

# POLISH JOURNAL *of* EDUCATIONAL STUDIES

ISSN 2657-3528

2018, Vol. I (LXXI)

DOI: 10.2478/poljes-2018-0006

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## Can legal remedy be used to address bullying and cyberbullying in South African schools?

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### ABSTRACT

Bullying is part of the reality of teachers and learners all over the world. While other forms of bullying are limited to the time when learners interact face-to-face, cyberbullying follows learners via their electronic devices wherever they go. Bullying negatively affect victims and amongst others result in anxiety, low self-esteem and poor academic performance. In some instances, victims become suicidal. Preventing and counteracting bullying requires interventions on several level, and one possibility is to take a legal response. In this paper, the South African legal response is considered. There are several legislative and common law remedies available to victims, but these are not without challenges. Explicit reference to bullying is made in only one act, namely the Children's Act but no definition of bullying or cyberbullying is provided. It is clear that while there are sufficient legal remedies available in the South African context, to address bullying and cyberbullying, particularly with the emphasis on Human Rights and the rights of children, the suitability of legal action is questionable.

### KEYWORDS:

Bullying, cyber bullying, school discipline, human rights, education law.

## Introduction

Bullying is part of the reality of teachers and learners all over the world. Most learners are affected by bullying in one way or another be it as bully, victim or bystander. The consequences of bullying are severe and include depression, anxiety, panic attacks, insecurity, low self-esteem, unassertiveness, poor academic performance, aggression,

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high truancy rates, school drop-out and in severe cases, antisocial personality disorders, substance use disorders and suicide. (Copeland & Wolke, 2013, pp. 419, 423–224; Lets'opha & Jacobs, 2017, pp. 87–88; O'Brien & Moules, 2013, pp. 54–55; Olweus, 1994, pp. 1179, 1183). While we do not want to underplay the issues relating to bullying in general, research indicates that the consequences of cyberbullying are more severe (O'Brien & Moules, 2013, pp. 55).

In spite of the commonness of the problem, many teachers and parents do not know how to deal with bullying and cyberbullying. Some children are of the opinion that their parents will not know what to do about cyberbullying and they do not even tell their parents or teachers about it (Li, 2008, p. 229; O'Brien & Moules, 2013, pp. 61–62). Furthermore, some parents and teachers are convinced that bullying is a harmless rite of passage or a normal part of growing up and thus believe that intervention is unnecessary (Copeland & Wolke, 2013, p. 419). There are various ways to address the problem, albeit with varying levels of success, and teachers, parents and education students should take cognisance of these ways. One way of dealing with bullying is to seek legal remedy.

### **Demarcating bullying and cyberbullying**

According to Olweus (1997, p. 496) bullying or victimisation occurs when a person “is exposed repeatedly and over time, to negative actions” of another person or persons, and typically the power relations between the bully and the victim are unbalanced.

In general, bullying happens in different ways and children are often exposed to more than one of these forms. Verbal bullying includes name-calling, teasing, making fun of the victim, threats and insults. Physical bullying comprises of blocking someone's path, physical restraint, pushing/kicking, slapping and hazing. Bullying can also contain inappropriate sexual conduct such as touching, distribution of compromising pictures, emails with sexual content, graffiti and sexual assault. Being accepted and experiencing a sense of belonging are especially important for children and adolescents in particular. Bullying also takes on relational dimensions when victims are excluded from the group, rumours and gossip are spread and victims are ignored or isolated. Victims are also exposed to conduct that involves their possessions such as hiding belongings and/or theft, arson, extortion, vandalism and destruction of property (De Wet, 2005, pp. 82–83; SAHRC, 2006, pp. v, 6–7; Mestry, Van der Merwe & Squelch, 2006, pp. 47–48; Aluede, Adeleke, Omoike & Afen-Akapaida, 2008, pp. 153–154).

