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For attention: Prof SM Mayatula
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Portfolio Committee on Education
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06 September 2007

Dear Prof Mayatula

RE: SUBMISSION ON THE EDUCATION LAWS AMENDMENT BILL [B33 – 2007]

Please find attached a submission from Resources Aimed at the Prevention of Child Abuse and Neglect on the abovementioned Bill.

We request the opportunity to make an oral presentation to the committee.

Yours Sincerely

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**Resources Aimed at the Prevention of Child Abuse and Neglect
(RAPCAN)
SUBMISSION¹
To the Portfolio Committee on Education
ON THE EDUCATION LAWS AMENDMENT BILL [B33-2007]
September 2007**

INTRODUCTION

RAPCAN welcomes the opportunity to comment on the abovementioned bill. We will comment primarily on section 7 of the Bill which relates to random search and seizure and drug testing at schools.

School safety is a critical issue to learners, parents and educators in South Africa. Reports of serious and endemic violence at schools as well as reports of high rates of drug use by adolescents are cause for serious concern. We support attempts by Parliament to address these issues at school. Our comments are based on the assumption that the provisions made in section 5 of the Bill are an effort by Parliament.

ABOUT RAPCAN

Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) is an NGO focused on children's rights and protection in the Western Cape. We are committed to building a society in which children are perceived as human rights bearers in their own right and not as the property of adults. We believe that it is through this route that we will strengthen our society and be able to address issues of poverty, violence and crime in the long term. Associated with this we are committed to enabling children to realise their human rights through supporting communities, schools and the children themselves to access services that give meaning to these rights.

Our programmes include community training and development, training of teachers and the development of materials and resources for children, parents and service providers to enhance implementation of children's access to appropriate care and support. We run a child witness project in conjunction with the National Prosecuting Authority and the Department of Justice at six sexual offence courts in the Western Cape. The organization is engaged in advocacy on a local, provincial, national, regional and international level to

¹ Submission prepared by Cheryl Frank, Executive Director of RAPCAN and Samantha Waterhouse, Advocacy Manager of RAPCAN

strengthen initiatives aimed at the prevention of violence and abuse against children, to lobby for the practical implementation of children's human rights and to improve service delivery to children in all areas.

SUBMISSION ON SECTION 7 OF THE EDUCATION LAWS AMENDMENT BILL [B33-2007]

Sources of information for intervention programmes

It is important that intervention to address violence and drugs at schools be based on reliable sources of information.

Information available to the public tends to reflect only the most outrageous and horrific instances of violence. These probably represent just one small part of the crime and violence problem that schools are regularly faced with. Newspaper reports over the past few months have highlighted incidents that indicate that schools across the country are indeed subjected to serious crime. These reports reflect a relatively small number of incidents in which learners are responsible for the extreme violence. Yet, in addition to this the reports indicate that community members, gang members are more often responsible for perpetrating serious violence against learners and educators². In addition, reporting has been biased towards more often illustrating the victimisation of educators by learners³, without similar focus being given to the victimisation of learners by educators⁴.

There is currently a lack of reliable information relating to the true nature and extent of crime and violence in schools. Information relating to the numbers of learners and educators who perpetrate violent incidents (this includes corporal punishment) at school; the rate of victimisation of learners and educators; the extent to which violence in the community impacts on schools; and information on the forms of violence to which learners are exposed at school is critical to the development of appropriate preventative and responsive policies for Educations departments and schools. There have been very limited efforts by the Department of Education to ensure that such data is collected. The absence of this data weakens the ability of the Department of Education to establish responses that are relevant to the diverse environments within which schools operate.

Recommendation

- **Measures to address violence and drug use at schools must be based on reliable information to ensure the applicability of the measures.**

² Search on www.iol.co.za for school violence between March 2007 and May 2007.

³ Kassiem A, *Stressed teachers fear 'hostile' classrooms* Cape Times 22 March 2007

⁴ Waterhouse S, (2006) Report on RAPCAN junior youth participation process on violence in schools pp9 - 10

Comprehensive approach to school safety

The provisions that this Bill introduces regarding search and seizure represent only a narrow element of what is required to adequately address the issue of violence and drugs in schools. This is an inherently reactive approach to complex problems that require strategies that are oriented towards both prevention and management. School crime, violence and substance abuse can be reduced by developing comprehensive safe school plans that are integrated into the overall school improvement process⁵. To date comprehensive school safety policy has not been developed, in spite of several attempts to address the issue. These efforts include the COLTS campaign, which post 1994, sought to restore the culture of learning and teaching in schools. This was followed by Minister Kader Asmal's Tirisano programme in 1999⁶ including the Signposts for Safe Schools resource book that was later developed with the South African Police Service⁷. More recently, there have been attempts by the Department of Education to develop a school safety framework, but little has come of these efforts⁸.

