

# Corporal punishment of children in Burkina Faso

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Child population 9,475,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Summary of necessary legal reform to achieve full prohibition

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

A “right of correction” of parents is recognised, though it appears not to be confirmed in written legislation, and legal provisions against violence are not interpreted as prohibiting all corporal punishment in childrearing. The near universal acceptance of corporal punishment in “disciplining” children necessitates a clear statement in law that all corporal punishment, however “light”, is prohibited.

*Alternative care settings* – Corporal punishment should be prohibited in 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, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

*Schools* – Corporal punishment should be prohibited in all schools, public and private, for children of all ages.

*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. The Government has confirmed that the law recognises a “right to correction of parents towards their children” (“le droit de correction des parents à l’égard de leurs enfants”),<sup>1</sup> though it would appear that this “right” is not explicitly confirmed in criminal or civil law (information unconfirmed). Provisions against violence and abuse in the Children’s Code 2006 (a compilation of laws relating to children), the Criminal Code 2018, and in the Law on Violence Against Women and Girls 2015 are not interpreted as prohibiting corporal punishment in childrearing.

In May 2014, the National Assembly passed the Law on Protection of Children in Conflict with the Law or in Danger 2014.<sup>2</sup> The provisions in the Law apply to all children (art. 1), defined as person under 18 (art. 2). Article 5 states (unofficial translation): “Notwithstanding the rules relating to the exercise of parental authority, the child has the right to protection of the law against arbitrary or unlawful interference with his privacy, family, home or correspondence, and against all unlawful attacks on his honour and reputation.” Article 7 states: “The child must be protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.” The Law does not prohibit corporal punishment.

During the Universal Periodic Review of Burkina Faso in 2013, the Government had repeatedly asserted that corporal punishment is prohibited in all settings, including the home,<sup>3</sup> contradicting the information provided to the African Committee in 2012 (see above). The Government then accepted the recommendation made during the review to implement legislation against corporal punishment but rejected the recommendation to prohibit it in all settings.<sup>4</sup>

A draft Child Protection Code which would prohibit corporal punishment in all settings has been under discussions since 2013. It states in article 220 (unofficial translation): “Physical punishment at home, at school, in the street or in other institutions is prohibited with respect to the child. Corporal punishment means any physical punishment inflicted on children by parents, teachers or others, by means of blows or injuries, mutilation, imprisonment, marking, shaving hair or other violent, humiliating and degrading ways.” Articles 221 and 222 provide sanctions for perpetrators of corporal punishment. The text underwent a technical validation process in November 2016. National consultations initiated during the drafting of the Code have been put on hold pending the review of related laws, including the Criminal Code and the Code on the Person and the Family (which has been ongoing since 2012).<sup>5</sup> The Government reported in 2017 that the Constitution was under review and that the review of the Code on the Person and the Family was still ongoing.<sup>6</sup> The Criminal Code adopted in May 2018 did not explicitly prohibit corporal punishment of children. As at August 2019 the draft Child Protection Code had not yet been validated by the Government for introduction to the

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<sup>1</sup> Second/third state party report to the African Committee of Experts on the Rights and Welfare of the Child, 2012, para. 68

<sup>2</sup> Loi No. 015-2014/AN portant protection de l’enfant en conflit avec la loi ou en danger

<sup>3</sup> 8 July 2013, A/HRC/24/4, Report of the working group, paras. 18 and 66

<sup>4</sup> 8 July 2013, A/HRC/24/4, Report of the working group, paras. 135(106) and 138(6)

<sup>5</sup> 2 March 2018, A/HRC/WG.6/30/BFA/1, National report to the UPR, para. 79

<sup>6</sup> 16 June 2017, CEDAW/C/BFA/Q/7/Add.1, Reply to list of issues, paras. 1 and 75

Parliament,<sup>7</sup> though the Government did accept 2018 UPR recommendations to adopt the Child Protection Code.<sup>8</sup>

In 2017 in response to a recommendation to explicitly prohibit corporal punishment in legislation, the Government declared that domestic legislation prohibited all violence against children and that awareness-raising sessions were being held on the harmfulness of corporal punishment.<sup>9</sup> During the Universal Periodic Review in 2018, Burkina Faso noted without comments a recommendation to prohibit corporal punishment in all settings.<sup>10</sup> Consequently, the Global Initiative no longer considers Burkina Faso committed to prohibiting all corporal punishment of children without delay. Despite including an explicit prohibition of corporal punishment in the Child Protection Code drafted in 2013, the Government has not taken any clear action since then to indicate that it intends to pursue law reform.

In November 2019, Burkina Faso became a Pathfinder country with the Global Partnership to End Violence Against Children. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals.

### **Alternative care settings**

There is no prohibition of corporal punishment in alternative care settings, where it is lawful as for parents (see under “Home”). It would be prohibited in the Child Protection Bill (see under “Home”).

