



**RESOURCES AIMED AT THE PREVENTION OF CHILD ABUSE AND NEGLECT  
(RAPCAN) SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE  
ON SOCIAL DEVELOPMENT ON THE CHILDREN'S AMENDMENT BILL [B 19B]**

**Discipline of Children  
&  
Prevention and Early Intervention  
August 2007**

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The Archbishop Emeritus Desmond Tutu said the following in support of the All Africa Special Report on Ending All Forms of Legalised Violence<sup>1</sup>: *“millions of the world’s children still suffer from humiliating acts of violence and these violations ... can have serious lifelong effects. Violence begets violence and we shall reap a whirlwind. Children can be disciplined without violence that instills fear and misery, and I look forward to church communities working with other organizations to ... make progress towards ending all forms of violence against children. If we really want a peaceful and compassionate world, we need to build communities of trust where all children are respected, where home and school are safe places to be and where discipline is taught by example.”*

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Minister in the Presidency, Dr EG Pahad noted the following in relation to the human rights approach required to the improvement of children’s lives in South Africa<sup>2</sup>: *“...in order to value the children of our country we must ensure that they can live in a world where they ... are free of violence and exploitation .... Are respected, nurtured and*

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<sup>1</sup> *Ending Legalised Violence Against Children, All Africa Special Report* Messages of support

<sup>2</sup> Address at the 1<sup>st</sup> National Children’s Rights Advisory Council Meeting, 10 March 2006, Pretoria

*where their fundamental human rights are guaranteed.” and “Children are entitled to the rights of full citizenship; they are not the property of adults.”*

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## **2. EXECUTIVE SUMMARY**

### **Discipline of Children (Chapter Seven, Section 139)**

The current South African law is inconsistent with our International and Constitutional obligations to protect children. The common law defence of *moderate and reasonable chastisement* to parents who assault their children must be abolished. Children are citizens of South Africa and are entitled to the same rights to freedom from violence and protection of the law as adults are. We support the provisions of section 139 that prohibit corporal punishment.

Children in South Africa are widely subjected to corporal and humiliating punishment, children from lower income homes and poorer schools experience more frequent and harsher forms of corporal punishment than children from wealthier homes and schools.

Corporal punishment is ineffective and has many negative effects on a child, including teaching children that it is acceptable to solve conflict with violence. This is especially concerning considering the high rates of violent crime in South Africa. Positive methods of discipline and parenting are more effective and result in more self disciplined and responsible children.

Banning corporal punishment does not mean that there will be no discipline. We support provisions in the bill enabling widespread programmes to provide education and support to parents regarding positive discipline methods. The departments of Education and Health must be included in strategies to promote positive discipline.

We support provision for measures to ensure that parents are referred to early intervention services that provide education and support as an alternative to prosecution in some cases. Parents must only be prosecuted when it is considered in the best interest of the child. Minor acts are unlikely to be prosecuted by the state because courts do not to prosecute in minor matters.

### **Prevention and Early Intervention (Chapter Eight)**

We support the inclusion of the chapter on prevention and early intervention in this bill as we believe that this is the foundation on which all other protection and response services are built. We are concerned that bill does not provide for sufficiently integrated interdepartmental strategies which are essential in ensuring these services. To ensure that prevention and early intervention programmes are funded and available this bill must place an obligation on the MECs in the provinces. The role of the Department of Education to identify, refer and support children in need of early intervention services must be emphasized.

### 3. INTRODUCTION

We commend Parliament and the Department of Social Development on the development of comprehensive legislation through the Children's Act and the Children's Amendment Bill which we believe have the potential to provide the majority of the most vulnerable and marginalized children in South Africa with greater access to a range of important services. In addition we commend the shift in focus to ensure a range of prevention and early intervention services.

