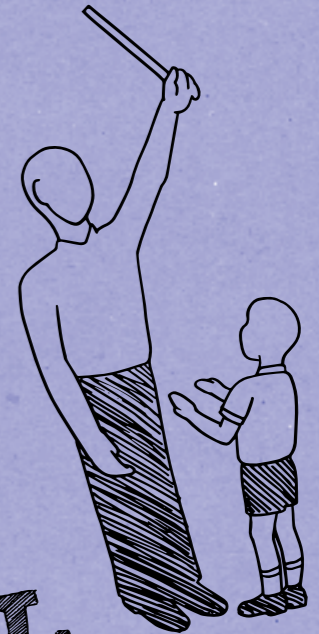


CHAPTER 20

CORPORAL PUNISHMENT

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INTRODUCTION

In February 2016, *Times Live* reported that a Grade 3 Free State pupil had died after a teacher had assaulted her with a hosepipe. Eight-year old Nthabiseng Mtambo was repeatedly beaten on her head with a hosepipe for not doing her homework.

In 1996, the South African Schools Act (SASA), under Section 10, banned the use of corporal punishment in schools. In 2000 this was confirmed in the *Christian Education* case. Corporal punishment in the home was also confirmed as unlawful and unconstitutional by the Constitutional Court in 2019, in the *Freedom of Religion South Africa* case.

Despite the clear illegality of corporal punishment, 6.8% of learners were subjected to corporal punishment at school in 2019, according to the General Household Survey (GHS) 2019. This amounts to at least one million learners. Corporal punishment is known to be underreported, so the number is likely to be much higher. Corporal punishment has been banned in South Africa for 25 years;

yet many teachers are still subjecting children to violence. This is illegal.

This chapter provides an overview of the historical context of corporal punishment and its abolition in South Africa, the debates on corporal punishment, the statistics on corporal punishment, the law and policies applicable to corporal punishment, and the process of reporting corporal punishment.

WHAT IS CORPORAL PUNISHMENT?

The United Nations Committee on the Rights of the Child defines corporal punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.

The Committee gives some examples of different types of corporal punishment:

- Hitting – with a hand or an object (for example, a whip, stick, belt or hosepipe)
- Kicking, grabbing or throwing
- Scratching, pinching, biting, pulling hair or boxing ears
- Forcing children to stay in uncomfortable positions
- Throwing objects at a learner
- Burning (for example, with hot water or cigarettes).

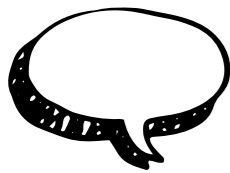
The Western Cape Provincial government defines corporal punishment as:

Any deliberate act against a child that inflicts pain or physical discomfort to punish or contain him or her. This includes (but is not limited to) spanking, slapping, pinching, paddling or hitting a child with a hand or with an object; denying or restricting a child's use of the toilet; denying meals, drink, heat and shelter; pushing or pulling a child with force; and forcing the child to do exercise.

EXAMPLE

The Grade 7 learners of Mpeli Primary School have been taken on an outing to the Planetarium. All the learners are very excited about the trip, and are very loud. Mr Smith, their bus driver, gets very angry with the children. He stops the bus, pulls Skosi off the bus, and hits him, in front of all the other learners.

The ban on corporal punishment is applicable not only to educators but to any person, including other members of staff such as bus drivers.



KEY WORDS

This chapter focuses on corporal punishment, but there are other important terms to know.

Abuse Any form of harm or ill-treatment deliberately inflicted on a child. This includes:

- Assaulting a child or inflicting any other form of deliberate injury on a child
- Sexually abusing a child or allowing a child to be sexually abused
- Bullying by another child
- Exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally.

Assault Unlawfully and intentionally:

- Applying force to a learner
- Creating a belief that force is going to be applied to the learner

Injury Physical harm or damage.

Code of Conduct A statement that sets rules that must be followed by members of the school community.

Positive discipline A form of discipline that is not punitive but rather teaches learners to obey rules by working with them to help them understand how to act acceptably, using positive reinforcement, and respecting children as individuals with human rights.

CORPORAL PUNISHMENT IN THE SOUTH AFRICAN CONTEXT

HISTORICAL OVERVIEW OF CORPORAL PUNISHMENT IN SOUTH AFRICA

Prior to 1994, corporal punishment was frequently relied on to ensure discipline in South African schools. It became acknowledged as an essential part of the schooling system, and was part of the broader culture of violence and oppression in apartheid South Africa. The predominant Christian National Education policy affirmed the role of teachers as disciplinarians.

Generally, corporal punishment was used to discipline unruly children, and was also used as a means to ‘toughen up’ boys and ‘turn them into men’; however, “(c)orporal punishment became one of the ways in which the racial and authoritarian apartheid system entrenched itself”, according to a report titled ‘Corporal Punishment of Children: A South African National Survey’.

Robert Morrell, a senior professor in education who has researched and written on corporal punishment, has noted that while corporal punishment was used in boys’ schools – both black and white – white girls’ schools were not exposed to corporal punishment, but black girls’ schools were.

The reliance on corporal punishment and the values attached to it became deeply ingrained in the South African school system and society in general.

THE DEVELOPMENT OF THE PROHIBITION OF CORPORAL PUNISHMENT IN SOUTH AFRICA

The end of apartheid brought with it the end of an authoritarian culture, and a shift towards a culture of human rights.

The social and political developments in South Africa created a shift in the education system towards an outcomes-based education (OBE) designed to facilitate more participative forms of learning in the new human rights culture. This was coupled with a new national legal framework for schooling.

The South African Schools Act (SASA) and National Education Policy Act (NEPA) of 1996 created a single, unified system of schooling in South Africa. NEPA seeks “to facilitate the democratic transformation of the national system of education into one which serves the needs and interests of all the people of South Africa and upholds their fundamental rights”.

The reformed schooling system is part and parcel of the transformation agenda for South Africa. The banning of corporal punishment reflected the need to move away from a violent and authoritarian past, and towards an environment respectful

of human dignity and bodily integrity. Our Constitutional Court has confirmed these principals in three important cases. In *S v Williams*, the Court held that “[a] culture of authority which legitimates the use of violence is inconsistent with the values for which the Constitution stands”. In the *Christian Education* case, the Court held that there was a need for the legislature to “make a radical break from our authoritarian past”. Further, in the *Freedom of Religion South Africa* case, the Constitutional Court confirmed that corporal punishment, even when committed by loving parents on their children, is violence and constitutes assault. Corporal punishment violates the dignity of children, which is a constitutional value central to remedying the harm done by South Africa’s violent, authoritarian history.