While the above relates to bullying in general, a particular kind of bullying is cyberbullying, which occurs when the perpetrator uses information and computer technology (ICT) to bully another person or persons, who in turn finds it difficult to

defend or protect themselves (Burton & Mutongwizo, 2009, pp. 1–2; Sullivan, 2011, p. 42). Electronic bullying includes sending text messages to the victim or posting humiliating or threatening messages, teasing, lies, rumours, pictures or video clips of the victim (Pyżalski, 2012, p. 305). Li (2008, p. 225) mentions a few other forms of cyber-bullying such as “flaming” which refers to “sending angry, rude, vulgar messages about a person to an online group or to that person via email or other text messaging.” “Masquerading” which refers to “pretending to be someone else and sending or posting material that makes that person look bad.” “Outing” means “sending or posting material about a person that contains sensitive, private, or embarrassing information, including forwarding private messages or images.” “Exclusion” denotes “cruelly excluding someone from an online group.” Other forms of cyberbullying include online harassment, cyberstalking and denigration (put-downs). Different forms of electronic media are used including phones, tablets and computers, and it can take place via text messages, phone calls, social networking sites, emails, blogs, chat rooms and internet gaming to name a few.

The main issue that needs to be understood is that whereas bullying occurs in-school or at after-school activities, cyberbullying follows children home with their phones and other devices. Victims have nowhere to hide from the apparent limitlessness of reach, audience and durability of electronic media. Cyber-bullying is often carried out by people known to the victim, and even if not, people can often be identified through applications such as TrueCaller. However, the vulnerability of the victim is exacerbated when the attacks are done anonymously or under alternative profiles and by the fact that cyber-attacks on the victim can spread much faster and much wider (Li, 2008, p. 225).

## **Reference to bullying in legal documents of other countries**

Some countries have taken steps to define bullying and to address it through legislation. Antibullying legislation is common in the United States of America. For instance, the House of Representatives of the State of Washington (2002) amended the Substitute House Bill 1444 in 2002 to include a new section wherein “harassment, intimidation and bullying” is defined as follows:

Harassment, intimidation, or bullying are defined collectively as any intentional written, verbal, or physical act that is shown as being motivated by the person's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap, or by other distinguishing characteristics. Students are not required to actually possess a characteristic that is the basis for the harassment, intimidation, or bullying.

Harassment, intimidation, or bullying include any intentional written, verbal, or physical acts that:

- Physically harms a student or damages the student's property; or
- Has the effect of substantially interfering with a student's education; or
- Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
- Has the effect of substantially disrupting the orderly operation of the school.

Of particular interest is the explicit reference in the definition to the personal characteristics of the victims of harassment, intimidation and bullying. The definition emphasises the effect of this conduct on the physical, social, emotional and psychological well-being of the victim as well as monetary implications. Furthermore, it also recognises the undesirable impact of this conduct on the creation and maintenance of an environment conducive to teaching and learning.

While anti-discrimination legislation is fairly common, in different countries (for instance through the *Equality Act 2010* of the United Kingdom<sup>3</sup>) explicit references to bullying are often not available. There are many commonalities as well as differences between countries, in this paper we will focus specifically on the legal remedies that are available to address bullying and cyberbullying in South Africa. We focus specifically on the *South African Schools Act 84 of 1996*, the provisions of the Children's Act 38 of 2005, criminal law remedies and civil law remedies. Challenges to implementing legal remedies are highlighted.

## **Existing legal response to bullying and cyber bullying in South Africa**

While explicit reference to bullying in the South African legal framework is limited to one Act, several documents provide the foundation for a legal response.

### **Constitution**

The *Constitution of the Republic of South Africa* (RSA, 1996a) includes a Bill of Rights which contains several rights that are applicable to this issue. These include the right to equal protection under the law (section 9), dignity (section 10) the right to freedom and security of the person that includes protection from any form of physical and psychological harm and not to be treated in a cruel, inhuman or degrading way (section 12), freedom of expression (section 16), and the right to education (section 29).

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

In addition to these rights children, as a vulnerable group, are afforded additional protection under section 28(1)(d) of the Constitution which guarantees children the right to be protected from maltreatment, neglect, abuse or degradation. Of particular importance is section 28(2), which provides that: "A child's best interests are of paramount importance in every matter concerning the child." Unlike most of the other jurisdictions in the world the best-interests-of-the-child concept is not only a principle that should be taken into account in any matter related to children, but it is actually an enforceable constitutional right. (*S v M* 2007 (2) SACR 539 (CC)). These provisions of the Constitution therefore require legislation and policies to respect, protect, promote and fulfil all the constitutional rights and best interests of the bully, the victims and any child bystanders that might be affected by the bullying and cyberbullying. Still, the Constitution does not mention bullying explicitly.

### Legislation

While there is no dedicated legislation that deals with bullying or cyberbullying, several statutes provide some directives on how to address bullying. In our discussions we will refer to specific acts, and a distinction will be made between criminal law remedies and civil law remedies.

