



Global Initiative to
**End All Corporal Punishment
of Children**

MADAGASCAR – COUNTRY REPORT

Child population: 9,759,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, penal institutions, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

??? – We have been unable to establish whether or not legislation confirms a right of parents and others to punish or correct a child, but legal provisions against violence and abuse are not interpreted as prohibiting corporal punishment of children. 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 All legal defences should be repealed and explicit prohibition of all corporal punishment should be enacted in relation to parents and all those with parental authority.

Other legislative measures necessary

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

Alternative care settings – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc. Laws authorising or regulating corporal punishment of children in any of these settings should be repealed.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is lawful in the home. The Constitution (2007) incorporates the Convention on the Rights of the Child into national law but it appears that domestic law has not been amended to prohibit corporal punishment in all settings. In 2007, a new child protection law was adopted, Act No. 2007-023 on the rights and protection of the child. We have been unable to examine the full text of the Act but to our knowledge it does not prohibit all corporal punishment of children. We have yet to establish whether Act No. 62-038 on the protection of children (1962) has been repealed. Provisions against violence and abuse in the Criminal Code (1972) and the Constitution are not interpreted as prohibiting all corporal punishment in childrearing.

Schools

Corporal punishment is unlawful in schools under Article 11 of Ministerial Decree No. 5246-96 MEN (1996).

Penal system

Corporal punishment is unlawful as a **sentence for crime**. There is no provision for it in the Criminal Code, the Code of Criminal Procedure (1962) and Act No. 62-038 on the protection of children.

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 (articles 135 to 138). As at October 2011, a Bill on the protection of children in conflict with the law was under discussion but we have no details of its proposed provisions.

Alternative care

Corporal punishment is lawful in alternative care settings.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 February 2012, CRC/C/MDG/C0/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 37 and 38)

“The Committee notes that although corporal punishment is prohibited in schools, it remains lawful in the home and in alternative care settings. The Committee regrets that the State party report provides limited information on corporal punishment.

“Taking due note of the Committee’s General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee recommends that the State party:

- a) consider enacting legislation to explicitly prohibit corporal punishment of children in all settings, including within the family and in alternative care settings;
- b) ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are systematically initiated against those responsible of violence against children; and
- c) introduce public education, awareness-raising and social mobilization campaigns on the harmful effects of corporal punishment with a view to changing the general attitude towards this practice and promote positive, non-violent, participatory forms of child-rearing and education as alternative forms of discipline.”

Committee on the Rights of the Child

(27 October 2003, CRC/C/15/Add.218, Concluding observations on second report, paras. 45 and 46)

“While noting that child abuse is prohibited under the Criminal Code as amended by Act No. 98-024 of 25 January 1999, the Committee is concerned at the incidence of abuse, including sexual abuse, violence against and neglect of children in the State party; that corporal punishment is not prohibited under law; and that insufficient efforts have been made to protect children....

“The Committee recommends that the State party:

- b) take all necessary steps to introduce the legal prohibition of corporal punishment in schools and other institutions and at home, and train teachers in the use of alternative measures of discipline....”

Committee Against Torture

(21 December 2011, CAT/C/MDG/CO/1, Concluding observations on initial report, para. 13)

“The Committee is concerned about information indicating that there is a large number of cases of early and forced marriages and of ill-treatment and domestic violence. It is also concerned about the fact that complaints are not lodged due to social and family pressure, despite the existence of Act No. 2000-21, which criminalizes domestic violence and sexual abuse (arts. 2, 12, 13 and 16)....

The Committee encourages the State party to pass a law to prevent and punish marital rape and prohibit corporal punishment of children. It invites the State party to ensure that methods for detecting violence against women and children are included in the training of law enforcement officers.”

Universal Periodic Review

Madagascar was examined in the first cycle of the Universal Periodic Review in 2010. No recommendations were made concerning corporal punishment of children. Examination in the second cycle is scheduled for 2014.

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