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## THE CANE, THE PAIN AND THE PUNISHMENT: CORPORAL PUNISHMENT IN PERSPECTIVE

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### The Cane, the Pain and the Discipline: Corporal Punishment in Perspective Introduction

From time immemorial and since biblical times, caning as a form of discipline has been in existence. The term used for punishment, its form and the implement used varied from one society to another. The use was not restricted to a particular age bracket or genders as adults, children, male and female were subjected to discipline.<sup>1</sup> The setting where the punishment was used varied from homes, schools and even courts. The purpose was either to inflict pain or ridicule. One thing was however common. This was its general acceptance as a form of discipline or correction or punishment. In the 20th century, with globalization and the campaign for more humane forms of discipline under a modernized criminal justice system, things appear to be changing. A once accepted method of discipline is now seen as barbaric, inhumane and degrading. It has been phased out and even outlawed and totally banned in some settings and jurisdictions.<sup>2</sup>

Caning as a form of punishment has now become a topic of debate at the international, regional and national levels. Whilst a stand has been taken at these different levels, the arguments for and against the use of caning as a form of punishment continue in religious, social and community levels. The paper discusses the concept of punishment particularly corporal

<sup>1</sup> Lambert Tim. *The brief History of Corporal Punishment*. In [www.localhistories.org/corporal.htm](http://www.localhistories.org/corporal.htm). Assessed on 27 July 2015

<sup>2</sup> *Ibid*

punishment, it considers caning as a punishment under the traditional and modern system, analyses the arguments for and against its use at all levels with a view to proffering solutions to the long debate that has gone on in contemporary times.

The concept of punishment has been since time immemorial. In biblical times, the issue of punishment arose for Adam and Eve for disobedience to an instruction given to them by God in the Garden of Eden.<sup>3</sup> It is also recorded that apart from the denial of some benefits which hitherto they enjoyed in the Garden, they were also banished.<sup>4</sup> All societies communities and tribes in history, right from the tribal and feudal societies, appear to have some form of unwritten code of conduct and behaviour, given by the leaders and understood by all as guiding the conduct of the people within that given group. Unacceptable behaviour was not condoned and it was frowned at to maintain discipline and any person who flouted the law was subject to punishment as laid down in the given society.

In his book, Bentham defines punishment as an evil resulting to an individual, from the direct intention of another, on account of some act that appears to have been done or omitted. Punishment may therefore be described as the imposition by an authority of an unpleasant or undesirable thing on or removal of something desirable or pleasant from a person or group of persons for wrongdoing. The concept of punishment arises in criminal matters. This brings about the issue of criminal punishment. According to Parker, criminal punishment means any particular disposition or the range of permissible disposition that the law authorizes or (appears to authorize) in cases of persons who have been judged through the distinctive processes of criminal law to be guilty of crimes.<sup>6</sup> For an act or omission to be a crime, there must be a prescribed punishment. This distinguishes a criminal act from a civil action. Scholars on the issue of punishment have suggested five elements in defining punishment. According to Hart, punishment must involve pain or other consequences that are unpleasant; it must be for an offence against legal

<sup>3</sup> Genesis 3: 17 -23 (NKJV)

<sup>4</sup> *Ibid*

<sup>5</sup> Jeremy Bentham (1830) *The rationale of punishment*. London: Robert Heward. MDCCCXXX (1830) Book 1 chapter 1. Retrieved in [https://www.archive.org/stream/therationaleofpu00bentham/therationaleofpu00benthamoft\\_djvu.txt](https://www.archive.org/stream/therationaleofpu00bentham/therationaleofpu00benthamoft_djvu.txt). Accessed on 5 February 2014

<sup>6</sup> Packer, Herbert L. (1968) *The Limits of the Criminal Sanction*. Stanford University Press, 1968. Retrieved in <https://books.google.com.ng/books?isbn=080478079X>. Accessed on 24 March 2015



rule; it must be of an actual or supposed offender for his offence; it must be intentionally administered by human beings other than the offender; it must be imposed or administered by an authority constituted by a legal system against which the offence is committed.<sup>7</sup> It is important for this paper to briefly discuss the rationale behind the concept of punishment. There are several philosophies on the rationale for punishment. Generally, they are discussed under the utilitarian and retributive philosophies. While the former seeks to punish offenders to discourage or deter future wrongdoing, the latter seeks to punish offenders, because they deserve to be punished. Under the utilitarian philosophy, the aims of punishment are deterrence whether specific or general and rehabilitation or reformation. On the other hand the aim under the retributive theory is retribution. This is based on the Old Testament principle of an eye for an eye. Another theory on the aim of punishment which has been brought forward is denunciation. It is said that punishment should be an expression of societal condemnation. According to Bentham in his book, rationale for punishment are listed thus. These are, Amendment, Reformation or Correction; Disablement (as is done by temporary imprisonment, confinement, or deportation; or forever, as would in some cases be done by mutilation.), Determent, Self-Defence, Self-preservation, Safe custody or imprisonment and Restraint.<sup>8</sup>

Different governments adopt different principles in imposing punishments on offenders. While some adopt only one or two a country like the United States of America appears to adopt the three.

Throughout history, the methods adopted by different societies and communities for punishing offenders against the law vary from one to the other. In the ancient English, Greek, Roman societies, the American colonies and the traditional societies in Nigeria, the types of punishment range from ridicule, slavery, imprisonment, mutilation, whipping, branding, cutting off of parts and death penalty, using all forms of method from hanging, beheading, quartering, disembowelling, burning, pressing underweight to death and drowning. Some of these punishments have been outlawed under the modern justice system, while some countries still retain some. In the same vein, other forms of punishments have been introduced. These include fines, community service, forfeiture, confiscation, deportation,

<sup>7</sup> Hart, HLA *The Presidential Address: Prolegomena to the Principles of Punishment in Proceedings of the Aristotelian Society New Series*, Volume 60 (1959-1960) pp 1-26. In <http://www.jstor.org/stable/4544619> Accessed on 4 February 2014  
<sup>8</sup> Jeremy Bentham *The Rationale of Punishment* Supra C. B.I. CH.1

imprisonment, caning and even death penalty. While there are different forms of punishment, many authors and governments have adopted different forms of classification. Punishments are classified according to offences as felonies or misdemeanour, while some are classified into capital and corporal punishments. This latter classification is recognized in all countries worldwide, though not used by them.

### Capital punishment

Capital punishment is authorised killing of someone who has committed an offence. The killing takes various forms in the different countries. The methods include hanging, shooting, electrocution, lethal injections, and gas chambers. The use of capital punishment dates back to 1772 BC.<sup>9</sup>

In the twenty first century, many countries have abolished this form of punishment, others have changed the method used in killing. (Some have revisited their laws to consider offences that will attract the punishment and some countries like Nigeria still retain the law. Corporal punishment is a punishment that involves physical infliction of pain on an offender as punishment. This form of punishment is the main focus of this paper and is discussed below.

### Corporal punishment

Corporal punishment is defined as the infliction of physical pain upon a persons body as punishment for a crime or infraction. It includes flogging, beating, branding, and mutilation.<sup>10</sup> It has also been defined as a form of physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming a wrongdoer, or to deter attitudes or behaviour deemed unacceptable.<sup>11</sup>

The term is said to usually refer to methodically striking the offender with the open hand or with an implement, whether in judicial, domestic, or educational settings.<sup>12</sup> It is further said that corporal punishment may be divided into three main types. These are parental or domestic, School and Judicial corporal punishments.<sup>13</sup> Parental or domestic corporal punishment is that which is within the family where typically the children

<sup>9</sup> Hammurabi Code 1772. Retrieved in [en.wikipedia.org/wiki/Code\\_of\\_Hammurabi](http://en.wikipedia.org/wiki/Code_of_Hammurabi). Accessed on 19 March 2015; See also Prince, J Dineley (1904) *Review: The Code of Hammurabi*. In *The American Journal of Theology*. Volume 8 no 3 July 1904 pp 606

<sup>10</sup> Editors of *Encyclopaedia Britannica*. *Corporal Punishment*: *Encyclopaedia Britannica*. Retrieved in [www.britannica.com/EBchecked/topic/138384/corporal-punishment](http://www.britannica.com/EBchecked/topic/138384/corporal-punishment). Accessed on 19 March 2015

<sup>11</sup> [http://en.wikipedia.org/wiki/Corporal\\_punishment](http://en.wikipedia.org/wiki/Corporal_punishment)

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*



are punished by parents or guardians. School is within the schools, when students are punished by teachers or school administrators or, in the past, apprentices by master craftsmen. Judicial corporal punishment is a part of a criminal sentence ordered by a court of law. Closely related is prison corporal punishment, ordered either directly by the prison authorities or by a visiting court<sup>15</sup>. The United Nations Committee on the Rights of the Child defines Corporal punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.