More recently, the South African Human Rights Commission (SAHRC) issued a report on religious teaching that encourages physical chastisement in the home as a form of discipline for children. The 2016 *Joshua Church Report* reaffirmed that “corporal [punishment] has been declared unconstitutional in all institutions having childcare responsibilities”. The report went on to say that it is “explicitly stated that corporal punishment in institutional settings (like schools) violates the dignity of the child”.

DEBATES ON CORPORAL PUNISHMENT

The issue of corporal punishment is by no means free of controversy.

Although corporal punishment is unconstitutional in all settings, many people still believe that it is an acceptable method of discipline. This is because corporal punishment has been so ingrained in society that it has been difficult to shift or change people's attitudes towards it. This section will highlight some of the common arguments for and against corporal punishment.

ARGUMENTS FOR CORPORAL PUNISHMENT – 'SPARE THE ROD, AND SPOIL THE CHILD'

- Learners who receive corporal punishment are more hardworking
- A lack of consequences or punishment can increase violent behaviour by students
- Banning of corporal punishment has resulted in reduced levels of discipline
- Different methods of discipline are not as effective as corporal punishment
- Since the ban on corporal punishment, learners are behaving poorly and are ill-disciplined

- “[P]hysical punishment only became degrading when it passed a certain degree of severity” (*Christian Education*). Those in favour of corporal punishment contend that if it is administered justly, it is essential to discipline (they promote the idea of ‘reasonable chastisement’); and
- Corporal punishment can be a significant part of some cultural or religious beliefs, as articulated by the Constitutional Court in the *Freedom of Religion South Africa* case.

The well-known Christian proverb ‘Spare the rod, and spoil the child’ suggests that without corporal punishment children will become ill-disciplined and spoil. It suggests that beating a child is an important part of the development of a child, and ensures that a child will become diligent and free from sin.

ARGUMENTS AGAINST CORPORAL PUNISHMENT

There is increasing evidence that corporal punishment – even corporal

punishment that many view as harmless (e.g. spanking) – has harmful effects.

In May 2016, the Universities of Michigan and Austin in the United States of America published the findings of a study about corporal punishment. The study spanned 50 years, and included more than 150 000 children. It found that “spanking is linked to aggression, antisocial behaviour, mental health problems, cognitive difficulties, low self-esteem, and a whole host of other negative outcomes”.

The study found that there were no redeeming effects of corporal punishment. These findings were published in the *Journal of Family Psychology*, by E Gershoff and A Grogan-Kaylor.

Arguments against the use of corporal punishment include:

- It is an ineffective deterrence mechanism:
- Evidence suggests that rather than acting as a deterrent, corporal punishment breeds aggression and hostility
- It makes learners unhappy, which in

turn contributes to absenteeism and learners dropping out of school.

- Corporal punishment perpetuates the acceptance of violent behaviour in society
- It doesn't encourage learners to behave appropriately
- It has the potential to weaken the relationship between the learner and the educator, which is crucial for the development of the learner
- It causes psychological harm, including:
 - Emotional damage
 - A negative impact on self-esteem
 - Negative feelings about going to school
 - Negative outcomes for academic performance.

The European Commission of Human Rights held that:

Corporal punishment amounts to a total lack of respect for the human being: it therefore cannot depend on the age of the human being ... The sum total of adverse effects, whether actual or potential, produced by corporal punishment on the mental and moral development of a child is enough ... to describe it as degrading...

CASE STUDY

CENTRE FOR CHILD LAW & OTHERS V SOUTH AFRICAN COUNCIL FOR EDUCATORS & OTHERS

In 2021 SECTION27, representing the Centre for Child Law and the parents of two learners who were subjected to corporal punishment, launched a case against the South African Council of Educators (SACE). SACE is the body responsible for overseeing the teaching profession, and one of the bodies responsible for sanctioning teachers if they have committed an act of corporal punishment (which goes against SACE's code of ethics). SECTION27 argued that the sentences imposed by SACE on two teachers who were found guilty of corporal punishment were grossly unreasonable and inadequate.

The first teacher had struck a Grade 2 learner over the head with a PVC pipe. This caused the learner both physical and psychological distress. After the incident occurred, the teacher intimidated the learner in the hopes that the learner would not report the incident.

The second teacher party to the case hit a Grade 5 learner across the face, resulting in the child bleeding from the ear. The child had to miss school to attend medical appointments made necessary because of the injury. Subsequently the learner had to repeat a grade. Despite the severity of these offences, the penalties meted out by SACE were both very lenient and exactly the same for both teachers. The penalties for the teachers were:

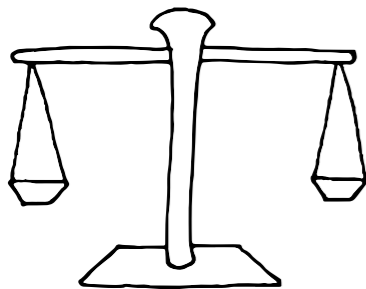
- The teachers' names would be struck off the roll if they committed another offence within 10 years from the date of sentencing.
- A fine of R15 000 each, R10 000 of which was suspended provided the teachers did not commit another offence.

The leniency of these sentences indicates the general attitude of ambivalence towards corporal punishment.

Further documentation obtained by SECTION27 in the course of litigation indicated that SACE may have been systemically imposing lenient sanctions on teachers who have been found guilty of corporal punishment. SACE had adopted 'mandatory sanctions', which were inadequate in several ways. For instance, the mandatory sanctions did not consider the rights of children, did not mandate that children or their parents provide their view on the sanctions meted out against teachers, did not mandate that the severity of the instance of corporal punishment be considered, and did not provide for rehabilitative or corrective sanctions. Although a revised mandatory sanctions document was adopted in 2020, it did not address many of the concerning features above.

SECTION27 is now approaching the court for an order that would require SACE to reconsider the sanctions it gave to the two teachers described above, and direct SACE to reformulate its mandatory sanctions. In reformulating the mandatory sanctions, SACE should be required to take a child-centred approach. The rights of children should be considered in sanctioning the teachers, and they and their parents should be given a meaningful opportunity to express their views throughout the disciplinary process.

Further, rehabilitative and corrective sanctions should be included as measures to impose on educators who have used less serious methods of corporal punishment. This is important in order to teach educators to use positive discipline and to address the root causes for corporal punishment still being used. However, teachers who have committed acts of corporal punishment using severe methods should be removed from the educators roll.



