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CORPORAL PUNISHMENT AGAINST CHILDREN IN THE HOME SETTING IN ETHIOPIA

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ABSTRACT

The purpose of this study is to (1) investigate the nature of corporal punishment against children in the home setting in Ethiopia and (2) examine why the state failed to ban it despite recommendations by the UN and others. To do so, a review of relevant literature and documents is used as a method. Also, Child Rights-Based Approach (CRBA) and Realist theory are employed to help explain results. The results of the study show that corporal punishment against children in the home setting is a legally and culturally accepted, widely practiced phenomenon in Ethiopia. As a result, the human right of children in Ethiopia is being violated by both parents and the state. The failure of the state to ban corporal punishment in the home setting is mainly due to cultural values and beliefs that consider corporal punishment beneficial for children and society. It is concluded that the state should ban corporal punishment in the home setting to protect child rights and to adhere to international human rights laws it ratified. Additional recommendations are also made in this study, i.e., emphasizing Human Rights Education (HRE), building a democratic system of governance, specifying the hierarchy between international and national laws, creating mechanisms for effective reporting of corporal punishment, strengthening the child protection systems, strengthening the social protection systems, and using advocacy.

KEY TERMS: *child right; corporal punishment; Ethiopia; human rights; human rights education, international law*

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INTRODUCTION

Children are vulnerable groups in all societies who could experience various violations of their human rights. One critical violation of children's rights is Corporal punishment (CRC, 1989). Corporal punishment, according to the UN Committee on the Rights of the Child, is:

any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involve hitting ('smacking', 'slapping', 'spanking') children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (2006: 4).

Corporal punishment against children can happen in different settings such as in schools and other educational institutions, in all forms of alternative care settings, in the justice systems, in situations of child labor, in the community, and in the home/family setting (UN Committee on the Rights of the Child, 2006).

Corporal punishment in the home setting is commonplace all over the world and throughout history, to a varying extent; many children have been corporally punished by people who were supposed to care for them (Save the Children, 2001). Perpetrators of corporal punishment could include mothers, fathers, step-parents, adoptive parents, and older brothers and sisters at home (Save The Children, 2011). The main reason behind such punishment is the need for correcting or controlling the behavior of children (Straus and Kantor, 1994), for disciplining children, and for responding to children's wrongdoing (Save the Children, 2001).

Despite the good intention behind it, corporal punishment is found to be ineffective and dangerous. Studies showed that corporal punishment is not effective in changing the behaviors of children for the long-term. It only works for short-term compliance and it is not more effective than other methods in securing this kind of compliance (Gershoff, 2002; Save the Children, 2001). Besides, it could have a lot of negative consequences including physical injuries, psychological injuries, damage to children's education, consequence for parents and societies (such as guilt and inter-generational cycle of violence) (Save the Children, 2001), increased aggression and delinquency, lower levels of mental health and internalization, and increased risk of abusing one's spouse or child (Gershoff, 2002).

Corporal punishment is not only ineffective and harmful but also a violation of children's human rights. That is why CRC (1989), which is ratified by all countries except the USA, calls for the protection of children from all forms of corporal punishment. Nevertheless, only 53 countries (out of 195) banned corporal punishment in all settings. Many other countries, including Ethiopia, are yet to prohibit corporal punishment in all settings, especially in the home setting (GIEACPC, 2018).

Ethiopia already ratified CRC in 1991 (UN Treaty Collection, 2018). It also took steps to ban corporal punishment in schools, daycare institutions, child care institutions, penal institutions, and as a sentence for a crime. However, it did not ban corporal punishment in home settings and alternative (non-institutional) child care settings (GIEACPC, 2018). Ethiopia was also advised, in the Universal Periodic Review (UPR), to criminalize all forms of corporal punishment against children (UNGA, July 2014). The government rejected this recommendation (UNGA, September 2014). This is an interesting event given the undemocratic nature of the government (its ability to do whatever it wants against the will of the people) and its strong desire to impress the donor countries in the West by ratifying conventions and protocols. This is also an important issue to investigate for people like me who are in the fields of human rights and social work.

