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23 August 2007

The Honourable Speaker of the National Assembly  
and  
The Honourable Chairperson of the NCOP

Dear Madam and Sir,

Children's Amendment Bill (B19B) of 2006 Section 139

The writer was present at a meeting of the Portfolio Committee on Social Development held yesterday, 22 August. At that meeting concerns were expressed by members of the Committee as to whether the requirements of the Constitution "to facilitate public involvement" in this Bill had been met. I spoke privately to the legal adviser to the Committee and expressed my concerns but nevertheless he persuaded the Committee that no further public hearings were necessary.

JASA presented a written submission on the very controversial section 139 of the Bill by fax to Zola Vice on August 8. The submission stated on the cover page that JASA wished to make an oral submission to the Committee. This submission was never acknowledged and every attempt to contact the secretary by telephone over several days was met with an answering machine message. We left our details more than once but never received a call back. We were never given any information therefore as to where and when public hearings would be held.

In view of the extremely controversial nature of section 139 we believe that the decision not to hold what the Committee described as "a national public hearing in Cape Town" cannot be sustained within the parameters laid down by the Constitutional Court in DFL vs Parliament, a case of which I was the architect and initiator in my role as legal adviser to DFL. What is more it is obviously very unfair to the many people and stakeholders, like JASA, who submitted their written submissions by the August 8 deadline, and then were never given details of the public hearings. In a word we feel we were seriously misled.

Turning to the NCOP, we must also express our concern that hearings were held in some Provinces and not others. Again, this seems to fly in the face of the Constitutional Court decision.

We accept of course that the Court drew a clear distinction between controversial legislation and non-controversial legislation. In the circumstances of this Bill it may well be that only section 139 is controversial. But for that reason we believe that proper public hearings must be held in respect of that one section, and that the public in advertisements must be informed that it is on the issue of Parental Discipline that submissions are invited. It is quite unacceptable we believe to conceal and submerge that controversial matter in a Bill of such length. The duty on Parliament is to *facilitate* public involvement, not mislead the public.

Please therefore accept this letter on behalf of ourselves and many others who wish to make oral submissions on this topic of parental discipline.

We would ask you, as the Constitutional Court judgement requires us to do, to provide an opportunity first in each Province, and then, *after* the NCOP have deliberated and revised the Bill and sent it to the National Assembly, to provide further NA public hearings, clearly and unambiguously advertised, in Cape Town, and perhaps elsewhere. It is of course vital that if this is a section 76 Bill, the Provinces and NCOP must complete their deliberations and pass the Bill with its amendments, before the National Assembly begins its consultative process. Any attempt by the two houses of Parliament to run the two processes concurrently, or for one House to 'plug the gaps' left by the other would be clearly unconstitutional. There was a suggestion at yesterday's Portfolio Committee that the NA committee had been to Provinces which the NCOP had left out.

In conclusion may I say on behalf of JASA, and many other stakeholders and individuals of a similar mind, that we recognise the enormous importance of this Bill and would wish to support most of its measures. That however cannot justify shortcuts in respect of section 139.

It would be a great pity if this Bill were to be eventually promulgated with the shadow of a challenge in the Constitutional Court hanging over it.

May we respectfully suggest that a better way of dealing with the whole matter would be to remove section 139 from the Bill and make it the subject of a separate Bill if the government still wish to proceed with it. That course would remove any grounds for complaint that the public had been misled and deceived.

Yours sincerely,

John J Smyth QC

**Executive Board of JASA**  
**NJ Desmond RAP Gifford HTP Makamu (Chair) BT Musikavanhu**  
**SP van Rhyn (Vice-Chair)**

