



Save the Children

Comments on the Domestic Violence Amendment Bill

Submission in response to the Domestic Violence Amendment Draft Bill, 2020

Published by the Department of Justice and Correctional Services to amend the
Domestic Violence Act, 1998

For the attention of Mr H. Du Preez: HDuPreez@justice.gov.za,
Ms V. Letswalo: Vletswalo@justice.gov.za
Department of Justice and Correctional Services

Submitted by Save the Children South Africa
Director of Programmes: Petronella Sebele
Telephone: 012 430 7775
Email: psebele@savethechildren.org.za

Submission endorsed by:

Children's Institute

ChildSafe

Disabled Children's Action Group (DICAG)

Equal Education Law Centre

Evangelical Lutheran Church in Southern
Africa

Give a Child a Family

Global Initiative to End All Corporal
Punishment of Children

Gun Free South Africa

Head of General Paediatric Specialist
Services Tygerberg Hospital at Western
Cape Government

Mosaic Training, Service & Healing Centre
for Women

Phaphama Initiatives

Protective Behaviours Southern Africa

South African Medical Research Council

SVRI: Sexual Violence Research Initiative

World Vision

Joan van Niekerk: Consultant

24 April 2020

Contact Details of Endorsees

Children's Institute:

Director: Shanaaz Mathews
Telephone: 083 246 1676
Email: shanaaz.mathews@uct.ac.za

Disabled Children's Action Group (DICAG)

National Coordinator: Sandra Ambrose
Telephone: 021 761 3531
Email: sambrose37@gmail.com

Equal Education Law Centre

Attorney: Chandre Stuurman
Telephone: 021 461 1421
Email: chandre@eelawcentre.org.za

Global Initiative to End All Corporal Punishment of Children

Africa Project Coordinator: Sonia Vohito
Telephone:
Email: sonia@endcorporalpunishment.org

Head of General Paediatric Specialist Services Tygerberg Hospital at Western Cape Government

Head: Elmarie Malek
Telephone: 082 462 0858
Email: Elmarie.Malek@westerncape.gov.za

Phaphama Initiatives

Contact: Thamsanqa "Afika" Mzaku
Telephone: 083 245 5842
Email: afrika@phaphama.org

South African Medical Research Council

Executive Scientist: Rachel Jewkes
Telephone: 012 339 8525
Email: Rachel.Jewkes@mrc.ac.za

World Vision South Africa

Director: Bruce Layzell
Telephone: 011 285 1700
Email: bruce_layzell@wvi.org

Childsafe:

Director: Yolande Baker
Telephone: 064 004 2370
Email: yolande@childsafe.org.za

Evangelical Lutheran Church in Southern Africa

Pastor: Joel Mokonoto
Telephone: 082 412 5673
Email: mokonotojoel@gmail.com

Give a Child a Family

Executive Director: Monica Woodhouse
Telephone: 0829275854
Email: monica@gcf.org.za

Gun Free South Africa:

Director: Adèle Kirsten
Telephone: 082 853 9776
Email: adele@gfsa.org.za

Mosaic Training, Service & Healing Centre for Women

Director: Tarisai Mchuchu
Telephone: 021 761 7585
Email: tarisai@mosaic.org.za

Protective Behaviours Southern Africa

Chairperson: Hayley Walker
Telephone: 081 436 8445
Email: hayley@pb.org.za

SVRI: Sexual Violence Research Initiative

Executive Director: Elizabeth Dartnell
Telephone: 012 339 8527
Email: Elizabeth.Dartnell@mrc.ac.za

Dr. Joan van Niekerk

Child Rights and Protection Consultant
Telephone: 083 303 8322
Email: joanvn@iafrica.com

Introduction

Save the Children South Africa (SCSA) warmly welcomed the Constitutional Court judgment on 18 September 2019, confirming a 2017 decision by the High Court of Gauteng which had found the common law defence of “reasonable or moderate chastisement” to be unconstitutional under articles 10, 12(1)(c) and 28(2) of the Constitution.¹ Previously, common law recognised parents’ power “to inflict moderate and reasonable chastisement on a child for misconduct provided that this was not done in a manner offensive to good morals or for objects other than correction and admonition.”² With this decision, the Court effectively banned the use of all corporal punishment in all settings, as criminal provisions against assault now apply equally to children, extending already established legislation from 1997 banning corporal punishment in schools to the home environment and beyond.³

While this judgment made South Africa the 57th state worldwide and 8th African state to prohibit all corporal punishment of children, SCSA is calling on the Government to maximise the impact of this decision by harmonising domestic legislation with the Constitution and enacting an explicit prohibition of all corporal punishment in legislation. Under the standards for law reform set out by the United Nations Committee on the Rights of the Child in General Comment No. 8,⁴ and as agreed by the African Committee of Experts on the Rights and Welfare of the Child,⁵ it is crucial that the law sends a clear message that all corporal punishment is prohibited in order to counter often deeply held views that it is acceptable or necessary.

