

Corporal punishment of children in Senegal: 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 Senegal, corporal punishment of children is still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Committee Against Torture.

We hope the Working Group will note with concern the legality of corporal punishment of children in Senegal. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Senegal enact the draft Children’s Code as a matter of urgency to clearly prohibit all corporal punishment of children in all settings, including in the home, and repeal article 285 of the Family Code.

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

- 1.1 Senegal 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 A recommendation to explicitly prohibit corporal punishment in all settings was extended during the review; but it was recorded in the report of the working group as “continue its efforts to fight against corporal punishment in all places” and was accepted as such by the Government.³
- 1.2 Since the review, there has been no change in the legality of corporal punishment of children. A draft Children’s Code has been prepared which includes explicit prohibition of all corporal punishment; but although the Government has declared its intention to repeal the legal defence from the Family Code, no progress has been made on such law reform.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Senegal. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Senegal enact the draft Children’s Code as a matter of urgency to clearly prohibit all corporal punishment of children in all settings, including in the home, and repeal article 285 of the Family Code.**

¹ 5 August 2013, A/HRC/WG.6/17/SEN/2, Compilation of UN information, para. 8

² 24 July 2013, A/HRC/WG.6/17/SEN/3, Summary of stakeholders’ views, paras. 23 and 24

³ 11 December 2013, A/HRC/25/4, Report of the working group, para. 123.64

2 Legality of corporal punishment in Senegal

Summary of current law and reforms needed to achieve prohibition

Corporal punishment of children in Senegal is lawful in the home, alternative and day care settings, and in some school settings. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including in the home, and repeal all defences and authorisations for its use.

- 2.1 **Home (*lawful*):** Corporal punishment is lawful in the home. Article 285 of the Family Code provides for persons with paternal authority to have a “right of correction” over children: “He that exercises paternal power can inflict on children reprimands and corrections to the extent that they are consistent with the child’s age and the improvement of his conduct” (unofficial translation). According to articles 277 and 281, paternal power is exercised by the father only or alternatively by the mother. Articles 298 and 299 of the Criminal Code 1977 (amended 2016) punish the causing of injury to a child under 15 and the use of violence and assault, the punishments being more severe if the perpetrator is a parent or other person with authority over or custody of the child. However, this protects children only from punishment of some severity – i.e. that which is perceived to cause injury. Corporal punishment that does not appear to cause physical injury is lawful under the above-mentioned “right of correction” in the Family Code.
- 2.2 In the context of examination by the Committee on the Elimination of Discrimination Against Women in 2015, the Government was asked if it envisaged amending article 285 of the Family Code in order to prohibit corporal punishment in the home.⁴ In reply, the Government stated that there are severe penalties for acts of corporal punishment and that the social departments of the Ministry of Justice have powers to propose measures aimed at protecting child victims of corporal punishment.⁵ In reporting for examination by the Committee on the Rights of the Child in January 2016, the Government stated that “provisions have been made in the Children’s Code project to make effective the prohibition of corporal punishment, even within the family”.⁶ The draft Code does include provisions intended to prohibit corporal punishment (articles 14 and 45), but as at March 2016 the draft does not explicitly repeal the “right of correction” in the Family Code. In February 2017, the Government reported that it planned “to expressly delete article 285 of the Family Code on forms of corporal punishment tolerated within the family”.⁷ But as at May 2017, there seemed to be no formal plans to repeal the “right of correction”, and the legislative process had stalled due to the inclusion of controversial inheritance provisions.⁸
- 2.3 **Alternative care settings (*lawful*):** There is no explicit prohibition of corporal punishment in alternative care settings. It is unclear whether the “right of correction” under article 285 of the Family Code 1989 can be transferred to persons caring for a child in alternative care settings.
- 2.4 **Day care (*lawful*):** There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. It is unclear whether the “right of correction” under article 285 of the Family Code 1989 can be transferred to persons caring for a child in day care settings.

⁴ 17 November 2014, CEDAW/C/SEN/Q/3-7, List of issues, para. 6

⁵ 17 June 2015, CEDAW/C/SEN/Q3-7/Add.1, Reply to list of issues, paras. 74 and 75

⁶ 29 December 2015, CRC/C/SEN/Q/3-5/Add.1, Reply to list of issues, para. 25

⁷ 16 March 2017, CAT/C/SEN/4, Fourth report, para. 237

⁸ Information provided to the Global Initiative, May 2017

- 2.5 **Schools (*partially lawful*)**: Corporal punishment is prohibited in schools for children aged 6-14 in Decree No. 79-11.65 1979 but there is no explicit prohibition in other schools and the authority to “correct” a child article 285 of the Family Code 1989 potentially applies.
- 2.6 The Government reported to the Committee on the Elimination of Discrimination Against Women in 2015 that violence by teachers is subject to severe criminal penalties, drawing particular attention to Law No. 99-05 of 29 January 1999 amending articles 299bis, 300, 319, 320, 323, 324 and 327 of the Criminal Code, and to administrative penalties.⁹ During the UPR of Senegal in 2009, the Government stated that corporal punishment is prohibited in Koranic schools,¹⁰ but gave no details of the relevant law. In 2017, the Government reported to the African Committee of Experts on the Rights and Welfare of the Child that reforms were being considered to regulate the Koranic schools. It seems however that the process is being stalled by religious pressure.¹¹
- 2.7 **Penal institutions (*?unlawful*)**: Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition. Article 100 of Decree No. 2001 (relative to the procedure of implementation and adjustment of the sanctions), applicable to prisons, states that “the personnel of the penal institutions can only employ force towards a prisoner in the case of violent resistance (by the inmate) or in the case of inertia to the orders given”. Juvenile justice penal law is being revised.¹²
- 2.8 **Sentence for crime (*unlawful*)**: There is no provision for judicial corporal punishment in the Criminal Code or the Criminal Procedure Code.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC**: The Committee on the Rights of the Child first recommended that corporal punishment of children be prohibited in the family in Senegal in 1995, following examination of the state party’s initial report.¹³ In its concluding observations on the second report in 2006, the Committee recommended prohibition in all settings, including the home.¹⁴ Finally in 2016, the Committee again recommended the prohibition of corporal punishment in all settings as well as the repeal of all provisions authorising corporal punishment, including article 285 of the Family Code.¹⁵
- 3.2 **CAT**: In 2013, the Committee Against Torture recommended to Senegal that article 285 of the Family Code be amended to explicitly prohibit corporal punishment of children, including in the home.¹⁶

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org

⁹ 17 June 2015, CEDAW/C/SEN/Q3-7/Add.1, Reply to list of issues, para. 114

¹⁰ 5 October 2009, A/HRC/11/24, Report of the working group, para. 60

¹¹ Information provided to the Global Initiative, May 2017

¹² UNICEF (2013), *Annual report – Senegal*

¹³ 27 November 1995, CRC/C/15/Add.44, Concluding observations on initial report, para. 24

¹⁴ 20 October 2006, CRC/C/SEN/CO/2, Concluding observations on second report, paras. 36 and 37

¹⁵ 29 January 2016, CRC/C/SEN/CO/3-5 Advance Unedited Version, Concluding observations on third-fifth report, paras. 35 and 36

¹⁶ 17 January 2013, CAT/C/SEN/CO/3 Concluding observations on third report, para. 15

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.