

SUBMISSION TO: Department of Social Development

REMOVAL OF SECTION 12A FROM 3RD CHILDREN’S AMENDMENT BILL

SUMMARY RESPONSE.....	1
<i>Public participation</i>	2
LISTEN TO OUR REBUTTAL OF RADIO DEBATE ARGUMENTS PROPOSING A BAN ON SPANKING	2
<i>Listen to debate with the SA Human Rights Commission on spanking on SAFM (4 Feb 2016)</i>	2
WHICH SIDE OF HISTORY ARE YOU ON?.....	3
<i>Debate with SA Human Rights Commission on Radio Pulpit (29 Jan 2016)</i>	3
<i>Locations of false claims on radio</i>	4
WHY DOES SPANKING MISINFORMATION MATTER?.....	4
COMMENTS ON THE GAUTENG HIGH COURT DECISION ON SPANKING OCTOBER 2017 (CURRENTLY ON APPEAL)	5
PRACTICAL IMPLICATIONS OF SPANKING JUDGMENT	6
WHAT DOES THE BIBLE SAY?.....	6
WHY DO SOME PSYCHOLOGISTS OPPOSE SPANKING?	6
PROBLEM SECTION 12A NEEDS TO BE REMOVED	7
<i>Text of September 2018 Bill (Old)</i>	7
<i>Text of November 2018 Bill (New)</i>	7

Summary response

- Section 12A which removes the common law defence of ‘reasonable chastisement’ for parents spanking children must be removed
- This clause is a violation of multiple rights and norms:
 - An infringement of religious freedom
 - A violation of the cultural norms of all communities in South Africa, including African, Asian, European and Semitic cultures.
 - An infringement of parents rights
 - An infringement of the privacy of the home
 - An infringement of the constitutional best interests of the child
 - An attempt to impose ideological constructs funded by European special interest advocacy groups.
- The clause would waste the capacity of the police and social services responding to spurious complaints and cause division in families.
- There are multiple instructions in the Bible for parents to spank their children in their best interests. Such a law would put parents in the difficult position of having to choose to obey God or the state.

- The proposal is particularly prejudicial to large families who will have difficulty in maintaining control without spanking. Family size makes South Africa very different to the European context to where these ideological ideas originate.
- The principal risk of medical physical harm of parents to children is in fact not 'spanking' but 'jerking' of the arm/ pulling of a disobedient child – which can lead to dislocation of the shoulder. Taking away a harmless form of punishment 'spanking', could in fact lead to greater risk of real harm from frustrated parents pulling their child.

Public participation

This section 12A does not only affect Children's advocacy organisations but every family in South Africa. We protest that the consultation process, by invitation to provincial workshops is inadequate and does not take this into account. If this clause is not removed, a new public participation process is needed which is open to everyone.

Listen to our rebuttal of radio debate arguments proposing a ban on spanking

The following three interviews/debates on spanking we rebut opponents arguments. The debates may be listened to at the links provided.

Interview on the High Court ruling against spanking on Radio 702 (Oct 2017) (currently on appeal)

https://www.youtube.com/watch?v=Mv_XVG2mLgE&t=15s

Listen to debate with the SA Human Rights Commission on spanking on SAFM (4 Feb 2016)

<https://www.youtube.com/watch?v=vLi-J76sKZU>

In a radio debate on SAFM Mr Karam Singh of the SA Human Rights commission (SAHRC) debating with Philip Rosenthal of ChristianView Network closed his argument saying "The question we have to ask is which side of history are you on?". Download the podcast of the debate at <http://goo.gl/shB8Ml>, (Karam Singh's controversial comment at 45mins 44 seconds). ChristianView Network argues that this is undemocratic Marxist rhetoric and view of history, which disturbingly follows their Marxist style demand to regulate church teaching and demand church leaders attend re-education classes (see point 10.1-10.3 of their report www.goo.gl/RhSkB5).

While a News24 poll found 14 out of 15 respondents support spanking (see 26 January 16 <http://www.news24.com/Vote>), SAHRC claim outlawing spanking is democratic. While only a few countries prohibit spanking, the SAHRC claim the trend was going in that direction. They claim 50 countries out of 196, while our research found only 21 but either way, it is a small minority. While the Constitutional Court in 2000 affirmed the existing common law allows parents to spank at home <http://www.saflii.org/za/cases/ZACC/2000/11.pdf>, the SAHRC claim outlawing it is constitutional. The SAHRC claim international treaty requires us to outlaw spanking, while other signatories of the treaty have not. That position comes from an interpretation document which is not agreed to or binding on signatories. We argue taking away parents rights to spank is part of a Northern hemisphere social experiment with the family, which like Marxism, has failed and leads to family breakdown. They replied that the experiment was "Constitutional Democracy" - which we deny, saying the worlds oldest Constitutional Democracy, America, does not outlaw spanking and neither do many others.

