

Corporal punishment of children in Zambia: Briefing for the Universal Periodic Review, 28th session, 2017

From the Global Initiative to End All Corporal Punishment of Children, March 2017



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 Zambia, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture and the Human Rights Committee, and the recommendations made during the 2nd cycle UPR of Zambia in 2012 (which the Government accepted).

We hope the Working Group will note with concern the legality of corporal punishment of children in Zambia. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Zambia clearly prohibit all corporal punishment of children in all settings, including the home.

1 Review of Zambia in the 2nd cycle UPR (2012) and progress since

- 1.1 Zambia was reviewed in the second cycle of the Universal Periodic Review in 2012 (session 14). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² The Government accepted recommendations to prohibit corporal punishment in all settings.³
- 1.2 By 2016, a new Constitution was drafted which included prohibition of corporal punishment within its Bill of Rights. The Bill of Rights was subjected to a referendum but failed due to a low turnout – the Government has recently declared that it will not hold another referendum as they are too costly. A draft Children's Code is under discussion but has not yet been presented to the Cabinet for approval, seemingly due to the failed referendum.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Zambia. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Zambia clearly prohibit all corporal punishment of children in all settings, including the home.**

¹ 13 August 2012, A/HRC/WG.6/14/ZMB/2, Compilation of UN information, paras. 26 and 27

² 20 July 2012, A/HRC/WG.6/14/ZMB/3, Summary of stakeholders' views, para. 28

³ 31 December 2012, A/HRC/22/13, Report of the working group, paras. 102(23), 102(25) and 102(26)

2 Legality of corporal punishment in Zambia

Summary of current law and opportunities for achieving prohibition

In Zambia, corporal punishment of children is unlawful in the penal system, in schools and in some forms of day care, but it is lawful in the home, alternative care settings and some day care. Some legislation authorising corporal punishment in the penal system is possibly still to be repealed.

- 2.1 **Home (lawful):** Article 46 of the Juveniles Act 1956 covers cruelty to juveniles under 19 but states: “Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer lawful punishment to him.” The English common law defence of “reasonable chastisement” is also applicable, under article 2 of the English Law (Extent of Application) (Amendment) Act 2011. Provisions against violence and abuse in the Penal Code 1931, the Constitution 1996, the Anti-Gender-Based Violence Act 2011 and the Persons with Disabilities Act 2012 are not interpreted as prohibiting all corporal punishment in childrearing.
- 2.2 The Juveniles Act 1956 is being revised, in the context of which a Child Justice Administration Bill had been drafted: as at November 2012, the Bill confirmed the “right to administer lawful punishment”. However in 2013 the plans for the Child Justice Administration Bill were scrapped in favour of a unified Children’s Code. A new Constitution had also been drafted which included prohibition of corporal punishment in the Bill of Rights, stating in article 61(4)(c): “(1) A child is equal before the law. (2) In all actions and decisions concerning a child the best interest of the child shall be the primary consideration. (3) A child’s mother and father, whether married to each other or not, have an equal duty to protect and provide for the child. (4) A child is further entitled to the following civil and political rights: ... (c) not to be subjected to corporal punishment or other form of violence, cruel or inhuman treatment in the home, school or an institution responsible for the care of children....” The Bill of Rights was subjected to a public referendum during 2016 which failed despite the majority of voters being in favour of it, due to a low turnout. The Government has declared that it was not planning on holding another referendum in the near future due to high costs.⁴ As at March 2017, the draft Children’s Code has not yet been presented to the Cabinet for approval: it appears the delays are due to the failed referendum, as the provisions of the draft Children’s Code – which is subsidiary legislation – provide higher protection than the current Constitution.⁵
- 2.3 The Government indicated its commitment to prohibiting corporal punishment of children by accepting recommendations to do so made during the Universal Periodic Review in 2012;⁶ during the review it confirmed that “the Government believes that corporal punishment does not have any place either in schools or in home”.⁷

⁴ See <http://www.coastweek.com/4009-Zambia-unlikely-holding-referendum-due-to-financial-constraints.htm>, accessed 29 March 2017

⁵ Information provided to the Global Initiative, March 2017

⁶ 31 December 2012, A/HRC/22/13, Report of the working group, paras. 102(23), 102(25) and 102(26)