If an offender upon conviction and sentence is offered a choice between some years in prison or several strokes of the cane, it is believed that the offender is most likely to pick the cane. Why is this so? The question has been raised whether imprisonment really deters crime, or it increases it. 16

For crimes driven by financial demand such as child trafficking, arresting one child trafficker creates a job opening for others, who might fill in the vacant position. Nigeria has a prison problem.<sup>17</sup> The number of accused persons awaiting trial in prison far outnumbers the convicted inmates in the prison. It signifies that something has gone terribly wrong. Paradoxically, when the prison was invented, it was designed to replace corporal punishment. According to Davis, imprisonment was not employed as a principal mode of punishment until the eighteenth and nineteenth centuries in Europe and the United States of America respectively and the prison systems in Africa and Asia was as a result of colonial rule.<sup>18</sup> Davis further stated that before the emergence of the prison as the major form of public punishment, it was taken for granted that violators of the law would be subjected to corporal and frequently capital penalties.<sup>19</sup> Therefore imprisonment was supposed to serve as an alternative to corporal and capital punishment. However, looking now at the present state of the prison system, flogging and sending home an offender is a much more humane action than sending them to prison. Corporal Punishment and Discipline  
Corporal Punishment is a way to punish crime. Corporal punishment

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Does Imprisonment Deter? A Review of the Evidence. Retrieved in <https://www.sentencingcouncil.vic.gov.au/.../Does%20Imprisonment%20>. Accessed on 25 March 2015

<sup>17</sup> Bamgbose Oluymisi (2010) *The Sentence, The Sentencer and The Sentence: Towards Prison Reform in Nigeria* 13th Series of University Inaugural lecture for the 2009/2011 Session delivered on 15 July 2010 Ibadan. Ibadan University press. Pp 52 -54

<sup>18</sup> Davis Angela Y 2003 *Are Prisons Obsolete? An Open Media Book* Seven Stories Press New York Pg 42. Retrieved in <http://www.feministesindicales.org/wp-content/uploads/2010/11/Angela-Davis-Are-Prisons-Obsolete.pdf>. Accessed on 20 March 2015

<sup>19</sup> Ibid Pg68

is defined by the UN Committee on the Rights of the Child as: any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light<sup>21</sup>

More serious forms of corporal punishment, including flogging and amputation, have undergone a revival in certain Islamic countries that have experienced a resurgence in fundamentalism. The United Nations Human Rights Committee and other organizations have suggested that the prohibition of cruel, inhuman or degrading punishment under Article 7 of the International Covenant on Civil and Political Rights could be extended by customary law to include corporal punishment. While some of the practices of some Islamic countries have drawn rebuke and condemnation by the United Nations Commission on Human Rights, that body has as recently as 1997 suggested only that certain forms of corporal punishment may violate international law, leaving open the question of the extent to which evolving standards or general principles of law will tolerate other forms.<sup>22</sup>

Corporal Punishment: The use of Caning as discipline

As a sentence, caning is known by different terms which include; whipping, thrashing, flogging, hiding, smacking, birching (when giving up to six strokes to a young offender), scourging. Slangs which were found to be used by students for different forms of caning include; birching, eight tanning, screwing<sup>23</sup>

Corporal punishment is a sentence that has been incorporated into statutes. According to Straus and Kantor, it is an act by parents intended to cause physical pain but not injury for the Straus and Kantor, it is an act by parents intended to cause physical pain but not injury for the purpose of corrections or control of behaviour.<sup>24</sup> Poole, Ushkow, Nader et al define corporal punishment as the purposeful infliction of bodily pain or discomfort by an official in the educational system upon a student as a penalty for unacceptable behaviour.<sup>25</sup> They went on to describe the

<sup>20</sup> Ibid Pg 106

<sup>21</sup> Article 37 Committee on the Right of the Child. Retrieved in [www.endcorporalpunishment.org/pages/hrlaw/crc\\_session.html](http://www.endcorporalpunishment.org/pages/hrlaw/crc_session.html). Accessed on 24 March 2015

<sup>22</sup> Corporal Punishment: Encyclopedia.com Retrieved in [http://www.encyclopedia.com/topic/corporal\\_punishment.aspx](http://www.encyclopedia.com/topic/corporal_punishment.aspx). Accessed on 24 March 2015

<sup>23</sup> Retrieved in <http://dictionary.reverso.net/english-definition/whipping>. Accessed on 24 March 2014

<sup>24</sup> See Straus MA, Kantor GK. Corporal punishment of adolescents by parents: a risk factor in the epidemiology of depression, suicide, alcohol abuse, and wife beating. In *Adolescence* 1994; 29: 543-61. Retrieved from Piyanjali de Zoysa A Study on Parental Disciplinary Practices and an Awareness Program to Reduce Corporal Punishment and Other Forms of Negative Parental Practices.

<sup>25</sup> Poole, S. R., Ushkow, M. C., Nader, P. R. et al. (1991). The role of the paediatrician in abolishing corporal punishment in schools. *Paediatrics*, 88, 162-167. In OBoyle, Beth *Corporal Punishment: Physical, Psychological, and Cognitive Effects for Children*. Retrieved in <http://>



pain associated with corporal punishment thus the infliction of pain is not limited to spanking, but includes any action that produces excessive physical discomfort<sup>26</sup> It is defined in a narrow sense as comprising direct punitive blows inflicted by one person on another including those which leads to amputation<sup>27</sup>

Throughout history, the terms used for corporal punishment vary from one country to another and from one period to another. In ancient times, the infliction was brutal and was used on different groups of people for different reasons. The objects used for inflicting the sentence vary and the method of application also varies. The objects used vary from the slap by the hand in informal means of discipline and control, to the use of objects such as sticks, specially made whips or cane in contemporary times and in the medieval times when more painful objects were used. According to the New World Encyclopaedia, objects used included the rod which was described as a thin flexible rod; the birch, which is a number of strong, flexible branches, bound together in their natural; the paddle, which is a flat wooden board or leather pad with a handle; the whip; and the cat o nine tails which was a popular implement used in naval discipline.<sup>28</sup> In the Roman Empire, the ferula was used for minor offences.<sup>29</sup> This was a flat leather strap. The scutica which was two thongs of leather twisted together was also used as well as the flagellum- a three heavy leather thong, knotted at intervals which was used in more serious offences- to rip off lumps of flesh from the offenders back. **History**

Corporal punishment (particularly caning) as a form of sentence dates as far back as the 16th century, biblical times and time immemorial. Corporal punishment was recorded as early as the 10th Century BC in the bible in the book of Proverbs He that spareth the rod hateth his son: but he that loveth him correcteth him betimes. Withhold not correction from a child: for if thou strike him. It is further recorded that Withhold not correction from a child: for if thou strike him with the rod, he shall not die. Thou shalt beat him with the rod, and deliver his soul from hell.<sup>31</sup> The sentence also known as whipping was made reference to in the biblical

account of Paul and Silas whilst in prison and the Lord Jesus Christ when he used the whip to drive out those who were buying and selling in the temple.<sup>32</sup> Slave owners used the whip to drive their slaves to work harder as accounted for in the holy Bible<sup>33</sup> - stories of the Egyptians using the whip on the Israelites who were slaves in Egypt. According to Von Yelyr it was used as a form of discipline to enforce conformity.<sup>34</sup> This type of sanction has been inflicted traditionally in countries like France, Germany, China, Russia, the United States of America and Britain. Corporal punishment was used to punish criminals, enforce conformity, discipline wives, religious persecution, in schools, on prisoners and as a form of religious practice. According to Hilbert,<sup>35</sup> it was used in the 16th and 17th century on children, adult drunkards, offenders, lunatics, peddlers and mothers of illegitimate children.

According to Adam,<sup>36</sup> in ancient Greece and Rome, flogging was used in punishing criminals. In Anglo-Saxon Britain, whipping with knotted cords was used. Under the 1530 Whipping Act of Britain, flogging was done by the use of whips. The offender was tied to a cart, stripped naked and beaten with whips throughout each market town till the body is bloody by reason of the whipping.<sup>37</sup> The use of brine soaked birch was also used for young offenders. In Scotland, during the reign of James VI, scourging especially of children was a form of sentence for such offences as causing disturbance in the church yard and the object used was a whip and the procedure was to beat or whip the offender in public. In Edinburg, corporal punishment ranged from whipping/scourging for a first offender and the stealing of bread worth one farthing.<sup>38</sup> Flogging was prevalent in the 17th century in English schools<sup>39</sup> In the United States of America, it was reported in the manual of correctional standards that it was only a corporal punishment of a humiliating type that was disapproved for the prisoners. There were reports that men and women in the prisons were flogged with heavy leather straps and that the sanctions were carried out by male employees of the prison.<sup>40</sup> Corporal punishment was used for

alpha.fdu.edu/psychology/corporal\_punishment.htm. Accessed on 26 March 2015

<sup>26</sup> *ibid*

<sup>27</sup> Adam Robert 1998 *The Abuses of Punishment*. St Martins Press, New York P.118

<sup>28</sup> Corporal punishment - New World Encyclopedia June 22 2013. Retrieved in [http://www.newworldencyclopedia.org/entry/corporal\\_punishment#cite\\_note-4](http://www.newworldencyclopedia.org/entry/corporal_punishment#cite_note-4)

<sup>29</sup> Henry Tim 2014 *Holy spirit of Fire*. Retrieved in <https://books.google.com.ng/books?id=4K2dAwAAQBAJ&pg=PA45&lpg=PA45&dq=In+the+Roman+Empire,+the+ferula+was+used+for+minor+offences.&source>. Accessed on 26 March 2015

<sup>30</sup> Proverbs 13 :24;

<sup>31</sup> Proverbs 23:13-14

<sup>32</sup> Act 16 :23 (NIV); See also John 2: 15

<sup>33</sup> Exodus 5

<sup>34</sup> Swan, G.G., *The Whip and the Rod: An account of Corporal Punishment among all nations and for all purposes*

<sup>35</sup> 1964 *The Root of Evil: A Social History of Crime and Punishment*. Penguin Books Hammondsworth

<sup>36</sup> Adam 1941 P. 121

<sup>37</sup> Van Yelyr p. 89

<sup>38</sup> Adams p 122; Cooper W.M., 1869 *Flagella*

<sup>39</sup> Freeman, C.B. 1979. *The Childers Petition of 1669 in Hyman, I.A & Wise J.H. ed Corporal Punishment in American Education*, Temple University Press. Philadelphia Pp. 41-9

<sup>40</sup> Tuff 1956 599 *Criminology*



religious persecution, According to *Van Yelyr*<sup>41</sup> in the mid-17th century, the Quakers were subjected to religious persecution and whipping was used to enforce conformity. This was also the case in the persecution of the Protestants in the early 19th century.<sup>42</sup> It was also a form of sanction in ancient monasteries and nunneries as an alternative to the sanction of excommunication and as part of penance in response to sin.

