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28 August 2007

RE Children's Bill Sub Group on Discipline of Children Response to the CGE submission to the Portfolio Committee on Social Development

We refer to the CGE submission made at the Community Consultations on the Children's Amendment Bill, held in Mthatha on 16 August 2007.

The Subgroup on Discipline of Children consists of a number of NGOs and Individuals concerned with the realisation of children's rights. The undersigned organisations wish to address the CGE on the abovementioned matter. For further comment see Appendix A for statements from other organisations and individuals on the matter and the attached letters of support on the matter from ChildrenFIRST and the National Alliance for Street Children.

We are concerned regarding the position of the CGE that the common law defence available to parents in assault cases must be maintained. This defence states that parents can use assault against their children as long as the assault constitutes *moderate and reasonable chastisement*.

The United Nations Committee on the Rights of the Child calls for a full prohibition of all forms of corporal and humiliating punishment of children by member states¹. The UN Secretary General's recent Global Study on Violence Against Children calls on member States to implement this ban by 2009². Furthermore the use of Corporal Punishment against children is inconsistent with article 16 of the African Charter on the Rights and Welfare of the Child.

The South African Constitution provides that all citizens have the right to psychological and physical integrity, this includes the right to be free from all forms of violence from either private or public sources, in addition it provides that no citizen shall be discriminated against on the basis of age and further that all must enjoy equal protection of the law. The current common law defence to assault for parents is inconsistent with all of the above.

We are certain that the CGE would not support a man's right to hit his wife as long as it is reasonable and moderate, and that the CGE position on this issue would be that every violation is unacceptable and an assault not only on the physical integrity but also on the dignity of the woman. We are concerned

¹ General Comment No. 8 (2006) paragraph 22 p6

² Report of the Independent Expert for the United Nations Study on Violence Against Children, paragraph 116 p32

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that it appears to be the view of the CGE that the body and the dignity of a child are worth less, especially in light of the fact that children are physically, emotionally and socially more vulnerable than adults are.

Children in South Africa are regularly subjected to corporal punishment including hidings with hands, fists, belts, sticks, hose pipes and even electrical wires. Although many of these instances may technically be considered physical abuse, it is rare for children to seek help from such abuse or for other adults to get involved in preventing it when it is done by a parent. The submission by the CGE that a certain level of 'reasonable chastisement' must be available to parents is bizarre. The very notion of "reasonable chastisement" presupposes that it is possible to define such a thing, and that some arbitrary level of violence is acceptable. We reject this notion unequivocally.

The reality is that most parents use corporal punishment due to their own frustration and high levels of stress, and although it may be related to an actual or perceived wrongdoing on the part of the child, the parent is seldom controlled. Many parents report feeling remorse and regret subsequent to using corporal punishment on their child.

Most people use corporal punishment because it is the method that most of us have been taught and the only method that we know. The Children's Amendment Bill provides the opportunity to teach parents and our society in general other methods of teaching children, these methods will benefit all South African's by encouraging better quality relationships between children and adults and less physical violence against children. We view this as an important tool to address the current high rates of violence against women and violence in general in our society. The oral submission by the CGE was silent on this important provision.

We support that children must be disciplined. First and foremost parents and adults must set the example, we must guide children, and teach them that they have a responsibility to behave a certain way, to respect other people and to do the right thing. We must ensure that children understand that there are consequences for their actions. It is not necessary for these consequences to be violent or humiliating, children can and do learn well without the use of corporal or humiliating punishment.

Research shows that the main lesson that children learn from corporal punishment is that it is acceptable to hit other people if you are bigger or stronger than they are and you don't like what they are doing. Importantly for the CGE, research shows a link between the nature of childhood experiences of corporal punishment and becoming a perpetrator or a victim of domestic violence in adulthood. The cycle of violence and its perpetuation as a result of childhood experiences is well-documented.

