

**PROHIBITION OF CORPORAL PUNISHMENT IN INTERNATIONAL LAW:  
ANALYSIS OF LEGAL DEFENCES AND JUSTIFICATION\***

Abstract

The effort of international organisations to prohibit the use of corporal punishment on children has not *been without controversies*. This study analyses the issues surrounding the prohibition of corporal punishment on minors. One of such issues relates to the 'reasonable chastisement' defence, an old legal justification for applying corporal punishment on a child. Such defence is no longer tenable under the purview of international law. In addition, the lawful use of force for the purpose of correcting a child under the Nigerian Criminal Code, Penal Code and Sharia code respectively is a violation of international human rights law. Researches by international experts have indicated that physical punishment involves the use of corporal punishment. Furthermore, surveys by the United Nations have further proven corporal punishment as the most common form of violence against children. Hence, the prohibition of corporal punishment under international law aims to protect and promote respect for the human dignity of a child as enshrined under the Convention on the Rights of a child. Corporal punishment as a means of correction no longer holds ground under International human rights Law. Therefore legal reforms should include a creative way of correction that will not violate a child's human dignity.

**Keyword:** Corporal punishment, Prohibition, Legal justification, Violence, International human rights, Reasonable chastisement

**1. Introduction**

There has been a paradigm shift in the international community. It focuses on the protection for the human dignity and integrity of a child through the prohibition of corporal punishment in all settings. In other words, a child has the right to have his dignity respected just like an adult. As a result, Corporal Punishment as a topic has attracted international attention because it concerns the human right of a child. A whole lot of research has gone into the study. Corporal punishment is widely accepted in public schools and often used as a means of inflicting pain on school children. The severity of the punishment on children has created a lot of devastating effect on the child, thus creating a major concern for the international community. Therefore in an effort by the United Nations to stop violence against children, it has prohibited all forms of corporal punishment. In spite of this, a lot of controversies have surrounded the prohibition of corporal punishment to date. Against this background, the purpose of this paper is a call to embrace new thinking and eliminate all legal justification for the use of corporal punishment on children. This paper derives inspiration from the interpretations of Article 19 of the Convention on the Rights of a Child, United Nations country report and the Global Initiative to End all Corporal Punishment of Children. It serves as a reorientation of the already established belief that corporal punishment is the best way to correct a child. It is believed that this study will make our policymakers in Nigeria to remove certain provisions that condone the use of physical punishment as a means of correction.

**2. Definition of Corporal Punishment by International Human Rights Standards**

The word Corporal is from the Latin word *Coporalis* which means 'pertaining to the body' or 'of the body, physical, strong'.<sup>1</sup> Therefore another word for corporal punishment is the body or physical punishment. It is clear from this definition that corporal punishment is calculated to cause bodily pain. However corporal punishment does not only deal with inflicting pain but, it also involves other methods of discomforts. It has been pointed out by writers that 'any excessive discomfort such as forcing a child to stand for long periods of time, confining one in an uncomfortable space, or forcing a child to eat obnoxious substances'<sup>2</sup> also amounts to corporal punishment.

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\*By **Oluwakemi ODEYINDE, LLM (Lagos), LLB (Ibadan)**, Lecturer, Centre For Foundation Education, Bells University of Technology Ota, Nigeria. E-Mail: Kemiodeyinde@Gmail.Com. Phone: 08178312706; 08056682060

<sup>1</sup><<https://www.etymonline.com/word/corporal>> accessed 3 July 2019

<sup>2</sup>C. Glenn 'Corporal Punishment: The Need for a Historical Perspective' *History of Education Quarterly*, (1983) 23(1), 91-97

Under International law, the Convention on the Rights of the Child 1989 (hereinafter referred to as CRC)<sup>3</sup> is the most ratified international treaty on the rights of a child. It does not mention the word corporal punishment. However, the committee on the CRC, which is the authoritative body charged with the interpretation and the implementation of the convention, defines corporal punishment as:

any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involve hitting ('smacking', 'slapping', 'spanking') children, with the hand or with an implement - a 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).<sup>4</sup>

The above definition lists some types of corporal punishment which includes 'smacking', 'slapping', 'and spanking'. Likewise, the committee mentions other non-physical punishment as corporal punishment. Such as 'which belittles, humiliates, denigrates, scapegoats threatens, scares or ridicules the child'.<sup>5</sup> In other words, international human rights standards clearly show zero tolerance for corporal punishment however light. According to the human rights perspective, all corporal punishment is degrading.

