

REVIEW OF ADVOCACY  
TOWARD THE PROHIBITION OF  
PARENTAL CORPORAL PUNISHMENT  
UNDERTAKEN BY THE WORKING GROUP ON POSITIVE DISCIPLINE

**Carol Bower**



**RAPCAN**  
protecting children's rights

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## FOREWORD

It is a privilege to introduce this publication on the experiences and challenges of the Working Group on Positive Discipline related to prohibiting corporal punishment through the Children's Act as Amended during the law reform process in South Africa over the past decade.

In spite of the failure of the legislation to prohibit parental corporal punishment, the advocacy campaign is none-the-less considered to have achieved a number of successful outcomes. In addition there are many lessons that have been learnt by members of the network through this process. It is these lessons that we are hoping to share with other organisations working towards policy or law reform on socially contentious children's rights issues, through the dissemination of this publication.

The work of the working group is by no means done and strategies have been identified for moving the campaign towards social, institutional and legal reform regarding the use of parental corporal punishment against children in South Africa forward over the coming years.

This report sets out the background to the legislative reform process and the establishment of civil society networks to mobilise advocacy regarding these reforms. It sets out the objectives and strategies that were employed by the Working Group on Positive Discipline and outlines the important lessons that were learnt in the advocacy process.

RAPCAN and Save the Children Sweden believe that documenting processes of this nature is of great importance in order to contribute to the available body of knowledge and to ensure learning across contexts. This publication is thus shared in the spirit of taking this learning forward to strengthen advocacy on children's rights in Africa.

*Samantha Waterhouse, RAPCAN*

*January 2009*

## ACRONYMS

ACDP	African Christian Democratic Party
ANC	African National Congress
CBWG	Children's Bill Working Group
CSO	Civil Society Organisation
DoSD	Department of Social Development
NA	National Assembly
NACCW	National Association of Child and Youth Care Workers
NCOP	National Council of Provinces
NPA	National Prosecuting Authority
PC	Portfolio Committee in the National Assembly
RAPCAN	Resources Aimed at the Prevention of Child Abuse and Neglect
SACC	South African Council of Churches
SALRC	South African Law Reform Commission
SASPCAN	South African Society for the Prevention of Child Abuse and Neglect
SAHRC	South African Human Rights Commission
UCARC	Umtata Child Abuse Resource Centre
UNICEF	United Nations Children's Fund
WGPD	Working Group on Positive Discipline

## INTRODUCTION

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

The SALRC had developed the Children's Bill over a period of several years, commencing its work in 1997. The Bill prioritised prevention and early intervention, and attempted to ensure co-operation across several government departments in the protection of children.

Civil Society Organisations (CSOs) were, in general, pleased with many elements within this very complex and comprehensive piece of legislation; however, there was also a wide range of concerns, both about omissions from the Bill and about the text of some of the clauses within it. In particular, in terms of this evaluation, there were concerns that parental corporal punishment was not explicitly prohibited.

Through the process of finalising and passing the Bill, corporal punishment was dealt with in several ways – for more information on the process, please see section 3 of this report on the history of the Bill. By the time the Children's

Act and its amendment were finally passed in November 2007, they neither prohibited parental corporal punishment nor did they abolish the common law legal defence of reasonable chastisement of children by their parents (which was included in the SALRC Draft Bill).

The WGPD decided to undertake a review of the advocacy and lobbying work on the Bill related to the prohibition of corporal punishment, and to identify the strengths and weaknesses of the campaign. This would inform decisions about whether and how to go forward on the issue.

This evaluation report is structured as follows:

- ▶ Section 2 examines the context of corporal punishment in South Africa;
- ▶ Section 3 unpacks the history of the process of the Bill linked to developments within the Working Group;
- ▶ Section 4 identifies the key role-players involved;
- ▶ Section 5 outlines the different strategies used by the Working Group;
- ▶ Section 6 of this report describes the methodology used in the evaluation;
- ▶ Section 7 reflects on the lessons learned; and
- ▶ Section 8 makes recommendations based on the findings of the evaluation.

## THE CONTEXT OF CORPORAL PUNISHMENT IN SOUTH AFRICA

During the apartheid era, corporal punishment was permitted in all settings – i.e. within the home, in alternate care settings, in the education system and within the justice system. The arrival of democracy and a new dispensation in 1994 signalled a change in practice with regard to corporal punishment. Mindful of the key role played by children and young people in overthrowing apartheid, and recognising that, in both the justice and education settings, corporal punishment (used almost exclusively against black people) had been a strategy of subjugation of the apartheid government, corporal punishment was prohibited in South African schools and as a sentencing option within the justice system. Amendments to the Child Care Act of 1983 also prohibited it in alternate care settings. However, it was still allowed in the home and it was assumed that the Children’s Bill, already in development at that time, would deal with the issue.

With regard to the use of corporal punishment as a judicial sentence, the case of *S v Williams and Others* (1995 [3] SA 632 [CC]) considered whether this practice was compatible with the South African Constitution. The court found that whipping as a sentence for children violated sections 10 and 11 (2) of the interim constitution, namely, the right to respect for and protection of dignity, and the protection against cruel, inhuman and degrading treatment or punishment. Following this decision, corporal punishment as a judicial sentence was prohibited by the Abolition of Corporal Punishment Act of 1997.

The use of corporal punishment in alternate care settings was dealt with via regulations enacted under the Child Care Act<sup>1</sup> which prohibited the use of corporal punishment as a disciplinary measure for children in children’s homes, schools of industry and reform schools. These regulations also prohibited foster parents from imposing corporal punishment on foster children within their care.

The South African Schools Act<sup>2</sup> prohibited the use of corporal punishment against learners, and made it a criminal offence to use corporal punishment within the school setting. In 2000, having already approached the High Court and been rejected, a group of ten Christian schools took the matter to

the Constitutional Court, claiming that the ban on corporal punishment violated their rights to freedom to follow and practice their religion, in terms of sections 15 and 31 of the South African Constitution.<sup>3</sup>

In this case (*Christian Education South Africa v Min of Education* 2000 [4] SA 757), the judge, writing for a unanimous court, accepted for purposes of argument that corporal punishment was part of a genuinely held Christian belief, and that the ban on corporal punishment in schools did limit the rights of parents in sections 15 and 31 of the Constitution. However, he found that the limitation was reasonable in an open and democratic society based on human dignity, freedom and equality. The Court found that, in the light of section 7(2) of the Constitution, the state must respect, protect and promote the fulfilment of rights in the Bill of Rights, and clearly has a duty to act because of the strong commitments to children’s rights protection in the Constitution.