AN 'OFFICIAL AMBIVALENCE' TO THE PROHIBITION

Twenty years after the laws banning corporal punishment came into effect, it is clear that there is still a high prevalence of corporal punishment being administered in schools across the country. It has been suggested that this is in part due to a lack of support for the ban among educators.

Marius Smit, an associate professor in the School of Education at North West University, and a proponent of corporal punishment, states that "[e]ducators feel disempowered" without the traditional form of discipline. However, the ambivalence observed regarding the prohibition is to a large extent the result of inadequate training of educators about alternative forms of discipline, and the failure of a nation-wide attitude shift away from corporal punishment.

While there are educators and parents who believe that corporal punishment is the only viable way to ensure control in a classroom, there are many instances

in which corporal punishment is used to assert power and control, rather than for discipline and to improve and maintain the learning process.

Examples of when corporal punishment was not used for discipline:

1. A learner was hit with a broken hosepipe until the learner agreed to have sexual intercourse with an educator
2. A learner was threatened with a knife for refusing to go home with an educator
3. A group of learners who were allegedly giggling in class were beaten and expelled
4. A learner was unable to wear his damaged shoes; the mother had written a note to the school explaining the situation, but the educator was not satisfied and punished the learner by hitting him until he fell
5. In Gauteng, a learner was verbally abused and harassed by an educator for wearing a string in accordance with the child's religion.

These are not examples of 'reasonable chastisement'. Rather, they are examples of the excessive and uncontrolled use of force, and of cruel abuse. So while educators argue that corporal punishment is needed to maintain discipline, it is clear that these uses of violence are a means of exerting power over a learner for reasons unrelated to discipline.

Parental support of corporal punishment contributes to the 'official ambivalence' of the ban. Many parents were raised in an era in which corporal punishment was commonplace; and like educators, they have not made the necessary shift in accepting the new laws. It is likely that if parents support the use of corporal punishment in schools, they also promote its use at home. This leaves learners exposed to unsafe environments both at home and at school. It is important that parents know that corporal punishment in the home is also unlawful, and amounts to the crime of assault.

CORPORAL PUNISHMENT STATISTICS

The different statistics regarding corporal punishment vary widely, and can seem to contradict each other. The possible reasons for this variance are discussed after the statistics listed below.

GENERAL HOUSEHOLD SURVEYS (GHS)

The General Household Surveys, produced annually by Statistics South Africa (StatsSA), include figures for the proportion of learners who have experienced corporal punishment in schools in that particular year.

Encouragingly, the GHS indicates that the number of learners reporting having experienced corporal punishment has

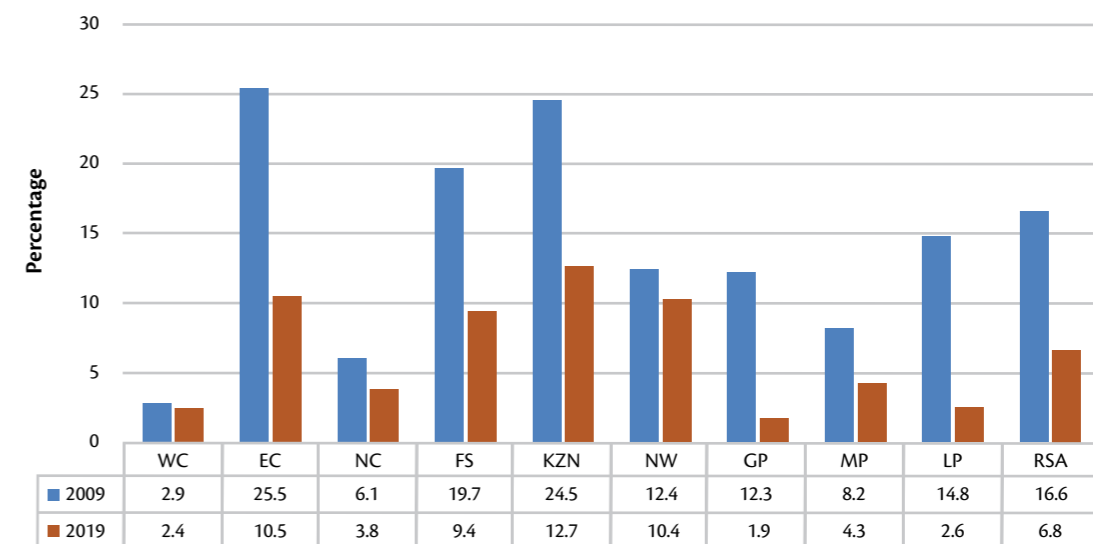
decreased from 2009 to 2019. However, the numbers are still far too high.

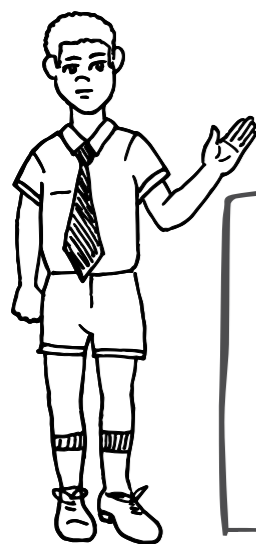
KwaZulu-Natal, Eastern Cape and North West were recognised as the provinces with the highest incidences of corporal punishment. The Western Cape had the lowest reported number of instances of corporal punishment. Even though the percentage of learners who experienced corporal punishment at school has decreased nationally since 2009, the actual

numbers of learners experiencing corporal punishment remains unacceptably high. According to the GHS, 6.8% of learners reported having experienced corporal punishment in 2019. This means that at least one million learners experienced corporal punishment in 2019.

This graph shows the percentage of learners who experienced corporal punishment across the provinces in 2009 and 2019 (GHS, 2019).

Figure 19.1: Percentage of learners who experienced corporal punishment 2009 and 2019





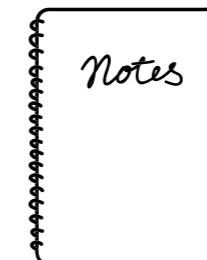
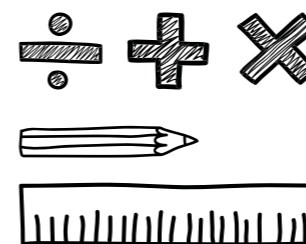
All educators are required to register with SACE, and to abide by its Code of Professional Ethics.

