

Working towards the promotion of positive forms of discipline and the abolition of corporal punishment to ensure the realisation of children's rights to dignity and physical integrity.

article 19

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ENDING CORPORAL PUNISHMENT OF CHILDREN:

Consultative workshop held in Zambia

by Judith Mulenga.

The Zambia Civic Education Association (ZCEA), in line with its mission of promoting and advocating for children's rights through civic education, is working towards the ending of corporal punishment of children in Zambia. In its efforts to achieve this, it hosted a consultative workshop with various stakeholders in order to chart a way forward focussing on a concerted effort to end corporal punishment of children in Zambia. This meeting was held on the 20th of November 2006, a day earmarked as the United Nations Child Rights Day.

The purpose of the workshop was to raise awareness of corporal punishment as a child rights violation, share ideas on strategies for advocating an end to the corporal punishment of children and to chart a way forward for ending corporal punishment in Zambia.

The 50 participants were drawn from relevant government ministries such as the ministries of Education (including some teachers), Community Development and Social Welfare, Justice and Labour. Other participants were drawn from child-focused civil society organisations, donor agencies, academia, and representatives of a cross-section of stakeholders including children and the media.

The meeting was officiated by the Solicitor General, Mr. Sunday Nkonde. In his opening remarks, the Solicitor General thanked ZCEA for holding the workshop. He pointed out that he regarded the workshop as important because of the nature of the subject matter, namely, ending corporal punishment of children in Zambia. He said he is passionate on issues relating to the prohibition of corporal punishment and acknowledged that the workshop was held within the broader

context of the recently completed UN Secretary General's Study on Violence Against Children.

He stressed that, for children, corporal punishment instills fear, and that fear retards development in children as they cannot adequately express themselves. He questioned how society expected children to grow up to be responsible adults capable of steering the much needed national development, if children cannot adequately express themselves.

He further pointed out that, despite the wish, and indeed resolve, to consign corporal punishment to history, the reality is that corporal punishment still exists. He said orphaned children are the most susceptible to violence especially with the rise in the number of orphans due to parents dying of HIV/AIDS.

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Recently, there have been a number of encouraging legal developments regarding a prohibition on corporal punishment. Firstly the National Council of Provinces have passed the Children's Amendment Bill that includes a ban on all forms of corporal punishment. This development is discussed in more detail in this edition. In addition, New Zealand has recently passed legislation banning corporal punishment in the home.

However, as Carol Bower points out in her article, legislative change is not enough - implementation is the key. She provides some useful suggestions as to how civil society can contribute to a society free of physical discipline for children as this responsibility lies not only with government but with society as a whole.

This edition also has a strong focus on regional developments in the move to eradicate corporal punishment. Following from the Southern and Eastern African Regional Consultation on Violence Against Children in preparation for the UN Study, it is clear that the region should work together and promote a common understanding on corporal punishment. In particular, civil society has an important role in leading a co-ordinated regional response to the UN Study's recommendations. In this regard, Article 19 features the efforts of the Southern African Network on Ending Corporal Punishment of Children, including the recently finalised position statement on ending all forms of physical discipline and degrading treatment against children.

Mr. Nkonde referred the participants to the case of *John Banda versus the People*, which outlawed corporal punishment as a sentence in Zambia. He reminded participants that they can rest be assured that there are, in the Ministry of Justice, old and faithful allies in the fight against corporal punishment.

He ended his address by wishing the participants a fruitful workshop and hoped that the topic of ending corporal punishment was going to receive the serious attention that it deserved and that the workshop would provide a platform for children to express their views.

The workshop, among other resolutions, suggested that the Ministry of Education need to come up with practical positive learning and discipline management strategies. It was further resolved that in communities, stakeholders should develop prevention strategies instead of only reacting to violence after the fact because this might mean that it may be too late to rehabilitate the victims of such violence. The need for encouraging dialogue between parents and children was also identified and in this regard it was decided that the church has a greater role to play. The need to sensitise parents, guardians and other care givers on the importance of upholding children's rights was a key theme of the workshop. The development and establishment of safe places in all provincial headquarters where abused children can receive counselling, life skills training and formal education was identified as a priority and in this regard it was recognised that there is need for accelerated political will to address these matters in Zambia. Increased social support for families is also necessary. Finally, the training of professionals such as social workers, the police, teachers, child care-givers and prison officers to create a child friendly environment for children was one focus area suggested by participants. The idea of role-models and community awareness was also emphasised. ●

At the workshop Deborah Banda – President, Lusaka Child Rights Clubs Executive Committee said as follows:

"The Solicitor General, Members of Parliament, Ladies and Gentlemen, girls and boys.