The dominant approach in international crime prevention practice relates to the implementation of 'evidence-based' approaches. This approach acknowledges that only those approaches that have shown, through exhaustive evaluation to have merit, should be implemented. Research into best practice and what works regarding school safety planning indicates that it is necessary to adopt a comprehensive approach that addresses prevention, intervention and response to issues of violence and drugs in schools⁹. It must include a school-wide approach to discipline that ensures that the educators and other school staff act as positive role models and are held accountable¹⁰. Prevention programmes must address the risk factors and promote protective factors¹¹, they should start early (as early as pre school¹²) and include ongoing interventions that reinforce the lessons and continually promote pro social behaviour¹³.

"...School safety is not about any one method of control: metal detectors, surveillance systems or swift punishment. Nor is it about any single risk factor such as dysfunctional homes and inadequate schools. We

⁵ Pollack I and Sundermann C (2001) *Creating Safe Schools: A Comprehensive Approach*. Journal of Juvenile Justice, v8 n1 June 2001 p13

⁶ Asmal K, (1999) *Call to Action: Tirisano* Department of Education

⁷ South African Police Service and Department of Education (2002) *Signposts for Safe Schools Tirisano*

⁸ *School Safety Framework (2003)* CSIR Crime Prevention Centre

⁹ *School-Based Violence Prevention Programmes: A Resource Manual* University of Calgary at www.ucalgary.ca/resolve/violenceprevention/English/prevprog.htm site updated in 2002

¹⁰ Elliot D, Grady J, Heys L, Ntepp R, Williams S (2002) *Safe Communities – Safe Schools Safe School Planning and Law Related Issues: A Tool for Community Violence Prevention Efforts* Centre for the Study and Prevention of Violence, University of Colorado p17

¹¹ Hawkins JD, Catalano RF, and Arthur M, (2002) *Promoting science based prevention in communities. Addictive Behaviours* 90(5): 1-26. In www.drugabuse.gov NIDA InfoFacts: *Lessons from Prevention Research*

¹² Webster-Stratten C, Reid J, and Hammond M. (2001) *Preventing Conduct Problems, Promoting Social Competence: A Parent and Teacher Training Partnership in Head Start*. Journal of Clinical Child Psychology 30: 282 – 302. In www.drugabuse.gov NIDA InfoFacts: *Lessons from Prevention Research*

¹³ Scheier L, Botvin G, Diaz T and Griffin K. (1999) *Social Skills, Competence and Drug Refusal Efficacy as Predictors of Adolescent Alcohol Use* Journal of Drug Education 29(3): 251-278. In www.drugabuse.gov NIDA InfoFacts: *Lessons from Prevention Research*

have learned that we cannot identify with certainty those students who, for reasons clear only to themselves will assault their teachers and peers. We now understand that safe schools require broad-based efforts on the part of the entire community, including educators, students, parents, law enforcement agencies, businesses and faith based organisations¹⁴.”

The National Resource Centre for Safe Schools (in the USA) identified the following key components to safe school planning¹⁵:

- Creating school-wide prevention and intervention strategies.
- Developing emergency response planning
- Developing school policies and understanding legal considerations
- Creating a positive school climate and culture
- Implementing ongoing staff development
- Ensuring quality facilities and technology
- Fostering school/law enforcement partnerships
- Institutional links with mental health and social services
- Fostering family and community involvement
- Acquiring and utilising resources

The National Resource Centre for Safe Schools further indicates that the following strategic process is necessary for the design and implementation of a comprehensive plan. This includes:

- Developing school/community partnerships
- Conducting a comprehensive needs assessment in the school and community
- Developing a comprehensive school plan
- Identifying strategies and implementing programmes
- Conducting evaluation
- Sharing outcomes and making adjustments

By ensuring that responses are based on reliable information regarding the nature and extent of school violence and drug use by learners we can begin to establish comprehensive school safety policy. The response of the Department to school safety must address the full range of needs and not only seek to respond to the most visible. The Department should seek to provide legislation or policy that relates to all these aspects, and provisions relating to searching and drug testing should form only a single component of

¹⁴ Pollack and Sundermann C (2001) *Creating Safe Schools; A comprehensive Approach.* Journal of Juvenile Justice v8 n1 June 2001 p13

¹⁵ Ibid p14

a more complex school safety plan. This narrow response to the complex situation supports the notion that children are the problem and not that the problem lies in a range of areas including the conduct of teachers and the impact of community violence.