We acknowledge that this represents a substantial shift in the approach to child protection and the realization of children's rights. In addition we recognize that the resourcing, both financial and human to achieve the objects of the Act are substantial, however we urge the Committee to continue to show commitment to a real shift in the delivery of services to prevent and respond to the violation of children'

### 4. ABOUT RAPCAN

Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) is a non-governmental, non-profit organisation established in 1989. It is a registered Section 21 Company (South African Companies Act) that is devoted to issues pertaining to children's rights, and the prevention of child abuse and neglect. RAPCAN engages in a number of activities towards prevention of child abuse and neglect and furthering the rights of children. These include: building capacity in communities to protect children from abuse and to ensure adequate services for those who need it; developing and implementing training interventions to increase awareness of child abuse and neglect; developing, producing, and disseminating material for children, parents, teachers and other service providers on child abuse prevention strategies; engaging in the legislative and policy reform processes concerning children's rights; and providing support services for child witnesses in Sexual Offences Courts.

### 5. SUBMISSION ON DISCIPLINE OF CHILDREN – SECTION 139

We support the change in the title of this section from '**corporal punishment**' to '**discipline of children**'. The purpose of this section extends beyond ensuring that children receive equal protection from violence and encompasses provisions to promote positive, nonviolent methods of discipline of children. We believe that these measures will address the prevention of other cruel and degrading forms of punishment that amount to emotional and psychological abuse of children.

#### 4.1 INTERNATIONAL COMMITMENTS

**Article 19 of the United Nations Convention on the Rights of the Child** protects children from “*all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment ... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child*”. The United Nations Committee on the Rights of the Child released **General Comment No. 8 (2006)** on the issue of corporal punishment. This states that “*Eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of state parties.*”<sup>3</sup> The General Comment also states that “*There is no ambiguity.... Corporal punishment and other cruel and degrading forms of punishment are forms of violence and the State must take all appropriate legislative, administrative, social and educational measures to eliminate them.*”<sup>4</sup>

Similarly **Article 16 of the African Charter on the Rights and Welfare of the Child** provides that: “*States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment ... while in the care of a parent, legal guardian or school authority....*”.

The **UN Global Study on Violence Against Children** has recently been released. This study provides a global picture of violence against children and proposes clear recommendations for member states to prevent and respond to violence against children<sup>5</sup>. Among various recommendations, the report highlights that no violence against children is justifiable and that all violence against children is preventable it thus unequivocally calls for a prohibition of corporal and humiliating punishment of children in all settings including by parents in the home. It further calls on States to effect this prohibition by 2009<sup>6</sup>.

## **4.2 CURRENT SITUATION IN SOUTH AFRICA**

### **The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)**

The South African Constitution aims to protect the right of all South African citizens to have their dignity respected and protected<sup>7</sup>, the use of corporal and humiliating punishment undermines the child's dignity and violates this right. All citizens have the right to be free from all forms of violence from either public or private sources, this means that corporal punishment

<sup>3</sup> General Comment No. 8 (2006) paragraph 22 p6

<sup>4</sup> Ibid paragraph 18 p6

<sup>5</sup> The study was prepared through a participatory process which included regional sub-regional and national consultations, expert thematic meetings, field visits, a detailed questionnaire to governments and children's involvement and participation. In total, nine regional consultations were held of which three were convened for the African continent, namely, for West and Central Africa, Middle East and North Africa and for Eastern and Southern Africa. These consultations brought together government ministers and officials, parliamentarians, regional and international organizations, NGO's, national human rights institutions, civil society, media, faith-based organizations and children. See Secretary General's report, op cit, p 6.

<sup>6</sup> Secretary General's report of the independent expert for the United Nations Study on Violence Against Children, 61<sup>st</sup> session, United Nations General Assembly, dated 29 August 2006.

<sup>7</sup> Section 10 of Act 108 of 1996.

must be banned not only in the public life of children but also in their homes. It also protects the right of all citizens not to be tortured<sup>8</sup> or to be treated or punished in a cruel, inhuman or degrading way<sup>9</sup>, this is emphasized again in the section relating to children specifically in that every child has the right to be protected from maltreatment, neglect, abuse or degradation. The use of corporal punishment is inconsistent with these rights.