Many of us children in Zambia suffer all forms of beatings and other forms of painful punishments. We are beaten in homes, in schools, in orphanages and those of us who work, in places of work. For example, if a child works as a nanny in a home, when she makes mistakes she will likely be beaten by her boss but if an adult nanny makes a mistake she will only be talked to ...

If adults are not beaten or punished in a painful way when they make mistakes, the big question is why should we children suffer such kind of punishment when we are even younger and weaker than adults? As Child Rights Clubs members we believe our rights will only be respected if we act responsibly. I want to assure all of you here that if any child behaves badly and says it is because of our rights then that child is not a member of our club. In conclusion, as President of the Lusaka District Child Rights Clubs Executive Committee and on behalf of all children in Zambia, I wish to state that corporal and physical punishment should be banned completely. In this way we children will at least feel safer to face other problems that we face in our country such as poverty, HIV /AIDS and being orphaned. We appeal to you to please free us from violence.

To all children, let us all be responsible in all areas of our lives."

Southern African Network working towards ending corporal and humiliating punishment of children and promoting positive discipline

by *Samantha Waterhouse: Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN)*

Background

In January 2006 partners of Save the Children Sweden from the Southern African region met and established a network to share information and undertake joint activities during 2006 towards ending all forms of corporal and humiliating punishment of children. Activities for the year included the development of a position statement for the network, dedicated events on the Day of the African Child in different countries, wider distribution of information in countries in the region and the establishment of an e-mail network to share experiences and support. During the year certain challenges arose to this work which included the lack of a dedicated coordinator for the network to oversee the work as well as the fact that countries have different needs regarding information and support depending on the status of corporal punishment in that country.

In January 2007 RAPCAN agreed to coordinate the network for 2007 and in May 2007 Save the Children Sweden hosted a second meeting to consolidate the network. This meeting provided an opportunity to discuss the roles and responsibilities of members, to provide support for individual countries' national advocacy plans and to identify joint issues and advocacy activities for the region for the rest of 2007. Peter Newell from the Global Campaign to End All Corporal Punishment of Children was invited to provide a global perspective on lessons learnt as well as advocacy initiatives.

The meeting was attended by representatives from the following organisations:

REDE CAME, Mozambique; Save the Children Swaziland, Swaziland; DITSWANELO, Botswana; NGO Coalition on the Rights of the Child, Lesotho; Human Rights Commission, Zambia; Save the Children Sweden, Zambia; Zambia Civic Education Association, Zambia; University of Zambia, Zambia; Save the Children Sweden, Zambia; Community Law Centre, University of the Western Cape, South Africa; South African Council of Churches, South Africa; Childline South Africa, South Africa; Resources Aimed at the Prevention of Child Abuse and Neglect, South

Africa; Save the Children Sweden, South Africa; Global Initiative to End All Corporal Punishment of Children, UK

Global Progress

The meeting commenced with Peter Newell presenting on the global context and the general development over the past centuries concerning the rights of adults in countries around the world to be protected from violence. However he noted that: *"It is children who have been left behind, with less protection for their human dignity and physical integrity than adults".*

He indicated that there is progress in all regions of the world as more countries are moving towards banning corporal punishment. The fastest progress has been in Europe (excluding the UK) and he estimates that, by the end of 2007, 23 States in Europe will have a prohibition in place. He indicated that this has been influenced by significant calls for a prohibition of corporal punishment through the European regional human rights bodies. He highlighted high level court decisions in countries ranging from Namibia, South Africa, Zambia and Zimbabwe to Fiji, Sri Lanka and New Delhi in India condemning corporal punishment in schools and the penal system. In addition he indicated that courts in states such as Costa Rica and Nepal have spoken out against corporal punishment in the family. There are law reform processes in a range of countries including Costa Rica, Venezuela, Brazil, Uruguay and Columbia. Seven of the eight states in South Asia have committed themselves to a full prohibition.

The importance of raising awareness of the global momentum and recognising that progress is inevitable was highlighted as an essential element of advocacy strategies. "Things

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¹ Peter Newell *Global progress towards banning all corporal punishment and other cruel or degrading punishment.*

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are really moving and we have to ... make it clear that progress is inevitable and unstoppable. But we also have to constantly remind ourselves of how much children are suffering every day and what an intolerable breach of their most fundamental rights it is.”

