

# Working Group on Positive Discipline

## SUBMISSION TO THE CHILDREN'S AMENDMENT BILL

*This submission is endorsed by the following organisations:*

1. RAPCAN
2. LINALI
3. SAVE
4. HEATHERDALE CHILDREN'S HOME
5. CHILDREN'S INSTITUTE
6. HOMESTEAD
7. QUAKER PEACE
8. COMMUNITY LAW CENTRE
9. PROUD2BE
10. DESK FOR SPECIALISED MINISTRIES
11. ACE- SCHOOL LEADERSHIP
12. UCARC
13. CHIDLIN
14. THE PARENT CENTRE

### 1 INTRODUCTION

The Working Group on Positive Discipline (WGPD) is a network of South African organisations working in various ways to prevent and address child abuse and neglect, and ensure the protection of the rights of children. It has a particular emphasis on the promotion of positive parenting and non-violent discipline, and is committed to the abolition of corporal and all other forms of humiliating punishment of children.

The WGPD was formed in early 2006, but began its life as a sub-group within the much larger civil society grouping, the Children's Bill Working Group (CBWG). The CBWG, a network of networks representing over 100 organisations, was established early in 2003, after the release by the South African Law Reform Commission (SALRC) of the Draft Children's Bill and the Discussion Document on the Bill.

The WGPD established itself as separate group after the passage of the Children's Amendment Act at the end of 2007, in order to continue to advocate for and strongly support the promotion of positive and non-violent parenting and the prohibition of parental corporal punishment in South Africa; it was always the intention of the WGPD to raise the issue of the excised clause 139 when further amendments to the Children's Act as Amended (38 of 2005 and 41 of 2007) were proposed.

We welcome this opportunity to make submissions on the Children's Act now that it has been in force for just over a year. In making this submission, we refer to the report of the Portfolio Committee on Social Development at the time of the excision of the clause, which stated that the excision was related to (our italics):

- The need for further investigation of the matter ahead of the *proposed second Amendment Bill*; and

- That this matter should have been ***tagged as one of national competency*** by the Joint tagging Mechanism when the comprehensive Children’s Bill was introduced in 2003.

This submission calls for:

- The insertion of a new section at section 12 into the consolidated Act, dealing with the issue of a child’s right to protection from all forms of violence and abuse, including physical and emotional violence, and the removal of the defence of ‘reasonable chastisement’;
- Prohibition of corporal punishment in alternate care settings, and provision for prevention and early intervention responses when children are corporally punished; and
- The inclusion of “positive discipline” and “positive parenting” in the definitions in chapter 1, section 1 of the Act.

## **2 CHILDREN’S RIGHTS TO PROTECTION FROM ALL FORMS OF VIOLENCE**

### **2.1 International imperatives**

As a signatory to the UN Convention on the Rights of the Child (UNCRC), South Africa has certain obligations with respect to protecting the rights of children. Article 19 of the UNCRC states that “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”<sup>1</sup> must be taken.

Although Article 19 does not speak explicitly to corporal punishment of children, the UN Committee on the Rights of the Child has, in General Comment 8<sup>2</sup>, pronounced extensively and clearly on this issue. It is the view of the UN Committee that article 19 of the UNCRC should be interpreted as an unequivocal prohibition of corporal punishment of children.

The issue of violence against children has been noted by the UN Committee as especially relevant; in their commitment to protecting children from all forms of abuse and neglect, the Committee called for a Global Study on violence against children in 2002. The outcome of this study highlighted that children from all countries and all social groups are vulnerable to some form of physical violence. The Study recommended the full prohibition of all forms of corporal punishment in all settings, by 2009.<sup>3</sup>

### **2.2 Regional imperatives**

The African Charter on the Rights and Welfare of the Child (the Charter), which South Africa has ratified, also does not speak directly to the issue of the prohibition of corporal punishment. However, the Charter itself states (in Article 1.2) that, in any case where