#### ***South African Schools Act 84 of 1996***

The *South African Schools Act* (RSA, 1996b) provides for a uniform education system in the country and directs stakeholders on matters related to education.

**Provisions of the *South African Schools Act 84 of 1996*.** School governing bodies (SGBs) have an obligation to draft a code of conduct for learners that should ensure an environment that is conducive to teaching and learning (RSA, 1996b, section 8(1)). In instances of gross misconduct a formal disciplinary hearing can be held by the SGB which can ultimately result in the suspension or expulsion of the learner. Schools must however provide support measures or structures for counselling learners involved in disciplinary proceedings. Other provisions to protect the interests of learners include the compulsory attendance of parents at disciplinary proceedings and the appointment of an intermediary (section 8(5)(b) & 8(6)). Furthermore, before a child can be expelled from the school the Head for the Department of Education (HOD) expects schools to provide evidence that they took appropriate steps to assist the learner to avoid expulsion (*Queens College Boys High School v MEC, Department of Education, Eastern Cape*, Case no 454/08).

As bullying can negatively impact on teaching and learning, the said code of conduct should also include an appropriate section to prohibit bullying. Depending on the seriousness of the nature of bullying incidences, disciplinary hearings, suspension and expulsions could follow if this is contravened.

**Challenges posed by the *South African Schools Act 84/1996*.** Although the legislation makes provision for formal disciplinary proceedings the Act does not provide any guidance on any preventative measures that schools should take or any other strategies that schools can follow to address the problem except through a formal hearing. The suitability of formal disciplinary hearings especially for young learners is questionable. Furthermore, the Act does not contain a definition for bullying or cyberbullying to ensure that the concept is understood, and to prevent for instance children from being unduly stigmatised as bullies for a once-off incident.

The legal issues pertaining to cyberbullying are more intricate if one considers issues such as the jurisdiction of SGBs to institute a disciplinary hearing for an online post that was made outside the school but which affects a learner that is at school. The continuous nature of cyberbullying as well as the potentially limitless audience of the infringement of the constitutional rights of the victim should be taken into account and guidance should be provided to schools and SGBs.

### ***Children's Act 38 of 2005***

**Provisions of the *Children's Act 38 of 2005*.** The aim of the *Children's Act* (RSA, 2005) is to ensure that there are adequate measures in place to safeguard the care and protection of children and prohibit, for instance, child abuse. Of particular importance is the inclusion of the provision that the bullying of one child by another child constitutes abuse (RSA, 2005, Section 1). Children who witness bullying often experience psychological and emotional trauma. This definition of abuse thus implies that the same measures that could be used against adults who abuse children should be used against children that bully their peers. Consequently a children's court will have jurisdiction to hear a matter where one child abuses another child (section 44(2)(f)).

This has serious legal implications. In terms of section 110 (RSA, 2005) several professionals, including teachers, have an obligation to report instances of physical child abuse to a designated child protection organisation, the provincial Department of Social Development or a police official. Taking into account that bullying by another child is regarded as child abuse therefore implies that teachers are obliged to report all instances where a child is physically bullied by another child or children. This will require social workers to investigate the allegations, secure the well-being of the child concerned and draft an initial assessment report. After the social worker has made an assessment the social worker should take appropriate steps to assist the child (section 110(5)). These measures include: "counselling, mediation, prevention and early intervention services, family reconstruction services and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation" (section 110(7)(a)). If these measures are ineffective or not suitable the social worker can institute children's court proceedings.

During the children's court proceedings the court will have to take into account that the abuser is also a child who should be treated as such. It should also be kept in mind that the High courts are regarded as the upper guardian of all children (RSA, 2005, section 45(4)). Research indicates that bullies were often bullied themselves before they became the bullies (Lets'opha & Jacobs, 2017, p. 93). The court can therefore order an investigation into the circumstances of the bully to determine whether that child is in need of care and protection. Section 150(1)(b) (RSA, 2005) provides that a child is regarded to be in need of care and protection if the child "displays behaviour which cannot be controlled by the parent or care-giver." Thus if parents are unable or unwilling to control the behaviour of their child that bullies others this provision can be invoked. The children's court can then make suitable orders to address the needs and interests of the bully.

With regard to the position of the victim section 150(1)(f) (RSA, 2005) provides that a child is regarded to be in need of care and protection if the child "lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social -wellbeing." These are all typical hardships experienced by the victims of bullying.