It must also be noted that searching for a dangerous object will not address the range of objects with which learners may commit acts of violence, which may include scissors, bats and tools. It is therefore more important and useful to address the reasons why learners and educators resort to violence than to attempt to remove weapons from learners.

Overall, the kind of approach adopted in this Bill is limited in its scope and potential for success. It reflects a limited concern for the safety of children on school property rather than an interest in promoting the overall safety and well-being of children as citizens. It relegates children to being defined as part of the problem rather than part of the solution to the many crime problems being experienced.

Recommendations:

- **The Department of Education undertake/finalise a comprehensive situation analysis of violence in schools.**
- **The Department develop a comprehensive National School Safety Policy based on reliable research.**

The rights of learners and educators

We recognise that the provisions in this Bill represent an attempt to provide some measure of protection to learners and educators from violence at school. The approach is taken of balancing the rights of educators and learners to life and to be free from violence with the rights to dignity, privacy and bodily integrity of all learners. We believe that the current provision in the Bill fails to adequately balance these rights as it allows for searching of a wide range of learners by a wide range of people including educators and the manner of the searching is not clear and thus open to intimate searching of learners which would unjustifiably violate learners right to dignity, respect, bodily integrity and privacy. The current construction of the provision makes learners more vulnerable to victimisation and abuse by educators.

The assertion that “*children do not shed their constitutional rights at the school-house door*”¹⁶ should remain foremost when formulating policy of this nature. It is important to invest in careful consideration of the rights

¹⁶ *Goss V Lopez*, 419 U.S. 565 in Elliot D, Grady J, Heys L, Ntepp R, Williams S (2002) *Safe Communities – Safe Schools Safe School Planning and Law Related Issues: A Tool for Community Violence Prevention Efforts* Centre for the Study and Prevention of Violence, University of Colorado p22

of all parties concerned. The current provision in section 7 of the Bill relating to section 8A(3)(a)(i) which requires that the best interest of a learner or any other learner at the school be taken into account provides no real assistance to schools regarding how best to balance these rights.

Section 36 of the Constitution is clear regarding the very specific conditions under which rights may be limited. In this case, the purpose for which the rights of children are being limited is the achievement of safety in schools. We submit that, based on the available evidence as discussed above, that the limitation of these rights will alone not achieve the intended purposes.

South Africa became a signatory to the *United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*¹⁷ in 1998. South Africa also signed the Optional Protocol to this Convention in 2006. The powers given to principals and educators under this Bill will make the Department of Education and individual schools subject to both these instruments. In particular, the following should apply:

- In terms of the Convention, legislation (such as this which provides for the detention of children for the purpose of searching) is required to criminalise any act of torture or cruel, inhuman or degrading treatment (Article 4). This will make anyone guilty of such acts guilty of a criminal offence
- Article 10 requires that personnel involved in the “custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment” be trained in relation to the prohibition of torture
- Article 11 will compel the Department of Education to “keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment...”

In addition, all schools will come under the scrutiny of the preventive mechanisms that South Africa is compelled to establish under the Optional Protocol to the Convention, which South Africa signed in 2006¹⁸. The Optional Protocol makes provision for a set of national and international visiting mechanisms aimed at the prevention of torture and cruel, inhuman and degrading treatment.

It should also be noted that in its response to the first Country Report presented by the South African government in November 2006, the Committee against Torture expressed its dissatisfaction at South Africa’s failure to legislate the criminalisation of torture and cruel, inhuman and degrading treatment and punishment. Of specific relevance to the Department of Education, the Committee expressed its concern about the

¹⁷ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 26 June 1987.

¹⁸ Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002.

continued existence of the use of corporal punishment in schools and other public institutions, and at the absence of an oversight mechanism to monitor these institutions.

It may be argued, that where children are already believed to be at risk of physical abuse by educators, the provisions of this Bill increase their vulnerability to abuse, and should be viewed with extreme caution.

