

Corporal punishment of children in Nigeria: Briefing for the Universal Periodic Review, 17th session, 2013

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Global Initiative to
**End All Corporal Punishment
of Children**

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Nigeria despite the Government's acceptance of relevant recommendations made during the UPR in 2009 and repeated recommendations by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment in Nigeria. We hope states will raise the issue during the review in 2013 and recommend to Nigeria that all laws authorising corporal punishment are repealed and that legislation is enacted to explicitly prohibit corporal punishment of children in all settings including in the home and as a sentence for crime as a matter of priority.

1 Review of Nigeria in the first cycle UPR (2009)

1.1 Nigeria was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 4). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² No recommendations were made specifically on corporal punishment, but the following recommendations were made and were accepted by the Government:³

“Accelerate the process of passing into law the various rights-based bills before the National Assembly in order to provide broader scope of protection for vulnerable members of society, especially women, children and the disabled (Ghana); ... Further pursue that its existing legislation at federal, state and local levels fully complies with the Convention on the Rights of the Child (The Netherlands); ... The National Action Plan include concrete and time-bound steps to accelerate the process of full domestication of all international human rights treaties to which Nigeria is Party... (New Zealand)”

1.2 Prohibiting and eliminating corporal punishment of children is a key obligation under the Convention on the Rights of the Child and other international human rights instruments. But too often it is an obligation ignored or evaded by governments.

1.3 There has been no change in the legality of corporal punishment of children in Nigeria since the initial UPR. Today, as in 2009, corporal punishment is lawful in the home, schools and alternative care settings; law reform has not yet fully prohibited corporal punishment in the penal system.

2 Legality and practice of corporal punishment in Nigeria

2.1 **Home (lawful):** Article 295 of the Criminal Code (South) states: “A blow or other force, not in any case extending to a wound or grievous harm, may be justified for the purpose of correction as follows: (1) a father or mother may correct his or her legitimate or illegitimate child, being under sixteen years of age, for misconduct or disobedience to any lawful command; ... (4) a father or mother or guardian, or a person acting as a guardian, may delegate to any person he or she entrusts permanently or temporarily with the governance or custody of his or her child or ward all his or her own authority for correction, including the power to determine in what cases correction ought to be inflicted; and such a delegation shall be presumed, except in so far as it may be expressly withheld, in the case of a schoolmaster or a person acting as a schoolmaster, in respect of a child or ward.” Article 55 of the Penal Code (North) states: “(1)(a) Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done: by a parent or guardian for the purpose of correcting his child or ward, such child or ward being under eighteen years of age.” These provisions are confirmed in the Shari’a penal codes in the Northern states.

2.2 Article 11 of the Child Rights Act 2003 states that every child is entitled to respect for the dignity of his person and no child shall be “subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse “subjected to torture, inhuman or degrading treatment or punishment”, but these provisions are not interpreted

¹ 5 January 2009, A/HRC/WG.6/4/NGA/2, Compilation of UN information, paras. 28 and 65

² 27 November 2008, A/HRC/WG.6/4/NGA/3, Summary of stakeholders' information, paras. 6 and 21

³ 5 October 2009, A/HRC/11/26, Report of the working group, para. 103(2)

as prohibiting all corporal punishment in childrearing. Similarly, child rights laws at state level prohibit corporal punishment which reaches a certain threshold of severity but are not interpreted as prohibiting all corporal punishment by parents.

