

Corporal punishment of children in Zambia

LAST UPDATED October 2018

Also available online at

www.endcorporalpunishment.org

Child population 8,535,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Zambia's commitment to prohibiting corporal punishment

Zambia expressed its commitment to prohibiting corporal punishment in all settings in accepting clearly the recommendation to do so made during the Universal Periodic Review of Zambia in 2012.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings and day care; legal provisions for corporal punishment in penal institutions and as a sentence for crime should be formally repealed.

The Juveniles Act 1956 recognises “the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer lawful punishment to him” (article 46). The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. Article 46 of the Juveniles Act should be repealed, and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home, schools and all other settings where adults have parental authority over 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).

Penal institutions – Legal clarity is required regarding prohibition of corporal punishment in all institutions accommodating children in conflict with the law, including repeal of all provisions for its use.

Sentence for crime – Provisions for judicial caning in the Juveniles Act 1956 should be repealed.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 46 of the Juveniles Act 1956 covers cruelty to juveniles under 19 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.” The English common law defence of “reasonable chastisement” is also applicable, under article 2 of the English Law (Extent of Application) (Amendment) Act 2011.

Provisions against violence and abuse in the Penal Code 1931 the Constitution 1996, the Anti-Gender-Based Violence Act 2011 and the Persons with Disabilities Act 2012 are not interpreted as prohibiting all corporal punishment in childrearing.

In 2008, a comprehensive review of laws relating to children was undertaken, with a view to bringing them into line with the UN Convention on the Rights of the Child. The Juveniles Act 1956 is being revised, in the context of which a Child Justice Administration Bill had been drafted: as at November 2012, the Bill confirmed the “right to administer lawful punishment”. However in 2013 the plans for the Child Justice Administration Bill were scrapped in favour of a unified Children’s Code. A new Constitution had also been drafted which included prohibition of corporal punishment in the Bill of Rights, stating in article 61(4)(c): “(1) A child is equal before the law. (2) In all actions and decisions concerning a child the best interest of the child shall be the primary consideration. (3) A child’s mother and father, whether married to each other or not, have an equal duty to protect and provide for the child. (4) A child is further entitled to the following civil and political rights: ... (c) not to be subjected to corporal punishment or other form of violence, cruel or inhuman treatment in the home, school or an institution responsible for the care of children....” The Bill of Rights was subjected to a public referendum during 2016 which failed despite the majority of voters being in favour of it, due to a low turnout. The Government has declared that it was not planning on holding another referendum in the near future due to high costs.¹ As at March 2017, the draft Children’s Code had not yet been presented to the Cabinet for approval: it appeared the delays were due to the failed referendum, as the provisions of the draft Children’s Code – which is subsidiary legislation – provide higher protection than the current Constitution.² The Minister for Justice declared in May 2017 that the Government had started identifying constitutional provisions that need to be amended to harmonise the domestic legislation.³ The Government reported in 2017 that the draft Children’s Code would be presented to Parliament within the year,⁴ but in March 2018 it was reported the Code was still being drafted.⁵

The Government indicated its commitment to prohibiting corporal punishment of children by accepting recommendations to do so made during the Universal Periodic Review in 2012;⁶ during the review it confirmed that “the Government believes that corporal punishment does not have any place either in schools or in home”.⁷

¹ See <http://www.coastweek.com/4009-Zambia-unlikely-holding-referendum-due-to-financial-constraints.htm>, accessed 29 March 2017

² Information provided to the Global Initiative, March 2017

³ <https://www.lusakatimes.com/2017/05/06/government-started-identifying-clauses-constitution-need-amandment/>, accessed 6 June 2017

⁴ [2017], Initial report on the implementation of the African Charter on the Rights and Welfare of the Child, para. 20

⁵ See <https://www.lusakatimes.com/2018/03/15/150-million-girls-face-risk-early-forced-marriage-wina/>, accessed 24 October 2018

⁶ 31 December 2012, A/HRC/22/13, Report of the working group, paras. 102(23), 102(25) and 102(26)

⁷ Government opening statement to the UPR, October 2012

Alternative care settings

Corporal punishment is lawful in alternative care settings, where article 46 of the Juveniles Act 1956 (see under “Home”) applies and rules made under the Act provide for corporal punishment in childcare facilities.

