Working towards the promotion of positive forms of discipline and the abolition of corporal punishment to ensure the realisation of children’s rights to dignity and physical integrity.

Linking Domestic Violence and Corporal Punishment

by Samantha Waterhouse and Fairouz Nagia-Luddy

In October 2009 the Parliamentary Portfolio Committee on Women, Youth, Children and People with Disabilities held public hearings to assess the impact of the Domestic Violence Act (DVA) 11 years after its implementation. A range of organisations made written and oral submissions. In addition to organisations focused on violence against women, submissions were also made by organisations which focus on child protection.

RAPCAN made a submission and argued that not only are children the secondary victims of domestic violence, as suggested by stakeholders in the gender sector, but they are in fact primary victims as well. This article argues that corporal punishment by parents is a clear form of domestic violence and that children are victimised in a range of ways in homes typified by domestic violence. It will examine the rights and legislative framework relating to domestic violence and child protection; set out findings from research relating to children’s experiences and the impact of domestic violence on children; and discuss recommendations for strengthening child protection in the context of domestic violence.

RIGHTS FRAMEWORK

Children’s experiences of and exposure to domestic violence can be considered a violation of rights contained within the following international instruments and domestic law. The United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) both require States to provide protection to children from all forms of physical or mental violence, injury or abuse, neglect or maltreatment while in the care of parents or guardians. The Constitution of the Republic of South Africa (the Constitution) provides all citizens (including children) the right to be ‘free from all forms of violence from either public or private sources’. Arguably this provision should then also protect children from any form of violence perpetrated by a parent. It further provides that all citizens have the right not to be treated or punished in a cruel, inhuman or degrading way. Finally children specifically are provided with the right to protection from maltreatment, neglect, abuse or degradation in section 28(1)(d) of the Constitution.

The principle of the best interests of the child is articulated in both the CRC and the ACRWC. The Constitution goes further by stating that the child’s best interests are of paramount importance in every matter concerning the child. Importantly the Children’s Act sets out a range of factors to be taken into

1 Oral presentation made to the committee by the Gender Advocacy Project on 29 October 2009.
account in considering the best interests of the child in the family environment, and includes consideration of:

- The child's physical and emotional security; and
- The need to protect the child from any physical or psychological harm that may be caused by subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to other harmful behaviour.\(^9\)

These provisions set out the basis for recognising children as victims of domestic violence. It further ensures services and provides protection to children living in families experiencing domestic violence.

**LEGISLATIVE FRAMEWORK PROVIDED BY THE DOMESTIC VIOLENCE ACT AND THE CHILDREN'S ACT**

The Domestic Violence Act\(^10\) recognises children as the potential victims of domestic violence and expressly provides that children are among its intended beneficiaries. It defines 'complainant'\(^11\) to include children and it further includes parent-child relationships in its definition of 'domestic relationship'.\(^12\) In addition, the Children's Act can be interpreted to include children living in families experiencing domestic violence in the definitions of abuse and description of children who may be considered in need of care and protection. The Children's Act defines 'abuse' \(\text{inter alia}\) to include 'assaulting a child or inflicting any other form of deliberate injury to a child' or 'exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally'.\(^13\) It also states that a child exposed to circumstances which may seriously harm their physical, mental or social well-being through actions by their parent, care-giver or family member may be in need of care and protection.

The Children's Amendment Act\(^14\) provides the potential for programmes to assist families experiencing domestic violence through the chapter on prevention and early intervention. It includes that the State must provide services to families to develop parenting skills; promote relationships in the family; prevent failures in the family environment; and prevent the recurrence of problems that may harm children or adversely affect their development.\(^15\)

**CHILDREN'S EXPERIENCES OF DOMESTIC VIOLENCE**

Evidence significantly links violence against women with violence against children in households that are considered to be violent.\(^16\) Research highlights \(\text{inter alia}\) that:

- Children may be abused intentionally as a form of punishment for the mother;\(^17\)

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\(^9\) Section 9 of the Children's Act.