### **Day care**

Corporal punishment is prohibited in preschool education settings under Decree No. 2008-236/PRES/PM/MEBA/MESSRS/MASSN/MATD (see under “Schools”) but there is no explicit prohibition in other early childhood care or in day care for older children. It would be prohibited in the Child Protection Bill (see under “Home”).

### **Schools**

Corporal punishment is unlawful in primary schools but lawful in other schools. It is explicitly prohibited in primary schools in Decree No. 2008-236/PRES/PM/MEBA/MESSRS/MASSN/MATD of 8 May 2008 on the organisation of primary education, article 66 of which states: “Corporal punishment is expressly prohibited in schools under penalty of disciplinary action, without prejudice to criminal penalties in accordance with applicable laws.” However, there is no law explicitly prohibiting corporal punishment at secondary level. Act No. 013-2007/AN of 30 July 2007 on Education Policy prohibits all forms of violence (art. 47), but it does not explicitly prohibit corporal punishment.

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<sup>7</sup> Information provided to the Global Initiative, August 2019

<sup>8</sup> 6 July 2018, A/HRC/39/4, Report of the Working Group, para. 125(146)

<sup>9</sup> [December 2017], CAT/C/BFA/2, Second report, paras. 109 and 110

<sup>10</sup> 6 July 2018, A/HRC/39/4, Report of the Working Group, para. 126(30); 11 September 2018, A/HRC/39/4/Add.1 Advance unedited version, Report of the Working Group: Addendum

## **Penal institutions**

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions under Law No. 010-2017 on the penitentiary regime in Burkina Faso, although there is no explicit prohibition. Article 23 of the law states that all inmates must be treated with respect to their human dignity and article 24 prohibits all forms of torture and cruel, inhuman and degrading treatment. According to its article 151, regulations are to be adopted to specify disciplinary rules in penal institutions – as of November 2017, the regulations were still under discussions.<sup>11</sup>

Law No 010-2017 repealed Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organisation, rules and regulations of detention facilities, which did not include corporal punishment among the disciplinary measures that may be imposed on juveniles but allowed for the use of force by prison staff in certain circumstances, including “in case of physical apathy following orders” (unofficial translation). Corporal punishment in penal institutions would be prohibited in the Child Protection Bill (see under “Home”).

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Law on Protection of Children in Conflict with the Law or in Danger 2014 or the Criminal Code. Article 2 of the Constitution 1991 prohibits inhuman, cruel, degrading and humiliating treatment, and physical or mental torture.

## **Universal Periodic Review of Burkina Faso’s human rights record**

Burkina Faso was examined in the first cycle of the Universal Periodic Review in 2008 (session 3). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:<sup>12</sup>

“Submit regularly reports to treaty bodies (Gabon), take further steps to present periodic reports to the treaty bodies and implement the recommendations in a timely fashion (United Kingdom);

“Effectively implement the international instruments ratified that focus on the protection of the child and children’s rights (Italy); make further efforts to ensure that the social services provided for children remain a priority (Djibouti) and take appropriate measures to protect the most vulnerable children, particularly girls, disabled children and rural children, and ensure effective protection of children against sexual abuse, all forms of violence and exploitation, trafficking and child labour (Luxembourg)”

The second cycle review took place in 2013 (session 16). During the review, the Government stated that corporal punishment is prohibited in the home and other settings.<sup>13</sup> The following recommendations were made:<sup>14</sup>

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<sup>11</sup> See <http://dggsp.justice.gov.bf/atelier-de-validation-des-textes-dapplication-de-la-loi-10/#more-813>, accessed 5 March 2018

<sup>12</sup> 7 January 2009, A/HRC/10/80, Report of the working group, paras. 98(5) and 98(15)

<sup>13</sup> 8 July 2013, A/HRC/24/4, Report of the working group, paras. 18 and 66

<sup>14</sup> 8 July 2013, A/HRC/24/4, Report of the working group, paras. 135(106) and 138(6)

“Ensure implementation of the laws against corporal punishment by encouraging the report of cases and by providing the means for effective investigation and prosecution of perpetrators (Liechtenstein);

“Explicitly prohibit corporal punishment in all settings, including the home and all care settings (Liechtenstein)”

The Government accepted the first of these, regarding implementation of existing laws, but rejected the recommendation to prohibit corporal punishment in all settings.

