

Prohibition of Corporal and Humiliating Punishment in the Home*

This is one in a series of topical guides developed for PAN: Children that provides key information on the current state of affairs in South Africa related to the topic and highlight practical guidance, lessons learnt and case studies (both national and international) that will be helpful in policy development dialogue and knowledge sharing.

1 Definitions

Corporal punishment is defined as ‘any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.’¹ It involves hitting or slapping a child with the hand or an implement (e.g. belts, canes etc.), kicking, shaking, or throwing a child, pinching or pulling their hair; forcing a child to stay in an uncomfortable or undignified position, or to take excessive physical exercise; burning or scarring a child (and the threat of any of these actions) as a form of discipline.²

Increasingly, corporal punishment is viewed as linked to other forms of humiliating and degrading punishment – reference is therefore often made to ‘corporal and humiliating punishment’ rather than just ‘corporal punishment’ in isolation. This is largely because experience has shown that where corporal punishment has been prohibited, persons charged with the responsibilities of childrearing often resort to other non-physical but also very damaging, forms of humiliating punishment. These can include verbal abuse, ridicule, isolation, or ignoring a child.³

It is also necessary to distinguish between and define ‘punishment’ and ‘discipline’, because there is a conflation of the two and confusion among the general public and decision-makers alike, who frequently reflect their fear that the prohibition of corporal punishment equates to the prohibition of discipline. An understanding of the Latin roots of the words ‘punishment’ and ‘discipline’ are useful here:⁴

‘Punishment’ comes from the Latin *punire*, and means “to correct, chastise, take vengeance for, inflict a penalty on, or cause pain for some offense”.

‘Discipline’, on the other hand, is based on the Latin *disciplina*, meaning “instruction given, teaching, learning, knowledge”.

Advocates for the prohibition of corporal and humiliating punishment in the home argue for the use of positive discipline techniques in raising children. They emphasise that positive discipline involves: (Durrant, 2007)

- Seeking long-term solutions that develop a child’s own self-discipline;
- Clear communication of expectations, rules and limits;
- Building a mutually respectful relationship with children;
- Teaching children life-long skills;
- Increasing a child’s competence and confidence to handle challenging situations;
- Teaching courtesy, non-violence, empathy, self-respect, human rights and respect for others.

2. International, African and national instruments relating to the corporal punishment of children

* This topical guide was prepared for PAN: Children by Carol Bower (LINALI)

- The **United Nations Convention on the Rights of the Child** (UNCRC), ratified by South Africa in 1995. Article 19 of the UNCRC states that children should be protected against ‘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.’⁵ In addition, Article 37 names the State as responsible for ensuring that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment.⁶
- The United Nations Committee on the Rights of the Child **General Comment 8** (UNCRCGC8), issued after the second day of general discussion, on violence against children within the family and in schools, in September 2001. In it, the Committee called upon States to ‘enact or repeal, as a matter of urgency, their legislation in order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention’.⁷
- **The United Nations Convention against Torture** (UNCAT), ratified by South Africa in 1998. Article 1 states that any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, is prohibited. Article 16 clarifies this prohibition further by stating that other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 are included in the prohibition.⁸
- **The United Nations Convention to End All Forms of Discrimination against Women** (CEDAW), ratified by South Africa in 1998. CEDAW itself does not speak directly about violence against women; nor does it address the issue of corporal punishment. Nevertheless, in Article 5, it states that States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.⁹ Perhaps more significantly, the 57th session of the Commission on the Status of Women held in March 2013 found that corporal punishment of children contributes significantly to the incidence of violence against women.¹⁰
- The **African Charter on the Rights and Welfare of the Child** (the Charter), ratified by South Africa in 2000. Article 11(5) enjoins States Parties to ‘take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter’.¹¹
- The proceedings of the 12th Meeting of the **African Committee of Experts on the Rights and Welfare of the Child** held in November 2008. These included a statement on violence against children, in which the African Committee clarified that all forms of violence against children, even moderate ones, should be clearly and unambiguously rejected, and that “the acceptance of corporal punishment and other harmful traditional practices should be publicly condemned and eliminated”.¹²