It is important to note that the Constitutional Court decisions with respect to corporal punishment in both the educational and judicial settings were not based on children’s rights arguments. This did not necessarily mean that these would not have been valid, but rather that it was not necessary to explore them as other arguments from the Bill of Rights could be used to make the findings. In the case of *S v Williams and Others*, the findings were based on the fact that the violation was not reasonable, justifiable or necessary when viewed against the underlying values of the Constitution (dignity, equality and freedom). Having made this finding, the Court did not consider it necessary to go on to explore whether whipping also violated other rights or the special protections in the children’s rights clause. In the case of *Christian Education South Africa v Min of Education*, the findings were made on the basis of whether the ban on corporal punishment in the Schools Act limited the right to freedom and security.<sup>4</sup> The basis of these findings has implications for future activities of the Working Group in relation to a possible constitutional challenge (see the recommendations in section 6 of this report).

<sup>1</sup> 74 of 1983. Regulation amended in Government Notice R 416 of 1998.

<sup>2</sup> 84 of 1996.

<sup>3</sup> 108 of 1996.

<sup>4</sup> Skelton, A. Personal communication, October 2008.

Thus, at the time that the future Children's Act was being drafted, the prohibition of corporal punishment in all settings except the home was being legislated and confirmed. Given that there was already a focus on prohibition, and that the Children's Bill was being drafted concurrently with this focus, there was an expectation, at least among child rights organisations, that the Bill would prohibit corporal punishment of children by their parents.

In the event, when the Draft Bill was released by the SALRC, it did not explicitly prohibit corporal punishment in the home; it contained a clause revoking the common law defence of reasonable chastisement. The SALRC also recommended that "an educative and awareness-raising approach be followed, in order to influence public opinion on the issue of corporal punishment"<sup>5</sup> and was of the opinion that the common law defence that a parent may raise that physical punishment was justified on the grounds of the

rights of parents to impose reasonable chastisement upon their children is overly broad, and that the common law in this regard should be revisited in order to protect children from serious breaches of physical integrity. The Commission therefore included a provision in the Draft Bill that "upon any criminal charge of assault or related offences (such as assault with intent to do grievous bodily harm), it shall not be a defence that the accused was a parent, or person designated by a parent to guide the child's behaviour, who was exercising a right to impose reasonable chastisement upon his or her child"<sup>6</sup>

While some members of the group felt that the removal of the legal defence would effectively prohibit corporal punishment by parents, other members of the group were committed to the unequivocal message that is communicated by an outright ban.

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5 South African Law Reform Commission. *Discussion Paper 103* (Project 110), p xxviii. 2002. Accessed at <http://www.doj.gov.za/salrc/dpapers.htm> on 9 October 2008.

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6 South African Law Reform Commission, *op cit*.

## THE PROCESS OF THE CHILDREN'S BILL AND ADVOCACY FOR PROHIBITION

### THE DEVELOPMENT OF THE COMPOSITE CHILDREN'S BILL

A Project Committee was appointed within the SALRC in 1997 to investigate and review the Child Care Act of 1983 and to make recommendations to the Minister of Social Development for the reform of this particular branch of the law. An issue paper, which was extensively workshopped, was published for general information and comment in May 1998.

The Project Committee was committed to the concept of a single comprehensive children's statute, and recommended that it go beyond the scope of the Child Care Act, and specifically include provisions on parental rights and responsibilities; children in need of special protection; the age of majority; surrogacy; artificial insemination; prevention and early intervention; early childhood development; partial care; the health rights of children; and the rights of children as consumers, among other new areas. The SALRC released the Draft Children's Bill early in 2003. As stated earlier, it contained a provision for the removal of the defence of reasonable chastisement of a child by her/his parent.

During the SALRC process of developing the Bill, there had been several consultations, including with organisations concerned with entrenching children's rights in South Africa and delivering services to vulnerable children in the country. Thus, CSOs were aware of much of the content of the proposed legislation and had already made numerous inputs to and comments on it.

### CIVIL SOCIETY AND THE COMPOSITE CHILDREN'S BILL

Once the Bill was released by the SALRC, the Children's Institute at the University of Cape Town and Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) began talking about co-ordinating the children's sector in South Africa specifically to contribute to the further development of the Children's Bill. A meeting convened by these two organisations was held in Cape Town in March

2003 where representatives from most national networks and organisations agreed to set up the Children's Bill Working Group (CBWG). The Children's Institute (CI) took on the co-ordination function of this working group from this point, supported by a secretariat comprised of representatives from RAPCAN, Childline South Africa and the South African Society for the Prevention of Child Abuse and Neglect (SASPCAN).

The CBWG divided itself into sectors so that organisations with specific knowledge and expertise would work on different sections of the Bill, depending on the area of work at issue. So, for instance, sub-groups within the CBWG were set up to look at the sections dealing with:

- ▶ children living and working on the street;
- ▶ child labour;
- ▶ children with disabilities;
- ▶ corporal punishment;
- ▶ prevention;
- ▶ early intervention;
- ▶ early childhood development;
- ▶ alternate care settings (child and youth care);
- ▶ protection;
- ▶ children infected and affected by HIV/AIDS; and
- ▶ trafficking.

As early in the process as the second meeting of the CBWG, it became clear that there was dissent within it with regard to corporal punishment. While some of the participating organisations wished to advocate for total prohibition of parental corporal punishment, there were others who felt that this issue was not the most critical for South Africa's children, that the fact that the issue is so controversial would detract from the rest of the work that needed to be done on the Bill, and that the country was not yet ready to legislate a total prohibition. While there were no organisations within the CBWG who advocated for corporal punishment, advocating for its prohibition proved to be somewhat divisive. Thus, from the outset, the CBWG as a whole took a decision to "agree to disagree" on this issue, and that the sub-group working on the issue would continue to do so but without the broad support of the CBWG. Members of the sub-group were RAPCAN,

and the Child Rights Project, within the Community Law Centre (CLC) at the University of the Western Cape. Save the Children (Sweden) provided financial support. (Note, however, that the CBWG did support the prohibition, after March 2006, when the passage of the initial section of the Children's Act was completed.)

At this stage, the Portfolio Committee on Social Development in the National Assembly, the Department of Social Development (DoSD) itself and civil society were not aware that the Children's Bill constituted what is known in the South African system as a "mixed Bill", that is, it contained elements which related to national competencies in the South African Constitution and elements which related to provincial competencies. These different portions of the Bill were known as 'Section 75 (national)' and 'Section 76 (provincial)' because it is in those sections of the Constitution in which the processes of passing Bills into law are laid out.