<sup>1</sup> See [www2.ohchr.org/english/law/crc.htm](http://www2.ohchr.org/english/law/crc.htm)

<sup>2</sup> See [www2.ohchr.org/english/bodies/crc/comments.htm](http://www2.ohchr.org/english/bodies/crc/comments.htm)

<sup>3</sup> See [www.unicef.org/violencestudy/](http://www.unicef.org/violencestudy/)

and international Charter or Convention contains stronger protections for children than the Charter, that Charter or Convention takes precedence.<sup>4</sup>

### **2.3 National imperatives**

The South African Constitution, section 28<sup>5</sup>, provides details on the rights of children. Indeed, the development of the Children's Act was in part in order to fulfil South Africa's obligations with respect to the protection of children's rights as outlined in the Constitution.<sup>6</sup> In fulfilment of its international and regional commitments to protecting children, the government of South Africa has prohibited corporal punishment of children in all other settings, including as a judicial sentence, in the prison system, in alternate care and in schools. However, it has thus far failed to protect children from this form of physical violence in the home. In addition, the South African government has failed to remove the defence of "reasonable chastisement" from the common law.

## **3 WHY CHILDREN SHOULD BE PROTECTED FROM CORPORAL PUNISHMENT**

Research evidence suggests that exposing a child to violent discipline has harmful consequences for the victim as well as the society in which he or she lives, and that even mild forms of physical discipline are harmful to children, hindering their cognitive capacity and increasing the proclivity for future violent acts.<sup>7</sup>

### **3.1 Negative consequences for individual children and families**

There is a significant and growing body of research evidence in support of the contention that subjecting children to corporal punishment, including the so-called 'loving smacks' has serious negative consequences.

Children who are corporally punished by their parents have been shown to have a higher risk of obesity,<sup>8</sup> impaired functioning in terms of capacity for executive functioning and psychological processes such as planning, abstract thinking, and delaying gratification,<sup>9</sup> and higher levels of aggression, delinquent, criminal and antisocial behaviour.<sup>10</sup> They are more at risk of perpetrating violence within their own intimate relationships, and resorting to violence in the face of adversity.<sup>11</sup>

### **3.2 Negative consequences for the wider society**

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<sup>4</sup> See [www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/A.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/A.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf)

<sup>5</sup> See [www.info.gov.za/documents/constitution/index.htm](http://www.info.gov.za/documents/constitution/index.htm)

<sup>6</sup> See Children's Act (38 of 2005) as Amended, first sentence

<sup>7</sup> UNICEF News Note. 2010. *UN experts call for closer examination of the impact of disciplinary practices of children*. New York: UNICEF. Accessed at [www.unicef.org/media/media\\_56550.html](http://www.unicef.org/media/media_56550.html)

<sup>8</sup> PHYsorg.com . 2000. *A higher risk of obesity for children neglected by parents*. Accessible at [www.physorg.com/news114171738.html](http://www.physorg.com/news114171738.html)

<sup>9</sup> Talwar V, Carlson S and Lee K. 2011. Effects of a Punitive Environment on Children's Executive Functioning: A Natural Experiment. *Social Development*, 20 (3).

<sup>10</sup> Gershoff, E. 2002. Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review. *Psychological Bulletin*, 128 (4).

<sup>11</sup> Dawes A, De Sas Kropiwnicki Z, Kafaar Z and Richter I. 2005. *Corporal punishment of children: a South African national survey*. Human Sciences Research Council and Save the Children (Sweden).

South Africa is a society characterised by high levels of violence within families and communities. Some of the highest levels of rape, child rape, domestic violence, intimate femicide, family murders and community violence are found in our country.

The findings of the Gershoff study cited earlier,<sup>12</sup> among others, confirm that children exposed to violence from early in their lives are more likely to themselves resort to violence in adulthood.

