

POLICY BRIEF: APPROPRIATE IMPLEMENTATION OF THE PROHIBITION OF CORPORAL PUNISHMENT IN SCHOOLS IN SOUTH AFRICA



Introduction

Corporal punishment in schools refers to any kind of violent action inflicted on children by teachers or school administrators as punishment for disciplinary purposes. Since its prohibition in 1997, research shows that corporal punishment has still been widely practised in South African schools.

It's a grave concern in terms of children's development as it violates children's human rights to physical integrity and human dignity, as upheld by the UN Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC), as well as the South African Constitution.

This policy brief aims to provide relevant information on corporal punishment in schools to policy-makers, stakeholders and interested parties. It interprets corporal punishment in educational settings in context of international/regional/national documents, discusses current barriers to implementing the prohibition and its consequences on children's development and finally suggests ways to implement enforcement of the prohibition from a child's rights perspective.

In its judgement, the Constitutional Court found that the infliction of corporal punishment violated the child's rights to equality, human dignity, freedom and security of person

Corporal punishment in South African schools

Corporal punishment within the education sector has been prohibited since 1997, by the South African Schools Act (no. 84 of 1996). This Act states quite clearly that corporal punishment at schools is prohibited (section 10[1]) and that contraventions of this subsection are criminal offences (section 10[2]).

The prohibition was challenged in 1998 by a group of independent Christian schools (Christian Education). In a landmark judgement delivered in 2000,¹ the Constitutional Court upheld both the earlier judgement in the high court and section 10 of the Schools Act. At issue was whether or not Parliament had violated the rights of parents of children at independent schools who, in line with their religious convictions, had consented to the use of corporal punishment by educators. Christian Education claimed that the rights to privacy; freedom of religion, belief and opinion; education; language; and the rights to conform to the teachings of their chosen religious community were being infringed by the prohibition.

In its judgement, the Constitutional Court found that the infliction of corporal punishment violated the child's rights to equality, human dignity, freedom and security of person, and dismissed the application of Christian Education.

Nevertheless, corporal punishment is still widely practised in South African schools. A 2012 survey by the Centre for Justice and Crime Prevention (CJCP) of violence in schools reported that “little headway has been made in reducing the levels of corporal punishment at schools, with provincial rates ranging between 22.4% and 73.7%.”² An increase in the average rate of corporal punishment was found, up from 47.5% in 2008 (when a similar study was undertaken by the CJCP) to 49.8% in 2012.³

The rights position

The prohibition of corporal punishment of children in educational settings is linked directly to the provisions regarding the aims of education and children’s rights to protection from harm set out in the following:

- UN Convention on the Rights of the Child (UNCRC);
- African Charter on the Rights and Welfare of the Child (ACRWC);
- South African Constitution;
- Children’s Act (no. 38 of 2005);
- Schools Act;
- African Charter on Human and Peoples’ Rights;
- UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT);
- Prevention of Combatting and Torture of Persons Act (Act, No 13 of 2013).

The **UNCRC** binds States Parties to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention” (Article 28[2]). Article 29 of the Convention defines the aim of education as the holistic development of the child’s full potential and to inculcate a respect for human rights and fundamental freedoms.

In their efforts to widen and deepen the understanding of State Parties, the **UN Committee on the Rights of the Child** (UNCROC) issued General Comments on the aims of education (General Comment number 1) and on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (General Comment number 8). Both these General Comments are unequivocally clear that (i) State Parties to the UNCRC are obliged to prohibit all forms of corporal punishment and (ii) that the use of corporal punishment in educational settings militates against the aims of education.

The **ACRWC** binds States Parties to taking all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter (Article 5).

The **South African Constitution** provides for the protection of children “from maltreatment, neglect, abuse or degradation” (section 28(1)[d]) and provides that children’s best interests are of “paramount importance in every matter concerning the child” (section 28[2]). **The Children’s Act** mandates that in any matter concerning a child, there must be respect, protection, promotion and fulfilment of the child’s rights (section 2(2)[a]); the child’s inherent dignity must be respected (section 28(2) [b]); and that the child must at all times be treated fairly and equitably (section 28(2)[c]). As has already been stated, the **Schools Act** clearly and unambiguously prohibits corporal punishment at schools, and gives the principal the primary responsibility to ensure implementation of the prohibition of corporal punishment. Furthermore, The **National Education Policy Act** (no. 27 of 1996) stipulates that no person shall administer corporal punishment or subject a student to psychological or physical abuse at any educational institution.

the Schools Act clearly and unambiguously prohibits corporal punishment at schools

The **Universal Declaration of Human Rights** and the **UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** can be interpreted to prohibit the practice of corporal punishment at schools. Corporal punishment is held to be “inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined in the Declaration”.⁴



Article 1 of the **UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** defines torture as

“...[a]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such a purposes as ... punishing him for an act he ... has committed or is suspected of having committed, or intimidating or coercing him... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁵

Teachers and administrators are acting in an official capacity on behalf of the state when punishing their students. Although corporal punishment at schools may not reach the level of severity necessary to fall within the definition of article 1 of the Convention, it may consistently lie within the scope of article 16 which regulates cruel, inhuman and degrading treatment or punishment. Therefore, the only element that must be determined in order to find a violation of the Convention is severity.

