

Corporal punishment of children in the United Republic of Tanzania: Briefing for the Universal Periodic Review, 39th session, 2021

From the Global Partnership to End Violence Against Children, March 2021



This submission provides an update on the legality of corporal punishment of children in UR Tanzania since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be fully achieved in the home, some alternative care settings, day care, schools, some penal institutions and as a sentence for crime.

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 UR Tanzania, corporal punishment of children is still lawful despite recommendations to prohibit it by the Committee on the Rights of the Child and other Treaty Bodies, during the 2nd cycle UPR of UR Tanzania in 2016.

We hope the Working Group will note with concern the legality of corporal punishment of children in UR Tanzania. We hope states will raise the issue during the review in 2021 and make a specific recommendation that UR Tanzania enact legislation to explicitly prohibit corporal punishment of children in all settings and repeal article 13 of the Law of the Child Act 2009 in mainland Tanzania and article 14 of the Children’s Act 2011, as a matter of priority.

1. Review of UR Tanzania in the 2nd cycle UPR (2016) and progress since

1.1 UR Tanzania was examined in the second cycle of the Universal Periodic Review in 2016. The issue of corporal punishment of children was raised in the compilation of UN information and the summary of stakeholders’ information.¹ During the review, The Government rejected the recommendation to prohibit all corporal punishment, stating: “Corporal punishment is provided by the Corporal Punishment Act, Cap 17. It is a lawful punishment handed out by Courts of law for specific offences. It is not administered indiscriminately as it is only

¹ 14 July 2016, A/HRC/33/12, Report of the working group, para. 29

administered on men below 55 years of age and subject to guidelines ensuring no harm is caused to the offender. Further, a study by the Law Reform Commission revealed that the majority of citizens are in favour of corporal punishment. This form of punishment plays a significant deterrent role in the society.”²

- 1.2 Since the review, no law reform appeared to have been initiated with a view to explicitly prohibit corporal punishment of children in all settings. Tanzania is a Pathfinder country with the Global Partnership to End Violence Against Children, which was established in 2016. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals. The National Plan of Action to End Violence Against Women and Children in Tanzania 2017-2022 does not explicitly recommend a legal prohibition of corporal punishment, focusing instead on the promotion of positive discipline.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in the United Republic of Tanzania. We hope states will raise the issue during the review in 2021 and make a specific recommendation that UR Tanzania enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal article 13 of the Law of the Child Act 2009 in mainland Tanzania and article 14 of the Children’s Act 2011, as a matter of urgency.**

2. Legality of Corporal Punishment in the United Republic of Tanzania

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in UR Tanzania is lawful in the home, alternative care settings, day care, schools, some penal institutions and as a sentence for crime. Article 13 of the Law of the Child Act 2009 in mainland Tanzania provides for “justifiable” correction; article 14 of the Children’s Act 2011 in Zanzibar confirms that parents may discipline their children providing it does not lead to injury. These provisions should be repealed/amended to ensure that no law can be construed as authorising corporal punishment in childrearing.

2.1 Home (lawful)

Mainland Tanzania: Corporal punishment is lawful in the home. The Law of the Child Act 2009 states that parents should protect children from all forms of violence (art. 9), includes beatings which cause harm in the definition of child abuse (art. 3) and prohibits “torture, or other cruel, inhuman punishment or degrading treatment” (art. 13). However, it allows for “justifiable” correction (art. 13) and does not exclude all forms of corporal punishment from such correction. The Government has confirmed that caning of children is justifiable under

² 22 September 2016, A/HRC/33/12/Add.1, Report of the working group: Addendum, para. 136(21)

the Act.³ Notably, the Law of Marriage Act 1971 explicitly prohibits corporal punishment of adults in the home (art. 66): “For the avoidance of doubt, it is hereby declared that, notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse.”

