



RESOURCES AIMED AT THE PREVENTION OF CHILD ABUSE AND NEGLECT (RAPCAN) SUBMISSION TO THE WESTERN CAPE LEGISLATURE (PROVINCIAL COMMITTEE ON SOCIAL DEVELOPMENT) ON THE CHILDREN'S AMENDMENT BILL AS INTRODUCED IN THE NCOP DATED 30 JUNE 2006

**Prevention and Early Intervention
&
Corporal Punishment**

Compiled by: Samantha Waterhouse 021 712 2330 084 522 9646

RAPCAN RESPECTFULLY REQUESTS THE OPPORTUNITY TO PRESENT TO THE COMMITTEE AT THE PUBLIC HEARINGS TO BE HELD IN KHAYELITSHA ON 13 FEBRUARY 2007.

The Archbishop Emeritus Desmond Tutu said the following in support of the All Africa Special Report on Ending All Forms of Legalised Violence¹: *"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."*

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 Africa²: *"...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 where their fundamental human rights are guaranteed."* and *"Children are entitled to the rights of full citizenship; they are not the property of adults."*

¹ *Ending Legalised Violence Against Children, All Africa Special Report* Messages of support

² Address at the 1st National Children's Rights Advisory Council Meeting, 10 March 2006, Pretoria

1. EXECUTIVE SUMMARY

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 a focus on this is critical to the protection of South African Children. 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 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 in this bill.

Corporal Punishment (Chapter Seven, Section 139)

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 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 than corporal punishment and result in greater self discipline and responsibility of children.

Banning corporal punishment does not mean that there will be no discipline of children. The ban must be supported by 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.

Child abuse is grossly underreported in South Africa, thus all reports of corporal punishment must be treated as possible "*maltreatment or abuse*" (Section 150(1)(i)) and managed as any other such case would be by the child protection and criminal justice systems. Minor acts are unlikely to be prosecuted by the state because of the decision of the courts not to institute prosecution in minor matters. Prosecuting parents is seldom in the best interests of the child and thus measures must be put in place to ensure that parents are referred to early intervention services to provide education and support before prosecution is considered.

2. 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, especially those involving child abuse and neglect. RAPCAN engages in a number of activities to help prevent child abuse and neglect and further 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.

3. 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.

4. SUBMISSION ON CORPORAL PUNISHMENT – SECTION 139

We propose that the title of this section be changed from '**corporal punishment**' to '**discipline of children**'. The purpose of this section extends beyond corporal punishment and encompasses education on appropriate methods of disciplining children. We believe that these measures must and will also address 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.*”³ 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.*”⁴

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....*”.

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 protected⁵, 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 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 tortured⁶ or to be treated or punished in a cruel, inhuman or degrading way⁷, 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 freedoms⁸ and that the state may not unfairly discriminate against anyone on the grounds of age

³ General Comment No. 8 (2006) paragraph 22 p6

⁴ Ibid paragraph 18 p6

⁵ Section 10 of Act 108 of 1996.

⁶ Section 12 (1)(d) of Act 108 of 1996.

⁷ Section 12(1)(e) of Act 108 of 1996.

⁸ Section 9(1)(2)(3) of Act 108 of 1996

(amongst others). However the defence provided to parents who beat their children 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 support the wording of section 139(1) in principle as it reinforces the constitutional imperative to protect children from physical punishment. The section must extend to protection from humiliating and degrading punishment. For the sake of clarity we recommend the inclusion in this section of a description of the constitutional rights referred to.

139. (1) Any persons, 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 sections 12 (1)(c), (d) and (e) of the Constitution in that no child may be subjected to any form of violence, including corporal or other forms of humiliating punishment, from either public or private sources, torture or be punished in a cruel, inhuman or degrading way.

In order to ensure equal protection for children under the law and in order to fulfill our international obligations we recommend that the common law defence of *Moderate and Reasonable Chastisement* be scrapped in a new section 139 (2).

(2) The common law defence of reasonable chastisement available to persons referred to in subsection 139(1) in any court proceeding is hereby abolished.

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 age⁹.

The following quotes are taken from *South African Children's Experiences of Corporal Punishment 2005*¹⁰:

⁹ Dawes A, De Sass Kropiwnicki Z, Kafaar Z & Richter L (2005), *Corporal Punishment of Children, A South African National Survey* Save the Children

¹⁰ Ibid

"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

Corporal punishment frequently extends beyond "reasonable" or "moderate" chastisement. Children are routinely exposed to legal violence, humiliation and indignity by adults.

To whose culture does corporal punishment belong?

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 18¹¹ 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.

4.3 PROMOTING POSITIVE DISCIPLINE IN SOUTH AFRICA

Methods of disciplining children

"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"¹².

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

¹¹ Clacherty G, Donald D & Clacherty A (2005), *South African Children's Experiences of Corporal Punishment* Pretoria: Save the Children Sweden

¹² www.dphilpotlaw.com/html/glossary.html

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 punishment¹³.