### 3. The historical basis for the development of corporal punishment

Historically corporal punishment is mostly practised on minors in schools and at homes. Cultural and Faith-based practices have over time favoured corporal punishment as the best method for the discipline of children. Accepted Cultural practices for instance, by itself, forms our belief systems. Therefore it is believed that discipline is a necessary requirement for good upbringing. Corporal punishment has become the norm and has been used in many countries of the world. Parents grew up with these practices as their own parents also disciplined them physically. These practice of corporal punishment apparently passed on from one generation to the other. Alternatively, in the faith-based practices, corporal punishment can be traced to the 10<sup>th</sup> century BC, where Solomon admonishes parents in the book of Proverbs: 'He that spareth the rod hateth his son, but he that loveth him, chasteneth him betimes'<sup>6</sup>. In addition, he says, 'Withhold not correction from the child; for if thou beatest him with a rod, thou shalt deliver his soul from hell'<sup>7</sup> In other words, beating is viewed as a biblical injunction which many in Christendom follow. Similarly, in Islam, a parent is allowed to 'smack' a child who refuses to pray.<sup>8</sup> The religious beliefs are based on the notion that the devil in a child cannot be subdued with words alone. These religious practices have over thousands of years justified the application of physical punishment on children. However, the United Methodist Church was the first denominational church to take a stand against corporal punishment.<sup>9</sup> In its resolution passed in 2004 and later renewed in 2012, the church condemned corporal punishment on Children. It regarded it as 'humiliating and degrading to children.'<sup>10</sup> A second resolution was passed by the Presbyterian Church USA in 2012.<sup>11</sup> On the whole, human beings are predominantly religious and culturally oriented by nature and therefore disciplining a child by canning or other means seemed to create a sense of obedience to biblical and cultural practices

Corporal punishment became a justifiable form of correction on a child; however, the arbitrary manner in which it has been administered became a global concern. Corporal punishment degenerated into another level of aggravated assault. Children were constantly abused and suffered injury. The life of the child became threatened, thus initiated the idea of safeguarding the human rights of a child. The morality of physical punishment on a child became

<sup>3</sup> UN General Assembly Convention on the Rights of the Child 1989 (Entry into force 1990) <<https://www.refworld.org/docid/3ae6b38f0.html>> accessed 3 July 2019

<sup>4</sup> UN Committee on the Rights of the Child (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)* <<https://www.refworld.org/docid/460bc7772.html>> accessed 3 July 2019

<sup>5</sup> *Ibid*

<sup>6</sup> Proverbs 13:24 King James Version of the Bible(KJV)

<sup>7</sup> Proverbs 23:13 KJV

<sup>8</sup> Abu Dawood (459) and Ahmad (6650)

<sup>9</sup> R Swan 'Religious Attitudes on Corporal Punishment', <[http://childrenshealthcare.org/?page\\_id=146](http://childrenshealthcare.org/?page_id=146)> accessed 4 July 2019

<sup>10</sup> Petition 20129 adopted by a vote of 879-25 at the United Methodist Church General Conference in 2012

<<http://childrenshealthcare.org/wp-content/uploads/2010/11/UMC-resolutions.pdf>> accessed 4 July 2019

<sup>11</sup> *Supra* note 10

questionable. It became a major topic for human rights activists. With a whole lot of deliberations and evidence of physical abuse and violence on the child, it became mandatory to take steps to abolish this whole concept of corporal punishment. Instigated by the prevalence of violence in the form of corporal punishment against children, international human rights standards have made it a major duty to ensure the prohibition of corporal punishment on children. Despite the call by the international community to ban corporal punishment, people still tend to justify its use. The major challenge for international human rights experts has been the legal defences that are condoned by many countries to justify corporal punishment. These defences shall be considered.

#### **4. Legal Defences for the Justification of Corporal Punishment**

In the criminal law parlance, any strikes, touches, or moves or any force of any kind applied to a person without his consent is an act of assault.<sup>12</sup> Such an act is an offence and prohibited under criminal law. However, for many years corporal punishment has been legal in many countries through cultural practices and the common law defence for charges against parents or teachers who strike their children for the purpose of correction. The legal defence for the use of corporal punishment originated from English law which shall be discussed.

