

# CORPORAL PUNISHMENT

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## NOTE

In this publication, “Ministry” and “Minister” refer to the Ministry and Minister responsible for child protection, and “Guide” means this *Guide to the Child Care and Protection Act* (which is published in separate chapters).

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**T**he Child Care and Protection Act says that any person with control of a child, including the child's parents, must respect the child's right to dignity when disciplining the child. The Act also outlaws the use of corporal punishment in –

- ⌚ any registered facility for children (including children's homes, shelters, crèches and day care centres);
- ⌚ any form of alternative care by court order (such as foster care or court-ordered kinship care);
- ⌚ public and private schools; and
- ⌚ prisons and police cells.

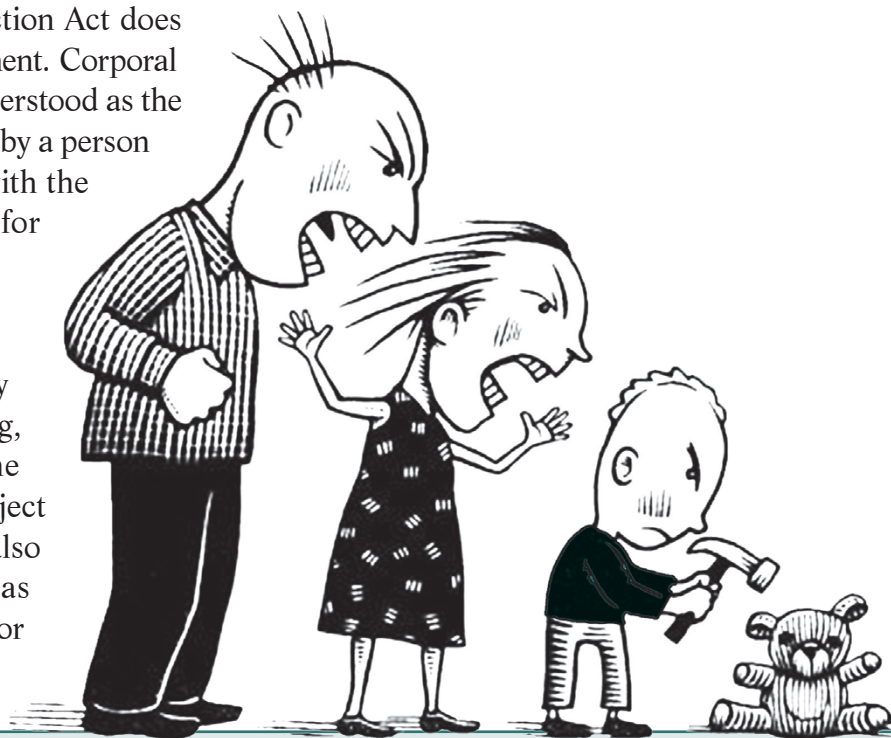
The Act also gives the Minister responsible for child welfare a duty to promote alternatives to corporal punishment.

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## 1. What is corporal punishment?

The Child Care and Protection Act does not define corporal punishment. Corporal punishment is generally understood as the application of physical force by a person in a position of authority with the intention of causing pain for disciplinary purposes.

Corporal punishment of children in Namibia usually includes things like slapping, spanking, beating with the hand or beating with an object like a stick or a belt. It can also involve other actions such as kicking, shaking, pinching or burning.



Corporal punishment is “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”.

◆ Committee on the Rights of the Child, *General Comment No. 8* (2006), paragraph 11

## 2. Constitutional and international framework

### 2.1 Namibian Constitution

#### Namibian Constitution

##### Article 8: Respect for Human Dignity

- (1) The dignity of all persons shall be inviolable.
- (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
- (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

**Shortly after Independence, in 1991, the Namibian Supreme Court found that Article 8 of the Namibian Constitution prohibits corporal punishment by any “organ of state”. The Court’s reasoning was as follows:**

- “1. Every human being has an inviolable dignity. A physical assault on him sanctified by the power and the authority of the State violates that dignity. His status as a human being is invaded.
2. The manner in which the corporal punishment is administered is attended by, and intended to be attended by, acute pain and physical suffering ‘which strips the recipient of all dignity and self-respect’...
3. The fact that these assaults on a human being are systematically planned, prescribed and executed by an organised society makes it inherently objectionable. It reduces organised society to the level of the offender. It demeans the society which permits it as much as the citizen who receives it.
4. It is in part at least premised on irrationality, retribution and insensitivity. It makes no appeal to the emotional sensitivity and the rational capacity of the person sought to be punished.
5. It is inherently arbitrary and capable of abuse leaving as it does the intensity and the quality of the punishment substantially subject to the temperament, the personality and the idiosyncrasies of the particular executioner of that punishment.
6. It is alien and humiliating when it is inflicted as it usually is by a person who is a relative stranger to the person punished and who has no emotional bonds with him.”

The Court stated that this reasoning applied equally to adults and juveniles, and to school settings as well as criminal justice ones. It held that “the imposition of any sentence by any judicial or quasi-judicial authority, authorising or directing any corporal punishment upon any person is

unlawful and in conflict with art 8 of the Namibian Constitution”, and that the infliction of corporal punishment in government schools “is unconstitutional and unlawful and in conflict with art 8 of the Namibian Constitution”. The case did not discuss corporal punishment in the home.

◆ *Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State* 1991 NR 178 (SC)

## 2.2 International framework

Many international and regional agreements which Namibia has joined guarantee respect for human dignity and prohibit the use of degrading treatment or punishment:

- ⑨ Universal Declaration of Human Rights
- ⑨ Convention on the Rights of the Child
- ⑨ International Covenant on Civil and Political Rights
- ⑨ International Covenant on Economic and Social Rights
- ⑨ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
- ⑨ African Charter on Human and Peoples’ Rights
- ⑨ African Charter on the Rights and Welfare of the Child.

Several of these agreements speak explicitly to corporal punishment of children in their texts, or in official comments which guide their interpretation.