The effects of corporal and humiliating punishment

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 humiliated¹⁴, it also undermines trust between the child and the parent¹⁵. 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.

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. Studies¹⁶ 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 percent¹⁷.

The use of corporal punishment in children is linked to antisocial, delinquent and criminal behaviour later in life¹⁸. Children reported the following regarding how they felt after corporal punishment¹⁹:

"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

¹³ Alexandrecu G, Bhavania YG, Derib A, Habasch R, Horno P, Nilsson M, Noueri R, Pierre-Plateau D, Sequeira L, Sonesson 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

¹⁴ Gershoff E (2002) Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review. Columbia University p542

¹⁵ Gershoff E (2002) p542

¹⁶ 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

¹⁷ 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*

¹⁸ Gershoff E (2002) P542

¹⁹ Clacherty G, Donald D & Clacherty A (2005), *South African Children's Experiences of Corporal Punishment* Pretoria: Save the Children Sweden

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

Positive discipline methods recognize that consistency, self control and routine need to be taught to children from an early age²⁰. 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 but no 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 banned²¹, showing that young adults probably became less violent not more so.

Support, Information and Education for Parents

According to research²² the strongest factor leading to the use of corporal punishment is social and cultural support for corporal punishment. We therefore support the provisions in section 139 regarding ensuring the availability of programmes promoting appropriate discipline at home and at schools.

²⁰ Cronan M, (2005) *Discipline is Not a Dirty Word*

²¹ Durrant J (2000) *A Generation Without Smacking: The impact of Sweden's ban on physical punishment* Save the Children p 16

²² 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*

Many parents don't know how to discipline their children except through using corporal punishment, it is for this reasons that a ban on corporal punishment must be accompanied by broad based education programmes to provide parents with information and support in developing positive parenting skills.

It is critical to develop public support for positive parenting strategies. 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 punishment²³.

Education on positive parenting and discipline will assist in addressing both physical and other forms of humiliating punishment of children to ensure greater protection to children from physical and psychological harm.

Recommendation

We fully support the content of subsection 139(3) 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..

(3) 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.**

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

(5) 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

²³ Barn Ombudsmannen *The Swedish Corporal Punishment Ban*, www.bo.se/Adfinity.aspx

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.

4.5 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, adults including family members, teachers and police often fail to protect children from serious physical abuse, it is in order to address this and ensure that serious abuse of children is addressed that an unequivocal ban must be instituted.

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 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.

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 is consistent with this section.

We submit that the child’s best interests will be better served by the referral of parents to early intervention services that promote positive parenting methods and that provide 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. Section 46(1)(g) states that the children’s court may order a child, parent or care-giver to early intervention or/and family

preservation programmes. Section 155(8) states that if a court finds that a child is not in need of care and protection the court can still make an order for early intervention services. Section 148 of the Amendment Bill states that a court may order early intervention services if the court considers the provision of such services appropriate in the circumstances. We believe that these provisions must and will be brought into effect in relation to managing cases of physical abuse by parents.

We submit that criminal prosecution of parents for using corporal punishment should only be instituted when early intervention strategies have failed and this form of abuse has continued. We propose that in order to deal properly with serious abuse cases, only on the recommendation of a social worker in consultation with a prosecutor should a parent be prosecuted before early intervention programmes have been tried, this will address cases of parental abuse that are serious.

Once a report of corporal punishment is made it must be considered as possible *“maltreatment, abuse, deliberate neglect or degradation”* as set out in section 150(1) of the Act, which lists the categories of children who are to be considered in need of care and protection and includes in section 150(1)(i) a child who is *“being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose control the child is.”* As with any other situation of suspected abuse a social service professional would do a preliminary investigation into the report and depending on the findings of that process will refer the matter to a children’s court enquiry or the criminal justice system if necessary. As is currently the case, unsubstantiated reports and minor cases will not necessitate the institution of these processes although other interventions may be indicated.

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 provide the necessary protection to children whose 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.

With regard to the prosecution of trivial matters, it is noted that courts do not prosecute trivial matters, for example, courts do not currently 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*”²⁴ Interestingly Countries that have instituted legal bans on the use of parental corporal punishment do not indicate an increase in the rate of prosecution of parents for abuse²⁵.

Recommendation

(6) Children subjected to inappropriate punishment must be dealt with as per section 150(1)(i) of the Act.

(7) Subject to subsection (8) a parent, care-giver, or any person holding parental responsibilities and rights in respect of a child who is found to have been subjecting a child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.

(8) prosecution of a parent or person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment should only be instituted-

(a) when early intervention services or family preservation programmes have failed; or

(b) when early intervention services or family preservation programmes are deemed by a designated social service professional in consultation with the NDPP to be inappropriate

²⁴ 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

²⁵ Research in Sweden indicates that an increase in reports of abuse but no increase in prosecution.. JE Durrant (2000) *A Generation Without Smacking: The impact of Sweden's ban on physical punishment* Save the children pp11- 14