THE USE OF CORPORAL PUNISHMENT IN THE HOME

1. Introduction

Recently, the SACBC Parliamentary Liaison Office had the opportunity to address the Child Protection Forum on the issue of positive discipline. This submission includes and expands on that presentation.

The Children's Amendment Bill raised the issue of the prohibition on corporal punishment in the public sphere, especially in schools, being extended to the private/domestic sphere. Clause 139 of the Amendment Bill stated that: "A person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect to fullest extent possible the child's right to physical integrity as conferred by section 12(1)(c), (d) and (e) of the Constitution" [1]

As the report of the South African Law Reform Commission points out, the "parental use of corporal punishment is one of the most controversial and emotionally charged topics in the parent-child relationship".[2] The controversy resulted in children's rights organisations being at odds with some church and parent groups, as well as with traditional leaders. Salient issues included the rights of children to bodily integrity and protection from harm, the autonomy of the family, the assumed right of parents to the 'reasonable chastisement' of their children, and differing understandings of what constitutes appropriate discipline.

In terms of the above the Clause was seen as compromising parental authority and withdrawing an effective method of discipline which had been a tried and tested child rearing practice for generations. Furthermore, the Clause was seen as an attempt to criminalise parents who may have committed minor infractions of the 'ban'. The issue was further complicated by the National Prosecuting Authority submitting that the ban would be

both difficult to prosecute and difficult to punish. Sensational media headlines suggesting that fines of up to R500 would be imposed on parents who smacked, slapped or hit their children alarmed public opinion. Parents who did use corporal punishment felt criticized and regarded as bad parents and resented what they perceived to be a negative characterization of their parenting skills. There was also a tendency to equate the 'ban' of corporal punishment at home with permissive and irresponsible parenting. [3] Alistar Nicholson suggests that "This stereotype has been used by the media, opponents of reform, and many politicians to trivialize the significance of the issue of the punishment of children and as a means of avoiding it. Any discussion is almost immediately diverted to this issue, with which so many of the public identify, and it is suggested that any limitation on the right of parents to correct a toddler in this way represents a serious interference with their rights as parents to protect their children, leaving them liable to potential prosecution". [4]

The controversy surrounding the Clause threatened to delay the passage of the Children's Act and was consequently withdrawn in the interests of providing the children of South Africa with the much needed services and protections set out in the Bill which subsequently become the Children's Act No. 38 of 2005. The exclusion of this Clause was greeted with disappointment and dismay from several members of the Parliamentary Portfolio Committee on Social Development, Children's Rights Advocacy Groups and Child Care experts.

However, the nature of the debate and the focus on technicalities of what constitutes a 'good' or 'bad' smack and whether corporal punishment is carried out with love- which renders it a corrective but, in the long term, harmless practice- removes the Clause from the context and guiding principles of the Children's Act.. The Children's Act asserts that the 'best interests of the child' are paramount in any matter regarding the child.

Furthermore, the focus on what the Clause 'takes away' detracts from the consideration of what alternative approaches to the discipline of children have to offer to both children and their parents. In the intervening period those advocating for the inclusion of the Clause have reflected on the concerns raised above, conducted rigorous research and established a Positive Discipline Working Group which has focused on the importance of Positive Discipline by explaining what it is, the positive and long term outcomes of the approach and the provision of resources for parents exploring different parenting strategies which respect the corporal/bodily integrity of children.

2. The Corporal Integrity of Children

The 1994 interim Constitution included a provision outlawing "cruel, inhuman or degrading treatment or punishment" and asserted the 'best interests of the child' standard. As Graham Travers points out "The final Constitution, which became law in February 1997, went even further. The Bill of Rights now applies to relationships between State and Subject as well as Subject and Subject. Section 12 provides "Everyone has the right to freedom and security of the person, which includes the right - ... [c] to be free from all forms of violence from either public or private sources ... and [e] not to be treated or punished in a cruel, inhuman or degrading way". [5] Arguably, the Constitution protects children from all forms of corporal punishment and asserts their right to bodily integrity, dignity and equality. Furthermore, the Constitution provides for the consideration of international conventions when interpreting the Bill of Rights and developing the common law.

