

PROHIBITING CORPORAL PUNISHMENT DOES NOT MEAN CRIMINALISING PARENTS

A fact sheet to counter the claim that parents will be criminalised



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MENCARE

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From a MenCare perspective, the prohibition of corporal punishment in all settings, including the home, is integral to efforts to create change of this nature.



THE FACTS

- 1 Unfortunately, **children routinely do not report** the most egregious harm done to them; it is highly unlikely that they will beat a path to the door of the police station because someone smacked them.
- 2 In any event, South African law operates on the principle that the law does not concern itself with **that which is trivial** (*de minimis curat lex*) which applies equally to adults and children who have been subject to less serious assaults.
- 3 Imprisonment of their parents is **seldom in children's best interest**, and will only happen where corporal punishment has been severe enough to cause injury, and in the best interests of the child in question.
- 4 The majority of the current international country-level bans on corporal punishment are housed within the family code, not the criminal code, and thus do not have criminal penalties and rather tend to require community service or supervision. The **bans are viewed as educational** and thus as a means of encouraging citizens to avoid this risky behaviour.
- 5 The National Prosecuting Authority confirmed in 2007 that, in the unlikely event that a child reports being smacked or hit at home, the most likely outcome is an admission of guilt fine, as is the case with common assault. Thus, **no criminal record** is attached to the perpetrator.
- 6 The Children's Act provides clearly for prevention and early intervention programmes that are aimed at **"developing appropriate parenting skills** and the capacity of parents and care-givers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline" (section 144 [1] [b]). **It is to these that parents using corporal punishment will be referred.**

THE MYTH

"If we ban corporal punishment in the home, we will make criminals out of parents."

MOST CULTURES HAVE CLAIMED THAT CORPORAL PUNISHMENT OF CHILDREN IS PART OF THEIR CULTURE

A fact sheet to counter cultural justifications of corporal punishment

SONKE GENDER JUSTICE

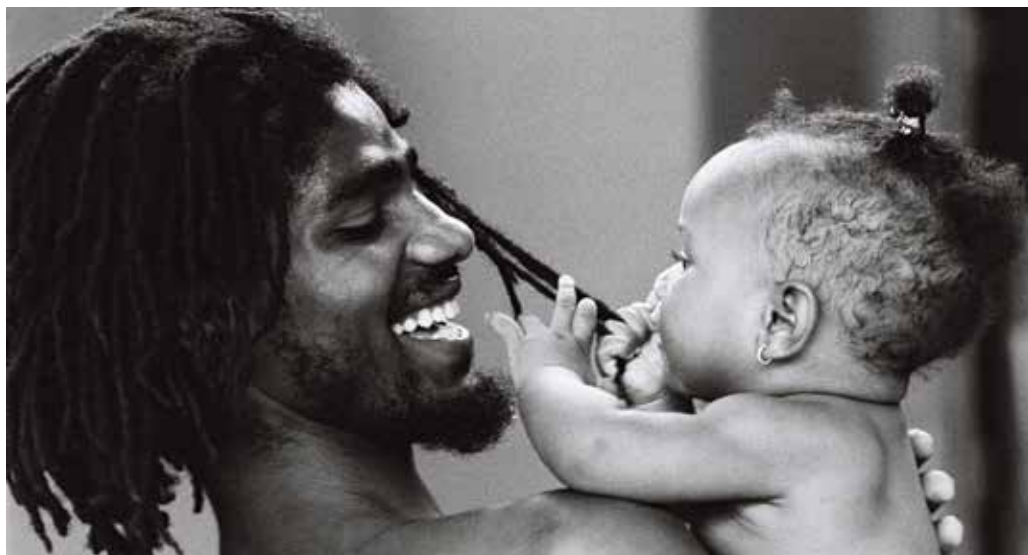
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THE FACTS

- 1 The use of corporal punishment as a means of maintaining control was **introduced into African societies** by missionaries and colonialism.¹ It was entrenched in South African law during the apartheid era, and was deliberately used to strengthen that system.²
- 2 In contrast, proverbs in African languages make questionable, for South Africans, the claim that hitting children "is part of my culture":
 - **Imbeko anakhiwa ngoswazi** – respect doesn't get built through a stick
 - **Induku ayinamzi** – beatings don't build a home
 - **Umntana akakhuliswa ngoswazi** - you don't raise a child with a stick
 - **Nhonga a yi aki mut** - you cannot raise a family with a stick
- 3 Corporal punishment is also incompatible with the concept of ubuntu. Archbishop Emeritus Desmond Tutu has said of this uniquely African world-view: **"Ubuntu is very difficult to render into a Western language... It is to say – 'my humanity is caught up, is inextricably bound up, in yours'..."**³ It has been variously defined as humanness, humanity, virtue, goodness and kindness.⁴

THE MYTH

"My culture says I should hit my children to punish them; banning corporal punishment is a Western, developed world idea".

