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Landmark moment for child rights in South Africa

Joint press release by respondents and amici curiae in the case of *Freedom of Religion South Africa v Minister of Justice & Constitutional Development & others* [Children's Institute (UCT); Peace Centre; Sonke Gender Justice; Centre for Child Law; The Parent Centre; Global Initiative to End All Forms of Corporal Punishment of Children; Dullah Omar Institute for Constitutional Law, Governance and Human Rights]

We welcome the judgment that was handed down by the Constitutional Court on the constitutionality of the use of corporal punishment in the home. The common law defence of 'reasonable chastisement' has been declared inconsistent with the Constitution. The defence previously allowed parents to hit their children with the justification of corporal punishment being a form of discipline as a defense to a charge of assault.

The Court found that the right to be free from all forms of violence from both public and private sources includes violence in the form of reasonable and moderate chastisement. Furthermore, the Court found that the right to dignity means that children are independent and autonomous right-holders who may not be subjected to shameful and undignified treatment.

The Court's approach to parents' entitlement to chastise their child was guided by the best interests of the child in respect of protection from potential abuse. The best interests of the child would be to achieve discipline and achieve the same result "without causing harm or unduly undermining the fundamental rights of the child," the Court said.

The Court also found that reasonable chastisement was neither necessary nor justifiable in light of

the fact that there are non-violent methods for disciplining children such as “positive parenting”.

The judgment reinforced submissions by the Children’s Institute, the Peace Centre, and Sonke Gender Justice – all represented by the Centre for Child Law – which had underlined the high levels of violence against children and the link between corporal punishment and other forms of violence. Corporal punishment is one of the key drivers of the high levels of violence against children in South Africa. Recent findings from the Birth to Twenty Plus study—which followed more than 2,000 children in Soweto from birth to 22 years old— shows that 50% of younger children have experienced violence in the home most often through physical punishment by parents. In adolescence, the proportion of children who have experienced violence in the home increases to 83%. Evidence shows that violence during childhood increased the risk for young boys to later become perpetrators and young girls to be victims in intimate relationships.

The court acknowledged the intergenerational cycle of violence. The court stated: “We have a painful and shameful history of widespread and institutionalized violence.”

Violence against women and children are inextricably linked. They occur in the same households and share the same drivers. With the current attention to the high levels of gender-based violence in South Africa, it is important to note that this ruling is not aimed at criminalizing parents. This is only the first step in protecting children more from physical violence in the home. The real work begins now. Raising public awareness on the ruling is accompanied by momentum from the Department of Social Development to drive a national parental awareness campaign on Positive discipline. Positive discipline is not an alternative form of punishment: it avoids the use of punishment. Instead, it assumes that children want to behave well but need help understanding how to do so and that children learn best through cooperation.

South Africa also needs to focus on the implementation of widespread interventions to support families at the national level to change attitudes and behaviours that perpetuate the use of harsh and violent ways of discipline against children. We need programmes that have shown to be effective in changing both individual attitudes and social norms around child discipline and we need to teach caregivers about alternative, non-violent forms of discipline that can replace smacking and spanking.

South Africa is currently in the process of finalizing the National Strategic Plan (NSP) on gender-based violence and femicide – given the intergenerational consequences of violence in the home it is imperative for the NSP to also cost the support for parents to use positive discipline with their children.

The ruling coincides with the passage through parliament of the Third Amendment to the Children’s Act. The ruling today offers an opportunity for the Children’s Act to be harmonized with the Constitution and developed in such a way as to support parents better in the guidance that they provide to children.

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