Child by including the provisions prohibiting corporal punishment, may be held as a failure towards its responsibility to ensure that, what is provided in human rights instruments ratified by Rwanda, is clearly enforced in internal laws.

#### ***4.2.2.3 National Youth Council***

The Rwandan Government has established the National Youth Council. However, the problem with the law establishing the Council is that it protects only the rights of youth and not those of all children. This is based on the fact that it defines *youth* as persons between 14 and 35 years old. Unlike National Commission on Human Rights, the law establishing this Council does not clearly give it the power to protect and advocate for the rights of the youth or children. Only one paragraph of Article 4 of that law provides the role that the Council plays in human rights protection.

According to article 4, the National Youth Council has the mandate of educating the youth on the culture of patriotism; sensitizing the youth on the fight against genocide ideology and division and other acts that may not be productive to them; bringing together the youth using various mechanisms such as training, sports, entertainment and public debates aimed at delivering constructive education to them; sensitizing the youth on productive activities and other activities

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<sup>175</sup> Save the Children, *Awareness Campaign against corporal punishment of children in families*, Third Session (1999) 51.

<sup>176</sup>Law n° 04/99 of 12/03/1999 establishing the National Human Rights Commission (O.G. n° 6 of 15/03/1999) modified and completed by Law n° 37/2002 of 31/12/2002 (O.G. n° special of 16/01/2003), article 4.



aimed at developing them and the nation; supporting and monitor the functioning of cooperatives, associations and other youth organizations; mobilising the youth on preservation and protection of the environment; advocating for the youth at all levels and sensitising the youth in science and technology and initiate them into job creation, and entrepreneurship to help their personal development and that of the nation and putting in place and monitor programs to sensitise the youth on hygiene, AIDS prevention and other diseases, and to promote cooperation and exchange between the youth of Rwanda and that of foreign countries<sup>177</sup>.

Article 4 gives the Council the responsibility to conduct strong advocacy for the youth at all levels<sup>178</sup>. Indeed, all children are not youth, but some children are part of youth (children between 5 and 14 years old) and are subject to corporal punishment by their parents. Therefore, the author suggests that the advocacy of National Youth Council should also be extended to that of abolishing of corporal punishment committed against children.

#### ***4.2.3 Poverty and specific history of Rwanda***

This section of the thesis examines the role of poverty and the genocide of 1994 in promoting and sustaining corporal punishment in Rwanda.

##### ***4.2.3.1 Poverty as a factor of corporal punishment***

Considering poverty as a factor contributing to the persistence of corporal punishment, a study has shown that harsh times such as economic recession, job loss and subsequent poverty, are associated with increased violence in families, including against the child and abuse of the elderly. The study indicates that poor families experience much more stress than middle-class

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<sup>177</sup> Law modifying and complementing law n° 24/2003 of 14/08/2003 establishing the functioning and organisation of the National Youth Council, article 4.

<sup>178</sup> Law modifying and complementing law n° 24/2003 of 14/08/2003 establishing the functioning and organisation of the National Youth Council, article 4, 80.

families<sup>179</sup> and therefore are prone to violence within the family. The same study highlighted that besides financial uncertainty those families are more likely to be exposed to a series of negative events and acts related to illness, depression, eviction, job loss, criminal victimization and family death. The study also indicates that some parents who experience economic difficulties may become excessively punitive and erratic, issuing demands backed by insults, threats, and corporal punishment<sup>180</sup> that is unjustified.

According to the United Nations Development Program (UNDP), Rwanda is a poor country; over 60% of Rwandans live in poverty and 42% in absolute poverty<sup>181</sup>. It has further been noted using the household as a unit that 57% of Rwandans live below the poverty line<sup>182</sup>. Furthermore, incidence of poverty is much higher in rural areas (66%) than in urban areas, for example 12% in Kigali and 19% in other towns. Inequality runs deep, with the richest 10% of the population holding approximately 50% of the nation's wealth<sup>183</sup>.

As a result of its weak economy, 90% of the Rwandan population is engaged in mainly subsistence agriculture, agro-processing, and tourism. Coffee and tea have always been Rwanda's main sources of foreign exchange<sup>184</sup>. As a consequence, revenue from these exports cannot adequately meet the needs of the economy.

Accordingly, one may argue that given the level of poverty in Rwanda, it is most likely that poverty is a contributory factor to the prevalence of punishment in the country.

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<sup>179</sup> CliffsNotes article: *Causes and Effects of Poverty* available at [http://www.cliffsnotes.com/study\\_guide/Causes-and-Effects-of-Poverty.topicArticleId-26957,articleId-26882.html](http://www.cliffsnotes.com/study_guide/Causes-and-Effects-of-Poverty.topicArticleId-26957,articleId-26882.html) (accessed 31/8/2012).

<sup>180</sup> CliffsNotes, *Causes and Effects of Poverty*.

<sup>181</sup> United Nations Development Program: Rwanda, *Poverty Reduction*. Available at [http://www.undp.org.rw/Poverty\\_Reduction.html](http://www.undp.org.rw/Poverty_Reduction.html) (accessed on, 31/8/2012).

<sup>182</sup> National Institute of Statistics of Rwanda Report, 2008.

<sup>183</sup> United Nations Development Program: Rwanda, *Poverty Reduction*.

<sup>184</sup> Index mundi, *Rwanda Economy Profile 2012* available at [http://www.indexmundi.com/rwanda/economy\\_profile.html](http://www.indexmundi.com/rwanda/economy_profile.html) (accessed on, 31/8/2012)<sup>184</sup> Cliffs Notes, *Causes and Effects of Poverty*.