In addition to progress in countries around the world, key developments on an international level during the past year include the General Comment No. 8 from the UN Committee on the Rights of the Child that was released

in June 2006, which clearly highlights the obligation of state parties to prohibit and eliminate corporal and other cruel or degrading forms of punishment of children. In addition to this, the report on the UN Secretary General’s Study on Violence Against Children recommends a universal prohibition of corporal punishment by 2009.

Situation in the Region

Delegates from the different countries were requested to consider a range of key questions regarding the status and situation in each country with regard to corporal punishment and law reform and this is set out in the table below.

STATE	PROHIBITED IN THE HOME	PROHIBITED IN SCHOOLS	PROHIBITED IN PENAL SYSTEM		PROHIBITED IN ALTERNATIVE CARE SETTINGS
			AS SENTENCE	DISCIPLINARY MEASURE	
Angola	No	Yes	Yes ²	No	No
Botswana	No	No	No	No	No
Lesotho	No	No ³	No	No	No
Mozambique	No	No ⁴	Yes	No ⁵	No
Namibia	No	Yes	Yes ⁶	Yes ⁷	Some ⁸
South Africa	No ⁹	Yes	Yes	Yes	Yes
Swaziland	No	No ¹⁰	No	No	No
Zambia	No	Yes	Yes ¹¹	Yes ¹²	No

Source: Southern Africa: summary of the legal status of corporal punishment of children prepared by the Global Initiative to End All Corporal Punishment of Children¹³

There was agreement that governments in the region are aware of the issue of corporal punishment. However in most countries there is a resistance to address the issue on the basis of tradition and the belief that a lack of corporal punishment is harmful to children. Although there is awareness on the issue it is not on the agenda in most parliaments of the countries present. In South Africa the issue is alive through the debate on the Children’s Amendment Bill. In Lesotho and Botswana the issue has had limited attention in parliament but this has not been sustained. In Swaziland and Zambia it was noted that there is some opportunity for the issue to be taken up with members of parliament.

Opportunities for advocacy and law reform in the countries represented include participation in current law reform processes regarding children’s legislation in Mozambique, South Africa and Swaziland; building coalitions for advocacy (including legal support) and working with opposition parties and key government departments in some countries. It was agreed that it is critical to maintain pressure on governments to fulfil their commitments in terms of the Convention on the Rights of the Child and highlight the implications of the General Comment on the issue of corporal punishment. In addition the recently updated All Africa Special Report on Ending Legalised Violence Against Children and the recommendations of the UN Study on Violence Against Children are essential tools to use in advocacy in individual countries.

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Building National Alliances

The second day of the meeting started with a presentation by Daksha Kassin on the South African experience of building a national alliance against corporal punishment. The presentation and subsequent discussion highlighted the value of strong support networks in advocacy initiatives. She noted that there is also a need to undertake internal advocacy within organisations in order to gain commitment from the

2 Prohibition for 16 and 17 year olds unconfirmed.

3 Legislation prohibiting corporal punishment was in preparation at April 2006.

4 Prohibited by government directives.

5 Information unconfirmed.

6 Declared unconstitutional in 1991 by Supreme Court ruling; prohibition in legislation unconfirmed.

7 Declared unconstitutional in 1991 by Supreme Court ruling; Not confirmed in legislation but Child Justice Bill was under discussion.

8 Unlawful in state institutions under 1991 Supreme Court ruling, not prohibited in privately administered settings.

9 The Children’s Bill proposes an explicit prohibition and removal of the ‘reasonable chastisement’ defence, as at June 2007 the debate was still continuing.

10 Prohibition proposed in new legislation due for presentation late 2006.

11 Ruled unconstitutional by the Supreme Court in 1999, as at June 2005 some legislation not amended.

12 Ruled unconstitutional by the Supreme Court in 1999, as at June 2005 some legislation not amended.

13 www.endcorporalpunishment.org.

entire organisation and this is especially true in larger representative organisations. Dedicated coordination and regular meetings were seen to be essential for the effectiveness of such alliances.

Experiences of religious and cultural support for a ban

The remaining presentations focused on the need for strategies to address and respond to the religious lobby in favour of corporal punishment of children. It was noted¹⁴ that all over the world a small but vocal fundamentalist pro - corporal punishment lobby is active when the issue is up for debate. In contrast to this there are a number of religious organisations and bodies that have come out in support of non - violent discipline and that call for a ban on corporal punishment. For example, a Churches Network for Non-Violence has been established in the UK and the World Assembly of Religions for Peace, in 2006, signed a declaration calling for the prohibition of all forms of corporal punishment.

