

Corporal punishment of children in Haiti

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Child population 4,294,000 (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; prohibition in alternative care settings and in day care requires confirmation.

We have not identified confirmation of a “right” of parents to punish/discipline children in criminal or civil law, but there appears to be some confusion as to whether the 2001 law prohibiting corporal punishment is applicable within the family home. The near universal acceptance of violence in childrearing necessitates clarity in law that all corporal punishment is prohibited, however light, including in the family home. Explicit prohibition of corporal punishment by parents should be enacted.

Alternative care settings – Confirmation is required that current law prohibits corporal punishment in all alternative care settings, without exception.

Day care – Confirmation is required that current law prohibits corporal punishment in all day care, including crèches, childminding, etc.

Current legality of corporal punishment

Home

It is unclear whether or not corporal punishment is lawful in the home. Articles 1 and 2 of the Law Against Corporal Punishment of Children 2001 state (unofficial translation): “(1) The inhuman treatment of any nature comprising corporal punishment of a child is forbidden. (2) Inhuman treatment is defined by any action that causes a bodily or emotional shock to a child, such as hitting or pushing, or inflicting any punishment that causes damage to the child, using or without the intermediary of an object, weapon or abusive physical force.” But the remainder of the law appears to apply to organisations, schools and other institutions. There is some legal opinion that the prohibition does apply to parental corporal punishment, but there is uncertainty among NGOs and we have been unable to identify any associated public education and awareness raising campaigns. The Act of 7 May 2003 on the prohibition and elimination of all forms of abuse, violence, ill-treatment or inhumane treatment against children is silent on the issue of corporal punishment.

The Constitution 1987 states that every child “is entitled to love, affection, understanding and moral and physical care from its father and mother” (art. 261) and that a Family Code “should be developed to ensure the protection and rights of the family” (art. 262) (unofficial translation). However, no Family Code has been adopted and the Government rejected recommendations to adopt a Code on Children made during the Universal Periodic Review of Haiti in 2012 on the grounds that this “depended on the elaboration of a family code”.¹ A Family Code Bill, a Bill on violence against women and girls and a draft new Criminal Code are under discussion and a new Children’s Code is being drafted. As at September 2014, the draft Children’s Code would explicitly prohibit corporal punishment in the home and other settings (art. 56, unofficial translation): “Subjecting a child to corporal punishment or humiliating or degrading treatment at home, at school, on the street or in other institutions is prohibited....” The Code was approved by Cabinet and tabled in Parliament;² as at December 2015 no further progress had been made.³ The Child Protection Bill under discussion in May 2015 did not include prohibition.⁴ The Bill on violence against women and girls was originally expected to be passed in 2016,⁵ but the Government reported in August 2017 that preparations were being made for the submission to Parliament of the draft bill.⁶ The draft Criminal Code was submitted to the Ministry of Justice in May 2016 for validation and would reportedly criminalise “torture and cruel, inhuman or degrading treatment”.⁷

In September 2014, in response to a question by the Human Rights Committee as to whether corporal punishment is prohibited in all settings, including the family, the Government stated that corporal punishment “is prohibited and is punishable under the Act of 10 September 2001” but made no reference to the draft Children’s Code in this respect.⁸

¹ 24 May 2013, A/HRC/19/2, Report of the Human Rights Council on its nineteenth session, para. 879

² Information provided by Save the Children in correspondence with the Global Initiative, 11 September 2014

³ Information provided by Save the Children in correspondence with the Global Initiative, 11 December 2015

⁴ <http://www.senat.fr/leg/pp13-799.html>, accessed 7 May 2015

⁵ 18 March 2016, CEDAW/C/SR.1394, Summary record of 1394th meeting, para. 5

⁶ 23 November 2017, CRPD/C/HTI/Q/1/Add.1, Reply to list of issues, para. 36

⁷ 25 August 2016, A/HRC/WG.6/26/HTI/1, National report to the UPR, para. 16

⁸ 12 September 2014, CCPR/C/HTI/Q/1/Add.1, Reply to list of issues, para. 63

Alternative care settings

Corporal punishment is prohibited in alternative care settings such as institutions, orphanages, children's homes and places of safety under the Law Against Corporal Punishment of Children 2001 (see under "Home"). We have yet to confirm that the prohibition applies to foster care. The Act on the Prohibition and Elimination of All Forms of Abuse, Violence, Abuse or Degrading Treatment Against Children 2003 states that a child entrusted to a foster family should be treated as a member of the family (art. 3): the Act prohibits "abuses and violence of all kinds" (art. 2) but does not explicitly prohibit corporal punishment.

Day care

Corporal punishment is prohibited in formal early childhood care such as nurseries, kindergartens, preschools and children's centres and in formal day care for older children such as day centres under the Law Against Corporal Punishment of Children 2001 (see under "Home"), but we have yet to confirm that the prohibition also applies to day care such as crèches, after-school childcare and childminding.

Schools

Corporal punishment is prohibited under the Law Against Corporal Punishment of Children 2001 (see under "Home").

Penal institutions

Corporal punishment is prohibited as a disciplinary measure in penal institutions under the Law Against Corporal Punishment of Children 2001 (see under "Home"). Article 25 of the Constitution 1987 prohibits the use of unnecessary force, psychological pressure and physical brutality on a person being detained.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Penal Code.

