Corporal punishment of children in Zimbabwe

Report prepared by the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), last updated February 2016

Child population
6,580,650 (UNICEF, 2013)

*Zimbabwe is committed to reforming its laws to prohibit corporal punishment in all settings.*

Zimbabwe’s commitment to prohibiting corporal punishment

Zimbabwe 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 Zimbabwe in 2011.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

Article 241 of the Criminal Law (Codification and Reform) Act 2004 authorises “moderate corporal punishment” of children by parents, guardians and schoolteachers; article 7 of the Children’s Act 1972 confirms the right of parents and guardians to “administer reasonable punishment”. These provisions should be repealed and prohibition of all corporal punishment enacted in relation to parents and all persons with authority over children.

Alternative care settings – All provisions authorising corporal punishment by persons in loco parentis should be repealed, together with any laws specifically regulating corporal punishment in alternative care settings. Prohibition should be enacted in legislation applicable to all such 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).

Schools – Provisions allowing corporal punishment in schools in the Criminal Law (Codification and Reform) Act 2004, the Education Act 2004 and any other law or regulation should be repealed. Prohibition should be enacted in legislation applicable to all education settings, public and private.

Penal institutions – All legal provisions authorising corporal punishment should be repealed and prohibition of corporal punishment as a disciplinary measure enacted in legislation applicable to all institutions accommodating children in conflict with the law.

Sentence for crime – All legal provisions authorising corporal punishment as a sentence for crime and as a disciplinary measure in penal institutions should be repealed, including those in the Criminal Procedure and Evidence Act 1927, the Prisons Act and any other law.
**Detailed country report**

**Current legality of corporal punishment**

**Home**

Corporal punishment is lawful in the home. Article 7 of the Children’s Act 1972 punishes ill-treatment and neglect of children and young persons but states: “(6) Nothing in this section shall be construed as derogating from the right of any parent or guardian of any child or young person to administer reasonable punishment to such child or young person.”

The Criminal Law (Codification and Reform) Act 2004 states in article 241(2)(a) that “a parent or guardian shall have authority to administer moderate corporal punishment for disciplinary purposes upon his or her minor child or ward”. Subparagraph (6) states: “In deciding whether or not any corporal punishment administered upon a minor person is moderate for the purposes of this section, a court shall take into account the following factors, in addition to any others that are relevant in the particular case: (a) the nature of the punishment and any instrument used to administer it; and (b) the degree of force with which the punishment was administered; and (c) the reason for the administration of the punishment; and (d) the age, physical condition and sex of the minor person upon whom it was administered; and (e) any social attitudes towards the discipline of children which are prevalent in the community among whom the minor person was living when the punishment was administered upon the minor person.” Case law has found corporal punishment which causes death and corporal punishment involving burning beyond what is considered “moderate”.1

The Constitution 1979 was amended in 1990 to allow “moderate” corporal punishment “in appropriate circumstances upon a person under the age of eighteen years by his parent or guardian or by someone in loco parentis or in whom are vested any of the powers of his parent or guardian” (article 15). According to the Government’s report to the Committee on the Rights of the Child, in 1999 efforts had been made to draft a Constitution which abolished corporal punishment but this was rejected by the populace.2 But in 2011 the Government signalled its commitment to prohibition by accepting recommendations to prohibit corporal punishment in all settings made during the Universal Periodic Review of Zimbabwe.3 The new Constitution enacted in 2013 does not include the provision authorising corporal punishment of persons under 18. Rather, it protects the rights of all persons to respect for and protection of their human dignity and physical integrity, including the rights “to freedom from all forms of violence from public or private sources”, and not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; it states that no law may limit these rights. However, it does not explicitly prohibit corporal punishment. A General Laws Amendment Bill intended to harmonise laws with the Constitution is under discussion but the Bill as drafted in 2015 deals with “minor” amendments to existing laws: it does not prohibit corporal punishment of children. Further amendments proposed in November 2015 similarly do not address corporal punishment of children.4

A High Court review judgment in December 2014 expressed the possibility that corporal punishment by parents, guardians and persons in loco parentis might now be unconstitutional, but the judgment itself was concerned with judicial corporal punishment (see “Sentence for crime”, below).5 The ruling must now be reviewed by the Constitutional Court, but in October 2015 the Court postponed the

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1 *R v Pondo & Anor* 1966 RLR 478 (G) and *S v Walata* HH-84-89, cited in Feltoe, G. (2012), *Commentary on the Criminal Law (Codification and Reform) Act* [Chapter 9:23]

2 [2011], CRC/C/ZWE/2 Unedited Version, Second state party report

3 19 December 2011, A/HRC/19/14, Report of the Working Group, paras. 94(22) and 95(5)


