

Corporal punishment of children in the Democratic Republic of Congo: Briefing for the Universal Periodic Review, 33rd session, May 2019



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

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

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 DR Congo, corporal punishment of children is still lawful, 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 DR Congo. We hope states will raise the issue during the review in 2019 and make a specific recommendation that DR Congo draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.

1 Review of DR Congo in the 2nd cycle UPR (2014) and progress since

- 1.1 DR Congo was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 19). Although the issue of corporal punishment of children was raised in the summary of stakeholders' information,¹ no recommendation was extended specifically on the issue of corporal punishment of children.
- 1.2 Since the review, there has been no change in the legality of corporal punishment. The Family Code was amended in 2016 – however the amendments did not repeal the legal defence in article 326(4) and did not address corporal punishment.
- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in DR Congo. We hope states will raise the issue during the review in 2019 and make a specific recommendation that DR Congo draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.**

¹ 6 February 2014, A/HRC/WG.6/19/COD/3, Summary of stakeholders' views, para. 42

2 Legality of corporal punishment in DR Congo

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in DR Congo is prohibited in schools and as a sentence for a crime but it is still lawful in the home, in alternative and day care settings, and in penal institutions. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home, and all legal defences for its use, including in the Family Code 1987, should be repealed.

- 2.1 **Home (lawful):** Article 326(4) of the Family Code 1987 states that “a person exercising parental authority may inflict reprimands and punishments on the child to an extent compatible with its age and the improvement of its conduct”. Provisions against violence and abuse in the Criminal Code 1940, the Family Code 1987 and the Constitution 2006 are not interpreted as prohibiting all corporal punishment in childrearing. Article 57 of the Child Protection Code 2009 confirms the right of the child to protection from all forms of violence and states that discipline in the home, schools and institutions should be administered with respect for the child’s humanity but it does not explicitly prohibit corporal punishment and is diminished by the authorisation contained in the Family Code.
- 2.2 In 2011, a draft Revised Family Code was under consideration, following a review from a gender perspective. In 2016, the Law amending and supplementing Law No. 87-010 of 1 August 1987 on the Family Code (Loi modifiant et complétant la Loi N°87-010 Du 1er Aout 1987 portant Code de la Famille) was passed. The new law did not repeal Article 326(4) and does not mention corporal punishment.
- 2.3 **Alternative care settings (lawful):** Corporal punishment in alternative care settings is lawful under the right of those with parental responsibility to punish the child in article 326 of the Family Code 1987. According to article 57 of the Child Protection Code 2009, discipline in public and private care institutions should be administered humanely but corporal punishment is not explicitly prohibited.
- 2.4 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under the right of those with parental responsibility to punish the child in article 326 of the Family Code 1987. According to article 57 of the Child Protection Code 2009, discipline in public and private care institutions should be administered humanely but corporal punishment is not explicitly prohibited.
- 2.5 **Schools (unlawful):** Corporal punishment is unlawful in schools under Ministerial decision No. MINEPSP/CABMIN/00100940/90 of 1 September 1990 establishing internal regulations for students, which does not include corporal punishment among permitted penalties. Article 57 of the Child Protection Code 2009 states that discipline in schools should be administered humanely, but it does not explicitly prohibit corporal punishment.
- 2.6 **Penal institutions (lawful):** Corporal punishment is lawful as a disciplinary measure in penal institutions. There are various prohibitions of ill-treatment of detainees, including in Decree-Law No. 017-2002 setting out the code of conduct for state officials, circular No. 04/008/JM/PHR/70 on intervention by judicial police officers (1970) and the Constitution 2006, and article 57 of the Child Protection Code 2009 states that discipline of children should be carried out humanely, but

there is no explicit prohibition of corporal punishment in law. Laws relating to prison are being reviewed.²

2.7 **Sentence for crime (unlawful):** Corporal punishment was prohibited as a sentence for crime in 1960. It is not among permitted sanctions in the Decree on juvenile delinquency 1950, the Criminal Code 1940 and the Child Protection Code 2009. The Congolese Charter of Human Rights states that “physical or mental torture and cruel, inhuman or degrading treatment, are prohibited” (art. 19).

3 Recommendations by human rights treaty bodies

3.1 **CRC:** The Committee on the Rights of the Child has on three occasions recommended that DR Congo took legal action to explicitly prohibit corporal punishment of children in all settings, in 2001, 2009 and 2017.³

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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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.

² 7 July 2014, A/HRC/27/5, Report of the working group

³ 9 July 2001, CRC/C/15/Add.153, Concluding observations on initial report, paras. 38 and 39; 10 February 2009, CRC/C/COD/CO/2, Concluding observations on second report, paras. 39 and 40; 28 February 2017, CRC/C/COD/CO/3-5, Concluding observations on third/fifth report, para. 24