SOUTH AFRICAN COUNCIL OF EDUCATORS (SACE)

The South African Council of Educators (SACE) is a statutory body that was established to develop and maintain ethical and professional standards for educators. All educators are required to register with SACE, and to abide by its Code of Professional Ethics. SACE submits a report every year that usually provides a breakdown of all the complaints per province of alleged abuse by educators. Between 2018 and 2019, SACE received 295 complaints of instances of corporal punishment. Corporal punishment or assault is the most common form of educator misconduct reported to SACE. Below is a breakdown of the number of corporal punishment complaints received per province by SACE in its 2018/2019 Annual Report.

Table 19.2: SACE 2018/2019 Annual Report: Corporal Punishment.

PROVINCE	COMPLAINTS OF CORPORAL PUNISHMENT AND ASSAULT
Eastern Cape	15
Free State	13
Gauteng	28
Kwa-Zulu Natal	27
Limpopo	10
Mpumalanga	14
North West	13
Northern Cape	2
Western Cape	173
Total	295



2012 NATIONAL SCHOOL VIOLENCE STUDY (NSVS)

In 2012, a National School Violence Study exposed the prevalence of corporal punishment in South African schools. The study showed that 49.8% of the nearly 6 000 learners who were interviewed had been subjected to corporal punishment. Provinces that showed high levels of corporal punishment included KwaZulu-Natal, Eastern Cape and Free State; those with fewer learners reporting incidents of corporal punishment included Gauteng and Western Cape.

LEARNERS WITH DISABILITIES

In 2012, in a report on 'Violence Against Children in South Africa', UNICEF concluded that children with disabilities were more vulnerable to and more likely to experience physical abuse than children without disabilities.

This concern is not unique to South Africa. Human Rights Watch, in a report on 'Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools', noted that educators "are more likely to use corporal punishment on children with disabilities than on their non-disabled peers". There are very few statistics on

corporal punishment of learners with disabilities, but this is not to say that it is not occurring. In UNICEF's report, it was explained that: "Children with disabilities are easy targets for abuse, because they may be less able to report the abuse and often have lower self-esteem than other children, are less able to defend themselves, and are more dependent on, and thus perhaps trusting of, adults."

Educators are often not trained to appropriately assist learners with disabilities. Further, educators might not be aware of, or understand, the specific disability of a learner. This can lead to educators being impatient with learners, making learners with disabilities 'easy targets' when it comes to corporal punishment.

OBSERVATIONS

According to the GHS (2019), almost one million learners had experienced corporal punishment; and according to SACE, 295 incidents of educators perpetrating corporal punishment were reported during 2018 and 2019.

Therefore, there appears to be a great variance between the number of learners experiencing corporal punishment in a province, and the number of cases that are eventually reported and investigated by SACE. The NSVS indicated that a far

higher number of learners experience corporal punishment than is reported.

As is the case with school violence and sexual violence in schools, there is a problem with under-reporting of corporal punishment. The lack of reporting is linked to the lack of education around the prohibition of corporal punishment: there are still many learners who consider it the norm.

Provinces such as the Western Cape have been very proactive in issuing circulars and providing educational aids about the ban, so learners, parents and educators are probably more aware of their rights, and are informed about the reporting process. Notably, while SACE received the most complaints of instances of corporal punishment from the Western Cape, the percentage of learners reported as having experienced corporal punishment in the Western Cape was the lowest percentage of all the provinces. This perhaps suggests that better enforcement of the corporal punishment ban is more likely to lower the incidence of corporal punishment.

These numbers are only reflective of a percentage of the number of learners who are subjected to corporal punishment. The following section explains what laws can be used to empower learners, educators and parents, so that they can speak out about corporal punishment.



LAW AND POLICY

INTERNATIONAL LAW

Various international legal instruments have recognised the rights of the child, the right to education, and the right not to be treated in a cruel or degrading way. South Africa has ratified many of these, and is legally bound to ensure that these rights are protected and enforced.

In 1995, South Africa ratified the Convention on the Rights of the Child (CRC). By so doing, our government is obliged to take measures to ensure that our laws reflect the standards and ideals set out in the CRC. Article 19(1) requires state parties to:

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 violence, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.

The CRC places an obligation on state parties to take steps “to ensure that school discipline is administered in a manner consistent with a child’s human dignity” (Art 28(2)). Furthermore, Article 37(a) of the United Nations’ CRC requires countries that have signed it to

ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.

South Africa is also a signatory to the African Convention on the Rights and Welfare of the Child (ACRW). The ACRW places similar obligations on state parties as those mentioned above in Article 19(1) of the CRC. The ACRW further commits member states to “take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child...”.

‘Appropriate measures’, in the context of corporal punishment, would include ‘legislative measures’ to protect learners from ‘physical or mental abuse’. It would also include public education programmes for the promotion of positive discipline.

THE CONSTITUTION

Our Constitution has various rights intended to protect learners from being subjected to corporal punishment.

- **Section 10** states that everyone has inherent human dignity and the right to have their dignity protected.
- **Section 12(1)** states that everyone has the right to freedom and security of

the person, which includes the rights:

- To be free from all forms of violence
- Not to be tortured in any way, and
- Not to be treated or punished in a cruel, inhuman or degrading way.
- **Section 28(1)(d)** states that every child has the right to be protected from maltreatment, neglect, abuse or degradation.
- **Section 28(2)** states that the child’s interests are of paramount importance in all matters concerning him or her.

NATIONAL LAWS

THE BAN ON CORPORAL PUNISHMENT

In the 1995 *S v Williams* judgment, the Constitutional Court said that prohibiting corporal punishment was an important part of moving away from our violent history. As a result, the Court held that juvenile whipping no longer be allowed in South Africa as a form of punishment.

Section 10 of the Schools Act prohibits corporal punishment in schools, and states that:

- (1) No person may administer corporal punishment at a school to a learner.
- (2) Any person who contravenes subsection (1) is guilty of an offence, and liable on conviction to a sentence which could be imposed for assault.

In the *Christian Education* case, the Constitutional Court had to balance the rights listed above against the religious rights of the parents. In this case, the parents argued that ‘corporal correction’ was an important part of their Christian faith, and that a blanket prohibition on corporal punishment in schools was a violation of their rights to practise their religion freely.

The Court looked at all the constitutional and international obligations placed on our government and affirmed that there is a duty to “take all appropriate measures to protect the child from violence, injury or abuse”. In addressing the parents’ arguments and the balancing of rights, the Court said that “the parents are not being obliged to make an absolute and strenuous choice between obeying a law of the land or following their conscience. They can do both simultaneously.” The court said that the prohibition on corporal punishment is not preventing schools from maintaining their specific Christian ethos.

This case indicates that the Constitution is respectful and accommodating of people’s values and beliefs; but when actions stemming from these beliefs do not coincide

with the protection of our children from cruel and degrading treatment, those actions will not be allowed.