In a survey of churches in Zambia¹⁵ on the issue of corporal punishment, although most churches continue to advocate for corporal punishment, the Zambian Episcopal Conference is against the use of corporal punishment. In South Africa, the South African Council of Churches is concerned with issues of abuse and violence against children and has taken a stand against the use of corporal punishment.

The contention that a defence for corporal punishment is a cultural practice was raised. This was contextualised by the fact that across the world almost all cultures lay claim to the practice of disciplining children with physical violence. The need to identify and support key traditional leaders who would take a stand on the issue and, while nonetheless promoting traditional systems, support non- violence and positive discipline for children is critical.

Capacity building for positive discipline in schools

In addition, it was also noted that in some countries the use of corporal punishment in schools is regulated. Despite the fact that in certain countries corporal punishment is banned in schools, the practice is still widely used. The Department of Education in South Africa estimates that 60% of schools are still relying on corporal punishment.

Therefore there is a need to engage in capacity building within schools to improve classroom management and reliance on positive discipline. In this regard experiences from Swaziland¹⁶ and South Africa¹⁷ were presented and it was agreed that the whole - school approach, which focuses on discipline throughout the school, is critical because the school norms and behaviour of educators and management have a significant impact on the behaviour and punishment of children.

Parenting Skills

The importance of improving parenting skills to enable parents to

discipline children in non-violent and non-humiliating ways was emphasised.¹⁸ Alongside advocacy towards banning corporal punishment, initiatives must call for education and support programmes for parents to enable them to raise children who are self-disciplined and contributing members of society. In advocacy it is important to focus on the constructive aspects of law reform and to recognise that parents do the best that they can do.

Regional Network: purpose, roles and responsibilities

In order to address the weaknesses and challenges faced in the network during 2006, the meeting established the basis for the terms of reference for the network and these are still pending finalisation:

The purpose of the network:

To coordinate advocacy towards banning all forms of corporal and humiliating punishment and to promote positive discipline in the region.

To bring together interested and committed organisations within the Southern African Region to work towards a prohibition of corporal punishment through capacity building, information dissemination, and joint regional advocacy initiatives.

The role of the network co-ordinator and members was also discussed.

An important outcome of the meeting was the finalisation of an updated version of the network's initial position statement. This appears in full on the centrespread of this edition, which allows for it to be removed and displayed in your office or organisation.

Conclusion

It is hoped that this network will contribute to the overall objective of eradicating all forms of violence against children in their public and private lives in the Southern African region. ●

For more information on the network contact Samantha Waterhouse at sam@rapcan.org.za

¹⁴ Peter Newell International Experiences and Resources.

¹⁵ Mushuma Mulenga Zambia Civic Education Association An Example from Zambia.

¹⁶ Nomzamo Dlamini Swaziland Update.

¹⁷ Lorna Siers RAPCAN experiences.

¹⁸ Joan Van Niekerk Parenting Skills in Relation to Positive Forms of Discipline in the Home

POSITION STATEMENT FROM THE SOUTHERN AFRICAN NETWORK WORKING TOWARDS THE ERADICATION OF CORPORAL AND HUMILIATING PUNISHMENT OF CHILDREN AND PROMOTING POSITIVE DISCIPLINE

February 2006,
amended May 2007

Background:

In some of our countries, as in countries in every region of the world, corporal punishment is legally sanctioned as a sentence in the penal system, in places of care or as a disciplinary measure in schools. All of our countries currently allow for the use of violence against children when committed by their parents.

In States where corporal punishment is prohibited in the education system, practitioners report ongoing use of physical and other forms of humiliating punishment against children. This is partly attributed to poor implementation of these legal reforms in the school system. Firstly, the continued use of corporal punishment by teachers is tacitly supported or encouraged by their peers and sometimes even by parents and caregivers. In the second instance, institutions rarely apply sanctions against teachers who continue to practice corporal punishment. Thirdly, teachers have not been provided with the knowledge, skills and support needed to implement new and appropriate measures of positive discipline in the classroom.