The children's court has a very wide range of orders that can be made which include *inter alia* subjecting parents and children to early intervention programmes (RSA, 2005, section 148(1)(a)) or instructing parents and/or children to participate in professional assessments (section 46(1)(g)(iv)).

Of particular importance is the provision that the court can instruct "a person" (thus the bully and or the victim) to "undergo a specified skills development, training, treatment or rehabilitation programme where this is necessary for the protection or well-being of a child" (RSA, 2005, section 46(1)(g)(vi)). The court is also at liberty to limit "access of a person to a child or prohibiting a person from contacting a child" (section 46(1)(g)(x)). The bully's contact with the victim can thus be prohibited. Furthermore, the court can make "any other order which a children's court may make in terms of any other provisions of this Act" (section 46(1)(k)).

In general, the children's court may order a lay-forum hearing in an attempt to settle an issue out of court. A lay-forum meeting includes mediation and family group conferencing. Although this might appear to be a proper solution to deal with bullying, lay-forums may not be used in instances of abuse, and thus also instances of bullying by another child (section 71(2)) and thus cannot be regarded as a remedy.

**Challenges of the Children's Act 38 of 2005.** The legal provisions are clearly not without flaws, for instance, bullying is not defined and some of the other provisions might need some refinement to clarify the legal position and to ensure better service delivery. In essence, the existing provisions can be used to address bullying but they are not used as general measures to address bullying. However, the more

pressing question that arises is whether the application of the *Children's Act* is the most suitable legal response to the issue due to the following issues.

Firstly, there is a huge shortage of social workers employed by the Department of Social Development. Non-governmental organisations are also severely understaffed and experience financial difficulties in providing the most basic services. Service delivery in this sector is already under immense pressure (Walters, 2013). To insist on the black letter law implementation of the role of social workers to address instances of bullying among children will probably result in a significant overload and possible collapse of the system.

Secondly, the Provincial Departments of Education employ a very limited number of social workers who focus mainly on crisis intervention in a specific district. They are also not in a position to enforce the provisions of the *Children's Act* adequately.

Thirdly, some schools have realised the need to appoint social services professionals to address children's psychological, social and emotional needs. The number of schools investing in these types of appointments are increasing. However, only fee paying schools can afford the services of these professionals. Currently only 14 percent of schools are allowed to charge school fees which will enable them to appoint a social worker (DBE, 2017).

### ***Criminal law remedies: Child Justice Act 75 of 2008***

As yet, bullying is not criminalised. Victims of bullying will thus have to rely on normal criminal law remedies such as pressing assault, defamation, crimen injuria, extortion, theft or damage to property charges. The *Child Justice Act* (RSA, 2008) was enacted "to establish a criminal justice system for children, who are in conflict with the law and are accused of committing offence", and is thus relevant to any of the possible charges mentioned above.

**Provisions of the *Child Justice Act 75 of 2008*.** If the bully is under 18 years of age at the time of the commission of the offence, the provisions of the *Child Justice Act* (RSA, 2008) will have to be followed. To have a remedy the first hurdle that needs to be overcome is the bully's criminal capacity.

Some bullies are very young. A child under 10 years of age has no criminal capacity and cannot be prosecuted for any crime but must still be referred to a probation officer (RSA, 2008, section 7(1)). The probation officer must assess the child within 7 days and refer the child to a children's court, counselling or therapy or an accredited programme to address the needs of the child, arrange support services for the child, arrange a meeting with parents and other persons who can provide information, or decide to take no action (section 9(3)).

A child older than 10 years but under 14 years is regarded to rebuttably have no criminal capacity (RSA, 2008, section 7(2)) The state will first have to prove that the child has the



requisite criminal capacity before the child can be prosecuted. A child older than 14 years but under 18 years is presumed to have the required criminal capacity to stand trial.

Depending on the seriousness of the crime the child will appear at a preliminary hearing after an assessment by a probation officer. The seriousness of the crimes will also affect the prosecutor's decision before or after the preliminary inquiry to continue with a prosecution or to recommend to the court that the child should be diverted away from the criminal justice system and be placed on a diversion programme. The main objectives of a diversion programme include encouraging the child to take responsibility for his or her actions, to address the needs and interests of the child, reduce potential re-offending, prevent a criminal record and stigmatisation, encourage re-integration of the offender into the community and reconciliation with victims where possible (RSA, 2008, section 51). Other important objectives of this Act are to protect children's human rights, in particular the right to dignity and to teach offenders respect for the human rights of others. This Act also emphasises the importance of safe-guarding the interests of victims and the community and to ensure the involvement of parents, families and victims throughout the process and to break the cycle of crime. Children are protected from the normal adverse effects of the criminal justices system and a multi-disciplinary approach is promoted through the co-operation of different government departments (section 2).

