

# **A ray of hope for the outlawing of corporal punishment in Zimbabwe: A review of recent developments**

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## **1. Introduction**

Zimbabwe has been going through some encouraging developments in the area of child rights since 2013. Of note has been the banning of child marriages in January 2016 in the *Loveness Mudzuru & Ruvimbo Tsopodzi vs Minister of Justice, Legal & Parliamentary Affairs N.O; Minister of Women's Affairs, Gender & Community Development & Attorney General of Zimbabwe* ( "the *Mudzuru* case"). In the same spirit of interpreting constitutional provisions to realise child rights, the High Court of Zimbabwe has since then twice declared corporal punishment on children to be unconstitutional in light of the 'new' Constitution of Zimbabwe<sup>2</sup>. First was the declaration of constitutional invalidity of corporal punishment by Justice Muremba on the 31 December 2014 in the case of *S v Chokuramba*<sup>3</sup>, followed by a similar declaration by Justice Mangota in the case of *Pfungwa & Anor v Headmistress of Belvedere Junior Primary School & Others*<sup>4</sup> on the 1 March 2017. While these declarations of constitutional invalidity still await confirmation by the Constitutional Court since they were made by the High Court, the repeated declaration affirms the loud voice by the High Court that corporal punishment no longer has any place in the new dispensation ushered in by the Zimbabwean Constitution of 2013 and indeed in the current human rights global order.

In light of the above, this paper explores recent developments regarding the issue of corporal punishment with a view to show the ray of hope that corporal punishment will indeed be a thing of the past soon, at least in terms of the law. The first part gives an overview of corporal punishment in terms of definition. This is followed by an analysis of international law regarding the issue. The next part explores domestic policy and law on corporal punishment prior to the new Constitution of Zimbabwe. This is followed by a brief discussion of the negative consequences of corporal punishment on children. The next part examines how recent developments show that corporal punishment may soon be abolished. This is seen mainly from the declaration of constitutional invalidity of the practice by the two High Court decisions highlighted above. The last part briefly explores what it would take for the outlawing of corporal punishment to be implemented successfully in a conservative society such as Zimbabwe.

## **2. The Definition of Corporal Punishment**

Corporal punishment is defined by the United Nations Committee on the Rights of the Child as:

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<sup>2</sup> Constitution of Zimbabwe Amendment (No 20) Act of 2013

<sup>3</sup> HH-718-14.

<sup>4</sup> HH-148-17.

*“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. In addition, there are other non physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”<sup>5</sup>*

Such types of disciplining children in the home, school and as a sentence for juveniles as described above are very common and accepted mainly in African countries, including in Zimbabwe. While beating up or torturing an adult in any of the ways mentioned in the above definition is regarded as inhumane, degrading treatment, unacceptable and in many cases called a punishable crime of assault or torture, it has for a long time remained acceptable when it involves children under the guise that it is for disciplinary purposes, even though the act of discipline involves the infliction of pain. According to Naker and Sekitoleko,<sup>6</sup> corporal punishment is so common that it has almost become invisible in the sense that many adults hardly notice themselves or others using violence to interact with children.

In a report titled *“Creating Safer Schools”*, UNICEF Uganda<sup>7</sup> attributes the continued use of corporal punishment to certain entrenched social norms and beliefs in societies such as:

- *“Spare the rod and spoil the child”*-from religion
- *“Without pain there is no gain”*
- *“Those who turned out well in life are so because they were beaten as children”*
- *“A person in authority has to exert control always”*.

### **3. International Policy and Legal Framework on Corporal Punishment**

Internationally, corporal punishment is regarded as violence against children and as a breach of fundamental human rights. It is considered inhumane and degrading as it violates children’s physical integrity and demonstrates disrespect for human dignity and undermines the self-esteem of children. It is said to treat children as half-human beings thereby breaching the principle of equal protection before the law and non-discrimination. There are regional and international conventions which discourage or outlaw outright the use of corporal

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<sup>5</sup> UNCR Committee, General Comment Number 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, CRC/C/GC/8, 2 June 2006.

<sup>6</sup> Dipak Naker and Deborah Sekitoleko ‘Creating A Good School Without Corporal Punishment’, (2009), Raising Voices, p 9.

