

A Report from New Zealand: four years post law change.

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I celebrate the fact that the New Zealand flag flies alongside us with those of the other 28 countries that have taken legal steps to ban corporal punishment of children. As we have already heard ending corporal punishment of children involves promoting positive forms of child discipline and law reform – hearing from the voices of children and youth is also important. Children’s human rights are the critical rationale for ending corporal punishment and evidence from research is an invaluable tool in persuading parents, professionals and politicians that smacking (spanking) and hitting are unnecessary and damaging practices irrelevant and unhelpful in modern society. I have chosen to look in particular at the law reform aspect of ending corporal punishment because it is central to the ultimate goal of ending corporal punishment of children.

I am aware that some of what I say today focuses on the hard end of things and what we have not yet achieved in New Zealand so I want to start with what we have achieved. Corporal punishment for children for the purposes of correction is illegal in New Zealand. One year after law change 98% of participants in a survey knew this (1). I suspect this fact influences parental behavior. We know that attitudes about the place of corporal punishment are changing but have some way to go. In 2008 59% of parents still thought that physical discipline had a place in child rearing – this is well down on earlier figures (2). In the process of engaging organizations’ and individual support for law reform over the years a large proportion of organizations that work with children and families came onside and positive discipline now strongly informs their policy, practice and the advice and guidance they give to the families they come in contact with. Their support for the new law is strong.

May 2nd 2007 was the day that both major parties in New Zealand’s parliament agreed to support a bill that would ban corporal punishment for the purpose of correcting children in New Zealand. At midday I was in the cathedral in our capital city with several hundred colleagues and faith leaders from across most Christian denominations. Just as an ecumenical prayer vigil supporting law reform was about to begin a group of about 40 or 50 politicians filed into the cathedral. They were led by our Prime Minister of the time, Helen Clark, and Member of Parliament Sue Bradford, the politician whose bill led to eventual law change in New Zealand. The congregation rose in spontaneous applause – in immense gratitude for the courage shown by these political representatives.

Outside in the grounds of Parliament Buildings a crowd, of perhaps two thousand fist shaking protestors waved banners and chanted their opposition to law change – they were led by members of the Destiny Church – a recently formed Christian group with conservative social

values. The schism between the group in the cathedral and the crowd in Parliament grounds reflected the strong emotions, the heated and sometimes hateful debate and strongly opposed views that were the very public discussion about banning corporal punishment in my country. Politicians and parliamentary time had been disproportionately pre-occupied with the issue for many months. In New Zealand the debate was very public (it was media fodder), and especially heated and unremitting over the period of the parliamentary process for law change – about eighteen months. Supportive politicians and public figures had received extremely angry messages and some even death threats to themselves or their families. At times they were vilified in the media. Do not under-estimate the intensity of feelings that can accompany potential law change.

You may well wonder how we ever achieved law change. In summary this is how it was achieved: A long term campaign underpinned law change – 15+ years (3). This involved engaging visible and credible support for the cause, lobbying politicians and publicizing rights arguments and the results of research that discredited the use of physical punishment. Critical though these elements were would not have been enough to achieve law change when we did. Undoubtedly a majority of the population still supported the use of physical discipline and feared law change. Law change happened when it did because of the leadership of key politicians sympathetic to law change and the chance drawing of a bill from a ballot. The fact that we had an organized campaign with a wide network of supporters, a wealth of evidence in support of law reform and established relationships with politicians meant that when opportunity suddenly presented itself we were able to make much of it.

We are now four years post law change in New Zealand and our situation is not ideal. Let me reassure you I do not in any way discredit the importance of what we have achieved but I think a brief and realistic assessment of our present situation may inform your strategic planning.

In an ideal world what might the picture look like four years on from a law change banning corporal punishment of children?

- There would be a clear and unambiguous law in place giving children the same legal protection from assault as adults.
- Prosecution guidelines would exist outside law to ensure that the law is implemented sensitively and sensibly with use of supportive alternatives to prosecution when minor breaches of the law are notified to authorities.
- There would be visible promotion of positive parenting messages and effective access for all parents to information about positive, non-violent discipline.
- The effects of the law would be being well monitored and reported on.
- Social change would be occurring. Support for the law, and belief in the effectiveness of corporal punishment would be declining as would the use of corporal punishment.

In 2007 the statutory defence that gave adults prosecuted for assaulting a child an “excuse” they could use in court if they were prosecuted was repealed. Although New Zealand law is now very clear that it is illegal to use force to punish a child in all settings it allows use of force, (undefined) when a child needs to be restrained in a variety of circumstances such as being at risk of harming himself or others. This is an unfortunate consequence of a hastily drafted and ambiguously worded law. The interpretation of the new law is occasionally being tested in courts at this stage with inconsistent results (2). Sue Bradford’s initial law proposal was very clear but in its passage through the Parliamentary processes various amendments were made by politicians in order to get support which depended on making the law as palatable as possible to the public.

We do have prosecution guidelines for the police. These are being monitored and publically reported on and indications are that the law is being sensibly and sensitively implemented – with only a very small increase in notifications to the Police for very minor assaults on children but a significant increase in notifications for more heavy handed assaults. Likewise numbers of prosecutions for assaults at the lower end of the scale have not increased significantly and it is reported that in many situations the police make use of interventions other than prosecutions, like warning parents or referring them to social service organizations for family support (5).

No new Government led public campaign to promote the law or positive parenting messages has accompanied or followed the law change. In 2004 a Labour Government funded a positive parenting initiative named SKIP (Strategies for kids: Information for Parents)(4). SKIP continues today and a fund supporting initiatives developed and implemented in local communities has given rise to some good programmes based on community development principles. A number of major child and family support non-government-organizations run other positive parenting initiatives and ending corporal punishment in homes is a fundamental principle underpinning the organizations’ policies and education. A major benefit of our New Zealand’s campaign to have the law changed has been securing the long term commitment of many NGO’s to the new law and to positive non-violent parenting.