Universal Periodic Review of Haiti's human rights record

Haiti was examined in the first cycle of the Universal Periodic Review in 2011 (session 12). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁹

"Ensure that the rights of women and girls are protected during the recovery process, including protecting them from violence (Australia);

"Take the most appropriate measures to better protect children with disabilities (Djibouti);

"Take continued action to combat violence against women and girl children (Sri Lanka);

⁹ 8 December 2011, A/HRC/19/19, Report of the working group, paras. 88(35), 88(40), 88(74), 88(78) and 88(92)

“Take all the measures necessary, in particular by reinforcing the current structures, to play a leadership role to prevent and combat violence against women and children, including sexual abuses, especially in the displacement camps (Canada);

“Take further steps to deal with the problem of child domestic workers and abolish children abuse (Turkey)”

Examination in the second cycle took place in 2016 (session 26). No recommendations were made specifically concerning corporal punishment of children. However, the Government accepted recommendations to adopt a Child Protection Code.¹⁰

Haiti will be examined in the third cycle in 2021.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 January 2016, CRC/C/HTI/CO/2-3 Advance Unedited Version, Concluding observations on second/third report, paras. 32 and 33)

“The Committee, while welcoming the adoption in 2014 of the national action plan to prevent and respond to violence against children, is concerned that corporal punishment is still extensively practised in all settings, including the usage of different forms of whips against children, and widely accepted as a form of discipline. The Committee is also concerned that the law prohibiting corporal punishment lacks clarity whether all forms of corporal punishment are prohibited, and that the existing prohibitions of corporal punishment are insufficiently implemented, leading to frequent impunity for perpetrators.

“In the light of its general comments No. 8 (2006) on corporal punishment and No. 13 (2011) on the right of the child to freedom from all forms of violence, as well as the recommendations of the United Nations study on violence against children of 2006 (A/61/299), the Committee recommends that the State party prioritize the elimination of all forms of violence against children. The Committee urges the State party to:

- a) explicitly prohibit corporal punishment in all settings and vigorously enforce this prohibition and monitor the ban of corporal punishment in all settings on a frequent basis;
- b) raise awareness about the prohibition of violence among teachers, including by developing a code of conduct for teachers and by training teachers on positive and non-violent forms of discipline;
- c) develop a comprehensive national strategy to prevent and address all forms of violence against children;
- d) promote positive, non-violent and participatory forms of child-rearing and discipline and strengthen awareness-raising and education programmes, including campaigns, on the prohibition of corporal punishment, including with the involvement of children.”

Committee on the Rights of the Child

(18 March 2003, CRC/C/15/Add.202, Concluding observations on initial report, paras. 3, 36 and 37)

“The Committee welcomes:

¹⁰ 16 November 2016, A/HRC/WG.6/26/L.10, Draft report of the Working Group, paras. 115(28) and 115(29)

a) the adoption of the 2001 Law prohibiting the use of corporal punishment within the family and in schools....

“The Committee welcomes the Act prohibiting corporal punishment (August 2001) within the family and at schools, but remains concerned at the persistent practice of corporal punishment by parents or teachers and the ill-treatment of child domestics (*restaveks*). The Committee is further deeply concerned about instances of ill-treatment of street children by law enforcement officers.

“The Committee recommends that the State party:

a) take all necessary measures for the effective implementation of the law prohibiting corporal punishment, in particular by making use of information and education campaigns to sensitize parents, teachers, other professionals working with children and the public at large to the harm caused by corporal punishment and to the importance of alternative, non-violent forms of discipline, as foreseen in article 28, paragraph 2, of the Convention;

b) investigate in an effective way reported cases of ill-treatment of children by law enforcement officers and ensure that alleged offenders are transferred from active duty or suspended while they are under investigation, dismissed and punished if convicted;

c) provide for the care, recovery and reintegration of child victims.”

Committee on the Rights of the Persons with Disabilities

(28 February 2018, CRPD/C/HTI/CO/1 Advance unedited version, Concluding observations on initial report, paras. 12 and 13)

“The Committee is seriously concerned by the abandonment and neglect of and violence against children with disabilities, including ill treatment and corporal punishment, within the family, at schools and in residential alternative care facilities...

“The Committee recommends that the State party take concrete legal and other measures to ensure the protection of children with disabilities from abandonment, neglect and abuse, including explicitly prohibiting corporal punishment in all settings. It also recommends that the State party collect and analyse disaggregated data on the situation of children with disabilities, including child abandonment and neglect, with a view to designing appropriate policy responses. In particular the Committee recommends that the State party:

(a) Ensure the inclusion of children with disabilities in the national strategy for the protection of the child;

(b) Increase resources for parents and families with children with disabilities and ensure they benefit from the same social, education, health care, education, and economic services and support on an equal basis with others;

(c) Encourage alternative care in family settings for children with disabilities and, in the meantime, ensure residential alternative care facilities have adequately trained staff and sufficient financial resources to ensure the rights of children with disabilities in those facilities.”

Prevalence/attitudinal research in the last ten years

Findings from a national survey conducted in 2012 reveal 38.1% of girls and 36.4% of boys aged 13-17 experienced physical violence by an adult household member or authority figure in the community in the 12 months prior to the survey; 90.0% of girls and 85.7% of boys in the same age group perceived

that their most recent experience of physical violence by adult household members or authority figures was a result of disciplinary action or intended as punishment.

(Centers for Disease Control and Prevention, Interuniversity Institute for Research and Development, Comité de Coordination (2014), *Violence against Children in Haiti: Findings from a National Survey, 2012*, Port-au-Prince, Haiti: Centers for Disease Control and Prevention)

According to UNICEF statistics collected between 2005 and 2013, 85% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Nearly eight in ten (79%) experienced physical punishment and 64% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). Fifty-two per cent were punished by being forced to kneel. A smaller percentage (30%) of mothers and caregivers thought physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)

Research by Amnesty International found that despite the prohibition of corporal punishment in schools, it was commonly reported, including the use of whips, beatings with electric cables, and forcing children to kneel in the sun.

(Amnesty International (2008), *Safe Schools: Every girl's right*)