

Corporal punishment of children in the Gambia: Briefing for the Universal Periodic Review, 20th session, 2014

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**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 Gambia, corporal punishment of children is currently lawful, despite the recommendation to prohibit it by the Committee on the Rights of the Child. No clear recommendation to prohibit corporal punishment was made to Gambia in the initial UPR in 2010.

We hope the Working Group will note with concern the legality of corporal punishment of children in Gambia. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Gambia to explicitly prohibit corporal punishment in the home and all other settings and to repeal the common law defence of “reasonable chastisement”.

1 The initial review of Gambia by the Human Rights Council (2010)

1.1 Gambia was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was raised in the compilation of UN information¹ and the summary of stakeholders’ information.² The following recommendations were made:³

“Take legal measures to prohibit all forms of physical and mental violence against children in all settings and to arrange an adequate juvenile justice system (Slovenia);

“Enforce Gambia’s Children’s Act of 2005 on issues such as corporal punishment, early marriages, FGM and sexual exploitation of children, as well as the Child Trafficking Law of 2007 (Norway)”

1.2 The Government did not clearly accept or reject these recommendations but stated that “there were laws already in place to protect children against violence and abuse of all

¹ 13 November 2009, A/HRC/WG.6/7/GMB/2, Compilation of UN information, paras. 26 and 27

² 21 November 2009, A/HRC/WG.6/7/GMB/3, Summary of stakeholders’ information, para. 21

³ 24 March 2010, A/HRC/14/6, Report of the working group, paras. 99(15) and 99(44)

forms” and that sensitization and other measures were being taken to promote “alternative disciplinary measures”.⁴

- 1.3 Compliance with the Convention on the Rights of the Child and other human rights treaties involves enacting legislation to explicitly prohibit all corporal punishment of children in all settings, including the home. But the near universal acceptance of a degree of violent punishment in childrearing and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Furthermore, the obligation to prohibit corporal punishment of children is one which is frequently ignored or evaded by Governments. In Gambia, legislation does not explicitly prohibit corporal punishment in all settings and the common law right to impose “reasonable chastisement” has not been repealed. **For all these reasons, we respectfully urge members of the Working Group to make specific recommendations to Gambia that legislation is enacted to explicitly prohibit all corporal punishment of children in all settings, including the home, and to repeal the common law defence of “reasonable chastisement”.**

2 Legality and practice of corporal punishment in Gambia

- 2.1 **Summary:** Corporal punishment in Gambia is unlawful as a sentence for crime but it is not fully prohibited in the home, alternative care settings, day care, schools and penal institutions.
- 2.2 **Home (lawful):** Under common law, which is part of the laws in Gambia under the Laws of England (Application) Act, parents, guardians and others *in loco parentis* can “reasonably chastise” their child. The Children’s Act 2005 includes the responsibility of parents to “ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child” (art. 22). The Act specifies the duty “of any person having custody of a child to protect the child from discrimination, violence, abuse and neglect” (art. 21); it defines child abuse as “contravention of the rights of the child which causes physical or mental harm to the child” (art. 2) and prohibits “any social and cultural practices that affect the welfare, dignity, normal growth and development of the child” (art. 19). But the Act does not explicitly prohibit all corporal punishment or repeal the common law defence of “reasonable chastisement”.
- 2.3 The Gambia Multiple Indicator Cluster Survey (MICS) carried out in 2010 found that 90% of 2-14 year olds had been physically and/or psychologically punished by their mothers/caregivers or other household members in the past month; 18% had been severely physical punished (hit or slapped on the face, head or ears or hit over and over with an implement).⁵
- 2.4 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings. Those with parental authority must ensure that discipline respects the dignity of the child under article 22 of the Children’s Act 2005 (see para. 2.2), but the common law defence of “reasonable chastisement” is available.

⁴ 23 October 2012, A/HRC/14/37, Report of the Human Rights Council on its fourteenth session, para. 594

⁵ The Gambia Bureau of Statistics (2011), *The Gambia Multiple Indicator Cluster Survey 2010, Final Report*, Banjul: UNICEF

- 2.5 **Day care (lawful)**: There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. Those with parental authority must ensure that discipline respects the dignity of the child under article 22 of the Children’s Act 2005 (see para. 2.2), but the common law defence of “reasonable chastisement” is available.
- 2.6 **Schools (lawful)**: Article 15 of the Education Regulations under the Education Act states: “Firm discipline shall be maintained and enforced in all schools, but all degrading and injurious punishments are prohibited, and no child shall receive corporal punishment of any form save as is hereinafter in this regulation provided.” Under paragraphs 2-4 of article 15, corporal punishment should be administered only by the head teacher or an assistant teacher in the presence of the head teacher, to female pupils only in exceptional circumstances and then only by a female teacher, and logged in a designated book. A questionnaire study found that corporal punishment is used in 70% of schools: 68% of students were beaten at school “sometimes”, 8% “often”, 11% “very often” and 13% “rarely”; students were beaten with belts, canes and rulers.⁶
- 2.7 **Penal institutions (lawful)**: The Children’s Act 2005 protects children in conflict with the law from violence (articles 210 and 212) but there is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.
- 2.8 **Sentence for crime (unlawful)**: Corporal punishment is prohibited as a sentence for crime in section 220(7) of the Children’s Act 2005.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC**: In 2001, the Committee on the Rights of the Child recommended to Gambia that corporal punishment be prohibited in all settings, including in families.⁷

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.

⁶ Tang, J. (2005), *Beating the Misconceptions, Not the Children*, The Gambia: The Child Protection Alliance

⁷ 6 November 2001, CRC/C/15/Add.165, Concluding observations on initial report, paras. 32 and 33