

# Management Systems Training Programmes



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**SUBMISSION TO THE GAUTENG LEGISLATURE (PROVINCIAL COMMITTEE ON  
SOCIAL DEVELOPMENT) ON THE CHILDREN'S AMENDMENT BILL AS INTRODUCED  
IN THE NCOP DATED 30 JUNE 2006**

**SUBMITTED BY MSTP  
18 September 2006**

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## **INTRODUCTION**

This submission relates specifically to the section pertaining to corporal punishment, namely section 139 of the Children's Amendment Bill as introduced in the National Council of Provinces dated 30 June 2006. This submission is made by MSTP.

**MSTP WISHES TO ADDRESS THE PROVINCIAL COMMITTEE AT ANY INTENDED PUBLIC HEARING AND FORMALLY REQUESTS THE OPPORTUNITY TO DO SO.**

## **Introduction**

South African law needs to be consistent with the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

South Africa has committed itself to fulfilling all the obligations under the Convention; therefore there is obligation to protect children from all forms of physical and mental violence as outlined in Article 19. The Committee on the Rights of the Child has recommended a clear prohibition of all corporal punishment.

Article 16 of the African Charter on the Rights and Welfare of the Child provides for the protection of children 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 a parent and others.

Under the Constitution of the Republic of South Africa , 1996 (Act 108 of 1996)

children are protected from neglect, maltreatment, abuse and degradation and everyone has the right to Equality. Equality presupposes equal protection and benefit of the law, full and equal enjoyment of all rights and freedoms and a lack of discrimination on the basis of age.

Corporal punishment has legally been abolished as a sentence by the court and in schools but there is allowance for physical corporal punishment by parents that is deemed to be moderate, reasonable, fair and equitable which is open to interpretation.

The actual situation in this country indicates that the schools, particularly in poor socio-economic rural contexts still use corporal punishment as a discipline practice and that this is supported by parents; is under-reported or acted upon through legal channels.

MSTP is an organization presently conducting research in this field and it is on this basis that the submission is made.

## **The Organisation**

MSTP is a national non- governmental organisation that works in the areas of educational leadership, management, governance and quality assurance in the field of education with a focus on research and development at all levels of the system (Provincial, district, HEI's, schools)

Started in 1992 to address the need for professional management of schools. MSTP is an accredited service provider with accredited courses through the ETDP Seta with staff registered as facilitators, assessors and moderators.

## **Human Rights Research**

In September 1994 a research project was started in urban and rural Primary and High Schools in the King Williams Town District of the Eastern Cape to examine methods of discipline and develop a cost-efficient model of positive discipline strategies that could be employed effectively at all levels across all contexts (In South Africa and other countries). The findings will be formalised by the end of the year and presented to the Department of Education and to NGO's working in the field of Children's Rights.

A baseline assessment was conducted in February 2005 which indicated corporal punishment was evident in all the schools. There was little compliance to the ban on corporal punishment and there was an acceptance of this from learners and parents as it was common practice in the home. There were also high levels of learner on learner violence.

Resource materials from the Department of Education on alternative discipline strategies were not in use or unavailable and there was an unawareness or unconcern for the rights of the learners in general by the school community.

Advocacy was strongly lacking as was support to the schools and the Department of Education complicit by its lack of adherence to the law; at all levels turning a 'blind-eye' to what is happening on a daily basis in their schools.

Characterised by location in poor socio-economic areas with most learners on social grants, the schools exhibited high levels of absenteeism, latecoming, drug and alcohol abuse in both teachers and learners; teenage pregnancies, absentee or no parental control, HIV Aids. This combined with a school environment not conducive to learning has impacted negatively on a population who will be the next parents and teachers of children - perpetrating a cycle of violence.

School staffs were found to be demotivated, stressed and depressed and did not feel there was an interest or support from the District...in many cases leadership at school, in the form of the Principal was conspicuous by its absence on a daily basis.