<sup>7</sup> UNICEF Uganda, *Creating Safer Schools: Alternatives to Corporal Punishment’* (2008), p 5. [https://www.unicef.org/uganda/Alternatives\\_to\\_VAC\\_160812.pdf](https://www.unicef.org/uganda/Alternatives_to_VAC_160812.pdf) . (Accessed 03/07/17).

punishment. Zimbabwe has ratified and acceded to some of them. While many instruments may not expressly refer to it as corporal punishment, the ban is seen in the prohibitions of application of inhumane, degrading and torturous discipline or punishment methods on children.

To begin with, Article 19 of the Convention on the Rights of the Child (“the CRC”)<sup>8</sup> obligates member states to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence. This is buttressed by Article 28(2) which likewise obligates states parties 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 principles of the CRC. Article 37 sums up the CRC’s disdain for violence against children by stating that State Parties shall ensure that: (a) *“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”*.

This abhorrence of corporal punishment shown by the CRC is equally matched by the African Charter on the Rights and Welfare of the Child (“the ACRWC”).<sup>9</sup> It asserts in Article 11 that member states shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the principles of the ACRWC. This is cemented by Article 16 which like the CRC, also prohibits subjecting a child to any form of torture, inhuman or degrading treatment and especially physical or mental injury or abuse. Articles 17 and 20 of the ACRWC also reinforce the above prohibitions on violence against children in the form of corporal punishment.

While these are the major instruments as far as children are concerned, the same prohibitions are found in other instruments such as the African Charter of Human and People’s Rights<sup>10</sup>; the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights<sup>11</sup>, where violence against children is prohibited within the broader prohibitions of the same on every human being. The message from the international community as represented by the international instruments is clearly that violence against children in the form of corporal punishment is not acceptable and should not be accepted.

#### **4. Domestic Policy and Law on Corporal Punishment prior to the 2013 Constitution of Zimbabwe**

As rightly stated by Justice Muremba in the *Chokuramba* case<sup>12</sup>, in Zimbabwe, corporal punishment had continued to exist because of the old Lancaster House Constitution<sup>13</sup> which in its section 15(3) permitted the use of corporal punishment in the home, school or as a sentence. As a result, statutes that existed then (and still exist) followed suit in allowing use

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<sup>8</sup> Ratified by Zimbabwe on the 11 September 1990.

<sup>9</sup> Ratified by Zimbabwe on the 19 January 1995.

<sup>10</sup> Ratified by Zimbabwe on 30 May 1986.

<sup>11</sup> Acceded to by Zimbabwe on 13 May 1991.

<sup>12</sup> See detailed discussion of the case in Part 6 below.

<sup>13</sup> Constitution of Zimbabwe of 1979.

of the practice and of note is section 241(2) of the Criminal Law (Codification and Reform) Act<sup>14</sup> which states that:

*“(a) a parent or guardian shall have authority to administer moderate corporal punishment for disciplinary purposes upon his or her minor child or ward;*

*(b) a school-teacher shall have authority to administer moderate corporal punishment for disciplinary purposes upon any minor male pupil or student”.*

As evident above, this gave authority for use of corporal punishment in the home and school.<sup>15</sup>

For use of corporal punishment in sentencing a juvenile for a criminal offence, the relevant enabling provision is section 353(1) of the Criminal Procedure and Evidence Act<sup>16</sup>. The section gives a court options for sentencing a male accused person under the age of eighteen years, among them, an order for him to receive moderate corporal punishment, not exceeding six strokes.

While this was the status of corporal punishment prior to 2013 (and technically still is), the practice has slowly been losing favour for some time now. Over the years in Zimbabwe, there has been a movement towards imposing strict conditions to be applied regarding the use of corporal punishment. Already, the above mentioned statutes did not give a general permit to use corporal punishment but rather did put in place some conditions such as that corporal punishment is applicable to a male juvenile only and as regards corporal punishment as a court sentence that the juvenile was certified by a doctor to undergo such punishment.<sup>17</sup>

Specific to the education sector, Circular P35<sup>18</sup> issued by the then Ministry of Education, Sports and Culture,<sup>19</sup> while still allowing corporal punishment in schools, echoed the same sentiments as above where corporal punishment is only used with some strict conditions attached. These conditions include that only the School Head is allowed to administer corporal punishment; to a male pupil only; with a witness present; recording the offence and strokes applied; using a light cane among other conditions. While this would have notably reduced the cases of indiscriminate use of corporal punishment by any teacher, the policy however, regrettably still allows the School Head to delegate this function to other teachers, thus leaving room for abuse of the restriction.