#### **The English Common Law ‘reasonable chastisement’ defences for Corporal Punishments**

Over the years the common law defence of ‘reasonable chastisement’ has always been adopted as a justification for the use of corporal punishment. This can be traced to the much-publicised case of *R v Hopley*<sup>13</sup> in England in the 19<sup>th</sup> century. In that case, the Court of Queen’s Bench stated as follows:

By the law of England, a parent or a schoolmaster (who for this purpose represents the parent and has the parental authority delegated to him), may for the purpose of correcting what is evil in the child, inflict moderate and reasonable corporal punishment, always, however, with the condition, that it is moderate and reasonable. If it be administered for the gratification of passion or of rage, or if it be immoderate or excessive in its nature or degree, or if it be protracted beyond the child's powers of endurance, or with an instrument unfitted for the purpose and calculated to produce danger to life and limb: in all such cases the punishment is excessive, the violence unlawful, and if evil consequences to life or limb ensue, then the person inflicting it is answerable to the law, and if death ensues it will be manslaughter.<sup>14</sup>

The above decision established the common law defence of ‘reasonable chastisement’ as a reason for engaging in corporal punishment. Although today corporal punishment has been banned in schools in Britain after this case, the phrase ‘reasonable chastisement’ became the defences to the charges of corporal punishment. Subsequently, it was incorporated into the Children and Young Persons Law 1933<sup>15</sup> and is still today used as a legal defence for corporal punishment. In the house of lord debates by parliament to amend the reasonable chastisement clause it was stated that the ‘battery of a child cannot be justified in any proceedings on the grounds that it constituted lawful punishment.’<sup>16</sup> However it went ahead to state that

battery of a child is not unlawful if the act amounts to the use of reasonable force in order to—  
(a) avert an immediate danger to the child or any other person; (b) avert an immediate danger to property; or (c) prevent the commission of a crime, or an act which would be a crime if the child had reached the age of criminal responsibility.<sup>17</sup>

This clearly does not remove the reasonable chastisement defence in spite of the amendment. Consequently, Section 58 of the United Kingdom Children’s Act merely limited the use of the reasonable chastisement but did not completely abolish it.<sup>18</sup> When Ireland took the lead in abolishing the reasonable chastisement defence, it stated that

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<sup>12</sup> *Eneji v. The state* (2013) LPELR-20393(CA)

<sup>13</sup> *R v Hopley*, (1860) 2 F&F 202. This is an English case commonly referred to as the ‘Eastbourne Manslaughter’ case where a school teacher who had caned a child died afterwards.

<sup>14</sup> This is the summary of the decision given by Alexander Cockburn

<sup>15</sup> The Act was amended in 1963, 1969 and 2008

<sup>16</sup> ‘Reasonable Chastisement Defence’ Hansard 1805- 2005

<<https://api.parliament.uk/historic-hansard/lords/2004/may/20/reasonable-chastisement>> accessed 4 July 2019

<sup>17</sup> *Ibid*

<sup>18</sup> ‘Review of Section 58 of the Children Act 2004’

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/344503/Review\\_of\\_Section\\_58\\_of\\_the\\_Children\\_Act\\_2004.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/344503/Review_of_Section_58_of_the_Children_Act_2004.pdf)>

‘England has been responsible for rooting this legal defence in over 70 countries and territories throughout the world’<sup>19</sup>.

However, the United Nations has condemned the use of reasonable chastisement defence as incompatible with the obligations of state parties to protect the rights of a child as contained in the CRC. Similarly, a landmark case of *A v United Kingdom*, in 1998<sup>20</sup> which involved a minor who had been punished with a garden cane by his stepfather. He was charged with assault occasioning actual bodily harm. The stepfather claimed the common law defence of reasonable chastisement and was acquitted on that charge. However, A took the matter to the European Court of Human Rights. The court rejected the reasonable chastisement defence as a failure to protect the right of the said child and therefore a violation of Article 3 of the European Convention on human rights which guarantees freedom from ‘torture, inhumane, or degrading treatment’. The European court was of the view that the step father’s treatment (i.e. canning the child several times) was severe and beyond the sufficient scope of reasonableness. He was found by the court to have violated Article 3 because of the severity of the punishment. Although the United Kingdom has reviewed the ‘reasonable chastisement’ defence it has not completely abolished it.<sup>21</sup> Similarly, in a Canadian case, the use of force on a child was justified on the following grounds: ‘(1) The force must be intended to actually correct the child’s behaviour. (2) The force cannot result in harm or the prospect of harm.’<sup>22</sup>

Similar to the reasonable chastisement defence, there is a widespread acceptance of a certain degree of physical punishment on children. However, whether the word ‘reasonable’ is used or not, the general notion is to justify corporal punishment in some way as to correct a child’s misbehaviours. Although many may not justify its use in the context of the common law defence, however, the basis has always been to administer some measure of discipline that will correct a child and not harm him either physically or psychologically. In any case, the underlying justification for administering corporal punishment is for the upbringing of the child. Apart from the legal justification for the use of corporal punishments, there are others such as the faith-based justification. Although everyone as the freedom to religious or traditional beliefs, it should however not infringe on the human dignity of a child.<sup>23</sup>