5 *The State vs Willard Chokuramba*, High Court of Zimbabwe, 31 December 2014
hearing indefinitely and stated that when it does hear the case it will only consider judicial corporal punishment.\(^6\)

In reporting to the UN Committee on the Rights of the Child in November 2015, the Government stated that article 53 of the Constitution has the effect of prohibiting corporal punishment and it is currently considering the issue, which has been considered in consultations with all ten provinces in the country; recommendations were being prepared for the Children’s Bill.\(^7\) The Ministry of Public Service, Labour and Social Welfare Inter-Ministerial Task-Force (IMT) Technical Committee has prepared a draft discussion paper on the review of the Children’s Act and related legislation which addresses corporal punishment: the Government recommends that article 7(6) of the Children’s Act, which allows “reasonable punishment”, be amended “to remove the endorsement of corporal punishment”, but also notes that this recommendation “will have to await the outcome of the impending Constitutional Court judgment on this matter”.\(^8\)

**Alternative care settings**

Corporal punishment is lawful in alternative care settings under article 241 of the Criminal Law (Codification and Reform) Act 2004 and article 7(6) of the Children’s Act 1972 (see under “Home”).

**Day care**

Corporal punishment is lawful in early childhood care and in day care for older children under article 241 of the Criminal Law (Codification and Reform) Act 2004 and article 7(6) of the Children’s Act 1972 (see under “Home”).

**Schools**

Corporal punishment is lawful in schools. Article 241(2)(b) of the Criminal Law (Codification and Reform) Act 2004 states that a school teacher (defined as the head or deputy head of a school) “shall have authority to administer moderate corporal punishment for disciplinary purposes upon any minor male pupil or student”. A school is defined as including “an educational institution of any kind” (art. 242(1)). No teacher may administer corporal punishment on a female pupil or student (art. 242(4)) and school rules on the administration of corporal punishment must be adhered to (art. 242(5)). Subparagraph (6) sets out the factors a court must consider in deciding whether or not a punishment is “moderate” (see under “Home”). There is some case law concerning corporal punishment which exceeds the bounds of moderate chastisement by the headteacher.\(^9\) In another case, a student teacher was convicted of assault for caning a schoolboy on his buttocks on the grounds that during the trial she admitted that she knew only the headmaster was allowed to administer strokes: however, without such an admission it may be that the common law right to impose moderate chastisement would apply to teachers.\(^10\)

Article 69(2)(c) of the Education Act 1987 authorises for the making of regulations to provide for “discipline in schools and the exercise of disciplinary powers over pupils attending schools, including the administration of corporal punishment”. Article 7(6) of the Children’s Act 1972 provides a defence for the use of corporal punishment (see under “Home”). In 2011 it was announced that a decision had

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\(^7\) 16 November 2015, CRC/C/ZWE/Q/2/Add.1, Reply to list of issues, paras. 47, 48, 49 and 50


\(^10\) *S v Mangwarira 1988 (2) ZLR 372 (S) X*, cited in Feltoe, G. (2012), op cit.
been taken to abolish corporal punishment in schools\textsuperscript{11} but we have no detailed information. The Government has recommended that article 69(2)(c) of the Education Act be reviewed.\textsuperscript{12}

In reporting to the Committee on the Rights of the Child in 2011, the Government noted that a Ministry of Education Policy Circular\textsuperscript{13} provides that only the head of a school can administer corporal punishment on boys.

**Penal institutions**

Corporal punishment is lawful as a disciplinary measure in penal institutions under article 241 of the Criminal Law (Codification and Reform) Act 2004 and article 7(6) of the Children’s Act 1972 (see under “Home”).

**Sentence for crime**

Corporal punishment is lawful as a sentence for crime for males under the age of 18. There appears to be no provision for such punishment for adults. Article 336 of the Criminal Procedure and Evidence Act 1927 (amended 2004) lists the punishments which a court may impose on a convicted person, including “where the convicted person is a male person under the age of eighteen years, corporal punishment”. Article 353 states that for males under 18, “moderate corporal punishment, not exceeding six strokes” may be ordered in lieu of or in addition to other punishments: it must be “inflicted in private” in a manner and place and by a person prescribed by the court; the boy must be certified by a medical practitioner as fit to receive the punishment, and the boy’s parent or guardian has a right to be present when the punishment is inflicted. The Prisons Act (art. 103) states that a sentence of “moderate correction of whipping referred to in article 353 of the Criminal Procedure and Evidence Act” should be carried out in the presence of the “officer in charge” and of the medical officer who certified the boy as fit to undergo the punishment. The medical or prison officer may halt the punishment “if, in his opinion, the punishment is likely to cause more serious injury than is contemplated in the sentence” (art. 104). The punishment should not be inflicted in instalments (art. 105). The Government has recommended that article 336 of the Criminal Procedure and Evidence Act and articles 101-105 of the Prisons Act be reviewed.\textsuperscript{14}

