



LEGAL ASSISTANCE CENTRE

Recipient of the UNICEF Maurice Pate Human Rights Award – 1997
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Dignity, non-violence and respect for the law

On 13 June, four teachers at the private school Windhoek Gymnasium were found guilty of assault after inflicting corporal punishment on a learner. The four teachers were each fined N\$2000.

This is not the first time that corporal punishment in schools has led to a criminal charge or a court case. According to press reports, a teacher in a public school in Windhoek paid an admission of guilt fine in respect of corporal punishment of a primary school learner earlier this year and in 2005, corporal punishment of a student at another public school in Windhoek led to an award of civil damages in the amount of N\$35 000 against the teacher and the Minister of Education. However the vital importance of the current judgment is that the fine was imposed as a consequence of the court finding the four teachers guilty of assault. The teachers did not choose to pay an admission of guilt fine, and the case was a criminal one rather than a civil one.

The Education Act makes a very clear statement: corporal punishment in a public or private school constitutes misconduct and grounds for disciplinary action. The law makes no provision for any exceptions to this rule. The ruling in this case should provide a strong deterrent to teachers across the country, as it is now clear that teachers who apply corporal punishment risk being charged with assault which is punishable by a fine or and possibly even jail time.

Education Act 16 of 2001, section 56: Corporal punishment upon learner

(1) 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.

(2) For the purposes of the Labour Act, 1992 (Act 6 of 1992), misconduct contemplated in subsection (1) constitutes a valid and fair reason for any disciplinary action.

Whilst it is true that some parents condone corporal punishment, it is not legally possible for parents to give teachers permission to violate the law of the land. A 2000 Constitutional Court case in South Africa, which considered a provision on corporal punishment similar to that contained in the Namibian statute, ruled that this provision prevents parents “from empowering the schools to administer corporal punishment”.

The South African Constitutional Court further noted the connections between the institutional use of corporal punishment and South Africa’s traumatic history of oppression, “when the claims of protesting youth were met with force rather than reason” – as well as connections with the widespread and traumatic child abuse which occurs in present-day South African society.

This reasoning makes sense in Namibia as well. As the magistrate stated in the course of sentencing the four Windhoek Gymnasium teachers, Namibia’s Supreme Court long ago found that corporal punishment implicates the right to dignity guaranteed by Article 8 of our Constitution.

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The recent case also shows that respect for the law and the Constitution does not stop at the gate of a private institution – be it the Windhoek Gymnasium or the Buffalo Bar (which recently made the news as the site of an allegedly racially-motivated assault). The Constitution applies to every man, woman and child in Namibia.

In fact, when it comes to private schools, Article 20(4)(b) of the Namibian Constitution explicitly states that one of the conditions for the establishment of private schools is that “the standards maintained by such schools... are not inferior to the standards maintained in comparable schools... funded by the State.” It would be strange indeed if this rule did not cover standards for the protection of learners’ Constitutional rights as well as curriculum requirements.

Furthermore, the Education Act explicitly requires that where the owner of a private school fails to comply with “any provision” of the Education Act, or where “the school is being conducted in a way which is prejudicial to the welfare of the learners of the school or the peace, good order or good governance of the Republic of Namibia”, the Minister must order the private school to remedy the problem within a maximum of six months. If the school fails to do so, the Minister may order the closure of the school.

An email circulated shortly after the conviction was handed down, labeled as being from the Managing Director of the Windhoek Gymnasium, states: “We believe as parents of a private school, which is privately managed, we have the right to choose a school that continues the values that we maintain at home. Therefore we trust our staff to discipline our kids and show them the correct path – like these 4 teachers have done and will continue to do.” The email states further that the school intends to appeal the case.

The teachers who have been found guilty have every right to appeal against the judgment of the magistrate’s court. But the teachers and the school have a corresponding duty to respect the rule of the law which they are themselves relying on. Until such time, if ever, that a higher court rules differently, the verdict handed down on 13 June indicates that corporal punishment by a private school teacher constitutes assault, regardless of what the internal rules of that school might say.

Namibia is already an extremely violent society, with murder, rape and assault being all too common-place. The Legal Assistance Centre takes the view that one of the most important principles we can teach our children is respect for the law of the land. Black or white, man or woman, adult or child, public or private, the law applies to all of us. We call on the Ministry of Education, the Office of the Ombudsman and the Office of the Prosecutor-General to ensure that everyone in Namibia is held to the same standard when it comes to respecting the Constitution, the statutes and the court rulings which make up the Namibian legal system. That is the kind of discipline which would serve our society well.