The first international convention signed by the newly constituted parliament was the United Nations Convention on the Rights of the Child. The Convention states that "State parties shall take all appropriate legislative, administrative, social and

educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".[6] This protection clearly extends to the corporal punishment of children in the domestic sphere while in the care of their parents or caregivers. It is impossible to "avoid the conclusion that the interpretation of Article 19 by the Committee on the Rights of the Child is unequivocal: corporal punishment is a serious violation of both the dignity and the physical integrity of the child and the "appropriate" measures which States are required to take in order to protect children from all forms of physical or mental violence including both legislative measures prohibiting all corporal punishment within the family and public education programmes".[7]

Furthermore, the African Charter on the Rights and Welfare of the Child asserts that "Parents or other persons responsible for the child…shall have the duty to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child".[8]

In their study of 'Childrearing, Discipline and Violence in Developing Countries' Lansford and Deater-Deckard note that the UN Convention on the Rights of the Child "focused governments around the world on reducing violence against children and increasing parents' competence in non-violent responses to children".[9] Furthermore, "there is no doubt that those countries that preserve the defence of reasonable chastisement, and do not legally ban the corporal punishment of children, are in clear breach of the CRC".[10]

3. The Social Teaching of the Catholic Church

The Second Vatican Council document 'The Pastoral Constitution of the Church in the Modern World' declared that the "Church has always had the duty of scrutinizing the 'signs of the times' and of interpreting them in the light of the Gospel".[11] This is a contextual approach and calls for an understanding and analysis of the world. "The joys and the hopes, the griefs and the anxieties of the people of this age, especially those who are poor or in any way afflicted, these are the joys and hopes, the griefs and anxieties of the followers of Christ... the council focuses its attention on the whole human family along with the *sum* of those realities in the midst of which it lives". Furthermore, "Public authority has a duty to 'recognize, protect and promote' the prosperity of home life. Children in need should be protected by prudent legislation and other undertakings which provide the assistance and the help that they need." The ethos of the document is the dignity of all human persons and a concern with social justice and peace.

In a subsequent document, the 'Charter on the Rights of the Family', the Church asserted that the state "must protect the family through measures of a political, economic, social and juridical character, which aim at consolidating the unity and stability of the family so that it can exercise its specific function". Moreover, the document noted that "many families are forced to live in situations of poverty which prevent them from carrying out their role with dignity".[12] Speaking at a Special Session of the United Nations on Children, Cardinal Trujillo said "It seems that full recognition of the child's human dignity, of all children, images of God...has been lost, and this must be recovered. The true measure of a society's greatness is the extent to which the society recognises and protects human dignity and human rights and ensures the well-being of all its members, especially children".[13]

There is nothing in the Catechism of the Catholic Church which supports the right of parents to use corporal punishment. The New Zealand Catholic Bishops' Conference asserts that "Our basic Christian teaching applies equally to children as to adults: *every person is made in the image and likeness of God and therefore has an innate dignity*. We invoke this teaching in confirming our commitment to support everything that will promote the protection of children".[14] Furthermore, Pope John Paul II in his 'Letter to Children' emphasises that "children suffer many forms of violence from grown-ups....How can we not care, when we see the suffering of so many children, especially when this suffering is in some way caused by grown-ups".[15]

4. The Sum of our Realities

Contemporary South Africa is characterised by astonishing, and deeply disturbing, levels of inter-personal violence. Parents and other primary care-givers today are confronted with overwhelming socio-economic difficulties and challenges which impact on their ability to successfully raise their children. Escalating poverty, rising unemployment, poor service delivery, substance abuse, domestic violence, and the stresses of life in informal settlements all cause enormous strain. There is a high incidence of crimes against children. South Africa experiences a high incidence of all forms of violent crime – rape, homicide, assault. Furthermore, there is an increasing trend toward the 'normalization' of violence as socially acceptable behaviour. Clearly, existing strategies have not been able to contain this violence. Children grow up within the context of structural and physical violence.