Physical punishment of a child in the home and intimate partner violence are closely linked. The social settings that permit the use of violence against children, including corporal punishment similarly foster the use of intimate partner violence, allowing their coexistence. The prevailing social and cultural context provides the space in which men’s violence towards women is considerably tolerated.⁶ Women anticipate and tolerate the use of violence under certain conditions and men’s use of violence is associated with controlling and violent behaviour of a man towards his wife/partner and children. Intimate partner conflict in the household increases the possibility for physical punishment of the child by both men and women in the household.⁷ The determinants of violence against children demonstrates the increased risk for both emotional and physical abuse when children live in households where there is domestic conflict.⁸ Furthermore, girls who witness abuse between their parents or in the home are more likely to experience partner violence as adults, while boys who witness abuse between their parents are more likely to perpetrate violence within the community and intimate relationships.⁹

In light of the above, SCSA would suggest the following amendments to the Domestic Violence Amendment Bill, in order to ensure the Bill clearly and explicitly prohibits all corporal punishment in the home. Please note that the definition of “corporal punishment” suggested is the established international human rights law definition.

We also note that a draft Children’s Third Amendment Bill was under discussions in 2018 which included provisions on child discipline and provides the Government with a further opportunity to showcase their commitment to strengthen and enforce the ban. We encourage the Government to enact the Third Amendment Bill, and to continue the work with the Positive Parenting Strategic Group, to clarify the implementation of the ban and send a clear message that corporal punishment is unacceptable.

Proposed amendments to the Domestic Violence Amendment Bill to explicitly prohibit all corporal punishment in legislation

Current text of the Domestic Violence Amendment Bill 2020	Proposed amendments to the Amendment Bill 2020	Comment
<p>Section 1(g) of the Bill amends section 1 of the Domestic Violence Act 1998, as follows:</p> <p>“(g) the substitution for the definition of “domestic violence” of the following definition:</p> <p>“‘domestic violence’ means -</p> <ul style="list-style-type: none"> (a) physical abuse; (b) sexual abuse; (c) emotional, verbal or psychological abuse; (d) economic abuse; (e) intimidation; (f) harassment; (g) spiritual abuse; (h) damage to property; (hA) elder abuse; (hB) coercive behaviour; (hC) controlling behaviour; ...” 	<p>Amend section 1(g) of the Bill to include “corporal punishment and child neglect” in the definition of domestic violence, as follows:</p> <p>“(g) the substitution for the definition of “domestic violence” of the following definition:</p> <p>“‘domestic violence’ means -</p> <ul style="list-style-type: none"> (a) physical abuse; (b) sexual abuse; <u>(bA) child neglect;</u> (c) emotional, verbal or psychological abuse; <u>(cA) all forms of corporal punishment;</u> (d) economic abuse; ...” 	<p>We propose the inclusion of two additional definitions under “domestic violence” to include “child neglect” and “all forms of corporal punishment”.</p> <p>The additions will expand the current definitions to include forms of violence and maltreatment against children that are often ignored because of the difficulties in obtaining substantial proof as well the intersections between violence against women and children.</p>

