**BRIEFING ON NAMIBIA FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 68th session, Nov/Dec 2019**

*From the Global Initiative to End All Corporal Punishment of Children, June 2019*

**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, the repeated recommendations to prohibit made to Namibia by the Committee Against Torture, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination Against Women, the African Committee of Experts on the Rights and Welfare of the Child and during the Universal Periodic Review (which the Government accepted), and the Government’s commitment to enacting prohibition, as well as the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee Against Torture will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Namibia, in particular asking what steps are being taken to enact legislation explicitly prohibiting all corporal punishment of children, however light, in the home and all other settings, and**
* **recommend, in the concluding observations on its third report, that Namibia immediately enact legislation which clearly and explicitly prohibits all corporal punishment of children in all settings, including in the home.**

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

1.1 ***Summary:*** Corporal punishment of children in Namibia is unlawful in early childhood centres, places of care, in alternative care settings, schools and in the penal system but it is not yet fully prohibited in the home and in all day care settings.

1.2 ***Home (lawful):*** 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 not interpreted as prohibiting all forms of corporal punishment, however light. An explicit prohibition of all corporal punishment, including by parents, must be enacted.

1.3 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.[[1]](#footnote-1) 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.[[2]](#footnote-2) 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.[[3]](#footnote-3)

1.4 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.[[4]](#footnote-4) 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. The Government reported that amendments to the Combating of Domestic Violence Act 2003 were under discussion for adoption in early 2017.[[5]](#footnote-5) 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.

1.5 ***Alternative care settings (unlawful):*** 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)).

1.6 The 1991 Supreme Court ruling (see 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.

1.7 ***Day care settings (partially lawful):*** Article 228(3) of the Child Care and Protection Act 2015 prohibits corporal punishment in early childhood centres and in places of care. 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)).

1.8 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 below), but the ruling does not apply to privately administered day care. There is no explicit prohibition of corporal punishment in all other forms of day care.

1.9 ***Schools (unlawful):*** 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.[[6]](#footnote-6) 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 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.

1.10 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”.[[7]](#footnote-7)

1.11 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 for reporting incidents of corporal punishment and to submit quarterly reports on the issue.

1.12 ***Penal institutions (unlawful):*** Corporal punishment is unlawful as a disciplinary measure in penal institutions under the 1991 Supreme Court judgment.[[8]](#footnote-8) The Correctional Service Act 2012[[9]](#footnote-9) does not provide for corporal punishment, but it does not explicitly prohibit it. Prohibition in prisons and in police cells is confirmed in article 228(3) of the Child Care and Protection Act 2015.

1.13 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.

1.14 ***Sentence for crime (unlawful):*** Corporal punishment is unlawful as a sentence for crime under the 1991 Supreme Court judgment.[[10]](#footnote-10) Article 228(2) of the Child Care and Protection Act 2015 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.[[11]](#footnote-11) The Rules of the High Court of Namibia: High Court Act 1990, brought into force in 2014, make no reference to judicial corporal punishment.

1.15 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,[[12]](#footnote-12) but then stated that it was being finalised for adoption in 2017.[[13]](#footnote-13)

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

2.1 ***CAT***: In 2017, the Committee Against Torture welcomed the adoption of the Child Care and Protection Act 2015 and recommended that Namibia ensure the proper implementation of laws prohibiting corporal punishment and conduct awareness-raising campaigns.[[14]](#footnote-14)

2.2 ***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.[[15]](#footnote-15)

2.3 ***CEDAW***: The Committee on the Elimination of Discrimination Against Women recommended in 2015 that Namibia strengthen efforts to eliminate corporal punishment in all settings and promote non-violent discipline.[[16]](#footnote-16)

2.4 ***ACERWC***: The African Committee of Experts on the Rights and Welfare of the Child recommended in 2015 that Namibia prohibit corporal punishment in all settings including in the home.[[17]](#footnote-17)

2.5 ***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.[[18]](#footnote-18) At the Review in 2016, Namibia accepted recommendations to prohibit corporal punishment in all settings.[[19]](#footnote-19)

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

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1. 13 February 2015, E/C.12/NAM/1, Initial state party report, para. 376 [↑](#footnote-ref-1)
2. 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 [↑](#footnote-ref-2)
3. 22 November 2016, CAT/C/SR.1478, Summary records of 1478th meeting, para. 4 [↑](#footnote-ref-3)
4. 28 October 2015, A/HRC/WG.6/24/NAM/1, National report to the UPR, para. 90 [↑](#footnote-ref-4)
5. 23 November 2016, CAT/C/SR.1481, Summary records of 1481st meeting, para. 25 [↑](#footnote-ref-5)
6. *Ex Parte Attorney-General, Namibia: in Re Corporal Punishment by Organs of State*, 1991 (3) SA 76 [↑](#footnote-ref-6)
7. *Van Zyl v The State* (CA 25-2014) [2016] NAHCMD 246 (05 September 2016) [↑](#footnote-ref-7)
8. ibid. [↑](#footnote-ref-8)
9. The Correctional Service Act, Act No. 9 of 2012, repealed the Prisons Act, Act No. 17 of 1998 [↑](#footnote-ref-9)
10. ibid. [↑](#footnote-ref-10)
11. 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) [↑](#footnote-ref-11)
12. 30 June 2016, A/HRC/32/2 Advance Unedited Version, Report of the Human Rights Council on its 32nd session, para. 200 [↑](#footnote-ref-12)
13. 23 November 2016, CAT/C/SR.1481, Summary records of 1481st meeting, para. 30 [↑](#footnote-ref-13)
14. 1 February 2017, CAT/C/NAM/CO/2, Concluding observations on second report, paras. 36 and 37 [↑](#footnote-ref-14)
15. 16 October 2012, CRC/C/NAM/CO/2-3, Concluding observations on second-third report, paras. 18, 19, 38 and 39 [↑](#footnote-ref-15)
16. 24 July 2015, CEDAW/C/NAM/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 30 and 31 [↑](#footnote-ref-16)
17. [October 2015], ACERWC, Concluding observations on initial report, para. 25 [↑](#footnote-ref-17)
18. A/HRC/17/14, Report of the Working Group, paras. 96(1), 96(6), 96(13) and 97(11) [↑](#footnote-ref-18)
19. 15 April 2016, A/HRC/32/4, Report of the working group, paras. 137(127), 137(128) and 137(129); 14 June 2016, A/HRC/32/4/Add.1, Report of the working group: Addendum, para. 11 [↑](#footnote-ref-19)