This paper aims to examine the issue of corporal punishment against children (below the age of 18) in the home/family setting, in Ethiopia. In so doing, the paper specifically attempts to answer the following research questions:

- What is the nature of corporal punishment against children in the home setting in Ethiopia, in relation to national, regional and international legal frameworks?
- Why has the state (Ethiopian government) failed to ban corporal punishment against children in the home setting, despite repeated recommendations by UN's UPR and others?

METHODS

A review of various literature is used to collect data and examine the research questions. Reviewed materials include: national legal documents (the Constitution of Ethiopia, the Revised Family Code of Ethiopia, the Criminal Code of Ethiopia, and the Civil Code of Ethiopia); regional human rights instruments (African Charter on the Rights and Welfare of the Child/ACRWC); international human rights instruments (Convention on the Rights of the Child/CRC and UN Declaration on Human Rights Education and Training); empirical and literature-based research articles (on corporal punishment of children, child rights, human rights, HRE, etc.); reports by the

Ethiopian government (e.g., Country Response to the Questionnaire on Violence Against Children); reports by the UN and other human rights groups (Universal Periodic Reviews of 2010 and 2014, reports by UN Committee on the Rights of the Child, reports by Global Initiative to End All Corporal Punishment of Children/ GIEACPC, and reports by Save the Children); and other relevant documents (country statistics, books, and Manuals for Human Rights Education and practice).

The results of the review are discussed in relation to theories i.e., the Child Rights-Based Approach (CRBA) and Realist Theory as well as my personal experience as a social work student and an educator. In addition, Okafor & Agbakwa's (2001) theory of the 'Three Constitutive Orthodoxies' of Human Rights and HRE) is used to make important recommendations.

RESULTS AND DISCUSSION

Corporal punishment and international legal frameworks

Children need special protection because of their vulnerability. This fact is well understood by the international community. Accordingly, children are given such protection by international law (Doebbler, 2006: 166). The most important international legal documents, in this case, is CRC (1989), which is devoted to children's rights. There are also similar conventions in various regions of the world. Africa (where Ethiopia is found) has its own convention named African Charter on the Rights and Welfare of the Child (ACRWC) (1990). Both CRC and ACRWC have been ratified by Ethiopia and both prohibit corporal punishment against children. Nevertheless, Ethiopia has not yet banned corporal punishment in the home setting, despite repeated recommendations from the UPR.

CRC (1989) promotes children's rights by focusing on four major needs of children, i.e., survival, development, participation, and protection. The issue of corporal punishment is dealt with within the protection rights of children (Garman, 2007). In this case, articles 19, 28 and 37 are pertinent. Article 19 of CRC clearly stipulates that "States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (1989: 169). Article 28 (par. 2) of CRC prohibits corporal punishment in schools. Article 37 of CRC further states that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment" (1989: 171).

Similarly, ACRWC protects children from corporal punishment. Article 16 (protection against child abuse and torture) and 20 (parental responsibilities) are relevant here. Article 16 requires states to "take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child" (1990: 8). Article 20 (c) also underlines that "domestic discipline [should be] administered with humanity and in a manner consistent with the inherent dignity of the child" (ACRWC, 1990: 10).

In addition to CRC and ACRWC, the UN's UPR constantly reminds countries like Ethiopia to ban corporal punishment. Ethiopia has had two UPRs so far, i.e., the first cycle in 2009 (recommendation by Mexico) and the second cycle in 2014 (recommendation by Portugal). In both UPRs, Ethiopia was recommended to prohibit/criminalize all forms of corporal punishment (UNGA January 2010; UNGA, July 2014). Ethiopia rejected these recommendations (UNGA March 2010; UNGA, September 2014). Ethiopia also rejected recommendations from the Committee on the Rights of the child and other treaty bodies (GIEACPC, 2013).

Corporal punishment and legal documents of Ethiopia

Besides subscribing to CRC and ACRWC, Ethiopia has its own national legal documents that claim to protect children from all forms of abuse. These include the constitution, the revised family law, the criminal code, and the civil code. Nevertheless, all of them fail to ban corporal punishment in the home setting (GIEACPC, 2013; GIEACPC, 2018; Save the Children, 2001; Save the Children, 2011).