Furthermore the constitution provides that everyone has the right to equality, this includes equal protection and benefit of the law, full and equal enjoyment of all rights and freedoms<sup>10</sup> and that the state may not unfairly discriminate against anyone on the grounds of age (amongst others). However the defence provided to parents who use corporal punishment through the common law defence of *Moderate and Reasonable Chastisement* denies children, who are physically, emotionally and socially the most vulnerable members of our society the right to equal protection under the law.

**Recommendation:**

We strongly support the provisions of section 139(1) and (2) as they reinforce the constitutional imperative to protect children from physical and psychological punishment from all sources. It is important to emphasise, in this Bill, the provisions of the Constitution we thus support the inclusion of section 139(2) as it clarifies and underscores the intention of section 139(1).

**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 from either public or private sources, or to be punished in a cruel, inhuman or degrading way.**

In order to ensure equal protection to children from violence and equal access to the law and in order to fulfill our international obligations we commend the inclusion of subsection (3) which includes an explicit abolition of the common law defence of *Moderate and Reasonable Chastisement* currently available to parents.

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

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<sup>8</sup> Section 12 (1)(d) of Act 108 of 1996.

<sup>9</sup> Section 12(1)(e) of Act 108 of 1996.

<sup>10</sup> Section 9(1)(2)(3) of Act 108 of 1996

## **Experience of Corporal Punishment in South Africa**

Corporal punishment is widely used in South Africa. Parents use many different methods ranging from smacking and spanking to kicking, punching and beating with objects. 57% of parents surveyed in a recent South African national survey on corporal punishment reported smacking or spanking their children with a hand while 33% reported beating their children with a belt or other object, the most common age for smacking children with a hand was three years and for beating with an object four years of age<sup>11</sup>.

The following quotes are taken from *South African Children's Experiences of Corporal Punishment 2005*<sup>12</sup>:

*"We were all sitting with my sisters, brothers and cousins. He asked how am I talking to him and he hit me. He hit me with a pipe that has wires inside. He hit all over the body."* Girl KwaZulu-Natal

*"She took out a belt in front of my brother and she started beating me up. She made me go to my friend's house. I was scared and I went there crying. When I got to the gate I wiped my tears and my eyes were still red and I was embarrassed that my friend could see me, that I was beaten at home."* Girl Limpopo

*"She gave me five strikes on the buttocks, My heart was so sore and my bums were painful. I couldn't sit down the whole weekend. Every time I looked at the teacher I resented her"* Girl KwaZulu-Natal

These acts if committed against an adult would without question constitute assault. An adult would be able to choose to run away, to defend themselves, to fight back or to seek help, children do not have this luxury.

In light of the fact that some adults defend their 'right' to smack and spank their children, corporal punishment frequently extends beyond "reasonable" or "moderate" chastisement. It is irresponsible for the law to choose not to protect the most vulnerable children on the assumption that some parents have the self control to limit themselves to lower levels of violence. In addition we wouldn't argue that as long as a man is able to maintain his self control he may hit his wife once or twice.

## **To whose culture does corporal punishment belong?**

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<sup>11</sup> Dawes A, De Sass Kropiwnicki Z, Kafaar Z & Richter L (2005), *Corporal Punishment of Children, A South African National Survey* Save the Children

<sup>12</sup> Ibid

Corporal Punishment was popularized as a method of controlling people by missionaries and through the processes of colonialism and systems of slavery. Apartheid policies and practice further entrenched this in South Africa.

Research involving interviews with 410 South African girls and boys between the ages of 6 and 18<sup>13</sup> indicates that children of all ages and from different backgrounds are subjected to corporal and other forms of humiliating and degrading punishment, both at home and at school. Children from high income families and attending more affluent schools reported very few cases of corporal punishment. The most frequent and severe forms of punishment were experienced in the homes and schools of the children from low income environments. Thus it is poor children who suffer most due to corporal punishment. In addition to this it is notable that many traditional African cultures have sayings that illustrate a non violent approach towards discipline. In isiXhosa there are the sayings that “*Imbeko ayikhiwa ngoswazi*” (Respect cannot be built with a stick) and “*Induku ayinamzi*” (Beatings do not build a home). In isiZulu the saying “*umntwana akakhuliswa ngoswazi*” (You cannot raise a child with a stick) and in isiTsonga the proverb “*Inhonga ayi aka muti*” (You do not raise a family with a stick).