<sup>184</sup> United Nations Development Program: Rwanda, *Poverty Reduction*. Available at [http://www.undp.org.rw/Poverty\\_Reduction.html](http://www.undp.org.rw/Poverty_Reduction.html) (accessed on, 31/8/2012).

<sup>184</sup> National Institute of Statistics of Rwanda Report, 2008.

<sup>184</sup> United Nations Development Program: Rwanda, *Poverty Reduction*.

<sup>184</sup> Index mundi, *Rwanda Economy Profile 2012* available at [http://www.indexmundi.com/rwanda/economy\\_profile.html](http://www.indexmundi.com/rwanda/economy_profile.html) (accessed 012).

#### ***4.2.3.2 Genocide as a factor of corporal punishment***

The genocide of 1994 had severe effects on Rwanda's social structures. Human Rights Watch (HRW) has highlighted some consequences in that regard, stating that due to the genocide, traditional protective structures for children including family networks, the judicial system, and the education system has totally collapsed. As a result children have become victims of systematic violations of human rights<sup>185</sup>. HRW added that the genocide left a lot of children orphaned or with their parents in prison for their role in the genocide<sup>186</sup>. These orphans are raised in orphanages or in the homes other than those of their own parents. In such situations, they are likely to be subjected to corporal punishment due to the stress suffered by the parent. For instance if one parent is imprisoned, the other one will have to do a number of jobs or works in order to survive. This will cause a lot of stress and have negative effects on the general well-being of the children including the use of corporal punishment. In some cases, the young have themselves committed crimes either voluntarily or have been used by adults to commit crimes.

#### **4.3 Effects of corporal punishment**

Corporal punishment has serious effects on and consequences for children. This section therefore sets out some of the major effects of corporal punishment in order to provide some guidance to policy makers and the society at large in seeking appropriate measures to end it.

#### ***4.3.1 Physical and psychological effects on the child***

##### ***4.3.1.1 Physical effects***

Children who are physically punished generally suffer injuries that leave permanent damage<sup>187</sup> and affect their lives as adults. This is a violation of the child's right to physical integrity

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<sup>185</sup> Human Rights Watch, Consequences of Genocide and war on Rwanda's Children, Vol.15, no.6 (2003) 1.

<sup>186</sup> Human Rights Watch, Consequences of Genocide and war on Rwanda's Children, Vol.15, no.6 (2003) 1.

<sup>187</sup> Save the Children, ending corporal punishment of children, A handbook for working with and within religious communities (2011) 12.

protected in a large number of international and regional human rights instruments ratified by Rwanda. For instance, the ACHPR provides that every human being shall be entitled to respect for his life and the integrity of his person<sup>188</sup>. Corporal punishment violates that right because it causes physical suffering on a child. Apart from that, corporal punishment violates the child's right for not being subjected to torture and other cruel, inhuman and degrading punishment the ICCPR provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment<sup>189</sup>. Apart from injuries, some of the severely abused may die. A case was reported in the Nyagatare District, located in Eastern Province of Rwanda, where a woman named Mukankuranga Chartine had beaten and killed her daughter Uwase Jeanne because she has refused to take drugs prescribed for her<sup>190</sup>. This case shows us how in addition to violation of the child's right to physical integrity and dignity, it may also violate the child's right to life.

#### **4.3.1.2 Psychological Effects**

Children are psychologically affected by corporal punishment in a number of ways<sup>191</sup>. The Gender Research and Advocacy Project highlight a number of psychological effects of corporal punishment. It states that corporal punishment

*'... can teach children that violence is an acceptable way of dealing with issues. It teaches them that it is okay to use violence against someone they love. It also makes them more aggressive towards other children. Children who are exposed to violence are more likely to be violent as adults. Corporal punishment does not teach children the reason why their behaviour is wrong. It generates low self-esteem by making the victim feel*

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<sup>188</sup> ACHPR, adopted 27 June 1981, OAU Doc. Cab/Leg/67/3 Rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986, article 4.

<sup>189</sup> ICCPR, adopted by the General Assembly of the United Nations on 19 December 1966, United Nations Treaty Series, 1976, article 7.

<sup>190</sup> <http://www.nppa.gov.rw/component/content/article/54-top/428-nyagatare-mukankuranga-chartine-afunze-byagateganyo-kubera-kwiyicira-umwana-wimyaka-ibiri-yamavuko.html>, accessed on 11/7/2012 (this case is pending before the court).

<sup>191</sup> Gender Research and Advocacy Project, Basic Facts about Corporal Punishment, Fact Sheet. Available at [http://www.crin.org/docs/FileManager/Poster\\_factsheet\\_cp.pdf](http://www.crin.org/docs/FileManager/Poster_factsheet_cp.pdf), last accessed on 30/8/2012.

*scared, sad, ashamed, or worthless and finally it can destroy the relationship between the child and the child's parents or caregiver*<sup>192</sup>.

On those negative effects, Rohner adds that “one of the major mechanisms through which corporal punishment affects children’s future adjustment is through their perceptions of their own parents” warmth and acceptance versus hostility and rejection<sup>193</sup>. In this perspective, Lansford argues that:

*‘when parents use corporal punishment, their children tend to perceive them as hostile and rejecting. Consequently those perceptions of rejection and hostility will in turn lead to an escalation of children’s behavioural problems and a decrease in the quality of their social relationships and performance’*<sup>194</sup>.

The above are not the only effects on a child. Besides, a child who had been beaten will equally suffer mental illness and may exhibit violent behaviour such as attacking other children, fall to drug addiction and various other illegal activities<sup>195</sup>. Furthermore, many studies show that children who have been beaten by their parents may feel more anger, experience more fear, and nourish resentment that result in poor relationships with parents and with other persons who have authority over them<sup>196</sup>. They are more likely to exert the same violent behaviour in their own relationships with adult partners and work colleagues.

