

Corporal punishment of children in Namibia

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Child population 1,063,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Namibia's commitment to prohibiting corporal punishment

Namibia expressed its commitment to prohibiting all corporal punishment of children by accepting the recommendations to do so made during the Universal Periodic Review of Namibia in 2016.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home and in some forms of private day care.

Article 59 of the Children's Act 1960 which confirmed parents' "right to punish and to exercise discipline" was repealed by the Child Care and Protection Act 2015 but the 2015 Act did not clearly and explicitly prohibit corporal punishment in all settings. The near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that all degrees and kinds of corporal punishment are unacceptable and unlawful. Explicit prohibition should be enacted of all corporal punishment, however light, in the home and in all other settings where adults care for children.

Day care – Corporal punishment should be prohibited in all private day care settings, including childminding and other informal arrangements.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. The Child Care and Protection Act 2015 replaced the Children's Act No. 33 1960; it came into force in January 2019 by notice in the Gazette. Article 228(1) of the Child Care and Protection Act 2015 states: "A person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect the child's right to dignity conferred by Article 8 of the Namibian Constitution." Article 8 of the Constitution states: "(1) The dignity of all persons shall be inviolable. (2)(a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed. (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment." This protects children from more 'severe' corporal punishment but it is unclear whether it includes all forms of corporal punishment, however light, particularly in light of the explicit phrasing used in article 228(3). An explicit prohibition of all corporal punishment, including by parents, must be enacted.

In reporting to the UPR for the 2016 review, the Government stated that violence against children is considered to be "part of" gender-based violence.¹ The Combating of Domestic Violence Act 2003 includes in its definition of domestic violence "physical abuse, which includes physical assault or any use of physical force against the complainant" and "emotional, verbal or psychological abuse, which means any pattern of conduct which seriously degrades or humiliates the complainant, or a family member or dependent of the complainant, or deprives such person of privacy, liberty, integrity or security" within the context of a domestic relationship (article 2). "Domestic relationship" includes a parent-child relationship (article 3). The Act has been used by the High Court to protect children from 'harsher' corporal punishment² but there are no indications that it would apply to all forms of corporal punishment, however light. The Government reported that amendments to the Combating of Domestic Violence Act 2003 were under discussion for adoption in early 2017.³ The National Plan of Action on Gender-Based Violence 2012-2016 includes as a preventive strategy the promotion of "positive discipline techniques such as alternatives to corporal punishment in all spheres" and aims to ensure widespread availability of relevant materials by 2013 (Action 2.5) but it makes no mention of law reform to prohibit corporal punishment in the home.

In reporting to the UN Committee on Economic, Social and Cultural Rights in 2015, the Government asserted that corporal punishment was abolished under the Constitution and the Education Act.⁴ In the same year, the Government was asked by the Human Rights Committee about its intentions regarding prohibition of corporal punishment in all settings but did not respond.⁵ The Government then reported in November 2016 that corporal punishment was prohibited in the home under article 228(1) of the Child Care and Protection Act 2015.⁶ As detailed above, current legislation does not explicitly prohibit all corporal punishment of children.

In December 2020, Namibia became a Pathfinding country with the Global Partnership to End Violence Against Children. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals.

¹ 28 October 2015, A/HRC/WG.6/24/NAM/1, National report to the UPR, para. 90

² In this case, lashing children with a belt: *FN v SM* (CA 77/2011) [2012] NAHC 226 (08 August 2012)

³ 23 November 2016, CAT/C/SR.1481, Summary records of 1481st meeting, para. 25

⁴ 13 February 2015, E/C.12/NAM/1, Initial state party report, para. 376

⁵ 21 August 2015, CCPR/C/NAM/Q/2, List of issues, para. 23; 10 December 2015, CCPR/C/NAM/Q/2/Add.1, Reply to list of issues

⁶ 22 November 2016, CAT/C/SR.1478, Summary records of 1478th meeting, para. 4

Alternative care settings

Corporal punishment is unlawful in alternative care under article 228(3) of the Child Care and Protection Act 2015, which states: “A person may not administer corporal punishment to a child at any residential child care facility, place of care, shelter, early childhood development centre, a school, whether a state or private school or to a child in foster care, prison, police cell or any other form of alternative care resulting from a court order.” A residential child care facility is defined as a “place of safety, children’s home or a child detention centre” (article 1). A children’s home is “a facility, other than the child’s family home, used for (a) the reception and provision of residential care of children who (i) have been abandoned or orphaned; (ii) for any reason cannot be placed in kinship care or foster care; (iii) are awaiting trial or sentence; (iv) are placed in such home in terms of an order under the Criminal Procedure Act; or (b) any other purpose that may be prescribed” (article 68(1)).

