

Corporal punishment of children in Madagascar

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Child population 11,776,000 (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 and penal institutions.

We have been unable to establish whether or not legislation confirms a right of parents and others to punish or correct a child, but legal provisions against violence and abuse are not interpreted as prohibiting corporal punishment of children. 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. All legal defences should be repealed and prohibition of all corporal punishment should be enacted in relation to parents and all those with parental authority.

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 settings – Prohibition should be enacted in legislation applicable to all early childhood care (nurseries, preschools, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

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 Constitution 2010 states in its Preamble that the Convention on the Rights of the Child and other treaties are considered an integral part of Madagascan law, but domestic law has not been amended to prohibit corporal punishment in all settings. Article 8 states that “no one may be submitted to torture or to cruel, inhuman or degrading penalties or treatments” and article 17 protects the dignity of the person but these provisions are not interpreted as prohibiting all forms of corporal punishment.

Act No. 2007-023 on the Rights and Protection of the Child states that no child shall be subjected to any form of violence (art. 4, unofficial translation) and defines child abuse as “all forms of violence, injury or physical or moral abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual violence perpetrated against a child by his parents, legal representatives or any other person, and sanctions against children in the family, schools and community which impair their physical or moral integrity” (art. 67), but it does not explicitly prohibit all corporal punishment. Provisions against violence and abuse in the Criminal Code 1972 are not interpreted as prohibiting all corporal punishment in childrearing.

Under examination by the African Committee of Experts on the Rights of the Child in 2015, the Government reported that the Criminal Code is under review but indicated that this was with a view to limiting rather than fully prohibiting corporal punishment of children.¹ As of September 2017, the review to implement recommendations from treaty bodies and the Universal Periodic Review was still ongoing.² A National Policy on Child Protection is being developed.³

In September 2017, the Government stated that corporal punishment in the home was prohibited by a 2017 Law which “prohibits any form of mistreatment of children by individuals holding parental authority” (unofficial translation).⁴ We are seeking to establish whether this refers to Law No. 2017-014 on adoption which allows for children to be placed into care when their safety, moral or physical integrity, health or education are compromised (art. 18) but does not prohibit corporal punishment in childrearing.

Alternative care settings

Corporal punishment is lawful in alternative care settings as for parents (see under “Home”).

Day care

Corporal punishment is lawful in early childhood care and in day care for older children as for parents (see under “Home”).

¹ Examination of state party report to the ACERWC, June 2015

² 13 September 2017, CCPR/C/SR.3385, Summary records of 3385th meeting, para. 27

³ [2018], CRC/C/MDG/5-6, Fifth/sixth report, para. 22

⁴ 13 September 2017, CCPR/C/SR.3385, Summary records of 3385th meeting, para. 9

Schools

Corporal punishment is reportedly unlawful in schools under Article 11 of Ministerial Decree No. 5246-96 MEN (1996)⁵ and Memorandum n°234/MEN/SG of 4 April 2017.⁶ We have yet to verify that prohibition is explicit. Act 2004-004 of 26 July 2004 on Free and Compulsory Primary Education does not address the issue.

Penal institutions

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. Discipline in prisons is regulated by Decree No. 2006-015 on the general organisation of the prison service. There is no provision for corporal punishment as a disciplinary measure but persons over 16 may be placed in isolation as a disciplinary measure (arts. 135 to 138). Article 13 of the Constitution 2010 prohibits “all physical brutality to apprehend a person or to keep them in detention” but it does not prohibit all corporal punishment.

Law no. 2016-018 on the protection of children in conflict with the law protects children from torture and cruel, inhuman and degrading treatments (art. 6) but this is not interpreted as prohibiting all corporal punishment.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for it in the Criminal Code 1972, the Code of Criminal Procedure 1962 and Act No. 62-038 on the protection of children.

Universal Periodic Review of Madagascar’s human rights record

Madagascar was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁷

“To strengthen efforts to fulfil its obligations under the Convention for the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child to protect its most vulnerable populations, including women and children, notably in times of crisis

“To make all forms of violence against women and children criminal offences, and to provide victims of violence with effective mechanisms of redress and protection (Germany);

“To adopt, as a matter of priority, proper, comprehensive and effective measures to address all forms of violence against women and girls, including domestic violence, sexual violence and trafficking (Italy);

“To adopt effective measures to combat violence against women and girls, especially domestic and sexual violence, particularly through prevention and sanctioning and the protection and compensation of victims (Chile);

⁵ 3 November 2009, A/HRC/WG.6/7/MDG/1, National report submitted to the Universal Periodic Review

⁶ [2018], CRC/C/MDG/5-6, Fifth/sixth report, para. 115

⁷ 26 March 2010, A/HRC/14/13, Report of the working group, paras. 72(6), 72(37), 72(38), 72(39) and 72(40)

“To take effective measures to protect all girls and women from all forms of violence and ill treatment, to carry out investigations and to ensure those responsible are punished (Argentina)”

Examination in the second cycle took place in 2014 (session 20). No recommendations were made specifically on corporal punishment of children. However, the Government accepted recommendations to bring its national legislation into line with international human rights standards and to address violence against children.⁸

Third cycle examination took place in 2019 (session 34). The Government supported the following recommendations:⁹

“Take practical steps, including through legislative measures, to put an end to corporal punishment in all settings (Zambia);

“Adopt laws prohibiting corporal punishment of children and redouble efforts against child, early and forced marriages (Brazil)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(8 March 2012, CRC/C/MDG/C0/3-4, Concluding observations on third/fourth report, paras. 37 and 38)

“The Committee notes that, although corporal punishment is prohibited in schools, it remains lawful in the home and alternative care settings. The Committee regrets that the State party report provides limited information on corporal punishment.