3. National law

- The **Constitution** of the Republic of South Africa provides a substantial Bill of Rights protecting the rights of all South Africans, including children, in Chapter 2. These are the right to equality (section 9), human dignity (section 10) and the right not to be subjected to cruel, degrading or inhumane treatment (section 12). In addition, section 28 of that chapter provides for additional rights to which children are entitled by virtue of their relatively greater vulnerability, including the right to protection from maltreatment, neglect, abuse or degradation, in section 28(1)(d). The Constitution emphasises that the best interests of the child are paramount in all matters affecting the child, in section 28(2).
- The **Children’s Act 38 of 2005** as amended¹³ provides the legislative framework for a holistic prevention, early intervention and child protection strategy which includes provisions requiring adherence to the ‘best interests’ principle and protecting children from all forms of violence. In

particular, section 144(1)(b) emphasises the need for parents and care-givers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline.

Although a prohibition of corporal punishment appeared in the draft Children's Amendment Bill in clause 139,¹⁴ it was excised before being presented to Parliament for approval in late 2007. This was largely because the Portfolio Committee on Social Development in the National Assembly realised that the issue was controversial and proposed that the clause be removed in order to not to jeopardise the passage of the rest of the Children's Act, and made a commitment to reconsidering the issue when the Children's Act was again amended.¹⁵

As yet, national law does not prohibit parental corporal punishment and the defence of reasonable chastisement is still open to parents who assault their children.* There is currently no specific mention of dealing with parental corporal punishment in any policy. Even the Green Paper on Families does not raise the issue.¹⁶

Nevertheless, the Children's Act does provide for a range of activities intended to change parental attitudes towards disciplining their children and implement parent training and support programmes. Section 144 (1) of the Act states:

"Prevention and early intervention programmes must focus on—

(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 the promotion of positive, non-violent forms of discipline"¹⁷

4. Situation assessment and analysis

4.1 Parental corporal punishment in South Africa

Generally, with regard to the corporal punishment of children, a settings approach is adopted, with 4 settings considered. These are:

- Corporal punishment in the justice system, as a sentence and as a punishment;
- Corporal punishment in the educational system;
- Corporal punishment within alternate care settings;
- Corporal punishment in the home.

Corporal punishment in South Africa has been prohibited in the first three of these settings. The 1997 Abolition of Corporal Punishment Act abolished its use within the justice system and the South African Schools Act of 1996 outlawed it in schools, while amendments to the Children's Act 38 of 2005, as amended, in its Regulations and Norms and Standards prohibit the use of corporal punishment and other forms of humiliating and degrading punishment in alternative care settings, i.e. foster care, cluster foster care and child and youth centres; and care settings such as Drop-in centres and early childhood development programmes. However, corporal punishment in the home is still permitted.

Unfortunately, recent data and information about the prevalence of corporal punishment in the home in South Africa is not available, and the data that do exist are disparate and inconsistent.¹⁸ However, the available information does indicate high levels of corporal punishment in the home.

* The defence of reasonable chastisement is a common law principle which allows that parents who are charged with assaulting their children can claim in their defense that they were exercising their right to reasonably chastise their children.

In a national survey undertaken in 2005 by the Human Sciences Research Council (HSRC), it was found that the most common age of children who are *smacked* is 3 years of age and the most common age of children who are *beaten* with some or other object is 4 years old (current author's emphasis). The data showed that 57% of parents with children under 18 used corporal punishment, and 33% used severe corporal punishment in the form of beatings (in addition to smacking).¹⁹

A nation-wide opinion poll of 1,200²⁰ South African children on the rights most violated in their lives, as well as another survey with 410 South African children²¹, found that boys experienced corporal punishment to a larger extent than girls. The latter survey also indicates that older girls might be subjected to humiliating and degrading punishment to a greater extent than boys, not least to control perceived sexual activities of teenage girls.²²

