

# Corporal punishment of children in Mauritania

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Child population 1,890,000 (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, schools, penal institutions and as a sentence for crime.

We have been unable to establish whether or not written legislation confirms a “right” of parents and others to physically punish a child, but corporal punishment is widely tolerated and legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing. Prohibition should be enacted of all forms of corporal punishment, including by parents.

*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* – The Ministerial Decision against the use of corporal punishment in schools should be confirmed in legislation, which should clearly prohibit all 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.

*Sentence for crime* – All judicial corporal punishment should be prohibited by law, including under Islamic law.

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. Provisions against violence and abuse in the Criminal Code 1983, the law “sur la traite des personnes” 2003, the Personal Status Code 2001 and the Constitution 1991 are not interpreted as prohibiting all corporal punishment of children. Order No. 2005-015 of 5 December 2005 on the judicial protection of children states that the subjection of children to torture or to acts of barbarity shall be punishable by “six years’ rigorous imprisonment” and provides for harsh sentences if the offence is committed repeatedly or if it results in damage, mutilation, disability or death (art. 11), but it does not prohibit corporal punishment. In 2009, a Fatwa was issued against corporal punishment of children but it has not been followed by law reform.<sup>1</sup> A draft Act on violence against women is under discussion.<sup>2</sup>

The Government did not respond to recommendations to prohibit all corporal punishment of children made during the Universal Periodic Review of Mauritania in 2010.<sup>3</sup>

The Government reported in 2017 to the Committee Against Torture that the draft Child Protection Code criminalised corporal punishment of children,<sup>4</sup> which led the Committee to mistakenly welcome its prohibition.<sup>5</sup> The draft Code was adopted by the National Assembly in June 2017<sup>6</sup> and was to be transmitted to the Senate – but following a referendum in August 2017, the Senate was “repealed”.<sup>7</sup> The Code passed another vote at the National Assembly in December 2017.<sup>8</sup> The Government has declared that the Code had been adopted and promulgated,<sup>9</sup> but we have been unable to confirm whether it has indeed been gazetted. Despite the Government’s declarations that the Code prohibits all corporal punishment of children,<sup>10</sup> there is no explicit prohibition. Article 15 states that children “cannot in any instance be submitted to cruel, inhuman or degrading treatment or punishment *which endangers their physical or mental wellbeing*” (emphasis added, unofficial translation). Article 80 prohibits torture and cruel, inhuman or degrading treatment, but this is defined in article 79 as “submitting a child to *repeated* acts of brutality which may affect their psychological balance, *repeated* violation of their physical integrity, and the habit of depriving them of food or sequestering them” (emphasis added, unofficial translation). This in fact protects children from some but not all forms of corporal punishment.

In 2018, the National Commission for Human Rights recommended that the Government review the Penal Code to explicitly prohibit all corporal punishment in all settings, including the home.<sup>11</sup>

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<sup>1</sup> “On the Prohibition of Excessive Child Beating in Islamic *Shariah* (Law): Abstract of a comprehensive social, educational and legal study of the negative impact of child beating, and the rules governing it in Islamic *Shariah* (law)”, prepared by Professor Imam Hadd Amin Ould Al-Salek, Imam of the Old Mosque, Nouakchott, and President of the Imams and Ulema Coalition for the Rights of Women and Children in Mauritania, June 2009

<sup>2</sup> 6 August 2015, A/HRC/WG.6/23/MRT/1, National report to the UPR, para. 54; see also 23 March 2016, A/HRC/31/2 Advance unedited version, Draft report of the Human Rights Council on its 31st session, para. 288

<sup>3</sup> 4 January 2011, A/HRC/16/17, Report of the working group, paras. 92(30), 92(39), 92(40), 92(42) and 92(45)

<sup>4</sup> 20 February 2017, CAT/C/MRT/2, Second report, para. 143

<sup>5</sup> [August 2018], CAT/C/MRT/CO/2 Advance unedited version, Concluding observations on second report, para. 4(f)

<sup>6</sup> See <http://www.assembleenationale.mr/2017/06/13/adoption-du-projet-de-loi-12517/>, accessed 21 July 2017