**Universal Declaration of Human Rights:** The Universal Declaration of Human Rights provides the foundation for modern international human rights law. It recognises the inherent dignity and the equal and inalienable rights of all members of the human family. Article 5 of the Declaration recognises the right to be free from torture and cruel, inhuman or degrading treatment or punishment. This principle has been interpreted as providing support for the prohibition of corporal punishment in all places, including in the home.

◆ See, for example, “Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment”, UN General Assembly, 2002

**Convention on the Rights of the Child:** Article 37 of this Convention requires States to ensure that: “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”. Article 19 requires that States take steps “to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child”. In addition, Article 28(2) requires States to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity”. In 2006, the Committee which monitors the Convention issued a General Comment which stressed that corporal punishment of children conflicts with these principles. The Committee noted the growing recognition that explicit prohibition of corporal punishment is required in order to make it absolutely clear that it is as unlawful to hit, “smack” or “spank” a child as to do so to an adult, and that the criminal law on assault applies to such violence, regardless of whether it is termed “discipline” or “reasonable correction”. It also recommended that law reform should be accompanied by awareness-raising, guidance and training to change attitudes and practice.

◆ Committee on the Rights of the Child, *General Comment No. 8* (2006), paragraphs 34, 38

“Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies”.

◇ Committee on the Rights of the Child, *General Comment No. 8* (2006), paragraph 3

**International Covenant on Civil and Political Rights:** Article 7 of this Covenant states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The Committee which monitors this Covenant has made it clear that this extends to corporal punishment, including corporal punishment of children. The Committee has strongly rejected corporal punishment in its concluding observations on States’ reports, calling such punishment a “primitive measure” that is “degrading”.

◇ Office of the High Commissioner for Human Rights, *General Comment No. 20*, 10 March 1992

**International Covenant on Economic, Social, and Cultural Rights:** Article 10 of this Covenant protects children and the family and states that “special measures of protection and assistance should be taken on behalf of all children and young persons.” Its monitoring Committee has stated in its concluding observations on many State reports that Article 10, when read in conjunction with the principle of the dignity of the individual constitutes a prohibition on the physical punishment of children in families. According to the Committee, corporal punishment of children in the home or in schools constitutes a serious violation of Covenant obligations. It has called on States Parties to prohibit the use of corporal punishment in all areas of life.

◇ Committee on Economic, Social, and Cultural Rights, *General Comment No. 13*, 1999, paragraph 41

◇ See, for example, Committee on Economic, Social, and Cultural Rights, *Concluding Observations on Report of Lebanon*, 2016, paragraph 48; *Belgium*, 2013, paragraph 17; *Tanzania*, 2012, paragraph 14; *Costa Rica*, 2007 paragraphs 23, 44; *United Kingdom*, 2002, paragraph 36; and *Jamaica*, 2001, paragraph 14

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment:** Even though the focus of this Convention is torture by the State or State officials, the Committee which monitors the Convention has repeatedly urged States Parties to prohibit corporal punishment in all settings, including the home. It has also consistently promoted awareness-raising campaigns about the harmful effects of corporal punishment and the promotion of positive, non-violent forms of discipline as an alternative to corporal punishment.

◇ See, for example, Committee against Torture, *Concluding Observations on the Report of Maldives*, 2018, paragraphs 41-42; *Mongolia*, 2016, paragraphs 25-26; *Lithuania*, 2014, paragraph 24; *Senegal*, 2013, paragraph 15; *Serbia*, 2009, paragraph 20; and *Belgium*, 2009, paragraph 24

**African Charter on Human and Peoples’ Rights:** The Charter is the pivotal human rights instrument of the African Union. Article 5 reads: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”. This principle has been interpreted by the African Commission on Human and Peoples’ Rights as providing



support for the prohibition of corporal punishment. In a 2003 case, the Commission stated that the prohibition of torture, cruel, inhuman, or degrading treatment or punishment is to be interpreted as widely as possible and that there is no right for individuals, and particularly the government of a country, to apply physical violence to individuals as punishment for offences. Such a right would be tantamount to sanctioning State-sponsored torture and contrary to the very nature of the Charter.

◆ African Commission on Human and Peoples' Rights,  
*Curtis Francis Doebbler v Sudan*, Application 236/2000, May 2003

**African Charter on the Rights and Welfare of the Child:** This Charter requires that States Parties take legislative measures to protect children from all forms of torture and inhuman or degrading treatment (Articles 16 and 17) and ensure that discipline of children, whether at home or in schools, respects their human dignity (Articles 11 and 20). The implementation of the Charter is monitored by the African Committee of Experts on the Rights and Welfare of the Child. In 2011, the Committee issued a statement on violence against children, in which it stated that the acceptance of corporal punishment should be publicly condemned and eliminated. In 2016, the Committee issued a General Comment which emphasised the need to adopt legislation to outlaw corporal punishment in all settings – as a judicial punishment, in the alternative care system, in schools and in the home – adding that appropriate sanctions for violations should be enacted.

◆ African Committee of Experts on the Rights and Welfare of the Child,  
*Statement on Violence against Children*, 2011

◆ African Committee of Experts on the Rights and Welfare of the Child,  
*General Comment No. 5*, 2018, section 5.3.1

**Universal Periodic Review:** The Universal Periodic Review is a United Nations reporting mechanism created by the UN Human Rights Council, in which States (as opposed to independent experts) examine the human rights record of other States, with each country reporting and being examined in four-year cycles. In Namibia's second review, which took place in 2016, several recommendations focused on the elimination of corporal punishment of children in all settings, including the home. The Namibian Government accepted these recommendations.