Current text of the Domestic Violence Amendment Bill 2020	Proposed amendments to the Amendment Bill 2020	Comment
<p>Section 1(b) of the Bill amends section 1 of the Domestic Violence Act 1998, as follows:</p> <p>(b) the insertion after the definition of “arm” of the following definitions:</p> <p>“child’ means a person under the age of 18 years;” and</p> <p>“coercive behaviour’ means an act or pattern or acts of assault, threats, humiliation or other abuse that is used to harm, punish, or cause fear;”</p> <p>“controlling behaviour’ means causing a person to be dependent or subordinate by isolating them from sources of support, exploiting their resources for personal gain or depriving them of the means needed for independence, resistance or escape and regulating their everyday behaviour;”;</p> <p>(c) the substitution for the definition of “court” of the following definition: ...”</p>	<p>Amend section 1(b) to include a definition of “corporal punishment”, as follows:</p> <p>“(b) the insertion after the definition of “arm” of the following definitions:</p> <p>“child’ means a person under the age of 18 years;” and</p> <p>“coercive behaviour’ means an act or pattern or acts of assault, threats, humiliation or other abuse that is used to harm, punish, or cause fear;”</p> <p>“controlling behaviour’ means causing a person to be dependent or subordinate by isolating them from sources of support, exploiting their resources for personal gain or depriving them of the means needed for independence, resistance or escape and regulating their everyday behaviour;”</p> <p>“corporal punishment’ means <u>any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light;</u>”;</p>	<p>We propose the inclusion of the definition of “corporal punishment” as it stands in the United Nations Committee on the Rights of the Child’s General Comment No. 8.</p>

Current text of the Domestic Violence Amendment Bill 2020	Proposed amendments to the Amendment Bill 2020	Comment
<p>Section 1 of the Bill amends section 1 of the Domestic Violence Act 1998, as follows:</p> <p>“(k) the substitution for the definition of “emotional, verbal and psychological abuse” of the following definition:</p> <p>“emotional, verbal [and] or psychological abuse’ means [a pattern of] degrading or humiliating conduct towards a complainant or a related person, including</p> <ul style="list-style-type: none"> - (a) [repeated] insults, ridicule or name calling; (b) [repeated] threats to cause emotional pain; [or] (c) the [repeated] exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's or a related person’s privacy, liberty, integrity or security; or (d) inducing fear;”; <p>(l) the substitution for the definition of “harassment” of the following definition:</p> <p>“harassment’ means directly or indirectly engaging in [a pattern of] conduct that [induces the fear of] the respondent knows or ought to know...”</p>	<p>Amend Section 1 of the Bill to include a definition of “child neglect” as follows:</p> <p>“(k) the substitution for the definition of “emotional, verbal and psychological abuse” of the following definition:</p> <p>“emotional, verbal [and] or psychological abuse’ means [a pattern of] degrading or humiliating conduct towards a complainant or a related person, including</p> <ul style="list-style-type: none"> - (a) [repeated] insults, ridicule or name calling; (b) [repeated] threats to cause emotional pain; [or] (c) the [repeated] exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's or a related person’s privacy, liberty, integrity or security; or (d) inducing fear;”; <p><u>(kA) child neglect is defined as any confirmed or suspected egregious act or omission by a parent or other caregiver that deprives a child of basic age-appropriate needs and thereby results, or has reasonable potential to result, in physical or psychological harm.”</u></p>	<p>We propose that the inclusion of the definition of “child neglect” as it stands in the Children’s Act be included under Section 1 of the Bill.</p>

Current text of the Domestic Violence Amendment Bill 2020	Proposed amendments to the Amendment Bill 2020	Comment
<p>Insertion of Section 2A in Act 116 of 1998</p> <p>“2A (1) (d) render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment;”</p> <p>...”</p>	<p>Amend Section 2A(d) to include “all”, as follows:</p> <p>“2A (1) (d) render such assistance to <u>all the complainants</u> as may be required in the circumstances, including assisting or making arrangements for the <u>complainants</u> to find a suitable shelter and to obtain medical treatment;”</p>	<p>We propose that the word “<u>all</u>” be included in instruction of assisting victims of domestic violence as many levels of discrimination when reporting domestic violence have been experienced by other categories of our society, including men and migrants. Additionally, we propose that dependants of a complaint be included in the need for assistance.</p>
<p>Insertion of Section 2B in Act 116 of 1998</p> <p>“2B (1)(a) A person who has knowledge, reasonable belief or suspicion that an act of domestic violence has been committed against a child, person with a disability or an elderly person must report such knowledge, reasonable belief or suspicion immediately to a social worker or police official.”</p> <p>...”</p>	<p>Amend Section 2B (1)(a) to include the phrase “including against any other person(s) rendered vulnerable by any circumstance”, as follows:</p> <p>“2B (1)(a) A person who has knowledge, reasonable belief or suspicion that an act of domestic violence has been committed against a child, person with a disability or an elderly person, <u>including against any other person(s) rendered vulnerable by any circumstance</u>, must report such knowledge, reasonable belief or suspicion immediately to a social worker or police official.”</p>	<p>We propose that the reference to persons vulnerable to abuse to which reporting must be compulsory should include violence “<u>against any other person(s) rendered vulnerable by any circumstance</u>” who might not ordinarily be vulnerable but due to circumstances might be rendered vulnerable to abuse and compelled not to report.</p>