References ¹ Sifuna, Daniel N. *Wither African Indigenous Knowledge? The Case Of Primary Education In Africa, From Colonialism To Globalisation*. Accessed at http://www.inst.at/trans/17Nr/9-3/9-3_sifuna.htm.

² Bower, C. 2002., *Implications of the SALC recommendations on corporal punishment*, contained in Chapter 10 of the Discussion Paper on the Review of the Child Care Act. Cape Town: RAPCAN.

³ Tutu, D. 2000. *No Future Without Forgiveness: A Personal Overview of South Africa's Truth and Reconciliation Commission*. London: Rider.

⁴ Gade Christian B. 2010. "The Historical Development of the Written Discourses on Ubuntu", *South African Journal of Philosophy* 30(3), 303–329.

FACT SHEET 2

FOR PROMOTING POSITIVE DISCIPLINE



- 4 In the past, slave owners said that they had the right to beat their slaves; the police and courts said it was their right to beat prisoners; and husbands have said they have the right to beat their wives. The fact that parents say it is their right to beat their children must be challenged. It is of great concern that **children, who are physically and emotionally the most vulnerable** members of society, are last in line to have this fundamental human right protected.
- 5 **Five African countries have now banned all forms of corporal punishment:** Kenya, Tunisia, South Sudan, Togo and the Democratic Republic of the Congo. In addition, campaigns for prohibition are ongoing in Tanzania, Angola and South Africa, among others. Child rights defenders across Africa have committed to a prohibition of all forms of corporal punishment of children and the promotion of positive parenting and support for parents.⁵
- 6 The **African Committee of Experts on the Rights and Welfare of the Child** has recommended that all African states prohibit all forms of corporal punishment, including by parents.⁶

⁵ For detailed information of global progress towards prohibition, see www.endcorporalpunishment.org/pages/frame.html.

⁶ Global Initiative to End All Corporal Punishment of Children. 2010. *Ending legalised violence against children: All Africa Report*. Global Initiative, African Child Policy Forum and Save the Children Sweden. Accessible at http://www.endcorporalpunishment.org/pages/pdfs/reports/All_Africa_Report-2010.pdf.

DESPITE A LEGAL BAN, CORPORAL PUNISHMENT IS STILL WIDELY PRACTICED IN SOUTH AFRICAN SCHOOLS

A fact sheet to counter claims that prohibition in schools has led to indiscipline

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THE FACTS

- 1 Corporal punishment in schools and educational settings was prohibited in 1996. However, it is still being widely used. The 2012 study by the Centre for Justice and Crime Prevention found that a total of **49.8% of the learners surveyed had been caned or spanked** by an educator or principal as punishment for wrongdoings. This percentage was up from 47.5% in 2008.

The study also found clear linkages between violence and corporal punishment in the home, violence in communities and violence in schools. **Violence in schools is a result of violence within the home and communities**, not as a result of corporal punishment being abolished.

In 2008, the Human Rights Commission reported that corporal punishment is still applied in more than half of South African schools (51.4%), with the Eastern Cape (65.3%), Mpumalanga (64.1%) and Limpopo (55.7%) reporting the highest incidences of such schools.

- 2 Thus, the claim that the prohibition of corporal punishment in schools has led to indiscipline and out-of-control children is **not supported by the facts**.

THE MYTH

“Look at what's happening in our schools now that teachers can't use corporal punishment”.