As a chapter nine institution, we expect the CGE to respect the human rights of all citizens, to understand that children grow up and become the women and men in our society and that they will reflect the experiences and lessons that they have learnt as children.

Should you require any further information including the abovementioned documents or research into the prevalence or impact of corporal punishment on children and our society, please contact Samantha Waterhouse on the details below.

Yours Sincerely

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The Sub Group on Discipline of Children for the Children's Bill Working Group
And Advocacy Manager
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on behalf of:

1. Carol Bower, Independent Consultant on Children's Rights

2. Nokuku Sipuka, Director, Mthatha Child Abuse Resource Centre (UCARC)
3. Dr Ann Skelton, Advocate Coordinator of the Children's Litigation Project at the Centre for Child Law, University of Pretoria
4. Keith Vermeulen, Director of Public Policy and Liaison Unit, South African Council of Churches
5. Joan Van Niekerk, National Coordinator, Childline South Africa
6. Janis Wylie, Director, Management Systems Training Programme
7. Ulrika Soneson, Save the Children Sweden South Africa
8. Nokutula Magudulela, Director, ChildrenFIRST
9. Cati Vawda, Director, Children's Rights Centre
10. Avril Knott Craig, Project Leader, Quaker Peace Centre
11. Sandra Morreira, Director, Homestead Projects for Street Children and
12. Chairperson, Western Cape Street Children's Forum
13. Phiroshaw Camay, Co-operative for Research and Education (CORE)
14. Je'anna L Clements, Mother and Volunteer, Youth Insights in Planning (YIP)
15. Beth Thomas, President, National Alliance for Street Children (NASC)
16. Andrew Swart, Psychologist
17. Sara Roux, Independent

APPENDIX A

Cati Vawda, Director, Children's Rights Centre (by email)

"The Children's Rights Centre supports the total abolition of all forms of violence against children. We are appalled that members of the Gender Equity Commission should make a submission endorsing the use of physical punishment at home for "reasonable chastisement", when any violence is against children's rights. It is an inexplicable stand, taking into consideration, too, that violence in the home is so often gender-based."

Andrew Swart, Psychologist (by email)

"I recommend that the CGE ... read Sue Gerhard's " Why Love Matters; How affection shapes the Baby's Brain" for an excellent review of fairly recent research on how stress, neglect and abuse/corporal punishment contribute to later stress-related disease, mental illness, violence against others and crime in later life. And how affirming love and careful emotional regulation in childhood produces mentally healthier adults.

I believe that the most important intervention to effect positive social change in South Africa in future would be parent education on how to affirm and regulate children's developing psyche's constructively - without abuse and co-ercive fear! I believe that this could have profound positive effects on reducing the levels of crime, improving marital, couple and family relationships and improving the economic productivity and levels of creative responsibility in this country.

I believe that to allow formerly abused and culturally misguided parents to perpetuate the cycle of abuse trans-generationally would be a tragic and costly mistake. But one cannot effectively prohibit or end something as important as "discipline" without transforming it and replacing it positively. If corporal punishment is criminalised, the perpetrators need remedial education or psychotherapy, not further abusive and punitive treatment by the state.

I strongly support Rapcan's stance."

Je'anne L Clements, Mother and Volunteer, Youth Insights in Planning (by Email)

"No child deserves even 'moderate' assault by those s/he must trust to keep him/her safe.

Furthermore, different people have different ideas of what 'moderate' is - in my experience there are plenty of people who consider a beating with belt or stick that completely terrifies the child and leaves welts and bruises but breaks no skin to be 'moderate'! Can you imagine trying to explain to a child "nobody may hit you, except your parents, and they may only hit you when it is reasonable to do so and the punishment is moderate." We may as well not bother! How are children to be able to tell the difference between 'moderate punishment' and 'assault', and be able to gauge when or when not to ask for outside help for themselves or their siblings? If we intend to empower children to protect themselves and each other, we need to keep things clear cut: 'nobody has the right to hit you, not even your parents.' Period."