The constitution of Ethiopia is the supreme law of the country, providing grounds for the protection of children from abuse. It also domesticates international conventions such as CRC by stating, in Art 9(4), that "all international agreements ratified by Ethiopia are an integral part of the law of the land" (FDRE, 1994: 4; MOLSA, 2005). The constitution also clearly stipulates, in Art 18(1), that "everyone has the right to protection against cruel, inhuman or degrading treatment or punishment" (FDRE, 1994: 6). However, it only bans corporal punishment in school and child care institutions, in Art 36(1)(e) (FDRE, 1994). It fails to ban corporal punishment in the home setting (GIEACPC, 2018; Save the Children, 2011).

The revised family code of Ethiopia goes one step further from the constitution. While the constitution remains silent on corporal punishment against children in the home setting, the family code allows it (Save the Children

& ACPF, 2005). Art 258 of the revised family code, concerning the upbringing of children, clearly states that “the guardian may take the necessary disciplinary measures for the purpose of ensuring [the child’s] upbringing” (FDRE, 2000: 41).

Similarly, the criminal code of Ethiopia allows corporal punishment against children in the home setting. The criminal code claims to punish maltreatment of children, however, it does not consider corporal punishment at home as maltreatment (GIEACPC, 2018; Save the Children, 2011). Art 576 (3) of the criminal code states that “the taking, by parents or other persons having similar responsibilities, of a disciplinary measure that does not contravene the law, for the purposes of proper upbringing, is not subject to this provision” (FDRE, 2005: 337). The Civil Code of Ethiopia (1960/2009), too, permits corporal punishment in the home setting, though it is now amended by the revised family code (MOLSA, 2005). One of the original provisions of the code, Art 267(2) states that “the [guardian] may inflict light bodily punishment on the minor, for the purpose of ensuring his education” (Civil Code of Ethiopia, 1960: 46). Another original provision of the code, Art. 2039(c), states that “no offense shall be deemed to have been committed where [...] the act consists in reasonable corporal punishment inflicted by the defendant on his child, ward, pupil or servant” (Civil Code of Ethiopia, 1960: 333).

Aspects of corporal punishment in the home setting in Ethiopia

Ethiopia is a developing country in Africa where the child population (around 46 million) constitutes half of the total population of the country (UNICEF, 2018). Various studies showed that Ethiopia has collectivist societies that consider the use of corporal punishment as a normal and principal means of raising/disciplining children. As a result, corporal punishment is prevalent in the country (ACPF, 2010; Gebrehiwot, 2015; GIEACPC, 2013; GIEACPC, 2018; Portela & Pells 2015; Save the Children, 2001; Save the Children, 2011; Tadele, 2001), with similar patterns across different regions (Save the Children, 2011). In relation to this, a country-wide study by Save the Children and ACPF (2005) reported that 98.6% of children in Ethiopia experienced violent punishment in the home setting.

Causes and justifications

Corporal punishment in Ethiopia is usually a response by parents/guardians to alleged wrongdoing of children (Gebrehiwot, 2015; Save the Children & ACPF, 2005). The main causes of the use/prevalence of corporal punishment in Ethiopia are related to cultural beliefs and societal attitudes (Gebrehiwot, 2015; Save the Children & ACPF, 2005). Such beliefs and attitudes made societal members consider children as parental property, not as human beings endowed with rights, interest and capacity to make decisions (Save the Children & ACPF, 2005). These beliefs and attitudes also made parents/guardians think of corporal punishment as an important and effective means of disciplining children, as something good for children’s future in terms of making them ethical, respectful, strong, etc. (Gebrehiwot, 2015). Other important causes for the use/prevalence of corporal punishment include: attitudes that give lower value to the views, best interests and dignity of children; lack of awareness about children’s rights and alternative ways of keeping discipline; poverty and unemployment; large family sizes; law enforcement problems; and alcoholism (Save the Children & ACPF, 2005).