The strongest, usually unintended, message that corporal punishment sends to the mind of a child is that violence is an acceptable behaviour, and thus legitimate for a stronger person to use force to coerce a weaker one. It is therefore not surprising that a major consequence of corporal

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<sup>192</sup> Gender Research and Advocacy Project, Basic Facts about Corporal Punishment, Fact Sheet.

<sup>193</sup> Rohner RP The warmth dimension: Foundations of parental acceptance-rejection theory. Thousand Oaks, CA: Sage; 1986.

<sup>194</sup> Lansford J E et.al. ‘Corporal Punishment’, Duke University, Center for Child and Family Policy, USA, Chiang Mai University Department of Psychiatry, THAILAND, Maseno University, KENYA , October 2011, p. 4.

<sup>195</sup> Umurerwa E.M., To beat children create psychological effects on them (translated into English). Available at <http://www.igihe.com/ubuzima/inama/guhanisha-abana-akanyafu-bibatera-ihungabana-bamaze-gukura.html>, (Accessed on 11/7/2012)

<sup>196</sup> Save the Children, ending corporal punishment of children, A handbook for working with and within religious communities (2011) 12.

punishment in childhood, increasing proportionately with its severity, is aggression and criminal and anti-social behaviour in childhood, and later in adulthood<sup>197</sup>.

Save the Children lists other similar negative effects of corporal punishment on children: some of them are ‘lowering self-esteem and self-worth, teaching of poor self-control and promoting negative expectations of themselves<sup>198</sup>’. It adds that:

*‘corporal punishment also teaches the children to be both victims and to victimize others; it interferes with the learning process and alters their intellectual, sensory and emotional development. It discourages the use of reasoning to solving problems and rather encourages the use of brute force; it makes children feel lonely, sad, isolated, and abandoned; it promotes a negative view of other people and portrays society as a threatening place to live in; it creates barriers that impede parent-child communication and damages the emotional links established between them; and it teaches children that violence is an acceptable way of solving problems<sup>199</sup>’.*

Children learn from these negative examples and from their own personal experiences.

The Rwandan Ministry of Gender and Family Promotion (MIGEPROF) highlights some psychological effects of corporal punishment on children. It states that violence has huge negative effects on children because it affects the growth and development of a child’s brain. It adds that exposure to violence affects the child’s capacity to learn, respond, play and relate, which has negative effects on the child’s overall potential. It further argues that when children

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<sup>197</sup> Gunnoe M L and Mariner C L: Towards a developmental-contextual model of the effects of parental spanking on children’s aggression, in Gunnoe et al, Archives of Paediatric Adolescent Medicine 151, pp. 768-775, 1997; Straus M et al, Spanking by parents and subsequent anti-social behaviour of children, in Archives of Paediatric Adolescent Medicine 151, pp. 761-767, 1997; Brezina T, Adolescent maltreatment and delinquency: the question of intervening processes, in Journal of Research in Crime and Delinquency 35, pp. 171-99, 1998; and P Leach, The physical punishment of children: some input from recent research, NSPCC UK, 1998.

<sup>198</sup> Save the Children, Awareness Campaign against corporal punishment of children in Families, First Session (1999)2-3.

<sup>199</sup> Save the Children, Awareness Campaign against corporal punishment of children in Families, First Session (1999)2-3

are exposed to violence over a long period of time and/or from someone they know and love, it adds to the gravity of the trauma. In relation to trauma, MIGEPROF highlights some signs to include physical complaints, sleep deprivation, avoidance, aggression and developmental regression for example, when a child of an older age starts acting like he or she is much younger, a 14 year old acting like a 5 year old for instance<sup>200</sup>.

The alarming psychological consequences of corporal punishment on children have been described above. These consequences also constitute a clear violation of the child's right to moral integrity. It is a violation of every human being's right to respect for his life and the integrity of his person as provided by various international instruments such as the CRC. It is also consistent with the Preamble of the ACRWC which recognizes that the child occupies a unique and privileged position in the African society; and that for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding. For this, it ought to be stated that if a child is subjected to corporal punishment, he will not grow up in atmosphere of happiness and love.

#### ***4.3.2 Effect on the family and society***

The child who has been abused physically may develop antisocial and criminal behaviour. As an adult, he or she will be likely to abuse his or her own children and/or the spouse. In addition, the family or society will bear the greater cost in healing the physical and mental injuries of a child who has been beaten. Furthermore, if the treatment meted out to the child becomes a criminal issue, the family or society will incur great cost in dealing with the justice system<sup>201</sup>.

Furthermore, the children who have been subjected to corporal punishment may manifest difficulties with social integration and later participate in political agenda because the social isolation may extend to his or her attitude in adulthood. Corporal punishment doesn't teach

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<sup>200</sup> Republic of Rwanda: MIGEPROF 'Stop Violence against Children' available at [http://www.unicef.org/rwanda/RWA\\_resources\\_vac2011.pdf](http://www.unicef.org/rwanda/RWA_resources_vac2011.pdf) (accessed 10/9/ 2012).

<sup>201</sup> Save the Children, Ending corporal punishment of children, A handbook for working with and within religious communities (2011) 12.

children to cooperate with authority. On the contrary it teaches them to either strictly comply with rules or find ways to infringe them<sup>202</sup>. Moreover, the advocates for the use of corporal punishment usually argue that the administration of corporal punishment is a powerful yet easy and simple technique for stopping misbehaviour. Another argument is that excessive permissiveness, both in childrearing and school punishment, has directly contributed to social problems such as drug addiction, juvenal delinquency and lack of respect for authorities, for example, parents and teachers<sup>203</sup>.

