

# Corporal punishment of children in Gambia

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Child population 1,051,000 (UNICEF, 2015)

## Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and penal institutions.

The near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that no degree of corporal punishment is acceptable or lawful. The Children's Act states that domestic discipline must respect the child's dignity but does not clearly prohibit all corporal punishment, and the English common law defence of "reasonable chastisement" has not been repealed. The "reasonable chastisement" defence should be explicitly repealed, so that it is clear in law that the defence can no longer be relied upon by adults charged with assaulting children.

**Alternative care settings** – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

**Day care** – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

**Schools** – Provisions for corporal punishment in the Education Regulations should be repealed and prohibition of corporal punishment should be enacted in legislation applicable to all education settings, public and private.

**Penal institutions** – Prohibition should be enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. 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 Government confirmed this in its report to the Committee on the Rights of the Child in 2014.<sup>1</sup> There appears to be no confirmation of this right in the Criminal Code 1965.

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). These provisions are not interpreted as prohibiting all corporal punishment in childrearing.

The Women’s Act 2010 provides for protection of women and girls from violence, in public and private settings, in section 6: “(1) Every woman shall be protected against any form of physical, sexual, psychological or economic harm, suffering, or violence whether occurring in public or private life. (2) Any form of violence against women is hereby prohibited. (3) All Government Departments, agencies, organs, public or private institutions shall take appropriate measures to promote and protect women’s rights and their legal status from any form of abuse or violence by any person, enterprise, organisation or institution.” The Act does not clearly prohibit all physical punishment of children.

The Domestic Violence Act 2013 is intended to combat domestic violence against women and children.<sup>2</sup> Article 2 of the Act defines physical abuse as “physical assault or use of physical force against another person ... or subjecting another person to torture or other cruel, inhuman or degrading treatment or punishment”. The Act does not explicitly prohibit all corporal punishment in childrearing.

A Disability Bill is under consideration.<sup>3</sup> In January 2015, the Government informed the Committee on the Rights of the Child that there was currently a focus on awareness raising around corporal punishment as “an interim measure until a prohibition on corporal punishment could be discussed during the review of the Children’s Act”.<sup>4</sup> But as at August 2015, proposed amendments to the Children’s Act did not include prohibition,<sup>5</sup> and amendments enacted in 2016 did not address corporal punishment. The Constitution is also being reviewed.<sup>6</sup>

In July 2018, the Government stated that it “had established a zero-tolerance policy on corporal punishment. That policy had been brought to the attention of teachers and parents and was reflected in minimum standards that had been issued.”<sup>7</sup>

### Alternative care settings

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 under “Home”), but the common law defence of “reasonable chastisement” is available. The Act provides for the Secretary of State to make rules “regulating the management and discipline of the residential care homes” (art. 134) but does not specify that these must prohibit corporal punishment. Corporal punishment is addressed in minimum standards for alternative care institutions but it is not prohibited in law.

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<sup>1</sup> 28 May 2014, CRC/C/GMB/2-3, Second-third state party report, para. 92

<sup>2</sup> Women’s Bureau/UNDP (2014), National Review Report on The Beijing Declaration and Platform for Action-Beijing Plus 20 (The Republic of The Gambia), Final Report, para. 5.4.1

<sup>3</sup> 24 July 2014, A/HRC/WG.6/20/GMB/1, National report to the UPR, para. 55; 24 December 2014, A/HRC/28/6, Report of the working group, para. 109(67)

<sup>4</sup> 27 January 2015, CRC/C/SR.1943, Summary record of 1943rd meeting, para. 18

<sup>5</sup> National Youth Council, correspondence with the Global Initiative, 28 August 2015

<sup>6</sup> Information provided to the Global Initiative, October 2017; see also 28 May 2018, CCPR/C/GMB/Q/2/Add.1, Reply to list of issues, para. 4

<sup>7</sup> 11 July 2018, CCPR/C/SR.3497, Summary records of 3497th meeting

## Day care

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 under "Home"), but the common law defence of "reasonable chastisement" is available.

## Schools

Corporal punishment is lawful in schools. There is a ministerial directive on alternative discipline in schools, but the law still authorises corporal punishment. Article 15 of the Education Regulations under the Education Act 1990 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.

In reporting to the Committee on Economic, Social and Cultural Rights in 2013, the Government stated that it was increasing the number of child-friendly school environments through the Child Friendly School Initiative supported by UNICEF and that this included "discouraging" corporal punishment.<sup>8</sup> But no mention was made of drafting and enacting prohibiting legislation.