“Taking due note of the Committee’s 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) consider enacting legislation to explicitly prohibit corporal punishment of children in all settings, including within the family and in alternative care settings;
- b) ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are systematically initiated against those responsible of violence against children; and
- c) introduce public education, awareness-raising and social mobilization campaigns 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 as alternative forms of discipline.”

Committee on the Rights of the Child

(27 October 2003, CRC/C/15/Add.218, Concluding observations on second report, paras. 45 and 46)

“While noting that child abuse is prohibited under the Criminal Code as amended by Act No. 98-024 of 25 January 1999, the Committee is concerned at the incidence of abuse, including sexual abuse,

⁸ 23 December 2014, A/HRC/28/13, Report of the working group, paras. 108(40) and 108(88)

⁹ 17 December 2019, A/HRC/43/13, Report of the Working Group, paras. 121(140) and 121(143)

violence against and neglect of children in the State party; that corporal punishment is not prohibited under law; and that insufficient efforts have been made to protect children....

“The Committee recommends that the State party:

b) take all necessary steps to introduce the legal prohibition of corporal punishment in schools and other institutions and at home, and train teachers in the use of alternative measures of discipline....”

Committee Against Torture

(21 December 2011, CAT/C/MDG/CO/1, Concluding observations on initial report, para. 13)

“The Committee is concerned about information indicating that there is a large number of cases of early and forced marriages and of ill-treatment and domestic violence. It is also concerned about the fact that complaints are not lodged due to social and family pressure, despite the existence of Act No. 2000-21, which criminalizes domestic violence and sexual abuse (arts. 2, 12, 13 and 16)....

The Committee encourages the State party to pass a law to prevent and punish marital rape and prohibit corporal punishment of children. It invites the State party to ensure that methods for detecting violence against women and children are included in the training of law enforcement officers.”

Human Rights Committee

([July 2017], CCPR/C/MDG/CO/4, Concluding observations on fourth report, Advance unedited version, paras. 31 and 32 [in French only])

“Le Comité prend note de la loi n° 2007-023 du 20 août 2007 sur les droits et la protection de l'enfant. Il regrette toutefois qu'à ce jour, les châtiments corporels ne soient formellement prohibés que dans le cadre scolaire (arts. 7 et 24).

“L'État partie devrait prendre des mesures pratiques, notamment d'ordre législatif, pour mettre un terme aux châtiments corporels dans tous les contextes. Il devrait encourager le recours à des formes non violentes de discipline pour remplacer les châtiments corporels et mener des campagnes d'information pour sensibiliser la population aux effets préjudiciables de cette pratique. ”

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

([August 2015], ACERWC, Concluding observations on initial report, paras. 25 and 26)

“The Committee notes with regret that the State Party promotes corporal punishment in the family as a way of domestic disciplining. However, the Committee has a strong stand that corporal punishment should be banned in all settings taking its negative impact on the physical, mental and psychological wellbeing of the child into consideration; and that State Parties should introduce positive disciplining mechanisms at home. Therefore, the Committee recommends that the State Party legally proscribes corporal punishment and promote positive disciplining without physically or verbally harming the child.

“Despite the measures taken by the Government to protect children from abuse and torture, the Committee laments that many children are victims of sexual violence and corporal punishments. The Committee reprehends these violations and regrets that many of the sexual abuses are perpetrated by family members. Consequently, the Committee urges the State Party to investigate and prosecute perpetrators of sexual violence and ensures no impunity, and encourages the society to report such cases and stop stigmatization against those who report sexual abuse by family members. In addition,

the Committee recommends that the State Party bans [sic] corporal punishment in all settings including home and schools.”

Prevalence/attitudinal research in the last ten years

The first study on violence against children in Madagascar, which involved 2,523 respondents, including children aged 15-17, found 86% of respondents think corporal punishment is often used in homes and 65% consider corporal punishment at home to be acceptable. Of the 701 young people involved in the study, nearly 90% think physical punishment is often used by adults to discipline children at home and 67% say it was frequently used as means of discipline at home when were children. Half of them also reported experiencing violence at school.

(Ministere de la Population, de la Protection Sociale et de la Promotion de la Femme (MPPSPF) and UNICEF Madagascar (2018), *Étude sur les violences envers les enfants à Madagascar*)

According to a survey conducted in the four regions of southern Madagascar in 2012, 64% of children age 2–14 years were subjected to physical punishment during the month preceding the survey, with 20% of children subjected to severe physical punishment. Overall, 84% of children were subjected to at least one form of psychological or physical punishment by their mothers, caregivers or other adult household members.

(Instat Madagascar, World Bank & UNICEF (2013), *Madagascar Sud: Enquête par Grappes à Indicateurs Multiples (MICS) 2012, Rapport Final*)

A study involving 100 children aged 4-17 who had experienced violence and 30 parents and other family members revealed the severity of violence experienced by children. More than half the children (52%) had been beaten with an object such as a belt or a broom, 49% had been hit with a hand, most commonly on the back or the head, and 19% had been pinched or had a part of their body twisted. Other types of violence included being insulted and threatened, having their hair pulled and being attacked with a knife. Parents were the most common perpetrators of violence: of the 100 children, 43 had experienced violence from their biological mother, 30 from their biological father and 7 from both. Other perpetrators included grandparents, stepparents, uncles, aunts and older siblings. Thirty-five per cent of the children experienced violence every day, 9% every week, 5% every month and 50% “sometimes”.

(Plate Forme de la Société Civile pour l’Enfance & Centre d’Etudes et de Recherches Juridiques (2011), *La violence a l’égard des enfants au sein de la famille en situation precaire a Antananarivo*, Antananarivo: Plate Forme de la Société Civile pour l’Enfance & Centre d’Etudes et de Recherches Juridiques, Université d’Antananarivo)