The 2019 *Freedom of Religion South Africa* case further declared that the criminal law defence of “reasonable and moderate parental chastisement” for parents in assault cases was inconsistent with sections 10 and 12(1) of the Constitution. The Constitutional Court held that the right to freedom of religion or participation in the cultural life of one’s choice does not confer on parents the right to administer corporal punishment on their children. This means that corporal punishment in the home is a crime in South Africa, and amounts to assault.

PROTECTING LEARNERS FROM CORPORAL PUNISHMENT

South Africa’s national laws have been very clear in expressing the need to protect learners from any form of mistreatment.

NATIONAL EDUCATION POLICY ACT OF 1996

The National Minister for Education must develop policies about

the control and discipline of learners, ensuring that “no person shall administer corporal punishment, or subject a student to psychological or physical abuse at any educational institution”.

THE CHILDREN’S ACT OF 2005

Section 7(1)(h) of the Children’s Act says that the best interest of the child is of paramount importance in every matter concerning the child, and specifically states that the child’s physical and emotional well-being must be taken into consideration in all matters concerning the child.

Section 110(1) of the Children’s Act says that an educator who on reasonable grounds concludes that a child is being abused must report this in the prescribed manner to a designated child-protection organisation, the provincial department of social development, or a police official. Failure to report in terms of Section 110 is a criminal offence. Educators are therefore legally obliged to report acts of corporal punishment being administered by other educators.

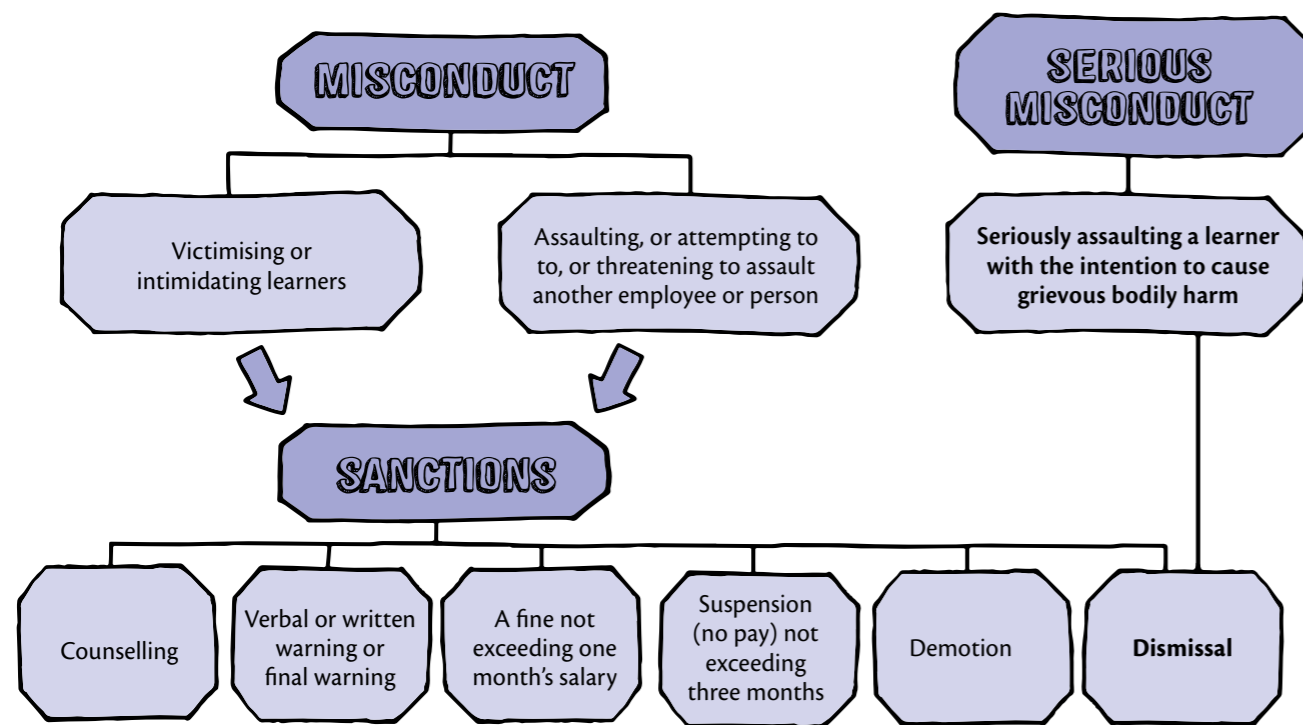


Figure 19.2: Possible outcomes when an educator is found guilty of misconduct.

SANCTIONS

Where there has been a complaint of corporal punishment against an educator at a school, the district office for that school will conduct preliminary investigations of the allegations. Depending on the outcome of the investigation, the district official will refer the case to the Labour Relations Directorate for further investigation and disciplinary hearings.

EMPLOYMENT OF EDUCATORS ACT

Schedule 2 of the Employment of Educators Act of 1998 (EEA) governs the procedure for disciplinary hearings against educators. The EEA distinguishes between misconduct and serious misconduct, and attaches different sanctions to each.

The EEA states that if the misconduct is also a criminal offence, separate

and different proceedings will occur. It does not make provision for legal representation in disciplinary hearings; but it allows for the presiding officer to appoint an intermediary, if the learner is under 18 and will suffer 'undue stress' during proceedings. The EEA further states that educators can also be dismissed if they contravene Section 10 of the Schools Act.

SACE

The South African Council for Educators has a prescribed disciplinary procedure for use if there is a complaint regarding an alleged breach of the code.

There is an initial investigation of the alleged breach. The matter may then be referred for a disciplinary hearing. The SACE disciplinary procedure has developed comprehensive rules to govern the disciplinary hearing, in terms of which the rules of natural justice apply. The procedure also provides for an appeal within SACE.

SACE may impose the following sanctions where an educator is found to be guilty of a breach:

- A caution or reprimand
- A fine not exceeding one month's salary, or
- The removal of the educator's name from the register for a specified period, or indefinitely, or subject to specific conditions.

As mentioned earlier in the chapter, SECTION27 is approaching the court for an order directing SACE to reconsider these sentences by reformulating its mandatory sanctions. Rehabilitative and corrective measures should be included as possible sanctions for SACE to impose on teachers found guilty of corporal punishment.