The Minimum Standards of Care for Child Care Facilities 2014 prohibit the use of corporal punishment in child care facilities, defined as any facility “operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision, and guidance of seven (7) or more children, unaccompanied by a parent or guardian, not including those related to the operator of the facility, on a regular basis for at least twelve and one-half (12.5) hours in a continuous seven (7)-day week”. This excludes community schools, nursing homes, hospices and child care operated by a recognised religious organisation for no more than 24 hours in a continuous seven-day week. However this is policy, not law. It is further undermined by the legal defence in the Juveniles Act 1956 and it is unclear whether the rules made under the Act providing for corporal punishment are still in place.

Day care

Corporal punishment is unlawful in some preschool provision under the Education Act 2011 (art. 28, see under “Schools”), but it is lawful in other early childhood care and in day care for older children, where article 46 of the Juveniles Act 1956 applies (see under “Home”).

The Minimum Standards of Care for Child Care Facilities 2014 apply in some institutional day care but as it is policy it is undermined by the legal defence in the Juveniles Act 1956 (see under “Alternative care”).

Schools

Corporal punishment is prohibited in public and private schools in the Education Act 2011. Article 28 states: “(1) A teacher, employee or other person at an educational institution shall not impose or administer corporal punishment or degrading or inhuman treatment on a learner or cause corporal punishment or degrading or inhuman treatment to be imposed or administered on a learner. (2) A teacher, employee or other person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.”

Zambia’s initial report to the African Committee of Experts on the Rights and Welfare of the Child stated that children who were consulted on the issue had reported they were still subjected to corporal punishment at school, including “whipping with a hose pipe, holding one’s ears by passing the hands in between the legs and being put on detention for long hours and being made to miss lunch”.⁸

Penal institutions

Provisions in the Prisons Act 1966 allowing and regulating corporal punishment as a disciplinary measure in penal institutions were repealed in 2004, but by 2012 relevant provisions in the Prisons

⁸ [2017], Initial report on the implementation of the African Charter on the Rights and Welfare of the Child, para. 175

Rules 1966 had not been repealed. The Reformatory School Rules 1965 allowing corporal punishment have been repealed, but provisions for corporal punishment in approved schools and reformatories under the Juveniles Act and the Approved Schools Rules have not been repealed. The Government is preparing a Correctional Services Bill,⁹ as at January 2018 it was before the National Assembly.¹⁰

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. The Penal Code provisions for judicial corporal punishment were amended in 2003, following a 1999 Supreme Court ruling that they were unconstitutional.¹¹ The Criminal Procedure Code (Amendment) Act 2003 and the Penal Code (Amendment) Act 2003 repealed articles 14 and 330 and articles 24(c), 27, 36(c), 39 and 40(1) of the Criminal Procedure Code 1934 and the Penal Code 1931 which authorised and regulated flogging. Other laws amended to reflect the prohibition include the Supreme Court Act and the Local Courts Act. However, article 73 (1) (e) of the Juveniles Act 1956, which allows a court to order the offender to be caned, has not been repealed.

