

Corporal punishment of children in Guinea

LAST UPDATED March 2020

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Child population 6,196,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Guinea's commitment to prohibiting corporal punishment

The draft Children's Code includes clear prohibition of corporal punishment in all settings, including the home. The Code was adopted in December 2019 – we are seeking further information on its status and content.

Summary of necessary legal reform to achieve full prohibition

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

Article 398 of the former Civil Code 1983, which confirmed that parental authority entailed a "right of correction", was repealed in 2019. Nevertheless, 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. Clear prohibition of all corporal punishment must be enacted in relation to parents and all those with parental authority. The draft new Children's Code has been adopted – we are seeking more information on its impact on the legality of corporal punishment of children.

Alternative care settings – Prohibition should be enacted in legislation applicable 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 – Ministerial circulars reportedly inform schools not to use corporal punishment: this policy must be confirmed in legislation, which should clearly prohibit corporal punishment in all education settings, public and private, at all levels.

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 new Civil Code 2019 did not repeat the “right of correction” which existed in article 398 of the Civil Code 1983 (unofficial translation): “The rights of parental authority are: - the right of correction on the child...”. However, this is a silent repeal as the Civil Code 2019 does not prohibit corporal punishment. The Children’s Code 2008 prohibits “all forms of physical and psychological maltreatment” in the family, schools and institutions (art. 403) but does not explicitly prohibit corporal punishment. The provisions against assault in the Penal Code 2016 (arts. 239 to 249) are not interpreted as prohibiting all corporal punishment of children, however light. The Constitution 2010 states that parents have a right and duty to ensure the education and physical and moral health of their children; children have a duty to assist their parents (art. 18). Children have a right to be protected from exploitation, sexual abuse, and inhumane treatment (art. 19). But corporal punishment is not prohibited.

The Government admitted in 2018 that there were no laws explicitly prohibiting corporal punishment and reported that one of the priorities of the National Policy for the Promotion and Protection of the Rights and Welfare of the Child 2017–2019 was the elimination of corporal punishment, including “through improvements to the legal framework”.¹

The Children’s Code 2008 is being revised and the Government has stated that the bill amending the Children’s Code included “a ban on corporal punishment”.² As at December 2018, the draft new Children’s Code prohibited corporal punishment of children, with draft article 787 stating (unofficial translation): “All forms of corporal or physical punishment, cruel, inhuman, degrading or humiliating treatment are strictly prohibited against a child, whether they take place in the family, educational, institutional or other contexts. The child has the right to benefit from care, safety and a good education. He/she must be treated with respect for his/her person and individuality and cannot be subjected to corporal punishment or other humiliating punishment.” The article defined corporal punishment as “any physical sanction inflicted to the child through hitting or hurting, mutilation, locking up, or other violent, humiliating or degrading means” as well as “any act in which physical force is used in childrearing and aiming to inflict a certain degree of pain or discomfort however light, to correct, control or modify the behaviour of the child” (unofficial translation). Draft article 788 stated that corporal punishment can never be justified as “reasonable”. The draft new Children’s Code was adopted by the Parliament in December 2019 but the new Code has not been promulgated yet.³ We have been unable to examine the text to ascertain whether the provisions prohibiting all corporal punishment have been adopted.

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings: it is lawful as for parents (see under “Home”).

¹ 7 August 2018, CRC/C/GIN/3-6, Third/sixth report, para. 65

² 7 August 2018, CRC/C/GIN/3-6, Third/sixth report, para. 65

³ Information provided to the Global Initiative, December 2019

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children, where it is lawful as for parents (see under “Home”).

Schools

Corporal punishment is lawful in schools. A ministerial circular advises against its use (information unconfirmed) but there is no explicit prohibition in law.

Penal institutions

There appears to be no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. Laws relating to the justice system are under review but we do not know if prohibition of corporal punishment has been proposed.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Children’s Code 2008 or the Penal Code 2016. Article 6 of the Constitution 2010 states that everyone has the right to life and physical integrity and prohibits torture and cruel, inhuman and degrading treatment or punishment.

