

SUBMISSION
To the Justice and Electoral Committee of Parliament
From Amnesty International Aotearoa New Zealand
in support of the
Crimes (Abolition of Force as a Justification for Child Discipline)
Amendment Bill.

The New Zealand Section of Amnesty International (AINZ) is part of a worldwide voluntary movement in support of universal human rights. This submission is presented by **Peter Sutton**, co-ordinator of the Children's Rights Network of AINZ.

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I am a former member of the governance committee of AINZ and was, for two years, national Chair of the organisation. My wife and I have been joint co-ordinators of the AINZ Children's Rights Network since its creation in 2002.

I am a retired Senior Psychologist with the Department of Education and was formerly a primary school teacher and principal. My 21 years experience of psychological practice included work with schools, families, the Department of Social Welfare (now Child, Youth and Family Services) and the Family Court. I was formerly chair of the Family Court Associations in both Dunedin and Nelson.

AINZ supports the Bill because it believes that New Zealand's position as a State party to the UN Convention on the Rights of the Child is incompatible with the provisions of Section 59 of the Crimes Act 1961. AINZ believes that children's right to freedom from violence requires greater protection than that afforded to others. As the weakest and most vulnerable members of society, children are entitled to the greatest level of protection.

1. The UN Convention on the Rights of the Child. (CRC)

1(1). The Convention was adopted by the United Nations on 20 November 1989, signed by New Zealand on 1 October 1990 and ratified on 6 April 1993. It came into force here on 6 May 1993.

1(2) The Preamble to the Convention includes *inter alia* the following passages:
“*Considering that.....recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,*”
“*Recognising that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,*”
“*Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,*”

“Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,”

“Bearing in mind that, as indicated in the Declaration of the Rights of the Child ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.....’”

1(3) Article 3(1) of the Convention reads: *“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 the primary consideration.”* (My emphasis)

1(4) Article 12(1) of the Convention reads: *“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”*

1(5) Article 19(1) of the Convention reads: *“States Parties shall 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, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians or any other person who has the care of the child.”* (My emphasis)

2. Other Human Rights Treaties and Conventions.

2(1) The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights both stress in their Preambles *“the inherent dignity and the equal and inalienable rights of all members of the human family”*.

2(2) The International Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment contains the same wording in its Preamble. Article 16(1) of this Convention reads: *“Each state party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committedwith the consent or acquiescence of a public official or other person acting in an official capacity.”* (Abbreviated by omitting irrelevant material).

3. COMMENTARY

It is clear that the human rights proclaimed and required of States Parties to all of these human rights documents are intended to be equal and inalienable for all members of the human family without regard to age or any other distinction. In fact the treaties make clear that the rights of children to dignity and protection are, if anything, greater than those accorded to adult members of society.

As will be argued later in this submission, physical force applied by adults to children is inherently degrading and disregards their dignity as members of the human family. It always contains the possibility of serious physical hurt or injury. It teaches and reinforces undesirable psychological attitudes and is proven to be ineffective as a method of training or disciplining children.

Amnesty International believes that Section 59 of the Crimes Act is therefore contrary to this country’s obligations under the Convention on the Rights of the Child and calls for its repeal. This is also the attitude of the UN Committee on the Rights of the Child (see Section 4 of this submission).

4. UN Committee on the Rights of the Child, – Report to New Zealand Government – 27 October 2003.

This was the response of the Committee to the New Zealand's second Periodic Report on compliance with the Convention on the Rights of the Child. The relevant section is quoted below:

“Corporal punishment

29. *The Committee is deeply concerned that despite a review of legislation, the State party has still not amended section 59 of the Crimes Act 1961, which allows parents to use reasonable force to discipline their children. While welcoming the Government's public education campaign to promote positive, non-violent forms of discipline within the home, the Committee emphasizes that the Convention requires the protection of children from all forms of violence, which includes corporal punishment in the family and which should be accompanied by an awareness-raising campaign on the law and on children's right to protection.*

30. *The Committee recommends that the State party:*

- (a) Amend legislation to prohibit corporal punishment in the home;*
- (b) Strengthen public education campaigns and activities aimed at promoting positive, non-violent forms of discipline and respect for children's right to human dignity and physical integrity, while raising awareness about the negative consequences of corporal punishment.”*

5. Historical Background

The present legislation is the remnant of the historic attitude that children are the property of their parents, are without rights of their own and can be punished or beaten as their parents wish.

In the early nineteenth century, corporal punishment was also administered legally by masters on their servants, by husbands on their wives, by owners on their animals, and as a form of punishment for lower ranks of the army and the navy and for criminal offenders. In all these situations, the punishment was ordered by a powerful individual of higher status and given to one of lower status and less power.

The twentieth century development of democratic ideas, humane ideals and, more recently, universal human rights has made all of these types of corporal punishment no longer acceptable in New Zealand or in nations with similar backgrounds. The exception to this statement is that the beating of children by their parents is still permitted here. New Zealand has a good start by banning corporal punishment in schools; further progress is now desirable

The development of universal human rights legislation and of the understanding of children's psychological and physical needs have rendered this attitude to children anachronistic. All corporal punishment of children is now legally abolished in eleven countries:- Sweden, Finland, Denmark, Norway, Austria, Cyprus, Latvia, Croatia, Israel, Germany, and Iceland. Several other countries are considering changing their legislation in this direction.

6. The Effect of Corporal Punishment on Children

This is a subject on which there is a great deal of research available. I recommend to the Select Committee that they take the time to read the excellent short book published by Children's Issues Centre of the University of Otago and the Office of the Children's Commissioner: *The Discipline and Guidance of Children: A Summary of Research – June 2004*.