### 4.3 PROMOTING POSITIVE DISCIPLINE IN SOUTH AFRICA

#### Methods of disciplining children

*“(Discipline is) An educational process by which staff assist children and adolescents to develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to live in conformity with accepted levels of social behavior”<sup>14</sup>.*

While discipline may include the use of punitive measures, such as corporal and humiliating punishment, these methods are seen to be the least effective in developing a sense of responsibility, accountability and the desired change in the future behaviour of the child. Corporal punishment is one of the easiest forms of punishment for parents to use in that it is immediate and it requires no follow up. There are other, more effective methods for developing self discipline in children. Positive discipline is based on the idea that children learn more through co-operation and reward than through conflict and punishment<sup>15</sup>.

#### The effects of corporal and humiliating punishment

<sup>13</sup> Clacherty G, Donald D & Clacherty A (2005), *South African Children's Experiences of Corporal Punishment* Pretoria: Save the Children Sweden

<sup>14</sup> [www.dphilpotlaw.com/html/glossary.html](http://www.dphilpotlaw.com/html/glossary.html)

<sup>15</sup> Alexandrecu G, Bhavania YG, Derib A, Habasch R, Horno P, Nilsson M, Noueri R, Pierre-Plateau D, Sequeira L, Soneson U & Stuckenbruck D; 2005: *Ending Physical and Humiliating Punishment of Children Making it Happen, Global submission with recommendations, prevalence and attitudes and good practice examples to the UN Study on Violence Against Children.* International Save the Children Alliance

Corporal punishment does not teach a child self discipline or about logical consequences. It undermines the child's self confidence and self esteem leaving them feeling helpless and humiliated<sup>16</sup>, it also undermines trust between the child and the parent<sup>17</sup>. Corporal punishment is an ineffective method because children are less likely to learn from this form of punishment and more likely to resist the parent and to develop strategies to avoid getting caught in the future. This is why children often repeatedly receive punishment for the same misbehaviour, if corporal punishment is effective then surely it would not need to be used repeatedly on children.

Corporal punishment can also cause physical and psychological harm to the child. Most physical abuse of children is committed in the name of punishment or correction. Studies<sup>18</sup> with parents who had physically abused their children indicated that two thirds of the abusive incidents are started in an attempt to "teach the child a lesson". In Sweden where Corporal Punishment was banned in the home in 1979 the protective impact of the ban is seen in that between 1970 and 2000 child homicides in Sweden have dropped by 25 to 30 percent<sup>19</sup>.

The use of corporal punishment in children is linked to antisocial, delinquent and criminal behaviour later in life<sup>20</sup>. Children reported the following regarding how they felt after corporal punishment<sup>21</sup>:

*"So when my mom hits me, it feels like she doesn't love me" Girl Limpopo*

*"I beat the children because I was angry." Boy Western Cape*

*"I felt like killing someone." Boy Western Cape*

Because children learn by example corporal punishment teaches that:

- It is acceptable to resolve conflict and difference with violence.
- It is acceptable to express frustration anger and helplessness through violence.
- It is acceptable to hit someone who is smaller than or less powerful than you are.

## Positive Discipline

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<sup>16</sup> Gershoff E (2002) Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review. Columbia University p542

<sup>17</sup> Gershoff E (2002) p542

<sup>18</sup> Coontz, P.D., & Martin, J.A. (1998). Understanding Violent Mothers and Fathers: Assessing explanations offered by mothers and fathers of their use of control punishment. In G.T. Hotaling, D. Finkelhor, J.T. Kirkpatrick, & M. A. Straus (Eds), *Family abuse and its consequences: New directions in research* Newbury Park, CA: Sage and

Gil, D.G. (1973). *Violence against children: Physical abuse in the United States*. Cambridge, MA: Harvard University Press

