

Corporal punishment of children in Zimbabwe: Briefing for the Universal Periodic Review, 26th session, 2016

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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 Zimbabwe, 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 African Committee of Experts on the Rights and Welfare of the Child, and recommendations made during the 1st cycle UPR of Zimbabwe (accepted by the Government).

We hope the Working Group will note with concern the legality of corporal punishment of children in Zimbabwe. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Zimbabwe clearly prohibit all corporal punishment of children in all settings including the home and explicitly repeal all legal defences for “moderate” and “reasonable” punishment of children.

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

- 1.1 Zimbabwe was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 12). In its national report, the Government confirmed that corporal punishment is lawful in schools and as a punishment for male juvenile offenders.¹ The issue of corporal punishment of children was raised in the compilation of UN information² and the summary of stakeholders' information.³ The Government accepted recommendations to prohibit all corporal punishment of children.⁴
- 1.2 Since the initial UPR in 2011, there have been some positive legislative developments in Zimbabwe: the new Constitution 2013, unlike its predecessor, does not expressly provide for “moderate” corporal punishment of children and a High Court ruling challenging the legality of corporal punishment is pending in the Constitutional Court. However, there has been no change in the legality of corporal punishment, which remains lawful in all settings – in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime. The General Laws Amendment Bill 2015, intended to harmonise legislation with the new Constitution, does not

¹ 19 July 2011, A/HRC/WG.6/12/ZWE/1, National report to the UPR, para. 29

² 22 July 2011, A/HRC/WG.6/12/ZWE/3, Summary of stakeholders' information, paras. 31, 40 and 41

³ 22 July 2011, A/HRC/WG.6/12/ZWE/2, Compilation of UN information, para. 29

⁴ 19 December 2011, A/HRC/19/14, Report of the working group, paras. 94(22) and 95(5); 19 December 2011, A/HRC/19/2, Report of the Human Rights Council on its twenty-first session, para. 706

include prohibition of corporal punishment of children. A Children's Bill is being prepared and a Juvenile Justice Bill is planned: these provide key opportunities for achieving prohibition.

- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Zimbabwe. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Zimbabwe clearly prohibit all corporal punishment of children in all settings including the home and repeal all legal defences for "moderate" and "reasonable" punishment of children.**

2 Legality of corporal punishment in Zimbabwe

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

Corporal punishment of children in Zimbabwe is lawful in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime. A High Court judgment in 2014 ruled that judicial corporal punishment of children is unconstitutional and challenged the legality of corporal punishment in all other settings but the review of this decision is still pending in the Constitutional Court. Immediate opportunities for prohibiting corporal punishment are provided in the current preparations of a Children's Bill and a Juvenile Justice Bill. The Government has provisionally recommended that provisions authorising corporal punishment be repealed, pending the decision of the Constitutional Court on the issue.

- 2.1 **Home (lawful):** Article 7 of the Children's Act 1972 punishes ill-treatment and neglect of children and young persons but states: "(6) Nothing in this section shall be construed as derogating from the right of any parent or guardian of any child or young person to administer reasonable punishment to such child or young person." The Criminal Law (Codification and Reform) Act 2004 states in article 241(2)(a) that "a parent or guardian shall have authority to administer moderate corporal punishment for disciplinary purposes upon his or her minor child or ward".
- 2.2 The Constitution 1979 was amended in 1990 to allow "moderate" corporal punishment of persons under 18 (art. 15). The new Constitution enacted in 2013 does not include this provision. Rather, it protects the rights of all persons to respect for and protection of their human dignity and physical integrity, including the rights "to freedom from all forms of violence from public or private sources", and not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; it states that no law may limit these rights. However, it does not explicitly prohibit corporal punishment.
- 2.3 A High Court review judgment in 2014 expressed the possibility that corporal punishment by parents, guardians and persons *in loco parentis* might now be unconstitutional, but the judgment itself was concerned with judicial corporal punishment (see below).⁵ The ruling must now be reviewed by the Constitutional Court, but in October 2015 the Court postponed the hearing indefinitely and stated that when it does hear the case it will only consider judicial corporal punishment.⁶
- 2.4 A General Laws Amendment Bill intended to harmonise laws with the Constitution is under discussion but the Bill as drafted in 2015 deals with "minor" amendments to existing laws: it does not prohibit corporal punishment of children. A Children's Bill is also being prepared: the

⁵ *The State vs Willard Chokuramba*, High Court of Zimbabwe, 31 December 2014

⁶ <http://www.herald.co.zw/corporal-punishment-permissible-concourt/>, accessed 1 December 2015

Government has provisionally recommended – pending the decision of the Constitutional Court on the issue – that article 7(6) of the Children’s Act, which allows “reasonable punishment”, be amended “to remove the endorsement of corporal punishment”.⁷