Corporal punishment was a common form of punishment in the ancient military form. From Roman times, in the English army, flogging was used for most offences.<sup>43</sup> Around 1900, it was used by the Europeans on African subordinates in the army. According to Kilgray, soldiers in Northern Gold Coast (now Ghana) could receive about 36 strokes of the cane for stealing and 30 strokes for looting. According to Napier in the use of corporal punishment in the military I often saw the unhappy victim brought out from the hospital three or four times to receive the remainder of his punishment too severe to be borne with danger of death at one flogging. According to him, the sentence in the military could be between 60 to 1000 lashes.

Corporal punishment could be found in the penal laws of different societies. The Criminal Code of Tuscany depended heavily on the use of whipping as a sanction.<sup>45</sup> Examples included, the Whipping Act of 1865 of India, the British Whipping Act of 1520, the Australian Penal Code of the 1930s, Jamaica in 1865, the mutiny Act of 1869 which was discouraged in the early 19th century.<sup>46</sup> One of the uses of corporal punishment was also to discipline erring wives. According to Sutherland the Welsh law allowed the husband to strike the wife three times with a broom stick. The French law allowed wife beating moderately without causing death.<sup>47</sup> According to Van Yelyr, King James II in England justified the beating of his wife with reference to Prophet Mohammed's injunction in the Holy Koran.<sup>48</sup> Wife beating is allowed under the Penal code in Nigeria subject to certain restrictions.<sup>49</sup> The section states Wife beating is permitted in so far as it does not amount to grievous injury Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is

<sup>41</sup> P. 38-45

<sup>42</sup> *Ibid* p.37-8

<sup>43</sup> *The Military Act 1689: The Military Act 1829*

<sup>44</sup> 1994 p. 208

<sup>45</sup> Cooper, W.M. 1869, *Flagellation and the Flagellants: A History of the rod* John Camden p.47

<sup>46</sup> Sindall R. 1990 *Street Violence in the 19th Century*, Pub. Media Public or, Real Danger. Leicester University Press/Printer Leicester

<sup>47</sup> 1895 *the origin and growth of moral instinct* Longman

<sup>48</sup> P.162

done by a husband, for the purpose of correcting his wife, such husband or wife being subjected to any native law or custom in which such correction is recognised as lawful. Justification for the use of corporal punishment has also been given in the Bible.<sup>50</sup> Old children rhymes depicted the fact that caning was part of the old British system. One of such was about the (not clear) who lived in a shoe. According to the words of the rhyme, she has so many children, she did not know what to do. She gave them bread without any broth and she whipped them all soundly and put them to bed. Another rhyme was that of Tom that stole a pig. Tom was beaten and the pig was eaten and Tom cried down the street.<sup>51</sup> Apart from such English rhymes, the use of corporal punishment was highly depicted in novels, these include Tom Brown and School Days<sup>52</sup> James Hilton's autobiography, to you Mr Chips and Goodbye Mr. Chip<sup>53</sup> that referred to corporal punishment at Brookfield College.<sup>54</sup> In an 1884 novel, the use of corporal punishment was mentioned. Huckleberry Finn Stated that after playing hockey, the hiding I got next day done me good and cheered me up.<sup>55</sup> In a novel by Roy Fuller in 1959, beating of boys with a hard brush across the bare buttocks was highlighted.<sup>56</sup> Corporal punishment was and still is a form of sanction commonly used in schools. In the culture of mid-Victorian English public schools, this was highly depicted. James Joyce in his book described the beating of a prefect in a Jesuit school in Ireland.<sup>57</sup> of Marlborough College, a public school in southern England stated that mass flogging of pupils was known.<sup>58</sup> Evelyn Waugh was quoted as stating in her diaries, that at Lancing College, between 1919 and 1921, corporal punishment was the norm rather than the exception.<sup>59</sup> Different arguments have been brought forward in support of the use of corporal punishment in ancient times. Hardy J. argued that corporal punishment was one physical ordeal that male children of the upper class had to pass through

<sup>50</sup> Section 55 Penal Code LFN 2004

<sup>51</sup> Proverbs 13:24

<sup>52</sup> *Favourite Nursery rhymes 2014* Retrieved in [https://books.google.com.ng/books?id=\\_r-NBQAAQBAJ&pg=PT126&pg=PT126&q=Another+rhyme+was+that+of+Tom+that+stole+a+pig.+Tom+was+beaten+and+the+pig+was+eaten+and+Tom+cried+down+the+street.&source](https://books.google.com.ng/books?id=_r-NBQAAQBAJ&pg=PT126&pg=PT126&q=Another+rhyme+was+that+of+Tom+that+stole+a+pig.+Tom+was+beaten+and+the+pig+was+eaten+and+Tom+cried+down+the+street.&source). Accessed March 26 2015

<sup>53</sup> Mullan John (2009) *Ten of the best flogging: Tom Brown's Schooldays* by Thomas Hughes. Retrieved in <http://www.theguardian.com/books/2009/apr/24/floggings>. Accessed on 24 March 2015

<sup>54</sup> Richards Jeffrey 1988 *Happiest Days: The Public Schools in English Fiction* Retrieved in <https://books.google.com.ng/books?id=7RMNAQAIAAJ&pg=PA254&pg=PA254&q=sequel+to+%E2%80%9CGoodbye+Mr.+Chip+on+corporal+punishment&source>. Accessed March 26 2015. See also <http://www.basincome.com/bp/toyoumrchips.htm>

<sup>55</sup> Hilton S. 1938. *To You Mr. Chips* Hodder and Stoughton P. 41.

<sup>56</sup> Twain, M. 1942 (1884) *The Adventures of Huckleberry Finn*, Thomas and Nelson p. 28-29

<sup>57</sup> Fuller, R. 1959 *The Ruined Boys*. London: Andre Deutsch

<sup>58</sup> Joyce J. (1916) *A Portrait of the Artist as a Young Man*. NY: B. W. Huebsch

<sup>59</sup> Bradley A.C. 1893 *A History of Marlborough College*. London: John Murray P 162

<sup>60</sup> Davie, M. 1976; *The Diaries of Evelyn Waugh*. London: Wiedenfeld and Nicolson P.60



in their rites of passage from adolescence to adulthood.<sup>60</sup> Killingray listed some arguments used in support of the use of corporal punishment. These include the fact that it is convenient, instantly and readily understood by those it was inflicted on (this was the argument used by European overseers over their use of corporal punishment for the Africans). Other arguments are that it was the easily available form of punishment in the camp farms and mines, incarceration reduced the scarce labour force, fines as a form of sanction was not understood and that flogging was preferred to all other forms of sanctions.<sup>61</sup>

### Arguments for and against caning as discipline

Different scholars have argued for and against caning as a form of discipline. While Straus said that it is not a constructive method of discipline<sup>62</sup> scholars like Moskos say that if one is faced with the choice between hard time and the lash, the lash is better. The arguments of the different schools of thought are considered below

### ARGUMENTS FOR CANNING AS PUNISHMENT

#### i. Effective and humane when compared to imprisonment

Flogging, whipping and lashing which are other terms for caning have according to Moskos are humane alternative to the overcrowded prisons. Caning as a form of corporal punishment, according to Moskos, would be an effective and comparatively humane way to bring the American prison population back in line with world standards. Moskos further commenting on the prison system in the United States of America, stated thus America has more prisoners than any other country in the world, the incarceration rate in America is roughly seven times that of Canada, that America has more prisoners than China and more prisoners than soldiers and that

<sup>60</sup> Favourite Nursery rhymes 2014 Retrieved in <https://books.google.com.ng/books?id=-NBQAAQAAJ&pg=PT126&pg=PT126&dq=Another+rhyme+was+that+of+Tom+that+stole+a+pig+Tom+was+beaten+and+the+pig+was+eaten+and+Tom+cried+down+the+street.&source>. Accessed March 26 2015

<sup>61</sup> Mullan John (2009) Ten of the best flogging: Tom Brown's Schooldays by Thomas Hughes. Retrieved in <http://www.theguardian.com/books/2009/apr/24/floggings>. Accessed on 24 March 2015

<sup>62</sup> The Public Schools Phenomenon 1977 London: Hodder and Stoughton. Cited in Benthall, J 1991, Invisible Wound: Corporal Punishment in British Schools as a form of Ritual in Child Abuse and Neglect. Vol 15 Part 4 pp 378-88

<sup>63</sup> Killingray 1994 The Rod of Empire The Debate over Corporal Punishment in the British African Colonial Force 1888-1946. *Journal of African History* Vol. 35 Part 2 p. 202.

<sup>64</sup> Straus, Murray A. Prevalence, Societal Causes, and Trends in Corporal Punishment by Parents in World Perspective. Retrieved in [Http://Scholarship.Law.Duke.Edu/Cgi/Viewcontent.Cgi?Article=1560&Context=Lcp](http://Scholarship.Law.Duke.Edu/Cgi/Viewcontent.Cgi?Article=1560&Context=Lcp). Accessed on 26 March 2015

<sup>65</sup> Moskos Peter, 2011 In Defence Of Flogging The Chronicle Review April 24 2011

<sup>66</sup> Moskos Peter 2011 Bring back the lash: Why flogging is more humane than prison in Washington monthly Magazine May/June, 2011. Re-

trieved in [http://www.washingtonmonthly.com/magazine/mayjune\\_2011/features/bring\\_back\\_the\\_lash029136.php?page=allon](http://www.washingtonmonthly.com/magazine/mayjune_2011/features/bring_back_the_lash029136.php?page=allon) Accessed 8 March 2015

#### ii. Immediate compliance and strong deterrence

A general agreement that this type of punishment is effective in eliciting immediate compliance. Alexa quoting from an article by the American Psychological Association<sup>67</sup> says Physical pain and fear is a strong deterrent for the person who receives corporal punishment and for those who witness it. People will associate certain behaviour with a certain consequence, such as spanking, paddling or flogging. This encourages people to avoid those behaviours that elicit corporal punishment