In addition to the above consequences, many studies have shown that ‘corporal punishment increases the use of violence in society and legitimizes it in the eyes of succeeding generations and that it often results in a society characterized by submissive citizenship, where individuals have learned from their earliest years that being a victim is a natural condition<sup>204</sup>’. The above facts show clearly that a family or society which uses corporal punishment will bring up children who lack a harmonious environment. This is a violation of international human rights law.

As stated above, the ACRWC, which recognizes that ‘the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality the child should grow up in a family environment in an atmosphere of happiness, love and understanding<sup>205</sup>’. In light of the above, it is worthy to be reminded that if a child is subjected to corporal punishment, he cannot grow up to his or her full potential in such an atmosphere. Therefore, this thesis recommends that the Rwandan Government should explicitly ban corporal punishment through legislation in order to deter parents from using corporal punishment. The law should not only condemn severe corporal punishment, instead, it has to enhance monitoring and strongly condemn the use of any form of corporal punishment. It should

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<sup>202</sup> Save the Children, *Awareness Campaign against corporal punishment of children in Families*, First Session (1999)2-3.

<sup>203</sup> J.C. Dobson J C, *Dare to discipline*. New York: Bantam Books (1970) cited by E.T. Gershoff, *Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review*, *Psychological Bulletin*, Vol. 128, No. 4, 539-579(2002) 557.

<sup>204</sup> Save the Children, *Awareness Campaign against corporal punishment of children in Families*, First Session (1999)2-3.

<sup>205</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. Cab/Leg/24.9/49 (1990), entered into force Nov. 29, 1999, Preamble.



be emphasized that the current penal provisions on the crime of assault should also be applied to corporal punishment. Both the Penal Code and the Law on Protection of the Child should condemn any form of corporal punishment.

#### **4.4 Reasons for banning corporal punishment**

Having highlighted the effects of corporal punishment on the children, this thesis discusses the reasons for banning corporal punishment once for all. First, would be to decrease societal violence, domestic violence, psychological and mental illness, and drug use, all of which have an alarming effect on a child and on a society as a whole<sup>206</sup>. Furthermore, banning corporal punishment would decrease the death of children associated with it<sup>207</sup>.

The second reason for banning corporal punishment is to prevent family discord and at the same time promote an environment suitable for every member, in particular the child. For this, the Government should use its entire means in order to teach parents about negative effects of corporal punishment.

The third reason for banning corporal punishment is the humanitarian motivation. It appears to be inhuman to cause physical pain to children simply because they are engaged in irritating or recalcitrant behaviour that may be normal and appropriate according to their age. In addition, humanitarian motivation justifies banning corporal punishment based on its impact on the child's cognitive and physical development. It is also worthy to observe that 'it would be unreasonable to afford convicted felons greater protection from corporal punishment based on humanitarian concerns than relatively innocent human beings (the children)<sup>208</sup>'. For instance, the United States Court of Appeal dismissed the claim of pupils who had been physically punished. In dismiss

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<sup>206</sup> Pollard D A, "Banning corporal punishment: A Constitutional analysis"[2002], 458, *American Law Review*, Vol. 52: 447.

<sup>207</sup> See the case of Mukankuranga Chartine, discussed previously. Available at <http://www.nppa.gov.rw/component/content/article/54-top/428-nyagatare-mukankuranga-chartine-afunze-byagateganyo-kubera-kwiyicira-umwana-wimyaka-ibiri-yamavuko.html>, accessed on 11/7/2012 (this case is pending before the court).

<sup>208</sup> Pollard D.A, "Banning corporal punishment: A Constitutional analysis"[2002], 463, *American Law Review*, Vol. 52: 447.

their claim; the Court held that the prohibition of corporal punishment only applies to prisoners<sup>209</sup>.

The fourth reason for banning corporal punishment of children is based on the theory of *parens patriae* power. According to D. A. Pollard, this power consists in the State's limited paternalistic power to protect individual citizens, such as children and mentally incompetent people who cannot effectively protect themselves<sup>210</sup>. This thesis accordingly recommends that the Government of Rwanda should use this power in order to protect children from corporal punishment because they may be financially, mentally and physically unable to protect themselves or to claim their rights.

#### **4.5 Expectations to end corporal punishment**

In order to end corporal punishment in Rwanda, all members of its society, including or especially child-friendly organisations, should take the responsibility to constantly fight against corporal punishment. On this point, it is imperative that the Rwandan community change its attitude towards corporal punishment and finally, the State should pay attention to the voices of children as far as corporal punishment is concerned and strictly apply the law to those who violate it.

Paying attention to children gives effect to their freedom of expression. This right not only reinforces fairness, harmony, and freedom to speak what affect their lives (provided that it is not against public order or good morals), but also the satisfaction that their complaints have been heard by the authorities. Therefore if children denounce corporal punishment, the State has the responsibility to punish the perpetrators of such a practice. In view of these problems discussed above, law reform becomes necessary to ban corporal punishment.

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<sup>209</sup> US Supreme Court, *Ingraham v. Wright*, 430 U.S. 651 ,1977, *Ingraham et al. Wright V et al. Certiorari to the United States Court of Appeals for the Fifth Circuit* , No. 75-6527.

<sup>210</sup> Pollard D A, " Banning corporal punishment: A Constitutional analysis"[2002], 463-466, *American Law Review*, Vol. 52: 447.

#### ***4.5.1 Campaigning against corporal punishment***

The Council of Europe notes that corporal punishment of children has received little media attention compared to other issues such as sexual violence, and labour exploitation of children<sup>211</sup>. It further advises that the issue of corporal punishment should be brought immediately into the public sphere and must be of concern to the entire community. It adds that without raising awareness, it would be difficult to achieve prevention and behavioural change in the society<sup>212</sup> as far as use of corporal punishment is concerned in a broad-based and lasting manner<sup>213</sup>.