- 2.5 **Alternative care settings (lawful):** Corporal punishment is lawful under article 241 of the Criminal Law (Codification and Reform) Act 2004 and article 7(6) of the Children’s Act 1972 (see above).
- 2.6 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under article 241 of the Criminal Law (Codification and Reform) Act 2004 and article 7(6) of the Children’s Act 1972 (see above).
- 2.7 **Schools (lawful):** Corporal punishment is lawful under article 69(2)(c) of the Education Act 1987. Article 241(2)(b) of the Criminal Law (Codification and Reform) Act 2004 states that a school teacher (defined as the head or deputy head of a school) “shall have authority to administer moderate corporal punishment for disciplinary purposes upon any minor male pupil or student”. Corporal punishment must not be inflicted on female pupils (art. 242(4)). The Government has recommended that article 69(2)(c) of the Education Act be reviewed.⁸
- 2.8 **Penal institutions (lawful):** Corporal punishment is lawful as a disciplinary measure in penal institutions under article 241 of the Criminal Law (Codification and Reform) Act 2004 and article 7(6) of the Children’s Act 1972.
- 2.9 **Sentence for crime (lawful):** Corporal punishment is lawful as a sentence for crime for males under 18 (not for adults) under article 336 of the Criminal Procedure and Evidence Act 1927 (amended 2004). According to article 353, “moderate corporal punishment, not exceeding six strokes” may be ordered in lieu of or in addition to other punishments: it must be “inflicted in private” in a manner and place and by a person prescribed by the court; the boy must be certified by a medical practitioner as fit to receive the punishment, and the boy’s parent or guardian has a right to be present when the punishment is inflicted. The Prisons Act states that a sentence of “moderate correction of whipping referred to in article 353 of the Criminal Procedure and Evidence Act” should be carried out in the presence of the “officer in charge” and of the medical officer who certified the boy as fit to undergo the punishment (art. 103).
- 2.10 The Children’s Act 1972 provides for the children’s court to make orders in respect of children and young people in need of care and of those who have been convicted of an offence. Article 20 of the Act lists the orders that may be made, and does not include corporal punishment. However, a child or young person aged 12 or over who fails to comply with an order to attend an attendance centre “shall be guilty of an offence and liable to a sentence of moderate corporal punishment, not exceeding six strokes, in accordance with section 353 of the Criminal Procedure and Evidence Act” (art. 20). The Government has recommended that article 336 of the Criminal Procedure and Evidence Act and articles 101-105 of the Prisons Act be reviewed.⁹
- 2.11 In a High Court review judgment in December 2014, Justice Muremba declared that corporal punishment as a criminal sanction for juveniles is no longer lawful because the new Constitution 2013 places no limitation on protection from inhuman treatment and, unlike the previous Constitution, makes no explicit provision for “moderate corporal punishment”.¹⁰ The declaration of unconstitutionality must be confirmed by the Constitutional Court in order to have legal force. In 2015, the Constitutional Court provisionally and indefinitely set aside the High Court order pending further submissions, stating that in the mean time magistrates could impose corporal

⁷ Ministry of Public Service, Labour and Social Welfare (2015), *Draft Discussion Paper on the Review of the Children’s Act and Related Legislation*, page 37

⁸ Ministry of Public Service, Labour and Social Welfare (2015), *Draft Discussion Paper on the Review of the Children’s Act and Related Legislation*, page 37

⁹ Ministry of Public Service, Labour and Social Welfare (2015), *Draft Discussion Paper on the Review of the Children’s Act and Related Legislation*, page 37

¹⁰ *The State vs Willard Chokuramba*, High Court of Zimbabwe, 31 December 2014

punishment on juvenile offenders.¹¹ Efforts are under way to draft a Juvenile Justice Bill:¹² this provides a key opportunity for prohibiting corporal punishment for children in conflict with the law.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has twice recommended that all corporal punishment of children be prohibited in Zimbabwe – in its concluding observations on the initial state party report in 1996¹³ and more recently on the second report in 2016.¹⁴
- 3.2 **HRC:** In 1998, the Human Rights Committee reminded the Government of Zimbabwe that corporal punishment is incompatible with article 7 of the International Covenant on Civil and Political Rights.¹⁵
- 3.3 **ACERWC:** In 2015, the African Committee of Experts on the Rights and Welfare of the Child raised the issue of corporal punishment of children in its examination of Zimbabwe and expressed particular concern that children could still be sentenced by the courts to whipping.¹⁶

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

¹¹ *zimeye News*, 18 June 2015, <http://www.zimeye.com/corporal-punishment-returns-to-zimbabwe/>, accessed 25 June 2015

¹² 16 November 2015, CRC/C/ZWE/Q/2/Add.1, Reply to list of issues, para. 100

¹³ 7 June 1996, CRC/C/15/Add.55, Concluding observations on initial report, paras. 16, 18, 21, 31 and 33

¹⁴ 29 January 2016, CRC/C/ZWE/CO/2, Concluding observations on second report, paras. 7, 42, 43, 76 and 77

¹⁵ 6 April 1998, CCPR/C/79/Add.89, Concluding observations on initial report, para. 21

¹⁶ [October 2015], ACERWC, Concluding observations on initial report, para. 26