

BRIEFING FROM GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN

BRIEFING FOR THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS – November 2006

*From Peter Newell, Coordinator, Global Initiative
info@endcorporalpunishment.org*

This briefing outlines the legality of corporal punishment of children in the home, schools, and justice and care systems in the states under examination in the 40th session of the African Commission on Human and Peoples' Rights. Relevant prevalence research and recommendations from human rights treaty monitoring bodies are also summarised. The Global Initiative has been preparing similar briefings for the Committee on the Rights of the Child since 1994, and for other UN treaty monitoring bodies (the Committee against Torture, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Discrimination against Women) since 2004.

In light of the recommendation in the UN Secretary General's Study on violence against children, submitted to the General Assembly in October 2006, that all corporal punishment of children be prohibited by 2009, we hope the African Commission will rigorously pursue the issue of corporal punishment of children in its examination of states – including corporal punishment within the home – and make recommendations that state parties prohibit corporal punishment in all settings, supported by appropriate public education and professional training on positive, participatory and non-violent forms of discipline.

We note that the African Charter asserts in article 3 that everyone is equal before the law and shall have equal protection of the law. Article 4 states: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." And under article 5: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." Under article 18(3), states are required to ensure the protection of the rights of the child "as stipulated in international declarations and conventions".

The Commission may also be interested to see the Committee on the Rights of the Child General Comment No. 8, issued in June 2006, on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment".¹

ZAMBIA (initial report)

Corporal punishment is lawful in the **home**. Article 46 of the Juveniles Act (1956, amended 1994) covers cruelty to juveniles but states: "Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer lawful punishment to him."

Corporal punishment is unlawful in **schools**. Article 12 of the Education Act allowing the Minister to make regulations regulating the administration of corporal punishment in government and aided schools and hostels was repealed by the Education Amendment Act (2003), though there is no explicit prohibition of corporal punishment.

In a 2005 nationwide survey of over 2,000 children aged 6-18 years which looked at their experiences of corporal punishment over a two week period, 24% reported experiencing corporal punishment in the

¹ Available at www.ohchr.org/english/bodies/crc/comments.htm

home during the period, including being beaten with hands, sticks and belts.² Despite the prohibition of corporal punishment at school, 32% reported being hit with a hand during the period and 38% with an object, most commonly a stick or hosepipe. Other punishments included hard physical labour and excessive physical exercise. Humiliating punishment was reported as being experienced in the home by 43% of children and in school by 37%.

Corporal punishment is unlawful in the **penal system** following a 1999 Supreme Court ruling (*John Banda v The People* HPA/6/1998). However, as at June 2005 the provisions in article 73 (1) (e) of the Juveniles Act, which allows a court to order that the offender be caned, and in the Juveniles Act and Rules which allow for caning as a disciplinary measure were yet to be repealed.

Corporal punishment is lawful in **alternative care settings**, where article 46 of the Juveniles Act (see above) applies and rules made under the Act provide for corporal punishment in childcare facilities.

We have no information on the legality of corporal punishment of children in relation to **situations of employment**.

In its concluding observations on the state party's initial report in 2003, the **Committee on the Rights of the Child** expressed concern "that corporal punishment is still practised and accepted in schools, families, and care and juvenile detention institutions" (CRC/C/15/Add.206, para. 30) and recommended that the state party "take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment, in schools and care institutions, as well as in families" and "reinforce its public awareness campaigns to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society" (para. 31).

UGANDA (first periodic report)

Corporal punishment is lawful in the **home**. Children have limited protection from violence under the Children Act (2003) (which updates the 1996 Children's Statute), the Constitution (1995) and the Penal Code (amended 1990).

There is no explicit prohibition of corporal punishment in **schools** in legislation. In 1997, the Ministry of Education issued a circular entitled "A Temporary Ban on the Use of Corporal Punishment in Schools and Colleges" which stated that random beating must stop in schools and colleges but which also allowed for corporal punishment, stating that those who inflict it should define it and the procedures for administering it. In August 2006, the Ministry of Education and Sports issued a circular (No.15/2006) which unequivocally bans corporal punishment in schools, but this is yet to be confirmed in legislation. Corporal punishment is explicitly prohibited by the Guidelines for Universal Primary Education (1998, article 3.4 iii), but these are guidelines not law and do not apply to private schools. In the case of *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 the 1999 Supreme Court ruling against corporal punishment in the penal system (see below), but did not condemn all corporal punishment in schools.

