

Corporal punishment of children in Ghana: Briefing for the Universal Periodic Review, 28th session, 2017

From the Global Initiative to End All Corporal Punishment of Children, March 2017



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 Ghana, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture and the Human Rights Committee, and the recommendations made during the 2nd cycle UPR of Ghana in 2012 (which the Government accepted).

We hope the Working Group will note with concern the legality of corporal punishment of children in Ghana. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Ghana clearly prohibit all corporal punishment of children in all settings including the home.

1 Review of Ghana in the 2nd cycle UPR (2012) and progress since

1.1 Ghana was reviewed in the second cycle of the Universal Periodic Review in 2012 (session 14). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² The Government accepted two recommendations to explicitly prohibit corporal punishment of children in all settings.³

1.2 Since the second cycle review in 2012 and despite the Government's 2012 commitment, there has been no change in the legality of corporal punishment. The Constitution has been under review since 2011 but the Government has dismissed recommendations to strengthen children's rights through constitutional reform. The Children's Act and the Juvenile Justice Act are being reviewed; it is unclear whether prohibition is being considered.

1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Ghana. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Ghana clearly prohibit all corporal punishment of children in all settings, including the home.

¹ 13 August 2012, A/HRC/WG.6/14/GHA/2, Compilation of UN information, para. 28

² 20 July 2012, A/HRC/WG.6/14/GHA/3, Summary of stakeholders' views, para. 32

³ 13 December 2012, A/HRC/22/6, Report of the working group, paras. 123(20) and 125(50)

2 Legality of corporal punishment in Ghana

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Ghana is unlawful as a sentence for a crime, but it is not fully prohibited in the home, alternative care settings, day care, schools and penal institutions. The law allows so-called “reasonable” and “justifiable” correction.

- 2.1 **Home (*lawful*)**: The Children’s Act 1998 prohibits “cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental well-being of a child” (art. 13(1)) but allows for a degree of “reasonable” and “justifiable” punishment of children, stating that “no correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction” (art. 13(2)).
- 2.2 The Constitution 1992 states in article 28(3): “A child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” Neither these provisions nor the provisions against violence and abuse in the Criminal Code 1960, the Domestic Violence Act 2007 and the Children’s Act 1998 are interpreted as prohibiting all corporal punishment in childrearing. During the Universal Periodic Review (UPR) of Ghana in 2008 the Government defended the legality of “reasonable” corporal punishment.⁴
- 2.3 The Constitution is under review. In its final report, published in 2011, the Constitution Review Commission acknowledged receipt of submissions concerning the need for clarity regarding discipline of children but did not recommend that prohibition be included in the new Constitution.⁵ It made a general recommendation that the Children’s Act be “substantially revised”. The Government went on to reject the majority of recommendations that the Commission made concerning children’s rights, stating that “there are enough laws which address the concerns of children and the challenge has to do with enforcing them”.⁶ Nevertheless, the Government accepted recommendations to prohibit corporal punishment made during the Universal Periodic Review in 2012.⁷ Reporting to the African Committee of Experts on the Rights and Welfare of the Child in October 2016, the Government stated that the Children’s Act and the Juvenile Justice Act were being amended but it is unclear whether prohibition is being envisaged in this context.
- 2.4 **Alternative care and day care settings (*lawful*)**: Corporal punishment is lawful in alternative and day care settings under provisions allowing “reasonable” and “justifiable” correction in article 13(2) of the Children’s Act 1998.
- 2.5 **Schools (*lawful*)**: Pursuant to the Education Act 1961, the Ghana Education Code of Discipline for second cycle school provides for caning up to six strokes by a head teacher or person authorised by the head. Article 13(2) of the Children’s Act 1998 also applies, allowing for “justifiable

⁴ 1 September 2008, A/HRC/8/52, Report of the Human Rights Council on its eighth session, para. 660

⁵ CRC (2011), *Report of the Constitution Review Commission: From a political to a developmental Constitution*, paras. 365 and 383

⁶ *White Paper on the Report of the Constitution Review Commission of Inquiry*, June 2012, p. 46

⁷ 13 December 2012, A/HRC/22/6, Report of the working group, paras. 123(20) and 125(50)

correction". Ministerial directives advise against the use of corporal punishment in schools but this has not been confirmed in legislation.

