

Corporal punishment of children in Uganda: Briefing for the Universal Periodic Review, 40th session, 2022

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



This submission provides an update on the legality of corporal punishment of children in Uganda since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings and day care.

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 Uganda, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the 2nd cycle UPR of Uganda in 2016.

We hope the Working Group will note with concern the legality of corporal punishment of children in Uganda. We hope states will raise the issue during the review in 2022 and make a specific recommendation that Uganda enact a legislation to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Uganda in the 2nd cycle UPR (2016) and progress since

- 1.1 Uganda was reviewed in the second cycle of the Universal Periodic Review in 2016 (session 26). Recommendations to prohibit corporal punishment in all settings were made and accepted by the Government.¹
- 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. Uganda became a Pathfinder country with the Global Partnership to End Violence Against Children in 2016. This committed the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals. A 2017 report from the Ministry of Gender, Labour and Social Development recommended that the Government promulgate “legislation forbidding violent punishment of children by parents, teachers, and others” and promote positive discipline

¹ 16 November 2016, A/HRC/WG.6/26/L.7, Draft report of the Working Group, paras. 115(14), 115(36), 115(58), and 115(71)

instead of corporal punishment.² The National Parenting Guidelines, adopted in 2018, do not explicitly mention corporal punishment but do encourage the use of positive parenting.³

- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Uganda. We hope states will raise the issue during the review in 2022 and make a specific recommendation that Uganda enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal any legal defence allowing its use, as a matter of urgency.**

2 Legality of corporal punishment in Uganda

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Uganda is lawful in the home, alternative care and day care. A right to administer “reasonable chastisement” is recognised under common law and protection from violence and abuse in the Children Act and other laws is not interpreted as prohibiting all corporal punishment. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. Prohibition should be enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

2.1 **Home (lawful):** Corporal punishment is lawful in the home. A right to administer “reasonable chastisement” is recognised under common law. Provisions against violence and abuse in the Children Act 2003, the Constitution 1995, the Penal Code 1950 and the Domestic Violence Act 2009 do not prohibit all corporal punishment in childrearing.

2.2 A Government Children (Amendment) Bill was under discussion in 2015 which would have prohibited corporal punishment in the home and all other settings. However, it was tabled alongside a Private Members’ Bill – the Children (Amendment) (No. 2) Bill – which included prohibition in schools only. The Government Bill was later withdrawn, with the Minister of Gender, Labour and Social Development stating that the Private Member’s Bill “had hybrid provisions to sufficiently augment the current law”.⁴ The amendments as passed in March 2016 and assented to in June 2016 included a new article 42A which states that every child has a right to be protected against all forms of violence including physical and emotional abuse, and article 42B which states prevention and early intervention programmes “must focus on ... developing appropriate parenting skills and the capacity of parents and caregivers to safeguard the wellbeing and best interest of the child, including the promotion of positive,

² November 2017, Ministry of Gender, Labour and Social Development, *Violence against Children in Uganda: Findings from a National Survey (2015)*, page 80

³ May 2018, Ministry of Gender, Labour and Social Development, *The Uganda National Parenting Guidelines*

⁴ Statement by the Minister of Gender, Labour and Social Development to Parliament on the Amendment of the Children’s Act Cap 59

nonviolent forms of discipline” – but they did not prohibit corporal punishment in childrearing. As the Government Bill to prohibit all corporal punishment was withdrawn, and there is no explicit intention of the Government to introduce further law reform, the Global Initiative no longer considers Uganda committed to prohibiting all corporal punishment of children without delay.

2.3 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings. There is no explicit prohibition of corporal punishment in alternative care settings.

2.4 **Day care (lawful):** There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children.

2.5 **Schools (unlawful):** Corporal punishment is unlawful in schools. In March 2016, the Children Act was amended with the insertion of a new article 106A: “Corporal punishment in schools. (1) A person of authority in institutions of learning shall not subject a child to any form of corporal punishment. (2) A person who subjects a child to corporal punishment commits an offence and is liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred currency points or both.” As at October 2016, regulations were being developed to implement the law. Prior to this reform, corporal punishment had been discouraged in schools by Ministerial Circular No. 15/2006 and the Guidelines for Universal Primary Education (1998, art. 3.4 iii), but there was no explicit prohibition in law. In *Emmanuel Mpondi v Chairman Board of Governors & 2 ORS UHRC 1 (1999-2002)* the Human Rights Commission Tribunal ruled that the beating of a student to the point of severe injury violated his right to protection against cruel, inhuman and degrading treatment, based on a 1999 Supreme Court ruling against corporal punishment in the penal system,⁵ but did not condemn all corporal punishment in schools.

2.6 In August 2015, the Ministry of Education, Science, Technology and Sports issued Circular No. 2/2015 – “Ban on all acts of violence against children in schools, institutes and colleges” – which states that violence in schools is outlawed in the Constitution, the Children Act, the Penal Code, the Domestic Violence Act and the Employment Act, and that schools should review their rules and regulations to replace corporal punishment with positive learning sanctions/actions.

2.7 **Penal institutions (unlawful):** Corporal punishment is prohibited as a disciplinary measure in penal institutions in the Prisons Act (2003, in force May 2006).

2.8 **Sentence for crime (unlawful):** Corporal punishment as a sentence for crime was ruled unconstitutional in a 1999 Supreme Court ruling⁶ and is prohibited in article 94(9) of the Children Act 2003: “No child shall be subject to corporal punishment).”

3 Recommendations by human rights treaty bodies

⁵ *Kyamanywa v. Uganda*, Criminal appeal No. 16

⁶ *Kyamanywa v. Uganda*, Criminal appeal No. 16

- 3.1 **CAT:** In its 2005 concluding observations on the state party's initial report, the Committee Against Torture recommended the abolition of corporal punishment following Criminal Appeal No. 16 of 1999 (Supreme Court) *Kyamanywa vs. Uganda....*⁷
- 3.2 **CESCR:** The Committee on Economic, Social and Cultural Rights recommended that the Government introduce legislation to explicitly prohibit corporal in its concluding observations on the state party's initial in 2015.⁸
- 3.3 **CRC:** The Committee on the Rights of the Child has expressed concern at corporal punishment of children in Uganda and recommended it be explicitly prohibited in the family and other settings – in its concluding observations on the state party's initial report in 1997,⁹ and in the state party's second report in 2005.¹⁰
- 3.4 **HRC:** In its concluding observations on the state party's initial report in 2004,¹¹ the Human Rights Committee expressed concern about incidents of corporal punishment for disciplinary offences. It recommended that the Government “terminate practices contrary to article 7 and bring prison conditions into line with article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.”

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⁷ 21 June 2005, CAT/CO/34/UGA, Concluding observations on initial report, para. 3

⁸ 24 June 2015, E/C.12/UGA/CO/1, Concluding observations on initial report, para. 27

⁹ 21 October 1997, CRC/C/15/Add.80, Concluding observations on initial report, paras. 15 and 35

¹⁰ 23 November 2005, Concluding observations on second report, CRC/C/UGA/CO/2, paras. 39 and 40

¹¹ 4 May 2004, CCPR/CO/80/UGA, Concluding observations on initial report, paras. 5 and 18