◆ Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Namibia",  
Thirty-second session, A/HRC/32/4, 15 April 2016, paragraphs 137.127-129

◆ Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Namibia,  
Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies  
presented by the State under review", Thirty-second session, A/HRC/32/4/Add.1,  
15 June 2016, paragraph 11

“ How can we expect children to take human rights seriously and to help build a culture of human rights, while we adults not only persist in slapping, spanking, smacking and beating them, but actually defend doing so as being ‘for their own good’? Smacking children is not just a lesson in bad behaviour; it is a potent demonstration of contempt for the human rights of smaller, weaker people. ”

◆ P Newell & T Hammarberg, "The right not to be hit" in *Children's rights: Turning principles into practice*, Stockholm: Save the Children Sweden, 2000, page 135

### 3. Corporal punishment of children in family settings

#### Child Care and Protection Act, section 228(1)

##### Corporal punishment by a person who has control of a child

“A person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect the child’s right to dignity conferred by Article 8 of the Namibian Constitution.”

**Past law and practice:** Corporal punishment of children in the home has been common in Namibia in the past. Historically, “moderate and reasonable chastisement” by parents or others with children in their care was a defence to a charge of assault under the common law. A 2007-2008 Namibian study conducted in 8 regions in Namibia found that almost 61% of the survey respondents felt that it was common in their communities for children to be slapped or caned, and almost 37% thought that it was common for children to be seriously physically abused – but more than half of the respondents also said that it was *not* necessary to physically punish children as part of their upbringing. There have been cases in Namibia where excessive physical force has been used against children in the home, where children have been seriously injured or burned, and in some cases even beaten to death.

◆ Namibian study: SIAPAC, *Knowledge, Attitudes and Practices Study on Factors and Traditional Practices that may Perpetuate or Protect Namibians from Gender Based Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke, and Otjozondjupa Regions (Final Report)*, Ministry of Gender Equality and Child Welfare, 2008

◆ Examples of excessive physical force:  
*FN v SM* 2012 (2) NR 709 (HC);  
*S v Nkasi* (CC 02/2010) [2010] NAHC 9 (24 March 2010);  
*S v Moses* 1996 NR 387 (SC)

**Respect for the child’s dignity:** In terms of the Child Care and Protection Act, “a person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect the child’s right to dignity conferred by Article 8 of the Namibian Constitution.”

**Who is covered by this rule?:** The phrase “a person who has parental responsibilities and rights in respect of the child” would clearly include:

- ☉ a parent (biological or adoptive)
- ☉ a person named as a child’s custodian by an order of the children’s court or the High Court
- ☉ a foster parent.



The phrase “a person who has control of a child” would also appear to include persons such as the following:

- ⑨ a step-parent who is caring for a child
- ⑨ a family member who is caring for a child as a kinship care-giver
- ⑨ a person who is caring for a child in any day care centre (even one which falls outside the definition of “place of care”)
- ⑨ a person who is caring for a child in a health care facility
- ⑨ a domestic worker or babysitter entrusted with the care of a child.

**What does it mean to say that a person who has control of a child must respect the child’s constitutional right to dignity?:** According to the Namibian Government, in its 2018 report to the Committee which monitors the Convention against Torture: “Corporal punishment in the home was prohibited under section 228(1) of the Child Care and Protection Act of 2015”.

As of 2019, no court cases have yet interpreted Article 8 of the Namibian Constitution with respect to corporal punishment in the home. The wording of the law allows for the precise content of the right to dignity to develop over time. Around the world, corporal punishment of children is being increasingly recognised as a harmful practice, as more and more research shows that it is not a healthy or effective form of discipline.

◆ Committee against Torture, “Summary record of the 1478<sup>th</sup> meeting”, CAT/C/SR.1478, 22 November 2016, paragraph 4

**How will the duty to protect the child’s dignity be enforced?:** The Child Care and Protection Act does not make violation of this duty a criminal offence. Where a parent has failed to respect a child’s dignity, there would no longer be a defence of “moderate and reasonable chastisement” to a charge of assault. However, some forms of corporal punishment would not be significant enough to sustain a charge of assault, since this crime does not apply to minor or trivial forms of physical contact. As discussed below, the main strategy in the law is to positively encourage alternative forms of discipline, not to criminalise parents.

On the other hand, a concurring opinion in the 1991 Supreme Court case on corporal punishment note that even moderately-applied corporal punishment results in some impairment of dignity and degrading treatment.

It is likely that a failure to respect a child’s dignity would count against a parent in a dispute about custody or guardianship of a

“The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The *de minimis* principle — that the law does not concern itself with trivial matters — ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.”

◆ Committee on the Rights of the Child, *General Comment No. 8* (2006), paragraph 40



child, such as in a divorce case or a proceeding before the children's court. It could also be the basis for removing the child from the home and placing the child in alternative care, as a child in need of protective services. As detailed in the box below, corporal punishment of a child by a parent also constitutes domestic violence against the child – which gives rise to the remedies in the Combating of Domestic Violence Act 4 of 2003.

◆ Child Care and Protection Act, section 228(1)

“[...]even if very moderately applied and subject to very strict controls, the fact remains that any type of corporal punishment results in some impairment of dignity and degrading treatment.”

◆ *Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State*, 1991 NR 178 (SC) (concurring judgment)

## Corporal punishment as domestic violence

The **Combating of Domestic Violence Act 4 of 2003** provides for protection orders issued by magistrates' courts to protect persons against domestic violence in domestic relationships – which include parent and child relationships.

The definition of domestic violence encompass various forms of corporal punishment:

- ⑨ “physical abuse, which includes physical assault or any use of physical force, forcible confinement and physical deprivation of access to food, water, clothing, shelter or rest;
- ⑨ “intimidation”, which includes intentionally inducing fear by committing physical abuse or threatening to do so
- ⑨ “emotional, verbal or psychological abuse, which means any pattern of conduct which seriously degrades or humiliates a person or deprives a person of privacy, liberty, integrity or security.

A minor can apply for a protection order without assistance from a parent or guardian.

A protection order can include far-reaching terms, in addition to restraining the abuser from subjecting the complainant to any further domestic violence. For instance, it can include “no-contact” provisions, and in cases of physical violence, it can require the perpetrator of the violence to leave the family home. Violation of a protection order is a crime.