Universal Periodic Review of Guinea’s human rights record

Guinea was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁴

“Take effective measures to ensure protecting children’s rights in conformity with its international obligations (Ukraine);

“Integrate the various treaties to which Guinea is party into its domestic law, and become a party to other international human rights instruments for the well-being of the Guinean people (Chad)”

The second cycle review took place in 2015 (session 21). No recommendations were made specifically on corporal punishment. However, the Government accepted recommendations to strengthen protection for children from abuse and to promote and protect the rights of the child.⁵

Third cycle examination took place in 2020 (session 35). The following recommendation was extended:⁶

“Enact the new children’s code that would explicitly prohibit corporal punishment in all settings, including the home (Zambia)”

⁴ 14 June 2010, A/HRC/15/4, Report of the working group, paras. 71(6) and 71(7)

⁵ 10 April 2015, A/HRC/29/6, Report of the working group; 17 June 2015, A/HRC/29/6/Add.1, Report of the working group: Addendum

⁶ 5 February 2020, A/HRC/WG.6/35/L.2 Unedited version, Draft report of the Working Group, para. 113(196)

The Government will examine the recommendation and respond by the 44th session of the Human Rights Council in June 2020.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(1 February 2019, CRC/C/GIN/CO/3-6 Advance unedited version, Concluding observations on third/sixth report, para. 24)

“Referring to 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, the Committee recommends that the State party:

- (a) Ensure that corporal punishment, however light, against children in all settings, is explicitly prohibited by law;
- (b) Review and implement the three-year plan (2017-2019) with a view to providing the necessary human, technical and financial resources;
- (c) Repeal article 398 of the Civil Code on the “right to correction” of parents;
- (d) Promote positive, non-violent and participatory forms of child-rearing and discipline.”

Committee on the Rights of the Child

(13 June 2013, CRC/C/GIN/CO/2, Concluding observations on second report, paras. 48 and 49)

“The Committee, while noting that the Children’s Code prohibits “all forms of physical and psychological maltreatment” in the family, schools and institutions, the Committee remains concerned that:

- a) the Children’s Code does not explicitly prohibit corporal punishment in all settings;
- b) corporal punishment of children remains widespread and socially accepted in the home, in schools, in penal institutions, and in alternative care settings;
- c) some religious interpretations wrongly prescribe whipping as being an integral part of learning the Koran, as indicated by the delegation during the interactive dialogue; and
- d) there is no mechanism available for children to denounce corporal punishment.

“With reference to the Committee’s General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/GC/8/2006), the Committee urges the State party to:

- a) ensure that different laws and regulations explicitly prohibit corporal punishment;
- b) effectively implement these laws and regulations and systematically initiate legal proceedings against those responsible for mistreating children, including teachers using whips;
- c) introduce sustainable public education, awareness-raising and social mobilization programmes, involving children, families, communities and religious leaders, on both the physical and psychological harmful effects of corporal punishment on the development of children with a view to changing the general attitude towards this practice and promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative; and

d) ensure the involvement and participation of the whole society, including children, in the design and implementation of preventive strategies against corporal punishment of children.”

Committee on the Rights of the Child

(10 May 1999, CRC/C/15/Add.100, Concluding observations on initial report, para. 20)

“Although the Committee is aware that corporal punishment is prohibited by law, it remains concerned that traditional societal attitudes still regard the use of corporal punishment by parents as an acceptable practice. The Committee recommends that the State party reinforce measures to raise awareness on the negative effects of corporal punishment and ensure that discipline in schools, families and all institutions is administered in a manner consistent with the child’s dignity, in the light of article 28 of the Convention. It also recommends that the State party ensure that alternative disciplinary measures are developed and administered within the family and schools.”

Committee on the Elimination of Discrimination Against Women

(10 August 2007, CEDAW/C/GIN/CO/6, Concluding observations on fourth/fifth/sixth report, paras. 26 and 27)

“The Committee remains concerned about the prevalence of violence against women and girls. The Committee is particularly concerned about occurrences of domestic violence, rape, including marital rape, and all forms of sexual abuse of women, and about the persistence of patriarchal attitudes whereby the physical chastisement of family members, including women, is considered acceptable....

“The Committee urges the State party to place the highest priority on implementing a comprehensive approach to address all forms of violence against women. It encourages the State party to make full use of the Committee’s general recommendation 19 in such efforts and of the United Nations Secretary-General’s in-depth study on all forms of violence against women (A/61/122/Add.1 and Corr.1). It urges the State party to raise public awareness through the media and education programmes that all forms of violence against women are unacceptable.... The Committee urges the State party to enact without delay legislation on domestic violence, including marital rape, and all forms of sexual abuse, as requested in the Committee’s previous concluding comments (see A/56/38, part two, chap. IV, para. 135)....”

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

([December 2014], Concluding observations on initial report, para. 23)

“The Committee notes with appreciation that corporal punishment is prohibited by law. The Committee nonetheless has concerns on the effective implementation of the law, as well as on the measures put in place to promote non-violent disciplinary measures. The Committee encourages the State Party to explicitly ban corporal punishment in all settings and to adopt a positive discipline as an alternative. The Committee suggests awareness raising, training and sensitisation of the parents, youth, communities and those working with children as well as the proper monitoring of schools and day-cares to ensure that children are free from any kind of abuse and torture.”

Prevalence/attitudinal research in the last ten years

None identified.