Recommendations:

- **This Bill must aim to ensure that the rights of all concerned are more effectively balanced through ensuring that the provisions of the legislation minimise opportunity for unjustifiable rights violations.**
- **The Department of Education’s obligations in terms of the Convention against Torture and Cruel, Inhuman and Degrading Treatment as well as the Optional Protocol to the Convention, must be examined and appropriate adjustments be made to the provisions of this Bill.**

Searching by School Principals and Educators (Section 8A(2), 8A(3)and 8A(4))

The provision effectively empowers not only school principals but also delegated educators at a school to undertake these searches. While some schools may identify specific educators, others may allow all educators to conduct searches on learners. This is concerning due to the impact of this on existing levels of abuse of power by educators on learners with reports indicating sexual abuse. The impact of searches may exacerbate the experiences of those learners who have been subjected to sexual abuse in other settings.

The primary function of educators is to educate. The introduction of a policing function of this nature is likely to severely undermine the educator/learner relationship. Introducing this responsibility to educators risks creating a “*prison like environment due to undue privacy invasions*¹⁹” and this may result in learners feeling powerless and further entrench the existing culture of disrespect and mistrust between educators and learners. This is particularly problematic in a context where it is necessary for educators to build relationships with children to enable the learning process, rather than relying on punitive measures such as threats and corporal punishment as the means of creating control.

In addition, allowing educators to conduct searches has an impact on the complaints and accountability processes available to learners who have been searched. The complications include: how will an educator continue to teach and assess a learner that has made a complaint against him/her? This kind of situation

¹⁹ *Goss V Lopez*, 419 U.S. 565 in Elliot D, Grady J, Heys L, Ntepp R, Williams S (2002) *Safe Communities – Safe Schools Safe School Planning and Law Related Issues: A Tool for Community Violence Prevention Efforts* Centre for the Study and Prevention of Violence, University of Colorado p22

may prevent learners or their parents from seeking recourse against the abuse of learners through the search process. This can be avoided by ensuring that searches are conducted only by officials who do not teach and assess learners.

Lastly any person searching potentially dangerous learners for dangerous weapons must be trained to ensure their own safety and that of others in the school. Without special training and skills principals and educators conducting searches may be more vulnerable in some instances.

Recommendations:

- **Searching of learners by educators must be avoided at all costs.**
- **Principals or educators may only be authorised to search the property of learners and not the body of a learner.**
- **Complaints procedures and accountability mechanisms to address complaints regarding search and seizure must be put in place. Learners must be informed of these mechanisms and procedures.**
- **Searches must only be conducted by persons trained to manage potentially dangerous situations to ensure the safety of all concerned.**

Random searches vs. searches based on reasonable suspicion (Section 8A(2), 8A(3)(a)(iii) and (iv) and 8A(8))

School safety policies draw a distinction between random searches and searches based on reasonable suspicion²⁰. Random searches are conceptualised as generalised searches which are intended as a broad based preventative measure. The property of large numbers of learners is searched in such processes. Reasonable suspicion searches are seen as an intervention mechanism which is only indicated when there is a reasonable suspicion and evidence to support the suspicion that a particular learner has violated the code of conduct of the school or a law²¹. The Virginia School Search Resource Guide defines “reasonable grounds” as *“A suspicion that is based on reasons that can be articulated. It is more than a mere hunch or suspicion, but less than the level of proof than would be required to impose a disciplinary sanction”*²²

²⁰ *Ibid* p28

²¹ *Ibid* p23

²² Atkinson A (Ed) (2000) *Virginia School Search Resource Guide* Virginia Department of Education p6

The provisions of this bill do not draw this distinction but rather create confusion by referring to random searching at the same time as qualifying this to state that searches can only be conducted on reasonable suspicion.

Recommendations:

- **The term random should be deleted from 8A(2) and 8A(8) to avoid confusion.**
- **The term ‘reasonable suspicion’ should be changed to ‘reasonable grounds’ and defined.**

Method of search (Section 8A(2) and 8A(2)(e))

Section 8A(3)(b) provides that the search must be conducted in a manner that is reasonable and proportional to the suspected illegal activity. The current provisions of the Bill and formulation of this clause are entirely inadequate.

The considerations relating to searching learner’s property are different to those of searching the learner’s body. We believe that the implications of the latter are far more serious and complicated than those of the first.

Searching a learner’s property

We believe that searching the property of a learner may be justifiable in terms of section 36 of the Constitution in the event that it is undertaken based on reasonable grounds. Searching the property of a learner would include:

- Bags and other containers in the child’s possession
- Outer clothing such as blazers, jackets and jersey’s
- Pockets
- Socks and shoes
- Hats

It must not include the removal of clothing that such as shirts, shorts/pants or skirts/dresses.