In the case, *Doebbler v Sudan*, the **African Commission** concluded that the action of administering 'lashes' to a student amounted to corporal punishment and the act was in violation of article 5⁶ of the African Charter on Human and Peoples' Rights. Corporal punishment in schools clearly constitutes a violation of article 5 of the African Charter when applying the reasoning set forth in the *Doebbler* case.

The **Committee against Torture** (CAT Committee) has stated that corporal punishment may constitute a violation, and the Commission on Human Rights has also noted in its resolutions that "corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture". Children are necessarily more vulnerable to the effects of torture and, because they are in the critical stages of physical and psychological development, may suffer graver consequences than similarly ill-treated adults.⁷

The **Prevention of Combatting and Torture of Persons Act** (no 13 of 2013), which intends to carry out South Africa's obligations to implement the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), sets out the definition of torture -in parallel with the Convention- and acts of torture. It outlines the penalties, which can include imprisonment for life, and the factors to be considered during sentencing such as whether the victim was under the age of 18.

The **UN Human Rights Committee** has stated that the prohibition against torture in the UN Convention on Civil and Political Rights (CCPR) extends to corporal punishment and excessive chastisement 'ordered as punishment for a crime or as an educative or disciplinary measure.'⁸

IMPACT OF FAILING TO PROPERLY IMPLEMENT THE LEGAL PROHIBITION AGAINST CORPORAL PUNISHMENT

South Africa is a violent country with among the highest rates of sexual and interpersonal violence in the world. Levels of violence in schools are also very high, and school violence is a problem of particular significance in South Africa. Shootings, stabbings, and physical and emotional violence have taken place in both public and private schools.⁹

The South African Human Rights Commission (SAHRC) reported in 2008 that violence perpetrated by educators and other school staff include corporal punishment, cruel and humiliating forms of psychological punishment, sexual and gender-based violence and bullying.¹⁰

The 2008 report of the SAHRC and the 2012 CCJP study on violence in schools, and most researchers in the field, all highlight the close linkages between violence in the home and community and violence in schools. While these pieces of research examine the range of manifestations of violence in schools, they also highlight that corporal punishment is both a manifestation of and contributor to school violence.

close linkages between violence in the home and community and violence in schools

The negative consequences of corporal punishment are wide ranging, and have been reliably linked to increased aggression in childhood and adulthood and mental health problems. Importantly, harmful consequences for cognitive¹¹ and executive functioning have been found.¹²

High levels of violence in schools, of which corporal punishment is a significant component, routinely undermine children's capacity to access their rights to quality basic education, as schools become places which inspire fear and insecurity among learners. The right to basic education is a central facilitative right and its realisation is key to the enjoyment of other rights.

Children are taught the wrong lessons when they are corporally punished —such as that it is acceptable to impose your will on someone else if you are more powerful than they are; that children have no rights or dignity; that bigger, stronger people are entitled to hurt those who are smaller and weaker; and that care and hurting are somehow linked.



RESPONDING TO VIOLENCE IN SCHOOLS

Legal prohibition of corporal punishment in all its forms is a critical first step in addressing the endemic violence in South African society in general and school violence in particular. The legal prohibition has been achieved for the school setting, and a national policy on preventing violence in schools has been developed in South Africa.

The **National School Violence Prevention Framework** (also known as the National School Safety Framework or NSSF) acknowledges the inter-relatedness of different forms of violence within the school setting and the inappropriateness of considering one form of violence as more important than another.¹³ The NSSF maps out the role of all of those included in achieving a safe school environment, including educators, principals, administrative and support staff, school governing bodies, learners, parents, and community members. It contains very practical tools for diagnosing individual safety concerns and problems at a school level (including learner-led tools), and step-by-step guides and resources to develop plans to address these. The NSSF also deals with simplified school safety monitoring tools. It is anticipated that the roll-out to all district offices would have been completed by the end of 2014.¹⁴

Independent schools in South Africa pose a particular problem with regard to corporal punishment, although the case brought by Christian Education cited earlier confirmed that the prohibition against corporal punishment applies equally to them. However, these schools are more autonomous than public schools, making enforcement of the ban more difficult, since the primary mechanism for disciplinary action against educators, the Employment of Educators Act (no 76 of 1998), does not apply.

BARRIERS TO IMPLEMENTING THE PROHIBITION

Despite legal prohibition, the existence of a policy relating to its implementation and concern by the Department of Basic Education (DoBE), more than half of South African learners continue to experience corporal punishment at the hands of educators. Clearly, an appropriate legislative framework, while a necessary component, is not in itself able to ensure the protection of learners in South African schools.

