

# Corporal punishment of children in Comoros

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Child population 368,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Comoros' commitment to prohibiting corporal punishment

Comoros expressed its commitment to prohibiting all corporal punishment of children by accepting clearly recommendations to do so made during the Universal Periodic Review of Comoros in 2014. The Government reported that the Criminal Code had been amended to criminalise corporal punishment but it has not yet been promulgated.

## 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 and possibly as a sentence for crime.

Article 106 of the Family Code 2005 confirms the power of parents and those to whom parental authority is delegated “to admonish [children] excluding abuse and torture”. This provision should be repealed/amended to ensure that there is no legal defence for the use of corporal punishment in childrearing and education. 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* – Prohibition of corporal punishment should be enacted in relation 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* – Prohibition should be enacted in legislation and applicable to all education settings (public and private).

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

*Sentence for crime* – All judicial corporal punishment should be prohibited, including under Shari’a law and in traditional customary justice systems.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. According to the provisions on parental authority in the Family Code 2005, parents and those to whom parental authority is delegated have the power “to admonish excluding abuse and torture” (“Leur pouvoir consiste à le sermonner en excluant les sévices et la torture”) (art. 106). Articles 297 and 298 of the Penal Code 1982 punish violence against children with the exception of “minor” violence; minor violence is punished under article 12(7) of Law No. 81/007 (the Code des contraventions 1981) but there is no indication that this would apply to physical punishment of children by parents. Provisions against violence and abuse in the Family Code, the Child Protection Code 2005 and the Constitution 2018, which asserts the child’s right to protection from all forms of violence, are not interpreted as prohibiting all corporal punishment in childrearing.

The Government both accepted and rejected recommendations to prohibit corporal punishment in the home and schools made during the Universal Periodic Review (UPR) in 2009.<sup>1</sup> However, in 2014 the Government indicated its commitment to enacting prohibiting legislation by clearly accepting recommendations made during the 2<sup>nd</sup> cycle UPR to prohibit corporal punishment in all settings, stating that the new Criminal Code under discussion “contains provisions to criminalise corporal punishment”.<sup>2</sup> The draft amendments were submitted to Parliament in October 2013. In accepting the 2014 recommendations, the Government stated that it would “do everything in its power to achieve the objectives contained in these recommendations” and in this connection requested support from the international community.<sup>3</sup> The Government reported to the African Committee of Experts on the Rights and Welfare of the Child in May 2017 that the new Criminal Code had been adopted in 2014 and prohibits all corporal punishment – however the Code has not yet been promulgated by the President and so is not in force. We have not been able to obtain a copy of the text to verify this information and to ascertain if the “power to admonish” in the Civil Code is addressed. During the UPR in 2019, in response to recommendations made to prohibit and eliminate corporal punishment of children, the Government declared that (unofficial translation) “parents, or teachers in schools, did not use corporal punishment. That phenomenon was an exception.”<sup>4</sup>

### **Alternative care settings**

Corporal punishment is lawful in alternative care settings under the power of those with parental authority “to admonish” children in article 106 of the Family Code 2005 (see under “Home”).

### **Day care**

Corporal punishment is lawful in early childhood care and in day care for older children under the power of those with parental authority “to admonish” children in article 106 of the Family Code 2005 (see under “Home”).

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<sup>1</sup> 3 June 2009, A/HRC/12/16, Report of the working group, paras. 65(31) and 66(2)

<sup>2</sup> 15 April 2014, A/HRC/26/11/Add.1, Report of the working group: Addendum, para. 13; see also 8 November 2013, A/HRC/WG.6/18/COM/1, National report to the UPR, para. 120

<sup>3</sup> 19 September 2014, A/HRC/26/2 Advance Unedited Version, Report of the Human Rights Council on its twenty-sixth session, para. 661

<sup>4</sup> 6 February 2019, A/HRC/WG.6/32/L.9 Unedited version, Draft report of the Working Group, para. 114

## **Schools**

There is no explicit prohibition of corporal punishment in schools.

## **Penal institutions**

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.

## **Sentence for crime**

Corporal punishment as a sentence for crime is unlawful: there is no provision for judicial corporal punishment in the Penal Code 1982 and the Child Protection Code 2005. We have yet to confirm that corporal punishment cannot be imposed under Shari'a law or in traditional community justice systems.

## **Universal Periodic Review of Comoros' human rights record**

Comoros was examined in the first cycle of the Universal Periodic Review in 2009 (session 5). The following recommendations were made and were accepted by the Government:<sup>5</sup>

“Consider enacting legislation which prohibits the use of corporal punishment on children within the family and at school and promotes alternative forms of discipline (Brazil); take concrete measures by law to prevent and combat child abuse and ill-treatment of children within the family, at school, in other institutions and in society at large and to officially prohibit by law the use of corporal punishment within the family and at school (Germany)”

However, the Government rejected the following similar recommendation:<sup>6</sup>

“Include a specific prohibition on the use of corporal punishment within the family and at school in its legislation (Slovenia)”

