

# **Corporal punishment of children in Mozambique: Briefing for the Universal Periodic Review, 24<sup>th</sup> session, 2016**

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

**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 Mozambique, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture 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 Mozambique. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Mozambique clearly prohibit all corporal punishment of children in all settings including the home.**

## **1 Review of Mozambique in the 1<sup>st</sup> cycle UPR (2011) and progress since then**

- 1.1 Mozambique was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 10). The issue of corporal punishment of children was raised in the compilation of UN information<sup>1</sup> and in the summary of stakeholders' information.<sup>2</sup> No recommendations were made during the review concerning corporal punishment.
- 1.2 Prohibiting and eliminating all corporal punishment of children in all settings including the home – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments. Mozambique has received repeated recommendations from treaty monitoring bodies to reform its laws to prohibit all corporal punishment, including – since the 2011 UPR – from the Committee Against Torture in 2013<sup>3</sup> and the African Committee of Experts on the Rights and Welfare of the Child in 2014.<sup>4</sup>
- 1.3 There has been no change in the legality of corporal punishment of children in Mozambique since the initial UPR in 2011. However, a new Penal Code has been adopted and comes into force in is under discussion and the Constitution is being reviewed. These reforms provide immediate opportunities for enacting clear prohibition of all corporal punishment of children in all settings.
- 1.4 **We hope the Working Group will note with concern the legality of corporal punishment of children in Mozambique. We hope states will raise the issue during the review in 2015 and**

<sup>1</sup> 21 October 2010, A/HRC/WG.6/10/MOZ/2, Compilation of UN information, para. 36

<sup>2</sup> 17 September 2010, A/HRC/WG.6/10/MOZ/3, Summary of stakeholders' information, paras. 19 and 20

<sup>3</sup> 10 December 2013, CAT/C/MOZ/CO/1, Concluding observations on initial report, paras. 25 and 27

<sup>4</sup> [December 2014], Concluding observations on initial report, para. 29

**make a specific recommendation that Mozambique clearly prohibit all corporal punishment of children in all settings including the home.**

## **2 Legality and practice of corporal punishment in Mozambique**

- 2.1 **Summary:** In Mozambique, corporal punishment of children is prohibited in penal institutions and as a sentence of the courts but it is lawful in the home, alternative care settings, day care and schools.
- 2.2 **Home (*lawful*):** Article 7 of the Law for the Promotion and Protection of the Rights of the Child No. 7/2008 states that “no child shall be subjected to negligent, discriminatory, violent and cruel treatment or be subjected to any form of exploitation or oppression” and states that child abuse includes “assault or other deliberate injury” (unofficial translation). But the Law does not prohibit all corporal punishment, and article 17 provides for the concept of justifiable discipline: “The child has the right to be disciplined in accordance with their age, physical and mental condition, and no disciplinary action is justified if, by reason of their tender age or other reason, the child is unable to understand the purpose of disciplinary action.”
- 2.3 Article 40(1) of the Constitution 2004 states that “all citizens shall have the right to life and to physical and moral integrity, and they shall not be subjected to torture or to cruel or inhuman treatment”, but it is not interpreted as protecting children from all corporal punishment. Similarly, provisions against violence and abuse in the Law on the Jurisdictional Organisation of Minors No. 8/2008, the Family Law 2004 and the Law Against Domestic Violence No. 29/2009 are not interpreted as prohibiting all corporal punishment in childrearing. The new Penal Code, which comes into force on 1 July 2015, punishes crimes against physical integrity (art. 170ff) but only when this involves bodily harm; it punishes domestic violence (art. 245ff) but does not include all corporal punishment of children in this.
- 2.4 A 2009 survey of more than 2,600 children found that one child in three had been hit with a hand at home in the past two weeks, 37% had been beaten with an object.<sup>5</sup>
- 2.5 **Alternative care settings (*lawful*):** Corporal punishment is lawful in alternative care settings (care institutions, foster care, places of safety, emergency care, etc) as for parents, under the concept of “justifiable discipline” in article 17 of the Law for the Promotion and Protection of the Rights of the Child 2008.
- 2.6 **Day care (*lawful*):** Corporal punishment is lawful in early childhood care and in day care for older children under the concept of “justifiable discipline” in article 17 of the Law for the Promotion and Protection of the Rights of the Child 2008.
- 2.7 **Schools (*lawful*):** Government directives advise against corporal punishment in schools, but there is no explicit prohibition in law. Article 34(1) of the Law for the Promotion and Protection of the Rights of the Child 2008 states that the child has the right to education, including “the right to be respected by their teachers in order to be assured of the child’s human dignity” (unofficial translation). The Law also puts a duty on school management to report maltreatment of students (article 37(1)) but it does not explicitly prohibit corporal punishment. The Law on the National Education System 1983 appears to be silent on the issue (information unconfirmed). Law No. 2001-054 on Primary Education provides for compulsory education for children aged 6-14: it does not prohibit corporal punishment.
- 2.8 The above mentioned survey in 2009 found that about a third of children had been hit with a hand at school in the past two weeks; 40% had been hit with an object.<sup>6</sup>

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<sup>5</sup> Clacherty, G. et al (2009), *Children’s Experiences of Punishment in Mozambique: A Qualitative and Quantitative Survey*, Pretoria: Save the Children Sweden

<sup>6</sup> *ibid.*

- 2.9 *Penal institutions (unlawful)*: Corporal punishment is explicitly prohibited as a disciplinary measure in penal institutions in article 64(4) of the Law for the Promotion and Protection of the Rights of the Child 2008 (unofficial translation): “It is strictly forbidden to use disciplinary methods that constitute cruel, inhuman or degrading treatment, including corporal punishment, placement in a dark cell, imprisonment or solitary confinement, reduction in diet....”
- 2.10 *Sentence for crime (unlawful)*: Corporal punishment is unlawful under the Law Abolishing the Penalty of Whipping 1989: article 1 repealed Law No. 5/1983 which had introduced whipping as a judicial sentence, article 2 revoked all sentences of whipping that had not been carried out at the time the Law came into force. The Constitutional protection from cruel or inhuman treatment (article 40) applies (see under “Home”) and there is no provision for corporal punishment as a sentence of the courts in the Law for the Promotion and Protection of the Rights of the Child 2008.

### **3 Recommendations by human rights treaty bodies**

- 3.1 **CRC**: The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Mozambique and recommended that it be prohibited in the home and all other settings – in concluding observations on the state party’s initial report in 2002<sup>7</sup> and on the second report in 2009.<sup>8</sup>
- 3.2 **CAT**: In 2013, the Committee Against Torture expressed concern at reports of whipping inflicted by some traditional authorities and at the legality of corporal punishment of children in the home, school and care settings. The Committee recommended that the Government ensure that customary law and practices and compatible with Mozambique’s human rights obligations and that corporal punishment of children be prohibited in all settings.<sup>9</sup>
- 3.3 **ACERWC**: In December 2014, the African Committee of Experts on the Rights and Welfare of the Child recommended to Mozambique that corporal punishment of children be explicitly banned in all settings, including in school, the home and alternative care centres.<sup>10</sup>

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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*The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, 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, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.*

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<sup>7</sup> 7 February 2002, CRC/C/15/Add.172, Concluding observations on initial report, paras. 38 and 39

<sup>8</sup> 4 November 2009, CRC/C/MOZ/CO/2, Concluding observations on second report, paras. 8, 47, 48 and 75

<sup>9</sup> 10 December 2013, CAT/C/MOZ/CO/1, Concluding observations on initial report, paras. 25 and 27

<sup>10</sup> [December 2014], Concluding observations on initial report, para. 29