Corporal and humiliating punishment of children violates children's human rights to physical integrity and human dignity, as upheld by the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

Article 19 of the United Nations Convention on the Rights of the Child (CRC) protects children 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"*

The United Nations Committee on the Rights of the Child released General Comment No. 8 (2006) on the issue of corporal punishment. This states that *"Eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of state parties."* The General Comment also states that *"There is no ambiguity ... Corporal punishment and other cruel and degrading forms of punishment are forms of violence and the State must take all appropriate legislative, administrative, social and educational measures to eliminate them."*²

The UN Secretary General's Global Study on Violence Against Children conducted consultations with governments, civil society and children in all nine regions of the world including the East and Southern African Region, these consultations all called for a ban on all forms of corporal punishment of children. The final report on the study states that *"... no violence against children is justifiable; all violence against children is preventable. There should be no more excuses"*³ and calls for law reform to end legalised violence against children in all spheres by 2009.⁴

Article 16 of the African Charter on the Rights and Welfare of the Child 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 a parent, legal guardian or school authority ..."*. Although this article has not yet been interpreted by the African Committee, the similarity between the wording of this and Article 19 of the CRC suggests that the African Charter could be interpreted in the same way that Article 19 of the CRC has been, thereby protecting children from physical and mental abuse including all forms of corporal punishment. It must be noted that Article 1(2) of the African Charter provides that provisions in international Conventions that offer greater protection to children will supercede the African Charter, and will thus take precedence.

Children who participated in the nine regional young people's consultations on the UN Study on Violence Against Children and in other consultations on this issue have repeatedly called for an end to the use of corporal and

¹ General Comment No. 8 (2006) paragraph 22 p 6.

² Ibid paragraph 18 p 6.

³ Report of the Independent Expert for the United Nations Study on Violence Against Children, paragraph 91 p 24.

⁴ Ibid paragraph 116 p 32.

humiliating punishment. They highlight the harm that this practice does to them both physically and emotionally.

At its 8th World Assembly in 2006, different religious communities under the umbrella of Religions for Peace called on governments to prohibit all forms of violence against children, including corporal punishment, and committed to work actively in their communities to change attitudes and practices that perpetuate violence, including corporal punishment.

Our position:

We believe that children have a right to a life free from all forms of violence, including corporal and humiliating punishment. We take seriously children's evidence on how corporal and humiliating punishment hurts them and wish to underscore the commitments made by governments in all nine regional consultations of the UN Study on Violence Against Children to prohibit corporal punishment of children in all settings.

The rights of adults to be free from violence is protected by criminal laws, yet children do not have equal protection under the law as they can be subjected to physical violence for the purposes of correction. We therefore insist that children must enjoy the same human rights protection that is afforded to adults. Further, children's greater physiological, psychological and social vulnerability makes it critical that we ensure greater protection of children against all forms of violence.

We believe that countries in Southern Africa and all other regions of the world can no longer continue to hide behind religion, culture and tradition in order to perpetrate legalised violence against children.

There is an urgent need for all countries in the region to acknowledge their obligations under the Convention on the Rights of the Child as all these countries have ratified the Convention.

We thus call on all states in the region to prohibit all forms of corporal and humiliating punishment of children by 2009 through implementing a legal prohibition on these practices in all spheres of children's lives from penal systems to the education sector, places of care of children as well as in the home.

Instituting a legal prohibition is primarily a preventative measure. In addition to the ban, our governments must allocate resources for the implementation of educational programmes that aim to change attitudes towards children as rights bearers and develop the implementation of positive discipline methods by parents, caregivers and teachers. Further, resources must be allocated towards strengthening state support systems for children, parents and teachers.

We do not believe that the prosecution of parents is always in the best interests of the child and recognise that children do best in supportive and loving families. We thus call on states to put measures in place to ensure that parents have access to other supportive and corrective interventions as a diversion option and as a possible sentence where cases are prosecuted.

We support the aims of the Global Initiative to End All Corporal Punishment of Children, which calls on all governments to declare their opposition to corporal punishment of children in all contexts and to set a timetable for eliminating corporal punishment.

This statement is supported by the following organisations:

Childline South Africa	+27 (0)31 563 5718
Children's Rights Project, Community Law Centre, South Africa	+27 (0)21 959 2950
DITSHWANELO, The Botswana Centre for Human Rights, Botswana	+26 (0)7 390 6998
Education Policy Unit, University of Witwatersrand, South Africa	+27 (0)11 717 3076
Global Initiative to End All Corporal Punishment of Children	info@endcorporalpunishment.org
NGO Coalition on the Rights of a Child, Lesotho	+26 (0)62 231 2905
Resources Aimed at the Prevention of Child Abuse and Neglect, South Africa	+27 (0)21 712 2330
Save the Children Swaziland	+26 (0)8 404 3255
Save the Children Sweden, Regional Office for Southern Africa	+27 (0)12 342 0222
South African Council of Churches	+27 (0)21 423 4261
Zambia Civic Education Association	+26 (0)21 122 9641
Zambia Human Rights Commission	+26 (0)96 767 386

The Southern African Regional Meeting on the United Nations Study on Violence Against Children 15-16 May 2007 *by Emily Ruhukwa*

From 15-16 May 2007, Save the Children Sweden hosted the Southern African Regional Meeting on the United Nations Study on Violence Against Children in Pretoria for its partners and alliances in the region.