South Africa's 2013 Country Report to the UN Committee on the Rights of the Child (UNCROC)¹⁵ suggests that one of the primary reasons for the continued use of corporal punishment in schools is the lack of support for the prohibition amongst educators and in certain communities. A further reason proposed by the Country Report is the absence of stronger legal mechanisms to enforce the prohibition.¹⁶ It is thus clear that with a prohibition and policy in place, attention should be placed on shifting attitudes and improving mechanisms for enforcement of the prohibition.¹⁷

one of the primary reasons for the continued use of corporal punishment in schools is the lack of support for the prohibition amongst educators

Educator Attitudes

The DoBE has initiated two strategies to move schools towards using non violent positive discipline techniques rather than punishment, including physical punishment:¹⁸

- A training manual developed in conjunction with the CJCP, entitled "Positive Discipline and Classroom Management"; and
- A prototype Code of Conduct which has been distributed to schools in all 9 provinces in South Africa.

However, educators report that the manual is inadequate for changing attitudes and for building the capacity of educators to implement the positive discipline strategies recommended in it. Additionally, some provinces (notably the Western Cape and Gauteng) have developed their own manuals.

The manual has yet to be widely disseminated, particularly in the more rural provinces where the incidence of corporal punishment in schools is much higher than in more urban provinces.

In addition, educators seem to not always understand the holistic approach of positive discipline, and continue to mete out other punitive measures rather than adopting a positive discipline ethos.¹⁹

Of further concern is that parents either encourage the use of corporal punishment against learners, or feel powerless to confront it if they do not approve.

Weak legal mechanisms to enforce the prohibition

Currently, legal responses to violations of the prohibition are limited, and not uniform across the provinces.²⁰

The dearth of national data on the number of cases and the sanctions imposed on educators found guilty of administering corporal punishment, together with the fact there is no learner representation at disciplinary hearings and a generally lenient approach by provincial Departments of Education to report transgressions to either the South African Police Service (SAPS) or the South African Council of Educators (SACE), mean that legal enforcement of the prohibition is weak and ineffective.



Recommendations

Changing attitudes

In the short term:

It is clear that national initiatives to shift attitudes with respect to corporal punishment are failing. To address this, these initiatives should be evaluated, and training materials revised as needed and synthesised. Evaluations of approaches that do work, and that have shown positive results, should be incorporated into the national response. Resources and capacity-building should be focused on areas identified as having high levels of corporal punishment.

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A national schools competition rewarding schools and/or educators for implementing a whole-school approach to discipline could also be a vehicle for raising awareness in school communities about the negative consequences of corporal punishment and building support for the adoption of a positive discipline approach.

In the longer term:

Violence in the home and community contributes significantly to levels of violence in schools. Therefore, efforts should be directed at long-term attitude change, and broad initiatives to address community and interpersonal violence should be developed. In particular, the prohibition of corporal punishment in the home should be included in the forthcoming amendment to the Children's Act (expected in 2015).

We must improve compliance with the existing ban²¹

A clear, national definition of what constitutes corporal and humiliating punishment is required.

A national protocol for the enforcement of the prohibition is needed. Elements of the protocol should include:

- The establishment of a national database which records the number of complaints and the consequences for the educator(s) involved;
- Mandatory reporting of incidents of corporal punishment, both to SAPS and SACE. (This is already provided for where corporal punishment results in physical harm, in section 110(1) of the Children's Act);
- Steps that should be followed when an incident of corporal punishment is reported;

- Learner representation in disciplinary action against offending educators, supported by the development of child-friendly procedures. This too, is in accordance with the Children's Act;

- Specifics relating to the process and criteria for declaring an educator found guilty of contravening the prohibition unfit to work with children; and

- A mandatory referral to SACE (which will address the challenges of implementation of the ban arising from independent schools.)

CONCLUSION

Seventeen years after corporal punishment was prohibited in educational settings in South Africa, it remains a common experience for millions of children every day. A more focused and intensive campaign aimed at overcoming the barriers to implementation is critical for fulfilling the rights of children. Imagination, honest evaluation of current initiatives, and a willingness to develop bold and creative innovations to support positive discipline in schools are key ingredients for ensuring that schools become places which nurture and encourage learners to become self-sustaining and productive members of a vibrant, diverse and democratic society.



Sonke Gender Justice (Sonke), established in 2006, is a non-partisan, non-profit civil society organization, works in all of South Africa's nine provinces and in eighteen countries across Southern, Eastern, Central and Western Africa and plays an active role internationally. Sonke works to create the change necessary for men, women, young people and children to enjoy equitable, healthy and happy relationships that contribute to the development of just and democratic societies. Sonke pursues this goal by using a human rights framework to build the capacity of government, civil society organisations and citizens to promote gender equality and human rights, prevent gender-based violence and reduce the spread and impact of HIV and AIDS.

www.genderjustice.org.za

The MenCare Global Fatherhood Campaign:

Together with Promundo US, Sonke serves as co-coordinator of the global MenCare Campaign that is working towards two fundamental goals: Men doing fifty percent of the caregiving work around the world, and the pervasive uptake of equitable and non-violent fatherhood practices. MenCare works to achieve these goals by advocating diverse policy measures in governments and workplaces; by campaigning to shift social norms and attitudes about fatherhood; and by educating men and women about healthy, equitable, non-violent parenting practices.

www.men-care.org

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