#### iii. Faster means of dispensing punishment

According to Moskos, prison means losing a part of your life and everything you care for. Compared to this, he went on to say that in the case of flogging, it is just a few very painful strokes on the behind, and its over in a few minutes<sup>69</sup> Alexa agreeing with Moskos, says that immediacy is one of the advantages of corporal punishment<sup>70</sup>

#### iv. Feared compared to imprisonment

From the Singaporean context and according to Hwang, caning is greatly feared by men who face it. In a newspaper article he stated thus: In the Singapore context, caning is the most dreaded form of punishment. If proof be needed, I need only recall the very many instances when young and middle-aged offenders, under caning orders, begged the Appeal Court in vain to suspend them and give longer prison terms instead. (But) until Parliament changes the law, there is nothing that can be done<sup>71</sup>

#### v. Honest transparent and Cost Effective compared to imprisonment

Comparing caning to prison, Moskos stated that caning has the advantage of being honest, transparent, inexpensive, and easy to understand unlike prison which is a dishonest way of dealing with the problem of punishment<sup>72</sup>

rieved in [http://www.washingtonmonthly.com/magazine/mayjune\\_2011/features/bring\\_back\\_the\\_lash029136.php?page=allon](http://www.washingtonmonthly.com/magazine/mayjune_2011/features/bring_back_the_lash029136.php?page=allon) Accessed 8 March 2015

<sup>67</sup> *ibid*

<sup>68</sup> *ibid*

<sup>69</sup> Alexa Josephine The Advantage of Corporal Punishment Retrieved in [http://www.ehow.com/info\\_8211462\\_advantages-corporal-punishment.html](http://www.ehow.com/info_8211462_advantages-corporal-punishment.html) Accessed 8 March 2015

<sup>70</sup> Alexa Josephine The Advantages of Corporal Punishment Retrieved in [http://www.ehow.com/info\\_8211462\\_advantages-corporal-punishment.html](http://www.ehow.com/info_8211462_advantages-corporal-punishment.html) Accessed on 14 March 2015

<sup>71</sup> *supra*

<sup>72</sup> Alexa Josephine The Advantage of Corporal Punishment in [http://www.ehow.com/info\\_8211462\\_advantages-corporal-punishment.html](http://www.ehow.com/info_8211462_advantages-corporal-punishment.html) Accessed on 14 March 2015

<sup>73</sup> Hwang, T.F Caning -- the most dreaded punishment, *Straits Times*, 7 September 1974



Mosko further stated that corporal punishment would not only save money, it would also save prisons for those who truly deserve to be there.<sup>73</sup> The above argument is supported by a non-governmental organisation that highlighted some reasons to support corporal punishment.<sup>74</sup> According to Phil, Corporal punishment is usually an effective behaviour deterrent.<sup>75</sup> It is said to be an immediate short term compliance and very cost effective. It is further said that it is quick and it saves time emphasising that it allows both parties to return to their tasks.<sup>76</sup> Alexa in support of this argument for caning says Compared to alternative methods of punishment and discipline, corporal punishment can cost less. Most of the times in the case of parental and school corporal punishment, only a ruler, a paddle or a belt are required to retribution. Schools with limited finances and resources use corporal punishment as a more cost-effective method of discipline. In judicial corporal punishment, an alternative method would be rehabilitation or community service programs, which can be costly to organize and maintain.<sup>77</sup> In relation to the Singaporean Criminal Justice System on the issue of caning, it has been stated that whipping or caning is indeed stressful and painful but it is Singapore's alternative to costly long-term confinement.<sup>78</sup>

#### vi. Effective means of discipline

The paddle, another term for the cane is said to be a distinct and unequivocal means of grace.<sup>79</sup> In a report in The Springfield Sun, many an unruly youth apparently foredoomed to perdition and predestined to wrath, has been plucked like a brand from the burning by a regenerative paddling.<sup>80</sup>

#### vii. Caning brings order in schools

Supporting caning, according to Lilley in a report titled Chaos to remove corporal punishment she said the removal of corporal punishment from schools would lead to a chaotic society.<sup>81</sup>

#### viii. It has religious ideologies

For religious purposes, using of the rod in the discipline of a child is said to be acceptable. It is recorded in the bible that He who spareth the rod hateth his son: but he that loveth him correcteth him betimes.<sup>82</sup> The bible also provides thus Withhold not correction from a child: for if thou strike him with the rod, he shall not die. Thou shalt beat him with the rod, and deliver his soul from hell.<sup>83</sup> On the issue of using the rod or the cane as discipline, the bible further provides that The rod and reproof give wisdom, but a child left to himself brings shame to his mother.<sup>84</sup>

#### ix. Caning carried out appropriately is not abuse

It has been argued that there is a distinction between spanking (another term for caning) for discipline and that done for abuse. It is said that it is a misguided view that if you spank their behind, you will warp their character.<sup>85</sup> According to Pastor Roger Monasmith, speaking on caning, it won't warp their character at all except you do it wrong.<sup>86</sup> He went on to say it can only be done with a balance.<sup>87</sup> Describing how the caning is carried out, he stated that the cane was never used in anger and a small paddle, like a ping pong bat was used as part of the disciplinary approach in the school.<sup>88</sup> According to a report it is said that responsible parents know the difference between spanking as discipline and abuse.<sup>89</sup> The report quoted Mrozek that Research does not show that spanking, done appropriately, harms children.<sup>90</sup> Baumrind has also been quoted to have suggested that those parents whose emotional make-up may cause them to cross the line between appropriate corporal punishment and physical abuse should be counselled not to use corporal punishment as a technique to discipline their children.<sup>91</sup> Baumrind was further quoted to have stated that other parents could use mild to moderate corporal punishment effectively. The fact that some parents punish excessively and unwisely is not an argument, however, for counselling all parents not to punish at all.<sup>92</sup> Arguments against Caning as Punishment.

<sup>73</sup> Ibid

<sup>74</sup> Ibid

<sup>75</sup> Phil for Humanity The Pros and Cons of Corporal Punishment in [http://www.philforhumanity.com/Corporal\\_Punishment.html#8221](http://www.philforhumanity.com/Corporal_Punishment.html#8221)

<sup>76</sup> Ibid

<sup>77</sup> Ibid

<sup>78</sup> Josephine Alexa The Advantage of Corporal Punishment in [http://www.show.com/info\\_8211462\\_advantages-corporal-punishment.html](http://www.show.com/info_8211462_advantages-corporal-punishment.html)

<sup>79</sup> Singapore Law FAQ S H Tan & Associates 2000 Retrieved in <http://singaporelawfaq.com> accessed on 12 March 2015

<sup>80</sup> Seas Virtue in the Paddle world Corporal punishment Research United States School CP - April 1908 in The Springfield Sun, Kentucky, 1 April 1908, p.6 Retrieved in [www.corpun.com](http://www.corpun.com). Accessed on 8 March 2015

<sup>81</sup> Seas Virtue in the Paddle world Corporal punishment Research United States School CP - April 1908 in The Springfield Sun, Kentucky, 1 April 1908, p.6 Retrieved in [www.corpun.com](http://www.corpun.com). Accessed on 12 March 2015

<sup>82</sup> Chaos to remove corporal punishment world Corporal punishment Research Barbados School CP - May 2011 in The Daily Nation May 11

<sup>83</sup> Proverbs 13:24 Kings James Version

<sup>84</sup> Proverbs 23:13-14 American Kings James Version

<sup>85</sup> Proverbs 29 :15 New American Standard Bible

<sup>86</sup> Quoting Pastor Monasmith in a report by Phillip Yasmine School defends their (sic) use of the Cane The Sunday Times Perth Sunday 9 July 2011. In AUSTRALIA School CP July 2011 Retrieved [www.corpun.com](http://www.corpun.com) Accessed March 18 2015

<sup>87</sup> Ibid

<sup>88</sup> Ibid

<sup>89</sup> Retrieved in <http://www.apa.org/news/press/releases/2002/06/spanking.aspx> ibid

<sup>90</sup> Lilley Brian 2011 Spanking new law world Corporal punishment Research Canada Domestic CP - January 2011 in The Ottawa Sun, 3 January 2011 Retrieved in [www.corpun.com](http://www.corpun.com). Accessed on 12 March 2015

<sup>91</sup> Ibid

<sup>92</sup> American Psychology Association 2002 Is Corporal Punishment an effective means of discipline June 26 2002. Accessed on 12 March 2015



Some arguments have been made against the use of a cane for discipline. Caning is said not to be a constructive method of discipline.

### Arguments against Caning as Punishment

Some arguments have been made against the use of a cane for discipline. Caning is said not to be a constructive method of discipline.

#### i. Difficult to draw a line between reasonable corporal punishment and abuse.

Coleman, Dodge and Campbell are of the opinion that it is critical and important to define and draw a line between reasonable corporal punishment and abuse.<sup>93</sup>

They went on to state that the line between the two is ill-defined and that various arguments canvassed for this has its valid concerns but also has ancillary effects. They went on to suggest that even when it is known that the line between the two will never be exact, a legislative solution may be the way out.

#### ii. Caning encourages violence

According to Straus Physical punishment unfortunately is the foundation on which the edifice of family violence rest In condemning caning as a form of discipline, Straus went further to say that Physical punishment is the way most people first experience violence and it establishes the emotional context of association of love with violence.

#### iii. There are alternative and effective methods

Another argument against the use of corporal punishment is that it is said that there are better forms of punishment that exist and that there are more effective ways to punish misbehaviour, than using corporal punishment.<sup>94</sup> Phil stated some arguments canvassed against the use of corporal punishment. These are discussed below

#### iv. Caning is a destructive method of discipline. It lowers self Esteem

Caning is said to lower self-esteem having longer psychological impact. In a position statement by the National Association of School Psychologists on Corporal Punishment adopted by the NASP Delegate Assembly on

<sup>93</sup> *ibid*

<sup>94</sup> Coleman Dorane L, Dodge Kenneth M and Campbell Sarah K 2010 Where and how to draw the line between reasonable US National Library of Medicine. National Institute of Health. Retrieved in <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3805039/> Accessed on 18 March 2015

<sup>95</sup> National Association of School Psychologists Delegate Assembly. 1998, April 18. Position Statement on Corporal Punishment. Retrieved in <http://www.nospank.net/nasp2.htm>; Accessed on March 18 201

April 18, 1998, NASP reaffirmed its opposition to the use of corporal punishment in schools in the United States of America

#### v. Instils rage, hostility and encourages violence

It is said that this form of punishment tends to instil rage and hostility in persons punished, which may be till adulthood and trains persons especially when the person punished is a child, to be violent to other children accepting corporal punishment as a form of education.

