

**SUBMISSION TO THE PORTFOLIO COMMITTEE ON SOCIAL  
DEVELOPMENT ON THE CHILDREN'S AMENDMENT BILL (B19 B – 2006)  
CHAPTER 7, SECTION 139: DISCIPLINE OF CHILDREN**

**INTRODUCTION**

This submission is made by Umtata Child Abuse Resource Centre (UCARC), a non – profit organization working from a perspective of children's rights in the O.R. Tambo District municipality, Eastern Cape Province. The organization was established in 1996 with its areas of focus being child's rights advocacy as well as education and training on prevention and management of child abuse, neglect and exploitation (CANE). UCARC is an active member of Eastern Cape Provincial Advisory Council (ECPAC) on children; Provincial Child Protection Committee (EPCPC) and South African Society for Prevention of Child Abuse and Neglect (SASPCAN). The organization has successfully facilitated a process of development and implementation of a Local Plan of Action (LPA) for children at Mhlontlo local municipality and is currently facilitating development of LPAs at Port St John's and King Sabata Dalindyebo local municipalities in the O.R Tambo District municipality.

UCARC, through the LPAs, advocates for duty bearers' adherence to the principle of 'PUT CHILDREN FIRST' and prioritization of children's interests by governments' line function departments and municipalities in the planning, budgeting and implementation processes.

The organization, in its work also works with children as rights holders for participation is one of the human rights principles and a right of the child. UCARC therefore, has an ongoing interaction with the children and it is through these interactions that the organization draws a lot of children's experience in terms of feelings, reactions and thoughts of their rights violations by the people with authority over them, particularly hitting and or humiliating punishment.

**SUBMISSION ON SECTION 139**

UCARC welcomes and supports the provisions of this section as it begins to practically show the government of the Republic of South Africa (RSA)'s commitment in the ratification of the United Nations Convention on the Rights of the Child (UNCRC), African Charter on the Rights and Welfare of the Child as well as provisions of RSA's Constitution, Chapter 2 – the Bill of Rights, in particular.

Article 19 of the UNCRC provides for the protection of children against 'all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment ... while in the care of parents, legal guardian(s) or any other person who has the care of the child.' Similarly, article 16 (1) of the African Charter on the Rights and

welfare of the Child emphasizes protection of the child from hitting and/or humiliating punishment and therefore, advocates for respect and protection of children's human dignity. The article provides that, 'states parties to the present charter shall 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.'

Ratification of the above international instruments meant that the RSA commits itself to protecting South African children against all forms of abuse that include hitting and humiliating punishment and violence against children. This commitment has been demonstrated practically at the time of drawing of the RSA Constitution which is aimed at advancing human rights, children inclusive. Section 12 (1) (c), (d), (e) of the constitution provides that 'everyone has the right to be free from all forms of violence from either public or private sources; not to be tortured in any way, and not to be treated or punished in a cruel, inhuman or degrading way,' respectively. The Constitution goes on to provide protection rights that are exclusively applicable to children in section 28. Section 28 (d) provides that, 'every child has the right to be protected from maltreatment, neglect, abuse or degradation.

Transforming the above Constitutional provisions, the RSA government has banned corporal punishment by Criminal Justice Agencies and followed by the banning of application of corporal punishment in schools as a form of punishment, through South African Schools Act. UCARC perceives this as progressive realization of child's right to protection and therefore highly appreciates it. What is good about the provisions of section 139 of this children's amendment bill is that it puts the interests of the child first. The section does not only provide for banning of corporal punishment or subjecting of children to cruel, inhuman or degrading punishment, but it goes on to provide for capacity development of parents or care givers on positive parenting which includes positive discipline. It further provides for early intervention services to parents and caregivers who happen or are found to have subjected a child or children to inappropriate form or forms of punishment and prosecution as a last resort. The Act is aimed at family preservation in the best interests of the child.

This Act and Section 139 in particular, completes the circle of a long and hard marathon of struggle for equal treatment and protection of both adults and children as equal human beings with different responsibilities, subject to evolving capacity of children, in the society. It restores the human dignity of the child.

UCARC views this Act, Section 139 in particular as contributing to reduction toward total eradication of violence by a human being against another human being in South Africa, Africa and the world in general. Violence against children teaches them that violence is a solution to conflict and or wrong doing. However, in reality, this generates more violence, for violence begets violence.

## **UCARC'S INTERACTION WITH CHILD VICTIMS OF VIOLENCE BY ADULTS**

Many children that UCARC has interacted with revealed that they were not and will never be at peace with people that have beaten or subjected them to humiliating punishment. These people include parents in some instance and teachers mostly. Children have feelings of revenge. This is a guarantee for a room for violence in our

society. Most of the time, angered people who can not revenge themselves against the perpetrators always find a soft target and in most cases the soft targets are children, the girl child in particular.

Children reported that in some instances they are punished for wrong doings that they were never responsible for or committed as a mistake but were denied opportunities to explain themselves. In these cases, they reported feelings of not being loved and therefore think that it would be better for them to leave their homes or kill themselves.

At Mqanduli in the KSD local municipality, a boy child who grew up being beaten by his grandfather was once found poisoning the grandfather's tea. Asked why he had done that, he said that he hated him and therefore wanted to kill him. The boy then started being involved in violent and crime related activities and was in and out of police cells up until he ended up being a criminal.

Lastly, the organization submits that the provisions in section 139 (7) which reads, 'prosecution of a parent or person holding parental responsibilities and rights referred in subsection (6) may be instituted if the punishment constitutes abuse of the child,' be amended to read as 'prosecution of a parent or person holding parental responsibilities and rights referred to in subsection (6) may be instituted if it is in the best interests of the child.' The aim here is not to separate the parents from their children but to unite them at all times.

UCARC appreciates the opportunity given for it to make this submission.