

Corporal punishment of children in Burundi

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Child population 5,685,000 (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, penal institutions and possibly schools.

There is no confirmation in legislation of a “right” of parents to punish their children, but legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing. The near universal social acceptance of corporal punishment in disciplining/correcting children necessitates clarity in law that no degree or kind of such punishment is acceptable or lawful. Prohibition should be enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

Alternative care settings – The law should prohibit corporal punishment in all alternative care settings (formal foster care, institutions, orphanages, children’s homes, places of safety, emergency care, etc).

Day care – Legislation should prohibit corporal punishment in all formal early childhood care (nurseries, crèches, family centres, etc) and all formal day care for older children (after-school childcare, childminding, day centres, etc).

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

Penal institutions – Prohibition of corporal punishment should be enacted in legislation relating to disciplinary measures in all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Articles 512-525 of the Penal Code 2009¹ punish crimes against children but corporal punishment is not included. The Code punishes domestic violence, including “whoever submits his spouse, child or other person living in the same household to cruel, inhuman or degrading treatment” (art. 535), but this is not interpreted as prohibiting all corporal punishment in childrearing. Parental authority is regulated in the Code on the Person and the Family 1993: it is silent on the issue of child discipline. The Code of Persons and of the Family was under revision in 2016;² we have no further information.

The Convention on the Rights of the Child has been incorporated into national legislation through article 19 of the Constitution 2005, which states: “The rights and duties proclaimed and guaranteed, inter alia, by the Universal Declaration of Human Rights, the International Covenants on human rights and the rights of peoples, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi. These fundamental rights may not be the subject of any restriction or derogation, except in certain circumstances justifiable by the general interest of the protection of a fundamental right.” Article 21 of the Constitution provides for respect for human dignity: “Human dignity is respected and protected. Any violation of human dignity is punishable under the Criminal Code.” Article 25 protects physical integrity: “Every woman and man has the right to life, security of person and physical integrity. No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment.” Article 44 protects children from “ill-treatment, abuse or exploitation”. In reporting to the Universal Periodic Review in 2012, the Government implied that corporal punishment is prohibited in all settings, including in families.³ However, there is no explicit prohibition of corporal punishment in domestic legislation.

Drafting of a Code of Child Protection has been under way since 2010 and is still under discussion. In November 2014 the draft was undergoing technical validation and did not include prohibition of corporal punishment. Reporting to the Committee on the Elimination of Discrimination Against Women in 2016, the Government stated that a Code on Children’s Rights was being prepared – it seems this referred to the same text.⁴ In February 2017 the draft Code of Child Protection did not include prohibition; however during a Government-organised workshop on its drafting, it was suggested to include a provision prohibiting corporal punishment. This provision now needs to be validated for inclusion by the Government, before the finalised draft is presented to the National Assembly. As of November 2018, the Code was still being discussed.⁵

¹ Law No. 1/05 of 22 April 2009, on the revision of the Penal Code (Loi N°1 / 05 du 22 avril 2009 portant révision du Code pénal)

² 30 June 2016, CEDAW/C/BDI/Q/5-6/Add.1, Reply to the list of issues on fifth/sixth report, para. 51

³ 21 November 2012, A/HRC/WG.15/BDI/1, National report to the UPR, para. 82

⁴ 30 June 2016, CEDAW/C/BDI/Q/5-6/Add.1, Reply to the list of issues on fifth/sixth report, para. 71

⁵ November 2018, information provided to the Global Initiative; see also [August 2017], Initial report to the African Committee of Experts on the Rights and Welfare of the Child, para. 10(9)

Alternative care settings

There is no explicit prohibition of corporal punishment, which is lawful as for parents (see under “Home”).

Day care

Corporal punishment is lawful as for parents (see under “Home”).

Schools

Corporal punishment is reportedly prohibited in schools in regulations.⁶ We have yet to verify this information.

Penal institutions

There is no explicit prohibition of corporal punishment. The new Code of Criminal Procedure promulgated in 2013⁷ did not address the issue.

Sentence for crime

There is no provision for judicial corporal punishment in the Penal Code 2009 and the Code of Criminal Procedure 2013.

Universal Periodic Review of Burundi’s human rights record

Burundi was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). No specific recommendation on corporal punishment was made. However, the following recommendations were made, and were accepted by Burundi:⁸

“Continue its efforts for the promotion and protection of human rights with the support of the international community, at the bilateral and multilateral levels (Rwanda);

“Fully promote the protection of human rights in the country (Nigeria)”

The second cycle review took place in 2013 (session 15). In its national report, the Government stated that awareness raising campaigns “on the prohibition of corporal punishment” are regularly targeted at families, children’s institutions and prisons, that corporal punishment is prohibited in school regulations and that the Criminal Code 2009 “pays particular attention to the protection of children”.⁹ However, despite information provided to the UPR – by the Community Association for the Promotion and Protection of Human Rights, ACPDH, and the Global Initiative to End All Corporal

⁶ 1 September 2010, CRC/C/BDI/Q/2/Add.1, Reply to list of issues; 23 September 2014, CCPR/C/BDI/Q/2/Add.1, Reply to list of issues, para. 49; [August 2017], Initial report to the African Committee of Experts on the Rights and Welfare of the Child, para. 82

⁷ 23 September 2014, CCPR/C/BDI/Q/2/Add.1, Reply to list of issues, para. 49, para. 50

⁸ 8 January 2009, A/HRC/10/71, Report of the working group, paras. 80(40) and 80(41)

⁹ 21 November 2012, A/HRC/WG.6/15/BDI/1, National report to the UPR, para. 82

Punishment of Children – that there is no explicit prohibition of corporal punishment, no specific recommendations on the issue were made during the review.

