

2011

Spare the Rod? South Africa's Efforts Toward a Total Ban on Corporal Punishment

Sarah Sallen

Follow this and additional works at: <http://lawcommons.luc.edu/pilr>

 Part of the [Law Enforcement and Corrections Commons](#)

Recommended Citation

Sarah Sallen, *Spare the Rod? South Africa's Efforts Toward a Total Ban on Corporal Punishment*, 17 Pub. Interest L. Rptr. 7 (2011).
Available at: <http://lawcommons.luc.edu/pilr/vol17/iss1/3>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

SPARE THE ROD? SOUTH AFRICA'S EFFORTS TOWARD A TOTAL BAN OF CORPORAL PUNISHMENT

by SARAH SALLEN

“Spare the rod, spoil the child.” This maxim has long influenced parenting philosophy in many parts of the world. Even so, few countries have gone so far as to adopt corporal punishment as a matter of public policy. In South Africa, however, corporal punishment is now the legal norm.

Under current South African law, corporal punishment in the home is firmly protected.¹ South Africa uses the definition of “corporal punishment” adopted by the United Nations Convention on the Rights of the Child (“UNCRC”).²

The UNCRC defines corporal punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.”³ The general rule is that parents have a right “to inflict moderate and reasonable chastisement on a child provided that this was not done in a manner offensive to good morals or for objects other than correction and admonition.”⁴ It is up to South African courts to determine whether or not the punishment is “reasonable.”⁵

In 2007, despite the vigorous efforts of various advocacy groups, South Africa amended the Children’s Act.⁶ Parliament removed Clause 139,⁷ which would have prohibited corporal punishment in the home, before the amendment passed.⁸ Now, a year after the amendment has taken force, non-governmental organizations (“NGOs”) in South Africa are giving a ban on corporal punishment within the home another attempt. This time, however, NGOs have acknowledged that they need a new approach.⁹

CULTURAL AND RELIGIOUS ROOTS

Although South Africa abolished apartheid in 1994, several of its vestiges remain, including limitations on the rights of children.¹⁰ South Africa has ratified the UNCRC and the African Charter on the Rights and Welfare of the Child, both of which specifically call for governments to protect children from all forms of violence.¹¹ Nevertheless, at least one study has shown that “not much has been done to end corporal punishment administered to children by their families, in their homes, where violence seems to be culturally accepted.”¹²

Why did the prohibition fail? The causes are deeply rooted in South African culture. The Afrikaans¹³ expression “*Jy’t ’n goeie pakslae, net soos brood en konfyf, nodig*,” may be loosely translated as “A good hiding¹⁴ is as necessary as jam and bread.”¹⁵ This saying reflects the common South African belief that corporal punishment is both “morally necessary and ‘good.’”¹⁶

Notably, religious groups continue to support the use of corporal punishment.¹⁷ An association of 196 Christian schools unsuccessfully challenged the ban as it applies to schools.¹⁸ Also, many South Africans believe that the Bible requires the use of corporal punishment by parents in the “training” of their children.¹⁹

The Working Group on Positive Discipline (“WGPD”), a network of South African NGOs committed to the “abolition of corporal and all other forms of humiliating punishment of children,” is at the forefront of the movement.²⁰ The WGPD’s strategy is to get at the heart of the problem and change cultural beliefs.²¹ For WGPD activists, justifying corporal punishment as “part of my culture” is not acceptable.²²

As Joan van Niekerk, training and advocacy manager of Childline South Africa, notes, “Culture is also not static. We change cultural practices that are harmful for children – for example, South Africa has banned female genital mutilation which has been practiced in some of our cultures.”²³

The statements of the children themselves are chilling.

“We were all sitting with my sisters, brothers and cousins. He asked how I am talking to him and he hit me. He hit me with a pipe that has wires inside. He hit all over the body.”²⁴

A 2004 study illustrates the reality that many South African children face.²⁵ The study of 410 children aged 6 to 18 revealed that corporal punishment is prevalent in all sections of society.²⁶ Children of all ages and income levels experience corporal punishment.²⁷

“We see broken arms, legs, ribs, fractured skulls, burns, burst ear drums, etc.,” reports Childline South Africa, which receives about 4,500 reports of physical abuse per year.²⁸ The majority of these are the result of so-called discipline.²⁹

WILL THE MOVEMENT WORK THIS TIME?