Current text of the Domestic Violence Amendment Bill 2020	Proposed amendments to the Amendment Bill 2020	Comment
<p>Substitution of Section 3 of Act 116 of 1998 with the following: “3. (1) A peace officer may without warrant arrest any [respondent] person at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence [containing an element of violence against a complainant]”</p>	<p>Amend the substitution of Section 3 of Act 116 of 1998 with the removal of the phase “at the scene of an incident of domestic violence”, as follows:</p> <p>3. (1) A peace officer may without warrant arrest any [respondent] person at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence [containing an element of violence against a complainant]”</p>	<p>We propose that consideration be given to the removal of the requirement for the reasonable arrest without warrant to only be at the scene of the incident. In many cases of domestic violence perpetrators may leave the scene.</p>

Rationale for proposed amendments

Children in households where there is domestic violence are often victims themselves and report various types of physical, sexual and emotional violence by the same perpetrators as their mothers.¹⁰ Furthermore, even when not the direct victims, children suffer negatively. Research has shown that children who witness domestic violence often perform poorly at school and male children are known to become perpetrators of domestic violence as adults too.¹¹ A South African study found that more than half of all children, increasing from childhood into adolescence, were reported to have been exposed to violence in their home. Close to half of preschool children were reported to have been victims of violence, most often through physical punishment by parents.¹² Furthermore, according to the Child Death Review, homicide was the second most common cause of death among children with child abuse and neglect accounting for 11.3% of child deaths.¹³

Children who grow up with violence in the home learn early and powerful lessons about the use of violence to dominate others. Many studies have found that a child's experience of corporal punishment is associated with higher levels of aggression against parents, siblings, peers and spouses. There is now robust evidence that corporal punishment is a risk factor for child aggression and anti-social behaviour. One paper reviewed 88 studies of corporal punishment with 62 years of data and found that corporal punishment was associated with ten negative outcomes for children and the only positive effect was short-term compliance.¹⁴

Corporal punishment not only causes immediate trauma; but it is associated with a range of mental health problems in children, youth and adults, including depression, unhappiness, anxiety, feelings of hopelessness, use of drugs and alcohol, and general psychological maladjustment.¹⁵ Researchers are also finding that corporal punishment is linked to slower cognitive development and adversely affects academic achievement.¹⁶

There are also economic and social implications to physical punishment. The Cost of Violence against Children study¹⁷ estimated that in 2015 alone, no action to prevent violence against children cost South Africa R238 billion, or nearly 5% of the country's GDP. In addition to this, costs to society in productivity and well-being are high. Although some studies have found no relation between corporal punishment and negative outcomes,¹⁸ and others have found the relation to be moderated by other factors,¹⁹ no study has found corporal punishment to have a long-term positive effect, and most studies have found negative effects.²⁰

Physical abuse is defined by the WHO as "the intentional use of physical force against a child that results in or has a high likelihood of resulting in harm for the child's health, survival, development or dignity."

Most of the physical violence against children in the home intends to discipline children:

- 21% of children in South Africa have experienced physical punishment by an adult who was supposed to be taking care of them⁶
- 75% of physical abuse occurred during episodes of physical punishment⁷

While corporal punishment may be considered a mild form of violence it violates the dignity and rights of children, and robs them of the joys of childhood.

The UNCRC issued General Comment 8 (GC8) in 2006, in which it clarified that State parties to the UN Convention on the Rights of the Child are obliged to prohibit corporal punishment of children in all settings including the home.

The Committee defines "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, *however light*.