### **Legal Defences for the prohibition of Corporal Punishment in Nigeria**

Nigeria is a party to the United Nations Convention on the Right of a child. It has domesticated this convention as the Child Rights Act 2003. By Section 221 (1b) of the Act, no child is to be subjected to corporal punishment. In spite of this provision, Section 295 of the Criminal Code Act (South), Section 55 of the Penal Code Act (North) and the Shari’a penal codes in the northern states still permit corporal punishment. These various Acts still justify some measures of corporal punishment in the discipline of children so long as it does not cause grievous bodily harm. Section 295(1) of the Criminal Code Act allows the use of ‘a blow or force’ to be justifiable for the purpose of correction, although it must not be unreasonable. It further states that ‘no correction can be justified in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted.’<sup>24</sup> Similarly, Section 55 of the Penal code provides that ‘Nothing is an offence which does not amount to the infliction of child, pupil, grievous hurt upon a person and which is done by a parent or guardian for the purpose of correcting his child....’

The above provisions are all legal defences to the use of corporal punishment. Quite contradictory in these provisions is the statement that no correction that is unreasonable is justifiable.<sup>25</sup> How does one distinguish a reasonable and unreasonable correction in such circumstances? What seems reasonable to a particular person may be considered unreasonable to another. Clearly justifying the use of force for the purpose of correction in the criminal code Act presents a legal defence for corporal punishment. This clearly negates the human right guiding

<sup>19</sup> ‘Ending Legalised Violence against Children’ p.6

<[https://resourcecentre.savethechildren.se/sites/default/files/documents/global\\_report\\_2015\\_singles.pdf](https://resourcecentre.savethechildren.se/sites/default/files/documents/global_report_2015_singles.pdf)> accessed 4 July 2019

<sup>20</sup> 1998 2 FLR 959

<sup>21</sup> Council of Europe: Commissioner for Human Rights, *Children and Corporal Punishment: ‘The Right not to Be Hit, Also a Children’s Right’*, (2006)1Rev p.5

<<https://rm.coe.int/children-and-corporal-punishment-the-right-not-to-be-hit-also-a-childr/16806da87b>> accessed 4 July 2019

<sup>22</sup> *Canadian Foundation for Children, Youth and the Law v. Attorney General in Right of Canada* (2004) 1 S.C.R. 76,

<sup>23</sup> CRC General Comment No.8 (n. 4) paragraph 29

<sup>24</sup> Criminal Code Act s. 295(6) Cap C38 LFN 2004

<sup>25</sup> Penal Code Act s. 55(2) Cap 53 LFN 1990

principles which disallow any form of force however light. In addition, the justification for the use of force to correct a child under the criminal code goes against the principles of human rights that ‘no violence against a child is justifiable.’

In a country report by the federal government on the issue of violence against children in Nigeria, it was indicated that Section 221 (1b) of the Child Rights Act 2003 which prohibits corporal punishment in Nigeria now ‘constitutes an assault or battery or causing grievous harm to the child.’<sup>26</sup> And yet Section 295 of the Criminal Code Act (South), Section 55 of the Penal Code Act (North) and the Shari’a penal codes in the Northern states still condone corporal punishment. Although it was noted in that same report that there is the need to review the existing legislation which allows corporal punishment, there seems to be some inconsistency between the Child Right Act and these two Acts. The Child Right Act is a federal Act which is adopted in Nigeria. States which have adopted the Act are yet to modify these provisions, therefore leaving room for conflict in laws. However, where an international treaty which has been domesticated into a federal law conflicts with state law on the same subject matter, the courts have held that the provisions of the international treaty will prevail over those of other statutes.<sup>27</sup> The international human rights standards are clear with its mandate that there is no legal basis whatsoever for engaging in physical punishment however mild.<sup>28</sup> Whether the purpose of the punishment is for correction does not amount to a legal defence to corporal punishment. The provisions of Section 295 of the Criminal Code Act (South), Section 55 of the Penal Code Act (North) which allows ‘lawful correction’ has been described as ‘assault disguised as discipline or control’<sup>29</sup> This provisions clearly violates Article 11 of the Child Rights Act 2003 which states that every child has a right to the respect of his human dignity and no child should be ‘subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse... torture, inhuman or degrading treatment or punishment’