Thus, initially the CBWG worked in sub-groups on the original composite Draft Bill. The sub-group of organisations advocating for total prohibition was one of these.

In October 2003, it was realised that Parliament does not have any mechanisms for processing mixed Bills, and the Bill was split into two sections – the Children's Bill (commonly referred to as the section 75 version) and the Children's Amendment Bill (referred to as the section 76 version). Those parts of the Bill which did not relate to national competencies were left for the Amendment Bill which would be processed immediately after the piece dealing with national competencies was completed.

When the composite Bill was split into its two parts, the section on corporal punishment was excluded from the section 75 portion of the Bill and inserted into the 76 portion. This meant that the sub-group working on the issue temporarily shelved its activities pending the recommencement of work on the second part of the Bill, which then was named the Children's Amendment Act. The Children's Act (section 75) was passed in November 2005,<sup>7</sup> and the CBWG (including the sub-group on corporal punishment) took up work on the remaining sections of the Bill, then known as the Children's Amendment Bill (section 76 Bill).

## **CORPORAL PUNISHMENT IN THE CHILDREN'S AMENDMENT BILL**

With the finalisation of the section 75 part of the Children's Bill, the WGPD renewed its focus on the prohibition of corporal punishment in March 2006. At this stage, the WGPD was still known as the Sub-Group on Corporal Punishment, but included a number of new members – the South Africa Human Rights Commission; the South African Council of Churches; Childline South Africa; the Centre for Child Law, University of Pretoria; and Umtata Child Abuse Resource

Centre (UCARC). In addition, it was at this point that the wider CBWG also, in principle, supported advocacy for prohibition, although there were still two organisations which did not agree that this was a particularly important issue for children (these were Child Welfare South Africa and the Johannesburg Child Welfare Society).

In June 2006, both RAPCAN and the Community Law Centre made submissions on the issue of parental corporal punishment directly to the DoSD. Despite these submissions, the Amendment Bill as tabled by the DoSD in August 2006 did not include a clear prohibition of corporal punishment nor did it abolish the common law defence available to parents which was contained within the original SALRC version of the Bill. It addressed only the issue of corporal punishment in the public life of a child, and made no reference to corporal punishment by parents, leaving the status quo unchanged.

Initially, the Children's Amendment Bill<sup>8</sup> was tabled in the National Council of Provinces (NCOP), and public hearings were held in most of South Africa's nine provinces between November 2006 and February 2007. Submissions in support of the prohibition of corporal punishment were made by a range of organisations in the provinces where hearings were held.<sup>9</sup> Subsequent to these hearings, clause 139 was amended to reflect many of the recommendations of these submissions, and that version of the Amendment Bill that was then referred to the National Assembly contained the following clause:

### **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

<sup>8</sup> B19B of 2006.

<sup>9</sup> Submissions were made by Management Systems Training Programmes (MSTP), the Centre for Child Law, the Community Law Centre, the Quaker Peace Centre and Umtata Child Abuse Resource Centre.

<sup>7</sup> 38 of 2005.

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.

The Bill explicitly prohibited all corporal punishment of children (sub-section 2), abolished the common law defence of reasonable chastisement (sub-section 3), and committed the DoSD to ensuring the availability of appropriate parenting programmes across the country (sub-section 5[b]).

The Portfolio Committee (PC) in the National Assembly held community consultations on the Bill in eight communities and four provinces in August 2007. Submissions for and against the prohibition of corporal punishment were again made. These included submissions by local and national organisations as well as children themselves calling for prohibition and for the promotion of positive relationships between parents and children. These consultations were followed up with another day and a half of hearings on the Bill in Parliament in Cape Town in September 2007.

Submissions to these community consultations were made by the following members of the Working Group, among others: RAPCAN; Centre for Child Law; UCARC; National Association of Child and Youth Care Workers (NACCW); SACC; and Childline.

The Portfolio Committee held a final round of hearings in Parliament, with submissions in favour of prohibition made by members of the WGPDP (the SAHRC, the SACC, Carol Bower, the CGE and the SAHRC). Three submissions against the prohibition on religious grounds were also made.

The PC then debated the Bill extensively between September and October 2007. The debate was heated and the Portfolio Committee was divided on the issue. The prohibition was supported by key ANC members, while the ACDP led a group, which included members of the DA and some ANC members, supporting rights to “reasonable chastisement” if done under certain circumstances.

As part of the process of these deliberations, the National Prosecuting Authority (NPA) was called to Parliament to discuss with parliamentarians how they (the NPA) would deal with charges of corporal punishment laid against parents. While the NPA was at pains to clarify that prosecution of parents would not normally be entertained, the representative did explain that, generally, in the event of charges being laid for common assault the NPA permits the offending party to pay an admission of guilt fine. Unfortunately, the press reported on this entirely out of context, and there was a national outcry, with headlines in local newspapers claiming “Spank a kid, pay a R300 fine”.<sup>10</sup>

Three different versions of clause 139 were then drafted

to reflect the different positions of the members of the PC, and presented on 18 October 2007. All three required the DoSD to provide education and awareness of the ban, and programmes on appropriate discipline and positive parenting.

The first version of the clause was the one originally tabled by the NCOP, and clearly abolished corporal punishment. The second version retained corporal punishment, and set out the circumstances and manner in which corporal punishment could be applied – essentially, this was a textbook set of instructions for hitting children. The third version also retained corporal punishment but did not spell out the circumstances as version two did.

The ruling ANC was, at this stage of processing the Children’s Amendment Bill, facing a time of uncertainty. Just ahead was the 2007 National Conference in Polokwane, at which it was clear that far-reaching changes to ruling party policies were to be considered, and a general election was to take place within 18 months. The timing of the public outcry at clause 139 with the uncertainties within the ANC itself at this stage led to the passage of the entire Bill being threatened. The WGPDP was clear that it did not wish to see the processing of the Bill held up because of disagreements about one clause – aspects of the total Bill were urgently needed to address more broadly the situation of vulnerability for children, exacerbated by poverty and the HIV/AIDS pandemic. Neither did it wish to see either of the versions proposed as alternatives to the clause as it existed at that point “win the day”. The WGPDP thus accepted the excision of clause 139 on the understanding that Parliament would look into the issue during the following year.

In excising the clause, the PC committed to considering it again when a second amendment to the Act is considered, scheduled for 2008, although it became clear during that year that the time-frame would not be met. The reasons given by the PC for the excision were<sup>11</sup> the recognition of (a) the need for further investigation of the matter ahead of the proposed second Amendment Bill, and (b) that this matter should have been tagged as a section 75 one by the Joint Tagging Mechanism when the comprehensive Children’s Bill was introduced in 2003. The Committee emphasised that the existing law regulating inappropriate forms of discipline of children remains in place and urged that the programmes envisaged in the Bill aimed at promoting positive parenting skills be implemented by the DoSD.