<sup>7</sup> See <http://www.bbc.co.uk/news/world-africa-40847092>, accessed 4 September 2017

<sup>8</sup> See “ L’Assemblée nationale adopte le projet de loi portant code général de la protection de l’enfant » <http://fr.ami.mr/Depeche-43216.html>, accessed 31 January 2018

<sup>9</sup> 13 June 2018, CAT/C/MRT/Q/2/Add.1, Reply to list of issues, para. 164; 12 July 2018, CRC/C/MRT/Q/3-5/Add.1, Reply to list of issues, para. 45

<sup>10</sup> 12 July 2018, CRC/C/MRT/Q/3-5/Add.1, Reply to list of issues, para. 46

<sup>11</sup> [September 2018], Submission of the National Commission for Human Rights to the Committee on the Rights of the Child

## **Alternative care settings**

Presumably, the Fatwa against corporal punishment (see under “Home”) would apply to alternative care settings, including in the *kafalah* system, but there is no explicit prohibition of corporal punishment in law.

## **Day care**

Presumably, the Fatwa against corporal punishment (see under “Home”) would apply to early childhood care and to day care for older children, but there is no explicit prohibition of corporal punishment in law.

## **Schools**

The Ministry of Education has stated that corporal punishment should not be used (Decision No. 701 MEN/PR of 4 November 1968, art. 17), but there is no explicit prohibition in law. Applicable law includes Act No. 099-012 of 26 April 1999 on the reform of the education system and Act No. 2001-054 of 19 July 2001 on compulsory basic education: we have yet to examine the full texts of these Acts.

## **Penal institutions**

Article 136 of the Child Protection Code, which applies to children in the penitentiary system, states (unofficial translation): “(...) It is prohibited even for disciplinary reasons to inflict to a minor detainee cruel, inhuman or degrading treatment such as: corporal punishment, ... and any punishment which can be harmful to the mental or physical health of the minor.” It is unclear whether this would apply to all children involved in penal proceedings, in particular those sentenced to the institutions for juvenile offenders provided for in articles 130 and 131 of the 2005 Order on the judicial protection of children. We have been unable to confirm whether the Code has been gazetted.

The Code of Criminal Procedure 2007 provides a more general protection from violence, stating in article 58: “Any person deprived of his or her liberty as a result of arrest or detention or any other form of deprivation of liberty must be treated in accordance with respect for human dignity. Mental or physical ill-treatment of detainees ... are prohibited.” Article 15 of the National Police Regulations Act No. 2010-07 of 20 January 2010 prohibits “all cruel or degrading treatment that violates human rights”. Decree No. 2003-1524 (2003) on the structural regulations of rehabilitation centres for children in conflict with the law contains provisions on the rights of the child but we have no further details.

## **Sentence for crime**

Corporal punishment is lawful as a sentence for crime. The Constitution states in article 13 that “Any form of mental or physical violence is prohibited” but the Criminal Code 1983 provides for punishments of amputation and flogging (e.g. art. 7). Order No. 2005-015 on the judicial protection of children states that the penalties imposed on children aged 15 to 18 convicted of an offence may not exceed half of the adult sentences, but it does not prohibit corporal punishment.

Article 285 of the Criminal Code states that “any adult who deliberately inflicts injury on, strikes, amputates a limb of, or inflicts any form of violence on an innocent person shall be punished by qisas

[retribution in kind].” We have yet to ascertain the age at which adulthood is defined for the purposes of this provision.

## **Universal Periodic Review of Mauritania’s human rights record**

Mauritania was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). The following recommendations were made:<sup>12</sup>

“Remove the death penalty and corporal punishment from Mauritanian laws, and establish special procedures for juvenile justice (Ecuador);

“Eradicate in law and in practice corporal punishment and the amputation of limbs, child abuse and neglect, female genital mutilation, forced and early marriage, and the forced feeding of girls, as well as issues related to birth registration, and seek technical assistance from United Nations agencies in this regard, as recommended by the Committee on the Rights of the Child (Israel);

“Take measures to reduce widespread child labour and trafficking in children, to raise the age of criminal responsibility and to eradicate corporal punishment of children (Norway);

“Reinforce the legal framework for the protection of children, and remove the provision in the penal code establishing the age of criminal responsibility as 7 years old, as well as the corporal punishment of children, including flagellation and amputation (France);

“Bring the minimum criminal age of responsibility and the minimum age for marriage into line with CRC, and ban any form of corporal punishment (Spain)”

The Government did not respond to the recommendations.