From my reading and my substantial professional experience with children and families, I have reached a number of conclusions:

- Corporal punishment is completely ineffective as a method of training or guidance – it does not provide any direction towards the desired way of behaving;
- Hitting children is a release of frustration and emotion by the parent who, at the time, ignores the best interests of the child;
- The physical punishment of children can be addictive and virtually all cases of children being killed or seriously injured developed from a family culture of hitting which became more damaging with time;
- Corporal punishment teaches children that it is all right to use force to impose your will on someone weaker; it contributes to a culture of violence;
- All adults who were beaten as children do not become child abusers but all child abusers were themselves abused physically or sexually as children;
- Hitting children is an attack on their dignity and self esteem – they feel the same as adults do when attacked; children report their resentment and feelings of unfairness after being hit;
- Children who were beaten tend to become parents who beat their own children.

In view of the recommendation of Article 12 of the Convention on the Rights of the Child, I believe that children's comments on the subject (as recorded in two studies in Scotland (1) and in New Zealand (2)) should be heard. A summary of these children's statements includes:

- *They feel hurt when they are smacked, both physically and mentally;*
- *Only a minority are smacked when they are facing immediate or potential danger;*
- *Smacking interrupts children's behaviour, but has many other negative associated effects – children say that they did not like their parents any more, they felt angry, upset, grumpy, unloved and sad after being smacked and, for many, smacking made them more naughty.*

Other researchers (3) included the following statement in their conclusions:

“The effective protection of children, however, like that of women, requires not only a legal prohibition of violence against them, but a challenging of prejudice against them and a strengthening of their power position. Adult power and convenience need to be disentangled from assumptions about children's best interests. Adult might is neither right nor a ‘right’. The protection of children involves challenging the coercive power of parents and recognising the moral and practical value of children's own reasoned resistance to parental violence and coercion.”

7 Section 59 of the Crimes Act.

- 7(1). The Section sends a message to parents and care-givers that violence against children is countenanced by the law provided it is “reasonable” This is clearly contrary to the Government’s public education programme which advocates non-violent methods of child rearing.
- 7(2). The use of this Section as a defence against charges of abuse has resulted in the acquittal of people who have beaten their children with hose pipes, leather belts, pieces of timber, or, most recently, a cane and a riding crop. In several cases, there has been clear medical evidence of the seriousness of the assault.
- 7(3). Most of the acquittals have been in jury trials and result from the juries perception of what is “reasonable” force. Judges in the High Court and the Appeal Court have usually had a different attitude towards child beating and were less likely to acquit. Clearly the definition of “reasonableness” is a subjective and imprecise factor leading to wide variations in the application of justice.
- 7(4). Section 59 indicates that children in New Zealand have a lower level of protection from assault than other members of the community. No other group of people is exposed to gratuitous legal violence in the same way.
- 7(5). This situation is contrary to New Zealand’s commitments under the Convention on the Rights of the Child and other UN Human Rights Treaties (See sections 1 and 2 of this submission). This has been clearly recognised by the UN Committee on the Rights of the Child which has twice called for the repeal of this Section of the Crimes Act.

8 Possible Alternatives to Repeal

The most commonly suggested alternative to the repeal of Section 59 is the definition of what is to be regarded as acceptable levels of force to be used against children.

Amnesty International rejects this suggestion because it does not deal with the issue of children’s absolute right to protection from violence. It treats children as inferiors in a way contrary to the requirements of the relevant UN Human Rights Declarations and Conventions.

Also any level of violence against children carries unacceptable risks of causing physical injury and certainly answers none of the difficulties caused by corporal punishment listed in section 6 of this submission.

Others suggest that the Government programme of public education is adequate and will, eventually, result in a reduction of corporal punishment. Amnesty International cannot accept this suggestion.

Any campaign to change traditional (and harmful) public attitudes requires both components – an informative education programme and legal sanctions. Could the Committee imagine a road safety campaign without the legal prohibition of drink driving or excessive speed? The fact that drivers can claim that they have often driven under the influence of alcohol or at speed without causing any harm would not be accepted. Neither should the assertion that a person was given corporal punishment as a child and that it “did them no harm”.

9 RECOMMENDATIONS

Amnesty International NZ makes the following recommendations on this Bill:

- That Section 59 of the Crimes Act 1961 be repealed;

- That ongoing Government education campaign promoting positive, non-violent discipline be continued and increased;
- That the programme should aim at the total abolition of all forms of corporal punishment, including smacking, after a period of five years.

General References

1. Convention on the Rights of the Child, United Nations General Assembly, (1989)
2. Universal Declaration of Human Rights, United Nations General Assembly(1948)
3. International Covenant on Civil & Political Rights, UN General Assembly,(1966)
4. International Convention Against Torture & Other Cruel, Inhuman Or Degrading Treatment or Punishment, UN General Assembly, (1984)
5. The Discipline and Guidance of Children; A Summary of Research, Children's Issues Centre, Univ.of Otago & Office of the Children's Commissioner, (2004).

Specific References

- (1) Willow, C. & Hyder,T.(1998) *It hurts you inside:Children talking About Smacking*, London, National Children's Bureau Enterprises in assoc. with Save the Children.
- (2) Dobbs, T. (2003) *The missing voice;What are children's views on physical punishment*. Dunedin, Research report, Univ. of Otago, and Save the Children.
- (3) Phillips, B. & Alderson, P. (2003) *Beyond 'anti-smacking'; Challenging violence and coercion in parent-child relations*, The International Journal of Children's Rights, 11, pp193-194.

(All cited in The Discipline & Guidance of Children, see 5 above)

Please note that I would appreciate the opportunity to speak to this submission and to respond to any questions Committee members may have.