

# Corporal punishment of children in the Democratic Republic of the Congo

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Child population 40,639,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Summary of necessary legal reform to achieve full prohibition

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

Article 326(4) of the Family Code 1987 states that “a person exercising parental authority may inflict reprimands and punishments on the child to an extent compatible with its age and the improvement of its conduct”. This provision should be repealed. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no degree or kind of corporal punishment can be considered reasonable or lawful. All forms of corporal punishment, however light, should be 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, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

*Penal institutions* – Corporal punishment should be prohibited as a 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. Article 326(4) of the Family Code 1987 states that “a person exercising parental authority may inflict reprimands and punishments on the child to an extent compatible with its age and the improvement of its conduct”. Provisions against violence and abuse in the Criminal Code 1940, the Family Code 1987 and the Constitution 2006 are not interpreted as prohibiting all corporal punishment in childrearing. Article 57 of the Child Protection Code 2009 confirms the right of the child to protection from all forms of violence and states that discipline in the home, schools and institutions should be administered with respect for the child’s humanity but it does not explicitly prohibit corporal punishment. The Government has reported to the Committee on the Rights of the Child that a National Communication Plan relating to the Child Protection Code provides for awareness raising on abolition of corporal punishment at home and school:<sup>1</sup> we are seeking further information.

In 2011, a draft Revised Family Code was under consideration, following a review from a gender perspective. During the Universal Periodic Review of DR Congo in 2014, the Government reported that the Family Code was still under revision.<sup>2</sup> In 2016, the Law amending and supplementing Law No. 87-010 of 1 August 1987 on the Family Code (Loi modifiant et completant la Loi N°87-010 Du 1er Aout 1987 portant Code de la Famille) was passed. The new law does not mention corporal punishment.

In 2019, the Government supported several UPR recommendations to enact legislation prohibiting corporal punishment of children in all settings.<sup>3</sup>

### **Alternative care settings**

Corporal punishment in alternative care settings is lawful under the right of those with parental responsibility to punish the child in article 326 of the Family Code 1987 (see under “Home”). According to article 57 of the Child Protection Code 2009, discipline in public and private care institutions should be administered humanely but corporal punishment is not explicitly prohibited.

### **Day care**

Corporal punishment is lawful in early childhood care and in day care for older children under the right of those with parental responsibility to punish the child in article 326 of the Family Code 1987 (see under “Home”). According to article 57 of the Child Protection Code 2009, discipline in public and private care institutions should be administered humanely but corporal punishment is not explicitly prohibited.

### **Schools**

Corporal punishment is unlawful in schools under Ministerial decision No. MINEPSP/CABMIN/00100940/90 of 1 September 1990 establishing internal regulations for students,

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<sup>1</sup> [n.d.], CRC/C/COD/3-5 Unedited Version, Third-fifth state party report

<sup>2</sup> 7 July 2014, A/HRC/27/5, Report of the working group

<sup>3</sup> 5 July 2019, A/HRC/42/5, Report of the Working Group, paras. 119(235), 119(241), 119(249) and 119(250); 9 September 2019, A/HRC/42/5/Add.1, Report of the Working Group: Addendum

which does not include corporal punishment among permitted penalties. Article 57 of the Child Protection Code 2009 states that discipline in schools should be administered humanely, but it does not explicitly prohibit corporal punishment.

### **Penal institutions**

Corporal punishment is lawful as a disciplinary measure in penal institutions. There are various prohibitions of ill-treatment of detainees, including in Decree-Law No. 017-2002 setting out the code of conduct for state officials, circular No. 04/008/JM/PHR/70 on intervention by judicial police officers (1970) and the Constitution 2006, and article 57 of the Child Protection Code 2009 states that discipline of children should be carried out humanely, but there is no explicit prohibition of corporal punishment in law. Laws relating to prison are being reviewed.<sup>4</sup>

### **Sentence for crime**

Corporal punishment was prohibited as a sentence for crime in 1960. It is not among permitted sanctions in the Decree on juvenile delinquency 1950, the Criminal Code 1940 and the Child Protection Code 2009. The Congolese Charter of Human Rights states that “physical or mental torture and cruel, inhuman or degrading treatment, are prohibited” (art. 19).

### **Universal Periodic Review of DR Congo’s human rights record**

The Democratic Republic of Congo was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:<sup>5</sup>

“Undertake further measures to improve the legislative and regulatory basis with respect to human rights and their effective implementation. (Belarus);

“Take better account of the situation of vulnerable populations and adopt legislation to ensure promotion and protection of handicapped persons, children and women. (Congo);

“Consider developing a comprehensive action plan to operationalize the recently adopted Child Code and to address concerns related to the care and protection of children; in this regard, give due consideration to the recently adopted Guidelines for the Alternative Care of Children. (South Africa);

“Continue to make efforts to eradicate violence against women and children and take the necessary measures to provide appropriate treatment for victims of crimes of this sort. (Argentina).”