The *Child Justice Act* has the potential to address the needs and interests of children who display criminal behaviour which overlaps with typical bullying behaviour. It has already made a positive contribution to the lives of many children who were in conflict with the law (Reyneke & Reyneke, 2011).

**Challenges posed by the *Child Justice Act 75 of 2008*.** However, the application of criminal remedies are not without challenges. Firstly, schools and parents are reluctant to involve the police in these type of matters, possibly to protect the reputation of the school. Parents of victims can also think that involving the police is too drastic and that they do not want the bully to end up with a criminal record and/or that the criminal justice option would be too stressful for their own child. Such views do not take into account that this Act can provide children who display socially unacceptable behaviour with an opportunity to get help without getting a criminal record (RSA, 2008, section 51(j)).

Lack of legal knowledge of the overlapping elements of assault, defamation and *crime injuria* on the one hand and what constitutes bullying deprives many bullies of the opportunity to access the social services they need. Furthermore, schools do not understand that this legislation is aimed at assisting children with behavioural problems and mistakenly think that involving the criminal justice system would do more harm than good.

The implementation of this Act is more challenging in rural areas due to a lack of capacity. The absence of physical resources, probation officers and trained staff in the

required multi-disciplinary team. This hampers an effective response to crimes that are related to bullying behaviour. On the other hand, specialised child justice courts and one-stop child justice centres exist in urban areas and provide specialised services. (Reyneke & Reyneke, 2011, p. 160). The ideal is for schools to build networks with these courts, centres, NGOs and the relevant state departments, but it does not happen in practice (*Jacobs v Chairman, Governing body, Rhodes High School and others* 2011 (1) SA 160). In rural areas individual role-players, which include schools have to work harder to establish these networks because not all the services are available at one site. Taking into account that educators are in many instances the most educated members of a specific community one should encourage schools to take the lead in getting all the stakeholders together to give effect to the provisions of this Act and to address bullying in a multi-disciplinary manner.

### **Civil law remedies: Protection from Harassment Act 17 of 2011 and Domestic Violence Act 116 of 1998**

The *Protection from Harassment Act* (RSA, 2011) “provides for the issuing of protection orders against harassment” while the *Domestic Violence Act* (RSA, 1998) provides for “the issuing of protection orders with regard to domestic violence; and for matters connected therewith”. As there are a number of overlaps in these two Acts, we discuss these together.

**Provisions of the Protection from Harassment Act 17 of 2011 and Domestic Violence Act 116 of 1998.** Definitions of bullying and cyber bullying can be aligned with what constitutes harassment in terms of the two acts. In terms of the *Protection from Harassment Act* (RSA, 2011, section 1):

“harassment” means directly or indirectly engaging in conduct that the respondent knows or ought to know-

- (a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably –
  - (i) following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
  - (ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
  - (iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person; or
- (b) amounts to sexual harassment of the complainant or a related person;

The explanation in the *Domestic Violence Act* (RSA, 1998, section 1(xii)) largely corresponds with the above but uses the word “repeatedly” instead of “unreasonably”. This act further defines stalking as “repeatedly following, pursuing, or accosting the complainant” (RSA, 1998, section 1(xxxiii)) and intimidation is explained as “uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear; (section 1(xiii)). In section 1(xxi) sexual abuse is explained as “any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant”.

In the first instances, these Acts provide civil law remedies. In terms of the *Protection from Harassment Act* a complainant can apply through a civil law process for a protection order against a harasser/ bully referred to as the respondent in the proceedings (RSA, 2011, section 2). The protection order will normally prohibit the conduct complained of and expect the respondent to stop the behaviour that is reminiscent of bullying (section 10). The complainant will receive a protection order and warrant for arrest of the respondent if the order is granted (section 9(6)). If the respondent then continues with the prohibited conduct, (harassment) the complainant can contact the police who has to arrest the respondent for contravening a court order (section 11 & 18).

The *Domestic Violence Act* similarly make allowance for a protection order, and as it is applicable to “a wide range of domestic relationships” (RSA, 1998, Preamble) this Act could be applicable to children that live together in a hostel, child and youth care centre, partial care facilities, shelters and drop-in centres (section 1(vii)(f)).