FACT SHEET 3

FOR PROMOTING POSITIVE DISCIPLINE

7 STEPS FOR SCHOOLS TO MOVE BEYOND CORPORAL PUNISHMENT:

Management Systems and Training Programmes (MSTP), through the UCT Department of Education, developed a 7-step programme for schools in moving from corporal punishment to positive discipline

- 1) Get everyone involved, from learners and their parents and teachers to community structures (e.g. community and religious leaders)
- 2) Assess the current situation
- 3) Create a plan for positive discipline which considers priorities, goals and strategies, and involves all stake-holders
- 4) Test the strategies in the school generally and the classroom
- 5) Keep everyone informed
- 6) Evaluate
- 7) Revise if necessary

This worked well in the schools which were involved in the development and testing of the methodology, in rural and urban and peri-urban areas, and in primary and secondary schools.



Case study

Kubusie Combined School

The Kubusie Combined School is located in a rural district of South Africa's Eastern Cape province. It is one of the most impoverished areas in the country, and has a poor academic track record. In 2004, only 29% of Kubusie's final year learners passed their matriculation exams. In the same year, 14 teachers were held hostage at the school and there were violent clashes between learners and police.

In 2005, all the stakeholders of Kubusie Combined School joined forces to turn their discipline system around, using the seven steps outlined on this fact sheet. They identified the following discipline problems:

- Learners were using drugs on school premises.
- Learners were bringing dangerous weapons to school.
- Many learners were habitually late.
- Some learners roamed around school instead of attending classes.
- The school uniform was not worn in the proper way.
- There was aggression and fighting amongst learners.
- School work not done or kept up to date.

To address these challenges, the school stakeholders:

- designed and adopted a new discipline policy.
- negotiated new school and class rules.
- defined roles and responsibilities for their representative council of learners.
- tried out and adapted many positive discipline strategies, some of which are described on this fact sheet.

The behavior of learners improved and teachers started working together more effectively as a team. Kubusie Combined School moved away from using corporal punishment, and was no longer plagued by drug use and weapons. Learners were less often late or absent from school. They attended classes and concentrated more on their schoolwork.



THE NEGATIVE IMPACTS OF CORPORAL PUNISHMENT

A fact sheet to counter claims that corporal punishment does no harm



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THE FACTS

There is a substantial body of research showing the negative effects of corporal punishment on children, with an increasing focus on the negative consequences of the so-called 'little smacks'. A 2002 study highlighted the many harmful consequences of corporal punishment, and clearly identified that corporal punishment has only one positive outcome, and that this is a short-term benefit of immediate compliance.¹ A growing body of research findings indicate that corporal punishment has a range of adverse neurological, physical, behavioural, cognitive, emotional and social development outcomes.²

A 2012 research paper which examined two decades of research into corporal punishment from across the world showed that:³

- **Numerous studies** have found that physical punishment increases the risk of broad and enduring negative developmental outcomes, while **no study** has found that physical punishment enhances developmental health (present author's emphasis).
- Most child physical abuse occurs in the context of punishment.
- A professional consensus is emerging that parents should be supported in learning nonviolent, effective approaches to discipline.

The serious **physical consequences** of corporal punishment can include broken bones, internal injuries, cuts and burns; in the worst cases, they lead to death.

THE MYTH

"I got hidings as a child; it didn't do me any harm".

And

"Using corporal punishment in a measured and loving way does more good than harm if you are an otherwise loving parent".

And

"There is a big difference between child abuse and corporal punishment used to discipline a child".

FACT SHEET 4

FOR PROMOTING POSITIVE DISCIPLINE

Many South African children are harmed in the exercise of discipline in the home; a recent study on child death confirms this.⁴ When angry and stressed parents lash out at their children because they believe they have the right to physically punish them, great harm can be done. Childline S.A confirms that many of the cases of child abuse brought to their attention involve corporal punishment that 'got out of hand', an assertion supported by findings other countries.

In 2013, the Medical Research Council (MRC) found that 45% of all child homicide was child abuse- and neglect-related, and estimated that 3 children are murdered per day in South Africa.⁵

Negative behavioural outcomes linked to corporal punishment include child aggression and antisocial behaviour,⁶ as well as increased aggression, criminality and antisocial behaviour in adulthood,⁷ and an increased risk of abusing their own child or spouse in adulthood or being the victim of abuse.⁸

Adverse emotional outcomes, including a decreased quality of relationship between parent and child, have also been found.