The last effort to pass a ban on corporal punishment taught members of WGPD an important lesson on civil engagement.³⁰ “Different civil society groups need to be engaged . . . as well as certain religious leaders forums.”³¹ Moreover, the law reform process needs to be coupled with specific tools and strategies for alternative forms of discipline.³² If corporal punishment is “taken away, something needs to be put in its place; otherwise, teachers and parents will feel incredibly disempowered by the process.”³³

Loyola Public Interest Law Reporter

As one advocate relates, in South Africa “we do not allow any smacking or hitting between adults. This is termed assault. Why should children not be respected in the same way?”³⁴

To achieve a ban on corporal punishment, one critical step is to help parents understand that parenting “need not involve hitting, smacking.”³⁵ Therefore, the movement is not directed at punishing parents, but rather sending the message that “imposing physical punishment or other cruel and inhuman punishment on children is wrong . . . and an infringement of the child’s right to dignity and physical integrity.”³⁶

Instead, “positive discipline” is an approach that “actively promotes child participation, positive reinforcement, problem-solving and positive role modeling.”³⁷ The goal is to help parents understand the need to parent differently.³⁸ Kerry-Jane Coleman, research coordinator at Resources Aimed at the Prevention of Child Abuse and Neglect, notes that although corporal punishment is banned in schools, the ban is often ignored.³⁹

The law reform process for achieving a ban in school has revealed a significant message: if a ban is enacted “without an awareness raising within the population and consultation, then that becomes problematic. So the ban needs to be done on two levels: one would be the legal steps that need to be put in place, and at the same time an awareness needs to be brought to society about the harms that corporal punishment does to children.”⁴⁰

WGPD members continue to reflect on lessons learned to make strides toward this two-step approach.⁴¹ Only time will tell whether South Africa will heed Archbishop Desmond Tutu’s famous saying: “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.”⁴²

NOTES

1 *South Africa*, GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN (Feb. 2011), <http://www.endcorporalpunishment.org/pages/progress/reports/south-africa.html> [hereinafter GLOBAL INITIATIVE].

2 *General Comment N° 8 (2006): 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)*, U.N.

COMM. ON THE RIGHTS OF THE CHILD (June 2006), http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/GRC-C-GC-8_EN.pdf ("Most involves hitting ['smacking', 'slapping', 'spanking'] children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion [for example, washing children's mouths out with soap or forcing them to swallow hot spices]. In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.").

3 *Id.*; *A Teacher's Guide to Positive Discipline*, RESOURCES AIMED AT THE PREVENTION OF CHILD ABUSE AND NEGLECT (2008), http://rapcan.org.za/File_uploads/Resources/teaching%20positive%20discipline%20screen.pdf [hereinafter *Teacher's Guide*].

4 *R v Janke and Janke*, 1913 TPD 382.; Peter Newell, *Briefing from Global Initiative to End All Corporal Punishment of Children*, GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN (Mar. 2011), <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Globalinitiative.pdf>.

5 *The Legal Status of Corporal Punishment in South Africa*, CHILDREN'S RIGHTS PROJECT, COMMUNITY LAW CENTRE (June 2005), <http://www.communitylawcentre.org.za/clc-projects/childrens-rights/article-19/archives/Volume%201%202013%20Number%201.pdf> ("In deciding whether or not the punishment falls within the boundaries of being moderate, reasonable, fair and equitable, the court will take various factors into account. These include the nature of the offence; the physical and mental condition of the child; the motive of the person administering the punishment; the severity of the punishment {i.e. the degree of force applied}; the object used to administer the punishment and the age, sex and build of the child. Even with the presence of these factors to guide magistrates hearing the matter, in practice, different courts hearing a case with similar facts can reach different conclusions, thereby creating inconsistency within the judicial system.").

6 Carol Bower, *Review of Advocacy Toward the Prohibition of Parental Corporal Punishment: Undertaken by the Working Group on Positive Discipline*, RESOURCES AIMED AT THE PREVENTION OF CHILD ABUSE AND NEGLECT (2009), http://www.rapcan.org.za/cp_docs/RAPCAN_Advocacy_A4_WEB.pdf.

7 Clause 139 explicitly prohibited all corporal punishment of children and abolished the common law defense of reasonable chastisement:

Discipline of Children

139. (1) A person who has care of a child, 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 section 12(1)(c), (d) and (e) of the Constitution.

(2) No child may be subjected to corporal punishment or be punished in a cruel, inhuman, or degrading way.