There is a profound lack of psycho-social support. The increasing number of non-marital births, absent fathers and the decline of the extended family mean that many mothers are bringing up children in isolation and are dependant on state grants for an

income. Depression is common and this engenders apathy and disengagement in the adequate performance of everyday tasks-including the care and supervision of children. Many mothers/parents are young and unprepared. The quality of nurture children receive has major consequences for their physical and psychological well-being, which in turn plays a determining role in the kind of society we are 'growing'. "Parents' responses to conflict with their children are an important part of the way that parents socialize children because their responses can correct misbehaviour and promote desired behaviours in the future". [16]

5. Vulnerable Households

We know that there is no 'typical' South African family. Rather, there are a wide variety of family living arrangements, and migration continues to play a role in the structure of households and the responsibility for the care of children. Research suggests that some households in which children live are particularly vulnerable and experience high levels of socio-economic and psychological stress. Such households include: households where the parents are young and inexperienced; 'skip generational' households,[17] households with a chronically ill member; households where a member has committed a criminal offence; households where there is substance abuse; households where there is domestic abuse; households where a child has been found in need of care; and single parent households. There are many such households and there is a paucity of support services for them. The decline of the support and wisdom of the extended family further contributes to the sense of isolation experienced by many parents/primary care givers.

6. The Socialization of Children

"Healthy families help and support children and family members in their development by providing a safe space to grow and experiment with boundaries and by providing positive role models for relationships".[18] All families experience times of crisis and chaos – and then return to a normal, more containing and predictive home environment. How these are dealt with is the determinant factor. Examples of such crises may include illness/disability in the family, bereavement, a traffic related accident, substance abuse, being a victim of crime, or relocation. Children learn how to be in the world by watching how the adults in their world relate to each other and to children; this is particularly the case within the home. Children brought up in an environment where any form of abuse is common (this includes ridicule and other forms of verbal abuse), may grow up to regard this as 'normal', as they do not have the maturity or experience to interpret this experience differently.

Commenting on the National School Violence Report, the ISS notes that "School violence is inextricably related to violence and victimisation at home and in our neighbourhoods – children whose communities are violent and who are exposed to violence at home and in their neighbourhood were found to be more likely to also experience violence at school. It is the complex relationship between personal and social spaces that makes violence reduction such a challenging problem to address".[19]

In discussing the negative consequences of corporal punishment taken from long term studies of children who were spanked as children, Catholic psychotherapist Gregory Popcak writes that "girls who are spanked show a greater risk of ending up in abusive marriages; boys who are spanked have higher than average chances of being abusive spouses. Adults who were spanked as children tend to be less happy in their marriages. Adults who were spanked as children tend to *reject the religion of*

their parents". [20] There is an inter-generational aspect to domestic violence both in terms of those who perpetrate it and those who accept it as 'normal'.[21]

7. The Positive Discipline Approach

Positive discipline is not only about not using corporal punishment; it is about providing a consistently nurturing and containing environment that is as predictable as possible. Children who are able to explore and experiment with boundaries within a safe, secure environment are less likely to experiment or engage in risky behaviour in adulthood, as they are 'self-contained'.