### **Judicial Corporal Punishment in Nigeria**

Similarly, judicial corporal punishment which is the use of corporal punishment to serve a sentence by a court of law is very common in Nigeria. For instance, under the Criminal Procedure Act, a child who has committed a criminal offence is subjected to probation, fine or corporal punishment.<sup>30</sup> There are a number of reports in Nigeria concerning cases of minors who are caned for committing an offence. In Bayelsa state, a 17-year-old boy who escaped prison was given 40 strokes of the cane.<sup>31</sup> Likewise in 2011, a magistrate court in Ado Ekiti gave an order that a student of the University of Ado Ekiti is given six strokes of the cane.<sup>32</sup> The reason for the order was as a result of the offence of stealing. The student had allegedly stolen a mobile phone from one of his colleagues. Although he was arraigned on a one-count charge for the offence of stealing, the magistrate ordered him to be caned until a further hearing. According to the magistrate court, the act of canning was in accordance with the ‘provisions of Section 390 (a) of the criminal code, cap 30, volume 2, laws of Ondo-State as applicable to Ekiti.’<sup>33</sup> Similarly in Osogbo, an 18-year-old was convicted on a two-count charge for stealing. He was given a sentence of three years with hard labour and still ordered to be given 10 strokes of the cane.<sup>34</sup> The question is why should a person be subjected to physical punishment when he has already been served a sentence for the offence? Also in Akwa Ibom, children aged 17 are sentenced as adults and subjected to corporal punishment under the Criminal code 1916 and criminal procedure Act 1945.<sup>35</sup> From the above, we see that judicial corporal punishment is widely practised in the western states. The case is particularly worse in the northern parts of Nigeria. For example, in 2017, two teenagers, 14 years of age were

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<sup>26</sup> Federal Ministry of Women’s Affairs Abuja ‘Federal Government of Nigeria Country Report on Violence Against Children’ 2004

<<https://www.ohchr.org/Documents/HRBodies/CRC/StudyViolenceChildren/Responses/Nigeria.pdf>> accessed 4 July 2019

<sup>27</sup> *Abacha & Ors v Fawehinmi* [2000] 6 NWLR (Pt.660)228

<sup>28</sup> CRC General Comment No. 8 (n.4) paragraph 11

<sup>29</sup> ‘Global Initiative To End All Corporal Punishment of Children’

<<https://endcorporalpunishment.org/reforming-national-laws/>> accessed 4 July 2019

<sup>30</sup> Criminal Procedure Act s. 419 (2) Chapter 80 Laws of the Federation of Nigeria 1990

<sup>31</sup> ‘Teenager Who Escaped Police Detention Sentenced To 40 Strokes of The Cane, 6 Weeks Of Community Service’ *Sahara Reporters, New York* October 4, 2017 <<https://www.corpun.com/17archive/ngj01710.htm>> accessed 4 July 2019

<sup>32</sup> ‘Court orders that undergraduate be flogged for theft’ *The Daily Times, Lagos* August 3, 2011

<<https://www.corpun.com/11archive/ngj01108.htm>> accessed 4 July 2019

<sup>33</sup> *Ibid*

<sup>34</sup> ‘Ex-Convict Bags 3-year-Jail Term For Stealing’ *The Osun Defender Osogbo* August 4 2011

<<https://www.corpun.com/11archive/ngj01108.htm>> accessed 4 July 2019

<sup>35</sup> A child is defined in Akwa Ibom as anyone under the age of 16 years; CRIN, ‘Inhuman sentencing of children in Nigeria’ (2013)

<<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=47&file=EnglishTranslation>> accessed 4 July 2019

ordered by the upper area court in Nassarawa state to be given 7 strokes of the cane for assaulting and injuring a man.<sup>36</sup> In Jigawa state once a child has reached puberty; he is treated as an adult. Therefore he or she may be sentenced to corporal punishment at the age of puberty under the Sharia Penal Code 2000 and the Sharia Criminal Procedure Code Law 2001. States who have not domesticated the Child Rights Act are governed by the Children and Young Persons Law. Most states in the north have not enacted the Child right Act, as such, the Children and Young Persons Law allows children to be sentenced to corporal punishment. According to Article 9 of the Children and Young Persons Law, ‘Where a juvenile charged with any offence is tried by a court, and the court is satisfied with his guilt, the court may ... (f) order the offender to be whipped.’ From all this, we see that judicial corporal punishment is very common in Nigeria courts. This is not in conformity with international human rights standards which prohibits corporal punishment in judicial settings. The committee responsible for the implementation of the child rights convention has expressed major concerns. The Committee has stated such concerns in its reports about:<sup>37</sup>

(a) articles 9 and 11 (2) of the Children and Young Persons Law which provides for the sentencing of juvenile offenders to whipping and corporal punishment;(b) article 18 of the Criminal Code which provides for whipping; (c) article 55 of the Penal Code which provides for the use of physical corrective measures; (d) Shariah legal code to children prescribing penalties and corporal punishment such as flogging, whipping, stoning and amputation, which are sometimes applied to children; and (e) legal provisions that tolerate, if not promote, corporal punishment at home, in particular article 55 (1)(a) of the Penal Code and article 295 of the Criminal Code.