In a 2012 High Court case, a father's corporal punishment of his 13-year-old child was described by the court as a “severe beating” with a belt, which left massive and extensive bruising on the child's legs, back, shoulder and arms. The Court also found that the father had beaten his 8-year-old child to a lesser extent, by means of the administration of three lashes with a belt. The Court found that the beating of *both children* constituted domestic violence for the purposes of the Combating of Domestic Violence Act. It issued a final protection order directing the father not to commit any further acts of domestic violence against his children, and, in light of the fact that the parents were divorced, transferred custody of the children to their mother.

◆ Combating of Domestic Violence Act 4 of 2003, sections 2(1)(a), (d) and (g), 3(1)(d), 4, 14, 16  
◆ *FN v SM* 2012 (2) NR 709 (HC)

## Child Care and Protection Act, section 228(3)

### Corporal punishment in alternative care, schools and facilities

“A person may not administer corporal punishment to a child at any residential child care facility, place of care, shelter, early childhood development centre, a school, whether a state or private school or to a child in foster care, prison, police cell or any other form of alternative care resulting from a court order.”

## 4. Corporal punishment of children in alternative care

The Child Care and Protection Act says that a person may not use corporal punishment on a child at any **residential child care facility**, in **foster care** or in **any other form of alternative care resulting from a court order**. This could include, for example, court-ordered kinship care. The State has a particularly strong duty to protect a child in circumstances where it has intervened. Violation of the rule could be grounds for removal of a child from the alternative care in question and placement in another form of alternative care. The use of corporal punishment might also result in cancellation of registration for a residential child care facility or removal of approval as a foster parent. It could also lead to a criminal charge of assault or a civil claim for damages.

◆ Child Care and Protection Act, section 228(3)

## 5. Corporal punishment of children in places of care and shelters

The Child Care and Protection Act says that a person may not administer corporal punishment to a child in a **place of care** or a **shelter**. The use of corporal punishment could result in cancellation of registration for the place of care or the shelter in question. It could also lead to a criminal charge of assault or a civil claim for damages.

◆ Child Care and Protection Act, section 228(3)

A “**residential child care facility**” means a place of safety, children’s home or child detention centre.

◆ Child Care and Protection Act, section 1 (definition of “residential child care facility”)

“A **place of care** is a facility used for the care, whether for or without reward, of more than six children on behalf of their parents or care-givers during specific hours of the day or night or for a temporary period, in terms of a private arrangement between the parents or care-givers and the owner or managers of the place of care”

“A **shelter** is a facility used for the purpose of providing basic services, including overnight accommodation, to (a) abused adults and children; (b) children living or working on the streets; or (c) children who voluntarily attend the facility but who are free to leave.

◆ Child Care and Protection Act, sections 65(1), 67(1)



## 6. Corporal punishment of children in schools and ECD centres

### Education Act 16 of 2001, section 56(1)

#### Corporal punishment upon learner

“A teacher or any other person employed at a state school or hostel or private school or hostel commits misconduct, if such teacher or person, in the performance of his or her official duties imposes or administers corporal punishment upon a learner, or causes corporal punishment to be imposed or administered upon a learner.”

✦ Education Act 16 of 2001, section 56(1) (in the process of being replaced by a new Education Act)

**Namibian Supreme Court ruling:** As noted above, the Namibian Supreme Court ruled in 1991 that corporal punishment in **State schools** is a violation of children’s constitutional right to human dignity.

✦ *Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State* 1991 NR 178 (SC)

**Education Act:** The **Education Act 16 of 2001** says that teachers or any other persons employed at a **State school or hostel**, or at a **private school or hostel**, commit misconduct if they use corporal punishment on a learner in the course of their official duties – or if they cause anyone else to administer corporal punishment on a learner. The application of this prohibition to private schools was clarified by the High Court in 2016, in a case which also stressed that no parent

or learner can overrule the prohibition by giving “consent” to corporal punishment. Violation of this rule could result in disciplinary proceedings under the Public Service Act 13 of 1995 (for State-employed teachers) or the Labour Act 11 of 2007 (for privately-employed teachers). Corporal punishment could also lead to a criminal charge of assault or a civil claim for damages.

The **Code of Conduct for the Teaching Service** issued in terms of the Education Act in 2004 states that a teacher “may not administer corporal punishment or any other degrading punishment upon a learner”.

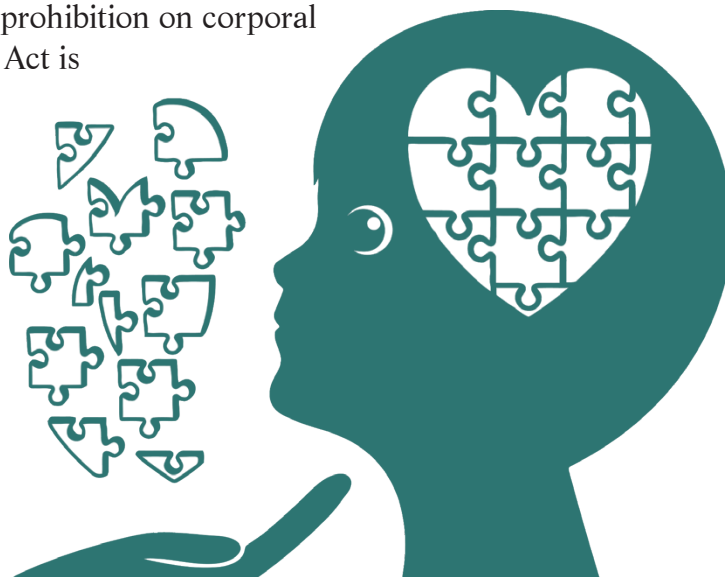
In 2018, the Ministry of Education, Arts and Culture launched a **National Safe Schools Framework** which focuses on promoting the health, safety and wellbeing of learners. The National Safe Schools Framework attempts to provide schools with insights into the root causes of violence and harmful behaviour in the Namibian context; how to recognise violence and harmful behaviours taking place in schools; and the impact of violence on the educational experience of both learners and teachers.