The Council further advises that the issue of corporal punishment should be brought into the public sphere through the media: journals, television, and especially radio which many poor people have access to. A change of mind-set and behaviour are therefore necessary to achieve goals that are measurable. Continued improvement is crucial because one is dealing with a human attitude that traditionally uses force to correct loved ones without knowing that in fact offences are committed<sup>214</sup>. Such change requires perseverance and consistency in educating the perpetrators of corporal punishment and those who claim ‘that is my child, he/she knows I love him/her’.

According to MIGEPROF, raising awareness will be done by organising a nationwide awareness through campaign targeting Government, NGOs, development partners and civil society including religious leaders, local leaders, communities, parents, teachers and children to break the culture of silence and secrecy around violence, to promote parent-child dialogue and to change attitudes and practices to promote tolerance and harmony<sup>215</sup>. In order to make that campaign more efficient, the media should be used in sufficient manner and for a long time.

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<sup>211</sup> Council of Europe, *Abolishing corporal punishment of children: questions and answers* (2007) 27.

<sup>212</sup> Council of Europe.

<sup>213</sup> Council of Europe.

<sup>214</sup> Council of Europe.

<sup>215</sup> MIGEPROF, *Conference Book, Kigali* (October 3-4 2011) 61.

Even if the States do not show any will to publicise the problem of corporal punishment and the right of children to be free of mistreatment, many international human rights instruments require them to do so. For instance, the CRC compels States to make the principles and provisions of the Convention widely known, by appropriate and active means, and to reach to adults and children alike<sup>216</sup>.

Indeed, States do have the obligation not to tolerate the use of corporal punishment. The CRC Committee, in its General Comment No 8, disapproves of the tolerance of violence and reinforces the obligation of the eliminate it by all means necessary. The Committee states thus in the General Comment:

*‘Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies<sup>217</sup>’.*

By stating the quotation above, the CRC Committee aimed to highlight 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 to outline the legislative and other awareness-raising and educational measures that States must take<sup>218</sup>. Rwanda is therefore under an obligation to reform its laws as quickly as possible and include an express prohibition of corporal punishment especially in the home. After that reform, it will then move to requesting some organizations, such as civil society or faith-based organisations to help it to sensitize people about that law.

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<sup>216</sup> Convention on rights of child, General Assembly resolution 44/25 of 20 November 1989, article 42.

<sup>217</sup> Committee of 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 (arts. 19; 28, paras 2; and 37, inter alia), para3.

<sup>218</sup> Committee of 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 (arts. 19; 28, para. 2; and 37, inter alia), para. 2.

Public sensitisation has also been strongly recommended by the CRC Committee. In its recommendations, the Committee requests that all States should adopt appropriate measures aiming at abolishing corporal punishment including the launching of public information campaigns ‘to raise awareness and sensitize the public about the severity of human rights violations in this domain and their harmful impact on children, and to address cultural acceptance of violence against children, promoting instead ‘zero-tolerance’ of violence<sup>219</sup>’.

In order to implement those recommendations, Rwanda has initiated gatherings<sup>220</sup> aimed at mobilising State institutions, international organisations and the private individuals to fight for the rights of the child, particularly protection from violence. However, though the meetings are of great importance, the reality is that they are not enough to change minds to a new platform of non-violence. The ideal approach – apart from explicitly banning all corporal punishment in legal texts – would be to concurrently use other channels that reach a larger number of people such as radio debates presenting alternatives to corporal punishment, instructions to all States institutions to fight against violence as is done in the fight against AIDS, etc.

As regards campaigning against corporal punishment, it is crucial to refer to what has been highlighted by Marta Santos Pais, the UN Special Representative of the Secretary-General on Violence against Children. She said that a key recommendation to end corporal punishment is campaigning against it and to prohibit all forms of violence.

She noted:

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<sup>219</sup> Committee of 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 (arts. 19; 28, para. 2; and 37, inter alia), para. 6.

<sup>220</sup> For instance, on 3-4 October 2011 at Kigali Serena Hotel, the Ministry of Gender and Family Promotion (MIGEPROF) in cooperation with UNICEF and other partners held a national conference on ending Violence against Children.

*‘Achieving the prohibition of all forms of violence against children, including corporal punishment, in all settings of children’s lives, was a key recommendation of the UN Secretary-General’s Study on Violence against Children. It remains a crucial priority for my mandate as the Secretary-General’s Special Representative’.*

She added that religious leaders and their communities have a unique moral authority and capacity to speak out and influence social change by raising awareness about the impact of violence on children, by rejecting harmful and violent forms of punishment, and by promoting non-violent discipline and education. She further argued that ‘those religious leaders also have an influential voice in emphasizing that violence against children, whether or not disguised as discipline, cannot be justified or condoned through culture, tradition or faith<sup>221</sup>’.

Rwandan religious leaders, no matter what recent history may be, still enjoy a great deal of influence and moral authority. This is due to the fact that the majority of the population is have deep faith in God. They can therefore be harnessed as effective partners of the State in the fight against corporal punishment.

In Rwanda, apart from sensitising people about the negative effects of corporal punishment, religious leaders may also influence the State to reform its laws in case these are in conflict with human rights or aid the State in enforcing the new law after the reform, by educating people to change their attitudes about corporal punishment.

In Rwanda, apart from religious bodies, the civil society in general also has to play a role to fight against corporal punishment. On this point, it worthy to mention that in April 2012, the Rwandan Civil Society Platform published a report on violence against children and found that:

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<sup>221</sup> Save the Children, ending corporal punishment of children, A handbook for working with and within religious communities (2011) Foreword by Marta Santos Pais, UN Special Representative of the Secretary-General on Violence against Children May 2011.