Perpetrators

The perpetrators of corporal punishment in the home setting in Ethiopia are those people who are responsible to protect children. Perpetrators include mothers, fathers, step-parents/adoptive parents, older brothers, older sisters (Gebrehiwot, 2015; Save the Children, 2011; Save the Children and ACPF, 2005) and other relatives/extended family members (ACPF, 2010; Gebrehiwot, 2015; Save the Children and ACPF, 2005). It should also be noted that cases of corporal punishment are usually unreported to the police. Even among those reported, very few are pursued (Save the Children, 2011).

Types

Types of corporal punishment in the home setting include beating children (by hitting, punching, kicking, pinching or by using instruments like stick, belt, plastic hose, rope, electric wire) (ACPF, 2010; Lelieveld, 2011; Save the Children and ACPF, 2005), shouting at children, forcing them to maintain painful positions, forcing them to look at the sun (Lelieveld, 2011), denying children food (ACPF, 2010; Save the Children and ACPF, 2005), tying and flogging them, forcing them to inhale burning chilli pepper, burning their body parts using hot iron rods (Save the Children and ACPF, 2005), throwing stuff at them, and kneeling them down (Gebrehiwot, 2015).

Consequences

Consequences of corporal punishment include missing school or work, needing rest at home, requiring medical attention, broken bones and teeth, permanent disability (ACPF, 2010), development of self-destructive behaviors such as smoking and substance abuse (Save The Children, 2011), permanent bodily injury, death, negative emotions (unhappiness, humiliation, low self-esteem and hopelessness), dropping out of school, lack of interest

in schoolwork, low retention and achievement rates in schools, streetism and prostitution, and the effect of all these on the future of the nation (Save the Children and ACPF, 2005).

Children's view

The study by Save the Children and ACPF (2005) revealed that while a large proportion of adults think 'non-excessive' corporal punishment is acceptable; most children consider any kind of punishment (even light ones) as unacceptable. Similarly, unlike adults, the majority of children consider corporal punishment as ineffective.

Why the state/government failed children?

As discussed earlier, in Ethiopia, corporal punishment against children in the home setting is a legally and culturally accepted and practiced phenomenon. Ethiopia's legal documents fail to protect children from corporal punishment by allowing 'light'/'necessary'/'responsible' punishment, whose boundary is not clear. This is happening in Ethiopia even though the country has ratified and domesticated CRC and ACRWC. The inconsistency is a result of a legal loophole existing in the country. According to Gebrehiwot (2015), the problem is created because the constitution of the country fails to clarify the hierarchy between domestic (e.g., the criminal code) and international laws (e.g., CRC), especially when they both contradict each other. In this case, it is evident that domestic laws have been superior.

Nonetheless, under international law, legalizing/ practicing corporal punishment is a violation of children's fundamental human rights to human dignity, physical integrity, and equal protection under the law (GIEACPC, 2013). The government of Ethiopia, by legalizing corporal punishment in the home setting using domestic laws, directly violated such rights of children. It specifically violated article 19(1) of CRC, which requires states to protect children from corporal punishment.

Here it is important to use CRBA to closely analyze the extent of the failure of the state and its laws in protecting children from abuse. CRBA underlines that while children are rights-holders who should be empowered to claim their rights, states and parents are duty-bearers who should respond to fulfill the claims of the rights-holders. This idea of CRBA is based on four major principles/rights of CRC, i.e., non-discrimination, child participation, the best interests of the child, and survival and development (Gebrehiwot, 2015; SC, 2007). The principle of non-discrimination requires the state to enact laws and take actions that are not discriminatory. Discrimination could occur against the individual child, specific groups of children, and the child population as a whole (SC, 2007). In this case, the government laws and actions discriminated mainly against the child population as a whole (as opposed to the adult population). The principle of child participation is also ignored by the government's responses. The study by SC and ACPF (2005), showed that the majority of Ethiopian children consider any corporal punishment unacceptable and ineffective. However, such voice of the children was not recognized by the government. Finally, the principles of the best interest of the child and the survival and development of the child are obviously disregarded by the government, given various studies have already shown that corporal punishment is dangerous for the wellbeing of children in Ethiopia.