The second cycle review of Comoros took place 2014 (session 18). In its national report, the Government addressed the previous recommendations that had been made on corporal punishment, stating: “The Union of Comoros has also reconsidered its position on the use of corporal punishment within the family and in the school and has taken the appropriate steps... Corporal punishment by the family and at school (Recommendation No. 2, Slovenia) is not a practice in Comorian society. The Union of the Comoros is a country of tolerance and non-violence inhabited by a peace-loving population imbued with the humanist ideals of religion and traditions of peace, solidarity and forgiveness. In each village, the traditional structures that underpin community life operate to ensure tranquillity and coexistence. There are sanctions of a social nature. In a country where there is a cult of honour and dignity, everyone voluntarily adheres to these standards. Causing injury wilfully is an offence under the Criminal Code. The upcoming revision of the Code includes provisions prohibiting corporal punishment of children and defenceless persons. The educational inspectorate provides oversight of what goes on in the school system.”<sup>7</sup>

The following recommendations were made:<sup>8</sup>

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<sup>5</sup> 3 June 2009, A/HRC/12/16, Report of the working group, para. 65(31)

<sup>6</sup> 3 June 2009, A/HRC/12/16, Report of the working group, para. 66(2)

<sup>7</sup> 8 November 2013, A/HRC/WG.6/18/COM/1, National report to the UPR, paras. 62, 118, 119 and 120

<sup>8</sup> 4 February 2014, A/HRC/WG.6/18/L.9, Draft report of the working group, paras. 112(4), 112(5) and 112(9)

“Adopt the legislation explicitly prohibiting the corporal punishment of children in all settings, including home (Slovenia);

“Prohibit, by law, all forms of violence against children, including corporal punishment, as well as the establishment of a minimum legal age for marriage (Portugal);

“Take the necessary measures to prohibit the use of corporal punishment against children (France)”

The Government accepted the recommendations, stating that “the new criminal code currently being adopted contains provisions to criminalize corporal punishment”.<sup>9</sup>

Third cycle examination took place in 2019 (session 32). The following recommendations were extended:<sup>10</sup>

“Enact legislation to explicitly prohibit corporal punishment of children in all settings, including at schools and home (Chile);

“Enact legislation which explicitly prohibits corporal punishment of children in all settings, including in the home, and repeal all legal defences for its use (Croatia);

“Take further steps towards eliminating corporal punishment for children in all settings (Namibia);

“Prohibit explicitly corporal punishment on children in all environments of society, including at home and also repeal all legal exemptions which authorise its use (Uruguay)”

The Government will examine the recommendations and will respond by the 41<sup>st</sup> session of the Human Rights Council in June 2019.

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

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

(23 October 2000, CRC/C/15/Add.141, Concluding observations on initial report, paras. 31 and 32)

“Concern is expressed at the insufficient awareness regarding the harmful consequences of ill-treatment and abuse of children, including sexual abuse, both within and outside the family. While aware that the draft family code aims at the protection of the dignity of the child, the Committee is concerned that the practice of corporal punishment in the home is socially and legally accepted, particularly for boys. The practice of corporal punishment in Koranic schools is also a matter of concern.

“The Committee recommends that the State party take effective measures, to prevent and combat child abuse and ill-treatment of children within the family, at school and in other institutions, and in society at large. Furthermore, educational programmes should be established to combat traditional attitudes in society regarding this issue. In particular, the Committee recommends that the State party include in its legislation a specific prohibition on the use of corporal punishment within the family and at school. The Committee encourages the State party to consider seeking to this effect international cooperation from, inter alia, UNICEF and international non-governmental organizations.”

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<sup>9</sup> 15 April 2014, A/HRC/26/11/Add.1, Report of the working group: Addendum, para. 13

<sup>10</sup> 6 February 2019, A/HRC/WG.6/32/L.9 Unedited version, Draft report of the Working Group, paras. 119(9), 119(10), 119(11) and 119(13)

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

([July 2017], Concluding observations on initial report, para. 18, in French only)

“Le Comité reconnaît les efforts déployés par l'État partie pour protéger les enfants contre les abus et la torture. Toutefois, le Comité note avec préoccupation que les châtiments corporels sont toujours infligés aux enfants dans les milieux familiaux et scolaires. Le Comité note avec une grande préoccupation que le Code pénal de l'État partie légalise les châtiments corporels infligés aux enfants en milieu familial ou scolaire en tolérant l'usage des corrections « légères ». Le Comité souhaite clarifier que la CADBE interdit toutes les formes de châtiments corporels indépendamment de la fréquence ou de la gravité de la peine infligée. Par conséquent, le Comité recommande vivement à l'État partie de:

- a. Interdire les châtiments corporels dans tous les milieux, notamment en famille, à l'école et dans d'autres établissements de soins alternatifs;
- b. Amender la disposition du code pénal qui légalise les châtiments corporels en milieu familial et scolaire et de proscrire les châtiments corporels sous le régime juridique comorien;
- c. Proscrire explicitement toutes les formes de châtiments corporels du Code pénal et d'infliger des sanctions aux personnes qui les pratiquent à l'égard des enfants;
- d. Sensibiliser la société sur la parentalité positive et à la discipline des enfants. »

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

None identified.