4.2 *The milieu in which South African children are raised*

South Africa is a deeply patriarchal society characterised by strongly held traditional and conservative views on the right and proper place of women and children, and a relatively high degree of gender inequality.²³ This feeds directly into the exceptionally high levels of violence of all kinds which currently bedevil South African society.²⁴

South Africa is a particularly violent society with among the highest-recorded levels of rape (including of very young infants), domestic violence, intimate femicide (where [usually] the male partner kills the female partner), family murders and community violence.²⁵

South Africa is also a very unequal society, with very large numbers of children living in poverty in poorly-resourced communities.²⁶

Large numbers of South African children live in single-parent- (often grand-parent) headed households.²⁷ Many of these households are in rural areas, under the authority of traditional and sometimes conservative and patriarchal chiefs.

The HIV pandemic has exacerbated these challenges to a significant degree, increasing the numbers of children not living with their biological parents and exacerbating levels of poverty.²⁸

In combination, these factors make children in South Africa vulnerable to severe corporal punishment as stressed caretakers try to provide for the children in their care, and find they cannot cope. This is militated by the fact that there is very little education and training available to parents, who often do not know about alternatives to corporal punishment.

4.3 *Attitudes towards the prohibition of corporal punishment in South Africa*

Generally, adult South Africans approve of corporal punishment and much blame for indiscipline in schools is laid at the door of the prohibition of corporal punishment within educational institutions. Whenever the subject of prohibiting corporal punishment is raised, a number of pro-corporal punishment arguments regularly arise. These include:

- ***The bible says we have a duty to beat our children.***

Although many of the followers of all the major religions in South Africa claim a theological basis for corporal punishment of children, this view is increasingly being questioned. All the major faiths committed themselves to non-violence in the raising of children in the Kyoto Declaration on Confronting Violence and Advancing Shared Security, made during the Eighth World Assembly of Religions for Peace, in August 2006.²⁹ In general, we no longer follow many of the injunctions of religious texts, such as for example the stoning of adulterers.

Christians often claim that the Bible specifically mandates that parents hit their children. The phrase “spare the rod and spoil the child” is erroneously attributed to the Bible. The statement was first made in a poem written in 1664. (Rossi, 2005)

While it is true that certain parts of the Bible contain references to physically punishing children (especially in the Book of Proverbs), Christians interpret these passages in different ways. Those who rely on ancient texts to justify corporal punishment should remember that, in the original Hebrew, there are three different words that are translated in English as “rod”, and the one used most often in the verses from Proverbs is the word “shebet”. The shebet was the walking staff held by the head of a family, the king's sceptre, on the crook with which shepherds guided and rescued sheep. This use of “shebet” can also be seen in Psalms, where the “rod” is identified as something that “comforts me”³⁰.

Within each of the major faiths there are differences in the ways that different factions interpret religious texts. There are arguments against the use of corporal punishment to be found within Christianity, Islam, Shiite Shari'a and Hinduism.*

- ***My right to cultural expression is being violated***

The use of corporal punishment as a means of maintaining control was introduced into African societies by missionaries and colonialism. This is supported by Sifuna, for example.³¹ It was entrenched in South African law during the apartheid era, and was deliberately used to strengthen that system.³² In contrast, there is a Zulu saying that “you don't build a family with a stick”; the concept is also incompatible with the concept of ubuntu. Archbishop Emeritus Desmond Tutu has said of this uniquely African world-view: “*Ubuntu is very difficult to render into a Western language... It is to say - 'my humanity is caught up, is inextricably bound up, in what is yours' ...*”³³ It has been variously defined as humanness, humanity, virtue, goodness and kindness.³⁴

In the past, slave owners said that they had the right to beat their slaves; the police and courts said it was their right to beat prisoners; and husbands have said they have the right to beat their wives. The fact that parents say it is their right to beat their children must be challenged. It is of great concern that children, who are physically and emotionally the most vulnerable members of society, are last in line to have this fundamental human right protected.