2.6 National Child Friendly School Standards for basic schools have been drafted by the Ghana Education Service which state that "school is a safe environment for teaching and learning for all children and staff (free from any form of intimidation, violence and abuse including corporal punishment and sexual abuse) regardless of race, sex, background and abilities" and that national standards were expected to be rolled out in 2012.⁸ A Code of Conduct for Teachers was also developed by the Ghana Education Service which allegedly defined physical violence as including corporal punishment; it was under consideration in June 2016.⁹ However, no indication was given of progress towards law reform to prohibit corporal punishment.

2.7 **Penal institutions (partially lawful):** Corporal punishment is unlawful in prisons under the Prisons Service Decree 1972, which states that no person shall be subjected to torture or degrading punishment or any other condition that will or is likely to detract from his human dignity (art. 1). Article 13 of the Children's Act 1998 prohibits cruel, inhuman and degrading punishment but there is no explicit prohibition of corporal punishment as a disciplinary measure in borstal institutions and industrial institutions established under the Juvenile Justice Act 2003. Article 59 of the Juvenile Justice Act 2003 provides for the Minister responsible for Social Welfare or Interior to make regulations the discipline, treatment and punishment of persons detained in centres and in remand homes but it does not specify that the regulations should prohibit corporal punishment.

2.8 **Sentence for crime (unlawful):** It is not an available sanction under the Juvenile Justice Act 2003 and the Children's Act 1998. Article 15(2) of the Constitution 1992 prohibits torture and other cruel, inhuman or degrading treatment or punishment.

3 Recommendations by human rights treaty bodies

3.1 **CRC:** In 1997, the Committee on the Rights of the Child expressed concern at corporal punishment of children in Ghana, particularly in schools, and recommended its prohibition.¹⁰ In 2006, the Committee recommended prohibition of corporal punishment in the family, schools and other educational settings and in alternative care systems in Ghana as a matter of priority.¹¹ In 2015, the Committee again recommended prohibition in all settings, together with repeal of legal provisions for "reasonable" and "justifiable" punishment.¹²

3.2 **CAT:** In 2011, The Committee Against Torture recommended that corporal punishment be prohibited in all settings in Ghana, including through repealing all legal defences for its use.¹³

3.3 **HRC:** In 2016 the Human Rights Committee recommended that Gabon put an end to corporal punishment of children in all settings.¹⁴

3.4 **UPR:** Ghana was examined in the first cycle of the UPR in 2008. The Government accepted recommendations to fully implement the recommendations of the CRC and of the UN Study on

⁸ 6 August 2014, CRC/C/GHA/3-5, Third to fifth state party report, paras. 98 and 99

⁹ 13 June 2016, CCPR/C/GHA/Q/1/Add.1, Response to the list of issues in relation to initial report, para. 88

¹⁰ 18 June 1997, CRC/C/15/Add.73, Concluding observations on initial report, paras. 16 and 36

¹¹ 17 March 2006, CRC/C/GHA/CO/2, Concluding observations on second report, paras. 7, 36 and 37

¹² 9 June 2015, CRC/C/GHA/CO/3-5 Advance Unedited Version, Concluding observations on third-fifth report, paras. 7, 8, 35 and 36

¹³ 15 June 2011, CAT/C/GHA/CO/1, Concluding observations on initial report, para. 24

¹⁴ 9 August 2016, CCPR/C/GHA/CO/1, Concluding observations on initial report, paras. 35 and 36

violence against children but later defended the legality of corporal punishment.¹⁵ However, at its UPR in 2012, the Government accepted recommendations to explicitly prohibit all corporal punishment of children in all settings.¹⁶

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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.

¹⁵ 29 May 2008, A/HRC/8/36, Report of the working group, paras. 68(6) and 69; 1 September 2008, A/HRC/8/52, Report of the Human Rights Council on its eighth session, para. 660

¹⁶ 13 December 2012, A/HRC/22/6, Report of the working group, paras. 123(20) and 125(50)