A study by Murray Strauss adds further evidence to the notion that corporal punishment of children leads to increased levels of violent behaviour. In his 1999 paper, *Spanking teaches short-term lesson, but long-term violence*, Strauss found that children from states in the US where corporal punishment was allowed in all settings were twice as likely to commit murder as children raised in states where corporal punishment was prohibited in all settings but the home.<sup>13</sup>

#### 4 SUGGESTED WORDING

It is the contention of the WGPD that the terms ‘positive discipline’ and ‘positive parenting’ should be defined in chapter 1, section 1, in the definitions section of the Act as Amended. This will also provide guidance on the nature of the prevention and early intervention strategies outlined in section 144 of the Act.

Section number	Section title	Proposed text
Chapter 1 section 1	Interpretation Definition of <i>positive discipline</i>	<u>Positive discipline is discipline that is intended to teach children and guide children’s behaviour, while respecting their rights to healthy development, protection from violence and participation in their learning. It is focussed on long-term solutions that develop children’s own self-discipline and their life-long skills.</u>
Chapter 1 section 1	Interpretation Definition of <i>positive parenting</i>	<u>Positive parenting is an approach to raising children which utilises positive discipline and teaches non-violence, empathy, self-respect, and understanding of human rights and respect for others.</u>

A new section should be inserted at section 12 in the Act, which deals with social, cultural and religious practices. This is in part in response to the opinion of the Portfolio Committee that section 139 in the Amendment Bill (19D of 2006)<sup>14</sup> and in part because those who defend the use of corporal punishment most frequently cite cultural or religious justifications for this.

Section number	Section title	Proposed text
Chapter 2 new section 12 A	Physical and psychological integrity of a child	<u>(1) A person who has care of a child, including a person who has parental responsibilities and rights in respect of</u>

<sup>12</sup> Gershoff. 2002. *Op cit.*

<sup>13</sup> See [www.nospank.net/strauss7.htm](http://www.nospank.net/strauss7.htm)

<sup>14</sup> Bower, C. 2008. *Banning corporal punishment - the South African experience*. Cape Town: RAPCAN. Accessible at [www.rapcan.org.za/File\\_uploads/Resources/RAPCAN\\_Banning\\_Corporal\\_Punishment\\_WEB.pdf](http://www.rapcan.org.za/File_uploads/Resources/RAPCAN_Banning_Corporal_Punishment_WEB.pdf)

Section number	Section title	Proposed text
		<p>the child, must respect, promote and protect to the fullest extent possible, the child's right to <u>physical and psychological integrity as conferred by section 12(1)(c), (d) and (e) of the Constitution.</u></p> <p><u>(2) No child may be subjected to corporal punishment or be punished in a cruel, inhuman or degrading way.</u></p> <p><u>(3) The common law defence of reasonable chastisement available to persons referred to in subsection (1) in any court proceeding is hereby abolished.</u></p> <p><u>(4) A parent, care-giver or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting such child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.</u></p>

Finally, in order to ensure the protection of children in alternative care (already in place under amendments to the Child Care Act,<sup>15</sup> a new section 137 should be inserted into

Section number	Section title	Proposed text
Chapter 7, part 4, (other protective measures) new section	Discipline of children	<p><u>(1) No person may administer corporal punishment to a child or subject a child to any form of cruel, inhuman or degrading punishment at a [any] child and youth care centre, partial care facility or shelter or drop-in centre.</u></p> <p><u>(2) The Department must take all reasonable steps to ensure that—</u></p> <p><u>(a) education and awareness-raising programmes concerning the effect of section 12A are implemented throughout the Republic; and</u></p> <p><u>(b) programmes promoting appropriate discipline are available throughout the Republic.</u></p>

<sup>15</sup> Bower C. 2007. Submission to the Portfolio Committee on Social Development on the Children's Amendment Bill: Discipline of Children. Accessible at [www.ci.org.za/depts/ci/plr/pdf/subs/aug07/Carol%20Bower%20CP%20submission.pdf](http://www.ci.org.za/depts/ci/plr/pdf/subs/aug07/Carol%20Bower%20CP%20submission.pdf)