To complement the National Safe Schools Framework, the Ministry of Education, Arts and Culture issued a circular entitled **Zero Tolerance for Corporal Punishment** in 2018, reiterating and emphasising the prohibition on corporal punishment in schools. This circular instructed all schools to implement a mechanism which would enable learners to report incidents of corporal punishment without fear of victimisation, and to submit quarterly reports to the Ministry recording complaints on this issue and action taken.

- ◆ Education Act 16 of 2001, section 56  
(in the process of being replaced by a new Education Act which is expected to have a similar or even stronger rule)
- ◆ Code of Conduct for Teaching Service, Government Notice 15 of 2004 (*Government Gazette* 3144), regulation 65, “Part A. Teacher and Learner”, paragraph (i)
- ◆ *Namibia’s National Safe Schools Framework, Part A: Introduction and Overview*, Ministry of Education, Arts and Culture and UNICEF, 2018, page 1
- ◆ “Zero Tolerance for Corporal Punishment”, Ministry of Education, Arts and Culture, Circular: Form ED: 10/2018, 18 December 2018
- ◆ *S v Van Zyl & Others* 2016 (4) NR 1000 (HC)
- ◆ *U v Minister of Education, Sports & Culture* 2006 (1) NR 168 (HC)

**Child Care and Protection Act:** The prohibition on corporal punishment at schools in the Education Act is confirmed and extended by the Child Care and Protection Act, which says that a person may not administer corporal punishment to a child in a **State or private school** or in an **early childhood development centre**. Violation of this rule could result in cancellation of registration. It could also lead to a criminal charge of assault or a civil claim for damages.

- ◆ Child Care and Protection Act, section 228(3)



# Education Policy on Corporal Punishment

## Ministry of Education, Arts and Culture

“Corporal punishment is the use of physical pain for punishment. It includes caning, hitting, smacking with a ruler, and all other forms of pain-inducing activity. School-age children are learning about their dignity and sense of self-worth, and they look to the adults in their lives to teach them about respect and their value as individuals. Adults serve as role models, fostering children’s sense of dignity and value by creating a respectful and supportive environment that includes clear boundaries and responsibilities.

Corporal punishment humiliates learners and undermines their dignity and their trust in, and respect for, adults. Corporal punishment is categorised by law as child abuse, therefore all incidents must be reported to the police.

Some teachers believe that corporal punishment is necessary to produce disciplined children who perform well academically. They may consider it to be ‘best for the child’ and a means of ensuring respect for elders. But corporal punishment does not help children to learn what was wrong with their behaviour, nor does it help them to believe in their ability to act differently. It also causes physical injury, distrust and low self-confidence, all of which can lead to further misbehaviour. Additionally, it provokes fear, anger and shame, all of which obstruct learning.

Using a positive discipline approach brings many rewards, but can be challenging for teachers. Schools should therefore support the teachers in practising positive discipline, including providing training, materials and a consistent commitment to banning corporal punishment.”

◆ *Namibia’s National Safe Schools Framework, Part B: Practical Guide for Building Safe Schools*, Ministry of Education, Arts and Culture and UNICEF, 2018, pages 59-60

“Any form of physical or psychological violence against a learner at any school or hostel is prohibited. Physical violence includes any measure which imposes any degree of physical harm to a learner, including corporal punishment. The prohibition also covers physical violence administered indirectly, by a third person acting at the behest, or with the consent or acquiescence of, any school personnel.

The Ministry of Education, Arts and Culture is committed to an education environment characterized by positive discipline. The continued use of corporal punishment in some schools, despite its illegality, may have created an impression that this practice is tolerated by the Ministry. The Ministry would like to make it clear that, in line with the Namibian Constitution, the relevant law on education and Namibia’s Safe Schools Framework, corporal punishment will not be tolerated in any school setting. Victimisation of any learner, teacher or other school personnel who reports the illegal use of corporal punishment will also not be tolerated.”

◆ “Zero Tolerance for Corporal Punishment”, Ministry of Education, Arts and Culture, Circular: Form ED: 10/2018, 18 December 2018



## 7. Corporal punishment of children in criminal justice settings

### Child Care and Protection Act, section 228(2)

#### Corporal punishment in terms of any law

“Any legislative provision and any rule of common or customary law authorising corporal punishment of a child by a court, including the court of a traditional leader, is repealed to the extent that it authorises such punishment.”

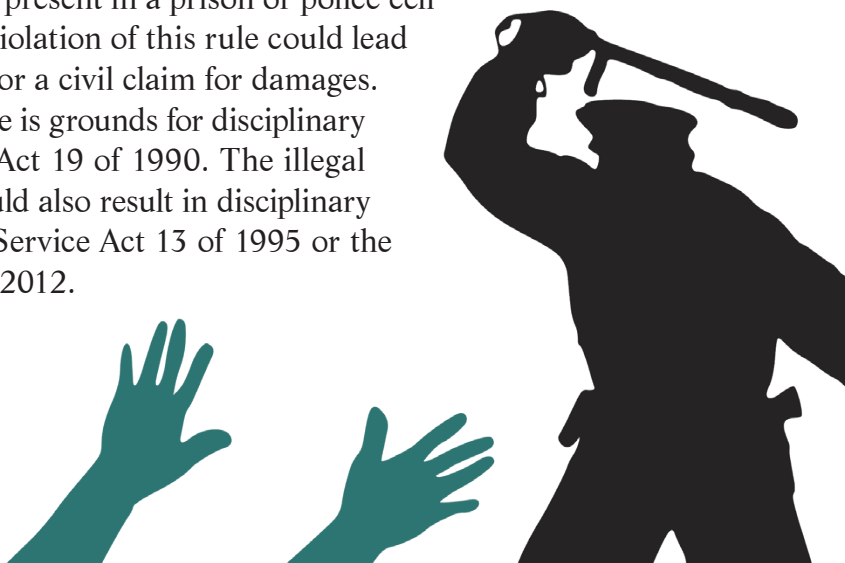
**Namibian Supreme Court ruling:** As noted above, the Namibian Supreme Court ruled in 1991 that corporal punishment by **organs of state** is a violation of children’s constitutional right to human dignity. This case invalidated all provisions in the Criminal Procedure Act 51 of 1977 and other legislation which previously allowed whipping or caning as punishments for crimes committed by adults or juveniles.