Examination in the second cycle took place in 2014 (session 19). No recommendations were made specifically on corporal punishment but the Government accepted a recommendation to continue

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<sup>4</sup> 7 July 2014, A/HRC/27/5, Report of the working group

<sup>5</sup> 4 January 2010, A/HRC/13/8, Report of the working group, paras. 94(8), 94(24), 94(29) and 94(41)

efforts in protecting children from violence against them as well as a number of more general recommendations concerning strengthening children's rights.<sup>6</sup>

Third cycle examination took place in 2019 (session 33). The following recommendations were made:<sup>7</sup>

“Prohibit corporal punishment of children in all settings, including in the home (Denmark);

“Enact legislation to explicitly prohibit corporal punishment in all settings including the home (Zambia);

“Establish a strong legislative framework to prohibit and sanction all corporal punishment of children (Madagascar);

“Enact legislation to explicitly prohibit all corporal punishment of children in all kinds of settings, including the home (Montenegro)”

The Government supported the recommendations.<sup>8</sup>

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

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

(28 February 2017, CRC/C/COD/CO/3-5, Concluding observations on third/fifth report, para. 24)

“In view of the fact that corporal punishment remains lawful under article 326 of the Family Code of 1987 as amended in July 2016 and is frequently practised in various care settings, the Committee urges the State party to enact legislation that clearly prohibits corporal punishment in all settings, including in the home, schools and other care settings. The Committee also recommends that the State party introduce sustained public education, awareness-raising and social mobilization programmes, involving children, families, communities and their leaders, on the physically and psychologically harmful effects of corporal punishment, with a view to changing the general attitude towards this practice and promoting positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment.”

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

(10 February 2009, CRC/C/COD/CO/2, Concluding observations on second report, paras. 39 and 40)

“While the Committee welcomes the prohibition of corporal punishment in schools, it remains concerned that it continues to be lawful, and is practiced, in the home as well as in institutions.

“The Committee recommends that the State party explicitly prohibit by law corporal punishment in all settings, including in the family, schools, alternative childcare and places of work and places of detention, and implement those laws effectively. It also recommends that the State party intensify its awareness-raising campaigns in order to promote the use of alternative forms of discipline in a manner consistent with the child's human dignity and in accordance with the Convention, especially article 28, paragraph 2, taking into account the Committee's general comment No. 8 (2006) on the

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<sup>6</sup> 7 July 2014, A/HRC/27/5, Report of the working group, paras. 133(33), 133(34), 133(35) and 133(88)

<sup>7</sup> 5 July 2019, A/HRC/42/5, Report of the Working Group, paras. 119(235), 119(241), 119(249) and 119(250)

<sup>8</sup> 9 September 2019, A/HRC/42/5/Add.1, Report of the Working Group: Addendum

right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

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

(9 July 2001, CRC/C/15/Add.153, Concluding observations on initial report, paras. 38 and 39)

“In the context of article 19 of the Convention the Committee is concerned that the corporal punishment of children is permitted under domestic legislation and continues to be practised in State institutions, including schools and places of detention, and in the family.

“The Committee recommends that the State party take all appropriate measures, including of a legislative nature, to prohibit and eliminate all forms of corporal punishment in schools and in homes. The Committee further suggests that awareness raising and education campaigns be conducted to change public attitudes and ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially articles 19 and 28.2.”

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

In a study involving interviews with 708 men and 754 women in Goma, 57% reported having been slapped on the face by parents or other adults in the home as a child. Fifty-four per cent of women and 47% of men said that as a child, they had been insulted or humiliated in front of others by someone in their family, and 50% of both men and women reported being threatened with physical punishment in the home.

(Sonke Gender Justice Network & Promundo (2012), *Gender Relations, Sexual Violence and the Effects of Conflict on Women and Men in North Kivu, Eastern Democratic Republic of Congo – Preliminary Results from the International Men and Gender Equality Survey (IMAGES)*)

According to statistics collected in 2010 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 92% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey; 37% experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement).

(Ministry of Planning et al (2011), *Democratic Republic of Congo: Multiple Indicator Cluster Survey 2010 summary report*, Ministry of Planning, National Institute of Statistics & UNICEF)

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 the Democratic Republic of the Congo, 74% had been hit during their childhood, 83% beaten, 25% kicked, 48% denied food, 7% choked or burned and 29% 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)