Thus, all was not lost, in the sense that the Children’s Amendment Act, very importantly, retained a clause on building parenting capacity as a prevention strategy, in clause 144.<sup>12</sup>

#### **Purposes of prevention and early intervention programmes**

**144.** (1) Prevention and early intervention programmes must focus on–

<sup>11</sup> Parliament of the Republic of South Africa. 2007. *Announcements, Tablings and Committee Reports*, number 126.

<sup>12</sup> 41 of 2007.

<sup>10</sup> *Sowetan*, 11 October 2007.

- (a) preserving a child's family structure;
  - (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;
  - (c) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of children with disabilities and chronic illnesses;
  - (d) promoting appropriate interpersonal relationships within the family;
  - (e) providing psychological, rehabilitation and therapeutic programmes for children;
  - (f) preventing the neglect, exploitation, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs;
  - (g) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;
  - (h) diverting children away from the child and youth care system and the criminal justice system; and
  - (i) avoiding the removal of a child from the family environment.
- (2) Prevention and early intervention programmes may include-
- (a) assisting families to obtain the basic necessities of life;
  - (b) empowering families to obtain such necessities for themselves;
  - (c) providing families with information to enable them to access services;
  - (d) supporting and assisting families with a chronically ill or terminally ill family member;
  - (e) early childhood development; and
  - (f) promoting the well-being of children and the realisation of their full potential.
- (3) Prevention and early intervention programmes must involve and promote the participation of families, parents, caregivers and children in identifying and seeking solutions to their problems.

## **THE WORKING GROUP ON POSITIVE DISCIPLINE**

### **Taking up the issue**

The WGPD took up the issue of the prohibition of corporal punishment because it saw this as an important children's rights issue. This importance was perceived as going beyond the actual prohibition, to include addressing parenting more broadly and as a strategy for preventing violence against children.

In addition, WGPD members were aware that, despite the ban on corporal punishment within the education system, it was still widely practiced in that setting, and that levels of resistance to prohibition were high. It was felt that civil society was in the best position to lead an awareness campaign on the negative consequences of corporal punishment, which would facilitate implementation of the ban in schools as well as promote changing attitudes and behaviour with regard to child-rearing.

### **The objectives of the WGPD**

There was always a tension between legal prohibition achieved via the removal of the defence of reasonable chastisement only, and prohibition achieved through an explicit clause.

At the meeting of the CBWG in March 2006, the WGPD agreed that "first prize" would be an explicit prohibition but that, if this turned out not to be possible, it would accept the removal of the defence. This was based on information from the experience of other countries which showed that going the route of removing the defence alone had created uncertainty amongst parents as to the status of the law, with many having the impression that "reasonable corporal punishment" was acceptable.

In addition, the WGPD was clear that support for parental corporal punishment is a complex issue and incorporates a complex range of behaviours arising from a complex context. Thus, advocacy for prohibition was always linked to advocacy for an extensive training and awareness-raising component within the legislation.

### **The activities of the WGPD**

The issue of prohibition was considered important in a wider sense as a key strategy for preventing violence against children, and the WGPD also stressed, in all its advocacy work, the need for the allocation of resources to prevention – including the need to provide programmes on positive parenting and non-violent discipline. This emphasis was a key element of all the submissions made.

Some organisations represented on the WGPD were also involved in endorsing and making submissions on several other sections of the Amendment Bill in their organisational capacities, as members of the broader Children's Bill Working Group. In all these submissions, prevention as a strategy, and the prevention of violence in particular, was a key feature.

As has already been clarified, the resistance to prohibition was clear even among certain members of the broader CBWG, and members of the WGPD strove successfully to change attitudes within that grouping. There was much success in this regard. For instance, one of the interviewees for this review commented that her organisation (which joined the WGPD after the passage of the Children's Act) was convinced to become a member of the Working Group partly because

of the links drawn to violence in society, and between the struggle for the protection of women from violence, and that to similarly protect children. In addition, as noted earlier, the CBWG as a whole did come to support prohibition, with only two exceptions.

The fact that the prohibition of corporal punishment was tagged as a section 76, rather than as a section 75 issue was problematic from the start of the work on the Amendment Bill. The consequence of this was that the issue was dealt with as one of service delivery one rather than as a rights issue. Although they were equally controversial, other rights issues (such as the regulation of virginity testing) were passed in the Children's Act. It is more likely that the prohibition of corporal punishment would also have gone through had it been dealt with similarly. Further, this (incorrect) tagging of the issue as a section 76 one was ultimately given as a reason for the excision of clause 139.

Much of the activity, including interactions with the DoSD and Parliament, was aimed at ensuring that the prosecution of parents, seldom in the best interest of children, was seen

as a last resort, and that there was significant emphasis on diversion of parents from the criminal justice system, and on building capacity to parent appropriately.

Although at this stage, there was a relatively high level of public support for the prohibition, it became clearer that there was also significant public opposition to clause 139, and members of the WGPD were intensively involved in public awareness-raising on the issue, appearing on radio talk show programmes and television, as well as writing letters to the press and being interviewed by national newspapers. Eight press releases were issued, and the WGPD conducted a media briefing. Due significantly to the efforts of the WGPD, the representation of the issue in the press was very balanced, with arguments being made for and against prohibition.

Throughout the period until clause 139 was excised, the WGPD was assured by both DoSD officials and members of parliament involved that the clause was safe, and there was a clear commitment to prohibiting corporal punishment in the home, supported by the prevention strategies related to developing positive parenting in the country.

## KEY ROLE-PLAYERS

There were a number of sectors represented in the advocacy process for the prohibition of corporal punishment, and representatives from organisations delivering services to children as well as from academic centres, the faith-based sector and organisations focused on entrenching children's rights more broadly were all involved.

At the start of the advocacy process, only two organisations were working actively on the prohibition of corporal punishment in the home. However, once activities were renewed when work began on the Amendment Bill, several other organisations joined the Working Group.

During the process of working on the Children's Amendment Bill, the Working Group on Positive Discipline was comprised of the following:

- ▶ Childline South Africa;
- ▶ Centre for Child Law, University of Pretoria;
- ▶ Children's Rights Project, Community Law Centre, University of the Western Cape;
- ▶ Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN);
- ▶ South African Human Rights Commission (SAHRC);
- ▶ South African Council of Churches (SACC); and
- ▶ Umtata Child Abuse Resource Centre (UCARC); and
- ▶ Carol Bower, former executive director of RAPCAN and independent child rights consultant.