Again Gregory Popcak writes that "there is an important distinction to be made between discipline and punishment... discipline assumes a teacher-student relationship, and its main objective is to teach the offender what to do *instead* of the offence". He continues "discipline is less concerned with teaching compliance with the law than it is with teaching children to have deeper, more respectful and loving relationships". [22]

8. What does Positive Discipline Teach Children?

Positive discipline teaches children a variety of vital life skills. It teaches alternative and appropriate ways of dealing with anger, frustration and disappointment; it instils tolerance and discourages prejudice; it builds emotional intelligence; children have their feelings validated and this helps to develop a 'feelings' vocabulary; it fosters an ability to compromise; it encourages self reflection and the ability to anticipate consequences and make informed choices. Positive discipline promotes the capacity to

cope with peer pressure. It discourages attention seeking behaviour. It engenders tolerance and a sense of human dignity, justice, and bodily integrity. It develops the patience to deal with delayed gratification as well as respect for appropriate authority and laws. Importantly, it builds self-esteem and confidence. Positive discipline is an investment in the future.

9. What does Positive Discipline Teach Parents?

The positive discipline approach has much to teach parents too. It focuses on the positive; it encourages self-reflection, consistency, flexibility and reliability. It results in more conscious use of language and an awareness of the way we as parents and caregivers deal with anger and frustration. Do we model the kind of behaviour that we would like our children to emulate? It provides perspective and reminds us to listen to the child's perspective. In short it is about more conscious and creative parenting.

Furthermore, this approach serves as a reminder to parents and care-givers that children are physically small and weak, that they are vulnerable to abuse both emotionally and physically, and that the society in which children are reared is characterised by extraordinarily high levels of inter-personal violence from which the domestic sphere is in no way exempt.

10. The Personal and the Social

Although the connections are not always obvious, personal change is inseparable from social and political change. [23] Positive Parenting cannot take place in a vacuum. Parenting is difficult and as we have seen that there are a great many socio-economic and psychological challenges that contribute to these difficulties. However, Dr Pinheiro points out that "children's rights to life,

survival, development, dignity and physical integrity do not stop at the door of the family home, nor do the states' obligations to ensure these rights for children". [24]

11. Appropriate Parent Support and Education

In their study of 24 developing countries, all of which had ratified the UN Convention on the Rights of the Child, and in so doing, indicated their commitment to child protection, Lansford and Deater-Deckard point out that while their findings "suggest wide variation across countries with respect to the use of violence against children; countries with low levels of educational attainment are at particularly high risk for violence against children. Given both the widespread use of violence and the widespread belief in the necessity of using physical punishment in some countries, efforts to eliminate violence against children will need to alter the belief that physical punishment is necessary to rear a child as well as provide caregivers with non-violent alternatives to replace violence"[25].

The delivery of social services and family support services that aid in the development of social competencies and behaviours that contribute to the health and welfare of families is critical. The promotion of positive discipline must be accompanied by strategies that educate parents in alternative methods of discipline, in understanding the psycho-social stages of development of the child, and in the recognition of age-appropriate behaviours. These services should be included in childcare centres, early childhood development centres, clinics, churches and community centres. Such programmes must provide parents with the encouragement and tools that they need to be effective parents. Information must be provided in an easily accessible form in terms of both availability and format. The media[26] should be used to popularize positive discipline as a viable and successful alternative to corporal punishment.

Support for new mothers is imperative.[27] The 'branding' of positive discipline programmes should be presented in a non-judgemental manner. The purpose of these programmes is not to criticise parents but rather to empower them. Positive discipline should be seen as an important intervention in the life of children and as a significant contribution toward the building of a better and less violent society.

12. Respect, Care and Love

In a country where the corporal integrity of children is violated on a daily basis, where the rape and murder of children is commonplace, where gang violence permeates schools, where children disappear, and where domestic violence is pervasive, the argument that it is time to hold up an alternative non-violent and positive approach to problem solving, that is characterised by love, respect and consistency, is a powerful one. We need collective action that nurtures children in such a way that they grow up with a strong sense of the bodily integrity and dignity of all and the capacity to engage in relationships of equality and reciprocity.