Universal Periodic Review of Zambia's human rights record

Zambia was examined in the first cycle of the Universal Periodic Review in 2008 (session 2). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:¹²

“To continue with its efforts to strengthen the rights of the child and protect them even further, in particular, the necessary resources should be earmarked so as to protect the weakest segments of the population, above all the disabled persons, and assistance should be requested from UNICEF in that regard (Libyan Arab Jamahiriya);

“To continue its efforts in economic, social and cultural rights to further build upon the progress it has already made (Cuba);

“That international treaties adhered to by Zambia enjoy full implementation and that their incorporation in domestic law be accelerated (Democratic Republic of the Congo)”

Examination in the second cycle took place in 2012 (session 14). In its opening statement, the Government drew attention to the prohibition of corporal punishment in schools and the prohibition in all settings in the draft new Constitution, and stated: “The Government believes that corporal punishment does not have any place either in schools or in homes.... There is evidence that corporal punishment is greatly reduced and the Government is committed to ensure that it is eliminated completely.” The Government confirmed that if passed, article 55(g) of the draft Constitution would prohibit corporal punishment of children in the home, schools and care institutions. During the review the following recommendations were made and were accepted by the Government:¹³

⁹ 26 October 2017, A/HRC/WG.6/28/ZMB/1, National report, para. 37

¹⁰ 9 January 2018, A/HRC/37/14, Report of the working group, para. 16

¹¹ *John Banda v The People* HPA/6/1998

¹² 2 June 2008, A/HRC/8/43, Report of the working group, paras. 58(12), 58(15) and 59(8)

¹³ 31 December 2012, A/HRC/22/13, Report of the working group, paras. 102(23), 102(25) and 102(26)

“Adopt additional measures, including legislative, to eliminate the practice of child labour exploitation and the use of corporal punishment for children (Belarus);

“Prohibit corporal punishment of children in all settings (Slovenia);

“Review its legislation to prohibit and sanction corporal punishments of children in all areas (Mexico).”

Third cycle examination took place in 2017 (session 28). The national report mistakenly stated that corporal punishment in homes, schools and other institutions was prohibited by the Constitution of Zambia (Amendment) Act No. 2 of 2016¹⁴ but the Bill of Rights which would have prohibited all corporal punishment failed in the referendum (see under “Home”). No recommendation specifically on corporal punishment was extended, but the Government supported the following recommendation:¹⁵

“Continue to adopt effective measures to prevent and eradicate violence against women, children and adolescents and provide protection and assistance to the victims (Chile)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 January 2016, CRC/C/ZMB/CO/2-4 Advance Unedited Version, Concluding observations on second-fourth report, paras. 33 and 34)

“The Committee notes with appreciation that the State party has outlawed corporal punishment in schools and in the prison system, and that it has carried out a number of awareness-raising activities. However, the Committee is concerned that corporal punishment is not expressly prohibited, that the Juveniles Act allows for the administration of lawful punishment and that it is still practised in the family setting.

“In the light of its general comment No. 8 (2006) on corporal punishment, the Committee recommends that the State party ensure the full implementation of the Criminal Procedure Code (Amendment) Act No.9 and Education Act No. 23 and that it explicitly prohibit by law all forms of violence against children, including corporal punishment, in all settings, including in the family. The Committee further recommends that the State party repeal the ‘right to administer lawful punishment’ in the Juveniles Act, and intensify its awareness-raising campaigns in order to promote the use of alternative forms of discipline at all levels of society.

Committee on the Rights of the Child

(2 July 2003, CRC/C/15/Add.206, Concluding observations on initial report, paras. 30, 31, 32 and 33)

“The Committee notes that the Constitutional Court outlawed the practice of corporal punishment (*John Banda v. the People*, HPA/6/1998) but remains concerned that corporal punishment is still practised and accepted in schools, families, and care and juvenile detention institutions.

“The Committee recommends 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. The Committee encourages the State party to reinforce its public awareness campaigns

¹⁴ 26 October 2017, A/HRC/WG.6/28/ZMB/1, National report, para. 83

¹⁵ 9 January 2018, A/HRC/37/14, Report of the working group, para. 129(30)

to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society.

“The Committee is deeply concerned about allegations of instances of ill-treatment by law enforcement officers against street children and children in custody in police stations and other detention centres, despite the circular of 27 December 1999 ordering prison authorities to stop the practice of caning.