Based on this, the international human rights standards have stated that treatment administered to children who are in conflict with the law must conform to the child’s sense of ‘dignity and worth’ Children, like an adult, must be protected from violation of their human dignity. Therefore a lot of our laws in Nigeria are a complete disregard for international human rights principles. It seems that no effort is being put in place by our policymakers to protect the human rights of a child. The barbaric nature of our laws which justify the infliction of pain on a minor goes to prove this. In essence, laws which provide legal justification for corporal punishment need to also be repealed.

## 5. Human Rights Arguments to Support the Prohibition of Corporal Punishment

For a number of years, the courts have tried to differentiate the thin line between the reasonable and unreasonable form of punishment. Of course, this has created more justification for the use of corporal punishment. Physical punishment no doubt inflicts pain on the child and does create a lot of psychological effect on the child’s development. The question then is, can inflicting pain on a child be found to be reasonable or justifiable? With the intervention of international human rights law, it became clear that this line cannot be drawn. Therefore it became necessary to protect the rights of a child by complete removal of any justification for the use of corporal punishment. The rationale for prohibiting corporal punishment was stated in the general comments on the convention on child rights.<sup>38</sup> The key issue was the extent of violence being meted out to children. Children just like adults have the same human rights and should not to be subjected to any form of pain or injury. This line of thought seems to be quite logical considering the fact that an adult will not allow himself to be subjected to any pain except it is forced on him. Just as it is strange for a man to beat up his wife thereby giving rise to domestic violence, to the international community, this line of thought should also apply to the child. International law seek to protect human right which is the basic necessity of life, it seems understandable why there are so many advocacies against corporal punishment.

An official study was conducted by the United Nations Secretary-General to determine the extent of violence on children.<sup>39</sup> In the study, it was discovered that violence against children is prevalence in all parts of the world. Furthermore, it particularly established the fact that violence was allowed has a form of punishment in most part of the country. According to a survey by the World Health Organisation the majority of children are physically abused

<sup>36</sup> ‘Two teenagers get 14 strokes of the cane for assaulting, injuring man’, *The Nation, Lagos*, August 11, 2017 <<https://www.corpun.com/17archive/ngj01708.htm#26619>> accessed 4 July 2019

<sup>37</sup> Global Initiative to End All Corporal Punishment of Children, ‘Country Report of Corporal Punishment in Nigeria’ (2019) p. 7 <[www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)> accessed 4 July 2019

<sup>38</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 13 (2011): The right of the child to freedom from all forms of violence* p.3 <<https://www.refworld.org/docid/4e6da4922.html>> accessed 4 July 2019

<sup>39</sup> ‘United Nations Secretary-General’s Study on Violence Against Children Adapted for Children and Young People’ <[https://www.unicef.org/violencestudy/pdf/Study%20on%20Violence\\_Child-friendly.pdf](https://www.unicef.org/violencestudy/pdf/Study%20on%20Violence_Child-friendly.pdf)> accessed 4 July 2019

in schools. This and many other studies by the United Nations and International experts have reached the conclusion that ‘no violence against children is justifiable; all violence against children is preventable’ The United Nations made it clear in its report that tradition or discipline should not be used as a justification for physical punishment on a child. As a result of all these findings, state parties are encouraged to prohibit all forms of corporal punishment. Therefore Corporal punishment as a human right issue violates international human rights standards.

Moreover, in an effort to fight violence against children, the international community has named corporal punishment to include ‘fatal and non-fatal physical violence’<sup>40</sup> The Global Initiative Against all forms of violence against Children states that corporal punishment is ‘the most common violence against children’<sup>41</sup>. According to the statistics by the United Nations Children’s Fund (UNICEF), almost three hundred million children between the ages of 2 and 4 suffer from violence through discipline every year.<sup>42</sup> From the analysis of international organisations, the method of discipline seems to be a major factor. It encompasses ‘All corporal punishment and all other forms of Torture, Cruel, Inhuman or Degrading Treatment or punishment’ as provided in Article 19 of the CRC.