Zanzibar: Corporal punishment is lawful in the home. The Children’s Act 2011 states that “no child shall be subjected to violence, torture, or other cruel, inhuman or degrading punishment or treatment or any cultural or traditional practice which dehumanizes or is injurious to his physical and mental wellbeing” but it also states that “parents may discipline their children in such a manner which shall not amount to injury to the child’s physical and mental wellbeing” (art. 14). The Act does not explicitly prohibit all corporal punishment in childrearing, and the Government has confirmed that corporal punishment is justifiable under article 14.⁴

2.2 *Alternative care settings (lawful)*

Mainland Tanzania: The Foster Care Placement Regulations 2012 explicitly prohibit corporal punishment by foster parents: article 11 sets out the responsibilities of foster parents, including “guiding the behaviour of the child in a human manner, promote positive discipline and not impose corporal punishment or any form of physical violence or punishment, or humiliating or degrading forms of discipline” (art. 11(1)(f)). In other forms of alternative care, corporal punishment is lawful under the provisions for “justifiable” correction in article 13 of the Law of the Child Act 2009.

Zanzibar: The Children’s Act 2011 prohibits corporal punishment in residential institutions in article 125: “(1) For the purpose of promoting the well-being and development of children in residential establishments, particularly as regards their education and health, every residential establishment approved under section 123(3) of this Act shall establish a committee of not less than four fit and proper persons to oversee the management of the establishment. (2) The committee shall: ... (e) inquire into the maintenance of discipline and behaviour management, having regard to the prohibition on corporal punishment and other humiliating forms of punishment....” However, there is no prohibition in relation to other forms of care, where corporal punishment is lawful as for parents under article 14.

2.3 *Daycare (lawful)*

Mainland Tanzania: The Law of the Child Act 2009 does not explicitly prohibit corporal punishment in day care; it is lawful under the provisions for “justifiable” correction in article 13.

Zanzibar: There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. The provision for disciplining children in the Children’s Act 2011 (art. 14) applies to all with parental authority.

³ 4 November 2013, CRC/C/TZA/3-5, Third-fifth state party report, para. 87

⁴ 4 November 2013, CRC/C/TZA/3-5, Third-fifth state party report, para. 87

2.4 Schools (lawful)

Mainland Tanzania: Corporal punishment is lawful in schools, for boys and girls, under the National Education (Corporal Punishment) Regulations 1979 pursuant to article 60 of the National Education Act 1978, which authorises the minister to make regulations “to provide for and control the administration of corporal punishment in schools”. Corporal punishment according to these Regulations means “punishment by striking a pupil on his hand or on his normally clothed buttocks with a light, flexible stick but excludes striking a child with any other instrument or on any other part of the body”.⁵ In 2000, Government guidelines reduced the number of strokes from six to four and stated that only the heads of schools are allowed to administer the punishment, with penalties for teachers who flout these regulations: efforts since then have focused on ensuring adherence to the guidelines.⁶ In October 2019, President Magufuli expressed support for a regional commissioner who had been filmed illegally caning students.⁷

Zanzibar: The Ministry of Education has adopted a policy against corporal punishment in schools, and in 2016 the Government reported to the Committee on the Elimination of Discrimination Against Women that the use of corporal punishment had been suspended in 10 schools.⁸ However, this is policy not law: corporal punishment remains lawful under the Education Act 1982, and in 2013 the Government confirmed that the provisions for discipline of children in the Children’s Act 2011 justifies the use of caning in schools.⁹ The National Plan of Action to End Violence Against Women and Children 2017-2022 mentions the enactment of legislation “addressing violence against children in schools and promoting the use of positive forms of discipline” in 2018-2020.

2.5 Penal institutions (lawful)

Mainland Tanzania: Corporal punishment is lawful as a disciplinary measure in penal institutions. The Law of the Child Act 2009 prohibits “torture, or other cruel, inhuman punishment or degrading treatment” (art. 13) but regulations under the Act permit corporal punishment. The Law of the Child (Retention Homes) Rules 2012 confirm the child’s right to protection from “all forms of violence” (arts. 4(1) and 52) but they also authorise the use of corporal punishment “as a last resort” (art. 43). According to article 44, with the exception of corporal punishment, physical force and restraints should not be used as a punishment against the child. The Law of the Child (Approved Schools) Rules 2011 similarly provide for corporal punishment in article 46. Article 47 states that physical force and restraint should not be used as a form of punishment.