#### vi. Humiliating form of punishment

Caning as punishment is said to be humiliating. Judicial caning is clearly intended to be a humiliating experience. It is reported that former Prime Minister Lee Kuan Yew, founding father of modern Singapore, introducing mandatory caning for vandalism in 1966, told Parliament:

if (the offender) knows he is going to get three of the best, I think he will lose a great deal of enthusiasm, because there is little glory attached to the rather humiliating experience of having to be caned.

According to an account by Michael Fry, the teenage American who was sentenced to six strokes of caning in Singapore whose caning took place at Queenstown Road Remand Prison, in an open-air prison yard that is partially protected from a tropical downpour by a covering over the trestle to which he was bound <sup>99</sup> Michael Fay was quoted thus they stripped me and put rubber-lined padding around my sides, leaving the buttocks bare. Otherwise I was completely naked <sup>100</sup>

#### vii. Causes Physical Injury

Corporal punishment is a technique that can easily be abused, leading to physical injuries<sup>101</sup> In a description of the punishment Michael fry was said to have stated thus The skin did rip open, there was some blood, <sup>102</sup> He was further alleged to have added this statement Lets not exaggerate, and lets not say a few drops or that the blood was gushing out. It was in

<sup>99</sup> The Pros and Cons of Corporal Punishment. Retrieved in [http://www.philforhumanity.com/Corporal\\_Punishment.html](http://www.philforhumanity.com/Corporal_Punishment.html). Accessed on 8 March 2015

<sup>100</sup> See American Academy of Paediatrics. 2000. Corporal Punishment in Schools. *Pediatrics* 106 (August): 343 (1998)

<sup>101</sup> National Association of School Psychologists Delegate Assembly. 1998 April 18. Position Statement on Corporal Punishment. In <http://www.nospank.net/nasp2.htm>; Retrieved on March 18 2015

<sup>102</sup> *ibid*

<sup>103</sup> Washington Times, 26 June 1994.

<sup>104</sup> Newsweek, 4 July 1994).

<sup>105</sup> National Association of School Psychologists Delegate Assembly. 1998, April 18. Position Statement on Corporal Punishment. In <http://www.nospank.net/nasp2.htm>; Retrieved on March 18 201

<sup>106</sup> Fay describes caning, seeing resulting scars, Los Angeles Times, 26 June 1994



between the two. Its like a bloody nose<sup>103</sup>

#### viii. Thin line between caning as discipline and abuse

It is also argued that it may be difficult to draw a line between corporal punishment as discipline and when it becomes an abuse. This according to the argument is because for corporal punishment to typically continue working, more punishment, pain, or force maybe be necessary.<sup>105</sup>

#### ix. Outdated form of Discipline

Another argument against caning is that it has been banned in many countries of the world. It is argued that the fact that so many countries are against it portrays the negativity it brings and banning of it in so many countries must be for a good reason.<sup>106</sup> Countries listed to have banned canning as a discipline or punishment include Austria, Bulgaria, Chile, Costa Rica, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Iceland, Israel, Latvia, Norway, Portugal, Romania, Spain, Sweden, The Netherlands, New Zealand, Ukraine, Uruguay and Venezuela.<sup>107</sup> Countries such as the United Kingdom have banned it in state schools<sup>108</sup> and it was abolished as judicial corporal punishment in 1948.<sup>109</sup> It was also eliminated as a disciplinary sanction in prisons in 1967.<sup>110</sup>

#### x. Violation of Right

On the issue of right, it is argued that to discipline or punish a child through physical violence is a violation of the most basic of human rights. Article 19 of the UN Convention on the Rights of the Child declares that Children and young people have the right to physical and personal integrity.<sup>111</sup>

#### xi. Hardens rather than reform

One argument against caning is that it hardens the person being punished. While this fact may be true, imprisonment may also harden an offender.

<sup>103</sup> Don't copy-Singapore, USA Today, Washington DC, April 5, 1994

<sup>104</sup> The Pros and Cons of Corporal Punishment in [http://www.philforhumanity.com/Corporal\\_Punishment.html](http://www.philforhumanity.com/Corporal_Punishment.html)

<sup>105</sup> *ibid*

<sup>106</sup> Corporal Punishment should be reintroduced. Accessed in <http://debatewise.org/debates/547-corporal-punishment-should-be-reintroduced/> on 9 March 2015

<sup>107</sup> *ibid*

<sup>108</sup> The Telegraph September 16 2011 Bring back the cane to improve pupil discipline, say parents in <http://www.telegraph.co.uk/education/educationnews/8766021/Bring-back-the-cane-to-improve-pupil-discipline-say-parents.html>. Accessed on 9 March 2015

<sup>109</sup> William J. Mlyniec, 1985 Corporal Punishment in the United Kingdom and the United States: Violation of Human Rights or Legitimate State Action? 8 B.C. Int'l & Comp. L. Rev. 39 (1985), Retrieved in <http://lawdigitalcommons.bc.edu/iclr/vol8/iss1/3>. Accessed on march 10 2015; See also the Criminal Justice Act 1948

<sup>110</sup> Criminal Justice Act 1967

<sup>111</sup> The telegraph 2011 Supra

#### xii. May cause Death

It has also been argued that corporal punishment can cause death. Middleton and Hopley in their article made reference to the fact that death resulted from caning or flogging in the course of discipline.<sup>112</sup>

While this argument is tenable, it could also be said to be untenable. The truth is that any form of punishment may lead to death, if care is not taken. Corporal punishment if properly administered for discipline and not abused will not lead to death.

#### Global Perspective on Corporal Punishment

Corporal punishment had at one time or the other had a place in the domestic educational, religious or political sphere of many societies. While the State reserved the right to inflict pains for flouting of laws and disregard to constituted authorities, it also gave educational institutions the right to discipline students for infringement of school rules in order to mould their character. Parents were also known to use this form of punishment to instil discipline in the homes and husbands in some jurisdictions were permitted to cane their wives to discipline them. The history, the development and method of inflicting corporal punishment varied from one jurisdiction to another. However, one thing was common. The method of using the rod or the cane cause pain in inflicting discipline.

Using the cane or the rod or whatever means of corporal punishment as discipline, remained in many of the jurisdictions until the nineteenth and mid- twentieth century when changes started to occur in the outlook to this form of punishment. It is however recorded that as far back as 1783, Poland had prohibited corporal punishment, making the country, the first in the world to do so. The changes in some selected countries is discussed briefly below<sup>113</sup>

#### England

Early common law recognized corporal punishment as a form of discipline in schools, for offenders in detention and even marital discipline by husbands. Different methods were used for different category of persons. The criticism of this form of punishment in schools in the early nineteenth

<sup>112</sup> Middleton J and Hopley T 2005 Mid Victorian attitude to Corporal Punishment. *History of Education* 2005 34:6. 599-615

<sup>113</sup> Corporal punishment - New World Encyclopedia retrieved in [www.newworldencyclopedia.org/entry/corporal\\_punishment](http://www.newworldencyclopedia.org/entry/corporal_punishment). Accessed on March 18 2015



Century paved way for changes and finally the abolition of corporal punishment in schools and as punishment in prisons.<sup>114</sup> In England in 1987 the cane was banned in state-funded secondary schools. It was banned in private schools in 1999.<sup>115</sup> Despite the abolition, there are still reports of its use in schools in the United Kingdom. According to a Guardian Newspaper report, in Greybrook School Newbiggin Northumberland, in the early 1990s, the use of corporal punishment in the school was reported to the police by a 12 year old girl who said she had been beaten once on her bare bottom and normally her clothing. The issue was investigated and found to be true.<sup>116</sup> England is said to be the last European country to ban corporal punishment<sup>117</sup>

### United State of America

The development of corporal punishment in the United States of America is closely linked to that of Britain from the historical perspective. The British settlers in the colonies of America brought their practices one of which was the use of corporal punishment for discipline, though the perspective in which it was introduced differed slightly.<sup>118</sup>

Individual states in the United States of America have the power to ban corporal punishment in their schools. Currently, it is said to be banned in public schools in about 31 states and the District of Columbia. It is said that most public school systems in the urban areas, even in states where it is permitted, have abolished corporal punishment.