- ***This is a first world idea – in Africa, we are not ready to ban corporal punishment***

Five African countries have now banned all forms of corporal punishment: Kenya, Tunisia, South Sudan, Togo and the Democratic Republic of the Congo. In addition, campaigns for prohibition are ongoing in Tanzania, Angola and South Africa, among others. Child rights defenders across Africa have committed to a prohibition of all forms of corporal punishment of children and the promotion of positive parenting and support for parents. For detailed information of global progress towards prohibition, see www.endcorporalpunishment.org/pages/frame.html.

The African Committee of Experts on the Rights and Welfare of the Child has recommended that all African states prohibit all forms of corporal punishment, including by parents.³⁵

* See for example:

- **Hindu:** Veylansami B. 2009. *Parenting with Love. An Introduction to “Positive Discipline,” with 14 Proven Strategies for Raising Children without Blame, Shame or Pain.* *Hinduism today January/February/March, 2009.* Available at <http://www.himalayanacademy.com/resources/parenting/PositiveDisciplineEnglish.pdf>;
- **Shiite Shari'a:** Ayatullah Ali Akbar Hashemi Rafsanjani, cited in: UNICEF. 2008. *Disciplining Children with Kindness. A Shiite Shari'a Perspective.* Tehran: UNICEF
- **Muslim:** *Positive Parenting – give your child the best start in life* developed by Kirklees Education and Social Services and available from Shakeel Hafez on Shakeel.Hafez@kirklees.gov.uk.

5 Research findings

There is by now a substantial body of research regarding the negative effects of corporal punishment on children. While much of the research in this field has historically focused on corporal punishment which can clearly be defined as physical abuse, increasingly the focus has been on the negative consequences of the so-called 'little smacks'. A landmark study by Gershoff highlighted the many harmful consequences of corporal punishment, and clearly identified that corporal punishment has only one positive outcome, and that this is a short-term benefit of immediate compliance.³⁶ Gershoff's research and a growing body of other research findings indicate that corporal punishment has a range of adverse neurological, physical, behavioural, cognitive, emotional and social development outcomes.³⁷

A 2012 research paper which examined two decades of research into corporal punishment from across the world showed that:³⁸

- Numerous studies have found that physical punishment increases the risk of broad and enduring negative developmental outcomes.
- No study has found that physical punishment enhances developmental health.
- Most child physical abuse occurs in the context of punishment.
- A professional consensus is emerging that parents should be supported in learning nonviolent, effective approaches to discipline.

5.1 *Adverse physical outcomes*

The physical consequences of corporal punishment can include broken bones, internal injuries, cuts and burns; in the worst cases, they lead to death.

Many South African children are harmed in the exercise of discipline in the home. While research in this area remains limited, a recent study on child death confirms this.³⁹ When angry and stressed parents lash out at their children because they believe they have the right to physically punish them, great harm can be done. Childline South Africa confirms that many of the cases of child abuse which are brought to their attention involve discipline 'gone wrong' and corporal punishment that 'got out of hand'. This assertion is supported by findings in, among others, Canada and the United States of America.

For example, the 2003 Canadian Incidence Study of Reported Child Abuse and Neglect showed that 75% of substantiated physical abuse of children occurred during episodes of physical punishment. Another large Canadian study found that children who were spanked by their parents were seven times more likely to be severely assaulted by their parents (e.g. punched or kicked) than children who were not spanked.⁴⁰

In a 2006 study undertaken in America by Crandall, Chiu and Sheehan, babies under 1 year old who had been spanked by their parents in the previous month were 2.3 times more likely to suffer an injury requiring medical attention than infants who had not been spanked.⁴¹

In South Africa, the Medical Research Council (MRC) found that 45% of all child homicide was child abuse- and neglect-related, and estimates that 3 children are murdered per day in South Africa.⁴² Male children are almost twice as likely to be homicide victims. Although fatalities due to child abuse and neglect form a large part of the child homicide statistics, they are grossly underestimated.