The 1991 Supreme Court ruling (see “Schools”, below) also prohibited corporal punishment in the forms of alternative care provided by the state. Article 92 of the now repealed Children’s Act 1960 authorised the Minister to make regulations concerning discipline, including “the infliction of corporal punishment”, in places of safety, observation centres and children’s homes. We have been unable to establish if any relevant regulations had been published and should be repealed, but they would likely not apply under the Child Care and Protection Act 2015.

Day care

Article 228(3) of the Child Care and Protection Act 2015 prohibits corporal punishment in early childhood centres and in places of care, both public and private (see “Alternative care settings”, above). An early childhood development centre is “a facility used to care for children from birth to the age of formal schooling and which offers a structured set of learning activities” (art. 66). A “place of care” is defined as “a facility used for the care, whether for or without reward, of more than six children on behalf of their parents or care-givers during specific hours of the day or night or for a temporary period, in terms of a private arrangement between the parents or care-givers and the owner or managers of the place of care and includes, but is not limited to a community hostel whether regulated by the minister responsible for education or not, but excludes the care of a child (a) by a school as part of tuition, training or other activities provided by the school; (b) as a boarder in a school hostel or other residential facility managed as part of a school; or (c) by a hospital or other medical facility as part of the treatment provided to the child” (article 65(1)). Corporal punishment is also unlawful in forms of early childhood care and day care for older children provided by the state under the 1991 Supreme Court ruling (see “Schools”, below). There is no explicit prohibition of corporal punishment in all other private day care, including childminding.

Schools

Corporal punishment is prohibited in schools. A Supreme Court judgment in 1991 ruled that the guarantee of human dignity in article 8 of the Constitution precludes the use of corporal punishment in schools as well as for adult and juvenile offenders.⁷ This is confirmed – and extended to hostels and private schools – in article 56(1) of the Education Act 2001: “A teacher or any other person employed at a state school or hostel or private school or hostel commits misconduct, if such teacher or person, in the performance of his or her official duties imposes or administers corporal

⁷ *Ex Parte Attorney-General, Namibia: in Re Corporal Punishment by Organs of State*, 1991 (3) SA 76

punishment upon a learner, or causes corporal punishment to be imposed or administered upon a learner.” Prohibition is reiterated in article 228(3) of the Child Care and Protection Act 2015 (see “Alternative care settings”, above).

In 2016, a High Court ruling confirmed that the ban on corporal punishment in the Education Act applies in all Namibian schools, including private schools. Judge Elton Hoff stated that interpreting the laws prohibiting corporal punishment as applying only to teachers employed by the government would be “an absurdity in that children enrolled at state schools would be protected against invasive punishment while those enrolled at private schools would not”.⁸

The Namibian Code of Conduct for Teaching Service states that a teacher “may not administer corporal punishment or any other degrading punishment upon a learner”. The Ministry of Education published circulars in 2018 reiterating that all corporal punishment in all schools was strictly prohibited and would not be tolerated. The circular instructed all schools to implement a safe mechanism to report incidents of corporal punishment and to submit quarterly reports on the issue.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under the 1991 Supreme Court judgment (see under “Schools”).⁹ Prohibition in prisons and in police cells is confirmed in article 228(3) of the Child Care and Protection Act 2015 (see “Alternative care settings”, above). The Correctional Service Act 2012¹⁰ does not provide for corporal punishment, but it does not explicitly prohibit it.