Equally important is the fact that children possess the same right as an adult and should therefore not be subjected to any kind of physical punishment. In addition, the vulnerability of the child presents a solid basis for the argument against corporal punishment. Their fragile nature gives a tenable reason for their protection under human rights law. On the final analysis, it seems logical to say that the idea of banning corporal punishment became more profound when physical punishment became severe on children. The major aim of the United Nations and other international bodies has been to ensure that state parties take measures to eradicate violence on children. For the international community, a call to abolish capital punishment was a step in the right direction. Consequently, 54 states have abolished corporal punishment in all areas so far.<sup>43</sup>

## **6. Relevant International Legal Provisions on the prohibition of corporal punishment**

The United Nation Convention on the Rights of the Child is the principal instruments that relate to the human rights of a child. It has also being domesticated into Nigerian law as the Child Rights Act 2003. The relevant provisions that create an obligation upon state parties to prohibit corporal punishment under the convention are Art 19(1), Art 28(2) and Art 37. Article 19(1) provides that:

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 guardian(s) or any other person who has the care of the child.

Article 19 is, therefore, the primary key to eradicating all forms of violence against children. In addition, it was discovered by the international human rights standard that there seems to be a link between corporal punishment and violence. Accordingly, dealing with issues of violence is the major rationale behind the prohibition of corporal punishment. Therefore the aim of the international human rights standard is to strengthen the measures that will put an end to violence among children.<sup>44</sup> One primary way it plans to accomplish this is to put an end to all forms of corporal punishment. Therefore under international human rights standards addressing and putting an end to all forms of corporal punishment against children is the major obligations of state parties. There are certain basic human rights principles upon which the prohibition of corporal punishment stands. Firstly, ‘Children have a right to legal protection from corporal punishment’<sup>45</sup>Such legal protection is a human right issue that does not even require proof.<sup>46</sup>

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<sup>40</sup> CRC General Comment No. 13 (n. 37) paragraph 22

<sup>41</sup> Global Initiative To End All Corporal Punishment of Children (2015) p.1

<https://www.who.int/topics/violence/Global-Initiative-End-All-Corporal-Punishment-children.pdf> accessed 4 July 2019

<sup>42</sup> UNICEF ‘Violent Discipline’ p.1 <<https://data.unicef.org/topic/child-protection/violence/violent-discipline/>> accessed 4 July 2019

<sup>43</sup> ‘Global Initiative to End All Corporal Punishment of Children’

<<https://endcorporalpunishment.org/countdown/>> accessed 4 July 2019

<sup>44</sup> CRC General Comment No. 13 (n. 37) paragraph 2

<sup>45</sup> Global Initiative to End All Corporal Punishment of Children ‘Prohibiting corporal punishment in schools: Positive responses to common arguments’(2009)

<<https://www.unicef.org/ecuador/Schools-briefing-2009.pdf>> accessed 4 July 2019

<sup>46</sup> Ibid at p.1

Secondly is the right of a child to have his human dignity respected. A child also possesses his or her own dignity just like the adult and such dignity ought also to be protected. International human rights law, therefore, seeks to promote the respects and protection for the human dignity of a child. In addition, states parties have the major obligation of protecting the dignity of the child. Article 28(2) states that ‘State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity...’

Similarly, various international instruments emphasize the need for safeguarding a child’s dignity. The Universal Declaration on the Rights of the Child and the International Covenant on Civil and Political Rights and on Economic, Social and Cultural Rights, provided the foundation for the respect of the dignity of every person. According to the Universal Declarations ‘all human beings are born free and equal in dignity and rights.’ In other words, this declaration provides a guiding principle for the protection of the human dignity of a person. The CRC has therefore built upon this foundation. Dignity presupposes also the integrity of a child that is the right to have his person respected and valued. In other words, corporal punishment violates the respect for the human dignity and integrity of a child and as such Article 37 provides that ‘No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.’ Torture or degrading treatments is also another form of violence against children. Therefore such degrading treatment is a violation of the human dignity of a child. Altogether, there is inherent in every human being the right to have his person respected and that includes a child who is also a person. Nigeria has signed and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) while the International Covenant on Civil and Political Rights (ICCPR) was ratified and signed in 1993.

Thirdly, the right of a child to human dignity as described above, therefore, culminates to the urgent need to completely eradicate any form of violence against children which most commonly comes in the form of corporal punishment. Consequently, international law seeks major legal reforms in the various legislative systems of state parties to incorporate the prohibition of corporal punishment in all settings.<sup>47</sup> The international human right perspective is that corporal punishment should not only be prohibited in some settings such as the schools but should also be disallowed in the home etc.