<sup>19</sup> Janson S (2005) 'Response to Beckett, C. (2005) 'The Swedish Myth: The Corporal Punishment Ban and Child Death Statistics', *British Journal of Social Work*, 35(1), pp. 125 – 38) in *British Journal of Social Work* (2005) 35, 1411 - 1415

<sup>20</sup> Gershoff E (2002) P542

<sup>21</sup> Clacherty G, Donald D & Clacherty A (2005), *South African Children's Experiences of Corporal Punishment* Pretoria: Save the Children Sweden

Positive discipline methods recognize that consistency, self control and routine need to be taught to children from an early age<sup>22</sup>. Some of the benefits of positive parenting and discipline methods include:

- Children know what is expected of them and know the limits to their behaviour.
- The ability to take responsibility for the consequences of her/his choices and actions.
- The child does not automatically resort to violence as a means to resolve conflict
- The child is taught self respect and to respect other people
- The child develops the ability to cooperate, negotiate and compromise.
- The development of self discipline and the ability to make healthy decisions.

### **Will banning corporal punishment result in a lack of discipline?**

As has been indicated above, corporal punishment is one of the least effective methods of obtaining discipline. This is why it is frequently true that the children who receive the most and harshest physical punishment are often the least disciplined which leads to repeated punishment of the child but no positive change in behaviour. Poor discipline is more likely to result from bad examples being set by adults and of permissive, inconsistent and uncontained parenting styles.

Research in Sweden indicates that there is an actual decrease in the prosecution for assault of young adults who grew up after corporal punishment was banned<sup>23</sup>, showing that young adults may become less violent not more so.

In South Africa, the high level of violence in some of our schools is often attributed to the ban of corporal punishment. It is important to note that the Department of Education indicates that according to their own research approximately 60% of schools still rely on corporal punishment. It is true that the schools with the worst problems with discipline, drugs and violence are the very schools with the highest educator/learner ratios, poorest examples being set by educators and the heaviest reliance on corporal and humiliating punishment.

Likewise there is the misconception that corporal punishment has been banned in the USA and in the UK. The UK have only banned corporal punishment in the schools and not in the home. In the USA parental corporal punishment is allowed in all states, approximately half of the states have banned corporal punishment in schools or in care settings. A study<sup>24</sup> shows that the states with the least protection to children from corporal punishment tend to have the

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<sup>22</sup> Cronan M, (2005) *Discipline is Not a Dirty Word*

<sup>23</sup> Durrant J (2000) *A Generation Without Smacking: The impact of Sweden's ban on physical punishment* Save the Children p 16

<sup>24</sup> Strauss M (1999) *Spanking Teaches Short-Term Lessons, But Long Term Violence*

highest rates of murder committed by children, those where children receive the greatest protection are the states in which there are lower rates of murder committed by children.

### **Support, Information and Education for Parents**

We whole-heartedly support the provisions for support and education to parents in subsection (5) as this is essential to the success of this section. The primary goal of law reform must be to change behaviour, it is thus critical that the ban must be accompanied with a strategy to provide parents with the support and information that they require.

According to research<sup>25</sup> the strongest factor leading to the use of corporal punishment is social and cultural support for corporal punishment. This can be addressed by ensuring the availability of programmes promoting appropriate discipline at home and at schools. Many parents don't know how to discipline their children except through using corporal punishment, a significant number of parents would change their methods if they had the tools with which to do so.

The success of broad based education is evident in the Swedish experience where, at the time that corporal punishment was prohibited in Sweden 53% of Swedish citizens supported corporal punishment, by 1994 after intensive public education on the issue only 11% of Swedish people support the use of corporal punishment<sup>26</sup>.

### **Recommendation**

We fully support the content of subsection 139(5) regarding the responsibility of the department of Social Development to make programmes available. However it is our opinion that the bill must include a role for the Department of Health and the Department of Education to provide information and education on positive parenting and discipline.