Last week the SAHRC falsely claimed in public debate that spanking at home had been illegal since 1996 <https://goo.gl/NhKEuv>, but it seems no longer.

The SAHRC claim spanking leads to violence, while we argue the opposite: that undisciplined children are more at risk of becoming violent and reckless youths; that wasting police and state resources prosecuting good parents will take away capacity to deal with real violent crime and that frustrated parents will end up lashing out in anger. The SAHRC claim they are not over-reaching into the private sphere, while we claim they are.

They ask where to draw the line between spanking and abuse. We argue existing law does that adequately.

WHICH SIDE OF HISTORY ARE YOU ON?

Having failed to properly defend their position and in our view lost the debate on all these issues - they ended with a new argument, which the debate didn't give time to rebut: "Which side of history are you on?". They further try blacken the Biblical position, for the second time by trying to associate it with apartheid.

Answer: Firstly, doesn't this sound a bit like what the the Marxists used to say? They move forward their totalitarian agenda in a few countries and then say there is a trend - and thus those opposing the trend are 'on the wrong side of history'. But all the empires and ideologies have claimed to be the future and they have fallen much faster than they thought they would: the Third Reich said they would last a thousand years, Marxism said they would conquer the world. The Japanese during the 1940s thought the trend was in a fascist direction, and so joined the wrong side of the war. The only kingdom that will last forever is the kingdom of Jesus Christ.

Secondly, actually in South Africa is going in the direction of more rights for parents. The Old South Africa did not allow home schooling, which under the new constitution is legal. The old South African government controlled all schools, while the new Constitutional Assembly gave control to parents through school governing bodies including over religious education policy. In the old South Africa, schools could spank children without parental consent - while Christians argue the parents right to decide.

Thirdly, this belief in the inevitability of history leads to arrogance (give in to us because we will win anyway) or cowardice (we won't help because good will triumph anyway). It undermines democracy, by attempting to silence rational debate.

Debate with SA Human Rights Commission on Radio Pulpit (29 Jan 2016)

<https://www.youtube.com/watch?v=-NXbJtaj1tw>

The Human Rights Commission representative, Isaac Mangena, misunderstands the law and claims that spanking is already a criminal act, and outlawed by the Constitution since 1996. Philip Rosenthal corrected him, saying that the Constitution did not outlaw spanking. Spanking in schools was outlawed in 1996 by the Schools Act. The Constitutional Court rejected an appeal to allow spanking by private Christian schools in 2000. Nevertheless, Mr Mangena maintained his false claim that parents spanking in the home was already criminal.

After the recording, to prevent public misinformation, ChristianView Network wrote to the Human Rights Commission asking them to correct this false information before it was broadcast. Nevertheless, Mr Matthew du Plessis, Senior Legal Officer at the SAHRC, in emails on 22 and 27 January defended this false claim - and when asked for evidence, forwarded us a powerpoint

presentation written by the Centre of Child Law, Pretoria. Nevertheless, the SAHRC appear to have misunderstood this presentation, in that it only expresses the hope, based on certain precedents, that the Courts or Parliament will outlaw spanking in the home based on precedent in schools - not that it is already illegal. There is a big difference between saying something is already criminal or that you hope to make it so. We challenged the SAHRC to another radio debate with a better informed representative - suggested on CapeTalk/702.

Contrary to the claims of the SAHRC, the Constitutional Court stated in their ruling on spanking in schools in 2000 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." In other words, the Constitutional Court in 2000 recognised the common law right of parents to spank children in the home. <http://goo.gl/Qv75vV>

In 2003, the Education Department led by Kader Asmal attempted to force an unpopular 'one-size fits all' Religion in Education policy on Schools by claiming it was required by the Constitution. When ChristianView Network publicised that the Constitutional Court had in 1996 ruled the opposite, schools realised they could ignore his policy. Again in 2015, same-sex marriage politicians and activists on the University of Cape Town Students Representative Council attempted to silence and expel Vice Chair Zizipho Pae by claiming it was unconstitutional. Nevertheless, when ChristianView Network publicised that the Constitutional Court had already in 1996 affirmed the right to speak against homosexuality, this legal correction was sent in an email by UCT to every UCT Student and her opponents were forced to back off. In both these cases this was a bullying attack based on misunderstandings of the constitution - and once the truth was publicised, the bullying had to stop.

