

Corporal punishment of children in the United Republic of Tanzania: Briefing for the Universal Periodic Review, 25th session, 2016



Global Initiative to
**End All Corporal Punishment
of Children**

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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 the United Republic of Tanzania, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights and recommendations made during the 1st cycle UPR (rejected by the Government).

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 2016 and make a specific recommendation that Tanzania clearly prohibit all corporal punishment of children in all settings including the home and as a sentence for crime.

1 Review of UR Tanzania in the 1st cycle UPR (2011) and progress since

- 1.1 The United Republic of Tanzania was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 12). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² The Government accepted a recommendation to “pursue efforts” in relation to corporal punishment, but rejected recommendations to prohibit it.³ The Government subsequently defended the legality and use of corporal punishment, stating that it is strictly regulated in the penal system and in schools.⁴
- 1.2 Tanzania ratified the Convention on the Rights of the Child in 1991. 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 Tanzania in 2011, the Committee on the Rights of the Child has for the third time recommended

¹ 25 July 2011, A/HRC/WG.6/12/TZA/2, Compilation of UN information, paras. 38 and 77

² 22 July 2011, A/HRC/WG.6/12/TZA/3, Summary of stakeholders' information, paras. 4 and 29

³ 8 December 2011, A/HRC/19/4, Report of the working group, paras. 85(7), 86(37), 86(38) and 86(47)

⁴ 12 March 2012, A/HRC/19/4/Add.1, Report of the working group: Addendum, paras. 86(37), 86(38) and 86(47)

prohibition of corporal punishment in Tanzania.⁵ A similar recommendation has now been made by the Committee on Economic, Social and Cultural Rights.⁶

- 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 2016 and make a specific recommendation that Tanzania clearly prohibit all corporal punishment of children in all settings including the home and as a sentence for crime.**

2 Legality of corporal punishment in the United Republic of Tanzania

Summary of current law and reforms needed in order to achieve prohibition

Corporal punishment of children in mainland Tanzania is lawful in all settings – the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime. In Zanzibar, corporal punishment is prohibited as a sentence for crime and in residential institutions, approved schools and remand homes, but it is lawful in other settings. Achieving prohibition requires the enactment of legislation clearly prohibiting corporal punishment in those settings where it is currently lawful, repealing all laws authorising and regulating the use of corporal punishment in schools and the penal system, and repealing/amending the provisions relating to child discipline/correction in the Law of the Child Act 2009 in Tanzania and the Children’s Act 2011 in Zanzibar.

- 2.1 **Home (lawful):** In mainland Tanzania, 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. In Zanzibar, 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.
- 2.2 **Alternative care settings (partially prohibited):** In mainland Tanzania, the Law of the Child Act 2009 does not explicitly prohibit corporal punishment in alternative care settings; it is lawful under the provisions for “justifiable” correction in article 13. In Zanzibar, article 125 of the Children’s Act 2011 explicitly prohibits corporal punishment in residential institutions but there is no prohibition in relation to other forms of care.
- 2.3 **Day care (lawful):** In 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. In 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) presumably applies to all with parental authority.
- 2.4 **Schools (lawful):** Corporal punishment is lawful in mainland Tanzania under the Education (Corporal Punishment) Regulations 1979 pursuant to article 60 of the National Education Act

⁵ 4 February 2015, CRC/C/TZA/CO/3-5 Advance Unedited Version, Concluding observations on third-fifth report, paras. 6, 35, 36, 71 and 72

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

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”.⁷ Regulation 3 states that corporal punishment “may be administered for serious breaches of school discipline or for grave offences committed whether inside or outside the school which are deemed by the school authority to have brought or are capable of bringing the school into disrepute”; it must “be reasonable having regard to the gravity of the offence, age, sex and health of the pupils and shall not exceed four strokes on any occasion”.⁸ The Law of the Child Act 2009 does not does not repeal this provision or prohibit corporal punishment in schools.

- 2.5 In Zanzibar, the Ministry of Education has adopted a policy against corporal punishment in schools, but it remains lawful under the 1982 Education Act. The Zanzibar Children’s Act 2011 does not explicitly prohibit corporal punishment in schools.
- 2.6 ***Penal institutions (partially prohibited)***: In mainland Tanzania, there is no prohibition of corporal punishment in penal institutions: the Law of the Child Act 2009 prohibits “torture, or other cruel, inhuman punishment or degrading treatment” (art. 13) but does not explicitly prohibit corporal punishment. Corporal punishment is prohibited in Zanzibar in article 122 of the Children’s Act 2011.
- 2.7 ***Sentence for crime (partially prohibited)***: Corporal punishment is prohibited in Zanzibar under article 47(2) of the Children’s Act 2011. However, in mainland Tanzania corporal punishment is authorised as a sentence under a number of laws, including the Corporal Punishment Ordinance 1930, the Minimum Sentences Act 1963, the Sexual Offences (Special Provisions) Act 1998, the Penal Code 1981 and the Criminal Procedure Code 1985. The Minimum Sentences Act amends the Corporal Punishment Ordinance (art. 12) to allow for administering corporal punishment in instalments. Under article 8 of the Ordinance, juveniles may be given up to 12 strokes (up to 20 for adults) and the punishment may be inflicted in the open courtroom. The Minimum Sentences Act does not apply to females or to juveniles under the age of 16 years (arts. 2 and 3). The Law of the Child Act 2009 provides for criminal charges against children to be heard by a juvenile court (art. 98); it prohibits “torture, or other cruel, inhuman punishment or degrading treatment” (art. 13) and does not explicitly provide for corporal punishment as a sentence of the court. But the Act does not prohibit judicial corporal punishment for child offenders or repeal the above mentioned laws which authorise such sentences.

3 Recommendations by human rights treaty bodies

- 3.1 ***CRC***: The Committee on the Rights of the Child has three times recommended prohibition of corporal punishment of children in Tanzania – in its concluding observations on the initial report in 2001, the second report in 2006 and the third-fifth report in 2015.⁹
- 3.2 ***HRC***: The Human Rights Committee recommended prohibition of corporal punishment in Tanzania following examination of the third report in 1998 and the fourth report in 2009.¹⁰
- 3.3 ***CESCR***: In 2012, the Committee on Economic, Social and Cultural Rights recommended prohibition of all corporal punishment of children in Tanzania.¹¹

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

⁸ *ibid.*, para. 88

⁹ 9 July 2001, CRC/C/15/Add.156, Concluding observations on initial report, paras. 38, 39 and 67; 21 June 2006, CRC/C/TZA/CO/2, Concluding observations on second report, paras. 6, 33, 34 and 70; 4 February 2015, CRC/C/TZA/CO/3-5 Advance Unedited Version, Concluding observations on third-fifth report, paras. 6, 35, 36, 71 and 72

¹⁰ 18 August 1998, CCPR/C/79/Add.97, Concluding observations on third report, para. 16; 6 August 2009, CCPR/C/TZA/CO/4, Concluding observations on fourth report, para. 16

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

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.