Examination in the second cycle took place in 2015 (session 23). No recommendations were made specifically concerning corporal punishment of children. However, the Government accepted recommendations to bring national laws into line with international norms and to improve legislation addressing domestic violence.<sup>13</sup>

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

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

(11 October 2018, CRC/C/MRT/CO/3-5 Advance unedited version, Concluding observations on third/fifth report, para. 25)

“In view of the fact that corporal punishment is not prohibited in all settings and is still widely accepted as a means of disciplining children, the Committee reiterates its previous recommendations (see CRC/C/MRT/CO/2, para. 41) and urges the State Party to:

(a) Revise its legislation, including the Criminal Code and Order No. 2005- 015 on the judicial protection of children, to prohibit the imposition of corporal punishment, including whipping and amputation, as a sentence for any offence committed while the offender was under 18 years of age;

(b) Explicitly prohibit the use of corporal punishment by law in all settings;

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<sup>12</sup> 4 January 2011, A/HRC/16/17, Report of the working group, paras. 92(30), 92(39), 92(40), 92(42) and 92(45)

<sup>13</sup> 23 December 2015, A/HRC/31/6, Report of the working group, paras. 126(1), 126(2), 126(3), 126(4), 126(12), 126(39), 126(40) and 126(41)

(c) Promote positive, non-violent and participatory forms of child-rearing and discipline, and raise the awareness of parents, professionals working with children and the public in general to the harm caused by corporal punishment;

(d) Ensure that offenders are expeditiously prosecuted and appropriately sanctioned by the relevant administrative and judicial authorities.”

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

(17 June 2009, CRC/C//MRT/CO/2 Concluding observations on second report, paras. 40, 41 and 74)

“The Committee is concerned that the Penal Code provides for the imposition of corporal punishment, including whipping and amputation of children. The Committee notes that corporal punishment is forbidden in schools by Ministerial order, however is concerned that it is still widely practised in schools and the family.

“The Committee recommends that the State party revise its Penal Code in order to explicitly prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, the schools and alternative childcare. It also recommends that the State party conduct awareness-raising campaigns to ensure that alternative forms of discipline are used, in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, while taking due account of 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 also recommends that the State party seek technical assistance from UNICEF in order to implement relevant programmes in the school environment.

“The Committee recommends that the State party:

a) undertake a systematic assessment of the situation of street children, including in particular *talibes*, in order to obtain a good understanding of root causes, magnitude, links with other factors, inter alia, poverty, the situation of *marabouts*, corporal punishment, exploitation, lack of parental responsibility, lack of access to schools and health facilities....”

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

(6 November 2001, CRC/C/15/Add.159, Concluding observations on initial report, paras. 29 and 30)

“The Committee is concerned that corporal punishment of children is widely practised in the family. It further notes that it is not expressly banned in schools and institutions.

“In light of articles 3, 19, and 28 (2) of the Convention, the Committee encourages the State party to:

a) develop measures to raise awareness on the harmful effects of corporal punishment and engage in the promotion of alternative forms of discipline in families to be administered in a manner consistent with the child’s dignity and in conformity with the Convention; and

b) explicitly prohibit corporal punishment in the family, in schools and in other institutions.”

### ***Committee Against Torture***

([August 2018], CAT/C/MRT/CO/2 Advance unedited version, Concluding observations on second report, paras. 34 and 35, in French only)