The wealth of experience and knowledge that grew out of the involvement of a relatively wide range of sectors played a pivotal role in the work undertaken.

For example, much of the opposition to prohibition came from the religious right, and the involvement of the faith-based sector and the support of the SACC proved to be a critical positive factor in the work undertaken.

The presence of organisations delivering services to vulnerable children, such as Childline South Africa and UCARC, considerably enriched the work undertaken by ensuring that the direct experiences of children informed it.

The fact that the group had access to legal expertise from the Centre for Child Law and the Community Law Centre ensured the appropriate legislative level to the work done.

The in-depth knowledge and experience of those organisations focused on child rights (such as the SAHRC, RAPCAN and Save the Children [Sweden]) contributed a clear rights focus and knowledge of the situation with regard to prohibition at the regional and global levels.

And finally, members of the Working Group were all experienced in dealing with government officials and parliamentarians, and had between them several years' experience of making oral and written submissions in relation to the development of new law and policy. Some of the Working Group members (notably the Centre for Child Law, Childline South Africa and Carol Bower) had existing political connections which they were able to use in various ways in the process.

In addition, as has been pointed out earlier, there was a broader base of support within the CBWG itself, and the following were identified as supporting prohibition as it was included in section 139 of the Children's Amendment Bill B19 B of 2006:

- ▶ Carol Bower;
- ▶ Centre for Child Law, University of Pretoria;
- ▶ Centre for the Study of Violence and Reconciliation (CSVR);
- ▶ Child Accident Prevention;
- ▶ Children First;
- ▶ Children's Institute, University of Cape Town;
- ▶ Children's Rights Centre;
- ▶ Childline;
- ▶ Children's Rights Project, Community Law Centre, University of the Western Cape;
- ▶ Co-operative for Research and Education (CORE);
- ▶ Global Initiative to End Corporal Punishment;
- ▶ Homestead Street Children's Project;
- ▶ Hope World Wide;
- ▶ Molo Songololo;
- ▶ NACCW;
- ▶ NACCW Youth;
- ▶ National Alliance for Street Children;
- ▶ National Prosecuting Authority;
- ▶ Parent Centre;

- ▶ Quaker Peace Centre;
- ▶ RAPCAN;
- ▶ SACC;
- ▶ SAHRC;
- ▶ School Leadership Project University of Cape Town;
- ▶ Southern African Network on Corporal Punishment;
- ▶ UCARC;
- ▶ Archbishop Desmond Tutu;
- ▶ Youth Insights Planning; and
- ▶ Individual professionals.

## STRATEGIES USED BY THE WORKING GROUP

The Working Group used a number of strategies in its advocacy for prohibition, and participants in this evaluation were in agreement that each strategy was useful in its own right. These were:

- ▶ hosting national meetings and seminars;
- ▶ developing fact sheets and making evidence-based information accessible;
- ▶ interaction with the DoSD;
- ▶ engaging with political and other leaders;
- ▶ capacity building;
- ▶ the media;
- ▶ submissions (oral and written);
- ▶ interaction with Parliament, including communication with specific politicians; and
- ▶ expanding the network and capacity-building of local CSOs.

### HOSTING NATIONAL MEETINGS AND SEMINARS

During the course of the period of advocacy, the Working Group hosted several national meetings during which the issues at hand were debated and discussed.

- ▶ In January 2006, as the WGPLD began gearing up after the passing of the section 75 portion of the Children's Bill, three important meetings were held:
  - ▷ RAPCAN and the SAHRC hosted a child participation meeting at which children and young people explored issues of discipline and punishment;
  - ▷ RAPCAN and the SAHRC also hosted a national round table with government and civil society; and
  - ▷ RAPCAN hosted a meeting of civil society organisations in order to build the alliance and popularise the issue, as well as increase civil society engagement on the issue and identify partners.
- ▶ In February 2006, a meeting was convened to consider a legal strategy for achieving prohibition, which was attended by RAPCAN, the SAHRC, the CLC and the Centre for Child Law.
- ▶ In March 2006, a national meeting of the CBWG was called

to consider the way forward with regard to advocacy for prohibition. It was after this meeting that the WGPLD (then still called the Sub-Group on Corporal Punishment) expanded as several new members joined. The Sub-Group, which had been relatively dormant during the processing of the section 75 section of the Bill (because corporal punishment and discipline were not dealt with in it) essentially regrouped and identified its strategy for the work ahead.

- ▶ In June 2006 a small meeting was hosted by RAPCAN and the Community Law Centre with organisations from the Western Cape with the aim of strengthening the broader alliance of organisations.
- ▶ In November 2006, the Community Law Centre hosted a seminar on corporal punishment, which outlined the latest developments regarding the prohibition of corporal punishment such as the release of General Comment 8 by the UN Committee on the Rights of the Child, and models of positive discipline in educational and home settings. The meeting was attended by various child rights and other organisations (RAPCAN, Childline, the Parent Centre, the Quaker Peace Centre, MSTP, and the Wits Education Policy Unit) as well as the South African Law Reform Commission and officials from the Departments of Social Development and Education.
- ▶ Then, in November 2007, the SACC hosted a meeting which brought together a wide range of Christian community representatives as well as government and civil society role-players, to consider the biblical and traditional arguments for corporal punishment.
- ▶ Finally, a national seminar was held in April 2008, with the purpose of strengthening the network and promoting positive parenting programmes. A range of civil society organisations attended, as well a group of young people, and the meeting was addressed by several government departments. The outcomes of this meeting included the identification of key areas for advocacy with the Departments of Social Development and Education, the addition of new members to the network and a renewed commitment from existing members.

These national meetings and seminars were a significant site for the identification and strengthening of the support base. In addition, they played a key role in raising awareness, in information dissemination and in lobbying. An important aspect was the strategy of engaging with the DoSD as active participants in some of these meetings. The very fact that representatives from the DoSD were participating as presenters ensured that the issue was kept alive and on their agenda.

### **DEVELOPING FACT SHEETS AND MAKING INFORMATION AVAILABLE**

The Working Group devoted considerable energy to the development and wide dissemination of resources and evidence-based information to members of the DoSD, the Portfolio Committee in Social Development in the National Assembly (NA), and the Select Committee on Social Development in the National Council of Provinces (NCOP) as well as the provincial parliamentary committees on social development. Packs of information were made up for each of the committees in the provinces. These resources included the *All Africa Special Report*<sup>13</sup>, the Article 19 publication produced by CLC, several fact sheets, key messages and frequently asked questions (all available via email request from [resources@rapcan.org.za](mailto:resources@rapcan.org.za)).