## Penal institutions

The Children's Act 2005 protects children in conflict with the law from violence (arts. 210 and 212) but there is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. The Government has reported that corporal punishment is not used in prisons.<sup>9</sup>

## Sentence for crime

Corporal punishment is prohibited as a sentence for crime in section 220(9) of the Children's Act 2005: "A Court shall not make an order subjecting a child to corporal punishment." Previously, corporal punishment (whipping) was lawful as a sentence under the Criminal Code 1965 (art. 30) and the Children and Young Persons Act 1949 (art. 11).

## Universal Periodic Review of Gambia's human rights record

Gambia was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). The following recommendations were made:<sup>10</sup>

"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)"

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 forms. Efforts were also

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<sup>8</sup> 6 November 2013, E/C.12/GMB/1, Initial state party report, para. 57

<sup>9</sup> 27 January 2015, CRC/C/SR.1943, Summary record of 1943rd meeting, para. 13

<sup>10</sup> 24 March 2010, A/HRC/14/6, Report of the working group, paras. 99(15) and 99(44)

being made through the Department of Social Welfare to sensitize communities and institutions on child protection and the use of alternative disciplinary measures for children, with a view to involve them in promoting these alternative measures. Similarly, a training manual on alternative disciplinary measures had been developed and introduced in teacher training college curriculum. The Child Protection Alliance, a locally-based civil society organization, was also working in partnership with the Government and communities to sensitize them on the promotion of alternative disciplinary measures for children.”<sup>11</sup>

Examination in the second cycle took place in 2014 (session 20). No recommendations were made specifically on corporal punishment of children.

Third cycle examination took place in 2019 (session 34). The Government supported the following recommendation:<sup>12</sup>

“Enact legislation that explicitly prohibits corporal punishment against children in all settings, including in the home, and to repeal all legal defences for its use, including the application of the concept of “reasonable chastisement” (Mexico)”

## Recommendations by human rights treaty bodies

### *Committee on the Rights of the Child*

(4 February 2015, CRC/C/GAM/CO/2-3, Concluding observations on second/third report, paras. 41 and 42)

“The Committee welcomes the prohibition of corporal punishment in the child justice system and the provisions of the Children’s Act that those with parental authority must ensure that discipline respects the dignity of the child. The Committee also notes the actions taken by the State party to discourage corporal punishment in school and in the community. However, the Committee remains concerned about:

- a) the absence of legislation explicitly prohibiting corporal punishment in the home, school and alternative care settings;
- b) the existence of provisions in the common law allowing parents, guardians and others in loco parentis to “reasonably chastise” their child; and
- c) frequent incidents of corporal punishment, including severe physical punishments suffered by children, especially in the home.

“With reference to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8), the Committee recommends that the State party:

- a) repeal all provisions that authorize corporal punishment, including the Children’s Act provisions on the right for parents, guardians and others in loco parentis to “reasonably chastise” their child and explicitly prohibit corporal punishment of children in all settings, including within the family, schools and other institutions and childcare settings;
- b) strengthen public education, awareness-raising and social mobilization programmes, involving children, families, communities and religious leaders, on the harmful effects, both physical and psychological, of corporal punishment, with a view to changing the general attitude towards this practice, and promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment in the family, schools, alternative care and penal institutions; and
- c) ensure the involvement and participation of the whole society, including children, in the design and implementation of preventive strategies with regard to corporal punishment of children.”

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<sup>11</sup> 23 October 2012, A/HRC/14/37, Report of the Human Rights Council on its fourteenth session, para. 594

<sup>12</sup> 19 December 2019, A/HRC/43/6, Report of the Working Group, para. 127(29)

## Committee on the Rights of the Child

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

“The Committee expresses grave concern that corporal punishment is still practised and accepted in schools, families, and care and juvenile detention institutions, and as a punishment in the penal system.

“The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment as a penal sanction within the juvenile justice system, in schools and care institutions, as well as in families. The Committee encourages the State party to 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.”

## Prevalence/attitudinal research in the last ten years

The Gambia Multiple Indicator Cluster Survey (MICS) carried out in 2010 found that 90% of children aged 2-14 had been physically and/or psychologically punished by their mothers/caregivers or other household members in the month prior to the survey. Seventy-four per cent of children had experienced physical punishment, while a smaller percentage (38.9%) of mothers and caregivers thought physical punishment was necessary in childrearing; 18% of children experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement). The survey involved 14,685 women in 7,791 households.

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

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