\(^11\) Section 1(iii) of the DVA.

\(^12\) Section 1(vii) of the DVA.

\(^13\) Section 1(1) of the Children's Act.

\(^14\) Act 41 of 2007.

\(^15\) Section 144 of the Children's Amendment Act.


\(^17\) Holt et al. op cit 2008: 800.
violent discipline against children, seldom result in any intervention to protect the child or support the family.

- The abusive partner uses harsh physical discipline or force with children.28
- The adult victim over-disciplines children to avoid conflict with an abusive partner;29 and
- The adult victim abuses the children due to diminished tolerance or inability to manage parenting stresses.20

Children are regularly slapped, smacked, kicked, beaten with fists, whips, sticks, hosepipes and belts in South Africa. They experience this in their homes and at the hands of their parents.2 Similar acts committed against adult women are considered abuse. However, violent discipline against children seldom result in any intervention to protect the child or support the family. Thus, children who are physically, socially and emotionally more vulnerable than adults receive less protection from violence. It is noted that the extreme majority of parents who use corporal punishment love their children and truly believe that their actions are in the child’s best interests. Therefore, measures to support parents and strengthen non-violent discipline are essential.

**IMPACT OF DOMESTIC VIOLENCE AND CORPORAL PUNISHMENT ON CHILDREN**

Studies indicate that the ‘witnessing of abuse is usually combined with other childhood experiences that negatively affect children’s emotional and social functioning, such as harsh discipline, lack of emotional support and affection and poor parental supervision’.27 These, it is argued, are positively associated with subsequent violent behaviour as the child grows older and the perpetuation of cycles of violence in families and society.23

One of the major concerns for children in abusive households is the inevitable emotional and psychological trauma that these children suffer. Such trauma is caused by being directly involved, witnessing and hearing violent episodes between parents. Further the anticipation of abusive episodes in the home results in constant stress for the children and these children often live in a chronic state of anxiety due to the ever-present anticipation of a violent outburst, directed either at them, or at their mothers.24

Research documents a wide range of physical, mental health and cognitive behavioural problems that children experience due to their exposure to domestic violence.23

**RECOMMENDATIONS FOR RESPONDING TO CHILDREN IN THE CONTEXT OF DOMESTIC VIOLENCE**

In spite of the relatively comprehensive legislative framework to recognise children as direct and indirect victims of domestic violence, identification of children as victims and the provision of protection and other necessary services to children traumatised and victimised in this context is problematic. Further, the legal framework for protection of children from domestic violence in the form of parental corporal punishment is insufficient due to the common law defence of ‘reasonable and moderate’ chastisement that is still available to parents. This defence not only directly allows the use of less severe physical violence against children (which is considered abuse or assault when committed against an adult) but we argue, also enables the socially accepted use of more severe forms of violence against children by parents in the name of discipline.

It is thus important that children receive equal legal protection from violence by adults and that the provisions of the Children’s Act aimed at supporting parents and strengthening non-violent methods of discipline be implemented. The ability of State and civil society service providers to identify children as victims of domestic violence and respond to the needs of those children must be strengthened through guidelines for screening, training and the allocation of funds for appropriate services. Finally, further research into the nature and availability of services to children in this context will assist in developing appropriate policy responses. ●

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18 Coohey in Renner & Shook Slack. 2006: 601
19 Ibid.
20 Ibid.
21 Dawes A, De Sais Kroonwiers C, Kafar L & Richter L (2005), Corporal Punishment of Children, A South African National Survey Save the Children. 57% of parents surveyed in a national survey on corporal punishment reported smacking or spanking their children with a hand while 33% reported beating their children with a belt or other object, the most common age for smacking children with a hand while 33% reported beating their children with a belt or other object, the most common age for smacking children with a hand was three years and for beating with an object four years of age.
23 Ibid.