*'Children parents and foster parents are the biggest number of perpetrators of child abuse in particular corporal punishment and child labour. Police force was also reported among the perpetrators in corporal punishment against children as follows: Parents and foster parents 69%, Police 06%, Teachers 13%, Neighbours 10%, and Others 02%<sup>222</sup>'.*

That report shows that corporal punishment at home has attained an alarming level. It shows that corporal punishment in the home, accounting for 69% of the research sample, is alarming. On the strength of these statistics, the need to ban all forms of corporal punishment in all settings becomes pertinent.

#### ***4.5.2 Changing attitudes towards corporal punishment in Rwandan communities***

Most Rwandans believe that without corporal punishment, a child will not have appropriate or proper education. The sentiments of the general public are illustrated by the views of two parents and one teacher in one of the online newspapers of Rwanda accessible at *igihe.com*<sup>223</sup>. Those views were gathered during a research conducted by that newspaper on how Rwandans feel about abolishing corporal punishment at school and at home.

A 41 year-old mother of five children called Mukamusoni Domithile, does not agree with banning corporal punishment. She argues that beating a child prevents him or her from committing another fault or repeating same. She adds that without corporal punishment, children will adopt undesirable behaviour such as stealing, prostitution, beating other children and insulting other persons.

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222 Baseline study children's perceptions of child protection measures existing at community level in Rwanda , cited by Rwanda Civil Society Platform, the Mapping exercise on Child Protection Programs in Rwanda, Report, 11<sup>th</sup> April 2012 (18).

<sup>223</sup>Igihe 'Kigali:Ngo kuba ababyeyi n'abarezi batemerewe gukubita abana babo byatumye abana baba ibyigenge' available at <http://www.igihe.com/amakuru/mu-rwanda/kigali-ngo-kuba-ababyeyi-n-abarezi-batemerewe-gukubita-abana-babo-byatumye-abana-baba-ibyigenge.html> (accessed on 11/7/2012).

Another parent of seven children named Mukagakwaya Christine argues that corporal punishment is necessary provided that it does not unduly harm a child. To support her idea, she expresses her view that it is not simple to dialogue with a very minor child less than five years, for example, in order to correct him or her through dialogue, but beating him or her will ensure that the fault is not repeated.

Apart from these parents, some teachers do not agree with the abolition of corporal punishment. They affirm that the corporal punishment is a necessity in educating a child. Kayitesi Marie Rose, a teacher with 12 years' experience criticises any idea aimed at prohibiting the use of corporal punishment by teachers. She notes that to do so will result in pupils adopting undesirable behaviours.

It may be concluded from the views noted above that a significant section of the Rwandan population is yet to abandon the use of corporal punishment. To address this challenge, this author is of the view that the following measures should be implemented:

- First, there should be increased public awareness and sensitisation by the government about the negative effects of corporal punishment. On this point, the author notes that if parents continue to be sensitised about the alarming effects of physically punishing their children, they will, little by little, change their minds about using it.
- Second, reviewing the laws prohibiting corporal punishment to ensure greater protection of children. As stated previously, both the Penal Code and Law on protection of the child do not condemn slight corporal punishment. They only condemn severe punishment. Therefore, reform is necessary in order to criminalize any form of corporal punishment.
- Third, support non-state institutions such as NGOs and faith-based organisations in their efforts to abolish corporal punishment. One of the ways to do this is for the Government to grant those institutions free access to State media to convey their messages.



### 4.5.3 Children's voices against corporal punishment

All over the world, the voices of children are raised against corporal punishment<sup>224</sup>. They request States to stop corporal punishment by creating the legislation which abolishes all forms of violence<sup>225</sup>. Many international and regional instruments provide that the child has a right to expression and this implies that his views must be recognised and if valid, implemented by the State. For instance, on international level, the CRC provides that the child has the right to freedom of expression<sup>226</sup>. At regional level the ACRWC provides that:

‘Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws<sup>227</sup>’.

This implies that if the children use their right to expression against the corporal punishment, the State should listen and implement their views. In this regard, reference is made to a Youth Summit in Rwanda where children condemned the use of corporal punishment. This Summit was held in 2011 and gathered the representatives of youth from Sector<sup>228</sup> level to the national level and was held in the presence of key leaders<sup>229</sup>. In that meeting, children recommended that the Rwandan Government should promote a loving family environment for the most vulnerable children (including prevention of family violence and institution of positive parenting)<sup>230</sup>. In the

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<sup>224</sup> Global initiative to end all corporal punishment of children, ending legalized violence against children, prohibiting and eliminating corporal punishment in all alternative care and day care settings(2012) 15.

<sup>225</sup> Global initiative to end all corporal punishment of children.

<sup>226</sup> Convention on Rights of the Child, General Assembly resolution 44/25 of 20 November 1989, article 13.

<sup>227</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999, article 7.

<sup>228</sup> In Rwanda, the Sector is one of the administrative entities of the Republic of Rwanda comes behind the Province and District respectively and is divided into Cells. See in Organic Law N° 29/2005 of 23/12/2005 determining the administrative entities of the Republic of Rwanda *O.G N° Special of 23/12/2005*.

<sup>229</sup> UNICEF, 7<sup>th</sup> National Children's Summit, Children and Equity: Our Contribution to EDPRS (2012) 2. 7<sup>th</sup> National Children's Summit, *Children and Equity: Our Contribution to the EDPRS (2012) 2*.

<sup>230</sup> UNICEF, 7<sup>th</sup> National Children's Summit, Children and Equity: Our Contribution to EDPRS (2012) 5.

same meeting, the children suggested an alternative to corporal punishment. They recommended that the parents should use dialogue and discipline, rather than violence as punishment<sup>231</sup>.