The meeting brought together partner organisations and alliance members from Angola, Botswana, Lesotho, Mozambique, Swaziland, South Africa, Zambia and Zimbabwe to examine how they as civil society could play a role in preventing and responding to violence against children as well as how to more effectively use the UN Study as an advocacy tool at the national, regional and international levels. The study was also particularly useful to child rights practitioners as it took into account the views of children themselves on how they wanted adults to engage with them to end violence against children.

Colleagues had the opportunity to share from the experiences and knowledge of Peter Newell of the Global Initiative to End Corporal Punishment based in the United Kingdom. The key issues raised at the meeting included suggestions on how to formulate legal reform for the

prohibition of violence against children, utilisation of national child protection systems, ways of ensuring child participation for the formulation and implementation of policies, how to effectively utilise the active participation of boys and men in ending violence against children and the use of human rights reporting mechanisms to advance the agenda of the meeting.

Some of the key advocacy messages that came out of the meeting were that civil society organisations needed to work together more cohesively to hold their governments accountable to implement the recommendations of the UN Study on Violence Against Children and to be more creative in their formulation of programmes to incorporate children's views.

The matrix developed below is an attempt to draw out some of the common issues that emerged in the consultation as a brief outline of some of the conclusions developed at the meeting. ●

	ROLE OF GOVERNMENT	ROLE OF CIVIL SOCIETY
Laws and Policies	Develop in consultation with stakeholders relevant and effective laws and policies to both prevent and respond to violence against children	Advocate for the development of relevant laws and policies and promote the participation of children and stakeholders in their development
Implementation	Effectively implement laws and policies in a comprehensive and sustainable manner	Monitor implementation and provide constructive feedback on programmes
Resourcing	Provide adequate human and monetary resources to programmes in local and national level budgets	Monitor budgets and advocate for resourcing of programmes at local and national level
Monitoring / Accountability	Create time bound monitoring and reporting mechanisms for programmes at all levels including international obligations	Utilise and interrogate monitoring and reporting mechanisms to ensure accountability and adequate representation of situations
Child participation	Create institutionalised systems for children to provide input into programmes and initiatives	Promote and monitor the ethical and meaningful participation of children in initiatives through highlighting models and best practices.
International obligations	Harmonise domestic law and policies with international obligations and ensure timeous reporting to both the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.	Monitor the harmonisation of laws and promote shadow reports on government reporting to the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.
Information Dissemination	Disseminate information and create awareness at all levels of society on both the prevention of violence against children and support programmes available to survivors of violence.	Disseminate information on the rights of children and government obligations to fulfil these rights
Partnerships	Partner where relevant with communities and stakeholders to ensure comprehensive, relevant and consultative programmes	Promote networking and coalitions in civil society to represent a unified voice to government on relevant issues. Develop models that can be shared with government and through partnerships further scaled up.
Research / Statistics	Conduct and share publicly base line and consistent statistical data collection that will inform the approach and effectiveness of programmes and to increase the visibility of violence against children in society.	Conduct research to promote an evidence base for advocacy work on violence against children and advocate for government research to promote evidence based approaches.
Capacity Building	Ensure adequate training and capacity for all relevant stakeholders	Create awareness around capacity gaps and through highlighting models promote effective capacity building initiatives.

A full copy of the workshop report: *The Role of Civil Society in Preventing Violence Against Children: Southern African Regional Meeting on the United Nation's Secretary General's Study on Violence Against Children* is available from Save the Children Sweden. Mail Shani Winterstein at shaniw@saf.savethechildren.se

The National Council of Provinces prohibits all forms of corporal punishment

On the 29th of May 2007, the National Council of Provinces passed the Children's Amendment Bill (B19B of 2006) containing a clause which expressly prohibits caregivers, including parents, from subjecting their children to corporal punishment or other cruel, inhuman or degrading treatment. The inclusion of this provision is indicative of the fact that South Africa is committed to ensuring the well-being of all its children and is dedicated to protecting children from all forms of physical violence and degrading treatment. This initiative echoes the unequivocal message of the recently completed United Nations Study on Violence Against Children as well as the General Comment No: 8 of the United Nations Committee on the Rights of the Child which calls on all States Parties to ensure that all forms of violence against children is eradicated and that corporal punishment and inhuman and degrading treatment of children in their public and private lives is prohibited. However, the Children's Amendment Bill still needs to be passed by the National Assembly and it is hoped that this prohibition on corporal punishment and other cruel, inhuman or degrading ways of punishment remains in the Bill that is eventually passed by the South African parliament.