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

(4) No person may administer corporal punishment to a child or subject a child to any form of cruel, inhuman or degrading punishment at a [any] child and youth care centre, partial care facility or shelter or drop-in centre.

(5) The Department must take all reasonable steps to ensure that –
(a) education and awareness-raising programmes concerning the effect of subsection (1), (2), (3) and (4) are implemented throughout the Republic; and

Loyola Public Interest Law Reporter

(b) programmes promoting appropriate discipline are available throughout the Republic.

(6) A parent, care-giver or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting such child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.

(7) Prosecution of a parent or a person holding parental responsibilities and rights referred to in subsection (6) may be instituted if the punishment constitutes abuse of the child. *See Id.*

8 GLOBAL INITIATIVE, *supra* note 1.

9 *Letter to Matlhogonolo Sebopela*, WORKING GROUP ON POSITIVE DISCIPLINE (Aug. 1 2011) [hereinafter *Letter*].

10 Bower, *supra* note 6.

11 *Ending Legalised Violence Against Children: All Africa Report 2010*, GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, THE AFRICAN CHILD POLICY, SAVE THE CHILDREN SWEDEN (2010), http://www.endcorporalpunishment.org/pages/pdfs/reports/All_Africa_Report-2010.pdf [hereinafter *2010 Report*].

12 *Ending Legalised Violence Against Children: All Africa Special Report*, GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, SAVE THE CHILDREN SWEDEN (2007), <http://www.endcorporalpunishment.org/pages/pdfs/reports/Report-AllAfrica.pdf> [hereinafter *2007 Report*].

13 Afrikaans is one of the official languages of South Africa.

14 In this context, "hiding" is synonymous with "beating."

15 Christy Hemstreet & Keith Vermeulen, *Religions, the Promotion of Positive Discipline and the Abolition of Corporal Punishment: Frequently Asked Questions*, <http://www.communitylawcentre.org.za/clc-projects/childrens-rights/article-19/archives/Volume%203%202013%20Number%203.pdf>.

16 *Id.*

17 Carol Bower, *Banning Corporal Punishment: The South African Experience*, RESOURCES AIMED AT THE PREVENTION OF CHILD ABUSE AND NEGLECT (2008), http://www.rapcan.org.za/cp_docs/RAPCAN_Banning_Corporal_Punishment_WEB.pdf.

18 *Christian Education of South Africa v. Ministry of Education*, CCT4/00 [2000] ZACC 11; 2000 (4) SA 757; 2000 (10) BCLR 1051 (18 August 2000).

19 *Id.*; *2007 Report*, *supra* note 12.

20 Working Group on Positive Discipline, *Welcome*, <http://www.rapcan.org.za/wgpd/default.asp> (last visited Nov. 14, 2011).

21 Email Interview with Joan van Niekerk Manager, Training and Advocacy, Childline South Africa. (Oct. 20, 2011).

22 *Id.*

23 *Id.*

24 *2007 Report*, *supra* note 12.

25 *Id.*

26 *Id.*

27 *Id.*

28 van Niekerk, *supra* note 21.

29 *Id.*

30 Email Interview with Kerry-Jane Coleman, Research Coordinator, Resources Aimed at the Prevention of Child Abuse and Neglect. (Nov. 14, 2011).

31 *Id.*

No. 1 • Fall 2011

32 *Id.*

33 *Id.*

34 van Niekerk, *supra* note 21.

35 *Id.*

36 *Submission to the Western Cape Legislature (Provincial Committee on Development) on the Children's Amendment Bill as Introduced in the NCOP Date 30 June 2006*, CHILDREN'S RIGHTS PROJECT, COMMUNITY LAW CENTRE, UNIVERSITY OF THE WESTERN CAPE (Feb. 2007), <http://www.ci.org.za/depts/ci/plr/pdf/publichearings/WC/CommunityLawCentre.pdf>.

37 *Corporal Punishment and Positive Discipline*, RESOURCES AIMED AT THE PREVENTION OF CHILD ABUSE AND NEGLECT, *available at* <http://www.rapcan.org.za/resources/resources.asp?ResourceFilter=corporal%20Punishment%20and%20Positive%20Discipline&filter=8>.

38 *Letter*, *supra* note 9; van Niekerk, *supra* note 21.

39 Coleman, *supra* note 30.

40 *Id.*

41 *Id.*

42 *2007 Report*, *supra* note 12.