- 2.3 **Schools (*lawful*):** Corporal punishment is lawful in schools under article 295(4) of the Criminal Code (South), which states that “a schoolmaster or a person acting as a schoolmaster” is automatically considered as having been entrusted with “authority for correction, including the power to determine in what cases correction ought to be inflicted”, and article 55 of the Penal Code (North), which states: “Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done by a schoolmaster for the purpose of correcting a child under eighteen years of age entrusted to his charge.”
- 2.4 The Government has stated that the Child Rights Act prohibits corporal punishment in schools.⁴ Article 11 of the Act states that every child is “entitled to respect for the dignity of his person” and that no child shall “be subjected to torture, inhuman or degrading treatment or punishment”, but it does not explicitly prohibit corporal punishment in schools.
- 2.5 **Penal system (*partial prohibition*):** Article 221(1)(b) of the Child Rights Act prohibits corporal punishment – but only in states which have adopted the Act without modifying this provision or the definition of the child is it unlawful to sentence a person under 18 to corporal punishment. For example, in Akwa-Ibom, a child is defined as 16 and under and older children are presumably sentenced as adults, including to corporal punishment under the Criminal Code 1916 and the Criminal Procedure Act 1945 (see below). In Jigawa, a child is defined with reference to puberty, so a Muslim child from the age of puberty may be sentenced to corporal punishment under the Shari’a Penal Code 2000 and the Shari’a Criminal Procedure Code Law 2001 (see below).
- 2.6 In southern states which have not adopted the Child Rights Act, boys as young as 7 may be sentenced to be whipped under the Children and Young Persons Law (articles 9 and 11), the Criminal Code Act 1916 (article 18) and the Criminal Procedure Act 1945 (articles 302, 419, 427).
- 2.7 In the northern Sharia states which have not enacted the Child Rights Act corporal punishment (caning, retribution and amputation) of Muslim children from puberty is provided for under the Shari’a penal codes. In 2004, the Government informed the UN Committee on the Rights of the Child that several persons under 18 had been sentenced to amputation and flogging under the northern Shari’a Penal Codes, but that between 2001 and 2004 none had been carried out as they had been quashed on appeal.⁵ A 2004 report by Human Rights Watch states that several boys under 18 were sentenced to amputation in Sokoto in 2003, and lawyers and NGO visitors to Sokoto prison in 2002-3 estimated that the majority of the 10 prisoners sentenced to amputation were under 18; at least one boy under 18 was sentenced to amputation in Katsina State.⁶ The most common form of corporal punishment carried out under the Shari’a laws is flogging, inflicted frequently and in public and often on teenagers.
- 2.8 Non-Muslims in northern states may be sentenced to corporal punishment (caning) under the Penal Code 1960 and the Criminal Procedure Code 1960. Up to 12 strokes may be

⁴ 5 January 2009, CRC/C/NGA/3-4, Third/fourth periodic report to the Committee on the Rights of the Child, para. 7.1.6

⁵ CRC/C/RESP/72, Written replies to the Committee on the Rights of the Child

⁶ “Political Shari’a”? *Human Rights and Islamic Law in Northern Nigeria*, New York: Human Rights Watch

passed by any court on a male offender in lieu of or in addition to any other punishment except capital punishment (Criminal Procedure Code). Flogging is commonly inflicted on child offenders for a range of offences.

2.9 Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 221 of the Child Rights Act (see above), but to our knowledge there is no explicit prohibition applicable in all states. We have no details of provisions in the federal Prisons Act 1990.

2.10 *Alternative care settings (lawful)*: Corporal punishment is lawful in alternative care settings under the Criminal Code (South), the Penal Code (North) and the Shari'a Penal Codes in the north. It is not explicitly prohibited in the Child Rights Act.

3 Recommendations by human rights treaty monitoring bodies

3.1 *CRC*: The Committee on the Rights of the Child first raised the issue of corporal punishment of children in Nigeria in 1996, in its concluding observations on the state party's initial report.⁷ In 2005⁸ and again in 2010⁹, the Committee against expressed concern at corporal punishment and recommended prohibition in all settings, including the home.

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⁷ 30 October 1996, CRC/C/15/Add.61, Concluding observations on initial report, paras. 15, 36 and 38

⁸ 13 April 2005, CRC/C/15/Add.257, Concluding observations on second report, paras. 38, 39, 79, 80 and 81

⁹ 11 June 2010, CRC/C/NGA/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 5, 6, 40 and 41