◆ *Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State* 1991 NR 178 (SC)

**Child Care and Protection Act:** The Child Care and Protection Act **repeals any law (including any rule of common law or customary law) which authorises corporal punishment of a child by any court (including the court of a traditional leader)**. This essentially implements the 1991 ruling of the Namibian Supreme Court that “the imposition of any sentence by any judicial or quasi-judicial authority, authorising or directing any corporal punishment upon any person is unlawful and in conflict with art 8 of the Namibian Constitution”.

The Child Care and Protection Act also says that a person may not administer corporal punishment to a child in a **prison** or a **police cell**. This would apply to child offenders and also to young children who are present in a prison or police cell with an incarcerated parent. Violation of this rule could lead to a criminal charge of assault or a civil claim for damages. In addition, any criminal offence is grounds for disciplinary proceedings under the Police Act 19 of 1990. The illegal use of corporal punishment could also result in disciplinary proceedings under the Public Service Act 13 of 1995 or the Correctional Services Act 9 of 2012.

- ◆ Child Care and Protection Act, sections 228(2)-(3), 231
- ◆ Correctional Services Act 9 of 2012, section 50(b)(iii)
- ◆ Police Act 19 of 1990, sections 1 (definition of “misconduct”), 18



## 8. Why is corporal punishment bad for children?

### Why is corporal punishment a problem?

- ⌚ Corporal punishment can turn into serious physical abuse.
- ⌚ Corporal punishment teaches children that violence is an acceptable way of dealing with issues.
- ⌚ Corporal punishment teaches children that it is okay to use violence against someone you love.
- ⌚ Corporal punishment makes children more aggressive towards other children.
- ⌚ Children who are exposed to violence are more likely to be violent as adults.
- ⌚ Corporal punishment does not teach children the reason why their behaviour was wrong.
- ⌚ Corporal punishment can affect self-esteem by making the child feel scared, sad, ashamed or worthless.
- ⌚ Corporal punishment can destroy the child's relationship with the parent or care-giver.

Child discipline is very important — without it, society would have many problems. The question is **what kind** of child discipline is most effective.

◆ “Corporal Punishment”, Child Care and Protection Act Factsheet 19, Legal Assistance Centre, Ministry of Gender Equality and Child Welfare, UNICEF and Embassy of Finland-Windhoek, [2017], reproduced in *Namibia's National Safe Schools Framework, Part B: Practical Guide for Building Safe Schools*, Ministry of Education, Arts and Culture and UNICEF, 2018, page 60

A recent review of studies of corporal punishment conducted during the last fifty years, involving more than 160 000 children, found that **the more children are spanked, the more likely they are to defy their parents and to exhibit anti-social behaviour, aggression, mental health problems and intellectual difficulties**. Studies have found that corporal punishment during childhood is the strongest predictor of adolescent aggression years later. Studies of adults who were spanked as children have similarly found that these adults are more likely than other adults to suffer mental health problems and to behave in anti-social ways.

**Corporal punishment sends a message that violence is acceptable, particularly when it is used by a strong person against a weaker one, and it also teaches children that violence is acceptable in family relationships.** Some men, when asked why they beat their wives or partners, talk about the need to “discipline” them, making the link between corporal punishment and gender-based violence very clear. A Namibian study of imprisoned perpetrators of gender-based violence found that significant numbers of these perpetrators had observed or experienced parental violence in the home during their childhoods. Research in other countries shows

strong associations between corporal punishment as a child and the tendency to abuse a spouse or child later in life. Corporal punishment in adolescence is also associated with an increased probability of using violence against a spouse later in life, or experiencing elevated levels of marital conflict. A person who observes violent methods of conflict resolution as a child is unlikely to have the capacity to deal with conflict in non-violent ways as an adult.

◆ Elizabeth T Gershoff and Andrew Grogan-Kaylor,  
“Spanking and child outcomes: Old controversies and new meta-analyses”,  
*Journal of Family Psychology*, Vol 30(4), June 2016

◆ Legal Assistance Centre, *Corporal Punishment: National and International Perspectives*, 2010

## Why corporal punishment is NOT acceptable

1. **It teaches children that hurting others is okay:** Children learn from adults how to behave and interact with others.
2. **It breaks down the relationship between parent and child or teacher and child:** Children need to be able to trust parents and teachers to care for them and not to hurt them. Physical punishment strains this relationship. Children may come to believe that they deserve to be hurt, leading to low self-esteem. Children who are beaten may become anxious or afraid of adults. They may also become angry, uncooperative and resentful.
3. **It may damage children physically.** Children may suffer permanent harm from corporal punishment, such as deafness from a strike to the head or brain damage or death from severe beatings. Physical punishment can break bones or damage internal organs.
4. **It opens the door to physical abuse.** Physical abuse of children promotes the notion that it is okay to hurt children. When parents or teachers are angry or distressed, it is easy for them to overstep the limits that they have set for themselves, and the child may be seriously hurt.
5. **It is not effective in the long term:** Hurting children does not work well in changing behaviour permanently, because it does not inform the child’s underlying attitudes and values. The child does not learn self-control, but only how to respond to the control of others, or how to lie and hide bad behaviour to avoid punishment.
6. **It damages children’s development.** Children who are sad, confused, anxious or angry cannot concentrate on the work and play they need to develop their potential. Research shows that children who are disciplined at home in alternative ways, without being hurt, do better at school than those whose parents use physical punishment. This is due, in part, to the fact that parents who use alternative and positive methods of discipline teach their children more communication and problem-solving skills.