The Ethiopian government also rejected the international community's repeated recommendations to ban all forms of corporal punishment in the country. Recommendations were made in the two UPRs and by various human rights treaty bodies. There is no clear reasoning provided by the government indicating why it failed to comply with international laws and recommendations. The government's response has mainly been denying facts on the ground. For example, for the 2009's UPR recommendation, the government justified its rejection of the recommendation by stating, "the FDRE Constitution explicitly guarantees the rights of the child to be free from corporal punishment" (UNGA, March 2010: 2). This is totally incorrect as the constitution and other domestic laws do not ban corporal punishment in the home setting.

Here, Realist theory helps to explain why the government rejected those recommendations and what motivated it to act in such a way in the international arena. According to Realist theory, the ultimate state of human/state relations is a state of anarchy where everyone is governed by individual reason/self-interest, to maintain its own sovereignty. And, the nation-state is the only rational actor in international relations. States want to achieve more power and, for them, power matters more than rules. Though states sometimes cooperate via international institutions, they act according to their best interest (Garman, 2007). The action of the Ethiopian government, in this case, is consistent with the major assumptions of the realist theory. First, by ratifying international treaties (CRC), the government showed the possibility of cooperation at the international level. Second, by having domestic laws that are inconsistent with CRC and by rejecting the recommendations, the government acted based on its self-interest. Third, by ignoring international laws and recommendations, the government showed that power mattered for it more than rules.

Why is it in the interest of the government to ignore international laws and recommendations? There could be three intertwined explanations for this. The first is in relation to cultural values and views. As discussed earlier, cultural values and beliefs are the main reason why corporal punishment is widely practiced in the home setting in Ethiopia. These values and beliefs are what created attitudes and actions that do not consider the views, best interests, and dignity of children in the country. These values and beliefs are so deeply held that even many of my

former colleagues and students, despite studying social work, thought that corporal punishment in the home setting was important for children. The study by SC and ACPF (2005) also found that even some police and prosecution offices openly showed unwillingness to intervene in the case of corporal punishment at home. Based on this, it is fair to conclude that the government (legislative, executive and judiciary) itself is simply a victim of the cultural values and beliefs of the Ethiopian societies. This means that the government in Ethiopia does not believe that corporal punishment in the home setting is bad for children and societies.

The second explanation could be that the government (which is totalitarian) does not want to give the people in the country another reason to be angry at it by passing laws that ban corporal punishment at home, to avoid possible revolt. The people of the country have already been very much dissatisfied with the government. The third explanation is regarding the practicality of implementing laws that ban corporal punishment in the home setting. Issues related to practicality could discourage the government from banning corporal punishment at home because of two main reasons. One is the cultural reason discussed above that makes banning corporal punishment in the home setting very difficult. The other reason could be problems experienced while trying to implement the banning of corporal punishment in other settings (e.g., school and the justice system). Despite the banning, according to SC (2011) and SC and ACPF (2005), corporal punishment is still practiced in these settings. These three factors together could influence the government's interest.

CONCLUSION AND RECOMMENDATIONS

Contrary to international laws and recommendations, corporal punishment against children in the home setting in Ethiopia is a legally and culturally accepted, widely practiced phenomenon. Domestic laws explicitly allow 'responsible' punishment by parents/guardians. As a result, the human right of children in Ethiopia has been violated by both parents and the state that failed to protect children from physical violence/abuse. The widespread practice of corporal punishment and the failure of the government to ban it in the home setting is largely due to cultural values and beliefs that consider corporal punishment beneficial for children and society. Whatever the case, from a human rights perspective, corporal punishment against any human being, including children, is unacceptable. Therefore, the government of Ethiopia should strive to criminalize corporal punishment in the home setting.

Doing so, however, will not be enough to stop families and parents from practicing corporal punishment and believing in its importance. This is because, (1) corporal punishment is deeply rooted in the culture of societies in Ethiopia (and Africa) and (2) changing cultural values, attitudes, and practices cannot be done overnight. This means that there is a critical need for devising strategies that can help change corporal punishment-related cultural values/attitudes, knowledge, and practices of societies while respecting the cultural/indigenous ways of child-rearing. One effective strategy, in this case, can be the use of Human Rights Education and Training (HRE) that emphasizes child rights. According to the UN Declaration on HRE, Article 2 (1):

[HRE] comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms and thus contributing, inter alia, to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and behaviors, to empower them to contribute to the building and promotion of a universal culture of human rights (UNGA, 2011).

