

Corporal punishment of children in Liberia: Briefing for the Universal Periodic Review, 36th session, May 2020



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

From the Global Initiative to End All Corporal Punishment of Children, October 2019

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Liberia, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee and the African Committee of Experts on the Rights and Welfare of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in Liberia. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Liberia draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and possibly in the penal system.

Article 5(8) of the Penal Code 1976 authorises the use of force by parents, guardians and teachers against children for “prevention and punishment of misconduct”; article 7(7) of the Children’s Law 2011 provides for “justifiable correction” of children. The near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that no degree of corporal punishment is acceptable or lawful. All legal defences should be repealed and prohibition of all corporal punishment should be enacted in relation to parents and all those with parental authority.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition should be enacted in relation to all education settings, public and private.

Sentence for a crime – Provisions for corporal punishment in the Rules and Regulations Governing the Hinterland should be repealed.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 5(8.1) of the Penal Code 1976, entitled “Use of force by persons with special responsibility for care, discipline, or safety of others”, states: “Parent, guardian or teachers. The use of force upon or toward the person of another is justifiable if the actor is the parent, guardian, or other person responsible for the care and supervision of a minor under eighteen years old or teacher or other person responsible for the care and supervision of such a minor for a special purpose, or a person acting at the direction of any of the foregoing persons, if the force is used for the purpose of safeguarding or promoting his welfare including prevention and punishment of his misconduct, and the maintenance of proper discipline. The force used for these purposes must not be designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement or degradation.”

The Children’s Law 2011 provides limited protection from violent childrearing but does not make all corporal punishment unlawful or repeal the provisions for the use of force in article 5 of the Penal Code 1976. Article 4(1.3) states that “every parent shall have an equal duty with a co-parent to: ... (g) respect the child’s dignity and refrain from administering domestic discipline that violates such dignity or adversely affects the psychosocial or physical well-being of any child living in the household”. However, it does not explicitly prohibit all corporal punishment, and article 7(7) allows for “justifiable” corporal punishment, stating: “(1) No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment. (2) Any correction or punishment of a child shall be justifiable for the child concerned. (3) No correction of a child is justifiable for any child if it is unreasonable in kind or in degree relative to the age, physical and mental condition of the child and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose and fairness of the correction. (4) The Ministry of Gender and

Development shall progressively facilitate parental guidance programs aimed at developing the capacity of parents to discipline and guide their children without use of any form of violence.”

There is an ongoing process of reviewing national laws so as to comply with international and regional human rights standards. The Constitution 1986 is being reviewed and public consultations on Constitutional Reform commenced in March 2014; the work of the Constitution Review Committee was expected to be completed in 2016.¹ A Domestic Violence Bill is under discussion, which the Government has said will domesticate the provisions of the Convention on the Rights of the Child.² As of July 2018, the Bill was still being finalised after disagreements around the prohibition of FGM.³ We do not know if prohibition of corporal punishment has been proposed in the context of these reforms.

The Government has said that its efforts to “eliminate corporal punishment provisions from legislation had met with considerable resistance at the community level. During the discussions held with stakeholders to promote the abolition of corporal punishment in both the criminal justice system and traditional justice, communities had expressed concern that the authorities were seeking to interfere with their form of exercising discipline.” It further explained that “more time was needed to raise public awareness in that regard”.⁴

Alternative care settings

Corporal punishment is unlawful in some but not all alternative care settings. Article 8(2) of the Children’s Law 2011 prohibits corporal punishment by child protection practitioners: “Every employer of a child protection officer shall incorporate into the child protection officer’s employment contract a code of conduct which mandates the employee to: ... (k) refrain from physical punishment of a child under the child protection officer’s protection....” But other carers would be permitted to inflict corporal punishment under the provisions for the use of force in article 5(8) of the Penal Code 1976 and for “justifiable” correction in article 7(7) of the Law.

Day care

In early childhood care (nurseries, crèches, kindergartens, family centres, etc) and in day care for older children (day centres, after-school childcare, etc), children are legally protected from corporal punishment by child protection practitioners under article 8(2) of the Children’s Law 2011. But other carers would be permitted to inflict corporal punishment under the provisions for the use of force in article 5(8) of the Penal Code 1976 and for “justifiable” correction in article 7(7) of the Law.

Schools

Corporal punishment is lawful in schools under the provisions for the use of force in article 5(8) of the Penal Code 1976 and for “justifiable correction” in article 7(7) of the Children’s Law 2011. The Education Reform Act 2011 replaces the Education Law 2001 and according to the Government it provides “appropriate sanctions against teachers who commit sexual abuse and assault of students”.⁵ However, the Act is silent on the issue of corporal punishment and discipline, stating only that “Pupils

¹ 18 February 2015, A/HRC/WG.6/22/LBR/1, National report to the UPR, para. 21

² *ibid.*, para. 20

³ 12 July 2018, CCPR/C/SR.3500, Summary records of 3500th meeting

⁴ 13 July 2018, CCPR/C/SR.3501, Summary records of 3501st meeting

⁵ 10 April 2014, CEDAW/C/LBR/7-8, Seventh/eighth state party report, p. 19

conduct shall be regulated by the policy guidelines prescribed by the Ministry” (art. 8.6); offenses listed in Chapter 7 of the Act include those of sexual violence towards a pupil but do not include corporal punishment.

Penal institutions

Corporal punishment is explicitly prohibited as a disciplinary measure in all penal institutions accommodating children in conflict with the law in article 9(3.5) of the Children’s Law 2011: “Corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned are hereby prohibited.” Article 34(18)(2) of the Criminal Procedure Code explicitly prohibits corporal punishment in prisons: “... No cruel, degrading or corporal punishment including punishment by confinement in a dark cell, shall be inflicted on any prisoner....”

