

**BRIEFING ON THE GAMBIA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 121st session (October - November 2017)**

*From the Global Initiative to End All Corporal Punishment of Children, July 2017*

**This briefing describes the legality of corporal punishment of children in the Gambia. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, the recommendations made to the Gambia by the Committee on the Rights of the Child (in 2001 and 2015) and during the UPR in 2010, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues for the Gambia, in particular asking what progress has been made to prohibit corporal punishment of children, however light, in all settings, and**
* **in its concluding observations on the Gambia’s second report, recommend that legislation explicitly prohibiting all corporal punishment of children and repealing the “reasonable chastisement” defence is drafted and enacted as a matter of priority.**

**1 The legality of corporal punishment of children in the Gambia**

1.1 ***Summary:*** Corporal punishment of children in the Gambia is unlawful as a sentence for a crime, but it is not yet prohibited in any other setting.

1.2 ***Home (lawful):***Under common law, which is part of the laws in the 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.[[1]](#footnote-1) There appears to be no confirmation of this right in the Criminal Code 1965.

1.3 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.

1.4 The Women’s Act 2010 provides for protection of women 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.

1.5 The Domestic Violence Act 2013 is intended to combat domestic violence against women and children.[[2]](#footnote-2) We have yet to examine the full text but in its Bill form it included in the definition of physical abuse “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” (section 3). The Act does not explicitly prohibit all corporal punishment in childrearing.

1.6 A Disability Bill is under consideration.[[3]](#footnote-3) Amendments to the Children’s Act are also under discussion. 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”.[[4]](#footnote-4) But as at August 2015, proposed amendments to the Children’s Act did not include prohibition.[[5]](#footnote-5) We have no further information.

1.7 ***Alternative care settings (lawful)***: 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, 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.

1.8 ***Day care (lawful)***: 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, but the common law defence of “reasonable chastisement” is available.

1.9 ***Schools (lawful):***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.

1.10 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.[[6]](#footnote-6) But no mention was made of drafting and enacting prohibiting legislation.

1.11 ***Penal institutions (lawful):***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.[[7]](#footnote-7)

1.12 ***Sentence for crime (unlawful):*** 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).

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

2.1 ***CRC:*** In 2001, the Committee on the Rights of the Child expressed concern at corporal punishment of children in the home, schools and other settings in the Gambia and recommended that it be prohibited in the family and all settings.[[8]](#footnote-8) This was reiterated in 2015.[[9]](#footnote-9)

2.2 ***UPR:*** The Gambia was examined in the first cycle of the Universal Periodic Review in 2010. The Government responded to recommendations concerning corporal punishment by stating “there were laws already in place to protect children against violence and abuse of all forms” and that efforts were being made to promote alternative methods of disciplining children.[[10]](#footnote-10)

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

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1. 28 May 2014, CRC/C/GMB/2-3, Second-third state party report, para. 92 [↑](#footnote-ref-1)
2. 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 [↑](#footnote-ref-2)
3. 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) [↑](#footnote-ref-3)
4. 27 January 2015, CRC/C/SR.1943, Summary record of 1943rd meeting, para. 18 [↑](#footnote-ref-4)
5. National Youth Council, correspondence with the Global Initiative, 28 August 2015 [↑](#footnote-ref-5)
6. 6 November 2013, E/C.12/GMB/1, Initial state party report, para. 57 [↑](#footnote-ref-6)
7. 27 January 2015, CRC/C/SR.1943, Summary record of 1943rd meeting, para. 13 [↑](#footnote-ref-7)
8. 6 November 2001, CRC/C/15/Add.165, Concluding observations on initial report, paras. 32 and 33 [↑](#footnote-ref-8)
9. 4 February 2015, CRC/C/GAM/CO/2-3, Concluding observations on second-third report, paras. 41 and 42 [↑](#footnote-ref-9)
10. 24 March 2010, A/HRC/14/6, Report of the working group, paras. 99(15) and 99(44); 23 October 2012, A/HRC/14/37, Report of the Human Rights Council on its fourteenth session, para. 594 [↑](#footnote-ref-10)