POLICY BRIEF: PROHIBITION OF CORPORAL PUNISHMENT IN THE HOME IN SOUTH AFRICA

Introduction

Corporal punishment in the home refers to any kind of physical force inflicted on children by a parent or guardian as a means of discipline. It is 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 the home to policy-makers, stakeholders and interested parties. It states the undeniable reasons for the prohibition of this harmful practice and the State’s responsibility in the light of (inter)national and regional documents. It also discusses various policy options and finally makes suggestions from a children’s rights perspective.

1. CORPORAL PUNISHMENT IN THE HOME IN SOUTH AFRICA

Corporal punishment has been prohibited in educational settings, the justice system (as a punishment and as a sentence) and alternate care in South Africa. However, it is still considered legal in the home by virtue of the common law provision for caregivers to “reasonably chastise” the children in their care.

There are many reasons to prohibit corporal punishment of children in South Africa. These include children’s innate (and legislated) rights outlined in the South African Constitution and the Children’s Act 38 of 2005, and the fact that they are the last group to be legally protected from assault, despite their greater vulnerability. But perhaps the most compelling relates to reducing violence in general and gender-based violence in particular in South Africa.

1.1 The rights position

South Africa is obliged to prohibit all forms of corporal punishment, because:

- It has ratified both the United Nations Convention on the Rights of the Child (UNCRC), in 1996 and the African Charter on the Rights and Welfare of the Child (ACRWC), in 2000. Although there is not a specific article which deals with corporal punishment in either of these two Conventions, the Committees which monitor implementation of the Conventions have interpreted both Conventions to explicitly prohibit corporal punishment. The UN Committee on the Rights of the Child (UNCROC) issued General Comment 81 to assist states to interpret the relevant articles in the UNCRC and noted that physical punishment of children is not compatible with the Convention. In addition, when the Committee reviewed South Africa’s Initial Country Report on the UNCRC, it recommended prohibition in all settings in its Concluding Observations.

- During the Universal Periodic Review process (UPR) in 2008, South Africa made a commitment to prohibit corporal punishment in the home. In its recent engagement with a
delegation from the South African government in October 2014 to discuss South Africa’s Initial Country Report on the ACRWC, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), questioned South Africa as to why after almost 6 years this commitment had still not been honoured.

- **Section 12 of the South African Constitution** provides that everyone has the right to freedom and security of the person. This includes the right to be free from all forms of violence from either public or private sources and the right not to be treated or punished in a cruel, inhuman or degrading way. Importantly, the right is not limited only to South African citizens; all people living in South Africa have the right to freedom and security of the person.

- **Section 28 of the South African Constitution** deals with the additional rights of children and provides that every child has the right to be protected from maltreatment, neglect, abuse or degradation. This section also provides that a child’s best interests are of paramount importance in every matter concerning the child.

Children deserve at least the same protection as adults, who are legally protected from assault. Due to their smaller stature and developmental state, children in fact require, and are entitled to, greater protection than adults.

### 1.2 Addressing violence

South Africa is a violent country with among the highest rates of reported gender-based violence in the world. Rape is perpetrated at least 200 times each day and estimates published by the Medical Research Council in 2012 indicate that a woman is killed by her intimate partner every 8 hours. The 2012/2013 crime statistics released by the South African Police Service (SAPS) revealed that 827 children were murdered in South Africa that year - a rate more than twice the global average, according to the World Health Organisation (WHO).

Corporal punishment of all kinds, including the so-called ‘little smacks,’ has been reliably linked to a range of negative outcomes, from increased aggression in childhood and adulthood through depression to damage to cognitive functioning. Importantly, corporal punishment in childhood is known to increase the likelihood of boys growing up to be the perpetrators of violence against their own spouse and children and girls growing up to be more vulnerable to risky sexual behaviour and poor intimate partner choices.

Children are taught the wrong lessons when they are corporally punished — such as that:

- bigger, stronger people are entitled to hurt those who are smaller and weaker;
- love and hurt are somehow linked.

The root causes of South Africa's high levels of interpersonal violence are complex and in part lie in the centuries-long oppression of the majority by a minority which denied them most of the rights we now take for granted. In addition, the clear and demonstrable links between corporal punishment and adult perpetration of violence, particularly in a country such as South Africa, cannot be ignored.

### 1.3 Policy implications

Legal prohibition of corporal punishment in all its forms is a critical first step in addressing the endemic violence in South African society. A clear and unequivocal message needs to be sent out that any form of violence, including violence against children, will not be tolerated in South African society.

In addition, support for and investment in non-violent, nurturing and responsive parenting is critical to protect children from violence in the home. Such support and investment is already legislated for in the Children’s Act as Amended 144(1)(b), which states: “Prevention and early intervention programmes must focus on developing appropriate parenting skills and the capacity of parents and caregivers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline.”

