

BRIEFING ON NAMIBIA FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Nov 2014

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Prohibiting corporal punishment of children – a key element in combating domestic and other violence against women and girls

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child has emphasised, addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.¹

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

“In almost all countries, parents and other caregivers are the most commonly cited perpetrators of physical violence against adolescent girls.”

UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, p. 51

This briefing describes the legality of corporal punishment of children in Namibia, where laws on domestic violence fail to give full protection to children in the home. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the recommendations to Namibia by the Committee on the Rights of the Child, we hope the Committee on the Elimination of Discrimination Against Women will:

- **raise the issue of corporal punishment of girls in its List of Issues for Namibia, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Namibia, in the concluding observations on the fourth/fifth state party report, that explicit prohibition of all corporal punishment and repeal of the “right to punish” and of all other provisions authorising corporal punishment of children be included in the Child Care and Protection Bill and that the new law be enacted as a matter of priority.**

¹ Committee on the Rights of the Child, General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2, and 37, inter alia), para. 31

1 The state party's report to CEDAW

- 1.1 The fourth/fifth state report of Namibia to CEDAW states that legislative work to protect women from violence has been taken in the form of implementation of the Combating of Domestic Violence Act 2003 and the development of the Child Care and Protection Bill.² However, it fails to reveal that neither of these laws prohibits all corporal punishment of children and, moreover, that other legislation specifically provides for a “right to punish” children. The report cites research showing that “physical discipline” is common in Namibia³ but makes no reference to efforts to address this.
- 1.2 The Government outlines in its report the national media campaign on zero-tolerance of gender-based violence.⁴ But no state can claim to be zero-tolerant of violence against women when its laws allow girls to be subjected to physical violence in the home in the name of so-called “discipline”.
- 1.3 The Child Care and Protection Bill provides a key opportunity for enacting legislation that prohibits all physical punishment of children. **We hope the Committee will raise the issue of corporal punishment of girls and boys in its List of Issues for Namibia and during the review of the state party's fourth/fifth report. We hope the Committee will recommend that explicit prohibition of all corporal punishment, and repeal of the “right to punish” children and of all other provisions authorising corporal punishment of children, be included in the Child Care and Protection Bill and that the new law be enacted as a matter of priority.**

2 Laws on violence against women and corporal punishment of children in Namibia

Summary

- 2.1 In Namibia, legislation aimed at combating domestic violence does not clearly protect children from all forms of physical punishment in the home. The deep rooted acceptance of physical punishment in childrearing and education means it is typically not perceived as being “violent” or “abusive” unless it reaches some threshold of severity: rather, some degree of violent punishment is commonly perceived – by legal and other professionals and more widely in society – as “reasonable”. It can also be perceived by some as being “for a child's own good” and/or a duty associated with one's religion. For this reason, protecting girls and boys from all forms of physical and other humiliating punishment requires law reform to send a clear message that corporal punishment is prohibited, in the home and in all other settings. This has not been achieved in Namibia: corporal punishment of girls and boys is lawful in the home and in some alternative care and day care settings. It is unlawful in schools and penal institutions, but some legislation is still to be formally repealed.

Laws protecting women and children from violence

- 2.2 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. In fact, the Act is not interpreted in this way and a “right to punish” children is maintained under other legislation (see para. 2.5, below).

² 13 December 2013, CEDAW/C/NAM/4-5, Fourth/fifth state party report, pages 8, 12, 22 and 23

³ *ibid.*, page 21

⁴ *ibid.*, page 24

- 2.3 The Children Act 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” (article 18). But protection under this article does not extend to protection from all corporal punishment: the Act also recognizes a “right to punish” (see para. 2.5).
- 2.4 The Child Care and Protection Bill in its current form would protect children from corporal punishment by all persons except parents. It states that parents have a duty to respect children’s dignity, but prohibits corporal punishment only in settings outside the home.

The legality of corporal punishment of children

- 2.5 Article 59 of the Children’s Act No. 33 1960, inherited from South Africa, confirms that parents have a “right to punish and to exercise discipline”. The article 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.
- 2.6 In 1991, the Supreme Court ruled that the guarantee of human dignity in article 8 of the Constitution precludes the use of corporal punishment in schools and for juvenile offenders.⁵ For schools, 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.” Provisions in the Children’s Act 1960 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) have not yet been repealed.

3 Recommendations by human right treaty monitoring bodies

- 3.1 **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.⁶

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⁵ *Ex Parte Attorney-General, Namibia: in Re Corporal Punishment by Organs of State*, 1991 (3) SA 76

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