## **5. Negative Consequences of Corporal Punishment**

The increase in international calls for the banning of corporal punishment, and indeed the introduction of strict conditions for applying it in Zimbabwe alluded to above, has not been without a basis. It has rather been grounded in evidence over the years that show the lack of

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<sup>14</sup>[Chapter 9:23].

<sup>15</sup> Sub-Sections 3-5 of the Act further elaborate on the use of corporal punishment on children.

<sup>16</sup> [Chapter 9:07].

<sup>17</sup> The involvement of a doctor in a procedure that involves causing of harm raises issues of medical ethics.

<sup>18</sup> Statutory Instrument No. 362 of 1998 [Education (Disciplinary Powers) Regulations, 1998].

<sup>19</sup> Now known as the Ministry of Primary and Secondary Education.

usefulness of the practice and indeed the futile consequences it presents on children in many cases.

According to the “*Creating Safer Schools*” Report by UNICEF Uganda<sup>20</sup>, corporal punishment fosters a belief among people, including children that other forms of violence will also be tolerated. Naker and Sekitoleko<sup>21</sup> add that:

- i. Corporal punishment has physical consequences where children may suffer physical injury as a result, such as broken bones, infections and physical illness. Such injuries can affect children’s physical development and can have an economic impact on the entire community. At the same time, injuries need treatment which may bring unnecessary cost of treatment to the school by the school.

Injuries or even death through corporal punishment are not an illusion but a reality. The *Pfungwa* case mentioned above, as will be discussed later in Part 6, involved serious injuries having been sustained as a result of corporal punishment at school. Furthermore, headlines in Zimbabwean Newspapers such as ‘*Zimbabwean Head-teacher charged with murder after caned pupil dies*’<sup>22</sup>; ‘*Dad kills son (13) for farting during supper*’<sup>23</sup>; ‘*Mom beats son to death over 25 cents*’<sup>24</sup>; ‘*Step mother beats 6 year old daughter to death, inserts vibrator in her VAGINA*’<sup>25</sup>; and ‘*Dad kills son for stealing 3 eggs*’<sup>26</sup>; among others also bears sad testimony to the reality of fatalities occurring through corporal punishment.<sup>27</sup>

- ii. Corporal punishment has emotional and psychological consequences whereby beaten up children often feel anger and shame at the same time, which leads to a feeling of humiliation which damages their sense of dignity, self-confidence and trust in adults who repeatedly use corporal punishment against them. The result can be depression, thoughts of suicide, desires for revenge and aggression toward others in children.
- iii. Corporal punishment has behavioural consequences whereby many children who experience corporal punishment bully other children, or as adults, use domestic violence. This is because corporal punishment teaches children that violence is an acceptable way of imposing their views on someone less powerful than themselves.

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<sup>20</sup> Note 8 above, p4.

<sup>21</sup> Note 7 above, p12-13.

<sup>22</sup> The Telegraph, 06 February 2015.

<sup>23</sup> *The Herald*, 25 January 2015.

<sup>24</sup> *The Herald*, 02 September 2016.

<sup>25</sup> *MYZIMBABWE*, 03 September 2016.

<sup>26</sup> *The Herald*, 16 November 2016.

<sup>27</sup> While some may want to argue that such fatalities will now be bordering on serious physical abuse of a child, the reality is that the abuse is committed in the name of using corporal punishment to discipline the child for a wrong committed. There is no limit to the amount of corporal punishment that can be applied, nor is there a universal measure of what moderate corporal punishment mean, thus leaving room for excessive use leading to such fatalities.

- iv. Corporal punishment has developmental consequences. Many children who experience corporal punishment on a regular basis live with slowed or interrupted cognitive and emotional development. They become withdrawn and fearful of trying new things. They feel ashamed of themselves due to regular humiliation. They need more time to learn social and academic skills. Their performance at school deteriorates, and their ability to form healthy, satisfying relationships can be severely affected.
- v. Corporal punishment often leads to loss of interest, resentment of the learning experience and, as a result, lack of value for education by children. More often than not, children who are beaten up learn to hate a subject or teacher, leading to subject or school dropout.