“The Committee recommends that the State party:

- a) set up child-sensitive mechanisms to receive complaints against law enforcement officers regarding ill-treatment during arrest, questioning and police custody, and make sure that perpetrators are brought to justice;
- b) systematically train the police force and prison staff and other authorities on the human rights of children; and
- c) ensure the physical and psychological recovery and social reintegration of child victims of such ill-treatment.”

Committee Against Torture

(26 May 2008, CAT/C/ZMB/CO/2, Concluding observations on second report, paras. 3 and 21)

“The Committee welcomes the following positive developments:

d) the abolition of corporal punishment through the enactment of the Criminal Procedure Code (Amendment) Act No. 9 of 2003, the Penal Code (Amendment) Act No. 10 of 2003, the Education Act (Amendment) Act No. 11 of 2003, and the Prisons (Amendment) Act No. 16 of 2004 ...

“While noting that the State party’s legislation prohibits corporal punishment in schools, the Committee remains concerned about the absence of legislation prohibiting such punishment in the family and in institutions other than schools, and that corporal punishment is de facto widely practised and accepted as a means of upbringing (art. 16).

The State party should extend legislation prohibiting corporal punishment to the family and to institutions other than schools, ensure that legislation prohibiting corporal punishment is strictly enforced and undertake awareness-raising and educational campaigns to that effect.”

Committee Against Torture

(23 November 2001, CAT/C/XXVII/Concl.4, Concluding observations on initial report, para. 3)

“The Committee notes, with satisfaction, the following elements,

e) the legal prohibition of corporal punishment.”

Human Rights Committee

(9 August 2007, CCPR/C/ZMB/CO/3/, Concluding observations on third report, paras. 6 and 22)

“The Committee welcomes the abolition of corporal punishment by amendments to the Penal Code, the Criminal Procedure Code, the Prisons Act and the Education Act.

“The Committee remains concerned at information according to which the legal recognition of the rights of parents and teachers to administer punishment on children brings confusion and jeopardizes

their full protection against ill-treatment. It is further concerned that corporal punishment is still widely practised on children. (articles 7 and 24)

The State party should prohibit all forms of violence against children wherever it occurs, including corporal punishment in the schools, and undertake public information efforts with respect to appropriate protection of children from violence.”

Prevalence/attitudinal research in the last ten years

A 2010 African Child Policy Forum report on violence against children with disabilities in Cameroon, Ethiopia, Senegal, Uganda and Zambia documented a very high level of violence. Nearly a thousand 18-24 year olds took part in the study across the five countries, reporting on their experiences as children. In Zambia, all the respondents had experienced at least one type of physical violence during their childhood: 100% had been denied food, over 50% hit, punched, kicked or beaten and over 25% choked, burnt or stabbed. Common perpetrators of physical violence included mothers (10.2%), stepmothers (4.9%) and adult neighbours (18.5%). Across the five countries, 23% said they had experienced physical violence which was “mostly discipline, reasonable and justified” and 27% which was “mostly discipline but not reasonable or justified”; 26% said they had experienced emotional violence which was “discipline, but not reasonable or justified”, 22% that was “disciplinary, reasonable and justified”. Across all five countries, more than half (54%) of those who had been physically beaten said they had suffered broken bones, teeth, bleeding or bruising; 2% had been permanently disabled; 21% required medical attention; 13% had to miss school or work; and 20% had needed rest at home. For all five countries, the majority of respondents with physical, visual and intellectual disabilities experienced physical violence more than 10 times. The report recommends prohibition of all corporal punishment, including in the home, as a way to minimise the risk of violence against children with disabilities.

(The African Child Policy Forum (2010), *Violence Against Children With Disabilities in Africa: Field Studies from Cameroon, Ethiopia, Senegal, Uganda and Zambia*, Addis Ababa: The African Child Policy Forum)