

Corporal punishment of children in Namibia: Briefing for the Universal Periodic Review, 24th session, 2016

From Dr Sharon Owen, Research and Information Coordinator,
Global Initiative, sharon@endcorporalpunishment.org



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 Namibia, corporal punishment of children is lawful, despite recommendations to prohibit it in all settings by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in Namibia. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Namibia clearly prohibit all corporal punishment of children in all settings including the home and explicitly repeal the parental “right to punish”.

1 Review of Namibia in the 1st cycle UPR (2011) and progress since then

1.1 Namibia 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 summary of stakeholders’ information.¹ No recommendations were made during the review specifically concerning corporal punishment of children, but the Government accepted a number of recommendations on fulfilling its obligations under the Convention on the Rights of the children and protection of children from violence.²

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. Since the initial UPR of Namibia in 2011, the Committee on the Rights of the Child has recommended to Namibia that corporal punishment be prohibited and eliminated in all settings including the home.³ It was anticipated that prohibition might be achieved by the passage of the new Child Care and Protection Act. However, this has not been the case. The new Act – not yet in force – prohibits corporal punishment in some settings but it does not clearly prohibit all corporal punishment in childrearing nor does it explicitly repeal the parental “right to punish”.

1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Namibia. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Namibia clearly prohibit all corporal punishment of

¹ 8 November 2010, A/HRC/WG.6/10/NAM/3, Summary of stakeholders’ information, para. 16

² A/HRC/17/14, Report of the Working Group, paras. 96(1), 96(6), 96(13) and 97(11)

³ 16 October 2012, CRC/C/NAM/CO/2-3, Concluding observations on second-third report, paras. 18, 19, 38 and 39

children in all settings including the home and explicitly repeal the parental “right to punish”.

2 Legality of corporal punishment in Namibia

- 2.1 **Summary:** Corporal punishment of children in Namibia is unlawful in the penal system, schools and some alternative care and day care settings, though some legislation authorising it is still to be repealed. Corporal punishment is lawful in the home and in some alternative and day care settings. The new Child Care and Protection Act, not yet in force, prohibits corporal punishment in some but not all settings.
- 2.2 **Home (lawful):** The Children’s Act No. 33 1960 punishes “any parent or guardian of a child or any person having custody of a child who ill-treats, neglects ... or abandons that child or allows it to be ill-treated” (art. 18). But the Act also recognises a “right to punish and to exercise discipline” (art. 59). The Combating of Domestic Violence Act 2003 is not interpreted as prohibiting all physical and other humiliating punishment of children and protection for children is undermined by the “right to punish and to exercise discipline” in the Children’s Act.
- 2.3 The Child Care and Protection Act 2015, not yet in force, does not clearly prohibit all corporal punishment in childrearing. It states: “A person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect the child’s right to dignity conferred by Article 8 of the Namibian Constitution.” Article 8 of the Constitution states: “(1) The dignity of all persons shall be inviolable. (2)(a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed. (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.” The Act will replace the Children’s Act 1960: the “right to punish and to exercise discipline” will then no longer be on the statute books but this will be a silent repeal. To send a clear message that corporal punishment is prohibited, the law should explicitly state that no corporal punishment of any kind may be inflicted on a child.
- 2.4 **Alternative care settings (partially prohibited):** Corporal punishment is unlawful in forms of alternative care provided by the state under a 1991 Supreme Court ruling (see below), but there is no explicit prohibition in legislation; the ruling does not apply to privately administered care settings. Article 59(1) of the Children’s Act 1960 states that when a child or pupil is placed in any custody other than that of the parent or guardian, the “right to punish and to exercise discipline” is vested “in the management of the institution to which the pupil was sent”, “in the person in whose custody the child was placed” or “in the case of any pupil to whom a license was granted under section 44 to live in the custody of any person or in any training institution, in such person or in the managers of such training institution”. Article 92 of the Act authorises the Minister to make regulations concerning discipline, including “the infliction of corporal punishment”, in places of safety, observation centres and children’s homes.
- 2.5 The Child Care and Protection Act 2015 includes explicit prohibition of corporal punishment in alternative care settings but is not yet in force.
- 2.6 **Day care (partially prohibited):** Corporal punishment is unlawful in forms of early childhood care and day care for older children provided by the state under the 1991 Supreme Court ruling (see below), but there is no explicit prohibition in legislation; the ruling does not apply to privately administered day care. The Child Care and Protection Act 2015 would prohibit corporal punishment in early childhood centres but not in all forms of day care.
- 2.7 **Schools (unlawful):** A Supreme Court judgment in 1991 ruled 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.⁴ Prohibition is confirmed – and extended to hostels and private schools – in article 56(1) of the Education Act 2001.

2.8 **Penal institutions (unlawful):** Corporal punishment is unlawful under the 1991 Supreme Court judgment. The Correctional Service Act 2012 does not provide for corporal punishment, but it does not explicitly prohibit it. However, provisions in the Children’s Act for the “right to punish and exercise discipline” in penal institutions (art. 59) and authorising the Minister to make regulations concerning the “infliction of corporal punishment” in places of detention, observation centres, schools of industry and reform schools (art. 92), are still in force.

2.9 **Sentence for crime (unlawful):** Corporal punishment is unlawful under the 1991 Supreme Court judgment. The Criminal Procedure Act 2004 does not provide for corporal punishment as a sentence of the courts (arts. 307 and 319). However, this Act appears not to have come into force, and the Criminal Procedure Act 1977 which is currently in force contradicts the Supreme Court ruling in authorising whipping as a sentence for male juveniles (arts. 276 and 292-295). Article 32 of the Children’s Act 1960 also authorises a court to sentence a child to “moderate whipping”. A Child Justice Bill has been under consideration since 2002, but has not yet been enacted.

3 Recommendations by human rights treaty bodies

3.1 **CRC:** In 2012, the Committee on the Rights of the Child expressed concern at corporal punishment of children in Namibia and recommended that it be prohibited in all settings, including the home, in the context of adopting the Child Care and Protection Bill.⁵

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

www.endcorporalpunishment.org; info@endcorporalpunishment.org

June 2015

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.

⁴ *Ex Parte Attorney-General, Namibia: in Re Corporal Punishment by Organs of State*, 1991 (3) SA 76

⁵ 16 October 2012, CRC/C/NAM/CO/2-3, Concluding observations on second-third report, paras. 18, 19, 38 and 39