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under article 9(3.5) of the Children’s Law 2011. Under the Revised Rules and Regulations Governing the Hinterland of Liberia 1949 (revised 2001), there are separate legal structures for “civilised” and “native” Liberians, with justice for the latter being administered in native courts. The Regulations provide for tribal affairs to be administered through tribal chiefs “who shall govern freely according to tribal customs and traditions so long as these are not contrary to law” and state that “no chief shall be penalised for imposing sanctions when his legitimate orders are not obeyed, provided such sanctions do not exceed the limits fixed by Regulation” (art. 29). Article 45 expressly provides for corporal punishment – “which means whipping, stocking, tying” – in cases of petty larceny (art. 45).

It would appear that such punishments if inflicted on a child would be unlawful under the above mentioned prohibition of corporal punishment in the administration of justice in article 9 of the Children’s Law. In addition, article 6 states that “no person or society shall subject a child to ... any unnecessary or uncultured practice that may inflict physical, psychosocial, or emotional pain to the child or otherwise violate or endanger her or his bodily integrity, life, health, dignity, education, welfare, or holistic development” (art. 6(4)(d)). Efforts are under way to harmonise the Hinterland Regulations with statutory law.⁶

Universal Periodic Review of Liberia’s human rights record

Liberia was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁷

“Complete the process of examining regional and international human rights instruments to which the country is party, so as to revise national legislation and better fulfil its regional and international obligations imposed by such instruments (Algeria);

⁶ UN Mission in Liberia & UN Office of the High Commissioner (2015), *An Assessment of Human Rights Issues Emanating from Traditional Practices in Liberia*, para. 53

⁷ 4 January 2011, A/HRC/16/3, Report of the working group, paras. 77(4), 77(5), 77(9), 77(10), 77(18), 77(50), 77(67), 77(68) and 77(69)

“Continue to prioritize and implement policies and legislation to address violence against women and the protection of the human rights of children (South Africa);

“Take further legislative and policy measures to protect the rights of children, including by ensuring that Liberia meets its obligations under the CRC and the Optional Protocol on the sale of children, child prostitution and child pornography (Australia);

“Pursue efforts to harmonize its national legislation with its international obligations (Senegal);

“Continue to pay particular attention to the rights of children and women, including through the development and enactment of national action plans (Egypt);

“Encourage Liberia to strengthen its judicial system, especially in view of promoting accountability, in order to bring to justice those committing violence against women and children (Thailand);

“Reinforce the protection and promotion of the rights of vulnerable groups, namely, children, women, disabled and elderly persons (Algeria);

“Sustain efforts to promote and protect the rights of groups and of the vulnerable population, such as children, women, disabled and elderly persons (Cuba);

“Continue to reinforce efforts to promote the rights of vulnerable groups such as women and children, especially orphaned and disabled children and child victims of trafficking and sexual exploitation (Bangladesh)”

Examination in the second cycle took place in 2015 (session 22). The following recommendation was made to which the Government must respond by September 2015:⁸

“Take all necessary measures to abolish corporal punishment for children at all institutions, including alternative care settings (Namibia)”

The Government “noted” the recommendation.⁹ The Government subsequently explained that “noting” a recommendation did not mean it had no support but that the Government could not commit to its practical implementation, and that all recommendations that were “noted” had been included in Liberia’s National Human Rights Action Plan as “aspirational provisions”.¹⁰

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child has twice recommended to Liberia that legislation be enacted to explicitly prohibit corporal punishment in all settings, in 2004 and 2012.¹¹

In 2018, the Human Rights Committee expressed concern at the legality of corporal punishment and recommended that Liberia take steps to put an end to corporal punishment in all settings.¹²

⁸ 13 July 2015, A/HRC/30/4, Report of the working group, para. 100(149)

⁹ 25 September 2015, A/HRC/30/4/Add.1, Report of the working group: Addendum

¹⁰ 1 October 2015, Future A/HRC/30/2 Advance unedited version, Draft report of the Human Rights Council on its 30th session, para. 562

¹¹ 1 July 2004, CRC/C/15/Add.236, Concluding observations on initial report, paras. 42 and 43; 11 December 2012, CRC/C/LBR/CO/2-4, Concluding observations on second-fourth report, paras. 44 and 45

¹² 26 July 2018, CCPR/C/LBR/CO/1 Advance unedited version, Concluding observations on initial report, paras. 42 and 43

In its 2014 concluding observations on Liberia's initial report, the African Committee of Experts on the Rights and Welfare of the Child recommended that the Government expressly prohibit corporal punishment in law.¹³

Prevalence/attitudinal research in the last ten years

In a baseline survey of parents and caregivers undertaking a parenting programme in Lofa in 2012, 36% of caregivers reported shouting at their child every day. Severe forms of physical punishment such as hitting, kicking, or locking the child in a room were rarely reported and only 8% of caregivers agreed it was necessary to physically punish their child in order to raise them well, but when asked what they did the last time their child misbehaved, more than half (53%) reported beating their child.

(International Rescue Committee (2014), *Parents Make the Difference: Findings from a randomized impact evaluation of a parenting program in rural Liberia*, New York, NY: International Rescue Committee)

According to UNICEF statistics collected between 2005 and 2013, 90% of children aged 2-14 experienced "violent discipline" (physical punishment and/or psychological aggression) in the home in the month prior to the survey. More than three quarters (76%) experienced physical punishment and 84% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A smaller percentage (61%) of mothers and caregivers thought that physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)

¹³ [April 2014], ACERWC, Concluding observations on initial report, pp. 5-6