◆ adapted and condensed from “Alternatives to Corporal Punishment”,  
*Prevention & Education Manual*, ChildLine South Africa, 2012

Arguments for corporal punishment	Arguments against corporal punishment
Corporal punishment is part of my religious belief and culture.	<ul style="list-style-type: none"> <li>Other people interpret the same religious teachings to have a different meaning that does not justify the use of corporal punishment.</li> <li>Wife-beating was also an accepted part of many cultures in the past, but this is now changing.</li> </ul>
There is a difference between a vicious beating and a light spanking or smack.	<ul style="list-style-type: none"> <li>This is true, but it is difficult to judge how the punishment is perceived by the child who experiences it.</li> <li>Adults who administer corporal punishment are not always able to control themselves when they act in the heat of the moment. This is why serious injuries and even death have resulted from corporal punishment in Namibia.</li> </ul>
Corporal punishment was used on me when I was a child, and I do not have any problems.	<ul style="list-style-type: none"> <li>Different people react differently to violence and aggression.</li> <li>It is undeniable that Namibia as a whole is suffering unhealthy levels of violence — so something is not well with our society as a whole.</li> <li>Alternative forms of discipline could teach children non-violent ways of problem-solving.</li> <li>Discipline is meant to teach a child the difference between wrong and right. Corporal punishment is not effective in this regard, because it makes children comply out of fear instead of teaching them how they should behave.</li> </ul>



## 9. Alternatives to corporal punishment

### Child Care and Protection Act, section 228(4)

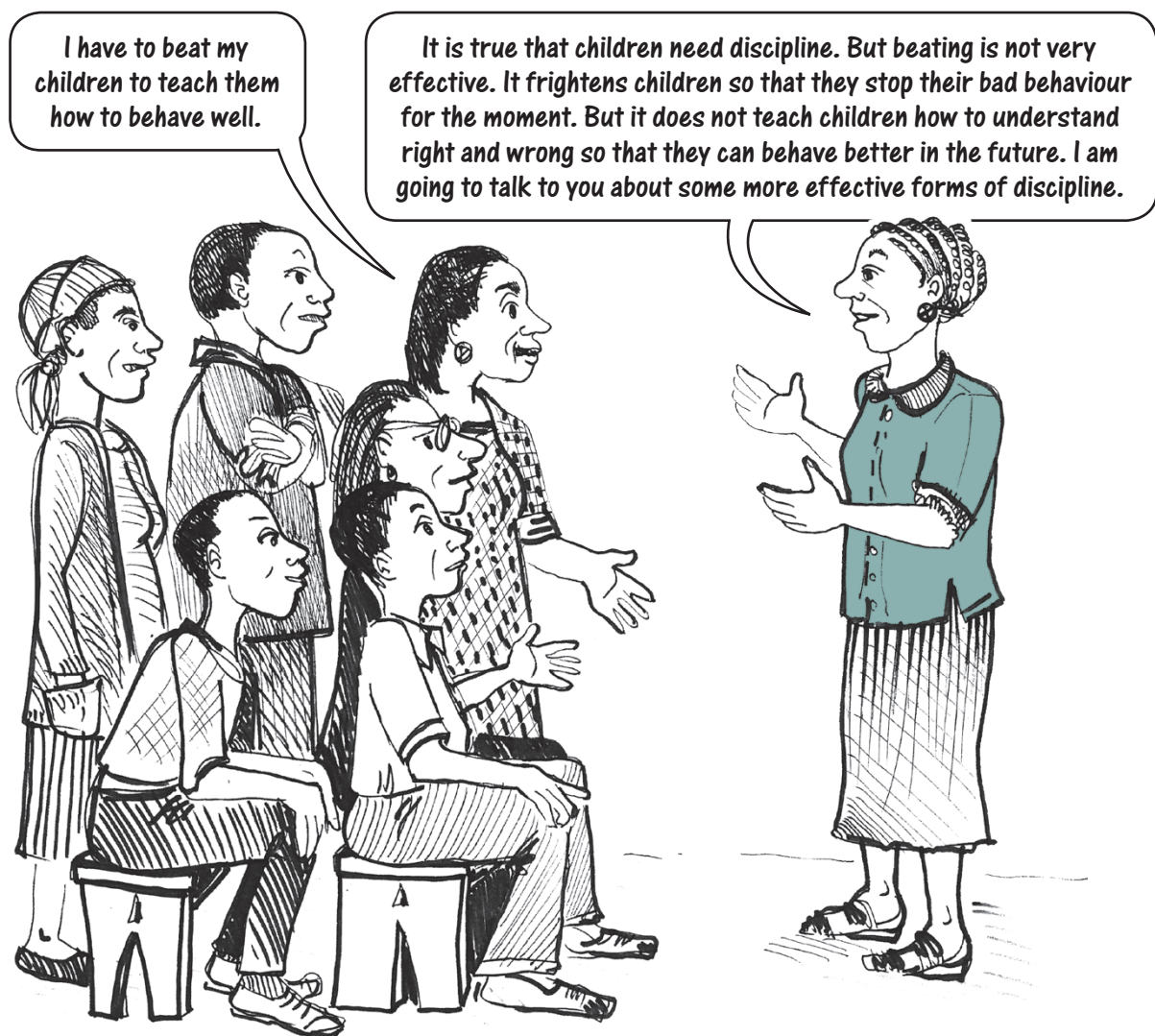
#### Promoting alternatives to corporal punishment

“The Minister must take all reasonable steps to ensure that —

- (a) education and awareness-raising programmes concerning the effect of subsections (1), (2) and (3) are implemented in all the regions in Namibia; and
- (b) programmes and materials promoting appropriate discipline at home and in other contexts where children are cared for are available in all the regions in Namibia.”

