

Corporal punishment of children in Nigeria: Briefing for the Universal Periodic Review, 31st session, November 2018

From the Global Initiative to End All Corporal Punishment of Children, March 2018



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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Nigeria, corporal punishment of children is still lawful in all settings, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in Nigeria. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Nigeria immediately draft and enact legislation to clearly prohibit all corporal punishment of children in all settings, including in the home, as a sentence for a crime and under traditional and religious law, and repeal all legal defences and authorisations for its use, throughout the territory.

1 Review of Nigeria in the 2nd cycle UPR (2013) and progress since

- 1.1 Nigeria was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 17). 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 issued specifically on corporal punishment but the Government accepted general recommendations on strengthening children's protection from violence and harmonising domestic legislation with international standards of human rights.³
- 1.2 Since the review, there has been no change in the legality of corporal punishment of children. Nigeria is now a Pathfinder country with the Global Partnership to End Violence Against Children – this is absolutely incompatible with the continued legality of corporal punishment of children in every setting of their lives, including as a sentence for a crime.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Nigeria. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Nigeria draft and enact legislation as a matter of priority to**

¹ 9 August 2013, A/HRC/WG.6/17/NGA/2, Compilation of UN information, paras. 7, 24 and 32

² 31 July 2013, A/HRC/WG.6/17/NGA/3, Summary of stakeholders' views, paras. 47 and 48

³ 16 December 2013, A/HRC/25/6, Report of the working group, paras. 135(12), 135(14), 135(20), 135(22), 135(23), 135(26), 135(83), 135(84), 135(85), 135(86) and 135(92)

clearly prohibit all corporal punishment of children in all settings, including in the home, as a sentence for a crime and under traditional and religious law, and repeal all legal defences and authorisations for its use.

2 Legality of corporal punishment in Nigeria

Summary of current law and reforms needed to achieve prohibition

Corporal punishment of children in Nigeria is lawful in all settings, including as a sentence for a crime. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including in the home, as a sentence for a crime and under traditional and religious law, and repeal all defences and authorisations for its use.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. 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; (2) a master may correct his servant or apprentice, being under sixteen years of age, for misconduct or default in his duty as such servant or apprentice;... (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 also confirmed in the Shari’a penal codes in the Northern states. 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 as prohibiting all corporal punishment in childrearing. Similarly, child rights laws at state level prohibit corporal punishment that reaches a certain threshold of severity but are not interpreted as prohibiting all corporal punishment by parents.
- 2.2 Nigeria is a Pathfinder country with the Global Partnership to End Violence Against Children, which was established in 2016. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals. A Roadmap for Ending Violence Against Children was published in October 2016, ahead of Nigeria’ accession to Pathfinder status; it did not refer to the issue of corporal punishment of children. Although a National Action Plan was planned for publication in early 2017, it is yet to be published.
- 2.3 **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.

2.4 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children 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.

2.5 **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." 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.

2.6 **Penal institutions (?partially lawful):** Corporal punishment is presumably prohibited as a disciplinary measure in penal institutions under article 221 of the Child Rights Act (see below), 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.

2.7 **Sentence for crime (partially lawful):** Law reform has not fully prohibited corporal punishment as a sentence for crime. Article 221(1)(b) of the Child Rights Act states that "no child shall be ordered to be subjected to corporal punishment". In states which have adopted the Act without modifying this provision or the definition of the child, it would be unlawful to sentence a person under 18 to corporal punishment. At least two states have modified the definition of the child: in the southern 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 northern 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). With regard to states which have not adopted the Child Rights Act, article 9 of the Children and Young Persons Law states: "Where a juvenile charged with any offence is tried by a court, and the court is satisfied of his guilt, the court may ... (f) order the offender to be whipped". Article 11(2) states: "No young person shall be ordered to be imprisoned if in the opinion of the court he can suitably be dealt with in any other way whether by probation, fine, corporal punishment, committal to a place of detention or to an approved institution or otherwise."

2.8 In the southern states that have not yet enacted the Child Rights Act, children may be sentenced to corporal punishment under the Children and Young Persons Law (as above). In addition, the Criminal Code Act 1916 states that when a male person under 17 has been found guilty of any offence "the court may, in its discretion, order him to be caned in addition to or in substitution for any other punishments to which he is liable" (art. 18). The Criminal Procedure Act 1945 states that when a child or young person (aged 7-16) is charged with an indictable offence other than a capital offence, the magistrate may deal with the case summarily, inflicting the specified punishment including, for boys, corporal punishment (art. 302). It states that no young person (aged 14-16) shall be imprisoned "if he can be dealt with in any other way whether by probation, fine, corporal punishment or otherwise" (art. 419(2)), and lists the measures available when a child or young person has been convicted of an offence, including "by ordering the offender to

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

be whipped” (art. 427). Under the Criminal Code Act 1916, persons aged 17 and over are tried as adults and males may be sentenced to caning, including for rape and other sexual offences, and endangering life (arts. 27, 218, 219, 221, 222, 225A, 330, 334, 358 and 359). Caning may also be ordered for any offence punishable by imprisonment for six months or more (Criminal Procedure Act 1945, art. 387). According to the Criminal Procedure Act, a maximum of 12 strokes shall be inflicted with a light rod or cane or birch (art. 386(1)). It must be carried out as soon as possible after sentencing or after the decision on appeal of the sentence (art. 388). Females may not be caned (art. 385).

2.9 In the north, the 11 Shari’a states that have not enacted the Child Rights Act provide for corporal punishment (caning, retribution and amputation) of Muslim children from the age of puberty under the Shari’a penal codes. Lashing or caning is a punishment for certain offences relating to alcohol, drugs, sex, theft, murder and hurt; amputation is a punishment for theft, kidnap of a child, embezzlement and robbery; the punishment of retaliation for hurt may involve amputation, blinding and other serious wounding. Many Shari’a Penal Codes allow for offences which are not specified in them to be punished by flogging, and other laws prescribe caning for particular offences. 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.

2.10 The Harmonised Shari’a Penal Code provides for punishments of caning, retaliatory wounding, and amputation (art. 93). Caning is specified as punishment for virtually every offence in the Code and it may be ordered by any court on any offender in addition to or in lieu of any other punishment except death (art. 100). A person aged 7-17 may be sentenced to caning up to 20 lashes instead of the punishment specified in the Code (art. 95(1)). The Code punishes the offence of causing grievous hurt with *qisas* (retaliation) (arts. 215 and 219), theft and *hirabah* with amputation (arts. 144 and 152).

2.11 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 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.

3 Recommendations by human rights treaty 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 again expressed concern at corporal punishment and recommended prohibition in all settings, including the home.

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

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

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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 since 2011 the Committee on the Rights of Persons with Disabilities.

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