There is clear research evidence that corporal punishment has a **negative effect on intelligence and cognitive functioning**. For example, children in a West African school that used corporal punishment performed significantly worse in tasks involving "executive functioning" and psychological processes such as planning, abstract thinking, and delaying gratification than those in a school relying on milder disciplinary measures such as time-outs.⁹

Child abuse has been shown to cause **permanent damage to the neural structure and function** of the developing brain itself.¹⁰

In early childhood, the brain develops faster than any other organ in the body.¹¹ This makes early childhood a very sensitive and critical period in brain development. The stresses caused by pain and fear of spanking can negatively affect the development and function of a child's brain, derailing natural, healthy brain growth and resulting in life-long and irreversible abnormalities.¹² Also, physical punishment can cause alterations in the dopaminergic regions associated with vulnerability to the abuse of drugs and alcohol.¹³

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- ⁵ Mathews S, Abrahams N, Jewkes R & Martin L. 2013.
- ⁶ See, for example, Mulvaney MK, Mebert CJ. Parental corporal punishment predicts behavior problems in early childhood. *J Fam Psychol* 2007; 21:389-97; Slade EP, Wissow LS. Spanking in early childhood and later behaviour problems: a prospective study of infants and young toddlers. *Pediatrics* 2004;113:1321-30; Taylor CA, Manganello JA, Lee SJ, et al. Mothers' spanking of 3-year-old children and subsequent risk of children's aggressive behavior. *Pediatrics* 2010;125:e1087-1065; Grogan-Kaylor A. The effect of corporal punishment on antisocial behavior in children. *Soc Work Res* 2004;28:153-62.
- ⁷ Gershoff. 2002
- ⁸ Gershoff. 2002
- ⁹ PHYSorg.com. 26 Jul 2011. *Spare the rod and develop the child*. Accessed at <http://www.physorg.com/news/2011-07-rod-child-non-corporal-discipline-aids.html>
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- ¹¹ Riak J. 2011. *Plain talk about spanking*. Alamo: Parents and Teachers Against Violence in Education (PTAVE). Available at www.nospank.net/pt2011ps.pdf.
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- ¹³ Sheu Y-S, Polcan A, Anderson CM, et al. Harsh corporal punishment is associated with increased T2 relaxation time in dopamine-rich regions. *Neuroimage* 2010;53:412-9.

DOES SPARING THE ROD REALLY SPOIL THE CHILD?

A fact sheet to address religious justifications of corporal punishment

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THE FACTS

1 The phrase “spare the rod and spoil the child” **does not appear in the Bible**. It is from a 17th century poem by Samuel Butler called “Hudibras”. In the poem, a love affair is likened to a child, and spanking is commended as a way to make the love grow stronger. The actual verse reads

“What medicine else can cure the fits, Of lovers when they lose their wits? Love is a boy by poets stiled, Then spare the rod and spoil the child.”

The idea was that the absence of periodic spankings in the relationship will spoil it. Further on in the poem, women are said to desire a good spanking more than an assortment of lovely ribbons.

The Book of Proverbs does contain several references to ‘rod’ and ‘chastisement’, e.g. Proverbs 13:24 “Whoever spares the rod hates his son, but he who loves him is diligent to discipline him” and Proverbs 22:15: “Foolishness is bound in the heart of a child; but the rod of correction shall drive it far from him.”

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There are three different words in the original Hebrew that are translated into English as “rod”; the one used in the often quoted Proverbs text is “shebet”. This was the large walking staff held by the head of a family, the king’s sceptre, or the shepherd’s crook which was used to rescue and guide sheep. A version of the shebet is carried by bishops to this day – as a symbol of guiding, not beating their people. It should be remembered that the “rod” referred to in Psalm 23 comforts people.

THE MYTH

“The Bible gives me the right and duty to spank my children spare the rod and spoil the child”.