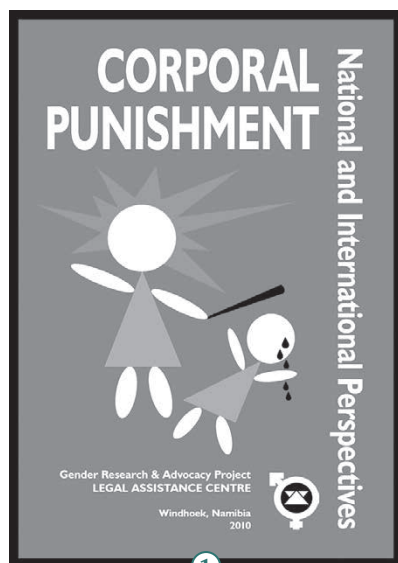
The Child Care and Protection Act gives the Minister responsible for child welfare a duty to provide education and awareness-raising programmes on the rules on corporal punishment, and to promote alternative forms of discipline which have a more positive impact on children, in all regions of Namibia.

◇ Child Care and Protection Act, section 228(4)

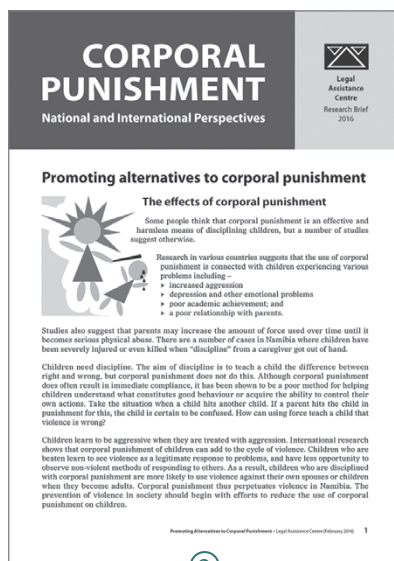




# The Legal Assistance Centre has produced comics, animations, a film and other materials on alternatives to corporal punishment.



1



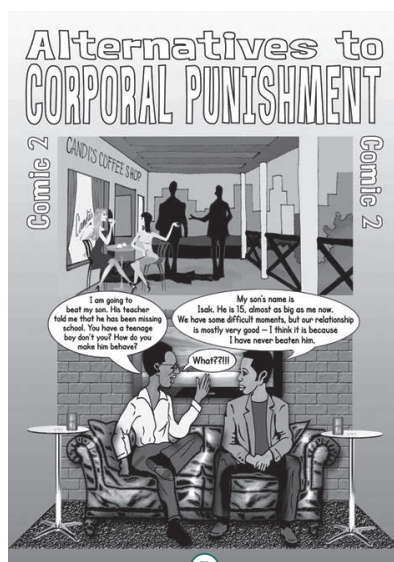
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1. Research Report: **Corporal Punishment: National and International Perspectives** (2010)
2. Research Brief: **Corporal Punishment: National and International Perspectives** (2016)
3. Factsheet: **The Links between Corporal Punishment and Gender-Based Violence** (2017)
4. Comic: **Alternatives to Corporal Punishment** (disciplining young children)
5. Comic: **Alternatives to Corporal Punishment** (disciplining teens)
6. Film: **A Betta Way**
7. Animation: **Alternatives to Corporal Punishment**

These and other Legal Assistance Centre materials on corporal punishment are available free of charge at [www.lac.org.na](http://www.lac.org.na).

## SUGGESTIONS FOR POSITIVE DISCIPLINE

1. **Give praise:** If you praise children when they obey or do things well, this encourages them to model their behaviour through positive reinforcement. Praise also encourages them to learn self-discipline. Rewards for good behaviour could range from telling the child a story at bed-time to allowing the child to visit a favourite friend or relative.
2. **Lead by example:** If a child is not allowed to use dirty language or to swear, neither should you. Practice what you preach.
3. **Be realistic:** There is no point in punishing a baby for crying because he or she is hungry, or a two-year-old who runs into the road in front of cars because this is what can be expected from children at those stages of development. Instead, keep children safe by removing the possibility of physical danger. For example, make sure that your baby can't reach the fire or the paraffin bottle or hold your child's hand when you are walking on the road.
4. **Restorative justice:** Restorative justice practices are well-known in African culture. They involve bringing 'victim' and 'offender' together in a meeting to discuss how to repair any harm caused, and how to prevent future misbehaviour.
5. **Explain:** Don't threaten or shout at children. It is better if children do as you ask because they understand the reasons for the requested behaviour, rather than because they are frightened or bullied.
6. **Use 'good' words to describe children:** Bad-mouthing and humiliation lower self-esteem in children and can become self-fulfilling prophecies. Telling children that they are lazy, stupid or bad can cause them to give up on themselves.
7. **Be respectful:** It is vital to treat any person, including a child, with respect. If there is respect for a child's thoughts and feelings, the child will be more likely to act respectfully towards others.
8. **Negotiate a compromise:** Sometimes parents and care-givers feel that if they give in just once, the child will take advantage of the situation and become more disobedient. However, sometimes it may be best to reconsider the demands being placed on the child and agree to a compromise that will not endanger the child's safety or hurt anyone else.
9. **Use guidance and counselling:** Guidance and counselling can be used more effectively with older children. Call on another teacher or relative or an older person in the family or community whom the child respects. Ask this person to discuss problematic behaviour with the child and to provide guidance on expectations for the future.
10. **Children learn by doing:** Give the child a task to perform that is related to what the child has done wrong. Children who have to repair, clean or tidy something that they damaged or dirtied will be less likely to repeat that behaviour in future.

*Adults who are concerned with the disciplining of children should negotiate with young people to set limits, consequences and rewards. This empowers children and gives them a sense of responsibility.*

*Children need to know their rules and limits. The consequences for breaking the rules should be simply and clearly discussed with them.*

◆ adapted and condensed from "Alternatives to Corporal Punishment",  
*Prevention & Education Manual*, ChildLine South Africa, 2012