The only official monitoring that is in place on the effects of the law is on police activity – the monitoring I referred to a few moments ago. This was to occur for two years but has continued as the result of a referendum about the law that I will talk about soon. There is no official monitoring of the impact of the law on attitudes or parental behavior, or on social change. The police monitoring is continuing to reassure the public that the law is not leading to prosecutions for minor breaches of the law. Lack of other monitoring may well reflect politicians’ desire to keep distance between themselves and the law or keep it out of the public spotlight as much as possible.

Because of lack of monitoring of the impact of the law on social change I cannot report on the effect it can be having on attitudes and behavior. A survey conducted for the Office of the Children Commissioner in 2008 showed encouraging trends (5). Certainly one see far less public smacking than one used to at supermarkets, parks, on public transport and other places where families gather.

In 2009 a non-binding postal referendum was forced on registered voters in New Zealand. This came about when forces committed to having the new law overturned succeeded in getting enough signatories to a petition to force a referendum. The question in the petition and the referendum was “Should a smack as part of good parenting correction be a criminal offence in New Zealand?” Available answers were “Yes” or “No”. This was clearly a confusing and emotive question. Voting is not compulsory in New Zealand and only 54% of registered electors voted. A Majority of those who voted (89%) – voted “no”. The petition that led to the referendum began well before the law changed. The organizers of the petition that led to the referendum claimed the results supported overturning the new law- the so called “anti-smacking” law. The Government fortunately did not agree – and set in place further reassurances to placate anxious parents. The use of corporal punishment for the purposes of correcting children remains illegal in New Zealand (8).

I want to emphasize what a difficult matter banning corporal punishment is for politicians. It is perhaps not so hard to get many politicians to understand the human rights and research underpinnings of law change. However, when a majority of the population is not supportive (as may be the case whenever law change leads rather than follows social change) individual politicians’ support or otherwise may be seen as a matter of political survival for them. In New Zealand we did our best to make the matter politically palatable by regularly giving all politicians convincing evidence for law change and sometimes the words to use.

What about the nature of the opposition to law reform? There are no doubt still many people who are uncomfortable about the law change; parents who believe smacking is effective, parents who are afraid they might occasionally lose control, smack a child and become a “criminal” and people uncomfortable about having smacked children and struggling with guilt. However, such people do not form the organized opposition in New Zealand and they may well be open to change over time. A more difficult group are those who object to the government interfering in their lives and telling them what to do – to them banning corporal punishment is symbolic of state control. But it is the opposition that comes from individuals and groups who believe in “Beating the devil out of children” – whose religious beliefs espouse the need to physically discipline children that are well organized, noisy and troublesome (9). Their goal is one of exerting conservative influence on family policy In New Zealand. They are still consistently fuelling fear about the effects of law change and feeding into resentment about

state interference in family lives. They were the energetic opposition force during the campaign for law reform, they were behind the referendum and they continue to run major full page advertisements in national newspapers reporting on families claimed to have been hurt by the new law. Do not underestimate the lengths to which such groups and individuals will go to undermine change.

We know that all children have the right to be protected from all forms of violence. Children's lives will be better in every way when they are protected from corporal punishment. Achieving the two components of protection, law reform and social change, involve overcoming traditions of punishment and violence that run deep in our societies and finding ways through associated agendas, prejudice, inhibitions and fears. Of course I ask myself what we might have done differently in New Zealand in order to be in a better place now. Our campaign was initially naïve, and the public parts of it always opportunistic and reactive. The media were able to frame it unhelpfully as the "anti-smacking" campaign. In hindsight if we had had a carefully structured long term plan and been able to capture the framing of the debate positively from early on it is possible we could have more public support and less political caution now. In the latter part of our campaign we were able to engage a strong presence of support from mainstream Christian leaders. This too is something I wish we had done earlier.

There is much that I could expand on. I am happy to share more informally. A book about the history of law reform in New Zealand is out of print but available online at <http://www.savethechildren.org.nz/news/publications/>

To all of you working to achieve change in your own states or countries - thank you for the work you do and very best wishes.

References

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- 2 Children's Commissioner. (2008) Omnibus Survey Report. One year on: Public attitudes and New Zealand's Child Discipline law. Retrieved 16 March 2011 from http://www.occ.org.nz/_data/assets/pdf_file/0008/5669/OCC_UMR-Research_141108.pdf
- 3 For a full history of law change in New Zealand see, Wood ,B, Hassall, I, Hook, G and Ludbrook,R (2008), *Unreasonable Force: New Zealand's journey towards banning the physical punishment of children*. Wellington. Save the Children New Zealand. <http://www.savethechildren.org.nz/news/publications/>

- 4 Eg. www.stuff.co.nz/national/crime/4807710/Huata-guilty-of-assaulting-pupils
www.stuff.co.nz/sunday-star-times/news/.../Smacking-acquittal-outrage
- 5 New Zealand Police. (March 2011). Eight review of Police activity following the enactment of the Crimes (Substituted Section 59) Amendment Act 2007. Retrieved 4 April 2011 from <http://www.police.govt.nz/news/release/27564.html>
- 6 See www.skip.org.nz
- 7 Children's Commissioner. (2008) Omnibus Survey Report. One year on: Public attitudes and New Zealand's Child Discipline law. Retrieved 16 March 2011 from http://www.occ.org.nz/_data/assets/pdf_file/0008/5669/OCC_UMR-Research_141108.pdf
- 8 For full information on the 2009 referendum see www.yesvote.org.nz
- 9 See - www.familyfirst.org.nz and www.familyintegrity.org.nz