References

- 1 18 September 2019, Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others, Constitutional Court, ZACC34; confirming 19 October 2017, YG v. The State, High Court of Gauteng Local Division, Case No. A263/2016
- 2 R v Janke and Janke 1913 TPD 382
- 3 Abolition of Corporal Punishment Act came into effect in 1997; South African Schools Act of 1996
- 4 General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)"
- 5 See the Committee's position on the issue on our dedicated page <https://endcorporalpunishment.org/human-rights-law/regional-human-rights-instruments/acrwc/>
- 6 Mathews S, Jewkes R, Abrahams N (2014) "So now I'm the man": Intimate partner femicide and its interconnections with expressions of masculinities in South Africa. *British Journal of Criminology*, 51(4)
- 7 Dawes A, De Sas Kropiwnicki Z, Kafaar Z, Richter L. Corporal punishment of children: A South African national survey. Cape Town, South Africa: Human Sciences Research Council; 2005.
- 8 Mathews S, Govender R, Lamb G, et al Towards a More Comprehensive Understanding of the Direct and Indirect Determinants of Violence against Women and Children in South Africa with a View to Enhancing Violence Prevention. Safety and Violence Initiative, April 2016. University of Cape Town, Cape Town. (Research Report) Commissioned research project for the Inter-ministerial committee on Violence against women and children
- 9 Abrahams N & Jewkes R (2005) Effects of South African men's having witnessed abuse of their mothers during childhood on their levels of violence in adulthood. *American Journal of Public Health*, 95(10): 1811-1816.
- 10 Hall D, Lynch MA. Violence begins at home: Domestic strife has lifelong effects on children. *British Medical Journal Publishing Group*; 1998. Katz E. Beyond the physical incident model: How children living with domestic violence are harmed by and resist regimes of coercive control. *Child Abuse Review*. 2016;25(1):46-59.
- 11 Carrell SE, Hoekstra ML. Externalities in the classroom: How children exposed to domestic violence affect everyone's kids. *American Economic Journal: Applied Economics*. 2010;2(1):211-28. Stith SM, Rosen KH, Middleton KA, Busch AL, Lundeberg K, Carlton RP. The intergenerational transmission of spouse abuse: A meta-analysis. *Journal of Marriage and Family*. 2000;62(3):640-54.
- 12 Richter, L M, Mathews, S, Kagura, J, & Nonterah, E. (2018). A longitudinal perspective on violence in the lives of South African children from the Birth to Twenty Plus cohort study in Johannesburg-Soweto. *SAMJ: South African Medical Journal*, 108(3), 181-186.
- 13 According to the Child Death Review pilot (2014) homicide was the second most common cause of death and affected children of all ages, with the highest burden (52.8%) in the 15 - 17-year age group. Child abuse and neglect accounted for 11.3% of deaths.
- 14 Gershoff, E. Corporal Punishment by Parents and Associated Child Behaviors and Experiences: a Meta-analytic and Theoretical Review. *Psychological Bulletin*, 128, no. 4 (2002):539-79.
- 15 Afifi TO, Brownridge DA, Cox BJ, et al. Physical punishment, childhood abuse and psychiatric disorders. *Child Abuse Negl* 2006; 30:1093-103. b) Turner HA, Muller PA. Long-term effects of child corporal punishment on depressive symptoms in young adults: potential moderators and mediators. *J Fam Issues* 2004;25:761-82. Javo C, Rønning JA, Hey erdahl S, et al. Parenting correlates of child behavior problems in a multiethnic community sample of preschool children in northern Norway. *Eur Child Adolesc Psychiatry*2004;13:8-18. Rodriguez CM. Parental discipline and abuse potential effects on child depression, anxiety, and attributions. *J Marriage Fam* 2003; 65:809-17.
- 16 Straus MA, Paschall MJ. Corporal punishment by mothers and development of children's cognitive ability: a longitudinal study of two nationally representative age cohorts. *J Aggress Maltreat Trauma* 2000;18:459-83.
- 17 Fang, X., Fry, D. A., Ganz, G., Casey, T., & Ward, C. L. (2016). The economic burden of Violence Against Children in South Africa. Report to Save the Children South Africa. Georgia State University, and Universities of Cape Town and Edinburgh.
- 18 Bradley RH, Corwyn RF, Burchinal M, et al. The home environments of children in the United States Part II: relations with behavioral development through age thirteen. *Child Dev* 2001;72: 1868-86.
- 19 Gunnoe ML, Mariner CL. Toward a developmental-contextual model of the effects of parental spanking on children's aggression. *Arch Pediatr Adolesc Med* 1997;151:768-75.
- 20 Grogan-Kaylor A. The effect of corporal punishment on antisocial behavior in children. *Soc Work Res*2004;28:153-62