Research has consistently found a high level of corporal punishment of children, both at school and at home.³ For example, in-depth research into children's experiences of violence against them was carried out in 2005 using a range of methods to look at the stories and opinions of 1,406 children aged 8-18 years and 1,093 adults.⁴ Almost all children (98%) reported experiencing physical violence at home and/or school, most commonly caning, slapping and pinching, followed by burning, locking up, tying up and other (e.g. kneeling, slashing grass, cleaning latrines). Almost a third (31%) said they

² Clacherty, G., Donald, D. & Clacherty, A. (2005), *Zambian Children's Experiences of Corporal Punishment*, Pretoria: Save the Children Sweden

³ For summaries of a range of Ugandan studies, see www.endcorporalpunishment.org

⁴ Naker, D. (2005), *Violence Against Children – The Voices of Ugandan Children and Adults*, Raising Voices/Save the Children in Uganda

experienced physical violence at least once per week and 15% said it happened “every day”, both at school and home. Most adults (90%) agreed that in their communities children were deliberately beaten, most commonly by caning (78%). Adults also reported slapping, pinching, assigning excessive work, locking children up, tying them up and burning them. Only 1.2% said they themselves never punished children.

In the **penal system**, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions following a 1999 Supreme Court ruling (*Kyamanywa v. Uganda*, Criminal appeal No. 16). The Children Act states that no child shall be subject to penal corporal punishment (article 94). However, legislation is still in the process of being amended and corporal punishment continues to be imposed under the Penal Code.

There is no prohibition of corporal punishment in other **institutions and forms of childcare**.

We have no information concerning the legality of corporal punishment of children in **situations of employment**.

Following examination of the state party’s second report in 2005, the **Committee on the Rights of the Child** expressed concern “that corporal punishment is still traditionally accepted and widely practised in the family and in other settings” (CRC/C/15/Add.270, para. 39). The Committee recommended that the state party “explicitly prohibit by law all forms of corporal punishment in all settings, including in the family, schools and alternative childcare, and implement those laws effectively” and “conduct awareness-raising campaigns to ensure that alternative forms of discipline are used, in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2” (para. 40). Similar concerns and recommendations, particularly regarding schools, were stated in the Committee’s previous concluding observations in 1997 (CRC/C/15/Add.80, paras. 15 and 35). In 2004, the **Human Rights Committee** addressed the problem of corporal punishment for disciplinary offences by prisoners (CCPR/CO/80/UGA, para. 18).

NIGERIA (first periodic report)

Corporal punishment is lawful in the **home** and in **schools** under article 55 of the Penal Code (North) and article 295 of the Criminal Code (South). The Rivers State Government has reportedly prohibited corporal punishment in schools in Rivers State, but we have no further details.

In the **penal system**, law reform has not yet effectively prohibited corporal punishment of children. It is prohibited in the Child Rights Act (2003) (article 221), but as at January 2005 this had been enacted by only 4 out of 36 states, and legislation authorising corporal punishment was yet to be amended or repealed. There have been numerous news reports of corporal punishment under Shariah law, including of children as young as 10 years of age.

Large scale research in 2000 by the Centre for Law Enforcement Education (CLEEN), revealed that physical assault was one of the most common complaints against police by juvenile offenders, and corporal punishment was found to be frequently used in custody: 26% of young offenders reported being flogged very frequently, 13% frequently, 44% sometimes and 17% never.⁵ Other types of corporal punishment reported included kneeling, frog jumping, and tough physical drill.

Corporal punishment is lawful in **other institutions and forms of childcare**.

We have no information regarding **situations of employment**.

In its concluding observations on the state party’s second report, the **Committee on the Rights of the Child** expressed concern “that corporal punishment is still widely practised in the penal system as a

⁵ Alemika, E.E.O. & Chukwuma, I.C. (2001), *Juvenile Justice Administration in Nigeria: Philosophy and practice*, Lagos: CLEEN

sanction, as well as in the family, in schools and in other institutions” and that many laws explicitly provide for the use of corporal punishment in various settings, including in the home (Unedited version, CRC/C/15/Add.257, Concluding observations on second report, para. 38). The Committee recommended that the state party “abolish or amend all legislation prescribing corporal punishment as a penal sentence, in particular the Children and Young Persons Act”, “expressly prohibit corporal punishment by law in all settings, in particular in the family, schools and other institutions”, and “conduct awareness-raising campaigns to ensure that positive, participatory, non-violent forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28 (2) as an alternative to corporal punishment at all levels of society” (para. 39).

The Committee also stated that “[d]espite the State party’s claim that there are no discrepancies between the provisions of the Convention and the Shariah laws with regard to the rights of children, the Committee remains deeply concerned by the sentencing of persons below 18 years to cruel, inhuman and degrading treatment such as stoning, flogging, whipping and amputation by Shariah courts” (para. 79). It recommended that the state party “amend, as a matter of urgency, the Child and Young Persons Act and the Criminal Code, as well as the *Shari’a* Penal Codes to abolish death penalty as well as cruel, inhuman and degrading treatment on juvenile offenders, and in the meantime take measures, as a matter of priority, to ensure that persons under 18 are not sentenced to torture, cruel, inhuman and degrading forms of sanction such as flogging and amputation by Shariah courts” and “enact an amendment to the Children and Young Persons Act, prohibiting all forms of corporal punishment in penal institutions” (para. 81 (e and h)).