"As we set about building a new South Africa, one of our highest priorities must therefore be our children. The vision of a new society that guides us should already be manifest in the steps we take to address the wrong done to our youth and to prepare for their future. Our actions and policies, and the institutions we create, should be eloquent with care, respect and love". [28]

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[1] Section 76 Children's Bill

[2] Report of the Law Reform Commission

[3] The writer of this Submission attended all the Public Hearings regarding the Children's Bill as well as attending the Parliamentary Portfolio Committee on Social Development Clause by Clause deliberations and is therefore well acquainted with the differing positions regarding Clause 39

[4] Nicholson, N, 'Choose to Hug, Not Hit' Family Court Review, Vol. 46 No. 1, January 2008 11–36

[5] 'Corporal Punishment of Children: Developments in South Africa', Letter of 12/19/98 to PTAVE from Graham Travers. At the time Graham Travers was a judicial officer in the Pretoria Magistracy

[6] Article 19 of the UN Convention on the Rights of the Child, 1985

[7] Nicholson, N, 'Choose to Hug, Not Hit' Family Court Review, Vol. 46 No. 1, January 2008 11–36

[8] Article 20 of the African Charter on the Rights and Welfare of the Child, 1998. It should be noted that the African Charter was conceived as an extension of the UN Convention on the Rights of the Child and sought to provide additional protections for children within an African context

[9] Lansford, J and Deater-Deckard, K, in Child Development, January/February 2012, Volume 83, Number 1, Pages 62–75

[10] Nicholson, N, 'Choose to Hug, Not Hit' Family Court Review, Vol. 46 No. 1, January 2008 11–36

[11] 'Gaudium et spes', Pastoral Constitution on the Church in the Modern World, 7th December, 1965

[12] Charter on the Rights of the Family, 22nd October 1983

[13] Cardinal Trujillo, Representative of the Holy See, addressing the Special Session of the United Nations on Children, 2002

[14] 'The Protection of Children', New Zealand Catholic Bishops Conference, 28th October 2002

[15] Pope John Paul II, 'Letter to Children' 13th December 1994. 1994 was the designated 'Year of the Family' in the Catholic Church

[16] Lansford, J and Deater-Deckard, K, in Child Development, January/February 2012, Volume 83, Number 1, Pages 62–75

[17] The HIV/AIDS pandemic has resulted in the absence of the generation responsible for the care of the elderly and the up bringing of children. Grandmothers have borne the brunt of this crisis in child care.

[18] Klipin, J. The Adult Child', Penguin Books, 2010

[19] Gould, C and Mofana, R, 'Spare the rod: Why we need to stop corporal punishment', Institute for Security Studies, May 2013

[20] 'Ten Reason's I Can't Spank: A Catholic Counsellor's Critical Examination of Corporal Punishment', Gregory K. Popcak, www.stophitting.com/religion/christian/10reasons.php

[21] See 20 above

[23] Harriet Lerner, psychologist, feminist and children's book author has written extensively on the psychology of women and family relationships, revising traditional psychoanalytic concepts to reflect feminist family systems perspectives.

[24] Launch of the UN Campaign to Stop Violence Against Children, 9th October 2006

[25] Lansford, J and Deater-Deckard, K, in Child Development, January/February 2012, Volume 83, Number 1, Pages 62–75

[26] Most people have access to some form of media.

[27] Clinic Sisters no longer visit new mothers at home once they have been discharged. This is regrettable in that these visits, while providing information on various infant related matters ranging from lactation advice, how deal with nappy rash, how to manage a colicky baby, good nutrition, reminders of immunization schedules and how it feels to be a new mom. Another unfortunate consequence is that these visits alerted health care and social services of the need for intervention in situations which may constitute risk. These instances may include household food insecurity, neglect, failure to keep clinic appointments, inappropriate handling of the baby. Unfortunately, our present functioning social welfare system means that social services/social workers only become involved once instances of neglect and/or neglect have occurred.

[28] Nelson Mandela at his speech at the launch of his Children's Fund