It may be concluded from these examples that in Rwanda children are against corporal punishment. This thesis therefore recommends that the Republic of Rwanda considers the views of children and enact the laws prohibiting any form of corporal punishment. Hosting such conferences is a very good start, but the views expressed by children in these forums must be put into practice.

#### 4.6 Conclusion

In Rwanda children continue to be victims of physical and sexual abuse in their families. They are subjected to battery by their parents, and they experience or witness violence in their schools and communities<sup>232</sup>. It is therefore strongly recommended that Rwanda considers the problem of corporal punishment as serious as any other national human rights issue and thus take any necessary means to stop it.

Indeed, the Minister of Gender and Family Promotion in Rwanda, Aloysie Inyumba said:

‘Violence against children is a challenge globally. The Rwandan Government is strongly committed to the protection of children and works continuously on multiple levels to prevent and respond to violence. However, there is always room for improvement<sup>233</sup>’.

This statement is well appreciated, but by itself, it does not save the affected children from their abusers.

Corporal punishment does not only affect the children who experience it but parents and the society at large as well. Many parents use corporal punishment because they have no other

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<sup>231</sup> UNICEF, 7<sup>th</sup> National Children’s Summit, Children and Equity: Our Contribution to EDPRS (2012)9.

<sup>232</sup> MIGEPROF, “Stop Violence against Children” available at [http://www.unicef.org/rwanda/RWA\\_resources\\_vac2011.pdf](http://www.unicef.org/rwanda/RWA_resources_vac2011.pdf) (accessed 10/9/ 2012).

<sup>233</sup> Republic of Rwanda, Ministry of Gender and Family Promotion: *Rwanda to strengthen action to end violence against children*. Available at <http://www.migeprof.gov.rw/?Rwanda-to-strengthen-action-to-end>, (accessed on 30/8/2012).

means to resolve a conflict with their children over the latter's behaviour. Most feel bad after they have used corporal punishment<sup>234</sup>.

To conclude, this chapter was related to the impact of corporal punishment on the child and family institution. Especially, it was geared towards encouraging efforts in fighting it within the Rwandan context. It has been found that corporal punishment has alarming effects on both a child and the society. Among efforts advocated to fight against corporal punishment in the Rwandan context is the recommendation that the Rwandan community should drastically change its conception and tradition on corporal punishment. The community should be made to understand that corporal punishment is not a proper way to educate children. The State must therefore sensitise all Rwandans to avoid a repeat of the past and get rid of the still strong belief that physical punishment is good for creating a productive nation.

In order to do that and get good results, both children and the Government must recognise that getting rid of corporal punishment is not an easy task, and that multiple strategies are needed. The Sweden experience in outlawing all forms of corporal punishment could be followed. The Swedish government did not just pass the necessary reform. After that reform, it started to sensitise it to the people, by using radios, television and other mass media. In addition to that, the information was printed on milk cartons and a brochure titled '*Can you bring up children successfully without smacking and spanking?*' and was distributed to all households with children and translated into English, German, French, Spanish and various other languages<sup>235</sup>. If the Rwandan government could as well follow a similar approach, it will greatly facilitate public education on the protection of children's rights.

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<sup>234</sup> *Educa, no pegues (Educate, don't hit)*, Ending corporal punishment Spanish campaign leaflet, SC Spain, UNICEF, CEAPA and CONCAPA, 1999.

<sup>235</sup> B. Hindberg, Ending corporal punishment: Swedish experience of efforts to prevent all forms of violence against children – and the results, Swedish Ministry of Health and Social Affairs and Ministry for Foreign Affairs, 2001.

## CHAPTER FIVE: CONCLUSION

### 5.1 FINDINGS AND CONCLUSIONS

The study primarily focused on the legal measures to end corporal punishment of children in the home setting, using Rwanda as a case study. Throughout the research, the researcher tried to answer a number of questions that deal with the issue at hand.

The first question was to examine how Rwandan legislation sustained the use of corporal punishment in the home. The answer to this question lies in the fact that both the Penal Code and Law on Protection of the Child only condemn severe or disproportional corporal punishment. Article 218 of the Penal Code was used as an example to the extent that it punishes only parents who inflict severe suffering or severe punishment to a child. It does not punish the parents, teachers or any person having authority on a child who gives him or her slight punishment<sup>236</sup>. The law on protection of the child has aggravated the problem as it seems to tolerate corporal punishment of children.

As it is, the offence is only to inflict excessive physical punishment, inhuman or degrading treatment, sexual violence, torture, physical or mental violence, negligence, exploitation or negligent treatment of the child. Most of these seem to be 'measurable' by the physical scars they leave on the child.<sup>237</sup> This means that the law implicitly authorises slight corporal punishment<sup>238</sup> as it ignores its negative psychological consequences on the child. In addition to those laws, the Civil Code also gives the parents the right of correction over their children. The problem with this Code is that it does not determine the limits of the right of correction. What

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<sup>236</sup>Organic law N° 01/2012/OL instituting the penal code of 02/05/2012, O G n° Special of 14June 2012, article 218.

<sup>237</sup>Law n054/2011 of 14/12/2011 relating to the rights and the protection of the child: O G n°26 of 25/06/2012, article 3.

<sup>238</sup> On this point, see article 3 and 25 of Law n054/2011 of 14/12/2011 relating to the rights and the protection of the child: O G n°26 of 25/06/2012, and article 218 of Organic law N° 01/2012/OL instituting the penal code of 02/05/2012, O G n° Special of 14June 2012.

constitute 'slight' punishment as opposed to 'severe' is undefined and is left opened to the judgment of the offender himself or herself. Therefore, there is always a great potential of misuse through misinterpretation of that right.