You don't need to be a lawyer to understand the Constitutional Court ruling. It is downloadable from the internet and written in Plain English and the relevant parts are summarised below. Either the SAHRC lawyers haven't done their homework or they are bluffing the public. But more seriously, the SAHRC are bullying Joshua Generation Church and parents by spreading false legal information - and violating their right to free speech, religion, conscience and association by demanding they promise to stop teaching the Bible and attend a course with the opposite view. These bullying lawyers are hoping churches and parents will give in without a fight thinking the battle is already lost - and out of fear of being labelled a criminal or taken to court. The truth is the Constitutional Court recognised parents existing common law right to spank children in the home in 2000 and we defeated an attempt in parliament to outlaw spanking in the Childrens Act in 2007. Most parliamentarians support parents spanking at home and we will defeat this second attempt again.

Locations of false claims on radio

Mr Isaac Mangena of the SAHRC repeatedly falsely claims that corporal punishment in the home has been outlawed since 1996.

0:1:20 '...corporal punishment in general was outlawed in 1996'

0:10:40 '... the people who made the constitution decided to outlaw corporal punishment both in the home and in schools...'

0:17:57 '...the law is there already since 1996. It is the enforcement...'

WHY DOES SPANKING MISINFORMATION MATTER?

Why does this misinformation matter? Answer: Firstly, because most disputes don't get decided in court. They are decided when one side backs down - and not everyone can afford a lawyer - so they rely on what they are told. For example, some headmasters stopped Bible teaching in schools when

Kader Asmal told them they must, but actually it was up to parents though governing bodies to decide. Some officials in the Health Department told healthworkers they had to assist with abortions. When we told the workers their constitutional right to refuse, they just stopped, and the Western Cape Health Department reported not enough doctors willing to do abortions.

Secondly, because this is one of many points where the SAHRC is legally wrong, misleading people and abusing their powers, but it is a very easy one to prove. <https://goo.gl/gIKCMU> When people realise the SAHRC is misleading and bullying on that point, then they will question them other points - and there is a lot of abuse to expose both in this case and others <https://goo.gl/yBCy3Q> and <https://goo.gl/JP8xU4>.

Comments on the Gauteng High Court decision on Spanking October 2017 (Currently on appeal)

In October 2017 Judge Raylene Keightley ruled at the Gauteng High Court to make spanking children illegal. If the version of events in the judgment is accepted, then the particular case, it would seem was one of domestic violence of a father against both his wife and son, in which he opportunistically claimed the common law defence of 'reasonable chastisement' (spanking) against his son.

But instead of ruling that this particular case was not 'reasonable chastisement', she opportunistically abused her powers to declare the common law for all parents to spank their children as unconstitutional. Her reasoning and argument are very very thin and certainly not the intention of the Constitutional Assembly. A short while ago Chief Justice Mogoeng Mogoeng asked the ANC for evidence of political interference by the judiciary. Well here we have yet another example to 2006 Albie Sachs ruling on 'same-sex marriage'; 2015 Fabricius ruling on euthanasia (overturned in 2016); 2017 Dennis Davis ruling on dagga; 2017 judge Vd Linde's judgment on religion in schools. And audaciously Judge Moshidi's 2017 ruling against journalist Jon Qwelane for criticising the court decision on 'same-sex marriage'. So a judge tries to criminalise speech against a wrong decision of the against the judiciary.

These judges have abused their powers to usurp the role of the legislature to try to change the law towards their social engineering agenda, and using a trumped up interpretatoin of the Constitution as an excuse and not a reason. They need to be fired, impeached, removed from office. Their actions are no more legitimate than those of President Zuma's Nkandla residence claiming he needed 250 million rand for security and a 'fire pool'. But they are a much bigger threat to South Africa than Zuma and the Guptas. Unfortunately, our middle class sees the courts as a bulwark against financial corruption in the executive, and thus reluctant to speak out against 'judicial activism', which is political corruption of the judiciary. A difficulty is that there is so much abuse of power by our judiciary, that they seem to no longer feel any conscience about it. Each abuse emboldens them towards the next. Our university law faculty and the press are glorifying judicial activism (abuse) as 'progressive'. They don't see it as corruption.

The problem is that our judges, the very people who are supposed to be defending our constitution, have systematically colluded together to betray that constitution. And if impeachment proceedings were launched, it would be other judges, possibly guilty of the same or more serious judicial activism who would be judging the impeachment hearings. It is hard for those in the legal profession to speak up against power abusing judges without risking their professional careers. We are no longer ruled by a Constitution, but by the whims whatever these elitist, unelected judges think happens to be good society policy. We do not need impeachment of one or two judges, we need to remove a major portion of these wicked judges who are abusing their powers and damaging

our society.

PRACTICAL IMPLICATIONS OF SPANKING JUDGMENT

The Bible teaches spanking explicitly in many places and implicitly in others (for example "Proverbs 13:24 He who spares the rod hates his son, but he who loves him is careful to discipline him.". Christian parents should obey God rather Raylene Keightley. Carry on exactly as you have done before.

