

Corporal punishment of children in Guinea-Bissau: Briefing for the Universal Periodic Review, 35th session, January 2020



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

From the Global Initiative to End All Corporal Punishment of Children, July 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 Guinea-Bissau, 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 Guinea-Bissau. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Guinea-Bissau draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.

Guinea-Bissau's commitment to prohibiting corporal punishment

Guinea-Bissau expressed its commitment to prohibiting all corporal punishment of children by accepting clearly the recommendation to do so made during the Universal Periodic Review of Guinea-Bissau in 2015.

Summary of necessary legal reform to achieve full prohibition

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

The “right of correction” of children has reportedly been removed from the Civil Code (information unconfirmed). But the near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that no degree of corporal punishment is acceptable or lawful. All legal defences should be repealed and prohibition of all corporal punishment should be enacted in relation to parents and all those with parental authority.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Legislation should prohibit corporal punishment in all education settings, public and private.

Penal institutions – Prohibition should be enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. According to the Government, the provision in the Civil Code 1966 for parents to “moderately correct their child in the latter’s mistakes” was repealed.¹ Article 1884 of the 2006 edition of the Civil Code still provided for this (unofficial translation): “(1) Both parents have the power to moderately correct their minor children in their failures; (2) If the child is disobedient, has had bad behaviour or is undisciplined, both parents can require the Court to apply the necessary measures, established by special legislation.” We are seeking to ascertain if this provision has been repealed from more recent editions of the Code.

There is no explicit prohibition of corporal punishment and provisions against violence and abuse in the Penal Code 1993 are not interpreted as prohibiting corporal punishment of children. The Law Against Domestic Violence 2014 defines domestic violence as all actions and omissions of a criminal nature that, repeatedly or not, cause suffering/pain; it defines physical violence as all acts or

¹ 2 December 2011, CRC/C/GNB/2-4, Second-fourth state party report to the Committee on the Rights of the Child, paras. 153 and 154

omissions that cause injury to the victim's physical integrity. The Law does not prohibit all corporal punishment.²

There is an ongoing process of laws being harmonised with the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The Government has stated its intention to submit a bill to parliament prohibiting corporal punishment,³ and drafting of a comprehensive Code on the Protection of Children is planned. The Government confirmed its commitment to prohibiting corporal punishment in all settings in clearly accepting the recommendation to do so made during the Universal Periodic Review of Guinea-Bissau in 2015.⁴

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings: it is lawful as for parents.

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children.

Schools

In 2002, the Government informed the Committee on the Rights of the Child that corporal punishment is prohibited in schools but gave no details of legislation.⁵ We have been unable to verify this assertion. The Law on the Education System 2010 is silent on the issue.

Penal institutions

Corporal punishment is reportedly prohibited as a disciplinary measure in penal institutions, but we have been unable to confirm this.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. The Constitution prohibits torture and other cruel, inhuman and degrading punishment (art. 37), and there is no provision for judicial punishment in the Penal Code 1993.

² Madeira, L. F. (2015), *Guinea-Bissau: Analysis on Corporal Punishment of Children*, prepared for the Global Initiative

³ 13 June 2013, CRC/C/SR.1804, Summary record of 1804th meeting

⁴ 13 April 2015, A/HRC/29/12, Report of the working group, para. 96(74); 24 June 2015, A/HRC/29/12/Add.1, Report of the working group: Addendum, para. 96(74)

⁵ 28 May 2002, CRC/C/SR.781, Summary record of 781st meeting, para. 28

Universal Periodic Review of Guinea-Bissau's human rights record

Guinea-Bissau was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁶

“Reaffirm its commitments to international human rights instruments through their transposition or integration into its national legislation, and intensify its efforts to submit its overdue reports to the treaty bodies (Spain);

“Amend and/or adopt and implement legislation providing for the full application of the juvenile justice infrastructure and system, in accordance with the provisions of CRC and other international standards (Germany);

“Ensure that the provisions of all international human rights treaties, once ratified, are incorporated into domestic law (Netherlands);

“Consider reviewing strategies aimed at the protection of children, with a view to developing a comprehensive plan for the care of children, and to aligning them with the provisions of CRC and all applicable international human rights instruments to which Guinea-Bissau is party (South Africa);

“Adopt and duly implement all measures necessary to prevent torture and other inhuman or degrading treatment, and ensure due accountability for perpetrators of such human rights violations (Slovakia)”

The second cycle review took place in 2015 (session 21). During the review, the following recommendation was made:⁷

“Explicitly prohibit corporal punishment of children in all settings (Slovenia)”

The Government accepted the recommendation.⁸

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child has twice expressed concern at corporal punishment in the family and other settings in Guinea-Bissau and has recommended prohibition and other measures – in its concluding observations on the state party's initial report in 2002⁹ and on the second to fourth report in 2013.¹⁰

Prevalence/attitudinal research in the last ten years

Research conducted in 2014 as part of UNICEF's Multiple Indicator Cluster Surveys (MICS) programme, found on average 82% of 1-14 year-old children experienced some form of violent discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 66% of children experienced psychological aggression, 72% physical punishment and 18% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Physical punishment of children was less common in the south province (55%) than the rest of the country

⁶ 16 June 2010, A/HRC/15/10, Report of the working group, paras. 65(14), 65(15), 65(16), 65(26) and 65(81)

⁷ 6 February 2015, A/HRC/WG.6/21/L.9, Draft report of the working group, para. 96(74)

⁸ 24 June 2015, A/HRC/29/12/Add.1, Report of the working group: Addendum, para. 96(74)

⁹ 13 June 2002, CRC/C/15/Add.177, Concluding observations on initial report, paras. 4, 30 and 31

¹⁰ 8 July 2013, CRC/C/GNB/CO/2-4, Concluding observations on second-fourth report, paras. 36, 37, 62 and 63

(74%), and less common for children aged 1-2 (60%) than those aged 3-9 (76%) or 10-14 (70%). Only 12% of children experienced only non-violent forms of discipline.

(Ministério da Economia e Finanças & Direcção Geral do Plano/Instituto Nacional de Estatística (INE) (2016), *Inquérito aos Indicadores Múltiplos (MICS5) 2014, Relatório Final*, Bissau, Guiné-Bissau: Ministério da Economia e Finanças & Direcção Geral do Plano/ Instituto Nacional de Estatística (INE))