The documentation contained a series of key messages which had been agreed on by the members of the Working Group and which were used consistently, and which addressed the arguments made in favour of corporal punishment, providing evidence to counter the religious, cultural, and parental rights arguments commonly made. These messages were concerned principally with the following:

- ▶ drawing links between violence in society more generally and violence against children;
- ▶ clarifying the international and domestic rights position, as contained within the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the South African Constitution;
- ▶ addressing the religious justifications given for corporal punishment; and
- ▶ addressing the cultural justifications given for corporal punishment.

Making available good information and taking the time to explain and clarify the arguments was identified, in the evaluation, as a useful strategy, which ensured that the people were encouraged to think beyond the “knee-jerk” response. In addition, and very importantly, the SACC

developed a position paper in support of the prohibition of corporal punishment in the home.<sup>14</sup>

### **INTERACTION WITH THE DEPARTMENT OF SOCIAL DEVELOPMENT (DoSD)**

The Working Group ensured that it had regular contact with officials within the DoSD responsible for the development of the Children’s Amendment Bill. Departmental officials were encountered at numerous meetings and consultations held by the DoSD through the long period in which the Bill was developed, finalised and passed. Every opportunity to discuss prohibition and its implications with these officials was utilised by the Working Group, and the WGPD made a formal submission to the DoSD.

The fact sheets and other documents developed by the Working Group were all made available to senior officials within the department, and requests for additional information were always responded to.

The interactions with officials within the DoSD undoubtedly contributed to convincing key officials that corporal punishment should be banned in the home. By the time the Bill was being finalised, Dr Maria Mabetoa, director general, and Ms Musa Ngcobo-Mbere, director of the Families Directorate, were both clear that clause 139 in the Amendment Bill (the version of the clause containing the prohibition) was confirmed and would not be removed. This represented a significant change in their attitudes since the beginning of the process.

### **ENGAGING WITH POLITICAL AND OTHER LEADERS**

A series of letters was written to ministers and deputy ministers in the Departments of Social Development, Justice, Health, and Education, as well as to the leaders of opposition parties explaining the reasons for the WGPD seeking prohibition and asking for their support. Letters were also addressed to those identified as key influencers of public opinion, including Mrs Zanele Mbeki (wife of the former state president of South Africa), the deputy president of South Africa, Archbishop Emeritus Desmond Tutu, and well-known child rights advocates Shirley Mabusela (South Africa) and Assefa Bequele, director of the African Child Policy Forum (Ethiopia).

During August 2007, when the NA was holding hearings in the provinces, the Commission for Gender Equality (CGE) made a submission in support of retaining the common law defence of reasonable chastisement of children by their parents. The WGPD developed a response and sought wide support from the various sectors. The response was delivered to each member of the Portfolio Committee,

13 Global Initiative To End All Corporal Punishment Of Children. 2007. *Ending legalised violence against children: All Africa Special Report*. Available at <http://www.endcorporalpunishment.org/pages/pdfs/reports/Report-AllAfrica.pdf>

14 Available at <http://www.sacc-ct.org.za/corppun.html>

who subsequently confirmed that they had found it very useful. The success of this aspect of strategic engagement is evidenced by the increased support from a wide range of organisations and the retraction by the CGE of its submission, as well as its confirmation of its support for prohibition. A second submission reflecting this position was subsequently made.

## **CAPACITY BUILDING**

RAPCAN, as a key driver of the advocacy campaign around the prohibition of corporal punishment, hosted several meetings with partners in the Western Cape. This was done to inform sister organisations of the work being done and to build their capacity to advocate for prohibition. Members of the WGPD were also involved with capacity-building as part of a wider CBWG capacity-building process in the Eastern Cape, Limpopo, and North West Provinces. Aside from ensuring a wider range and higher number of submissions to the Portfolio Committee on the issue, this strategy also contributed to raising awareness and knowledge within the sector, and brought new supporters into the arena. RAPCAN and other members of the CBWG undertook processes to increase the capacity of young people to address the issue of corporal punishment directly with Parliament through the National Association of Child Care Workers Youth Conference in 2007.

## **THE MEDIA**

The Working Group made innovative use of the media, and a local media company was contracted to work with the Working Group in June 2007, as the Amendment Bill moved forward. This company, Meropa Communications, facilitated the placement of opinion pieces and press releases in the local press. In addition, they monitored media coverage of the issue, and were very useful in alerting the Working Group to what was being said in the public domain. The WGPD also engaged in direct proactive media work through press releases.

The Working Group, it is generally agreed, held the media space very well for almost the entire time that the Amendment Bill was being processed – indeed, for the almost 12-month-long period between November 2006 and October 2007, while there were strong opinions on both sides of the argument, there was much balanced and thoughtful debate on the issue. So, while there were strong voices against prohibition, there were also some strong voices of support. It was only when the press misrepresented the submission by the NPA that the media space was lost. As this happened over a period of two to three days (between the NPA submission, the press reports and the ANC Caucus meeting), the WGPD was faced with a virtually overnight rising of the public temperature.

During this short but intense period of scrutiny and high levels of public rejection of prohibition, the WGPD sent out a press release and conducted a number of radio interviews on the reasons why it was advocating for prohibition and continued to stress that corporal punishment should be prohibited on the grounds that it violates the rights of children, that children deserve equal protection from violence, that it fuels and entrenches high levels of violence in our society, and is ineffective. The WGPD also consistently underlined its commitment to capacity-building and support for parenting.

## **MAKING WRITTEN AND ORAL SUBMISSIONS AND INTERACTION WITH PARLIAMENT**

The Parliamentary process of law-making in South Africa lends itself to the involvement of civil society, and members of the Working Group made several submissions to both the Portfolio Committee and the Select Committee as well as the provincial parliamentary committees. These submissions highlighted the key messages contained in the documentation developed by the Working Group. In general, the submissions were made by the individual organisations involved, but they were endorsed by the other members of the Group. It was a strength of this strategy that submissions were made by a wide range of organisations.

The Working Group was also able to ensure that different aspects of the issue were covered by the various submissions, and that the “message” of each was consistent, and aligned with the key messages and fact sheets that had been developed. It is significant that there were many submissions on the issue, including from a wide range of community-based services in the provinces as well as national NGOs.