5.2 *Adverse behavioural outcomes*

The meta-analytical study by Gershoff, covered 27 studies on physical punishment. It found that spanking results in increased childhood aggression, delinquency and antisocial behaviour as well as increased aggression, criminality and antisocial behaviour in adulthood.⁴³ Children who had been spanked were also

found to be at increased risk of abusing their own child or spouse in adulthood and at increased risk of being the victim of abuse.⁴⁴

Several studies during the past decade have provided strong evidence that physical punishment is a risk factor for child aggression and antisocial behaviour.⁴⁵

In addition, research indicates that corporal punishment is relatively ineffective in correcting the behaviour of children, and that, on average, the behaviour of children who are spanked by their parents gets worse over time.⁴⁶ Although immediate compliance in the short-term can be achieved, the longer-term goal of self-discipline cannot be achieved. This explains why corporal punishment is often inflicted on the same children for the same infractions.

5.3 Adverse emotional outcomes

Research shows that corporal punishment is linked to a range of adverse emotional outcomes, including a decreased quality of relationship between parent and child. It also plays a clear role in decreased child and adult mental health.⁴⁷

A wealth of studies has linked corporal punishment with heightened levels of depression and suicidal tendencies.⁴⁸ Mood disorders, anxiety disorders, substance abuse/dependence, and personality disorders have all been directly linked to corporal punishment.⁴⁹

5.4 Adverse cognitive outcomes

There is clear research evidence that corporal punishment has a negative effect on intelligence and cognitive functioning. One recent study found that children in the United States who were spanked had lower IQs four years later than those who were not spanked.⁵⁰ Furthermore, IQs of children aged 2 – 4 years who were not spanked were 5 points higher four years later than the IQs of those who were spanked.⁵¹

Research conducted in West Africa found that children in a school that used corporal punishment performed significantly worse in tasks involving "executive functioning" and psychological processes such as planning, abstract thinking, and delaying gratification than those in a school relying on milder disciplinary measures such as time-outs.⁵²

5.5 Adverse neurological outcomes

Child abuse has been shown to cause permanent damage to the neural structure and function of the developing brain itself.⁵³

In early childhood, the brain develops faster than any other organ in the body - by age 5, the brain reaches about 90 % of its adult weight and by 7, it is fully grown.⁵⁴ This makes early childhood a very sensitive and critical period in brain development. The stresses caused by pain and fear of spanking can negatively affect the development and function of a child's brain. It is precisely during this period of great plasticity and vulnerability that many children are subjected to physical punishment. The effect can be a derailing of natural, healthy brain growth, resulting in life-long and irreversible abnormalities.⁵⁵

This is of particular concern in the South African context, where research has shown that the most common age of children who are *smacked* is 3 years of age and the most common age of children who are *beaten* with some or other object is 4 years old.⁵⁶

In addition, physical punishment can cause alterations in the dopaminergic regions associated with vulnerability to the abuse of drugs and alcohol.⁵⁷

5.6 Adverse social outcomes

The evidence linking corporal punishment and negative social outcomes is strong and growing. Gershoff's research found clearly demonstrable links between corporal punishment and decreased moral internalisation and self-discipline;⁵⁸ Corporal punishment has been found to significantly increase the risks of becoming a perpetrator of domestic violence and/or the victim of abuse. Research also indicates that physical punishment elicits aggression,⁵⁹ and it has also been reliably linked to sexual violence, the rape of very young children in particular.⁶⁰

A 2011 study investigated the links between genetic risk factors, gender and corporal punishment. The findings suggest that genetic risk factors and spanking have a negative influence on antisocial behaviour; further, evidence was found that the interaction between genetic risk factors and corporal punishment may be particularly salient for males.⁶¹

6 Why parental corporal punishment should be banned

An increasingly human rights oriented mind-set globally has seen rights and protections against physical violence entrenched in both international and domestic law across the world. However, children remain the last group to be protected from physical violence, with many countries permitting corporal punishment of children in some settings, and almost all of them permitting parental corporal punishment of children. Only 33 of the UN member-states have prohibited corporal punishment of children in all spheres.⁶²

In South Africa, all adults are, at least officially, protected by law from interpersonal physical violence. Children are however, not offered the same degree of protection; parental corporal punishment of children is still allowed and the common law defence of reasonable chastisement remains open to parents who assault their children.