**Challenges of the *Protection from Harassment Act 17 of 2011* and *Domestic Violence Act 116 of 1998*.** The application for a protection order can be challenging for a child. Although the proceedings are less formal than normal court proceedings it can be difficult for victims to face the bully/harasser in a court setting if the bully/harasser opposes the application for a protection order.

If the bully transgress the protection order the *Child Justice Act* will be applicable to the bully. On the upside, the *Criminal Procedure Act 51* (RSA, 1977, section 170A) makes provision for intermediary services and in camera proceedings for children, which will make it easier for the victim to testify. Intermediary services can be more difficult to access in rural areas.

Another challenge that needs to be taken into account is the legal capacity of the bully victim. Normally children will not have legal standing and must be assisted by parents or a guardian. However, this Act allows a child to bring an application for a protection order without any assistance (RSA, 2011, section 2(4)). The protection order can still be served on the child bully and the child bully will need assistance from his or her parents with regards to legal standing.

Even if all the above mentioned obstacles with regards to legal capacity and criminal liability can be addressed the practicability of effective court orders within the school environment remains a challenge. This is especially true if the bully and

the victim are in the same class or sport team and the court order includes restrictions with regards to contact between them that for instance sets a specific distance that the bully must keep from the victim.

It also raises questions about the teachers' responsibilities, if any, to ensure that the bully complies with the court order. Furthermore, the question arises whether the teacher will have to report any transgression of the protection order and whether he or she will be obliged to testify in any proceedings that might flow from such a breach. This raises questions in terms of the labour rights of teachers, and whether it is reasonable to expect such actions from teachers.

### ***Interdict***

Another civil law remedy would be to apply for an interdict to prohibit the actions of the bully. This is however, a costly and time-consuming alternative to the other remedies captured in the Acts discussed above. However, in this instance both children will need assistance to ensure legal standing and it is a costly and time consuming process to obtain an interdict.

## **Suitability of the existing legal framework**

It should be evident that there are some legislative remedies available to address bullying albeit not flawless. One of the important flaws is that the needs and interests of the victim and bystanders are not adequately or expressly addressed in most of the legislative provisions. To ensure the best interests of all these children, legislation should adequately highlight the plight of all the children involved.

However, the main question to be answered is whether the involvement of the courts is the most appropriate response to bullying considering the implementation constraints discussed above. Furthermore, section 7(1)(n) of the Children's Act (RSA, 2005) provides that whenever the best interests of the child is at stake actions or decisions that would minimise legal or administrative proceeding should be followed. It is thus necessary to investigate alternatives.

Some of the possible alternatives are rooted in the objectives of the Children's Act which provides that the Act should ensure the preservation of family life, it should respect, protect, promote and fulfil all the constitutional rights of children, it should ensure that South Africa complies with its obligations to uphold international obligations to protect children from all forms of harm and it should ensure that the needs of children in need of care and protection and disabled children are addressed (RSA, 2005, Section 2)

Of particular importance for this paper is the following three objectives of the *Children's Act* (RSA, 2005, section 2) namely:

- (d) to make provision for structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children;
- (e) to strengthen and develop community structures which can assist in providing care and protection for children;
- (f) to protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards;

The school system can be regarded as the most important and readily available structure that can be used to promote and monitor the “physical, psychological, intellectual, emotional and social development of children” mentioned in the Act. Schools and in particular the capacity of the management, educators and parents of the school should therefore be strengthened and developed to provide the necessary development and protection of children who are bullied and who bully others as well as those children who are mere bystanders of the bullying. Addressing the problem through legal action is clearly one option. However adults need to find a variety of ways to prevent bullying and cyberbullying from happening. Various anti-bullying programmes exist, and as much as technology contributes to the problem, it can also be used to prevent it. Tłuściak-Deliowska (2018, pp. 38–39) indeed point out that there are technology based solutions to prevent and address the problem.

## Conclusion

Within the South African context, there is no all-encompassing legal solution to address bullying. Existing legislation does, however, allow for ways to prevent, report and penalise bullying and cyberbullying. Human Rights, which form the cornerstone of the South African legal framework, is at the heart of countering any form of victimisation, and South African law explicitly protects the rights of children. Nonetheless, the law is only one of the vehicles that can be used to address bullying and it should in all likelihood be regarded as the last option that should be used to address the issue.

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