#### **(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 across the country; and**
- (b) programmes promoting appropriate discipline at home and at school are available across the country.**

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<sup>25</sup> Dawes A, De Sass Kropiwnicki Z, Kafaar Z & Richter L (2005), Corporal Punishment of Children, A South African National Survey and Thompson Gershoff, E. (2002). Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review

<sup>26</sup> Barn Ombudsmannen *The Swedish Corporal Punishment Ban*, [www.bo.se/Adfinity.aspx](http://www.bo.se/Adfinity.aspx)

**(6) The department of Education must take all reasonable steps to ensure that positive discipline methods and parenting skills are included in the school curriculum.**

**(7) The department of Health must take all reasonable steps to ensure that information relating to positive discipline methods and parenting skills are available at primary health care centres.**

We recommend the explicit mention of programmes that promote positive discipline of children in the Prevention and Early Intervention section 144(1)(b) which provides for programmes that focus on “developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children”.

**144(1)(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 promoting positive discipline of children.**

#### **4.4 THE BEST INTERESTS OF THE CHILD AND PROSECUTION OF PARENTS**

We note that all forms of abuse of children are currently under-reported in South Africa, 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.

The purpose of prohibition is to clearly establish the expected national standard and provide people with the opportunity to change their behaviour. For example, although the ban on smoking in public places is not fully complied with, its enactment has resulted in a considerable shift in the behaviours of smokers who for the most part voluntarily (albeit begrudgingly) comply with the provisions, this legislation was not put in place with the intention of prosecuting smokers, but rather as a means to change behaviour in order to prevent more serious health consequences. Likewise we submit that a ban on corporal punishment will provide ensure equal protection to children and the opportunity to change discipline methods used by parents as a preventative measure against serious abuse of children and high levels of violence in our society.

We support the provisions in subsection (6) which provides that parents must be referred to early intervention services. We submit that this section better serves the child's best interests by providing support to parents who are experiencing difficulties. This is consistent with

provisions throughout the Act and the Amendment Bill in which references are made to the referral of families and children to early intervention and family preservation services.

We are concerned that the current formulation of subsection (7) which states that: *“prosecution may only be instituted if the punishment constitutes abuse of a child”*. This wording undermines the earlier intention to ensure that all South African citizens receive equal protection under the law, by once again requiring a test of whether ‘abuse’ has been committed or not.

It is our position that in the majority of cases, the prosecution of parents is not in the best interests of the child, furthermore we support section 2(a) of the Act which states that an object of this act is to *“promote the preservation and strengthening of families”* and do not believe that prosecution of parents in all cases is consistent with this section.

With regard to the prosecution of trivial matters, it is noted that our courts currently do not prosecute trivial matters, for example, courts do not prosecute minor assaults between adults in spite of the fact that this is illegal, likewise minor assaults on children will not automatically result in prosecution. The United Nations Committee on the Rights of the Child General Comment relating to the right of the child to protection from corporal punishment states that *“While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions<sup>27</sup>”*

We believe that the existing legal principle of non prosecution of trivial matters coupled with the application of the best interests of the child principle will suffice to ensure that parents are not prosecuted as a first resort unless it is indicated. In addition this ensures equal protection of the law to children. Lastly this ensures a constructive approach to parents that puts the child’s needs first.

Given that children who are being blatantly sexually and physically abused seldom report their offending parents and given children’s strong need for belonging, acceptance and love from their parents it is extremely unlikely that the system will suddenly be inundated with frivolous claims of abuse by vengeful children who have been smacked by their parents. In the event that such frivolous claims are made we believe that the existing system for assessing the validity and seriousness of any claim will be sufficient. The system will also be better able to

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<sup>27</sup> Committee on the Rights of the Child, General Comment No.8 (2006) The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment pp12-13

provide the necessary protection to children who's abuse does warrant intervention but who are currently falling through the cracks because cases of parental abuse remain unreported because of acceptance of parental corporal punishment.

#### **Recommendation**

**(7) Prosecution of a parent or person parental responsibilities and rights referred to in subsection (6) may be instituted if it is in the best interests of the child.**

### **6. SUBMISSION ON THE PROVISION OF PREVENTION AND EARLY INTERVENTION PROGRAMMES (CHAPTER 8)**

Children in South Africa are faced with many challenges, these range from high rates of physical and sexual violence perpetrated against them, to high levels of poverty and related poor access to nutrition, education, healthcare, and housing. The impact of HIV on children and their families intensifies these problems. The cost of Child Support, Foster Care and Disability Grants is high as is the cost of residential care for children who lose or are removed from their families. It is for these reasons that we support the inclusion of the chapter on prevention and early intervention in this bill.