While New Jersey was the first state to abolish corporal punishment in 1861, California banned it in public schools in 1986 and New Mexico followed suit in 2011. The last two American states to use corporal punishment as a judicial penalty were Maryland, where it was seldom inflicted before being abolished in 1952, and Delaware, where the last flogging took place in 1952 although formal abolition did not occur until 1972.<sup>119</sup>

Private school are exempted from the state ban. However a few states like Iowa and New Jersey have also banned caning in private schools.<sup>120</sup> While

<sup>114</sup> Allan J. Myniec, 1985 *Corporal Punishment in the United Kingdom and the United States: Violation of Human Rights or Legitimate State Action?* 8 B.C. Intl & Comp. L. Rev. 39 (1985), <http://lawdigitalcommons.bc.edu/icr/vol8/iss1/3>. Accessed on March 10 2015; See also the *Criminal Justice Act 1948*

<sup>115</sup> Lambert Tim A *Brief history of corporal punishment*. Retrieved in [www.localhistories.org/corporal.html](http://www.localhistories.org/corporal.html) on Accessed 10 March 2015

<sup>116</sup> *The Guardian Newspaper* 7 September 1994

<sup>117</sup> *Spare the Rod*. Retrieved in [www.nospark.net/bluestein.htm](http://www.nospark.net/bluestein.htm). Accessed on March 18 2015

<sup>118</sup> *Ibid*

<sup>119</sup> Rank, J *American Law and Legal Information, Crime and Criminal Law, Corporal Punishment Prevalence*, Retrieved in <http://law.jrank.org/pages/737/Corporal-Punishment-Prevalence.html>. Accessed on 26 March 2015

<sup>120</sup> Quazi Faruque Alamed 2011 *Corporal punishment: Yes or No* The Daily Star January 28 2011 Retrieved in <http://archive.net/newD>

some private schools still use caning as a form of discipline others do not. One of the many notable cases in the United States of America on the issue of corporal punishment in schools is the 1977 case of *Ingraham v. Wright*. In the case, the Supreme Court held that the use of corporal punishment in school did not violate the eight Amendment Constitutional provision that prohibit cruel and unusual governmental punishment. It should however be noted that a student who has sustained injury as a result of caning as discipline may have a case under assault and battery.<sup>123</sup>

### Singapore

According to West, Singapore's criminal laws is said to be one of the most extreme and consistent laws found in the entire world.<sup>124</sup> Its government still employs the use of corporal punishment for some offenses that would receive a mere parole sentence in other countries. The penal legislation in Singapore has its historical roots in the criminal laws of England and India.<sup>125</sup> When the Straits Settlements, comprising Singapore, Penang and Malacca, was formed in 1824, the criminal law of England applied.<sup>126</sup> Offences such as begging, pornography, and treason, attracted corporal punishment. In the 1870s, a code came into force based on the Indian Penal Code that contained numerous whipping provisions

Bruce Lockhart, writing on the Singaporean jail in the early 1930s quoted thus

*Crossing from one block of buildings to another, we passed a narrow oblong strip of grass surrounded by high windowless walls. And yet there was something uncanny and sinister about these high grey walls which shut out everything except the stretch of sky overhead. The plot is not an architect's whim. It has its uses. Sometimes its walls resound with the dull, heavy sound of the lash and with the screams of prisoners. ... Since [the 1890s] this plot has been used for floggings and hangings.*<sup>127</sup>

When Singapore became a separate colony in 1948, the Penal Code retained the provisions for whipping. Caning is a punishment that was recognized

<sup>123</sup> [esign/news-details.php?nid=171365](http://en.wikipedia.org/wiki/school_corporal_punishment#cite_note_117). Accessed on 18 March 2015

<sup>124</sup> Retrieved in [http://en.wikipedia.org/wiki/school\\_corporal\\_punishment#cite\\_note\\_117](http://en.wikipedia.org/wiki/school_corporal_punishment#cite_note_117)

<sup>125</sup> *Ingraham v. Wright*, 430 U.S. 651 (1977)

<sup>126</sup> *Frank v. Orleans Parish Sch. Bd.*, 195 So.2d 451 (La. Ct. App. 1967)

<sup>127</sup> West, Chasity 2014 *Power and the Penal System: A transnational comparison of penal strategies and the application of power* Retrieved in [minutesbefore6ix.blogspot.com/.../power-and-penal-system-transnational](http://minutesbefore6ix.blogspot.com/.../power-and-penal-system-transnational). Accessed on 26 March 2015

<sup>128</sup> Low, Donald, Vadaketh, Sudhir Thomas 2014 *Hard Choices: Challenging the Singapore Consensus* Singapore: NUC Press



in the statute book after Singapore's full independence in 1965.<sup>128</sup> It was given as punishment for a greater range of offences by 1966 and it is said that presently, caning is a punishment for over 40 offences in Singapore ranging from serious offences like rape and immigration offences such as overstaying of Visa over a specified period and for less serious offences like vandalism.<sup>129</sup> The country was in the world news in 1994 when a Singaporean court sentenced Michael Fay, an American teenager to six strokes of the cane for the offence of vandalism.<sup>130</sup>

### Australia

In Australia, laws on corporal punishment in schools are determined at individual state or territory level. Caning was banned in public and Catholic schools in 1986.<sup>131</sup>

In the state of Victoria, corporal punishment was banned in government schools in 1985, in non-government schools in 2006<sup>132</sup> and it was banned by law in all schools in Australian Capital Territory in 1997.<sup>133</sup> Corporal punishment was banned in government schools in Queensland<sup>134</sup> and South Australia<sup>135</sup> in 1989 and 1991 respectively, it is known that very few private schools impose corporal punishment.<sup>136</sup> In Western Australia, corporal punishment was formally outlawed in public schools by the Education Act 1999. It was effectively abolished by the Education Departments policy in 1987.

### South Africa

The use of corporal punishment in schools was prohibited by the South African Schools Act, 1996. Section 10 (1) of this Act provides that No

<sup>128</sup> SingaporeLaw.sg The Singapore Legal System - Singapore Law Chapter 1. Retrieved in <http://www.singaporelaw.sg/sglaw/laws-of-singapore/overview/chapter-1>. Accessed on 26 March 2015

<sup>129</sup> R. H. Bruce Lockhart, *Return to Malaya*. London: Putnam, 1936.

<sup>130</sup> Hodson, Joel 2003 A Case for American Studies: The Michael Fay Affair, Singapore-US Relations, and American Studies in Singapore. *American Studies International*, Vol. 41, No. 3, October 2003

<sup>131</sup> Caning in Singapore: Offences For Which Caning Is Imposed. Retrieved in <http://www.cjcpc.net/.../Crime%20and%20Punishment.../Crime%20and%20Punish>. Accessed on 26 March 2015

<sup>132</sup> What US columnists say about Fays caning. *The Straits Times* (Singapore), 8 April 1994. <http://www.corpun.com/sjju9404.htm#6392>; See also Wallis, Charles P. (4 March 1994). *Ohio Youth to be Flogged in Singapore*. *Los Angeles Times*. <http://www.corpun.com/sjju9403.htm#4910>. Retrieved from [http://en.wikipedia.org/w/index.php?title=Judicial\\_corporal\\_punishment&oldid=455938218](http://en.wikipedia.org/w/index.php?title=Judicial_corporal_punishment&oldid=455938218)

<sup>133</sup> Phillip Yasmine School defends their (sic) use of the Cane *The Sunday Times Perth*, Sunday 9 July 2011. In AUSTRALIA School CP July 2011 Retrieved in [www.corpun.com](http://www.corpun.com) Accessed March 18 2015

<sup>134</sup> [http://en.wikipedia.org/wiki/school\\_corporal\\_punishment#cite\\_note\\_44](http://en.wikipedia.org/wiki/school_corporal_punishment#cite_note_44)

<sup>135</sup> [http://en.wikipedia.org/wiki/school\\_corporal\\_punishment#cite\\_note\\_46](http://en.wikipedia.org/wiki/school_corporal_punishment#cite_note_46)

<sup>136</sup> [http://en.wikipedia.org/wiki/school\\_corporal\\_punishment#cite\\_note\\_48](http://en.wikipedia.org/wiki/school_corporal_punishment#cite_note_48)

person may administer corporal punishment at a school to a learner. A person who contravenes the law could be liable for the punishment of an assault.<sup>137</sup>

### Nigeria

Caning as a punishment is implemented in Nigeria. This is irrespective of the sex, age physiological or physical conditions of persons to whom it is administered. Under the Nigerian Criminal Justice System, in particular in the Criminal Code Act applicable to the southern part of the country, it is recognized as a form of punishment.<sup>138</sup> This is also the case in the Penal Code applicable to the Northern part of the country.<sup>139</sup> Under the penal code, section 55, provides that a husband can cane the wife to instil discipline.<sup>140</sup> Although caning as a form of discipline or punishment has been banned for persons under the age of eighteen years by the Child Right Act, a legislation passed in 2003 and Child Right Laws of the various states where they are applicable,<sup>141</sup> it is an issue of great concern how the ban can be effectively implemented, considering cultural and religious stands in Nigeria.<sup>142</sup> In a report by Bello and Ochu, an Abuja mobile court in 2010, ordered twenty five (25) hawkers who were minors to be given six stroke of cane each for displaying their wares at road junctions and unauthorized places on November 5, in the countrys main capital in Abuja, an offence under Section 35 (1h) of the Abuja Environmental Protection Board (AEPB) Act No 10 of 1997.<sup>143</sup> In a related report, Bello stated that another fifteen minors were also ordered to be flogged by the same court for a similar offence committed on October 5, 2010.<sup>144</sup> Sharia law, especially in the Northern part of Nigeria recognizes caning as a form of discipline. In 2000, a pregnant teenage girl was sentenced to 180 strokes of the cane by a sharia court in northern Nigeria on charges of having pre- marital sex. Many human rights groups reacted to this punishment.<sup>145</sup> Caning is very

<sup>137</sup> [http://en.wikipedia.org/wiki/school\\_corporal\\_punishment#cite\\_note\\_49](http://en.wikipedia.org/wiki/school_corporal_punishment#cite_note_49)

<sup>138</sup> [http://en.wikipedia.org/wiki/school\\_corporal\\_punishment#cite\\_note\\_50](http://en.wikipedia.org/wiki/school_corporal_punishment#cite_note_50)

<sup>139</sup> See also the case of *Christian Education South Africa v Minister of Education* (CCT13/98) [1998] ZACC 16; 1999 (2) SA 83; 1998 (12) BCLR 1449 (14 October 1998) for the position in South Africa

<sup>140</sup> Section 17 and section 18 of Criminal Code Act Cap C38, Laws of the Federation of Nigeria (LFN), 2004.