Most importantly, it has been proven that corporal punishment is actually not effective in the long term. This is primarily because hurting children does not change the child's underlying attitudes and values. The child does not learn self-control, but only permissiveness and how to respond to the control of others, or how to lie and hide what they are doing so as to avoid punishment.<sup>28</sup>

Because of the above reasons and more, human rights and indeed child rights advocates have for long argued that child discipline should primarily be about teaching and guiding children about what is right and wrong, helping children to learn what is expected of them and how to control their own behaviour as opposed to corporal punishment. With this line of thinking, there has been a banning the use of corporal punishment in many countries such as Uganda, Kenya, South Africa and Namibia among others in the region.

## **6. A Ray of Hope on the Banning of Corporal Punishment**

As regards corporal punishment in Zimbabwe, the education sector Ministerial Circular P35<sup>29</sup> discussed above is one policy that must ironically be applauded as it brought a ray of hope for the complete outlawing of corporal punishment in Zimbabwe in the near future. While it ironically still allows continued use of corporal punishment, it also shows a strong disapproval of the practice and it urges those involved to try and find practical alternatives to disciplining children apart from corporal punishment. Parts of the Circular state that: *“Every Head should try to cultivate a school climate where pupils will/can develop internal discipline which is not initiated by fear of punishment”*. It calls for a school ethos which provides self discipline among pupils as supported by counselling sessions where necessary in consultation with parents, in order to breed a more responsible and maturing individual. The Circular further compares corporal punishment to a physical fight and states that, *“...except in this case the pupil is not allowed to fight back. He has to endure the agony, the pain and the deprivation of human dignity. It is an admission that the school and the Head have ultimately failed to ‘correct’ the child”*.

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<sup>28</sup> Childline South Africa, (2012), “Alternatives to corporal punishment”, *Prevention & Education Manual (Childline South Africa)*.

<sup>29</sup> Note 17 above.

The above sentiments are encouraging for various reasons but chief among them is that there was and still is a realisation in the Zimbabwean education system that there are alternatives that can be used to discipline children apart from using the rod. This is important as it indicates a readiness of the Zimbabwean education system or its authorities to abandon corporal punishment and embrace practical alternatives to discipline as may be proffered by research and as used successfully in other jurisdictions.

This readiness has now been complimented by progressive provisions of the new Constitution of Zimbabwe which have now been aptly interpreted by Justice Muremba in the *Chokuramba* case and repeated in the *Pfungwa* case by Justice Mangota.

### **6.1. Overview of the *Chokuramba* and *Pfungwa* Judgements**

The *Chokuramba* judgement given by Justice Muremba is the more expansive of the two in terms of unpacking issues and exploring the law regarding corporal punishment, both domestic and international. This was a case under review after conviction and sentence in the Magistrates Court. In the lower court, a 15 year old juvenile had been charged with and correctly convicted of rape as defined in section 65(1) of the Criminal Law (Codification and Reform) Act<sup>30</sup>. He had been sentenced in terms of section 353(1) of the Criminal Procedure and Evidence Act<sup>31</sup> to receive moderate corporal punishment of 3 strokes with a rattan cane, which sentence had already been carried out by the time of the review. The court ruled that this punishment was unconstitutional and it referred the case to the Constitutional Court for confirmation in terms of sections 167(3) and 175(1) of the Constitution and the then Chief Justice Chidyausiku reserved ruling on the matter after hearing submissions from interested parties. Over two (2) years have now passed with the judgement still reserved.

On the other hand, the *Pfungwa* case was an application for a constitutional declaratory order to declare that corporal punishment in school and in the home violates the rights of children as set out in sections 51, 53 and 81 of the Constitution of Zimbabwe. In this case, a junior grade primary school going child had been severely assaulted by her teacher using a thick rubber pipe as punishment “*for the simple reason that her mother, the first applicant, failed to sign Makanaka's reading book to confirm that Makanaka had done her homework*”. Again after finding that this punishment was unconstitutional the case was referred to the Constitutional Court for confirmation in terms of sections 167(3) and 175(1) of the Constitution.

The relevance of the two cases, besides making emphasis on and portraying urgency of the issue of outlawing corporal punishment, is that between them, they have now covered all the three critical environments in which corporal punishment notoriously occurs, i.e. in the home, the school and the judiciary. This therefore makes a case for and indeed compels the Constitutional Court, whenever it decides to rule on the matter, to make an all encompassing confirmation or otherwise, of invalidity of corporal punishment for all the critical environments concerned.

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<sup>30</sup> [Chapter 9:23].

<sup>31</sup> [Chapter 9:07].