Third cycle examination took place in 2018 (session 30). Burkina Faso’s national report stated that “in an effort to combat the practice of subjecting children to corporal punishment, awareness-raising sessions on the harmful effects of such punishment are conducted for customary and religious leaders, civil society organizations and persons involved in the criminal justice system. In addition, the State has introduced a hotline (116) that people can use to report cases of child abuse.”<sup>15</sup>

The following recommendations were extended:<sup>16</sup>

“Finalize the review of the necessary legislation and complete the drafting and adoption of the Child Protection Code (Uganda)”

“Ensure that the capacity of the National Council of Children is strengthened in order to intensify efforts aimed at combatting trafficking of children, protecting children from sexual abuse, corporal punishment and the worst forms of child labour as well as to end early and forced marriages (Namibia)”

“Revise current legislation in order to explicitly prohibit a corporal punishment of children in all settings, including at home (Montenegro)”

Burkina Faso immediately supported the first two recommendations. The final recommendation was later noted without comments.<sup>17</sup>

The Government committed to submitting its mid-term report by 31 May 2020.<sup>18</sup>

## **Recommendations by human rights treaty bodies**

### ***Committee on the Rights of the Child***

(9 February 2010, CRC/C/BFA/CO/3-4, Concluding observations on third/fourth report, paras. 40 and 41)

“The Committee, while welcoming the circular sent by the Education Ministry to schools stressing the adverse consequences of corporal punishment, as well as the creation of a National Council against Violence in Education areas, notes with great concern that children are commonly beaten, whipped, insulted and humiliated by their teachers. The Committee also notes with concern that in spite of existing laws, corporal punishment continues to be widely practiced in alternate care settings, in situations of employment and in the home, where it remains lawful.

“The Committee urges the State party to take all the necessary measures to eradicate corporal punishment, and in particular:

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<sup>15</sup> 2 March 2018, A/HRC/WG.6/30/BFA/1, National report to the UPR, para. 107

<sup>16</sup> 6 July 2018, A/HRC/39/4, Report of the Working Group, paras. 125(146), 125(149) and 126(30)

<sup>17</sup> 11 September 2018, A/HRC/39/4/Add.1 Advance unedited version, Report of the Working Group: Addendum

<sup>18</sup> 6 July 2018, A/HRC/39/4, Report of the Working Group, para. 129

- a) explicitly prohibit corporal punishment by law in the family and all situations of child-rearing, and ensure that those laws are effectively implemented and that legal proceedings are systematically initiated against those responsible for mistreating children;
- b) conduct a comprehensive study to assess the causes, nature and extent of corporal punishment;
- 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;
- d) ensure that an educational programme is undertaken against corporal punishment, insisting both on the child rights and psychological aspects;
- e) take into account its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)."

### ***Committee on the Rights of the Child***

(9 October 2002, CRC/C/15/Add.193, Concluding observations on second report, paras. 36, 37 and 51)

"While noting that child abuse is prohibited under the Penal Code, the Committee is concerned at the incidence of abuse, including sexual abuse, and neglect of children in the State party, and that insufficient efforts have been made to protect children....

"The Committee recommends that the State party:

- a) undertake a study on violence, including sexual violence, against children within the family, at schools and in other institutions in order to assess the scope, nature and causes of this practice with a view to adopting and implementing a comprehensive plan of action and effective measures and policies, in conformity with article 19 of the Convention, and to changing attitudes;
- b) take all necessary steps to introduce the legal prohibition of the use of corporal punishment in schools and other institutions and at home....

"The Committee recommends that the State party:

- k) implement the ban on corporal punishment in schools and train teachers in the use of alternative measures of discipline..."

### ***Committee Against Torture***

(2 January 2014, CAT/C/BFA/CO/1, Concluding observations on initial report, para. 22)

" ... The Committee also remains concerned by reports that children continue to be subjected to corporal punishment in the home (arts. 2, 12 and 16).

The State party should: ...

- c) conduct campaigns to raise awareness of the harmful effects of corporal punishment on children; and
- d) revise its legislation to include a prohibition on corporal punishment in the home."

## ***African Committee of Experts on the Rights and Welfare of the Child***

(Concluding observations on the initial report of Burkina Faso, 2010, in French only)

“Le Comité retient qu’il existe encore quelques résistances sur l’abandon des châtiments corporels et recommande à l’État partie de renforcer les mesures prises pour éradiquer ce phénomène surtout au niveau des établissements scolaires.”

## **Prevalence/attitudinal research in the last ten years**

A study by the African Child Policy Forum in Burkina Faso, Cameroon, Democratic Republic of the Congo, Nigeria and Senegal found that hitting, beating and forced hard work were the most prevalent forms of violence against girls, and that most of the physical violence experienced by girls was corporal punishment. The study involved a survey of 3,025 young women (nearly 600 per country) aged 18-24 about the violence they had experienced in their childhood. In Burkina Faso, 91% had been hit during their childhood, 88% beaten, 51% kicked, 51% denied food, 27% choked or burned and 43% forced to do hard work. Parents and close relatives were the most common perpetrators of physical violence.

(The African Child Policy Forum (2010), *Childhood Scars in Africa: A Retrospective Study on Violence Against Girls in Burkina Faso, Cameroon, Democratic Republic of the Congo, Nigeria and Senegal*, Addis Ababa: The African Child Policy Forum)