The clause in the Children's Amendment Bill

Section 139 of the Bill addresses the prohibition of corporal or any other cruel, inhuman or degrading punishment of children. Of significance is the fact that this section is entitled "discipline of children" as opposed to "corporal punishment" which appeared in earlier versions of the Bill. This change in title is reflective of the fact that the section seeks to achieve the aim of ensuring that children are disciplined, as opposed to being punished, in a positive manner that respects their rights to human dignity and physical integrity. The first sub-section thus re-iterates that persons who have the care of a child, including a person who has parental responsibilities and rights in respect of a child, must respect, promote and protect the child's rights to physical and psychological integrity as conferred by the Constitution of South Africa.

The defence of reasonable chastisement

This sub-section is followed by an explicit prohibition of corporal and cruel, inhuman and degrading punishment and the abolition of the "reasonable chastisement" defence that currently exists in the common law of South Africa. The inclusion of the latter constitutes an express prohibition of corporal punishment and also confirms that no

person, not even parents, may rely on the defence of reasonable chastisement when faced with a charge of assault against their children. A further implication of removing the defence of reasonable chastisement is that children will now enjoy equal protection of the law similarly to adults, especially when they have been subjected to physical violence at the hands of their parents.

Awareness and education campaigns

However, in order to ensure that children are not physically punished or punished in a cruel, inhuman or degrading manner, law reform is not enough. Such law reform needs to be coupled with extensive awareness and education campaigns in positive discipline and the harmful effects of imposing corporal punishment. Therefore, the section contains a sub-clause which places an obligation on the Department of Social Development to ensure that education and awareness programmes are implemented and that programmes promoting appropriate discipline are available throughout South Africa.

Treatment of parents

It should be noted that the aim of prohibiting corporal and other cruel and degrading punishment of children is not only to ensure that the rights of children are respected, but also to send out a clear message that this type of punishment is a human rights violation and can no longer be tolerated in a human rights culture. However, the aim of the prohibition is not to criminalise each and every parent but is rather to ensure that children are disciplined in a positive manner and that parents are able to discipline their children without resorting to violence or other inappropriate forms of punishment. Therefore, the section makes provision for parents and persons holding parental rights and responsibilities, who have been reported for subjecting their children to inappropriate forms of punishment, to be referred to early intervention services which can assist in preventing these actions and also equipping

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such persons with other positive ways of disciplining their children. The implications of the final sub-section, however, means that children will still not have equal protection of the law as it provides that parents or persons holding parental rights and responsibilities may only be prosecuted if the punishment constitutes abuse. While it is recognised that prosecution of parents is not always in the best interests of children, the requirement that the punishment must constitute "abuse" before prosecution is instituted undermines children's rights to equal protection under the law and tends to affirm the notion that some arbitrary level of corporal punishment is acceptable.¹ This clause will better protect children if it is rewritten to reflect that prosecution of parents and persons holding parental rights and responsibilities may be instituted if this is in the best interests of the child.

Conclusion

Despite the final sub-clause which has the implication of not granting children equal protection of the law, the National Council of Provinces should indeed be commended for taking this step to prohibit corporal and other degrading forms of punishment of children, for abolishing the defence of reasonable chastisement and its firm stance of obliging government to undertake education and awareness raising around the issues of appropriate discipline. These efforts will assist in ensuring that children are brought up under less violent circumstances and will also contribute to the building of a less violent society as a whole. ●

Children's Amendment Bill

Discipline of children

139. (1) *A person who has care of a child, 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 section 12(1)(c), (d) and (e) of the Constitution.*

(2) *No child may be subjected to corporal punishment or be punished in a cruel, inhuman or degrading way.*

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

(4) *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.*

(5) *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 throughout the Republic; and*

(b) *programmes promoting appropriate discipline are available throughout the Republic.*

(6) *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.*

(7) *Prosecution of a parent or person holding parental responsibilities and rights referred to in subsection (6) may be instituted if the punishment constitutes abuse of the child.*

So now the law says no-one can hit kids

How do we make this real?

by Carol Bower

Those of us who have been advocating for the prohibition of corporal punishment in the private sphere are proud of and extremely pleased about the South African government's decision to do just this in section 139 of the current version of the Children's Amendment Bill before Parliament (June 2007). South Africa becomes only the 19th country in the world to do so, and the first in Africa. However, our good cheer needs to be tempered by the fact that the prohibition was only effected at the National Council of Provinces and still needs to be agreed to at the National Assembly.