## 6.2. The Constitutional Invalidity of Corporal Punishment

Justice Muremba by declaring in the *Chokuramba* case that “*There is need to examine the provisions of the new Constitution and see if it is still competent for the courts to impose corporal punishment on male juvenile offenders*”, takes time to explore and unpack section 53 of the Constitution of Zimbabwe which prohibits the subjecting of any person, children included, to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment. She correctly points out that while the old Constitution of Zimbabwe had a similar provision in section 15(1), *albeit* limited, in the new Constitution the right is not limited. This means that as far as use of physical force on another person is concerned, there is no differentiation between adults above 18 years and children below 18 years as used to be the case in the old Constitution. This acknowledges that children are not half-human beings but are full human beings who according to section 81(1)(a) of the Constitution, have a right ‘*to equal treatment before the law...*’ as is everyone else, in addition to having a right in section 81(1)(e) to be protected from all forms of abuse including violence.

With this constitutional interpretation of sections 53 and 81 as supported by section 52(a) which protect the right to personal security and section 56 on equality and non-discrimination, Justice Muremba correctly concludes that ‘*corporal punishment is now unconstitutional*’ in Zimbabwe. With it is the consequent invalidity of sections of the Criminal Law (Codification and Reform) Act<sup>32</sup>; the Criminal Procedure and Evidence Act<sup>33</sup> and associated policies such as Circular P35<sup>34</sup>.

In so banning corporal punishment in the *Chokuramba* case, it is important to also note that Justice Muremba, in her interpretation of the Constitutional provisions on corporal punishment contained in the Declaration of Rights, acknowledges international law on the matter. She conducts an expansive analysis of the above discussed international instruments as they relate to the issue of corporal punishment and highlights Zimbabwe’s international obligations arising therefrom. This is a positive development coming from the judiciary in child rights matters, having been done again in the *Mudzuru* case on child marriages by the then Deputy Chief Justice Luke Malaba.<sup>35</sup> This is important in that it highlights the willingness of the highest courts in Zimbabwe to embrace the guidance of international law in interpreting constitutional provisions, including importantly, on children’s rights. While the use of international law in interpreting domestic laws is not necessarily new, the continued application particularly at the level of the higher courts is critically important for assessing consistency of the courts in use of international law and indeed in creating and developing precedent that can continue to be followed by other lower courts.<sup>36</sup> It indeed reflects Zimbabwe’s willingness to have its human and child rights practices to be measured against international norms and standards. This is aptly stated by the then DCJ Malaba in the

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<sup>32</sup> Section 241(2).

<sup>33</sup> Section 353(1).

<sup>34</sup> To the extent that it still allows corporal punishment.

<sup>35</sup> He is now the Chief Justice of Zimbabwe.

<sup>36</sup> ‘Thoughts on the Constitutional Court Landmark Judgement on Child Marriages’, AlexMagaisa.Com, 21 January 2016.

*Mudzuru* case when he said, “...the court has to take into consideration the current attitude of the international community of which Zimbabwe is a party, on the position of the child in society and his or her rights.”

As already mentioned, the High Court repeated the call to outlaw corporal punishment in 2017 through Justice Mangota in the *Pfungwa* case. This has added to hope currently sweeping Zimbabwe on the outright outlawing of corporal punishment in the near future, once the Constitutional Court deliberates on and rules on the two cases presented for confirmation from the High Court. Further encouraging is that the Constitutional Court is now headed by Chief Justice Luke Malaba, who in 2016, sitting with 8 other judges of the Constitutional Court boldly declared child marriages to be unlawful in Zimbabwe in the *Mudzuru* case. This won the Constitutional Court an international award courtesy of the Women’s Link Worldwide of Rwanda. It is hoped that with such recognition of the court’s progressive law development on child rights, the same approach will be adopted when the cases on the issue of corporal punishment come before the Constitutional Court for confirmation.

## **7. Banning corporal punishment in practice**

The ban on corporal punishment, whenever it happens, will not be received with drums and ululation as was the case with the child marriages ban. If anything is to be learnt from the time when the *Chokuramba* and *Pfungwa* judgements were handed down, it is clear that there is going to be a public outcry from sections of the society, particularly parents and those in the education sector that will quickly brand an outright ban as unsuitable for the Zimbabwean context. The main reason that is always proffered in the general public outcry is that the ban will promote unruly behaviour among children while those in authority will have nothing to use in disciplining children that are under their control, thereby effectively being disempowered. Busienei<sup>37</sup> agrees and notes that where corporal punishment is banned, teachers may feel that they have been completely stripped of their powers and have no control over their students and they feel they have been given no alternatives. As a result they feel completely helpless. A general inference is thus made that corporal punishment is synonymous with child discipline and having control by teachers and conversely that the banning of the former means children can no longer be disciplined and teachers will lose control of students. While this is definitely wrong, these sentiments are widely held, especially of African societies.