This is especially ironic and of significant concern in the light of children's greater physical and emotional vulnerability, due to their youth and small stature. It is also a questionable practice in light of the high levels of violence of all kinds which characterise South African society. Research evidence is clear that corporal punishment has a range of negative consequences for children, including heightened levels of societal and interpersonal violence.

The prohibition of parental corporal punishment is a critical step in ensuring the maximum protection for our most vulnerable citizens, and is a key component of addressing the wider issues of appropriate parenting and the shockingly high levels of violence in South African society.

7 The prohibition of corporal punishment is particularly relevant for South Africa

Children are taught the wrong lessons when corporal punishment forms part of a disciplinary strategy – such as that it is acceptable to impose your will by force on someone else; that children have no say or rights or dignity; that bigger, stronger (more powerful) people are entitled to hurt those who are smaller and weaker (less powerful); that a violent response is an appropriate and socially sanctioned way of dealing with conflict and disagreement; that loving and hurting are somehow linked. These lessons help create the milieu in which many South African children are being raised.⁶³

In a society exhibiting such levels of interpersonal violence, hitting, smacking and slapping children send the wrong messages.

South Africa should prohibit parental corporal punishment for two reasons:

First is the fact that the rights of South African children as outlined in the Constitution and in the international and regional treaties to which the country is a signatory, continue to be violated on a daily basis by parents and caregivers who administer corporal punishment. As citizens accorded all the rights that adults have under the law, children deserve (and have the right to) at least equal protection. Indeed, section 28 of the Constitution

guarantees children additional rights to protection in view of their greater emotional and physical vulnerability.

Second, violence in South Africa is endemic, with the country having among the highest recorded rates in the world of sexual and violent crimes, as has been shown. Research also clearly links the high levels of violence in South African schools directly to violence within families, and specifically to corporal punishment⁶⁴.

8 Concerns regarding the consequences for parents of prohibition

8.1 Will parents be fined or sent to prison for hitting children?⁶⁵

All forms of abuse of children are currently under-reported in South Africa, and children routinely fail to report their parents or other adults even when serious physical injury is inflicted. Adults in South Africa have a poor track record of responding to abuse and neglect of children; family members, teachers and police often fail to protect children from serious physical abuse. It is unlikely that this situation will change if parental corporal punishment is prohibited. In addition, South African law operates on the principle of *de minimis curat lex* – the law does not concern itself with that which is trivial – which applies equally to adult and child complainants.

It is thus unlikely that parents and care-givers will be prosecuted for smacking children, even if charges are laid, unless the corporal punishment constitutes serious abuse.

8.2 Should government interfere in the private sphere in this way?

The rights of all South Africans, including South African children, are protected by the Constitution and Bill of Rights within it. Everyone has the right to be protected and no-one has the right, in exercising their own rights, to hurt or harm anyone else. Discrimination on the grounds of age is also prohibited by the Constitution, in section 9(3).

Government has a duty to intervene when the rights of citizens in a particular position of vulnerability (i.e. children in this case) are being violated. This would also justify the enacting of the Domestic Violence Act, for example.

8.3 Children will become undisciplined and uncontrollable

The research evidence presented in section 6 of this topical guide clearly outlines the many and varied negative consequences of corporal punishment. Children whose parents or caregivers employ positive discipline strategies to discipline children without violence are more likely to raise self-disciplined and emotionally healthy adults.