FACT SHEET 5

FOR PROMOTING POSITIVE DISCIPLINE

- 3 Similarly, the term “physical correction” is a term often used by parents and others who believe it to be their Biblical duty to punish their children by using corporal punishment. “Correction” is from the Hebrew word “muwcar” and means “chastening” or “let us reason together”. Reasoning together has nothing to do with physically striking a child.
- 4 **There is no mandate from God to beat children.** Within the entire Law or Torah, where God outlined what he required of his people, there is no instruction to beat children. For an issue proclaimed as so important, there is no instruction within scripture of how or when to beat or even who to beat. Christians look to the example of Jesus for the way to live their lives. Jesus was a teacher and a Rabbi and an expert in interpreting the scriptures. There is **no evidence to suggest that he cited the scriptures to justify hitting children.** All the recorded encounters between Jesus and children were kind, gentle and respectful and his reported words about causing children to stumble, and the consequences for doing so (Matthew 18:6), are amongst the strongest in the New Testament. Jesus tells his followers that the kingdom of God is like a little child, and whatever is done to the least of these is done to him. That clearly rules out physical punishment and humiliating treatment of children.
- 5 It is generally believed that the Book of Proverbs was assembled by King **Solomon**, circa 1000 BCE. He brought together a group of sayings which were already current in his time; some may have been his own thoughts; others may have been first written down centuries earlier. The passages which deal with chastising presumably reflect his parenting beliefs with respect to his son, Rehoboam. As an adult, he was vicious, unfeeling, inconsiderate to his subjects, had **no regard for human rights, and was widely hated.** He barely escaped assassination at the hands of his own people, having fled Jerusalem on a donkey in the dead of night.
- 6 As with Christians, **adherents of other faiths** also interpret their holy texts differently. So, there are always those who argue for and those who argue against corporal punishment on the basis of their religion.

According to Satguru Sivaya Subramuniyaswami, a renowned **Hindu** guru, the ideals of Hinduism include to never injure others. Hindu children are always treated respectfully as they may be incarnations of a grandparent, aunt or uncle, dearly beloved mother, sister, brother, respected father, a yogi or rishi returned to flesh to help humankind spiritually. Parents and teachers should be asking ‘Who are these souls? What is their destiny to fulfil in this life? How can I help?’ The principles of *ahimsa* – nonviolence and non-hurtfulness, physically, mentally or emotionally – apply in the parent-child relationship.

A high-level Islamic authority on **Shiite Shari’a** in Iran, Ayatullah Ali Akbar Hashemi Rafsanjani, stated that: “By forbidding punishment, particularly corporal punishment, Islam closes the door to an inferiority complex.” Rafsanjani also cites other Islamic leaders such as Imam Ali: “Do not beat your children. To correct them, speak to them for a while, but make sure that it does not last long. (Behar ol-Anvar; Volume 23, Page 114) Instead, encouragement is advised again and again. It has been given priority over all other educational strategies, something that helps children develop their talents and sustain their development.

According to the **Muslim** Quran, children are *amanat* (a trust) from Allah and everyone is required to protect them for the sake of Allah; further, it is the responsibility of all adults to protect and respect children so that they can grow up to feel valued and important. Hazrat Anas (Muhammad’s companion) reputedly stressed the Prophet’s compassion for children.

All the major faiths committed themselves to non-violence in the raising of children in the **Kyoto Declaration on Confronting Violence and Advancing Shared Security**, made during the Eighth World Assembly of Religions for Peace, in August 2006.

At the 9th General Assembly of the **All Africa Conference of Churches** held in Maputo in December 2007, representatives from churches across Africa committed to ensuring that their countries have “a legally binding Children’s Act, duly passed into law by parliament” and that each country “has passed legislation that outlaws all forms of corporal and humiliating punishment of children”.

POSITIVE PARENTING DOES NOT USE PUNISHMENT, BUT SUPPORTS DISCIPLINE

A fact sheet about the difference between discipline and punishment

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THE FACTS



Discipline:

- From the Latin *disciplinare* – which means 'to teach'
- Part of an ongoing educative process that encourages the development of self-control and respect for others
- Builds a culture of respect, tolerance and dignity



Punishment:

- From the Latin *punire* – which means 'pain'
- Part of an authoritarian approach that uses hitting, shouting and sarcasm to make children 'toe the line'
- Used to punish and humiliate rather than correct behaviour and nurture



Positive discipline:

- Promotes children's self-control
- Adults and children decide together on rules and consequences
- Uses incentives and modelling to motivate good behaviour
- Teaches children how to 'get it right'
- Builds on strengths



Corporal punishment:

- Uses force to make children obedient
- Rules and consequences decided by adults only
- Focuses on punishing bad behaviour
- Makes children 'pay' for their mistakes
- Focuses on weaknesses

THE MYTH

"I have to discipline my child – and that means to punish them physically."

