

Corporal punishment of children in Haiti: Briefing for the Universal Periodic Review, 40th session, 2022

From the Global Partnership to End Violence Against Children, July 2021



This submission provides an update on the legality of corporal punishment of children in Haiti since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be fully achieved in the home. Prohibition in alternative care settings and day care requires confirmation.

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 Haiti, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities.

We hope the Working Group will note with concern the legality of corporal punishment of children in Haiti. We hope states will raise the issue during the review in 2022 and make a specific recommendation that Haiti enact a legislation 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 Haiti in the 2nd cycle UPR (2016) and progress since

- 1.1 Haiti was reviewed in the second cycle of the Universal Periodic Review in 2016 (session 26). No recommendations were made specifically concerning corporal punishment of children. However, the Government accepted recommendations to adopt a Child Protection Code.¹
- 1.2 Since the review, no progress was made to enact a legislation to explicitly prohibit corporal punishment of children in all settings. In 2019, the Government reported that a draft Criminal Code which would reportedly criminalise “torture and cruel, inhuman or degrading treatment”² was under consideration in the Parliament.³

¹ 16 November 2016, A/HRC/WG.6/26/L.10, Draft report of the Working Group, paras. 115(28) and 115(29)

² 25 August 2016, A/HRC/WG.6/26/HTI/1, National report to the UPR, para. 16

³ 24 April 2019, CCPR/C/HTI/2, Second report, para. 33

- 1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Haiti. We hope states will raise the issue during the review in 2022 and make a specific recommendation that Haiti enact a legislation 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 Haiti

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Haiti is lawful in the home. Prohibition in alternative care settings and day care requires confirmation. We have not identified confirmation of a “right” of parents to punish/discipline children in criminal or civil law, but there appears to be some confusion as to whether the 2001 law prohibiting corporal punishment is applicable within the family home. The near universal acceptance of violence in childrearing necessitates clarity in law that all corporal punishment is prohibited, however light, including in the family home. Explicit prohibition of corporal punishment by parents should be enacted.

2.1 **Home (lawful):** It is unclear whether or not corporal punishment is lawful in the home. Articles 1 and 2 of the Law Against Corporal Punishment of Children 2001 state (unofficial translation): “(1) The inhuman treatment of any nature comprising corporal punishment of a child is forbidden. (2) Inhuman treatment is defined by any action that causes a bodily or emotional shock to a child, such as hitting or pushing, or inflicting any punishment that causes damage to the child, using or without the intermediary of an object, weapon or abusive physical force.” But the remainder of the law appears to apply to organisations, schools and other institutions. There is some legal opinion that the prohibition does apply to parental corporal punishment, but there is uncertainty among NGOs and we have been unable to identify any associated public education and awareness raising campaigns. The Act of 7 May 2003 on the prohibition and elimination of all forms of abuse, violence, ill-treatment or inhumane treatment against children is silent on the issue of corporal punishment.

2.2 The Constitution 1987 states that every child “is entitled to love, affection, understanding and moral and physical care from its father and mother” (art. 261) and that a Family Code “should be developed to ensure the protection and rights of the family” (art. 262) (unofficial translation). However, no Family Code has been adopted and the Government rejected recommendations to adopt a Code on Children made during the Universal Periodic Review of Haiti in 2012 on the grounds that this “depended on the elaboration of a family code”.⁴ A Family Code Bill, a Bill on violence against women and girls and a draft new Criminal Code are under discussion and a new Children’s Code is being drafted. As at September 2014, the draft Children’s Code would explicitly prohibit corporal punishment in the home and other settings (art. 56, unofficial translation): “Subjecting a child to corporal punishment or humiliating or degrading treatment at home, at school, on the street or in other institutions is prohibited....” The Code was approved by Cabinet