Fourthly, ‘no form of violence against children is justifiable’. No matter how light the punishment may be, it does not justify the use of physical punishment. The purpose of corporal punishment is usually to cause physical pain, in order to deter a person from something. According to human rights, no amount of reason can justify inflicting such pain, however moderate it may be. It is, therefore, necessary for state parties to understand that the prohibition pertains to all corporal punishment in all settings.

Lastly, there is a general inclination among those who are against the prohibition of corporal punishment, to believe that a child’s bad behaviour is as a result of the lack of corporal punishment. In other words, behavioural problems in children should not be linked to the absence of physical punishment. There are more perceived creative ways for the discipline of a child without the use of force. It is based on this that the international human right perspective is of the view that dealing with behavioural issues in children requires a more creative approach.

It is clear from the above that corporal punishment is a violation of international human rights law. Similarly, The European Committee of Social Rights (ECSR) states that corporal punishment is not in conformity with human rights standards.<sup>48</sup> Hence the international community has called upon state parties to prohibit all forms of corporal punishment. Today most European and Latin America countries have abolished corporal punishment. With regards to some countries, corporal punishment is legal but limited to a certain area.

## **7. Conclusion**

This paper reiterates the position of the United Nations and international human rights standards that no legal reasoning should exist for the use of corporal punishment on a child. It has evaluated the findings and fundamental principles upon which the outlawing of corporal punishment rests. The overall guiding principle for opposing the practice of corporal punishment has been clearly enshrined in the Convention on the Rights of a child. This can be seen in the preamble of the convention which states that the ‘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.’ As addressed in the body of the paper, the driving force for the removal of all forms of corporal punishment is the

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<sup>47</sup> Ibid

<sup>48</sup> Council of Europe: Commissioner for Human Rights (n. 22) p.5



overriding nexus between violence and physical or corporal punishment. It is clear that the rationale for the removal bothers on the 'extent and intensity of violence exerted on children'<sup>49</sup>To this end the prohibition of corporal punishment is precipitated upon these grounds. Furthermore, this study has also considered the controversies which ensued in the above discussions. International organisations have stood their grounds and maintained that no amount of violence can be considered reasonable as a basis for the use of corporal punishment. The Lawful justification for corporal punishments has been the 'unreasonable chastisement' defence. It still remains a defence in England and most common law counties, Nigeria inclusive. More importantly, in Nigeria, it has been clearly shown that the provisions of section 295 of the Criminal Code Act (South), Section 55 of the Penal Code Act (North) and the Sharia penal codes permit the use of force to correct children. International law experts have frowned at these provisions as a disregard for the dignity of the child. These provisions clearly do not protect the rights of a child. Consequently, it was declared by the Global Initiative to End All Corporal Punishment in Nigeria that 'The near universal acceptance of a degree of violence in childrearing necessitates clarity in law that all corporal punishment is prohibited, however light.'<sup>50</sup>In light of all this, the international organisations have extended the obligation to all states parties to make legal reforms to accommodate the prohibition of corporal punishment.

There is no adequate policy for the prohibition of corporal punishment in Nigeria. The only legislation that deals with the prohibition of corporal punishment is the Child's Rights Act 2003. Although it is a federal law, it can only produce the desired result when states parties adopt it. As at now 24 out of the 36 states have adopted the Act.<sup>51</sup> Therefore, there should be complete compliance with international human rights standard with regards to the prohibition of corporal punishment. If Nigeria has ratified and domesticated an international treaty which clearly prohibits all forms of physical and judicial punishment, then the country must be ready to comply with all obligations under the treaty. On the final Analysis, there is a need for a re-orientation on the side effects of corporal punishments on children in Nigeria. The reasonable chastisement defence, faith-based defence and cultural practices used as a justification for administering corporal punishment need to be re-evaluated. In addition, it has now become necessary to engage in further studies on ways to correct a child without necessarily violating his or her human dignity. Likewise, the provisions of the criminal code, penal code and Sharia code which encourages the use of force for the purpose of correction needs to be removed. This is necessary if Nigeria is to comply with International human rights standards.

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<sup>49</sup> CRC General Comment No. 13 (n. 37) Paragraph 2

<sup>50</sup> 'Country Report of Corporal Punishment in Nigeria' (n. 36) p. 1

<sup>51</sup> 'On Nigerian Children's Day, UNICEF calls for an end to violence against children and adoption of Child Rights Acts in all states' (2017) <<https://www.unicef.org/nigeria/press-releases/nigerian-childrens-day-unicef-calls-end-violence-against-children-and-adoption-child>> accessed 4 July 2019