CHILDREN'S ACT

The Children's Act provides for the establishment of a National Protection Register. Part B of the register was established to have a record of persons who are unsuitable to work with children. A court, either in civil or criminal matters, or a "forum established or recognised by law in any dispute in any disciplinary proceedings concerning the conduct of that person relating to a child" may make a finding that a person is unsuitable to work with children. In criminal proceedings, a person may be found unsuitable to work with children if they are found guilty of murder, attempted murder, or assault with intent to do grievous bodily harm with regard to a child. Once a person's name appears on Part B of the register, that person may no longer be employed at an institution dealing with children.

PROVINCIAL LAWS

All nine provinces have adopted provincial legislation that prohibits corporal punishment in schools. The Northern Cape, Mpumalanga, Gauteng and the Free State have gone further, and included provisions stating that 'anyone who administers corporal punishment in schools will be guilty of an offence

and is liable on conviction to a sentence which would be imposed for assault'.

Some provinces have been more proactive than others and have sent out circulars and published regulations in attempts to address the current levels of corporal punishment in schools in South Africa.

In 2002, the Western Cape Department of Education issued a circular after a growing number of incidents of corporal punishment had been reported. The circular aimed to reinforce what the laws and policies on corporal punishment are, as well as the consequences of administering corporal punishment.

In 2014, the Gauteng Department of Education issued a similar circular, with the purpose of promoting an understanding of assault and corporal punishment. The circular emphasised that corporal punishment was not to be used, and that 'positive discipline' was to be used.

In 2016, KwaZulu-Natal issued a circular "to promote an understanding of the acts of corporal punishment, and to ensure that corporal punishment is not administered at our schools".

It is not surprising that the three provinces that issued circulars are the ones with the highest number of reports of corporal punishment.

MEC FOR EDUCATION DEPARTMENT OF LIMPOPO V MOKAGDI SEBATHA

An educator applied lashes with a plastic pipe to the head of a six-year-old child. The main injury was bruising to one side of the head. The reason given by the educator for the corporal punishment was that the child had been absent the day before. The matter was reported to the police, and the educator pleaded guilty and was fined R300. The child was moved to another class.

The Limpopo Department of Education (DoE) instituted disciplinary proceedings against the educator, in consequence of which she was dismissed. The educator referred the matter for arbitration. The arbitrator found that while there was a ban in place regarding corporal punishment, the penalty was too severe. He took into account the remorse the educator had shown, her length of service, and the bruise that in his view was of a minor nature. The educator was reinstated.

On appeal, the Labour Appeal Court had to decide on the appropriateness of the dismissal.

The Labour Appeal Court held that a dismissal could occur even if an educator was found guilty of misconduct rather than serious misconduct.

The employer in such cases is certainly entitled to say that notwithstanding any remorse, notwithstanding an impeccable record, and given the violence perpetrated upon a minor child, dismissal may well be justified in such a case.

The reinstatement of the educator was nevertheless allowed on the basis that the Limpopo DoE's review was not instituted in the time required by the relevant legislation.

CASE STUDY

STANDER V EDUCATION LABOUR RELATIONS COUNCIL

An educator had been teaching for over 30 years. He was found guilty of slapping a Grade 11 learner and was dismissed. He took the disciplinary process on review. The court set aside the dismissal and referred the matter back to the Education Labour Relations Council. The court held that the commissioner had failed to take into account certain factors relevant to the substantive fairness of the dismissal, therefore leading to remittal of the matter back to the bargaining council under a new commissioner.

The factors that the commissioner had failed to consider included:

- The length of service of the educator;
- That the educator did not deny the commission of the offence;
- That the educator had accepted that what he had done was wrong, and had subjected himself to a further medical assessment and treatment.
- That the offence was the result of provocative behaviour on the part of the learner.
- That the relationship with the school had not broken down.
- That it would appear from the version of the school that disciplinary action was only taken because of pressure from outside the school, and;
- That there was no evidence that he would commit a similar offence again.

These two case studies illustrate the difficulties of trying to litigate to ensure the ban against corporal punishment is enforced. In the first case, technical reasons (the Education Department initiating the case too late) led to the educator being reinstated. In the second case, the court stated that factors other than the assault of a learner also needed to be considered when disciplining an educator. The law is clear on the matter, but differing sanctions flowing from different laws have created problems when matters have been reported. However, this should not deter a learner, parent or educator from reporting corporal punishment.

The following section suggests that there are three channels that must be followed when reporting corporal punishment. The reason for this approach is to avoid cases falling through the cracks, and to ensure that those who do wrong are appropriately dealt with.

WHAT TO DO WHEN A LEARNER HAS BEEN SUBJECTED TO CORPORAL PUNISHMENT

Many cases of corporal punishment are reported in schools, but few educators are officially found guilty.

For that reason, it is important to know what to do if you or someone you know has experienced corporal punishment, so that the educator can be appropriately sanctioned, and the learner can receive appropriate support.

In 2017, the DBE published the 'Protocol to Deal with Incidences of Corporal Punishment in Schools' ('Protocol'), which sets out how corporal punishment should be reported. Incidents of corporal punishment should not be dealt with informally by the school. The following section sets out how to respond to corporal punishment, based on the Protocol.

LEARNERS

If you or one of your classmates has been physically punished, it is important to report it so that it does not happen again. Sometimes it can be intimidating to report incidents like this, especially when it is very common in your school. It can help to talk to someone you trust to help you with reporting.

The steps below explain the different ways in which you must report an incident. These steps do not need to be done in this order and may be done simultaneously. It is important that all three steps are done.



FORM 22

WHAT IS A FORM 22?

This is the prescribed form that is used for the "reporting of abuse or deliberate neglect of a child". It is set out in Regulation 33, Section 110 of the Children's Act.

WHO CAN FILL IT IN?

Any person may fill in a Form 22.

WHERE CAN YOU GET IT?

These forms can be found on the internet, or they can be collected from local police stations or social services. Schools should also keep copies of the form.

HOW TO FILL IT OUT

A separate form must be filled out for each learner.

The following information is required:

- The details of the learner (age, gender, date of birth)
- Contact details of a person the child trusts
- Details of alleged abuser
- Details of parents or guardians
- Nature of the abuse – physical indicators (whether there are bruises, swelling or bleeding) or emotional indicators (whether the child is distressed)
- Brief explanation of what happened, and
- Anything relating to the incident of corporal punishment has been done since the event took place.

STEP 1: DEPARTMENT OF EDUCATION AND DEPARTMENT OF SOCIAL DEVELOPMENT

- Report the incident of corporal punishment to the principal, provided the principal is not implicated in the matter. If the principal is implicated in the incident, the matter should be reported directly to the circuit manager in the education district the school is located in or to the deputy director of the provincial department of education.
- According to the Protocol, the principal – or whoever the matter was reported to – must gather as much information as possible regarding the matter from the victim and record this information in a written statement.
- The principal must send the written statement, along with any relevant documents and a report by the head of the institution to the Directorate: Dispute Management at the head office of the provincial department of education (PED), marking the files as 'urgent'.
- The principal must inform the SGB of the alleged instance of corporal punishment.