Third cycle examination took place in 2018 (session 29). The following recommendation was made:¹⁰

“Take legislative measures to put an end to corporal punishment in all settings (Zambia)”

The Government accepted the recommendation, stating generally that supported recommendations were (unofficial translation) “of priority national interest and Burundi would take all measures needed to implement them”.¹¹

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(19 October 2010, CRC/C/BDI/CO/2, Concluding observations on second report, paras. 39 and 40)

“The Committee notes with interest that the new Penal Code of 2009 has increased penalties for cruel, inhuman and degrading treatment against children. However, the Committee is concerned that corporal punishment continues to be practiced in some schools and that domestic legislation does not explicitly prohibit corporal punishment in the home, schools, and alternative care settings and as a disciplinary measure in penal institutions.

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

- a) undertake a review of current legislation to explicitly prohibit the use of corporal punishment in all areas, including in the home, schools, alternative care settings and the penal system;
- b) introduce public education, awareness-raising and social mobilization campaigns in cooperation with the media, 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;
- c) conduct a comprehensive study to assess the causes, nature and extent of corporal punishment; and
- d) 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

(16 October 2000, CRC/C/15/Add.133, Concluding observations on initial report, paras. 40 and 41)

“The Committee is concerned that corporal punishment continues to be practised at home and in some schools and that domestic legislation does not prohibit its use.

“The Committee recommends that the State party take all appropriate measures, including legislation, information campaigns and the promotion of alternative forms of sanctions which respect

¹⁰ 19 April 2018, A/HRC/38/10, Report of the working group, para. 137(110)

¹¹ 6 June 2018, A/HRC/38/10/Add.1 Advance unedited version, Report of the working group: Addendum, para. 7

the physical and mental integrity of children, to end corporal punishment within the family, schools, juvenile justice and alternative care.”

Committee on Economic, Social and Cultural Rights

(9 October 2015, E/C.12/BDI/CO/1 Advance Unedited Version, Concluding observations on initial report, paras. 39 and 40, as at 13 October 2015 in French only)

“Le Comité note avec préoccupation qu’il n’existe pas d’interdiction explicite des châtiments corporels au sein de la famille et que ceux-ci restent largement tolérés et pratiqués dans la société, y compris à l’école, dans les institutions pour enfants et dans les établissements pénitentiaires (art. 10).

“Le Comité demande instamment à l’État partie de prendre les mesures législatives et autres pour interdire et prévenir les châtiments corporels infligés aux enfants en toutes circonstances, en particulier dans les écoles, dans les institutions assurant une protection de remplacement, dans les établissements pénitentiaires et au sein de la famille.”

Human Rights Committee

(21 November 2014, CCPR/C/BDI/CO/2, Concluding observations on second report, para. 15)

“The Committee notes with concern that corporal punishment is still used in some schools and in the family (arts. 7 and 24).

The State party should take practical steps, including legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage the use of non-violent forms of discipline instead of corporal punishment and should conduct public information campaigns to raise awareness about its harmful effects.”

Committee on the Elimination of Discrimination Against Women

(18 November 2016, CEDAW/C/BDI/CO/5-6, Concluding observations on fifth/sixth report, paras. 34 and 35)

“The Committee welcomes the measures in place to increase the enrolment and retention of girls in school, including the adoption of a policy on the reintegration of girls into school after pregnancy, the establishment of school meal programmes, and training of school teachers and students on combatting violence against women. However, the Committee is concerned that: ...

(e) Girls are often victims of sexual and gender based violence on the way to and from school as well as on school premises and that perpetrators of such acts regularly enjoy impunity due to the frequent lack of investigations into these allegations.

“The Committee, in line with Sustainable Development Goal 4, target 4.5 to eliminate gender disparities in education, recommends that the State party: ...

(e) Raise public awareness about the importance of women’s and girls’ education and reinforce a zero-tolerance policy with respect to sexual abuse and harassment at school, ensuring that perpetrators are punished appropriately, corporal punishment is abolished in practice, and that victims are ensured access to health-care, psychological services and reparations; and,

(f) Establish a robust gender-disaggregated data collection system in the education system, covering special needs education, school net enrolment and retention, and incidents of sexual and

gender-based violence in school settings, including their resolution, and enforce the Committee's previous recommendations (CEDAW/C/BDI/CO/4, para. 32)."

Prevalence/attitudinal research in the last ten years

Interviews with children in conflict with the law and with parents and law enforcement officials, carried out by Human Rights Watch in 2006-2007, found that many children had been beaten and suffered other ill treatment while in detention.

(Human Rights Watch (2007), *Paying the price: Violations of the rights of children in detention in Burundi*)