

**SUBMISSION
TO
THE EASTERN CAPE
(PROVINCIAL COMMITTEE
ON SOCIAL DEVELOPMENT)
ON THE CHILDREN'S
AMENDMENT BILL
[NO. 19 OF 2006]**

**SUBMITTED
BY THE**

**UMTATA CHILD ABUSE RESOURCE
CENTRE
(UCARC)**

**In Collaboration with the Sub-Working Group
Committee on Corporal Punishment**

Contact Person : *Nokuku P.P. Sipuka*
Telephone Number : *047 – 5311103*
Fax Number : *047 – 5313494*
E-mail : ucarc@intekom.co.za



1. **INTRODUCTION**

This submission relates to CORPORAL PUNISHMENT Section 139 of the Children's Amendment Bill. It focuses on the Constitution of the Republic of South Africa and International Instruments which it ratified in ensuring that the children of South Africa are protected from all forms of violence including those which occur within the family setting and thus calls for total prohibition of corporal punishment within all settings including that which is practiced by parents.

The Umtata Child Abuse Resource Centre (UCARC) wishes to address the Provincial Portfolio Committee of the Eastern Cape Province to be held at the O. R. Tambo District Municipality in the Mthatha area

2. **BACKGROUND OF UCARC**

UCARC is a non governmental organization (NGO), which works from a child's right perspective to prevent abuse, neglect and exploitation. We do this by conducting Education and Training as a core strategy of the organisation focusing on abuse recognition, appropriate response, awareness about the root causes and prevention. These services are supplemented by advocacy to ensure an appropriate legislative framework to protect and promote the rights of children and by dissemination of a range of materials for prevention. In addition we mobilize communities especially community leaders to participate actively in child protection services and begin to assume ownership of these programmes.

As we interact with communities on the ground through our activities, there is one thing that is still a big challenge, that of changing people's attitudes towards corporal punishment. Some of the staff members were literally chased away in one of communities "Mthentu" by the community members including the chief when they started talking about "corporal punishment". They have strong religious and cultural beliefs and argued that the practice made children to respect the adults, the physical punishment is a necessary part of bringing children up, they were also beaten up and it never did them (parents) any harm. Our argument would be – "Children learn by example" - the tendency would be to turn their anger and violence towards younger ones. One would think and argue that the violence and rape that is so rife in our country and is directed to the rape of the vulnerable group – women and children.

There are real stories, which we always come across:

- ◆ I know a case of a relative of mine, who was so cruel to his grandson, beating him with a sjambok, the child became a juvenile delinquent, left home, came

back and attempted to kill him. He is now in and out of jail because he is over 21

- ◆ A case of a child who was assaulted beaten up by his uncle who was supposed to take care of him.

Because the community at Tabase has been engaged with UCARC's prevention programmes. The community reported the case to the police and the uncle left for Cape Town, nobody knows his whereabouts.

These are but few cases that are reported, others they go unreported.

3. **SOUTH AFRICAN COMMITMENTS**

South Africa, by ratifying the following international instruments :-

- The United Nations Convention on Rights of the Child in 1995, committed itself to fulfilling all the obligations under the Convention. One such obligation is to protect children from all forms of physical and mental violence as outlined in Article 19, and this protection extends to corporal punishment in all settings including within the family.
- In addition, article 16 of the African Charter on the Rights and Welfare of the Child also 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
- South Africa in its Constitution, 1996, (Act 108 of 1996) provides for the protection of children from neglect, maltreatment, abuse and degradation, a right not to be treated or punished in a cruel, inhuman or degrading way, the right to be free from all forms of violence from other public or private sources, the right not to be tortured in any way and provides that everyone has inherited dignity and the right to have their dignity respected and protected. Furthermore the Constitution provides that everyone has the right to equality which includes equal protection and benefit of the law, full and equal enjoyment of all rights and freedoms and that the state may not unfairly discriminate against anyone on the grounds of (amongst others) age. This means that children are human beings and have rights too.

4. **COMMENTS ON SECTION 139 OF THE CHILDREN'S AMENDMENT BILL WITH REGARD TO CORPORAL PUNISHMENT**

UCARC's view with regard to this clause, it is a good clause and we endorse it as it reflects the Constitution of this country as well as the international instruments which South Africa ratified. But, it does not go that far enough to include corporal punishment in the home. Again the customary law allows parents to administer reasonable and moderate corporal punishment to their children and yet there is no instrument to measure what is reasonable and not reasonable. Section 139 (2) says "Any legislation and any rule of common or customary law authorizing corporal punishment of a child by a court, including the court of a traditional

leader, is hereby repealed to the extent that it authorizes such punishment". It again excludes corporal punishment in the home.

5. **PROPOSED SECTION 139 CORPORAL PUNISHMENT**

It is proposed that in order to ensure that children are protected from all forms of violence as well as humiliating and degrading 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) is permitted to impose corporal punishment or other forms of humiliating and degrading treatment or punishment, upon children even in the name of correction.

It is also proposed that the clause abolishing the defence of reasonable chastisement (as it appeared in section 142 (2) of the SALRC (South African Law and Reform Commission) be re-instated into Section 139 of the Children's Amendment Bill as this had the effect of prohibiting corporal punishment by parents. The insertion would prevent parents, who are charged with assaulting their children, from escaping liability for physical punishing their children and would provide children with equal protection of the law.

UCARC also supports the provisions of the clause 139 (4) of the Children's Amendment Bill in its promotion of education and awareness of positive discipline of children and propose that it be retained.

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

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 effects of subsections (1) and (2) are implemented across the country; and
- (b) programmes promoting appropriate discipline at home and at school are available across the country

Compiled by

P.P.N. SIPUKA