The Children’s Act 1972 provides for the children’s court to make orders in respect of children and young people in need of care and of those who have been convicted of an offence. Article 20 of the Act lists the orders that may be made, and does not include corporal punishment. However, a child or young person aged 12 or over who fails to comply with an order to attend an attendance centre “shall be guilty of an offence and liable to a sentence of moderate corporal punishment, not exceeding six strokes, in accordance with section 353 of the Criminal Procedure and Evidence Act” (art. 20). The Government has recommended that this provision in the Children’s Act be removed.\textsuperscript{15}

In a High Court review judgment in December 2014, Justice Muremba declared that corporal punishment as a criminal sanction for juveniles is no longer lawful because the new Constitution 2013 places no limitation on protection from inhuman treatment and, unlike the previous Constitution, makes no explicit provision for “moderate corporal punishment”.\textsuperscript{16} The declaration of unconstitutionality must be confirmed by the Constitutional Court in order to have legal force. In June

\textsuperscript{11} Plan International, AlertNet, 22 June 2011
\textsuperscript{13} Policy Circular P35 of 1999
\textsuperscript{16} The State vs Willard Chokuramba, High Court of Zimbabwe, 31 December 2014
2015, the Constitutional Court provisionally and indefinitely set aside the High Court order pending further submissions, stating that in the mean time magistrates could impose corporal punishment on juvenile offenders.\textsuperscript{17} The General Laws Amendment Bill 2015 does not amend laws providing for judicial corporal punishment of juvenile offenders. Efforts are under way to draft a Juvenile Justice Bill.\textsuperscript{18}

**Universal Periodic Review of Zimbabwe’s human rights record**

Zimbabwe was examined in the first cycle of the Universal Periodic Review in 2011 (session 12). In its national report the Government stated: “Zimbabwe administers corporal punishment to juvenile male offenders. However, a medical officer should certify that the juvenile is medically fit to receive corporal punishment. In schools, such punishment is only administered to deviant male learners by the school head or a designated official in the presence of such head and a record is kept. In addition, the Criminal Law (Codification and Reform) Act [Chapter 9:23] criminalises activities that infringe on a person’s liberty and dignity.”\textsuperscript{19} The following recommendations were made:\textsuperscript{20}

- “Prohibit corporal punishment as a form of sentence as well prohibit corporal punishment in all other settings (Austria);"
- “Ratify the CAT, clearly criminalize torture and ban all kinds of corporal punishment (Portugal)”

The Government accepted the recommendations.\textsuperscript{21}

Examination in the second cycle is scheduled for 2016.

**Recommendations by human rights treaty bodies**

**Committee on the Rights of the Child**

(29 January 2016, CRC/C/ZWE/CO/2, Concluding observations on second report, paras. 7, 42, 43, 76 and 77)

“The Committee recommends that the State party take all measures necessary to address its previous recommendations of 1996 (CRC/C/15/Add.55) which have not been sufficiently implemented and, in particular, those relating to reviewing the national legal framework (para. 22), combatting social attitudes and cultural and religious practices hampering the realization of children’s rights (para. 26), forbidding the use of corporal punishment (para. 31), and raising the minimum age of criminal responsibility (para. 33).

“The Committee welcomes the Constitutional guarantee of freedom from torture or cruel, inhuman or degrading treatment or punishment. However it remains deeply concerned (CRC/C/15/Add.55, para. 18) that corporal punishment remains legal and widely practised in the family, in schools and in other settings. The Committee notes with serious concern legislative provisions and Government policy allowing the administration of ‘reasonable’ or ‘moderate’ corporal punishment.

“With reference to its General comment No. 8 (2006) on corporal punishment, the Committee reiterates its previous recommendation (CRC/C/15/Add.55, para. 31) and urges the State party to:

a) repeal or amend, as needed, all legislation and administrative regulations in order to explicitly prohibit corporal punishment in all settings as a correctional or disciplinary measure;

\textsuperscript{18} 16 November 2015, CRC/C/ZWE/Q/2/Add.1, Reply to list of issues, para. 100
\textsuperscript{19} 19 December 2011, A/HRC/WG.6/12/ZWE/1, National report to the UPR, para. 49
\textsuperscript{20} 19 December 2011, A/HRC/19/14, Report of the working group, paras. 94(22) and 95(5)
b) sensitize and educate parents, guardians and professionals working with and for children, particularly teachers, on the harmful effects of corporal punishment and the need to end the culture of silence on cases of violence against children;

c) promote positive, non-violent and participatory forms of child-rearing and discipline in all settings, including through providing teachers and parents with training on alternative discipline measures.