Article 92 of the now repealed Children’s Act authorised the Minister to make regulations concerning the “infliction of corporal punishment” in places of detention, observation centres, schools of industry and reform schools. We have been unable to establish if any relevant regulations had been published and should be repealed, but they would likely not apply under the Child Care and Protection Act 2015.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under the 1991 Supreme Court judgment (see under “Schools”).¹¹ The judgment was confirmed by the Child Care and Protection Act 2015: article 228(2) states: “Any legislative provision and any rule of common or customary law authorising corporal punishment of a child by a court, including the court of a traditional leader, is repealed to the extent that it authorises such punishment.” Provisions in the Criminal Procedure Act 1977 which allowed for judicial corporal punishment were explicitly repealed by the Child Care and Protection Act 2015.¹² The Rules of the High Court of Namibia: High Court Act 1990, brought into force in 2014, make no reference to judicial corporal punishment.

⁸ *Van Zyl v The State* (CA 25-2014) [2016] NAHCMD 246 (05 September 2016)

⁹ *ibid.*

¹⁰ The Correctional Service Act, Act No. 9 of 2012, repealed the Prisons Act, Act No. 17 of 1998

¹¹ *ibid.*

¹² Namibia’s report to the UPR in 2015 confirmed that the Criminal Procedure Act, Act No. 51 of 1977, is the principal piece of legislation governing criminal procedure (28 October 2015, A/HRC/WG.6/24/NAM/1, National report to the UPR, para. 20)

A Child Justice Bill has been under consideration since 2002 but has not yet been enacted: the Government had originally reported to the Human Rights Council that it was expected to be tabled in Parliament in 2016,¹³ but then stated that it was being finalised for adoption in 2017.¹⁴

Universal Periodic Review of Namibia's human rights record

Namibia was examined in the first cycle of the Universal Periodic Review process in 2011 (session 10). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:¹⁵

“Strengthen efforts to fulfil obligations under the Convention on the Rights of the Child (Australia);

“Strengthen the mechanisms of legal and social protection of children against violence, particularly sexual, of which they are victims (France);

“Further promote women's and children's rights taking into consideration the views of relevant treaty bodies of the United Nations system (Italy);

“Increase its efforts to combat violence against women and children (Germany)”

Examination in the second cycle took place in 2016 (session 24). The following recommendations were made:¹⁶

“Continue to promote the rights of children by fighting effectively against corporal punishment (Djibouti);

“Prohibit all corporal punishment of children, including in the home (Estonia);

“Prohibit corporal punishment of children in all settings (Tunisia)”

The Government accepted the recommendations.¹⁷

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(16 October 2012, CRC/C/NAM/CO/2-3, Concluding observations on second-third report, paras. 18, 19, 38 and 39)

“... The Committee also regrets the lack of information on the cases of violence against children, including corporal punishment...”

“The Committee ... recommends that the State party collect systematic data on cases of violence against children, in particular sexual violence and corporal punishment, including by requiring all schools, alternative care institutions and state structures to report all instances of violence against children.

¹³ 30 June 2016, A/HRC/32/2 Advance Unedited Version, Report of the Human Rights Council on its 32nd session, para. 200

¹⁴ 23 November 2016, CAT/C/SR.1481, Summary records of 1481st meeting, para. 30

¹⁵ A/HRC/17/14, Report of the Working Group, paras. 96(1), 96(6), 96(13) and 97(11)

¹⁶ 15 April 2016, A/HRC/32/4, Report of the working group, paras. 137(127), 137(128) and 137(129)

¹⁷ 14 June 2016, A/HRC/32/4/Add.1, Report of the working group: Addendum, para. 11

“The Committee notes that the Education Act (Act No. 16 of 2001) prohibits corporal punishment in schools, and that the Supreme Court ruling of 1991 ruled that corporal punishment is unlawful in school and as a sentence for crime. However, the Committee is gravely concerned about the information provided by the State party that:

- a) the practice of corporal punishment remains widespread in all settings, including in schools;
- b) certain new legislation, such as the Combating of Domestic Violence Act (Act No. 4 of 2003), and laws prohibiting corporal punishment in schools are not fully enforced in practice;
- c) there is an absence of legislation that explicitly prohibits corporal punishment in the home, penal system and alternative care settings. In addition, the Committee deplores the fact that “reasonable chastisement” of a child is a common law defence to the crimes of corporal punishment.

