

Corporal punishment of children in Djibouti: Briefing for the Universal Periodic Review, 44th session, Oct./Nov. 2023



*From the Global Partnership to End Violence Against Children,
March 2023*

This submission provides an update on the legality of corporal punishment of children in Djibouti since its review in the third cycle UPR in 2018. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care, penal institutions and possibly schools.

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 Djibouti, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 3rd cycle UPR of Djibouti in 2018.

We hope the Working Group will note with concern the legality of corporal punishment of children in Djibouti. We hope states will raise the issue during the review this year and make a specific recommendation that Djibouti accelerates its efforts to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Djibouti in the 3rd cycle UPR (2018) and progress since

1.1 Djibouti was reviewed in the third cycle of the Universal Periodic Review in 2018 (session 30). Recommendations to prohibit corporal punishment in all settings were made and supported by the Government.¹

¹ 28 August 2018, A/HRC/39/10/Add.1 Advance unedited version, Report of the Working Group: Addendum, paras. 6 and 7

1.2 Following the review, no legislation to explicitly prohibit corporal punishment of children in all settings seems to have been adopted. Reporting to the Committee on the Rights of the Child in 2019, Djibouti misleadingly declared that corporal punishment and other forms of cruel or degrading punishment were prohibited under the Constitution and the Code on the Legal Protection of Minors, referring particularly to article 14 of the latter.²

1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Djibouti. We hope states will raise the issue during the review this year and make a specific recommendation that Djibouti intensify its efforts to enact a law to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

2 Legality of corporal punishment in Djibouti

Summary of current law and opportunities for achieving prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, penal institutions and possibly schools.

Article 475 of the Civil Code 2018 refers to parents' "right of education over the child". This provision should be amended to provide clarity in law that no form of corporal punishment is acceptable in childrearing, and prohibition should be enacted of all corporal punishment by parents and others with children in their care.

2.1 **Home (lawful):** Corporal punishment is lawful in the home. Article 475 of the Civil Code Act No. 003/AN/18/8 L 2018 states (unofficial translation): "[Parental] authority belongs to the father and mother to protect the child's safety, health and morality. They have right and duty of custody, surveillance and education over the child." This provision should be amended to clearly exclude the use of corporal punishment in "educating" the child, as the near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. There appears to be no confirmation in the Family Code Act No. 152/AN/02 2002 (amended 2014) or the Criminal Code Act No. 59/AN/94 1995 of a "right" of parents to punish/discipline children.

2.2 The Code on the Legal Protection of Minors (Act No. 95/AN/15/7 L) was adopted in 2015. It defines mistreatment of a child as "torture, violation of their physical integrity, detention, denying the child food, or committing any act of brutality which may impact the child's affective, moral or psychological balance" (art. 14, unofficial translation). Article 15 states that (unofficial translation) "is considered a victim of mistreatment the child who suffered bodily injury and/or cruel punishment". These and other provisions against violence and abuse in this Code, the Civil Code 2018, the Family Code 2002, the Criminal Code 1995 and in the Constitution 1992 are not interpreted as prohibiting corporal punishment in childrearing.

² [2019], CRC/C/DJI/3-5, Third-fifth report, pages 33 and 34

- 2.3 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings. Corporal punishment is lawful as for parents.
- 2.4 **Day care (lawful):** There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children.
- 2.5 **Schools (?unlawful):** Corporal punishment is reportedly prohibited in schools by regulations applicable to all education institutions,³ but we have been unable to confirm this. There is no prohibition of corporal punishment in the Education System Act No. 96/AN/00/4ème L 2000.
- 2.6 **Penal institutions (lawful):** There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions, including in the Code on the Legal Protection of Minors 2015. The Criminal Code and the Code of Criminal Procedure are being reviewed.⁴
- 2.7 **Sentence for crime (lawful):** Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Code of Criminal Procedure Act No. 59/AN/94 or the Criminal Code Act No. 59/AN/94 1995.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Djibouti and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party’s second report in 2008⁵ and on the state party’s third/fifth report in 2022.⁶
- 3.2 **CAT:** In its concluding observations on the state party’s initial report in 2011,⁷ the Committee Against Torture recommended that the Government amend its laws to prohibit corporal punishment in all settings.
- 3.3 **HRC:** In its concluding observations on the state party’s initial report in 2013,⁸ the Human Rights Committee recommended that the Government take practical steps to put an end to corporal punishment of children in all settings.

Briefing prepared by End Corporal Punishment on behalf of the Global Partnership to End Violence Against Children

www.endcorporalpunishment.org; secretariat@end-violence.org

³ 23 September 2008, CRC/C/SR.1347, Summary record of examination by the Committee on the Rights of the Child, para. 48

⁴ 11 July 2018, A/HRC/39/10, Report of the Working Group, para. 9

⁵ 7 October 2008, CRC/C/DJI/CO/2, Concluding observations on second report, paras. 35 and 36

⁶ 23 June 2022, CRC/C/DJI/CO/3-5, Concluding observations on the combined third to fifth periodic report, paras. 22 and 23

⁷ 22 December 2011, CAT/C/DJI/CO/1, Concluding observations on initial report, para. 23

⁸ 19 November 2013, CCPR/C/DJI/CO/1, Concluding observations on initial report, para. 14