<sup>141</sup> Cap C53, Laws of the Federation of Nigeria (LFN), 2004

<sup>142</sup> *Ibid*

<sup>143</sup> Section 221 (A) Childs Right Act

<sup>144</sup> Bamgbose Olujemisi 2014 Re-evaluating the Juvenile/Child Justice System in Nigeria. Text of the 2014 Professor Jadesola Akande Memorial Lecture. Nigerian Institute of Advanced Legal Studies, Lagos, 2014

<sup>145</sup> Bello Usman A and Ochu Victoria A 2010 Minors flogged for hawking in Abuja Daily Trust of 9 November 2010. World Corporal Punishment Research. CORPUN NIGERIA Judicial CP November 2010 in [www.corpun.com](http://www.corpun.com). Accessed on 15 March 2015

<sup>146</sup> Bello Usman A 2010 Minors flogged for hawking in Abuja Daily Trust of 15 November 2010. World Corporal Punishment Research. CORPUN NIGERIA Judicial CP November 2010 in [www.corpun.com](http://www.corpun.com). Accessed on 15 March 2015



much used in the discipline of students in schools and very much in the home setting.

### Corporal punishment in contemporary times

Flogging is regarded as one of the serious forms of corporal punishment. The United Nations Human Rights Committee and other organizations have suggested that the prohibition of cruel, inhuman, or degrading punishment under Article 7 of the International Covenant on Civil and Political Rights could be extended by customary law to include corporal punishment. Nevertheless, while some of the practices of some countries have been rebuked and condemned by the United Nations Commission on Human Rights, that body had at 1997, suggested that certain forms of corporal punishment may violate international law, leaving open the question of the extent to which evolving standards or general principles of law will tolerate other forms. The use of corporal punishment has been prohibited by the United Nations Human Rights Committee in 1982. It is categorised as a punishment that is cruel, inhuman and degrading. However studies have shown that it is still used in many societies. According to Korbins, corporal punishment is still used in British households.<sup>147</sup> McFarland also buttressed this fact and stated that it is well entrenched in the culture of Britain and the United States of America.<sup>148</sup> In Britain, the Education Act 1986, abolished the use of corporal punishment in schools and homes but the practice is still being discovered, whilst smacking is still allowed.<sup>148</sup> Caning as a form of sentence is used across cultures of all countries. This may be due to the fact that it is the most easily available form of punishment, whether applied by use of the hand for smacking, the use of objects like sticks, cane or whip and the fact that it may be said to be the cheapest form of sentence. The sentence is recognised by Nigerian law and the object to be used is specified by the law, the number of strokes and the person to inflict them are also specified. This will be discussed in detail later in this paper.

Though it may be said to be the cheapest, it may not necessarily be the most effective form of sentence or the safest. Unlike offences of assault

<sup>146</sup> Pregnant Girl ordered caned in Northern Nigeria. NIGERIA Judicial CP. September 2000. Yahoo News, 15 September 2000. Retrieved in [www.corpun.com](http://www.corpun.com). Accessed on March 18 2015

<sup>147</sup> Robert Adams: *The Abuses of Punishment*, St Martins Press. New York, 1998 pp18 Amnesty International 1984 Pg 16

<sup>148</sup> Korbin, J.E. (Ed) 1987 *Child Maltreatment in Cross Cultural Perspective*. Aldin de Gruyter. New York

<sup>149</sup> Mc Farland, R.B. 1995 *Beating the Devil out of Them- Corporal Punishment in American Families*. Journal of Psychohistory. Vol 22, Part 3 Winter Ed. Pp 366-9

<sup>150</sup> Sunday Telegraph October 27 1996 p.11

or battery where there is physical assault/contact by the aggressor on the victim, corporal punishment is not a criminal offence if the purpose is to discipline or contain a situation and reasonable pain is inflicted for the purpose. There is the difficulty in clarifying or defining the boundaries between corporal punishments in terms of the pain inflicted on a person by another for the purpose of discipline and punishment, and torture or inhuman or degrading treatment.

More serious forms of corporal punishment, including flogging and amputation, have undergone a revival in certain Islamic countries that have experienced a revival of fundamentalism. The United Nations Human Rights Committee and other organizations have suggested that the prohibition of cruel, inhuman, or degrading punishment under Article 7 of the International Covenant on Civil and Political Rights could be extended by customary law to include corporal punishment. Nevertheless, while some of the practices of some Islamic countries have drawn rebuke and condemnation by the United Nations Commission on Human Rights, that body has as recently as 1997 suggested only that certain forms of corporal punishment may violate international law, leaving open the question of the extent to which evolving standards or general principles of law will tolerate other forms.

### Towards Total Abolishment of Corporal Punishment

Despite the arguments in support of the use of corporal punishment, there are moves towards the total abolition of the sanction. Some of these are highlighted below.

#### i. Debates

Some religious, political and social leaders have engaged in the debate on corporal punishment and have given support to what is termed a moderate use of it.

#### ii. Organisations

In the 21st century, more attention is paid to the use of corporal punishment for children. The movement towards abolition of corporal punishment as a sanction led to the founding of such organisations like End Physical Punishment of Children (EPOCH) in Britain, established in late 1960 to stop corporal punishment in schools.

#### iii. Country Report

Sweden was the first country to abolish the use of corporal punishment on children by parents in 1979. Other countries;



Austria, Norway, Finland and Denmark have followed suit. In Nigeria, Corporal punishment has been abolished as a form of punishment for children in compliance with the Child Right Act 2003 at the Federal level and the passing of the Child Right Laws in nineteen states in Nigeria.

#### **Recommendations**

In the jurisdictions where caning is still permitted, it is governed by official regulations laid down by governments or local education authorities, defining such things as the implement to be used, the number of strokes that may be administered, which members of staff may carry it out, and whether parents must be informed or consulted. Depending on how narrowly the regulations are drawn and how rigorously enforced, this has the effect of making the punishment a structured ceremony that is legally defensible in a given jurisdiction and of inhibiting staff from lashing out on the spur of the moment.

In jurisdictions where caning is still allowed, it is canvassed that the discipline should not be meted in anger.

#### **Conclusion**

It is hoped that there is a means of deterring and punishing offenders that is better than either flogging or imprisonment. Until we figure out what that is and have the political fortitude to adopt it, we should not let the perfect be the enemy of the good. Flogging may be distasteful, but surely there is little harm in offering the choice. If it takes a defence of flogging to make us face the truth about prison and punishment, I say bring on the lash.

## **THE GENERAL COUNSEL AND CRISIS MANAGEMENT**

### **AN EXCERPT FROM THE COURAGEOUS GATEKEEPERS**

**BY LERE FASHOLA**

#### **INTRODUCTION**

A lot of factors are responsible for the increasing rate of the demands of the work of general counsel. These factors range from volatile economy, increasing competition, new and stricter regulations and laws governing corporate governance, uninterrupted legal and juridical interconnectedness, among others. With all of these, the general counsel are faced with mirage of unprecedented challenges and corporate risks. As would be expected, the panacea to this is not to run away from the challenges but rather to face them headlong with a view to a lasting solution to the increasing reputational, operational, or strategic risks to which the general counsel are constantly expose. All of this underscores the growing importance of a general counsel's ability to navigate the complicated landscape of crisis management swiftly and adeptly. While every crisis is unique and each response must be precisely tailored to the facts, any effective crisis-management plan must include a competent team, clearly defined roles and responsibilities, and continuing post-crisis communication.

Our earlier chapter introduces us to the risks involved in the work of the general counsel and part of the strategies he would be expected to employ to tackle them are also required in managing crisis when they arise. In summarizing the role of the general counsel, a crisis can occur at any time, in any form and it is often accompanied by paralyzing fear and uncertainty. Crisis management is a critical organizational function and each unique crisis requires a tailored response. Evaluate key components of in-house counsel's role in a crisis situation, including, proactively responding to operational and legal issues, seamlessly managing internal and external stakeholders, and confidently communicating to help move your organization forward. Hear from our expert panel about their lessons



learned in managing crises and how to guide your legal team and organization through a challenging time. Learn how to turn risk into an opportunity to showcase your leadership and management skills.

### UNDERSTANDING CRISIS MANAGEMENT

Crisis management is simply a cushion effect to reduce risk and other burden and cost of the organization. It involves the process by which an organization deals with a major occurrence that threatens to harm the organization, its stakeholders, or the general public. Crisis management is the application of strategies designed to help an organization deal with a sudden and significant negative event. A crisis can occur as a result of an unpredictable event or as an unforeseeable consequence of some event that had been considered a potential risk. In either case, crises almost invariably require that decisions be made quickly to limit damage to the organization. For that reason, one of the first actions in crisis management planning is to identify an individual to serve as crisis manager. Crisis management best practices also include:

- Planning in detail for responses to as many potential crises as possible.
- Establishing monitoring systems and practices to detect early warning signals of any foreseeable crisis.
- Establishing and training a crisis management team or selecting an external crisis management firm with a proven track record in your business area.
- Involving as many stakeholders as possible in all planning and action stages.

Every organization confronts one experience or another that threatens its continuous existence, hampers its business expansion and risk mitigation. In business corporations, the task of managing risks, exposure and crisis is primarily that of the general counsel. However, the strategies involved and employed are communicated to the board and the senior management before implemented. In commonplace, prevention they say is better than cure; general counsel would be required to take proactive steps in addressing issues and be anticipatory and preventive in their approach than curative or therapeutic. In other words, general counsel should endeavour to avoid crisis than managing them. If crisis prevention is done, the cost of managing it would be limited. But crisis like risk is obviously part and parcel of every business, the general counsel should provide a palliative measure.

### AREAS OF CORPORATE CRISIS

Crisis arrives in many forms. Any event that threatens an organizations existence or ability to thrive and expand business can present a crisis situation, including embezzlement, a founder transition, a corporate takeover and lawsuits, board tensions, bankruptcy analysis, succession planning, dispute resolution and settlement agreements, among others. During times of crisis, we think systemically to develop long-term solutions. General Counsel are expected to help organizations rally, identify and leverage resources during these difficult and business-threatening times.

