



Global Initiative to
**End All Corporal Punishment
of Children**

NAMIBIA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 10th session, 2011

From Peter Newell, Coordinator, Global Initiative

info@endcorporalpunishment.org

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

The Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org) has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies, and regional human rights mechanisms, have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

Summary

This briefing describes the legality of corporal punishment of children in Namibia and relevant draft legislation currently under discussion. We hope the Review will highlight the importance of prohibiting all corporal punishment of children in all settings, including the home, and strongly recommend that the Government ensures that new child protection legislation prohibits corporal punishment of children in the home as well as in other settings.

1 Legality of corporal punishment in Namibia

1.1 Corporal punishment is lawful in the **home**. The Children's Act No. 33 (1960), inherited from South Africa, confirms that parents have a "right to punish and to exercise discipline" (article 59). A Child Care and Protection Bill is under discussion, but as at June 2009 did not repeal the common law "reasonable chastisement" defence or explicitly prohibit all corporal punishment in childrearing.

1.2 Corporal punishment is prohibited in **schools** under the Namibian Educational Code of Conduct, following a Supreme Court judgment in 1991 that the guarantee of human dignity in article 8 of the Constitution precludes the use of corporal punishment in schools as well as for adult and juvenile offenders (*Ex Parte Attorney-General, Namibia: in Re Corporal Punishment by Organs of State*, 1991 (3) SA 76). The Child Care and Protection Bill would explicitly prohibit corporal punishment in schools.

1.3 In the **penal system**, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions under the 1991 Supreme Court judgment (see above), though some legislation is yet to be repealed. The Child Care and Protection Bill would explicitly prohibit corporal punishment of children as a sentence of the courts, including under common law, customary law and in traditional courts, and in penal institutions.

1.4 With regard to **alternative care settings**, the 1991 Supreme Court ruling applies to other institutions and state provided childcare, but there is no explicit prohibition of corporal punishment in legislation and the "right to punish and to exercise discipline" in the Children's Act applies. The Supreme Court judgment does not apply to privately administered alternative care settings.

2 Recommendations by human rights treaty monitoring bodies

2.1 The **Committee on the Rights of the Child** examined Namibia's initial report in 1994 but made no specific recommendation on corporal punishment. The state party's second report is yet to be examined. In 1997, the **Committee Against Torture** recommended abolition of corporal punishment in the penal system (A/52/44, paras. 227-252, Concluding observations on initial report, para. 250).