

# **BRIEFING ON THE GAMBIA 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”.<sup>1</sup>

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 the Gambia, where law reform to address domestic violence has failed to fully protect children from violence 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 the Gambia by the Committee on the Rights of the Child and during the UPR, 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 the Gambia, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to the Gambia, in the concluding observations on the fourth/fifth state party report, that legislation which prohibits corporal punishment in all settings, including through repealing the common law defence of “reasonable chastisement”, is adopted as a matter of priority.**

<sup>1</sup> 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 the Gambia to CEDAW describes legislative work on the Women's Bill 2010 and plans to draft legislation addressing violence against women to cover issues not included in the Bill.<sup>2</sup> However, it does not acknowledge that law reform is also required to protect girls (and boys) from violence inflicted in the guise of "discipline", violence which is lawful under the common law provision for "reasonable chastisement". The report mentions corporal punishment of children only in connection with the UNICEF Child-Friendly Schools Initiative,<sup>3</sup> but similarly fails to mention that corporal punishment in schools is authorised by law.
- 1.2 No state can claim to be protecting girls and women from violence when its laws allow girls to be subjected to physical violence in the home and schools in the name of so-called "discipline". **We hope the Committee will raise the issue of corporal punishment of girls and boys in its List of Issues for the Gambia and during the review of the state party's fourth/fifth report. We hope the Committee will recommend that legislation which prohibits corporal punishment in all settings, including through repealing the common law defence of "reasonable chastisement", is adopted as a matter of priority.**

## 2 Laws on violence against women and corporal punishment of children in the Gambia

### *Summary*

- 2.1 The Gambia has made significant progress in reforming its laws to address violence against women. However, the reforms to date have not achieved legal protection of girls from all forms of physical punishment. The near universal and deeply rooted acceptance of physical punishment in childrearing and education means that it is typically not perceived as being "violent" or "abusive" unless it reaches some threshold of severity: on the contrary, 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. This has not been achieved in the Gambia.

### *Laws protecting women and children from violence*

- 2.2 A number of laws protect women and children from "violence", including in the home, as described in the following paragraphs. While these laws are to be welcomed, they do not explicitly prohibit all corporal punishment of children, and the potential they have for being interpreted as protecting children from punitive violence is undermined by legal provisions authorising corporal punishment (see paras. 2.6 and 2.7).
- 2.3 The Women's Act 2010 provides for protection of women from violence, in public and private settings, in section 6: "(1) Every women shall be protected against any form of physical, sexual, psychological or economic harm, suffering, or violence whether occurring in public or private life. (2) Any form of violence against women is hereby prohibited. (3) All Government Departments, agencies, organs, public or private institutions shall take appropriate measures to promote and protect women's rights and their legal status from any form of abuse or violence by any person, enterprise, organisation or institution." The Act does not clearly prohibit all physical punishment of children.
- 2.4 The Domestic Violence Act 2013, enacted in December 2013, was intended to combat domestic

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<sup>2</sup> 13 December 2013, CEDAW/C/GMB/4-5, Fourth/fifth state party report, paras. 2, 3, 4, 5 and 32

<sup>3</sup> *ibid.*, para. 17

violence against women and children.<sup>4</sup> We have yet to examine the full text but in its Bill form it included in the definition of physical abuse “physical assault or use of physical force against another person ... or subjecting another person to torture or other cruel, inhuman or degrading treatment or punishment” (section 3). The Act does not explicitly prohibit all corporal punishment in childrearing.

2.5 The Children’s Act 2005 states that it is the responsibility of parents to “ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child” (article 22). It specifies the duty “of any person having custody of a child to protect the child from discrimination, violence, abuse and neglect” (art. 21); it defines child abuse as “contravention of the rights of the child which causes physical or mental harm to the child” (art. 2), and it prohibits “any social and cultural practices that affect the welfare, dignity, normal growth and development of the child” (art. 19). But in the absence of explicit prohibition of corporal punishment, as well as the existence of laws condoning corporal punishment (see below), these provisions are not interpreted as protecting children from all forms of physical punishment.