⁴ 24 May 2013, A/HRC/19/2, Report of the Human Rights Council on its nineteenth session, para. 879

and tabled in Parliament;⁵ as at December 2015 no further progress had been made.⁶ The Child Protection Bill under discussion in May 2015 did not include prohibition.⁷ The Bill on violence against women and girls was originally expected to be passed in 2016,⁸ but the Government reported in August 2017 that preparations were being made for the submission to Parliament of the draft bill.⁹ The draft Criminal Code was submitted to the Ministry of Justice in May 2016 for validation and would reportedly criminalise “torture and cruel, inhuman or degrading treatment”.¹⁰ The Government reported in 2019 that it was under consideration in the Parliament.¹¹

In September 2014, in response to a question by the Human Rights Committee as to whether corporal punishment is prohibited in all settings, including the family, the Government stated that corporal punishment “is prohibited and is punishable under the Act of 10 September 2001” but made no reference to the draft Children’s Code in this respect.¹²

2.3 *Alternative care settings (lawful)*: Corporal punishment is prohibited in alternative care settings such as institutions, orphanages, children’s homes and places of safety under the Law Against Corporal Punishment of Children 2001 (see under “Home”). We have yet to confirm that the prohibition applies to foster care. The Act on the Prohibition and Elimination of All Forms of Abuse, Violence, Abuse or Degrading Treatment Against Children 2003 states that a child entrusted to a foster family should be treated as a member of the family (art. 3): the Act prohibits “abuses and violence of all kinds” (art. 2) but does not explicitly prohibit corporal punishment.

2.4 *Day care (lawful)*: Corporal punishment is prohibited in formal early childhood care such as nurseries, kindergartens, preschools and children’s centres and in formal day care for older children such as day centres under the Law Against Corporal Punishment of Children 2001 (see under “Home”), but we have yet to confirm that the prohibition also applies to day care such as crèches, after-school childcare and childminding.

2.5 *Schools (unlawful)*: Corporal punishment is prohibited under the Law Against Corporal Punishment of Children 2001 (see under “Home”).

2.6 *Penal institutions (unlawful)*: Corporal punishment is prohibited as a disciplinary measure in penal institutions under the Law Against Corporal Punishment of Children 2001 (see under “Home”). Article 25 of the Constitution 1987 prohibits the use of unnecessary force, psychological pressure and physical brutality on a person being detained.

2.7 *Sentence for crime (unlawful)*: Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Penal Code.

⁵ Information provided by Save the Children in correspondence with the Global Initiative, 11 September 2014

⁶ Information provided by Save the Children in correspondence with the Global Initiative, 11 December 2015

⁷ <http://www.senat.fr/leg/pp13-799.html>, accessed 7 May 2015

⁸ 18 March 2016, CEDAW/C/SR.1394, Summary record of 1394th meeting, para. 5

⁹ 23 November 2017, CRPD/C/HTI/Q/1/Add.1, Reply to list of issues, para. 36

¹⁰ 25 August 2016, A/HRC/WG.6/26/HTI/1, National report to the UPR, para. 16

¹¹ 24 April 2019, CCPR/C/HTI/2, Second report, para. 33

¹² 12 September 2014, CCPR/C/HTI/Q/1/Add.1, Reply to list of issues, para. 63

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** In its concluding observations on the state party's initial report in 2003,¹³ the Committee on the Rights of the Child incorrectly welcomed prohibition of corporal punishment in the family and recommended that the Government take all necessary measures for the effective implementation of the law prohibiting corporal punishment. In its concluding observations on the state party's second-third report in 2016,¹⁴ the Committee expressed concern at corporal punishment of children in Haiti and recommended it be explicitly prohibited in all settings.
- 3.2 **CRPD:** In its 2018 concluding observations on the state party's initial report, the Committee on the Rights of Persons with Disabilities expressed concern at corporal punishment of children and recommended the Government enact legislation to explicitly and clearly prohibit corporal punishment in all settings.¹⁵

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¹³ 18 March 2003, CRC/C/15/Add.202, Concluding observations on initial report, paras. 3, 36 and 37

¹⁴ 29 January 2016, CRC/C/HTI/CO/2-3 Advance Unedited Version, Concluding observations on second/third report, paras. 32 and 33

¹⁵ 28 February 2018, CRPD/C/HTI/CO/1 Advance unedited version, Concluding observations on initial report, paras. 12 and 13