### DEALING WITH CRISIS

How then will the general counsel manage crisis that affects the growth of the company? The immediate answer to this question will be that crisis management does most times not require routine or general response; instead, they require non-routine, situation-determined responses. This, obviously is where the General Counsels value as a trusted Board adviser at the nexus of the organizations risk exposures, operating model and structure can really come to the fore. They can demonstrate their deep understanding of each crisis events underlying internal and external consequences for the business and also the consequences of its responses to those events. Many measures have been advised by experts in general counsel as to how crisis could be managed in corporate organizations, but basically, few of those will first be addressed here. Ariel Volpe<sup>1</sup> and Paul Mandell<sup>2</sup> opine that three preventive and curative measures are necessary in combating critical threat to reputational, operational and strategic functioning of the organization. However, it is relevant to state that one-size-fits-all approach to preparing for and responding to crisis situations will inevitably fail to address the full array of causes, consequences and twists and turns that can emerge.

Richard Sykes<sup>3</sup> of the PwC suggests that avoidance superimposes cure. In other words, the general counsel should endeavor to act the preventionist rather than the therapist script. This indicates that the pre-crisis period should be taken seriously with a view to achieving two things, namely, avoiding crisis and forestalling the havoc of debilitating crisis. In effect, by taking rational decisions and giving reasonable advice, the general counsel

<sup>1</sup> She is, at the time of compiling this manuscript a manager of forum planning at Consero, an international leader in the development of invitation-only events for senior executives in the legal industry, among others. Ms. Volpe has a B.A. in Government and History from the College of William and Mary.

<sup>2</sup> He is, at the time of this publication a founder and the CEO of Consero Group.

<sup>3</sup> He is a partner at PricewaterhouseCoopers. Check footnote 11 below to see the full meaning of PwC.



will on the one hand, be keeping the company from getting into crisis, and on the other hand, reducing the effect of the hit of crisis in case it eventually inevitably occurs. Thus, Sykes invites the general counsel to the three fundamental things they need to do to manage crisis: First, working in conjunction with the Company Secretary, act as the Board's eyes and ears in the governance domain. Second, work to embed an organization-wide compliance culture focused not just on risks, but on their potential outcomes. And third, be alert to signals or behaviours that might indicate a crisis.<sup>4</sup>

• **Building a proper pre-crisis team**<sup>5</sup>

A pre-crisis team means a team that takes decisions on reputational, strategic, or operational risks and exposures that await the organization. The team performs two major tasks, namely, minimizing effects of the given crisis and recommending measures to avoid or prevent future debilitating crisis. The composition of the team should consider competent and strategic people who, according to Mandell et al, whether talking about privilege, forensics, evidence preservation, or public statements and commitments navigates the immediate crisis in a manner that protects and in some cases even advances long-term strategic objectives.<sup>6</sup>

It is important that the pre-crisis team needs skills that involve its being multi-disciplinary, proactive, insightful and strategic, both in planning and preparing for and responding to a crisis and in possessing authority on strategic decisions to avoid damage. Except for availability of competent in-house lawyers, it is imperative, Volpe et al argue that the general counsel incorporates into the pre-crisis team skilled, experienced and versatile outside counsel, public relations firm(s), and internal senior level colleague from other units or departments. The rationale behind this is to ensure a variability of perspectives and skills necessary to forestall future crisis and mitigate fallout of the given crisis. The role of the outside counsel cannot be over-emphasized in crisis management. Volpe et al opine that a seasoned, respected and experienced attorney is capable of providing both critical legal guidance and signal that the company is taking the matter seriously enough that any inquiries or curative efforts are impartial and frank. Similarly, credible and experienced public relations firms are also instrumental in providing varying perspectives and assess dicey and complex situations with a view to proffering ways to minimize reputational

<sup>4</sup> <http://www.pwc.ca/uk/forensic-services/the-new-general-counsel-helping-the-board-tackle-crises.html>

<sup>5</sup> The author advisedly emphasizes the point that prevention is better than cure: that is, it is important to form and designate crisis-situation team even before crisis arises. This is a corroboration of PwC's opinion in the preceding discussion of this chapter.

<sup>6</sup> Paul Mandell

risk of the company. Doing this would go a long way to properly blend legal counsel to professionalism and strategy. Volpe et al argues further:

*When possible, general counsel should engage a PR firm that already knows the ins and outs of the business; however, it is best to use a firm other than the one that the company uses for its overall PR strategy. This avoids confusion about whether the PR firm is serving its routine PR duties versus directly assisting in the legal effort, which can be important in the context of privilege. Finally, the general counsel should be sure to include a variety of senior-level internal colleagues. These individuals can help identify specific issues relating to clients or employees that require specific attention, as well as help coordinate rigidly consistent internal and external messaging.<sup>7</sup>*

Ashely Post elaborates on the relevance and all-important roles of the Public Relation firm in these words:

A good PR firm will help companies develop draft questions and answers that will be readily available in the event of a crisis or negative event. They'll also guide the company in choosing crisis-response spokespeople. Spokespeople should be selected for their quality, their ability to look good during a crisis and [their ability] to think on their feet, Poole says. The head media spokesperson, even if its not that persons full-time job, is a very important role and should be assigned to someone whos going to put the company in the most favorable light.<sup>8</sup>

However, the kind of crisis into which a company runs determines the criteria required in recruiting and forming the crisis team. Ashely Post argues that:

*The members of companies crisis-management teams will vary depending on the crisis. For example, if the crisis relates to a government investigation, the general counsel should recruit the CEO, chief financial officer, head of corporate communications and the heads of any business units that may be implicated as team members. For other crises, such as white-collar crime, members of senior management may need to be excluded from the team.*

<sup>7</sup> <http://www.insidecounsel.com/author/ariel-volpe>

<sup>8</sup> <http://www.insidecounsel.com/2013/01/28/the-gc-guide-to-corporate-crises?page=3>



*In all crises, its critical for companies to seek help from outside counsel who are experts in the types of crises they're facing. Crisis-management professionals go from crisis to crisis to crisis, and they begin to identify and see patterns in highly complex circumstances*

The point here is clear as to who makes the team, when the team is constituted and why it is necessary to have the team. Summarily, factors to consider when determining who makes the team are but not limited to expertise, skills, experience, specialization, and strategy; in terms of when to constitute the crisis management team, the general counsel must consider having its team before crisis emerges. Otherwise, the unreasonable fire-brigade or what in other parlance is called hire-and-fire approach would be resorted to. Thirdly, the question of why crisis management team is important cannot be overemphasized in the sense that crisis

#### • **Assigning Roles and Responsibilities**

The second significant point identified by Volpe, et al is role and responsibilities assigning. According to them, in the event of managing crisis, the general counsel must ensure that each member or group in the team is assigned its roles and responsibilities; ditto to the public relation firm and the outside counsel. This would bring about proper co-ordination and control of activities and reduction in both legal and reputational risks, while at the same time putting in check unnecessary financial burden on the part of the company. Equally important as task of the general counsel is equipment with knowledge of the requisite skills; the outside counsel could be equipped to conduct fact investigations, provide objective risk assessment, and identify potential experts and useful assets in any litigation. The general counsel should also provide direction to the public relation firm, and ensure that PR strategies align with company goals and current public image.

#### • **Debrief and strategic future planning**

The third task of the general counsel in crisis management is concerned with post-crisis period. Volpe et al opines that after the immediate threat of the crisis has passed, it is vital to regroup and discuss the strengths and weaknesses of the response. The crisis management team should focus on analyzing thoroughly the root cause of the crisis and determine whether

the problem is systematic or a one-time issue. After identifying vulnerable internal functions, the general counsel can begin establishing any necessary new company protocol and policies. Outside counsel can track changes in the relevant regulatory framework to help the company plan for the future. The PR firm should monitor the company's public image and continue to assist with positive PR campaigns. Above all, the crisis-management team must keep an open dialogue with one another to ensure that any lasting effects of the crisis are handled in a timely manner ++ the right measures are in place to prevent a future crisis.<sup>10</sup>

The bitter truth is the question facing general counsel no longer seems to be simply whether a crisis will hit, but rather what can be done to prepare for and minimize the impact of the next one. By building the right team, establishing roles, and keeping lines of communication open, general counsel will be able to successfully guide a company through any crisis.<sup>10</sup>

#### **WHAT THE CRISES ARE**

Basically, crisis occurs in every area of company's life, because every course of action undertaken by the company, in the key areas of law, reputation, operation, strategy and/or finance bothers on risks and crisis. In one of its interviews, PricewaterhouseCoopers<sup>11</sup> identifies four key areas crisis hits companies, and these areas constitute the kinds of crisis to which companies are vulnerable. They include: (1) Physical or rapid-onset crisis (2) Operational disruptions (3) Hidden/Silent crisis (4) Strategic Crisis.

- **Physical or Rapid-onset Crisis:** this kind of crisis involves physical disaster or business continuity breakdown. Though easy to identify and tackle, rapid-onset crisis must be understood as devastating if not addressed and as such requires not only strategic but also expert and professional advice, guidance and response of the general counsel.

- **Operational Disruptions**

The role of the general counsel in the setting in order the operations and systems of the company cannot be overemphasized. For example, the general counsel would be required to advise and guide the Board on issues relating to supply chain failures, Information and Technology outages, issues pertaining to health and safety, etc. Oftentimes, operational crisis is a product of accumulated or aggregated problems that have dragged on for a period of time, apparently giving little or no caveat. This kind of crisis requires that the general counsel pays very keen attention to every detail of

<sup>9</sup> <http://www.insidecounsel.com/2013/01/28/the-gcs-guide-to-corporate-crises?page=3>

<sup>10</sup> <http://www.insidecounsel.com/author/ariel-volpe>

<sup>11</sup> It is a multinational professional services network. It is the world's second largest professional services network



the business operations of the organizations because operational crisis are more often not caused by observably protracted symptoms.

- **Hidden Crisis**

This kind of crisis Sykes describes as one capable of exploding into a large scale challenge that could truncate the reputation and growth of the company, and of which the general counsel should be aware. Example of such crisis include serious frauds and embezzlement, ethical breaches. These risks take a similar path to the major physical events, but their onset is concealed until they spring up.

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