“The Committee strongly calls upon the State party:

- a) to pass, as a matter of priority, the Child Care and Protection Bill with a view to prohibiting corporal punishment under civil and customary law and in all settings, including in the home, in school and in alternative care settings;
- b) to ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are systematically initiated against those responsible for corporal punishment;
- c) to immediately repeal all provisions authorising corporal punishment;
- d) to introduce sustained 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 to promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment;
- e) to ensure that all school teachers and personnel complete mandatory trainings on the rights of child and on the harmful effects, both physical and psychological, of corporal punishment and encourage positive behavioural support and alternative forms of discipline.”

Committee Against Torture

(1 February 2017, CAT/C/NAM/CO/2, Concluding observations on second report, paras. 36 and 37)

“While welcoming the adoption of the Child Care and Protection Act, No. 3 of 2015, which complements the Education Act, No. 16 of 2001, and penalizes corporal punishment in the home, in the criminal system and in alternative care settings, the Committee remains concerned at the lack of information regarding its enforcement and implementation.

“The State party should ensure that all laws prohibiting corporal punishment are effectively implemented, all allegations of corporal punishment investigated and perpetrators prosecuted and punished. The State party should also conduct awareness-raising campaigns about the harmful effects of corporal punishment on children and inform the public that such acts are prohibited.”

Committee Against Torture

(6 May 1997, A/52/44, paras. 227-252, Concluding observations on initial report, para. 250)

“The Committee recommends the prompt abolition of corporal punishment insofar as it is legally still possible under the Prisons Act of 1959 and the Criminal Procedure Act of 1977.”

Committee on the Elimination of Violence Against Women

(24 July 2015, CEDAW/C/NAM/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 30 and 31)

“The Committee welcomes the revision of the Teenage Pregnancy Policy of 2009 on the prevention and management of pregnancy and the provision of life skills as a subject in schools which, inter alia, focuses on the dangers and effects of teenage pregnancies. However, the Committee is concerned at the high rates of pregnancy resulting in drop out of girls from school, particularly in Kavango and Kunene regions. It is also concerned that girls routinely avoid engineering courses. The Committee is further concerned about the lack of appropriate measures to enforce the law which prohibits corporal punishment and prevent its use in all settings, particularly in schools.

“The Committee recommends that the State party: ...

d) intensify law enforcement efforts to curb corporal punishment with a view to eliminating its use in all settings, particularly in schools, and promote the use of non-violent forms of disciplining.”

African Committee of Experts on the Rights and Welfare of the Child

([October 2015], ACERWC, Concluding observations on initial report, para. 25)

“The Committee commends the State Party for prohibiting corporeal punishment in schools under the Namibian Constitution and the Education Act. The Committee further applauds the State Party for recognizing positive disciplining measures under the Code of Conduct for Teaching Service. As part of the continuous effort to protect children from abuse and torture, the Committee recommends the State Party to abolish corporeal [*sic*] punishment and to promote positive disciplining measures in all settings including at home.”

Prevalence/attitudinal research in the last ten years

A 2008 survey of 1,680 respondents found that 78% thought a parent had a right to hit their child if the child was disobedient, 63% if the child did not want to go to school, 51% if the child ran away from home and 27% if the child performed poorly in school. Almost 61% believed it was common in their communities for children to be smacked or caned. Respondents from households with children aged 2-14 years old were asked what forms of discipline had been used in their household: 40% said children had been spanked, hit or slapped on the bottom with a bare hand, 30% said children had been hit with objects and 18% that children had been hit or slapped on the face, head or ears.

(SIAPAC (2008), *Knowledge, Attitudes and Practices Study on Factors and Traditional Practices that may Perpetuate or Protect Namibians from Gender Based Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke, and Otjozondjupa Regions (Final Report)*, Ministry of Gender Equality and Child Welfare, cited in Hubbard, D. et al (2010), *Corporal Punishment: National and International Perspectives*, Windhoek: Legal Assistance Centre)