⁷ Government opening statement to the UPR, October 2012

- 2.4 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings, where article 46 of the Juveniles Act 1956 applies and rules made under the Act provide for corporal punishment in childcare facilities.
- 2.5 **Day care (partially unlawful):** Corporal punishment is unlawful in some preschool provision under the Education Act 2011 (art. 28, see below), but it is lawful in other early childhood care and in day care for older children, where article 46 of the Juveniles Act 1956 applies.
- 2.6 **Schools (unlawful):** Corporal punishment is prohibited in public and private schools in the Education Act 2011. Article 28 states: “(1) A teacher, employee or other person at an educational institution shall not impose or administer corporal punishment or degrading or inhuman treatment on a learner or cause corporal punishment or degrading or inhuman treatment to be imposed or administered on a learner. (2) A teacher, employee or other person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.”
- 2.7 **Penal institutions (?unlawful):** Provisions in the Prisons Act 1966 allowing and regulating corporal punishment as a disciplinary measure in penal institutions were repealed in 2004, but by 2012 relevant provisions in the Prisons Rules 1966 had not been repealed. The Reformatory School Rules 1965 allowing corporal punishment have been repealed, but provisions for corporal punishment in approved schools and reformatories under the Juveniles Act and the Approved Schools Rules have not been repealed.
- 2.8 **Sentence for crime (unlawful):** The Penal Code provisions for judicial corporal punishment were amended in 2003, following a 1999 Supreme Court ruling that they were unconstitutional.⁸ The Criminal Procedure Code (Amendment) Act 2003 and the Penal Code (Amendment) Act 2003 repealed articles 14 and 330 and articles 24(c), 27, 36(c), 39 and 40(1) of the Criminal Procedure Code 1934 and the Penal Code 1931 which authorised and regulated flogging. Other laws amended to reflect the prohibition include the Supreme Court Act and the Local Courts Act. However, article 73 (1) (e) of the Juveniles Act 1956, which allows a court to order the offender to be caned, has not been repealed.

3 Recommendations by human rights treaty bodies and during the UPR

- 3.1 **CRC:** In its concluding observations on Zambia’s initial state party report in 2003, the Committee on the Rights of the Child recommended that legislative measures be taken to prohibit all corporal punishment in schools, care institutions and families.⁹ The Committee reiterated its recommendation for prohibition in all settings in 2016.¹⁰
- 3.2. **CAT:** In 2008, the Committee Against Torture welcomed the prohibition of corporal punishment in the penal system in Zambia and recommended that legislation be enacted to prohibit it in the family and in institutions.¹¹
- 3.3 **HRC:** The Human Rights Committee welcomed abolition of judicial corporal punishment in Zambia in its concluding observations on the state party’s third report in 2007, but expressed concern at the legal provisions authorising parents and teachers to administer punishment to children. The

⁸ *John Banda v The People* HPA/6/1998

⁹ 2 July 2003, CRC/C/15/Add.206, Concluding observations on initial report, paras. 30, 31, 32 and 33

¹⁰ 29 January 2016, CRC/C/ZMB/CO/2-4 Advance Unedited Version, Concluding observations on second-fourth report, paras. 33 and 34

¹¹ 26 May 2008, CAT/C/ZMB/CO/2, Concluding observations on second report, paras. 3 and 21

Committee recommended prohibition of all violence against children, including corporal punishment in schools.¹²

3.4 **UPR:** During the first cycle Universal Periodic Review of Zambia in 2008, the Government accepted recommendations to strengthen protection of children’s rights and to fully implement the international treaties ratified by Zambia.¹³ The second cycle UPR of Zambia took place in 2012. In its opening statement, the Government drew attention to the prohibition of corporal punishment in schools and the prohibition in all settings in the draft new Constitution, and stated: “The Government believes that corporal punishment does not have any place either in schools or in homes.... There is evidence that corporal punishment is greatly reduced and the Government is committed to ensure that it is eliminated completely.” The Government confirmed that if passed, article 55(g) of the draft Constitution would prohibit corporal punishment of children in the home, schools and care institutions. During the review the recommendations were made to prohibit corporal punishment in all settings and were accepted by the Government.¹⁴

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org

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 since 2011 the Committee on the Rights of Persons with Disabilities.

¹² 9 August 2007, CCPR/C/ZMB/CO/3/, Concluding observations on third report, paras. 6 and 22

¹³ 2 June 2008, A/HRC/8/43, Report of the working group, paras. 58(12), 58(15) and 59(8)

¹⁴ 31 December 2012, A/HRC/22/13, Report of the working group, paras. 102(23), 102(25) and 102(26)