### 1.4 Current situation

Currently, a further amendment to the Children's Act has been proposed. It contains two suggested clauses relating to corporal punishment in the home: one explicitly prohibits corporal punishment by caregivers, and the other removes the common law defence of ‘reasonable chastisement’.

### 2. POLICY OPTIONS

It has not been established that senior officials within the Department of Social Development (DSD) are committed to prohibition of corporal punishment, despite several public statements by both the Minister of Social Development, Bathabile Dlamini, and the DSD’s spokesperson, Lumka Oliphant to the effect that corporal punishment in the home will be prohibited when the current amendment is passed. This ambivalence within the DSD may result in nothing legislative being done or that only the removal of the defence will be included.
There are thus three policy options to consider:

2.1 Do nothing legislatively but strengthen support to families and to parents

There are concerns in different sectors of the South African population that prohibition violates the rights of parents to bring up their children as they see fit, that it violates their rights to practice their culture or religion, and that it signals an unhealthy interference by government in the private sphere.

Aside from non-derogable rights such as the right to life, rights in South Africa are not unlimited and potential violations of one right have to be weighed against the violation of other rights that may result from the exercise of that right, such as the right to practice one’s culture and religion.

Government also has a constitutionally mandated duty to protect all South African citizens and, in certain instances, non-South African citizens who reside in South Africa, including children. If this were not the case, the country would not have enacted legislation against domestic (intimate partner) violence. The Constitution specifically prohibits discrimination on the grounds of age.

There is evidence to suggest that, without legislative change and the resulting support for non-violent and positive discipline of children, attitudes are very slow to change. However, a legislative prohibition has been found to have a positive impact on attitudes and social behaviour. For example, in New Zealand in 2013, 40% of parents from a representative sample believed hitting children was acceptable, in contrast to 58% who believed so one year after the ban was introduced in 2007.7

In Germany, full prohibition of corporal punishment was introduced in 2000. The rate of parental approval for corporal punishment dropped from 33% in 1996 to 26% in 2001.8

A study conducted in 2011 on behalf of the Children’s Ombud in Poland involving 1,005 respondents aged 15-75, found decreases in the social acceptance of parents hitting children since the achievement of full prohibition in 2010.9 In research published in 2008, 78% of respondents agreed that “there are situations when a child needs to be smacked”, compared to 69% in 2011.10

2.2 Remove the defence of ‘reasonable chastisement’

Repeal of the common-law defence of ‘reasonable chastisement’ is imperative (and effectively prohibits corporal punishment in the home because its effect is to provide for children the same level of protection afforded to adults). Though, this is not enough in itself and should be coupled with clear and explicit legislative prohibition of corporal punishment by caregivers. On its own, repeal of the common-law defence has not been found to have a significant impact on attitudes towards the use of corporal punishment by parents and caregivers and has been found to create confusion in the criminal justice system, the child protection system and among the population in general.

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2.3 Clearly and explicitly prohibit all forms of corporal punishment, including in the home

A clear and explicit prohibition of corporal punishment in the home will have a number of important results, including providing children with the same level of protection enjoyed by adults, fulfilling the obligations imposed by South Africa’s ratification of various international and regional treaties and conventions, reducing the levels of violence in South African society and addressing the prevalence of gender-based violence.
3. POLICY RECOMMENDATIONS

1. Prohibit corporal punishment in the home in the forthcoming amendment to the Children's Act.

2. Properly implement the provisions in section 144(1)(b) of the Children's Act, which provide for the development of: appropriate parenting skills and the capacity of parents and caregivers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline. This will include an audit of available services in each province, as mandated by the Children's Act in section 145(3).

3. Develop appropriate policy and services to support non-violent, nurturing parenting and positive discipline.

4. Ensure coordination with and support for non-governmental organisations delivering parenting programmes.

5. Develop and support sustained awareness-raising campaigns to address the cultural and religious arguments made in support of corporal punishment.

4. CONCLUSION

While a legal prohibition of corporal punishment in the home will not in itself ensure that children are protected from violence from private sources, it is an essential first step to the development and implementation of appropriate parenting support programmes and to address the extraordinarily high levels of gender-based violence found in South Africa.

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 achieve gender equality, 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

This policy brief was compiled by Carol Bower, Katy Hindle, Seda Tan and Wessel van den Berg (Produced January 2015)

References
1 CRC/C/GC/8.
6 No. 38 of 2005 and no.41 0f 2007.
9 TNS OBOP. (2011), Social resonance of the amendment to the Act on Counteracting Domestic Violence, Ombudsman for Children of the Republic of Poland.10 TNS OBOP. (2011). Ibid.