⁵ 4 November 2013, CRC/C/TZA/3-5, Third-fifth state party report, para. 87; see also Law Reform Commission of Tanzania (1994), *Final Report on Designated Legislation in the Nyalali Commission Report*, para. 2.6

⁶ See *Tanzania Daily News (Dar es Salaam)*, 14 June 2014, “Tanzania: Ministry sets guidelines on corporal punishment”, www.allafrica.com/stories/201406161113.html, accessed 16 May 2016

⁷ See “Tanzanian president backs official who beat students with a stick”, <https://www.reuters.com/article/us-tanzania-rights/tanzanian-president-backs-official-who-beat-students-with-a-stick-idUSKBN1WJ24W>, last accessed 18 October 2019

⁸ 9 March 2016, CEDAW/C/SR.1392, Summary record of 1392nd meeting, para. 7

⁹ 4 November 2013, CRC/C/TZA/3-5, Third-fifth state party report, para. 87

Zanzibar: Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 122 of the Children’s Act 2011. We have yet to establish if rules providing for prohibition of corporal punishment have been made under the Children’s Act 2011 and if provisions for the use of force “to make a trainee obey the lawful orders which he refused to obey or in order to preserve peace in the Centre”, introduced into the Offenders Education Act 1980 in 2007, have been repealed or amended.

2.6 Sentence for crime (lawful)

Mainland Tanzania: Corporal punishment is lawful as a sentence for crime, for males only. The Minimum Sentences Ordinance 1963 made corporal punishment mandatory for certain offences for males aged 16 and above. The Minimum Sentences Act 1972 abolished these provisions, but they were reinstated by the Written Law (Miscellaneous Amendments) Act No. 10 of 1989. A number of laws provide for judicial corporal punishment, including the Penal Code 1945, the Sexual Offences Special Provisions Act 1998, the Criminal Procedure Code 1985 and the Written Laws (Miscellaneous Amendments) (No. 2) Act 2007.

Zanzibar: Judicial corporal punishment was abolished in 2004, when the Criminal Procedure Decree was amended by the Criminal Procedure (Amendment) Act 2004 to insert a new article 291 entitled “Ban on corporal punishment”: “No court of law or judicial tribunal established by law shall inflict a corporal punishment to any person in Zanzibar.” Article 47(2) of the Children’s Act 2011 confirms prohibition: “No child shall be subject to corporal punishment as a result of being found guilty of the commission of an offence....”

3 Recommendations by human rights treaty bodies

3.1 **CRC:** The Committee on the Rights of the Child has three times expressed concern at corporal punishment of children in UR Tanzania and recommended it be explicitly prohibited in the penal system and other institutions – in its concluding observations on the state party’s initial report in 2001,¹⁰ on the state party’s second report in 2006¹¹ and the state party’s third to fifth report in 2015.¹²

3.2 **HRC:** The Human Rights Committee has twice expressed concern at corporal punishment of children in UR Tanzania and recommended it be explicitly prohibited in the penal system and in schools – in its concluding observations on the state party’s third report in 2001¹³ and on the state party’s fourth report in 2009.¹⁴

3.3 **CESCR:** The Committee on Economic, Social and Cultural Rights has expressed concern at corporal punishment of children in UR Tanzania and recommended it be explicitly prohibited in all settings– in its concluding observations on the state party’s initial to third report in

¹⁰ 9 July 2001, CRC/C/15/Add.156, Concluding observations on initial report, paras. 38, 39 and 67

¹¹ 21 June 2006, CRC/C/TZA/CO/2, Concluding observations on second report, paras. 6, 33, 34 and 70

¹² 21 June 2006, CRC/C/TZA/CO/2, Concluding observations on second report, paras. 6, 33, 34 and 70

¹³ 18 August 1998, CCPR/C/79/Add.97, Concluding observations on third report, para. 16

¹⁴ 6 August 2009, CCPR/C/TZA/CO/4, Concluding observations on fourth report, para. 16

2012.¹⁵

3.4 **ACERWC:** The African Committee of Experts on the Rights and Welfare of the Child recommended that corporal punishment is explicitly prohibited in all settings– in its concluding observations on the state party’s second to fourth report in 2017.¹⁶

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¹⁵ 3 December 2012, E/C.12/TZA/CO/1-3, Concluding observations on initial-third report, paras. 4 and 14

¹⁶ July 2017, Concluding observations on second/fourth report, para. 19