- The principal must inform the circuit manager in the school's education district about the alleged instance of corporal punishment, and confirm with them that the matter has been referred to the district director of the department of education.
- The principal must also inform the parents of the victim of the alleged corporal punishment, informing them that the matter has been referred to the head office of the PED and that they will be contacted by an official from the PED.

The district office of the education district the school is located in will then investigate the matter and compile a report. This report will be forwarded, along with recommendations, to the head of the PED for approval.

Where an educator has been found guilty of corporal punishment, disciplinary action will be taken by the PED, and the matter will be simultaneously referred to SACE.

A Form 22 should also be completed and sent to the head of the Department of Social Development, the district

manager of the PED, the national Department of Basic Education, and a social worker. You can ask an adult at your school for these details. More information about a Form 22 is given on the previous page.

Once a Form 22 has been filled out, it triggers a child protection investigation by a designated social worker.

STEP 2: SAPS

- All incidents of corporal punishment must be reported to the South African Police Service (SAPS) so that a case of assault can be opened against the educator.
- You can report an incident of corporal punishment at your local police station.
- If you are under 18 years of age, a parent, social worker or educator should accompany you to the police station and report with you.
- If you are over 18, you have a choice whether or not to lay a charge yourself. If you do not wish to or are under 18, a charge must be laid by the person accompanying you.



STEP 3: SACE

- You must lodge a complaint with SACE.
- This can be done by calling the hotline, faxing, emailing or posting your complaint.
- You need to give as many facts, dates and details as possible.
- If you are helping a classmate or reporting an incident on their behalf, their name must be included in the complaint.
- If you do not feel comfortable lodging a complaint you can do it anonymously, and it will be accepted. If you choose to do it this way, SACE will need the following in order to do a proper investigation:
 - Name of person who allegedly abused the learner
 - Name of the school involved
 - Name and grade of learner involved
 - Specifics of the incident, including the date.

When you report corporal punishment, people might ask you lots of questions. You do not have to give out information you are not comfortable with, but when you

are talking to a policeman, policewoman or social worker it is helpful for them to have as much information as possible so that they can investigate the matter properly.

EDUCATORS

Educators are legally required to report incidents of corporal punishment, and must follow the same steps.

PARENTS, THIRD PARTIES AND COMMUNITY MEMBERS

Parents, third parties and community members should also be empowered to report corporal punishment. They must follow the steps above. They can report an incident on behalf of a learner, or assist a learner in reporting the incident.

HOTLINES AND NGOS

In addition to the options above, cases involving violence/harassment by educators can also be reported via various hotline options:

SACE

Tel: 012 663 9517

DEPARTMENT OF BASIC EDUCATION:

Helpline: 0800 202 933

WESTERN CAPE DEPARTMENT OF EDUCATION – SAFE SCHOOLS CALL CENTRE

Toll-free number: 0800 45 46 47

POLICE CHILD PROTECTION UNITS

Tel: 10111

childprotect@saps.org.za

CHILDLINE SOUTH AFRICA

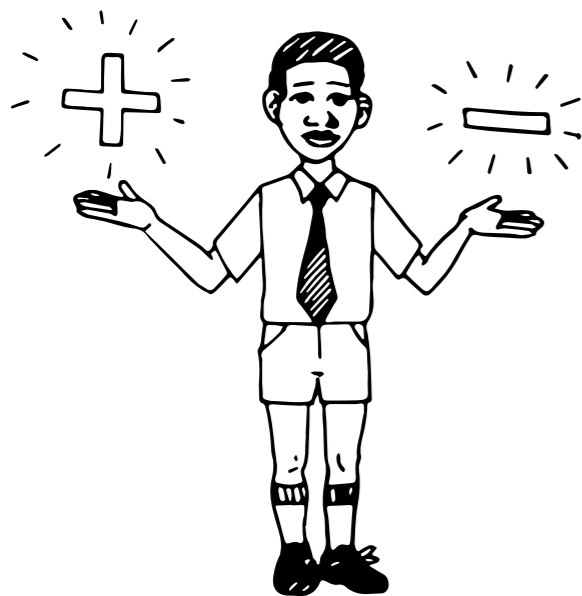
08000 55 555

CHILD WELFARE SOUTH AFRICA

0861 4 CHILD (24453)

011 452 4110

Organisations such as the Centre for Child Law, Legal Resources Centre, SECTION27, and Equal Education can also be contacted to assist with such matters, and to provide learners and families with legal advice.



ALTERNATIVES TO CORPORAL PUNISHMENT

In *S v Williams*, the court said:

There is indeed much room for new, creative methods to deal with the problem of juvenile justice. The court used community service as an example that would meet the punitive element of sentencing while allowing for the education and rehabilitation of the offender.

Kader Asmal, former Minister of Basic Education, said that “extensive research shows that corporal punishment does not achieve the desired end – a culture of learning and discipline in the classroom”.

This section aims to highlight alternative methods of discipline that can and must be used in place of corporal punishment.







Raising Voices, an NGO that works at preventing violence against women and children, defines positive discipline as:

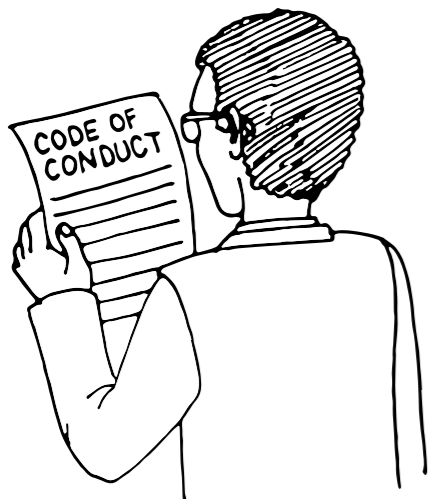
a different way of guiding children. It is about guiding children's behaviour by paying attention to their emotional and psychological needs. It aims to help children take responsibility for making good decisions, and understand why those decisions were in their best interests. Positive

discipline helps children learn self-discipline without fear. It involves giving children clear guidelines for what behaviour is acceptable, and then supporting them as they learn to abide by these guidelines.

On the next page is a table that lists key words to explain the differences between positive discipline and corporal punishment.