GOVERNMENT HAS A DUTY TO PROTECT CITIZENS OF ALL AGES FROM VIOLENCE AND ABUSE

A fact sheet outlining the responsibilities of the State



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THE FACTS

- 1 South Africa ratified the *Convention on the Rights of the Child* in 1996. In its Concluding Observations to South Africa’s Initial Country Report, the UN Committee on the Rights of the Child (UNCRC) recommended that “the State party take effective measures to prohibit by law the use of corporal punishment in the family and, in this context, examine the experience of other countries that have already enacted similar legislation”.
- 2 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.
- 3 The *South African Constitution*, in section 28 (1)(d), guarantees the right to protection from “maltreatment, neglect, abuse or degradation” and further states, in section 28 (2) that “A child’s best interests are of paramount importance in every matter concerning the child”.
- 4 The *Children’s Act as Amended* (38 of 2005) has as among of its objects:
 - To give effect to the constitutional right of children to protection from maltreatment, neglect, abuse or degradation (section 2 [b][iii]); and
 - To give effect to the Republic’s obligations in terms of international instruments binding on the Republic (section 2[c]).
- 5 Government has a constitutional obligation to protect all citizens from harm whether from public or private sources. This includes corporal punishment in the home. This is also the reason that the country has enacted laws against domestic and gender based violence.

THE MYTH

“Government should not interfere in the private sphere”.

CHILDREN HAVE THE RIGHT TO LEGAL PROTECTION FROM CORPORAL PUNISHMENT

A fact sheet to counter the defence of 'reasonable chastisement'



Sonke Gender Justice is a non-partisan, non-profit organisation, established in 2006. Today, Sonke has established a growing presence on the African continent and plays an active role internationally. Sonke works to create the change necessary for men, women, young people and children to enjoy equitable, healthy and happy relationships that contribute to the development of just and democratic societies. Sonke pursues this goal across Southern Africa by using a human rights framework to build the capacity of government, civil society organisations and citizens to achieve gender equality, prevent gender-based violence and reduce the spread of HIV and the impact of AIDS.

MENCARE

MenCare – A Global Fatherhood Campaign – is coordinated by Promundo, Sonke Gender Justice (Sonke) and the MenEngage Alliance, as an effort to promote men's involvement as fathers and as caregivers. It seeks to provide support materials, messages, policy recommendations and research to encourage local MenEngage partners, NGOs, women's rights organizations, governments and UN partners to implement campaign activities in their settings.

MenCare is conceived as a complement to global and local efforts to engage men and boys in ending violence against women and girls. Together with efforts like the White Ribbon Campaign, it is part of the MenEngage Alliance's global vision to achieve equitable, non-violent relationships and caring visions of what it means to be men.

From a MenCare perspective, the prohibition of corporal punishment in all settings, including the home, is integral to efforts to create change of this nature.