However, while we celebrate this milestone, we are mindful of the significant task that lies ahead of us. A statutory prohibition is a critical first step on the road to protecting children from physical and humiliating punishment, but it will not of itself achieve a society in which no child is hit as implementation of laws is the ultimate goal.

Why has government done this?

Many people ask this question: they feel that government is either infringing on their rights as parents to raise their children as they see fit, or on their rights to religious freedom. However, government has a number of other reasons for having taken this step. Any government has the responsibility to protect its citizens - including those who happen to be under 18 years old. Furthermore, our government has a legal obligation, in terms of our own Constitution and in terms of its ratification of the UN Convention on the Rights of the Child (CRC), to take this step.

With regard to the South African Constitution, section 28 (1) (d) provides that "Every child has the right - (...) to be protected from maltreatment, neglect, abuse or degradation". And, in terms of the CRC, article 19 has been interpreted by the UN Committee on the Rights of the Child as requiring such a prohibition. The recent General Comment (No. 8) adopted by the Committee in June 2006 seeks to emphasise the obligation of all States Parties (including all the countries in Africa that have ratified the CRC) "to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children ...".

However, perhaps South Africa's most significant responsibility with regard to the prohibition of corporal and other degrading and humiliating forms of punishment of children lies in the kind of society that we want to create. We are a country with extraordinarily high levels of interpersonal, family and community violence.

If we want to raise emotionally, physically, socially and psychologically healthy and responsible adults, we need to fundamentally change the context of childhood in South Africa. We need to teach children self-discipline, to be respectful of others and to resolve conflict and differences without violence. We cannot do so if anyone is allowed to physically punish and hurt another human being.

Beyond the legal ban

Our experience with the prohibition of corporal punishment within the education sector in South Africa confirms that a legal ban is not sufficient in and of itself to achieve a smacking-free society. Much more is needed in the way of awareness-raising - and a real "change of hearts and minds" is required. The General Comment referred to above, and the actual wording of clause 139 make clear that the State has a duty to take a range of awareness-raising and educational measures to achieve a prohibition of corporal and humiliating punishment of children.

However, government alone will not be able to achieve the mind-set changes that are required if we are to become a society in which no child is hit.

However, perhaps South Africa's most significant responsibility ... lies in the kind of society that we want to create.

The role of civil society

It could be argued that those organisations which have advocated specifically for the prohibition of corporal punishment share government's responsibility, at least on some levels, to work towards the attitude and behavioural changes that are required. So, as we move into a new era in South Africa, what role can we as civil society organisations play? There is in fact much that we can do.

- Raise our own children without hitting them or subjecting them to humiliating and degrading forms of punishment.
- In our own homes, and in our places of work, set the example of no violence of any kind against anyone.
- Build our own capacity to defend a child rights position.
- Raise awareness and advocate with decision-makers and those in positions of authority about the negative consequences of a society of violence for anyone, including children.
- Develop programmes and materials that build the capacity of parents to raise their children without hitting them.
- Engage parents, groups and community organisations in debating the issues, ensuring that we communicate the benefits of raising children without resorting to physical punishment to individual children, families, communities and society as a whole.
- Make information available as widely as possible about the negative consequences of hitting children and the benefits of positive parenting.
- Work with government to deliver interventions which prevent violence, and intervene early when it occurs.
- Assist parents and adults to develop their capacities to discipline without hitting and degrading children.
- Build on, encourage and disseminate information about how to discipline children without corporal punishment. ●



NEW PUBLICATION

The All Africa Special Report, *Ending legalised violence Against children*, has recently been updated to include the UN Committee on the Rights of the Child's General Comment Number 8 (2006). This report is a product of the regional consultations for the UN Study on Violence against Children. Copies are available at www.endcorporalpunishment.org

NEWSFLASH

Brazil launches a campaign against physical punishment

On the 15th of June 2007, Brazil launched a campaign for the eradication of physical punishment against children. The ceremony took place in Palácio do Planalto and was attended by President Luiz Inácio Lula da Silva and the children's show host Xuxa Meneghel. Almost 400 guests attended the ceremony, including authorities, members of parliament, representatives of organisations that form the network Educate, Do Not Punish! (Rede Não Bata, Eduque!) which promotes the campaign, NGOs and 120 children. The core purpose of the ceremony was the need to change the culturally accepted notion that beating children is a legitimate way to educate them.

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