Because of the very high level of consultation with civil society, communities and practitioners that characterised the development of this Act, there were a relatively large number of opportunities to engage with parliamentarians. Aside from the numerous written and oral submissions made by members of the Working Group to both the Portfolio and Select Committees, members of the Working Group had a number of other interactions with members of both the National Assembly and the National Council of Provinces. These included attendance at all briefing meetings and the provision, from the earliest stages, of information. Every opportunity for informal discussion with members in breaks and outside of working hours was utilised, and submissions to members during committee meetings were also a feature of the advocacy work.

Members of the WGPD attended the community consultations and the Parliamentary hearings as well as a number of meetings where the Bill was deliberated. This kept the members of the WGPD aware of where information was needed, and where support for prohibition could be strengthened with further information (where members

of the Portfolio Committee supported the ban but were unsure of supportive evidence for prohibition). A further (unsolicited) submission and key information from the Swedish government on the impact of the ban in Sweden was provided, as was evidence countering the pro-corporal punishment arguments that were being used.

In addition, several key Portfolio Committee members – including its chairperson – changed their views during the process of passing the Act. These differences in attitude emerged very clearly in comments made by Portfolio Committee members after the submissions made in June 2006. Working Group members are in agreement that the parliamentarians found the linkages made between violence in society and violence against children especially compelling in persuading them that corporal punishment should be prohibited in the home.

During the evaluation, it was raised that the submissions in the end failed to convince more parliamentarians outside of the Portfolio Committee. The subsequent instruction from the ANC Caucus to excise clause 139 was not challenged by the members of the Portfolio Committee despite their support of the clause. This is attributed to the fact that the support within the Portfolio Committee was not strong enough to counter the challenges from other Members of Parliament in the absence of a strong political champion.

### **EXPANDING THE NETWORK**

As has already been noted, the Working Group began its life as a much smaller entity, with few members. One of the strategies used as the Working Group geared up again for renewed work following the passing of the section 75 portion of the Act was to increase the membership of the Working Group.

Partly, it was possible to do this because the work on the section 75 part of the Act was completed. The section of the original Draft Bill that was left for the Amendment Bill was concerned largely with implementation and service delivery. This meant that the role-players who then became involved with advocacy toward prohibition had, in a sense, the time to do this. Importantly, however, many of these newer supporters were linked to service delivery – as the Amendment Bill dealt with issues of implementation, they had a clearer interest in the issue.

Given the dissension within the broader CBWG about the urgency of prohibition, the initial core group of WGPD members moved towards expanding the network by “preaching to the converted” and attempting to persuade those organisations with a clear commitment to children’s rights and to protecting children from violence but which had not yet committed to prohibition, to become involved. In this, there was great success, and the WGPD grew from three member organisations to a membership of nine organisations.

The members of the Working Group who came on board at that point enriched the work that was done enormously as they included the faith-based sector and service delivery organisations. The network was further expanded after the passing of the Amendment Act in December 2007, and any renewed activity with regard to prohibition is likely to involve them also. In the main, these organisations are engaged in work with parents and with building parental capacity.

These gains notwithstanding, there was also a sense among those interviewed for this evaluation that the work would have benefitted from additional capacity and alliance building.

## METHODOLOGY FOR THE REVIEW

The main purpose of the Review was to record the process of the advocacy for prohibition of corporal punishment in the Children's Act, identify its strengths and weaknesses, and make recommendations for the next phase of advocacy.

The methodology used for this review involved a perusal of minutes and other documents from the Working Group's meetings; interviews with some of the key role-players from civil society and from the DoSD; and a focus group discussion involving some key civil society role-players facilitated by the evaluator. It must be noted at the outset that the person undertaking this review was herself an active and key member of the WGP. This cannot fail to have influenced the process of the review and its findings

Selection of interviewees was based on ensuring as wide a spread as possible of the expertise within the Working Group involved in advocating for prohibition.

Telephone interviews were conducted with:

- ▶ Ann Skelton (Centre for Child Law)

- ▶ Joan van Niekerk (Childline SA)
- ▶ Ulrika Sonneson (Save the Children [Sweden])
- ▶ Nokuku Sipuka (UCARC)
- ▶ Musa Ngcobo-Mbere (DoSD)

A face-to-face interview was conducted with:

- ▶ Samantha Waterhouse (RAPCAN)

The following participated in a focus-group discussion:

- ▶ Lucy Jamieson
- ▶ Keith Vermeulen
- ▶ Daksha Kassan

The transcripts of these interviews and of the focus group discussion were then analysed, particularly for insights and comments related to lessons learned from the process. These are reflected in section 7 of this report.

## LESSONS LEARNED

### GAINS

Overall, this evaluation revealed that, despite losing clause 139 and failing to gain the prohibition of corporal punishment in the home when the Children's Amendment Act<sup>15</sup> was passed in November 2007, there were a number of significant gains.

#### Significantly increased awareness

The ultimate objective for members of the Working Group is the reduction of violence within society; this is a long-term goal, but significant progress towards it was made. The heightened awareness of the issue and the increased amount of "airtime" it received are evidence that the Working Group played a real role in generating discussion about the issue, both within civil society and within government. The media is also now much more aware of the issues, even if it is not always in agreement with prohibition.

Also, the support-base for prohibition was significantly broadened, with the domestic violence sector and organisations involved with parents and parenting issues coming on board.

#### The involvement of the faith-based sector

The support of the SACC was key, both in terms of addressing the arguments of the religious right and in terms of support from within it to carry the "message" of the possibility and desirability of raising children without violence.

#### Law and policy

The promotion of parenting skills and the emphasis on prevention in the final Act were a significant achievement, and the existence of clause 144 has strengthened its prevention focus and commitment to non-violent discipline. Indeed, even the excised clause 139 was in itself a significant achievement, encompassing as it did both the protection of children and an emphasis on training and capacity-building.

<sup>15</sup> 41 of 2007.

It provides a platform for future advocacy on the issue.

The current emphasis on parenting and parenting programmes by both UNICEF and the DoSD are evidence of the impact of the WGPD, as is the allocation of increased resources to prevention.

#### Practical issues

Several respondents raised the fact that the amount of time, energy and passion committed to the WGPD by its members was an achievement in its own right, and meant that much could be achieved with relatively small amounts of financial support. It is clear though, that having some financial resources for this kind of work is essential, and that having a co-ordinating organisation (RAPCAN in this case) was very helpful.

### LOSSES

Those who participated in this evaluation stressed that even the achievement of the outright prohibition of all forms of corporal punishment would have signalled only one step in the campaign, and that the most important work would lie ahead, that is, an effective ban requires a sea change in attitudes towards children and child-rearing. In a real sense, then, nothing has been lost – the WGPD will continue to do the important work of changing hearts and minds, either as individual organisations or collectively, and it remains the view of the WGPD that one day the ban will be achieved.