Table 19.3: Helpful keywords explaining the difference between positive discipline and corporal punishment.

<div></div> <div>POSITIVE DISCIPLINE</div>	<div></div> <div>CORPORAL PUNISHMENT</div>
<ul style="list-style-type: none">• Corrective• Nurturing• Learning• Tolerance, respect, dignity• Development• Non-violent• Inclusivity• Safety• Conflict resolution	<ul style="list-style-type: none">• Authoritarian• Controlling• Fear• Punitive• Humiliating• Threats• Isolation• Pain and suffering
<div></div> <div>USEFUL PHRASES FOR POSITIVE DISCIPLINE</div>	<div></div> <div>BAD STATEMENTS</div>
<ul style="list-style-type: none">• ‘Please can everyone quiet down now.’• ‘We are going to begin our life science lesson, and everyone needs to listen carefully.’• ‘Do you understand why it is important that we all quiet down?’• ‘If you listen carefully and work quietly, I will let you out to break a little earlier today.’ <p><i>Note: Some of these are examples that might be more useful for younger learners.</i></p>	<ul style="list-style-type: none">• Commands – ‘Sit down now and be quiet!’, ‘Write 100 times, “I will not waste my time on silly things.”’• Forbidding statements – ‘Don’t do that!’, ‘Stop that now!’• Criticising statements – ‘You are so stupid!’ ‘What is wrong with you?’• Threatening statements – ‘If you don’t stop that, I will hit you.’
<div></div> <div>USEFUL ACTIONS FOR POSITIVE DISCIPLINE</div>	<div></div> <div>BAD ACTIONS</div>
<ul style="list-style-type: none">• Keep eye contact with learners, and nod or smile at them when they are good• Give them a few extra minutes of playtime at the end of the day when they have been well behaved• Give learners stars on a ‘star board’ for their successes and good work. <p><i>Note: Some of these are examples that might be more useful for younger learners</i></p>	<ul style="list-style-type: none">• Physically punishing a child• Tearing up a learner’s work or throwing work at a learner• Not letting learners go to break• Making learners sit or stand in uncomfortable positions.



CODE OF CONDUCT

As stated in *Christian Education*, part of the transformation of education requires a “coherent and principled system of discipline” to be established. Part of this process is seen in Section 8 of the Schools Act, which provides that a School Governing Body (SGB) must, “after consultation with learners, parents and educators of the school”, adopt a code of conduct.

The KwaZulu-Natal Department of Education defines a code of conduct as “a statement that sets rules that must be followed by members of the school community”. The Schools Act states in Section 8(2) that a code of conduct is “aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning

process”. All learners will be bound by the code of conduct of their school.

Adopting a code of conduct must be a consultative process in which all stakeholders get the opportunity to participate. It is important for parents and learners to be involved in these processes, and to engage with the issues relating to methods of discipline, to ensure that learners

are safe, and that the school’s environment is conducive to learning.

The Minister of Basic Education is entitled to publish guidelines to assist SGBs in adopting their codes of conduct. In 1998, the Minister published such guidelines. These guidelines say that codes of conduct must be consistent with the Constitution, and that they must promote “positive discipline”.

The guidelines urge teachers to understand the “importance of mediation and co-operation, to seek and negotiate non-violent solutions to conflict”.

Codes of conduct should include levels of misconduct. For example:

Table 19.4: Example of levels of misconduct assigned to specific behaviours.

LEVEL 1 MISCONDUCT	LEVEL 2 MISCONDUCT	LEVEL 3 MISCONDUCT	LEVEL 4 MISCONDUCT	LEVEL 5 MISCONDUCT
<ul style="list-style-type: none">• Being late for class• Failing to do homework• Talking in class	<ul style="list-style-type: none">• Using abusive language• Being dishonest• Smoking cigarettes	<ul style="list-style-type: none">• Hurting another learner• Being very disruptive in class• Racist or sexist remarks• Stealing and vandalism	<ul style="list-style-type: none">• Selling drugs• Threatening a person with a weapon• Engaging in sexual activities	<ul style="list-style-type: none">• Sexual abuse and rape• Breaking and entering• Murder

Codes of conduct must also include the disciplinary actions for the different levels of misconduct. These can include warnings, suspensions and expulsions. It is also important to include the disciplinary process that must be followed when dealing with misconduct. This

process can include hearings that are fair and give both parties the chance to present their case. The chapter on School Governance in this Handbook provides further information on this topic. It is important to promote the use of positive discipline, and to participate

in the adoption of codes of conduct. Learners are vulnerable members of society who must be treated with dignity and respect. Creating a society free from violence cannot be achieved unless we show our learners how to be respectful of one another.



I support the Global Initiative to eliminate all corporal punishment at home, at school, in institutions and community

... Violence begets violence, and we shall reap a whirlwind. Children can be disciplined without violence that instils fear and misery, and I look forward to church communities working with other organisations to ... make progress towards ending all forms of violence against children. 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.

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CASES

South African

Christian Education South Africa v MEC of Education 2000 (4) SA 757 (CC).

Freedom of Religion South Africa v Minister of Justice and Constitutional Development 2020 (1) SA 1 (CC).

MEC for Education Department: Limpopo v Sebetha 2008 ZALAC 20.

Stander v Education Labour Relations Council (2011) 32 ILJ 978 (LC).

S v Williams and Others 1995 (3) SA 632 (CC).

European Court of Human Rights

Campbell and Cosans v UK Merits, App No 7511/76, A/48, [1982] ECHR 1, (1982) 4 EHRR 293, IHRL 33.

LEGISLATION, POLICY AND GUIDELINES

Constitution of the Republic of South Africa 1996.

Children's Act 38 of 2005.

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Department of Basic Education 'Protocol to Deal with Incidences of Corporal Punishment in Schools', 2017.

Department of Education 'Alternatives to Corporal Punishment', 2000.

Employment of Educators Act 76 of 1998.

Gauteng Department of Education 'Guidelines and Procedures for Dealing with Suspected and Confirmed Cases of Child Abuse', 2008.

National Education Policy Act 27 of 1996.

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Western Cape Education Department 'Abuse No More Protocol: Dealing Effectively with Child Abuse, Deliberate Neglect and Sexual Offences against Children', 2014.

Western Cape Education Department 'Learner Discipline and School Management: A Practical Guide to Understanding and Managing Learner Behaviour within the school context', 2007.

INTERNATIONAL AND REGIONAL INSTRUMENTS

The African Charter on the Rights and Welfare of the Child (ACRWC) 1990.

The Convention on the Rights of the Child (CRC) 1989.

FURTHER READING

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