The second question was to identify the international human rights instruments that have been domesticated in Rwanda. To this question, the thesis concludes that Rwanda has ratified many international and regional human rights instruments which implicitly protect the children from corporal punishment. These include: the ICCPR<sup>239</sup>, CRC<sup>240</sup>, ACHPR<sup>241</sup> and the ACRWC<sup>242</sup>. Measures promoted by these treaties seek to prevent a culture of using corporal punishment to correct children. For instance, the CRC obliges States to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, or exploitation, including sexual abuse, under the care of any person who has the care of the child especially parent(s) and legal guardian(s)<sup>243</sup>. In this light, even as Rwanda has ratified all those international and regional instruments, corporal punishment is still tolerated to a large extent, because the country fails to take adequate measures to completely eradicate it. Hence, undertaking legal reform is still necessary in order to fully domesticate these measures.

The third question was to determine the factors accounting for the widespread use of corporal punishment in the home setting. Among many other factors, the design of the current legislation with regard to child protection against violence, the lack of strong institutions to protect

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<sup>239</sup> Rwanda has ratified the International Covenant on Civil and Political Rights through Decree-Law no. 8/75 of 12/02/1975, Official Gazette 1975, p. 230 (F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 39).

<sup>240</sup> Rwanda has adhered to the Convention on Rights of the Child through Presidential Order no. 773/16 of 19 September 1990, Official Gazette 1990, p.1160 (F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 54).

<sup>241</sup> Rwanda has ratified the African Charter on Human and Peoples' Rights through the Law no. 10/1983 of 17/05/1983, Official Gazette 1983, p.343 (F. Reyntjens et J. Gorus, Codes et Lois du Rwanda, 2<sup>ème</sup> édition, Vol. I, (1993) 47).

<sup>242</sup> Rwanda has ratified the African Charter on the Rights and Welfare of the Child on 11/5/2001 (African Union, List of Countries which ratified/acceded to the African Charter on the Rights and Welfare of the Child, available at <http://www.africanunion.org/root/au/documents/treaties/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf>, (accessed on 29/10/2012).

<sup>243</sup> Convention on Rights of Child, General Assembly resolution 44/25 of 20 November 1989, article 19.

children's rights, continued poverty, and the specific history of Rwanda are the main factors that perpetuate corporal punishment. With regard to the first determinant on the design of legislation, both the Penal Code and Law on protection of the child authorise parents to use corporal punishment. For the second determinant, on lack of strong institutions in child's rights protection, the conclusion is that the relevant institutions such as the National Human Rights Commission lack sufficient financial and human resources to carry out their mandate efficiently.

The fourth question was to evaluate the impact of corporal punishment on children, on the family, and on the society. On this point, it is clear that corporal punishment violates children's right to moral and physical integrity. Regarding moral integrity, the Committee on the Convention on the Rights of the Child has stressed the fact that corporal punishment is invariably degrading to children by way of humiliation, threats, or ridicule<sup>244</sup>. Where it causes death, corporal punishment is also a violation of their right to life. Here, the Rwanda National Police reports that the number of children murdered as result of assault was 52 in 2007, 48 in 2008 and 50 in 2009<sup>245</sup>.

The thesis also concludes that corporal punishment has negative effects on society as a whole. Among the consequences of mistreatment at young ages, is the fact that children easily embrace undesirable behaviour and even resort to crime. Consequently, the real development of the country suffers as human resource, time and money are invested in prosecuting crimes committed by persons who tend to crime as a result of the harmful effects of corporal punishment. Building a better society in these conditions becomes hard to achieve. The slogan that 'the future of the country is in the healthy development of the children' seemingly remains a slogan for politicians who want to *look better* but completely empty of any practical significance. In light of these negative consequences, this thesis recommends that Rwanda and all other States

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<sup>244</sup>Committee of 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 (arts. 19; 28, para. 2; and 37, inter alia), para. 11.

<sup>245</sup> MIGEPROF, "Stop Violence against Children" available at [http://www.unicef.org/rwanda/RWA\\_resources\\_vac2011.pdf](http://www.unicef.org/rwanda/RWA_resources_vac2011.pdf) (accessed 29/10 / 2012).

commit to and adopt the strongest measures to end all forms of corporal punishment in the same way, and with the same energy that the endemic disease such as AIDS and Malaria are fought.

The last question to be answered by the thesis concerns the types of legislative measures needed to correct the situation. In response, the thesis recommends that the Government of Rwanda must further amend the Penal Code, Law on protection of children and Civil Code towards explicitly banning any form of corporal punishment in all settings.

## **5.2 RECOMMENDATIONS**

The thesis therefore makes the following recommendations to the Government of Rwanda in light of the conclusions of this study:

- Parliament must without delay amend in particular, the Penal Code, Law on protection of children and Civil Code, and all other relevant laws to expressly prohibit corporal punishment;
- Before, during and after the law reform process, the Government should effectively use the media and other channels of mass communication to sensitise the public about the negative impacts of corporal punishment;
- As part of the law reform, Rwanda should criminalise the use of any form of corporal punishment; and
- The Government should increase the budgetary allocation to the institutions whose mandate it is to fight for human rights in general and child's rights in particular in order to carry out their mandate efficiently.

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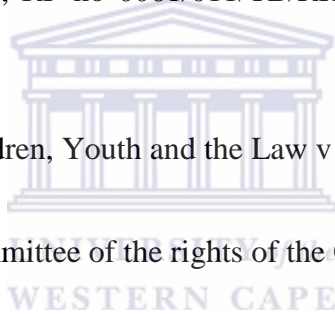
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