### ***The legality of corporal punishment of children***

2.6 Under English common law, which is part of the law in Gambia under the Laws of England (Application) Act, parents, guardians and others *in loco parentis* can “reasonably chastise” their child. This “reasonable chastisement” defence means that adults can impose physical punishment on children with impunity, provided it is not perceived as being “unreasonable” (at which point it would fall foul of the above mentioned laws protecting children from violence and abuse). It is imperative that law reform to prohibit all corporal punishment of children repeals the legal defence of “reasonable chastisement”.<sup>5</sup>

2.7 There is a ministerial directive on alternative discipline in schools, but the law itself still authorises corporal punishment. Article 15 of the Education Regulations under the Education Act states: “Firm discipline shall be maintained and enforced in all schools, but all degrading and injurious punishments are prohibited, and no child shall receive corporal punishment of any form save as is hereinafter in this regulation provided.” Under paragraphs 2-4 of article 15, corporal punishment should be administered only by the head teacher or an assistant teacher in the presence of the head teacher, to female pupils only in exceptional circumstances and then only by a female teacher, and logged in a designated book. The Government has reported to treaty bodies its efforts with regard to implementing the UNICEF Child-Friendly School Initiative<sup>6</sup> but has not spoken of efforts to prohibit corporal punishment by law and to repeal legal provisions authorising school corporal punishment.

## **3 Corporal punishment of girls and boys in practice in the Gambia**

3.1 Research has repeatedly documented a high prevalence of corporal punishment of girls and boys in homes and schools, as well as widespread acceptance of domestic violence against women.

3.2 The Gambia Multiple Indicator Cluster Survey (MICS), carried out in 2010 and involving 14,685 women in 7,791 households, found that 90% of 2-14 years olds had been physically and/or psychologically punished by their mothers/caregivers or other household members in the past month.<sup>7</sup> UNICEF’s major analysis of data on child discipline in the home in 2005-2006 found that

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<sup>4</sup> Women’s Bureau/UNDP (2014), National Review Report on The Beijing Declaration and Platform for Action-Beijing Plus 20 (The Republic of The Gambia), Final Report, para. 5.4.1

<sup>5</sup> See 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

<sup>6</sup> 13 December 2013, CEDAW/C/GMB/4-5, Fourth/fifth state party report, para. 17; 6 November 2013, E/C.12/GMB/1, Initial state party report, para. 57

<sup>7</sup> The Gambia Bureau of Statistics (2011), *The Gambia Multiple Indicator Cluster Survey 2010, Final Report*, Banjul: UNICEF

87% of 2-14 year olds had been violently “disciplined” in the month prior to the survey.<sup>8</sup> Nearly three quarters of girls and women aged 15-49 thought that a husband is justified in hitting or beating his wife under certain circumstances.<sup>9</sup>

3.3 In a study involving questionnaires with 878 children, 265 teachers and 426 parents, children reported that corporal punishment is used in 70% of schools. Sixty-eight per cent of students were beaten at school “sometimes”, 8% “often”, 11% “very often” and 13% “rarely”; students were beaten with belts, canes and rulers. At home, 55% of children reported that parents or guardians beat them “sometimes”, 22% “rarely”, 8% “often” and 14% “very often”; children were beaten on the back, buttocks, head, face and all over their bodies. Girls were more likely to be beaten on the face (62% of children beaten on the face were girls), boys were more likely to be beaten on the buttocks (61%). Nearly half (47%) of children had been injured by a punishment: of these, 31% were bruised, 17% cut, 25% suffered internal bleeding, 12% lost a tooth and 10% had an arm dislocated or fractured.<sup>10</sup>

#### **4 Recommendations by human right treaty monitoring bodies and during the UPR**

4.1 **CRC:** In 2001, the Committee on the Rights of the Child expressed concern at corporal punishment of children in the home, schools and other settings in the Gambia and recommended that it be prohibited in the family and all settings.<sup>11</sup>

4.2 **UPR:** The Gambia was examined in the first cycle of the Universal Periodic Review in 2010. The Government responded to recommendations concerning corporal punishment by stating “there were laws already in place to protect children against violence and abuse of all forms” and that efforts were being made to promote alternative methods of disciplining children.<sup>12</sup>

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<sup>8</sup> UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

<sup>9</sup> UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF

<sup>10</sup> Tang, J. (2005), *Beating the Misconceptions, Not the Children*, The Gambia: The Child Protection Alliance

<sup>11</sup> 6 November 2001, CRC/C/15/Add.165, Concluding observations on initial report, paras. 32 and 33

<sup>12</sup> 24 March 2010, A/HRC/14/6, Report of the working group, paras. 99(15) and 99(44); 23 October 2012, A/HRC/14/37, Report of the Human Rights Council on its fourteenth session, para. 594