

# Corporal punishment of children in Madagascar: Briefing for the Universal Periodic Review, 34<sup>th</sup> session, November 2019



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

*From the Global Initiative to End All Corporal Punishment of Children, March 2019*

**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 Madagascar, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture, the Human Rights Committee and the African Committee of Experts on the Rights and Welfare of the Child.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in Madagascar. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Madagascar draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home.**

## **1 Review of Madagascar in the 2<sup>nd</sup> cycle UPR (2014) and progress since**

- 1.1 Madagascar was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 20). Although the issue of corporal punishment of children was raised in the compilation of UN information<sup>1</sup> and in the summary of stakeholders' information,<sup>2</sup> no recommendation was made specifically on corporal punishment of children.
- 1.2 Since the review, there have been no changes on the legality of corporal punishment. The Government indicated in 2015 that the Criminal Code was under review to implement recommendations from treaty bodies and the Universal Periodic Review,<sup>3</sup> but we have no further information.
- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Madagascar. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Madagascar draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home.**

<sup>1</sup> 18 August 2014, A/HRC/WG.6/20/MDG/2, Compilation of UN information, para. 24

<sup>2</sup> 5 August 2014, A/HRC/WG.6/20/MDG/3, Summary of stakeholders' views, para. 21

<sup>3</sup> Examination of state party report to the ACERWC, June 2015

## 2 Legality of corporal punishment in Madagascar

### ***Summary of current law and reforms needed to achieve prohibition***

Corporal punishment in Madagascar 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.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. The Constitution 2010 states in its Preamble that the Convention on the Rights of the Child and other treaties are considered an integral part of Malagasy law, but domestic law has not been amended to prohibit corporal punishment in all settings. Article 8 states that “no one may be submitted to torture or to cruel, inhuman or degrading penalties or treatments” and article 17 protects the dignity of the person but these provisions are not interpreted as prohibiting all forms of corporal punishment.
- 2.2 Act No. 2007-023 on the Rights and Protection of the Child states that no child shall be subjected to any form of violence (art. 4, unofficial translation) and defines child abuse as “all forms of violence, injury or physical or moral abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual violence perpetrated against a child by his parents, legal representatives or any other person, and sanctions against children in the family, schools and community which impair their physical or moral integrity” (art. 67), but it does not explicitly prohibit all corporal punishment. Provisions against violence and abuse in the Criminal Code 1972 are not interpreted as prohibiting all corporal punishment in childrearing.
- 2.3 Under examination by the African Committee of Experts on the Rights of the Child in 2015, the Government reported that the Criminal Code is under review but indicated that this was with a view to limiting rather than fully prohibiting corporal punishment of children.<sup>4</sup> As of September 2017, the review to implement recommendations from treaty bodies and the Universal Periodic Review was still ongoing.<sup>5</sup> A National Policy on Child Protection is being developed.<sup>6</sup>
- 2.4 In September 2017, the Government stated that corporal punishment in the home was prohibited by a 2017 Law which “prohibits any form of mistreatment of children by individuals holding parental authority” (unofficial translation).<sup>7</sup> We are seeking to establish whether this refers to Law No. 2017-014 on adoption which allows for children to be placed into care when their safety, moral or physical integrity, health or education are compromised (art. 18) but does not prohibit corporal punishment in childrearing.
- 2.5 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings as for parents.
- 2.6 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children as for parents.

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<sup>4</sup> Examination of state party report to the ACERWC, June 2015

<sup>5</sup> 13 September 2017, CCPR/C/SR.3385, Summary records of 3385<sup>th</sup> meeting, para. 27

<sup>6</sup> [2018], CRC/C/MDG/5-6, Fifth/sixth report, para. 22

<sup>7</sup> 13 September 2017, CCPR/C/SR.3385, Summary records of 3385<sup>th</sup> meeting, para. 9

2.7 **Schools (?unlawful)**: Corporal punishment is reportedly unlawful in schools under Article 11 of Ministerial Decree No. 5246-96 MEN (1996)<sup>8</sup> and Memorandum n°234/MEN/SG of 4 April 2017.<sup>9</sup> We have yet to verify that prohibition is explicit. Act 2004-004 of 26 July 2004 on Free and Compulsory Primary Education does not address the issue.

2.8 **Penal institutions (lawful)**: There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. Discipline in prisons is regulated by Decree No. 2006-015 on the general organisation of the prison service. There is no provision for corporal punishment as a disciplinary measure but persons over 16 may be placed in isolation as a disciplinary measure (arts. 135 to 138). Article 13 of the Constitution 2010 prohibits “all physical brutality to apprehend a person or to keep them in detention” but it does not prohibit all corporal punishment. Law no. 2016-018 on the protection of children in conflict with the law protects children from torture and cruel, inhuman and degrading treatments (art. 6) but this is not interpreted as prohibiting all corporal punishment.

2.9 **Sentence for crime (unlawful)**: There is no provision for corporal punishment in the Criminal Code 1972, the Code of Criminal Procedure 1962 and Act No. 62-038 on the protection of children.

### 3 Recommendations by human rights treaty bodies

3.1 **CRC**: The Committee on the Rights of the Child has twice recommended prohibition of corporal punishment in Madagascar – following examination of the state party’s second report in 2003 and the third/fourth report in 2012.<sup>10</sup>

3.2 **CAT**: In 2011, the Committee Against Torture recommended prohibition of corporal punishment of children in Madagascar.<sup>11</sup>

3.3 **HRC**: In 2017, the Human Rights Committee recommended that Madagascar take practical measures, including enacting legislation, to end corporal punishment in all settings.<sup>12</sup>

3.4 **ACERWC**: The African Committee of Experts on the Rights and the Welfare of the Child recommended in 2015 that Madagascar bans corporal punishment of children in all settings.<sup>13</sup>

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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.*

<sup>8</sup> 3 November 2009, A/HRC/WG.6/7/MDG/1, National report submitted to the Universal Periodic Review

<sup>9</sup> [2018], CRC/C/MDG/5-6, Fifth/sixth report, para. 115

<sup>10</sup> 27 October 2003, CRC/C/15/Add.218, Concluding observations on second report, paras. 45 and 46; 8 March 2012, CRC/C/MDG/CO/3-4, Concluding observations on third/fourth report, paras. 37 and 38

<sup>11</sup> 21 December 2011, CAT/C/MDG/CO/1, Concluding observations on initial report, para. 13

<sup>12</sup> [July 2017], CCPR/C/MDG/CO/4, Concluding observations on fourth report, Advance unedited version, paras. 31 and 32

<sup>13</sup> [August 2015], ACERWC, Concluding observations on initial report, paras. 25 and 26