**BRIEFING ON NAMIBIA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE,
114th session (Jun/Jul 2015)**

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**This briefing describes the legality of corporal punishment of children in Namibia. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children and the recommendations to Namibia by the Committee on the Rights of the Child, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues for Namibia, asking what steps are being taken to fulfil the obligation to prohibit corporal punishment in the home and in all day care settings, and**
* **in the concluding observations on the second state party report, recommend to Namibia that the law is reformed as a matter of priority to explicitly prohibit corporal punishment in the home and all day care settings and repeal all legal provisions authorising corporal punishment of children.**

**1 Namibia’s report to the Human Rights Committee**

1.1 The fifth report to the Human Rights Committee barely addresses the rights of the child.[[1]](#footnote-1) It does not refer to corporal punishment.

**2 The legality of corporal punishment of children in Namibia**

2.1 ***Summary:*** Corporal punishment of children in Namibia is unlawful in the penal system, schools and some alternative care and day care settings, though some legislation authorising it is still to be repealed. Corporal punishment is lawful in the home and in some alternative and day care settings. The Child Care and Protection Act, as at April 2015 not yet in force, prohibits corporal punishment in some but not all settings.

2.2 ***Home (lawful):*** The Children’s Act No. 33 1960 punishes “any parent or guardian of a child or any person having custody of a child who ill-treats, neglects … or abandons that child or allows it to be ill-treated” (art. 18). But the Act also recognises a “right to punish and to exercise discipline” (art. 59).

2.3 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). On the face of it, it may seem that this would protect the child from physical and other humiliating punishment within the home, but the Act is not interpreted in this way and protection for children is undermined by the above-mentioned “right to punish and to exercise discipline” in the Children’s Act.

2.4 The Child Care and Protection Act 2014, not yet in force, does not clearly prohibit all corporal punishment in childrearing. It 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.”

2.5 ***Alternative care settings (partially prohibited):***Corporal punishment is unlawful in forms of alternative care provided by the state under a 1991 Supreme Court ruling (see below, para. 2.8), but there is no explicit prohibition in legislation; the ruling does not apply to privately administered care settings. Article 59(1) of the Children’s Act 1960 states that when a child or pupil is placed in any custody other than that of the parent or guardian, the “right to punish and to exercise discipline” is vested “in the management of the institution to which the pupil was sent”, “in the person in whose custody the child was placed” or “in the case of any pupil to whom a license was granted under section 44 to live in the custody of any person or in any training institution, in such person or in the managers of such training institution”. Article 92 of the Act authorises 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 there are regulations in force which would need to be repealed.

2.6 The Child Care and Protection Act 2014, not yet in force, includes explicit prohibition of corporal punishment in alternative care settings: “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.”

2.7 ***Day care (partially prohibited):*** Corporal punishment is unlawful in forms of early childhood care and day care for older children provided by the state under the 1991 Supreme Court ruling (below, para. 2.8), but there is no explicit prohibition in legislation; the ruling does not apply to privately administered day care. The Child Care and Protection Act 2014, not yet in force, would prohibit corporal punishment in early childhood centres but not in all forms of day care (see para. 2.6).

2.8 ***Schools (unlawful):*** 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.[[2]](#footnote-2) This is confirmed – and extended to hostels and private schools – in article 56(1) of the Education Act 2001 which states: “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 punishment upon a learner, or causes corporal punishment to be imposed or administered upon a learner.” 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”.

2.9 ***Penal institutions (unlawful):***Corporal punishment is unlawful under the 1991 Supreme Court judgment. The Correctional Service Act 2012 does not provide for corporal punishment, but it does not explicitly prohibit it. However, provisions in the Children’s Act for the “right to punish and exercise discipline” in penal institutions (art. 59) and authorising the Minister to make regulations concerning the “infliction of corporal punishment” in places of detention, observation centres, schools of industry and reform schools (art. 92), are still in force. We have been unable to establish if there are regulations in force which would need to be repealed.

2.10 ***Sentence for crime (unlawful):***Corporal punishment is unlawful under the 1991 Supreme Court judgment (see para. 2.8). The Criminal Procedure Act 2004 does not provide for corporal punishment as a sentence of the courts (arts. 307 and 319). However, this Act appears not to have come into force, and the Criminal Procedure Act 1977 which is currently in force contradicts the Supreme Court ruling in authorising whipping as a sentence for male juveniles (arts. 276 and 292-295). Article 32 of the Children’s Act 1960 also authorises a court to sentence a child to “moderate whipping”. A Child Justice Bill has been under consideration since 2002, but has not yet been enacted.

**3 The practice of corporal punishment in Namibia**

3.1 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.[[3]](#footnote-3)

**4 Recommendations by human rights treaty bodies and during the UPR**

4.1 ***CRC:***In 2012, the Committee on the Rights of the Child expressed concern at corporal punishment of children in Namibia and recommended that it be prohibited in all settings, including the home, in the context of adopting the Child Care and Protection Bill.[[4]](#footnote-4)

4.2 ***UPR:***Namibia was examined in the first cycle of the Universal Periodic Review in 2011. No recommendations were made specifically on corporal punishment of children, but the Government accepted recommendations to strengthen protection and promotion of children’s rights under the Convention on the Rights of the Child, including protection against violence.[[5]](#footnote-5)

*Briefing* *prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 23 February 2015, CCPR/C/NAM/2, Second state party report, paras. 212-214 [↑](#footnote-ref-1)
2. *Ex Parte Attorney-General, Namibia: in Re Corporal Punishment by Organs of State*, 1991 (3) SA 76 [↑](#footnote-ref-2)
3. 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 [↑](#footnote-ref-3)
4. 16 October 2012, CRC/C/NAM/CO/2-3, Concluding observations on second-third report, paras. 18, 19, 38 and 39 [↑](#footnote-ref-4)
5. A/HRC/17/14, Report of the Working Group, paras. 96(1), 96(6), 96(13) and 97(11) [↑](#footnote-ref-5)