“Le Comité relève avec préoccupation que le Code pénal contient toujours des dispositions autorisant les peines corporelles, pour sanctionner les infractions houdoud (la mort par lapidation publique, la

flagellation et l'amputation), dont certaines sont imprescriptibles, et celles de Ghissass et la Diya ou prix du sang, qui consacre la loi du talion dans les cas de crimes de violences portant atteinte à l'intégrité physique, et laisse la sanction ou le pardon à l'appréciation de la victime ou de sa famille, moyennant une compensation. Le Comité s'inquiète aussi des dispositions de l'article 303 du Code pénal, disposant qu' « il n'y a ni crime ni délit lorsque l'homicide, les blessures et les coups étaient ordonnées par la loi et commandées par l'autorité légitime ». Le Comité s'inquiète de la récente modification de l'article 306 du Code Pénal pour instituer la peine de mort obligatoire pour des actes qualifiés d'apostasie et sans possibilité de repentir ou d'appel. Bien qu'il existe un moratoire de facto sur l'application de la peine de mort et des peines corporelles, le Comité demeure préoccupé par leur persistance dans la législation et leur possible application future. Il s'inquiète également d'informations indiquant que plusieurs personnes condamnées à des 11 peines privatives de liberté assorties d'un châtiment corporel demeurent détenues malgré avoir purgé leurs peines d'emprisonnement, faute du pardon de la victime, parce que leurs peines corporelles ne sont pas exécutées (art. 2 et 16).

"Le Comité rappelle sa recommandation précédente (voir CAT/C/MRT/CO/1, par. 20) et engage l'État partie à : (i) amender le Code pénal afin de le mettre en conformité avec ses obligations sous la Convention et d'autres normes internationales, notamment en abrogeant les peines criminelles imposées aux infractions houdoud, la peine de Ghissass et la Diya ; (ii) annuler ou commuer les peines corporelles déjà prononcées, (iii) libérer les personnes dont les peines corporelles ne sont pas exécutées ; et (iv) assurer que les victimes ou leurs ayants droit obtiennent une réparation adéquate. Le Comité recommande également à l'Etat partie d'abolir la peine de mort et de la commuer en peines d'emprisonnement."

### ***Committee Against Torture***

(18 June 2013, CAT/C/MRT/CO/1, Concluding observations on initial report, para. 25)

"Notwithstanding the adoption of Ordinance No. 2005-015 of 5 December 2005 on the judicial protection of children, which establishes prison sentences for persons who commit acts of torture or acts of barbarity against children, the Committee is concerned that corporal punishment of children is not prohibited by law and seems to be even considered a suitable and effective method of education (art. 16).

"The State party should:

- a) amend its criminal legislation, including Ordinance No. 2005-015 on the judicial protection of children, to prohibit and explicitly penalize any form of corporal punishment of children in all places and contexts, including within the family, and enforce the principle of education without violence in accordance with article 28, paragraph 2, of the Convention on the Rights of the Child;
- b) carry out programmes involving children, families, communities and religious leaders to educate, sensitize and mobilize the general public about the harmful effects of corporal punishment on the physical and psychological development of the person."

### ***Committee on the Elimination of Discrimination Against Women***

(11 June 2007, CEDAW/C/MRT/CO/1, Concluding observations on initial report, paras. 29 and 30)

"... The Committee is particularly concerned ... about the persistence of patriarchal attitudes that consider the physical chastisement of family members, including women, 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....”

### ***Human Rights Committee***

(21 November 2013, CCPR/C/MRT/CO/1, Concluding observations on initial report, para. 16)

“While noting the State party's adoption of Ordinance No. 2005-015 of 5 December 2005 on the judicial protection of the child, the Committee is concerned that corporal punishment of children in the State party continue and are not explicitly prohibited by law (art. 7 and 24).

The State party should take effective measures to end the practice of corporal punishment in all circumstances. It should encourage the use of non-violent discipline as an alternative to corporal punishment and conduct information to raise awareness of the harmful consequences of such violence campaigns.”

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

Research conducted in 2015 as part of UNICEF's Multiple Indicator Cluster Surveys (MICS) programme, found on average 80% of 1-14 year-old children experienced some form of violent discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 72% of children experienced psychological aggression, 42% physical punishment and 27% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Only 10% of children experienced only non-violent forms of discipline.

(L'Office National de la Statistique (2016), *Enquête par Grappes à Indicateurs Multiples, 2015, Résultats clés*, Nouakchott, Mauritanie: L'Office National de la Statistique)

According to UNICEF statistics collected in 2011, 87% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Seventy-eight per cent experienced physical punishment and 82% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A smaller percentage (36%) of mothers and caregivers thought that physical punishment was necessary in childrearing.

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