“The Committee … remains concerned (CRC/C/15/Add.55, para. 21) about the:…

c) recourse to whipping as a disciplinary measure for boys;

“In the light of its General comment No. 10 (2007) on children’s rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. The Committee reiterates its previous recommendation (CRC/C/15/Add.55, para. 33) and urges the State party to: …

c) adopt a comprehensive policy for juvenile justice based on restorative practices and guided by the right of the child to have his or her best interests taken as a primary consideration…”

Committee on the Rights of the Child
(7 June 1996, CRC/C/15/Add.55, Concluding observations on initial report, paras. 16, 18, 21, 31 and 33)

“The Committee further notes that insufficient attention has been paid to the principle of the best interests of the child both in legislation and practice, as well as to the respect for the views of the child in school, social and family life. In this regard, it is noted that, as recognized by the State party, the civil rights and freedoms of the child are to be exercised subject to parental consent or discipline, thus raising doubts as to the compatibility of this practice with the Convention, notably articles 5 and 12.

“The Committee expresses its concern at the acceptance in the legislation of the use of corporal punishment in school, as well as within the family. It stresses the incompatibility of corporal punishment, as well as any other form of violence, injury, neglect, abuse or degrading treatment, with the provisions of the Convention, in particular articles 19, 28 paragraph 2 and 37.

“The Committee is concerned at the present system of juvenile justice, including the lack of a clear prohibition of capital punishment, life imprisonment without possibility of release and indeterminate sentencing, as well as at the recourse to whipping as a disciplinary measure for boys.

“The Committee recommends that the State party adopt appropriate legislative measures to forbid the use of any form of corporal punishment within the family and in school.

“In the field of juvenile justice, the Committee recommends that the State party raise the minimum age of criminal responsibility and incorporate in the legislation a clear prohibition of capital punishment, life imprisonment without possibility of release and indeterminate sentencing as well as of the use of whipping as a disciplinary measure.”

Human Rights Committee
(6 April 1998, CCPR/C/79/Add.89, Concluding observations on initial report, para. 21)

“The Committee is concerned about recent amendments of section 15 of the Constitution which inter alia authorize corporal punishment. The Committee reaffirms its position that corporal punishment is incompatible with article 7 of the Covenant.”

African Committee of Experts on the Rights and Welfare of the Child
([October 2015], ACERWC, Concluding observations on initial report, para. 26)
While appreciating the State Party for taking various legislative and administrative measures to protect children from abuse and torture, the Committee is concerned of the fact that children could still be sentenced by courts for whipping. The Committee, therefore, recommends the State Party to expedite the adoption of the General Amendment Bill as it has the effect of prohibiting child whipping and to abolish corporeal punishment in all settings and to promote alternative positive disciplining measures.

Prevalence/attitudinal research in the last ten years

A survey conducted in 2014 found that 63% of children age 1-14 years experienced “violent punishment” (psychological aggression and/or physical punishment) during the month preceding the survey: 53% experienced psychological aggression, 36% physical punishment and 5% severe physical punishment (hit/slapped on the face, head or ears and/or beat up, hit over and over as hard as one could). Harare had the highest percentage of severe physical punishment (8%), Matabeleland South Province the lowest (2%). Children aged 3-9 years were more likely to be subjected to violent discipline than any other age group and children in urban areas (68%) were subjected to some form of violent discipline more than their counterparts in rural areas (61%). On average, 38% of respondents believed that physical punishment is needed to bring up, raise, or educate a child properly. In contrast, 24% of children experienced only non-violent discipline.


A 2012 exploratory case study looked at 17 cases of unauthorised corporal punishment by teachers reported in the Masvingo region of Zimbabwe between 2005 and 2011. The study found that most of the victims were girls (14, compared to three boys), all of the perpetrators were male and accused of beating the child with a stick. It also found that some of the perpetrators were discharged from the teaching service and others were found not guilty of the offences.


In a survey conducted in 2011, children age 13-17 years were asked about their experience of physical violence in the 12 months preceding the survey. The results show 44% of boys and 38% of girls had experienced physical violence perpetrated by their mothers; 46% of boys and 19% of girls experienced physical violence by their fathers; 95% of boys and 99% of girls experienced physical violence by teachers. In the same survey, people age 18-24 years were asked about their experience of physical violence prior to age 18 years, with mostly similar results: 43% of males and 59% of females had experienced physical violence perpetrated by mothers; 46% of males and 28% of females had experienced physical violence by fathers, and 95% of males and 99% of females by teachers. The survey report did not specify the extent to which the physical violence was inflicted in the guise of “discipline” or punishment.


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