In such HRE, participants (both children and adults) should learn: (1) about human rights (to get knowledge about the human rights norms/principles, the values that underpin them, and the mechanisms for their protection – e.g., learning about CRC and the Committee on the Rights of the Child); (2) through human rights (learning in a democratic/rights-respecting environment, which is, for instance, free from corporal punishment); and (3) for human rights (to be empowered to enjoy and exercise their rights and to respect and uphold the rights of others) (UNGA, 2011). In addition, such HRE can be: (1) informal (unplanned and unstructured learning, e.g., learning from the mass media, learning from awareness creation/raising campaigns); (2) formal (structured education system based on a program/curriculum, ranging from nursery/primary school to university level), and (3) non-formal (planned/structured supplementary/complementary education occurring in after-school programs, youth organizations, sports clubs, community groups, etc.) (Brander, Keen, Juhasz, & Schneider, 2012; Toivanen, 2009). Brander, Keen, Juhasz, & Schneider (2012), argue that these three settings for HRE are complementary and mutually reinforcing elements of a lifelong learning process. I believe that HRE practice that deals with the rights of children (against corporal punishment) should combine all the informal, the formal and non-formal education, to be effective and efficient (to bring the desired change as quickly as possible) and to access and empower all segments of societies (children, parents/families, and communities). Promoting and ensuring such HRE, according to the UN Declaration on HRE, is mainly the responsibility of the state/government. There are also other stakeholders who have important roles to play in HRE. These stakeholders include the UN,

international and regional organizations, national/local civil society institutions, educational institutions, the media, local communities, and families (UNGA, 2011).

Here it is important to reflect upon the limitations of the global human rights regime and its HRE, from the perspective of Ethiopia (Africa or the global south). According to Okafor and Agbakwa (2001), in order to rapidly and fully legitimize human rights and HRE (the rights of the child against corporal punishment) across diverse societies of the world, we need to re-imagine human rights and HRE beyond the three constitutive orthodoxies. The three constitutive orthodoxies, i.e., the heaven-hell binary, the one-way traffic paradigm, and the abolitionist paradigm, are held by the mainstream human rights community and have serious negative consequences. The heaven-hell binary is a distinction between the West, which is considered as a human rights heaven, and the rest (the global south), which is considered as a human rights hell. The heaven-hell binary is also textual, i.e., the international human rights treaties and instruments are considered as heavenly and infallible. The consequence of this false dichotomy is the one-way traffic paradigm. The one-way traffic paradigm refers to the unidirectional traffic of HRE from the West to the rest and from urban to rural areas in a given society in Africa (the global south). Another consequence of the false dichotomy is the abolitionist paradigm in which non-Western local cultures (values, attitudes and practices) are generally considered as pathological that should be abolished altogether. The abolitionist paradigm tends to target all cultural/indigenous ways of child-rearing instead of a specific problematic practice.

Therefore, the HRE we design should abandon the three constitutive orthodoxies: by recognizing that human right violations occur in all societies; by focusing on a two-way paradigm in which various societies/groups can learn from one another (e.g., by identifying and learning from indigenous philosophies and practices that are compatible with the fundamental principles of human rights); and by emphasizing a less abolitionist, less ethnocentric, and more contextual approach (by recognizing that all societies are capable of changing their local cultural practices including corporal punishment) (Okafor & Agbakwa, 2001).

Finally, in addition to criminalizing all forms of corporal punishment and using HRE, the government of Ethiopia should take the following measures: building a democratic system of governance; clearly specifying the hierarchy between international and national laws; creating mechanisms for effective reporting of corporal punishment; strengthening the child protection systems (e.g., community-based child protection, shelters, psychosocial assistance); and strengthening the social protection systems (e.g., assistance to poor families). Other stakeholders at local/national, regional and international levels should also attempt to influence the government of Ethiopia to take the above-mentioned measures.

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