9 Recommendations

9.1 The law must be changed

The prohibition of parental corporal punishment must be enshrined in statute. This is because:

South Africa is bound to prohibit corporal punishment in the home because of the commitments made to children in the Constitution, in particular section 28, and its ratification of international treaties. It is unacceptable that children, the most vulnerable group in any society, are the last to receive the protections that all adults enjoy, despite their relatively greater vulnerability. This was highlighted in the responses of the UN Committee on the Rights of the Child to South Africa's first Country Report, submitted in 1999. In the Concluding Observations,⁶⁶ the UN Committee recommended that South Africa take effective measures to prohibit by law the use of corporal punishment in the family and reinforce measures to raise awareness on the negative effects of corporal punishment and change cultural attitudes to ensure that discipline is administered in a manner consistent with the child's dignity and in conformity with the Convention. This was also

highlighted in the Universal Periodic Review – recommendation 124.88 that corporal punishment in the home be prohibited was agreed to by South Africa.⁶⁷

The South African government thus has a duty to prohibit corporal punishment in the home, and has effectively committed to do so.

Experience in countries where corporal punishment in the home has been prohibited indicates that, once law is passed, attitudes and thus behaviour begin to change also, provided law reform is linked to significant public awareness and training campaigns.⁶⁸

Suggested text for inclusion in the forthcoming Amendment to the Children’s Act has been developed by the Working Group on Positive Discipline (WGPD)* and submitted to the Department of Social Development in 2012, as follows:

1(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 to the fullest extent possible, the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d) and (e) of the Constitution.

1(2) No child may be subjected to corporal punishment or be punished in a cruel, inhuman or degrading way.

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

1(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.

2 The Department must take all reasonable steps to ensure that—

(a) education and awareness-raising programmes concerning the effect of section [1(1) and 1(2)] are implemented throughout the Republic; and

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

The WGPD also proposed that the terms ‘positive discipline’ and ‘positive parenting’ be defined in the definitions section (section 1) of the Act.

9.2 The way South African children are parented needs to change

A legislated prohibition would allow that parents and caregivers can be held accountable when they assault the children with whose care they have been charged. However, parents should also be empowered to raise children without violence. Once the law is changed, opportunities for changing attitudes and behaviour and supporting parents in raising their children without violence are opened. Given the strong and demonstrable links between childhood experiences of corporal punishment and adult aggression and violence, it is critical to alter the way in which children are parented.

Training and resources for parents and care-givers on how to use positive discipline strategies in raising children is necessary to ensure that the legal protection afforded children by the prohibition of corporal punishment in the home becomes reality. Activities to this end should include:

* The WGPD is a loose network of organisations working in various ways in the children’s sector in South Africa, committed to advocating for the prohibition of parental corporal punishment. Further information can be accessed at <http://www.rapcan.org.za/wgpd/default.asp>.

- A countrywide, sustained awareness-raising campaign to promote positive parenting and highlight the dangers of corporal punishment. Children should be raised in an environment in which no violence is allowed or tolerated.
- Involve the business community in awareness-raising. In Sweden, for example, where all forms of corporal punishment of children were prohibited for the first time, pro-positive and non-violent parenting messages were printed on every milk carton.
- Increase support to civil society organisations providing training and support to parents and caregivers to discipline their children without violence.
- Include issues related to parenting in the Life Skills curriculum in secondary schools.
- Increase support to civil society organisations providing counselling and therapeutic services to the survivors of sexual violence, and ensure that such services are widely available across the country.

10 References

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- ⁴ Definitions from the Online Etymology Dictionary, accessible at <http://www.etymonline.com/index.php?term=punish>
- ⁵ UN Convention on the Rights of the Child, accessible at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.
- ⁶ UN Convention on the Rights of the Child.
- ⁷ UN Committee on the Rights of the Child. 2001. *Day of general discussion on violence against children within the family and in schools, Report on the twenty-eighth session, September/October 2001, CRC/C/111*: paras. 701-745, accessible at <http://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/school.pdf>.
- ⁸ UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, accessible at http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-9&chapter=4&lang=en.
- ⁹ UN Convention to End All Forms of Discrimination against Women, accessible at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article3>.
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