It is still necessary to ensure that searching the property of a learner is conducted in a reasonable and proportional manner to the suspected illegal activity.

Recommendations:

- **The term “property of a learner” must be defined.**
- **Guidelines for the place and method of searching the property of a learner must be prescribed to provide more detail than that which is provided in section 8A(4)**
- **Searches of learners’ property may only be conducted by designated and specially trained school officials, including principals using a prescribed method.**

Searching a learner

The Bill is silent on the limitations of searching the body of the learner, thus the provisions of the Bill currently extend from conducting a pat down search (a pat down search could include touching the learners breasts or genital area) of the learner to strip searches and even cavity searches.

In the event that it is suspected that a learner is hiding drugs in their underwear an educator is, according to this Bill, empowered to conduct the search in a manner that is reasonable and proportional to the suspected illegal activity and thus could feel the child’s genitals or breasts or request a strip search in such instances.

According to the School Search Resource Guide from Virginia USA “*Strip searches are searches that reveal undergarments or constitute the viewing of students’ breasts, buttocks or genitals*”²³. This would undoubtedly amount to a profound invasion of the rights to privacy, dignity and bodily integrity. In addition the potential for harm and abuse under such circumstances is great, this is in no way mitigated by the fact that searches would be conducted by educators of the same gender as the learner.

Recommendations:

- **Section 8A(4) must be amended to ensure that body searches may only be conducted in extreme circumstances and on no account should they be conducted by principals or educators.**
- **In cases where searches of learners are indicated members of the SAPS or specially appointed and appropriately qualified security officials must conduct such searches.**
- **Any person conducting a search of a learner must be specially trained to work with children**

²³ *Ibid* p27

Search in the presence of a witness (Section 8A(4)(c))

With reference to the previous point, in the event that a member of the SAPS or appropriately qualified security official undertakes a search of a learner, we support the provision that a witness be present during a body search. However it is important to ensure that a learner who is being subjected to a body search is not unnecessarily exposed to intimidation by the presence of numerous officials.

Recommendations:

- **The learner must be given an opportunity to request the presence of a particular witness who is not another learner and is a person of the same gender as that learner. This witness should be readily available to witness the search and the presence of such witness must not unnecessarily delay the search procedure.**
- **In the event that the learner does not request a particular witness officials must decide on a witness of the same gender as the learner.**

Random urine testing (Section 8A(8) and (9))

The purpose of random urine testing is not articulated in the Bill. As discussed earlier, the Bill also creates confusion about random urine testing of learners and urine testing based on reasonable suspicion.

We wish to highlight and support the provisions of the *National Policy on Management of Substance Abuse in Public and Independent Schools and Further Training Institutions* which states the following:

“There is no empirical evidence or justification for routine random testing of learners to reduce usage. Drug testing should be used when there is reasonable suspicion that a child is using drugs. Testing may be implemented as part of a structured intervention or relapse prevention programme in an environment that is committed to safeguarding personal rights relating to privacy, dignity and bodily integrity according to school policy, medical/treatment procedures and ethical guidelines”²⁴

In light of the above drug testing of learners who are reasonably suspected of using illegal drugs should be undertaken as part of a process of rehabilitation of a child and as such should be part of a constructive and not a punitive process.

²⁴ Government Gazette 24172 (2002) in Fisher S (2007) Letter to the editor of the Cape Argus *Drug Testing in Schools* unpublished

The Department of Education (through the school health clinics) in conjunction with the Department of Social Development should jointly address this issue within the broader framework of a drug and alcohol policy. The objective of both these Departments should be the promotion of the overall health of children rather than the adoption of a law enforcement orientation to the problem of substance abuse.

Unlike the possession of dangerous objects or drugs at school, a positive result on a drug test does not imply that the use of the drugs took place on the school property or during school activities.

Rapid urine tests do not provide reliable information. They do not give an indication of how much the drug has been used, how frequently or when last the drugs were taken. It must also be noted that Mandrax cannot be tested for in a rapid urine test, this would imply more costly testing to test for this substance. In addition, the tests are unreliable, for example a learner who has taken medication which contains codeine will test positive for an opiate (heroin).

Recommendations:

- **Random urine testing for drugs must not be done at schools.**
- **Testing of learners suspected of using drugs must only be done within a framework of a range of interventions to assist and support that learner.**
- **Legislation must provide for guidelines to be established for the taking of urine samples to ensure maximum protection to the learner's right to privacy.**