As such, in order to ensure that the ban becomes real, there will be need for public awareness campaigns to quickly follow the ban. The message to the general public should be that child discipline is not synonymous with corporal punishment but rather primarily about teaching and guiding children about what is right and wrong; helping children to learn what is expected of them and how to control their own behaviour. Away from the laws, the society should recognize that children’s mental and physical maturity limitations requires adults to nurture, protect and mentor them in a manner that guides them into becoming responsible

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<sup>37</sup> Agnes J. Busienei, Alternative Methods to Corporal Punishment and Their Efficacy, (2012) Vol 3 (2), *Journal of Emerging Trends in Educational Research and Policy Studies*, p 157.

citizens who abhor violence in any form, and respect others' human rights rather than fear them. This cannot be achieved by instilling a culture in children that interpersonal violence is an appropriate response to conflict or unwanted behaviour and that it is acceptable for those in authority to be violent towards the weak to force a particular line of behaviour or action.

Children merely need discipline which refers to teaching them self-control, how to consider alternatives for behaving in a particular manner, motivation for acting differently, understanding the consequences of wrongful behaviour and developing an awareness of what they ought to be doing right. Discipline as opposed to corporal punishment ideally should emphasize positive reinforcing of good behaviour and positive/negative reprimanding of bad behaviour without using physical punishment. Such child discipline should also be done in addition to an ongoing process of trying to solve the root causes of children engaging in unwanted behaviour, such as stressful or abusive family situations and poverty among others.

Myths such as *'I am what I am today because I was beaten as a child'* should be debunked in public awareness campaigns. It certainly is not true, just as it is likewise not true that women of yesteryear were more groomed and respectful because their husbands used to beat them up. Both are a primitive culture of past era time which can no longer survive the human rights respecting demands of today's world. In any case all cultures including the Zimbabwean culture are dynamic and corporal punishment should rightfully be relegated to the dustbins of yesteryear's culture.

Such public awareness should, however, be preceded by adequate research into practical alternatives to corporal punishment that can be used effectively in disciplining children in the Zimbabwean society. Case studies can be used of environments in Zimbabwe where corporal punishment is not used but disciplining of children has been successful, such as in some private schools. Lessons learnt can also be drawn from other countries in the region where the ban has been successfully implemented through the introduction of effective alternatives.

## **8. Conclusion**

Nelson Mandela once said *"There can be no keener revelation of a society's soul than the way in which it treats its children"*.<sup>38</sup> Corporal punishment indeed reveals a violent society and that is not a true or desirable reflection of the Zimbabwean society by any measure. Zimbabwe should be a non-violent society that has for some time now recognised that another human being in the form of a wife should not be beaten up by the husband hence the success of the domestic violence laws and the general abhorrence by society of physical abuse of women. With the same token, hitting a child in corporal punishment is violence and should no longer be tolerated and accepted in a human rights era that Zimbabwe is living in as part of the global community. In this regard, Circular P35 began the process of showing its discomfort with the use of corporal punishment in schools. The Constitution of Zimbabwe as

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<sup>38</sup> Speech by the late former South African President Nelson Mandela at the launch of the Nelson Mandela Children's Fund, Monday, May 08, 1995 at Mahlamba Ndlopfu, Pretoria, South Africa, available at [http://db.nelsonmandela.org/speeches/pub\\_view.asp?ItemID=NMS250&txtstr=Mahlamba&pg=item](http://db.nelsonmandela.org/speeches/pub_view.asp?ItemID=NMS250&txtstr=Mahlamba&pg=item). (Accessed 03.07.17).

the supreme law of the land took up the matter through section 53, among others. The High Court of Zimbabwe has followed suit by boldly interpreting the constitutional provisions, thereby banning corporal punishment in the two judgements discussed. The baton is now with the Constitutional Court to give a final blow to corporal punishment by simply and rightfully declaring it unconstitutional and therefore unlawful, the same way it did with child marriages. Zimbabwe can only wait and hope that this will happen sooner rather than later.