We are concerned that current State funded prevention programmes are limited and do not address the full spectrum of needs of children, furthermore we are concerned that the differences between prevention and early intervention programmes are often poorly understood to the extent that many believe that the provision of awareness raising programmes constitutes a satisfactory level of prevention and early intervention work, this is not the case. Early intervention especially, entails more comprehensive programmes that address a number of areas of a child's life from therapeutic intervention including emotional support and counselling, to providing support and intervention at the level of the family or school, it may also include interventions promoting access to medication such as ARVs and nutrition. Prevention programmes may include some of the above as well as after school supervision, education on parenting and pre natal programmes to name a few. For prevention and early intervention to be effective these more complex programmes must be put in place.

The current availability of prevention and early intervention services is inconsistent and insufficient. Although the cost of universal access to prevention and early intervention services will be greater than the current spending in this area, this must be considered against

the costs of not providing these services. Provision of primary and secondary prevention programmes is central to the developmental approach to welfare, emphasis on prevention and early intervention will result in a lower demand for more expensive child protection interventions which include foster care, residential care and criminal justice options.

However we note that this bill currently places no obligation on the State to provide these services unless it is ordered by a court. Without this obligation we are concerned that the provision of these services will not be prioritized and that the rate of spending on these programmes will remain as it currently stands which is insufficient to address prevention and early intervention to the extent that it would actually impact on the numbers of children requiring protection services. We submit that this bill must place an obligation the MECs in the provinces to ensure that prevention and early intervention programmes are funded and available.

Further, we support the development of a strategy for securing the provision of prevention and early intervention services in the Bill, however we are concerned that bill only mentions the Minister of Social Development in this chapter and does not provide for sufficiently integrated interdepartmental strategies which are essential in ensuring effective prevention and early intervention services. In light of the fact that civil society organizations currently deliver the majority of prevention and early intervention services we believe that it is necessary for the Minister to consult with these organizations to inform the strategy.

Lastly, it is our opinion that effective prevention and early intervention of the kinds of issues covered in this bill particularly requires close collaboration and partnership between the departments of Education and Social Development. Teachers see the same children daily, through this they become aware of changes in the behaviour and performance of the children in their class, this provides a key site of intervention to provide prevention or early intervention services to vulnerable children. Teachers, however are untrained to manage difficult family situations and are primarily responsible for delivery of the curriculum, not counseling or social work services. Thus we believe that a duty must be placed on schools to identify and refer vulnerable children in order to provide the opportunity for support. This requires training of educators in identifying children who are vulnerable. We believe that the department of Social Development must work with schools in order to ensure that appropriate referral services are available and support is in place at schools for teachers.

Currently there is insufficient psycho-social support available at schools, it is necessary for school based professional Child and Youth Care Workers or Social Workers to be available in

order to support children who are vulnerable and to assist children in accessing necessary services.

### **Recommendation**

Section 145 Provision of prevention and early intervention services:

**145 (1)The MEC for Social Development in each province must provide prevention and early intervention services**

Section 146 Strategies for securing provision of prevention and early intervention services:

**146. The Minister must [include in the departmental strategy] develop a comprehensive interdepartmental national strategy aimed at securing the provision of prevention and early intervention services to families, parents, care-givers and children across the country.**

Regarding the role of the department of Education we recommend the inclusion of a new clause:

**Xxx (1) The MEC for Education must establish and maintain a system for the identification and referral and support of vulnerable children**

**(2) The MEC for Education must consult with the MECs for Social Development and Health and civil society organizations providing social services**

**(3) The system must ensure:**

**(a) integrated and coordinated delivery of social services to vulnerable children**

**(b) provision for the appointment of social service professionals within schools to provide social services or to refer children to other social services where appropriate.**