Are you at risk of going to jail for spanking your child? Despite the ruling, unlikely. Keightley's judgment (Clause 81) claims that will not be the result, but rather parents will be referred to the Department of Social Development for brainwashing indoctrination into their ideology of child rearing.

'Sonke Gender Justice', a mainly foreign initiated and funded anti-moral NGO, which also participated in the court case has been lobbying the Department to adopt their ideology and is also partly funded by the Department of Social Development. So here we have a form of 'state capture' of Department of Social Development by an NGO to promote their ideology. We need to fight back for democracy.

A greater risk would be for example for divorced families, who share childcare responsibility - where they disagree. If one parent wanted to be nasty and get back at the other, they could use the spanking issue to haul the other into court (as has been done before). Also the risk of complaints to the Human Rights Commission on churches and organisations teaching spanking (as happened with Joshua Generation). Unlikely to go to jail, but may cause a lot of stress and legal fees.

This is a South Gauteng High Court ruling, so it may still be appealed to the Supreme Court of Appeal and the Constitutional Court. The case, however is messy and not ideal for an appeal. The man was accused of assaulting his wife as well which makes it about domestic violence, and makes his claim of 'reasonable chastisement' of his son more difficult to believe - and an appeal can make it look as if we are defending domestic violence, weakening our chances. Judge Keightley also said that the accused did not use the argument of a religious belief in spanking, which she believed would have been a stronger defence. That defence will thus still need to be tested in a future court case.

So, this is a messy case, but Christians should continue to obey the God rather than man and pastors should publicly condemn Raylene Keightley's unjust court ruling.

What does the Bible say?

Since the principal 'teaching material' advocating corporal punishment used by Joshua Generation and all other Churches is the Bible. For example, Proverbs 22:15 "Folly is bound up in the heart of a child, but the rod of discipline drives it far from him." ESV. Proverbs 13:24 "Whoever spares the rod hates his son, but he who loves him is diligent to discipline him." Hebrews 12:11 "For the moment all discipline seems painful rather than pleasant, but later it yields the peaceful fruit of righteousness to those who have been trained by it."

Why do some psychologists oppose spanking?

Moderate spanking does not inflict any permanent physical harm. It does produce short term psychological pain - as do all alternative forms of punishment such as 'reprimanding', 'withdrawal

of benefits' or 'time out'. Certain psychologists have to deal with extreme cases where certain men are physically violent and abusive to their children - and their over-reaction has been to oppose all spanking. Possibly there are certain exceptional cases of men who cannot control their anger, for whom the psychologist may recommend not to use spanking, but these psychologists and the SAHRC have no right to try to impose this on all all parents and all churches - especially when the Bible teaches it.

Problem Section 12A needs to be removed

The text of the draft bill, Section 12A has changed slightly but still has a substantially similar effect. The objections previously raised to the text advertised for comment in September 2018 thus are the same with the text advertised for comment November 2018.

Text of September 2018 Bill (Old)	Text of November 2018 Bill (New)
Insertion of section 12A in Act 38 of 2005.	Insertion of section 12A in Act 38 of 2005
8. The following section is hereby inserted in the principal Act after section 12-	7. The following section is hereby inserted in the principal Act after section 12—
"Positive discipline of children 12A.	“Discipline of children 12A.
(1) A person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not treat or punish the child in a cruel, inhuman or degrading way, when disciplining the child, to ensure the child's right to physical and psychological integrity as conferred by section 12 (1)(c), (d) and (e) of the Constitution.	(1) Any person caring for a child, including a person who has parental responsibilities and rights in respect of a child, must not treat or punish the child in a cruel, inhuman or degrading way.
(2) The common law defence of reasonable chastisement available in any court proceeding to a person contemplated in subsection (1) is hereby abolished.	(2) Any punishment, within the home or other environment, in which physical force or action is used and intended to cause some degree of pain or harm to the child is unlawful.
(3) A parent, guardian, care-giver or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting such child to any inappropriate form of punishment, including corporal punishment, must be referred to a prevention and early intervention programme as contemplated in section 144.	(3) Any person who is reported for contravening subsection(1) must be dealt with in accordance with section 110 of this Act.”.
(4) The Department in partnership with relevant stakeholders, must take all reasonable steps to ensure that- (a) education and awareness-raising programmes concerning the effect of subsections (1) and (2) are implemented across the Republic; and (b) programmes promoting positive discipline at home and in alternative care are available	

Text of September 2018 Bill (Old)	Text of November 2018 Bill (New)
across the Republic."	
(5) When prevention and early intervention services have failed, or are deemed to be inappropriate, and the child's safety and wellbeing is at risk, the designated social worker must assess the child in terms of section 110.	

<http://pmg-assets.s3-website-eu-west-1.amazonaws.com/180719childrensamendmentbill-draft.pdf>
<https://pmg.org.za/call-for-comment/704/>

Yours sincerely,

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