THE FACTS

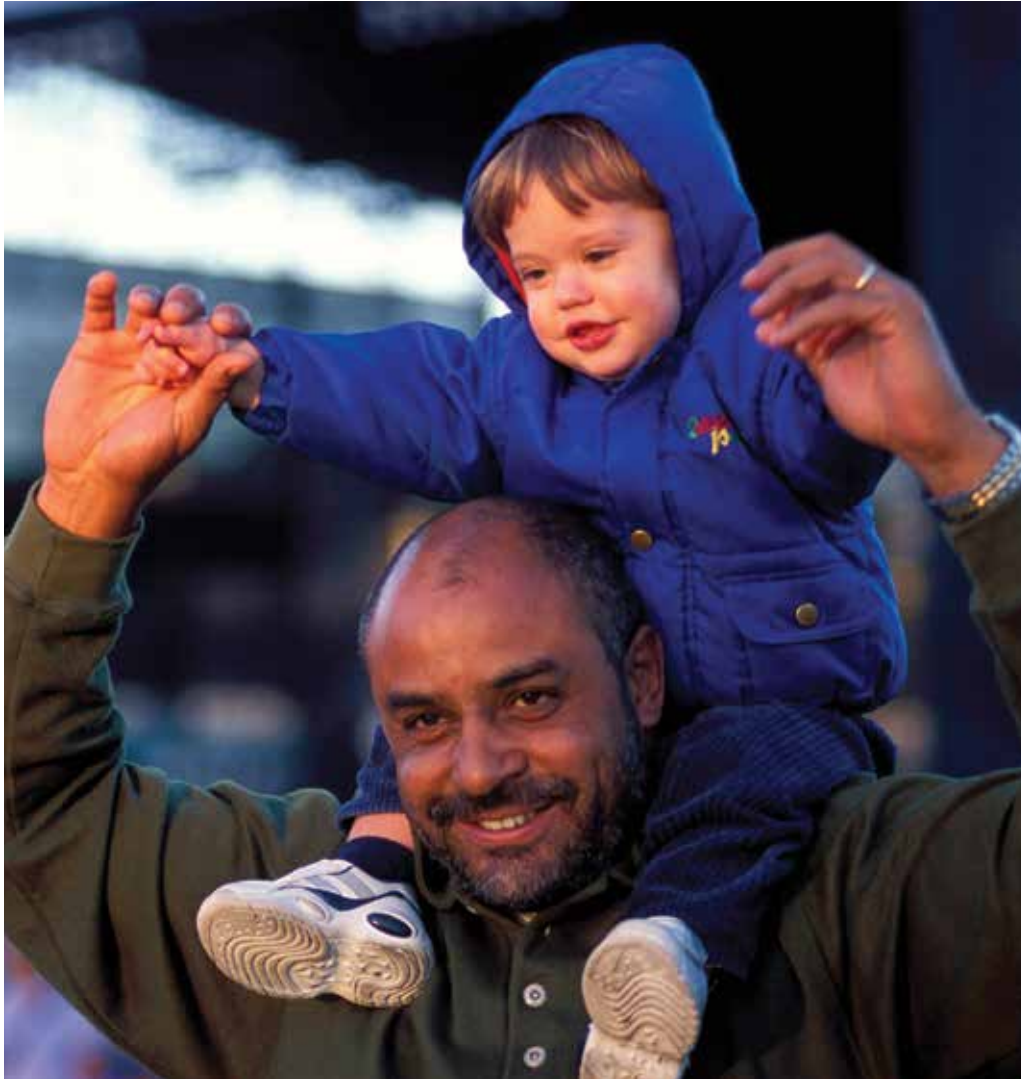
- 1 Common law (also known as case law or precedent) is law developed by judges through decisions of courts and similar tribunals. **It does not allow corporal punishment** to be used as a 'training tool'. Hitting children as a 'training tool used to teach' them good behaviour (much like circus animals), is not in fact legal, even in common law.
- 2 Common law also decrees that corporal punishment must be 'moderate' and 'reasonable'. What is 'reasonable' is determined by the obligations (arising from morals or honour that may be enforced by law) of society as laid down in the Constitution where the value and bodily integrity of each individual is protected. This means that exceptions to the general rule that any assault on another person is a criminal offence, while legal, can only be considered in the most extreme cases.
- 3 It is an open question whether the current exceptions to the prohibition against assault are constitutional, given South Africa's international legal obligations which demand the prohibition of corporal punishment in all settings.
- 4 Religious groups in South Africa cannot cite religious reasons or a violation of the freedom of religion to support corporal punishment as the courts have already determined that, where the practice of religion is damaging to people, it can and will be prohibited.

THE MYTH

"Under common law corporal punishment in the home is legal".

FACT SHEET 8

FOR PROMOTING POSITIVE DISCIPLINE



- 5** The common law rule that allows parents to use 'moderate' physical violence on children infringes on the rights of the child – in particular the rights protected by sections 12 and 28 of the **Bill of Rights**.
- Section 12(1)(c) states that everyone has the right to freedom and security of the person, which includes the right "to be free from all forms of violence from either public or private sources". Section 12(2)(b) also guarantees for everyone the right to bodily and psychological integrity which includes the right "to security in and control over their body".
- 6** These sections must be interpreted with reference to **South Africa's Constitution and international law obligations**. Section 39(1)(b) of the Constitution states that international law must be considered when interpreting the provisions of the Bill of Rights. Given this, there is little doubt that the present legal regime infringes on the rights of children. Parliament therefore has a legal duty to take steps to 'respect, protect, promote and fulfil' all the rights in the Bill of Rights – to abolish corporal punishment of children.