The schools were requested to try alternative strategies of discipline and report on their findings. Significant in the schools where there has been progress has been observation of the following:

- Leadership and advocacy by the School Principal
- Learners as part of a decision making process: School Policy on Discipline, School Rules ,Class Rules, Codes of Conduct
- An effective Representative Council of Learners with clearly defined roles and responsibilities (In High Schools). A growing awareness of criteria necessary in the electoral process of those who hold office.
- Learners taking responsibility to educate the community and keeping parents informed of the changes at school
- Parents meetings to further inform and encourage support of the methods employed by the school iwith regrd to discipline
- Individual conferencing with learners on performance
- Parents at interview when leaners infringe on agreed behaviour policies
- An attempt by teachers to know all the learners in the school

This has resulted in:

- Sharing success with other school principals in a similar context
- A reduction in absenteeism, late-coming and drug taking both in teachers and learners
- Improved relationships between stakeholders; especailly teachers and learners
- Empowerment of learners in taking a share of responsibility for the discipline in the school
- An implementation of discipline strategies that have contributed to an atmosphere of positive change

There has to be:

- Recognition of those who have made change (by DOE) in the interests of sustainability and motivation
- Support and Mentorship of School Management Teams by the Department of Education
- Media advocacy and a greater profile on the issue of corporal punishment and discipline
- Education Programmes to link home and school on the issue of positive discipline and its implementation
- Legal proceedings instigated by the Department of Education against those in their employ and care who infringe the law.

## **MSTP PROPOSES THE FOLLOWING: SECTION 139 CORPORAL PUNISHMENT**

As this section of the Bill is broader than corporal punishment and addresses appropriate methods of disciplining children, it is proposed that the title of this section be changed from corporal punishment to 'discipline of children'

It is proposed that in order to ensure that children are protected from punishment including any form of humiliating and degrading treatment or punishment, that the current wording of clause 139 (1) in the Bill be amended to reflect the South African Constitution and to ensure that no person (including parents and peers) is permitted to impose corporal punishment or other forms of humiliating and degrading treatment or punishment, upon children, even as a form of discipline.

It is proposed that the clause abolishing the defence of reasonable chastisement (as it appeared in section 142(2) of the SALRC version of the Bill) be reinserted into section 139 of the Children's Amendment Bill as this had the effect of prohibiting corporal punishment by parents. The reinsertion would prevent parents who are charged with assaulting their children from escaping liability for physically punishing their children.

MSTP supports the provisions of clause 139(4) of the Children's Amendment Bill in its promotion of education and awareness of positive discipline of children. The Department of Education has a particular role to play in linking home and school. We recommend that in addition to this clause which sets out the responsibility of the Department of Social Development, the additional responsibility of the Department of Education to ensure that discipline and parenting skills are addressed must be included in this bill.

It is proposed that the current clause be redrafted as follows:

### **Discipline of Children**

**139.** (1) Any persons, including a person who has parental responsibilities and rights in respect of the child, must respect, promote and protect the child's right to physical and psychological integrity as conferred by sections 12 (1)(c), (d) and (e) of the Constitution in that no child may be subjected to any form of violence, including corporal or other forms of humiliating punishment, from either public or private sources, torture or be punished in a cruel, inhuman or degrading way.

(2) The common law defence of reasonable chastisement available to persons referred to in subsection 139(1) in any court proceeding is hereby abolished.

(3) The Department must take all reasonable steps to ensure that—

- (a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented across the country; and

(b) programmes promoting appropriate discipline at home and at school are available across the country.

(4) The department of Education must take all reasonable steps to ensure that positive discipline methods and parenting skills are included in the school curriculum.

(5) The department of Health must take all reasonable steps to ensure that information relating to positive discipline methods and parenting skills are available at primary health care centres.

(6) Reports of persons who subject children to inappropriate punishment must be referred to a designated social worker for an investigation contemplated in section 155(1)(i) in order to establish if the child is in need of care and protection.

(7) A parent, care-giver, or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.

(8) In decisions regarding instituting criminal proceedings against a parent or person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate punishment, the best interests of the child principle is paramount.

(9) Prosecution of a parent or person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment should only be instituted-

(a) when early intervention services or family preservation programmes have failed; or

(b) when early intervention services or family preservation programmes are deemed by a designated social worker to be inappropriate

#### **Section 144 Purposes of prevention and early intervention programmes**

MSTP recommends the inclusion in section 144 of the Bill: Purposes of prevention and early intervention services or programmes, of specific reference to promoting positive discipline of children. Section 144(1)(b) provides for programmes that focus on 'developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children" we recommend that 144(1)(b) be amended as follows:

144(1)(b) Developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children, including promoting positive discipline of children.