#### The clause itself

Although clause 139 was lost, this is (at least according to the Portfolio Committee) a temporary situation, and the matter will eventually be taken up again with a further amendment to the Act. Also, those who participated in this evaluation felt strongly that the work it has already done has laid a good foundation for future advocacy to prohibit corporal punishment in the home.

However, the fact that so much attention was drawn to the

issue means that it will not be possible to go back to it with any subtlety in future. In a sense, the debate which should have led to prohibition happened without that result, and this may create a situation where it will take longer to achieve explicit prohibition within the law.

### **Lack of a strong political champion**

The process whereby the clause was lost highlighted the fact that, although it had gained the support of members of both the Portfolio Committee and the DoSD, the WGPD did not succeed in getting the support of a strong political champion. With an issue as personal and controversial as this, that was really necessary. There was no clear position on the issue within the ANC, and the WGPD should have focused more of its attention on ensuring that influential ANC members were “on board” with regard to prohibition. As one interviewee pointed out “It is important to note that the Portfolio Committee itself was not swayed by the hype, but the ANC Caucus was. This had a great deal to do with the timing – just before the Polokwane Conference, and a general rise in conservatism. Party politics was stronger than the commitment of the Portfolio Committee members”.

### **“Criminalisation” of parents**

The high profile that the possible criminalisation of parents acquired was a real problem, and the WGPD was unable to respond sufficiently quickly to address the issue. This was exacerbated by the fact that, due to serious time and other practical constraints, members of the WGPD were unable to be in Parliament as the debate turned, although members of the broader CBWG were present. The ambiguity of the NPA response to questions relating to the criminalisation of parents (despite the fact that the NPA supported prohibition), and the manner in which this was misconstrued in the press also had serious negative consequences. These challenges were exacerbated by the fact that, given the political timing, the impact of further advocacy on Portfolio Committee members would have had at this stage is questionable as advocacy was needed at this point with leaders in the ANC not parliamentarians.

In addition, the fact that the WGPD strongly supports building capacity to parent was not always obvious to the public at large and the media. The fact that the entire

complex and wide-ranging Bill became known colloquially as “the smacking Bill” is evidence of this.

### **Lack of consistent civil society commitment to prohibition**

The fact that not all children’s organisations were “on board”, and especially that Child Welfare S.A disagreed with advocating for prohibition at that time, probably diluted the effect of the WGPD. In addition, although the SACC was a strong member of the Working Group, none of the other religious groups (for example, the Jewish and Muslim groups) were.

### **Concerns about who was “driving” the process**

It is clear that the person who brings the message is very important. Several interviewees for this evaluation raised a point made during the process of passing another piece of child-related legislation, the Child Justice Bill, that “NGOs over-played their hand on the corporal punishment issue”, and that this had contributed to losing the clause. If DoSD officials had been carrying the day, the prohibition is more likely to have remained in the Act. To some extent, the impression was created that the Parliamentarians were the mouth-piece of the WGPD. Although the WGPD is clearly run by South African organisations that have a strong commitment to the prohibition of corporal punishment, several interviewees raised the fact that there was a perception that the issue was donor-driven.

### **Timing**

The issue of the timing of the final developments and passage of the Amendment Bill was raised several times. The Polokwane Conference of the ANC was a matter of weeks away, and the natural conservatism of the ANC was asserting itself. Party politics was stronger than the commitment of the members of the Portfolio Committee, not all of whom were committed to prohibition in any event. While the Chair of the Portfolio Committee and one other strong member of the Committee were both highly committed, the decision to excise the clause would be made “behind closed doors” and would have the support of most of the Portfolio Committee.

## RECOMMENDATIONS

### Constitutional Court challenge

Because politicians often want the courts to clarify contentious issues, it is possible that clause 139 will not fare well in the next amendment to the Children's Act (already this is clearly delayed beyond 2008). This implies that a legal challenge could be the route most likely to succeed. This has been on the table for some time, but the WGPD decided to wait until the option of achieving prohibition of corporal punishment through law reform seemed impossible or unlikely, and we appear to be approaching this point. However, there is a need for caution in moving forward with this and the prospects for success, as well as an effective strategy, are now being carefully examined and debated.

### Ongoing advocacy promoting positive parenting and non-violent discipline

Most of the members of the WGPD are involved to a lesser or greater degree with the protection of children, and this work should continue. The fact that the Act itself has such a clear prevention and early intervention focus, and allocates resources for these activities, creates space for CSOs to raise awareness and change attitudes among parents, and to obtain funding to do so. These opportunities should be fully utilised, focused on support for parents and parenting rather than on what parents are doing "wrong".

Further, ways of bringing the issue into the everyday lives of parents should be explored. The Swedish example of putting messages about positive parenting and non-violent discipline onto milk cartons when corporal punishment was prohibited in 1979 is a good one.

### Finding a political champion

While it may be some time before another opportunity to achieve an explicit prohibition within law comes along, it is likely that it will eventually do so. By then, the WGPD should have found a strong political champion among the ANC's decision-makers. Also, the call for prohibition should clearly

be led by DoSD officials, rather than by civil society and/or funders.

### Build media capacity to understand the issues

While much work has been done in this regard, and the WGPD held the media space well, there were a number of instances when it was clear that the media does not fully grasp the issues. This should be addressed, and the understanding of the media with regard to the links between violence experienced in childhood and its consequences for adulthood should be increased.

### Involve and obtain the support of other religions

As has already been pointed out, neither the Jewish nor Muslims faiths, which are relatively large in South Africa, were involved in the campaign. Religion can and does play a pivotal role in the lives of many parents. Religious leadership has the responsibility of espousing and supporting non-violent discipline, and working towards a greater respect for the rights of all, including children.

During the eighth gathering of Religions for Peace in Kyoto, Japan (August 2006), representatives from various religions agreed on the inherent dignity of every person, including children.<sup>16</sup> The Buddhist, Christian, Hindu, Jain, Jewish, Muslim, Sikh, Shinto, Zoroastrian and Indigenous leaders in attendance recognised their responsibility and obligation to protect children from violence, and the importance of inter-religious co-operation in doing so. The shared principles among these religions – of compassion, justice, love and solidarity – and their public acknowledgements, speaks to their commitment to a worldview based on non-violence and for the protection of children against all forms of harm and, hurt and punishment.

This can and should be used to facilitate the involvement and support of the wider faith-based community.

<sup>16</sup> World Conference for Religions and Peace. Eighth World Assembly of Religions for Peace. Religious Leaders Confront Violence and Advance Shared Security. Kyoto, Japan 2006.