



**End Corporal
Punishment**

Corporal punishment of children in Mozambique

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Child population 15,968,000 (UNICEF, 2020)

Mozambique's commitment to prohibiting corporal punishment

Mozambique expressed its commitment to prohibiting all corporal punishment of children by accepting the recommendation to do so made during the Universal Periodic Review of Mozambique in 2016.

Summary of necessary legal reform to achieve full prohibition

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

The Law for the Protection of the Rights of the Child 2008 provides for the concept of “justifiable discipline”, which in the absence of explicit prohibition of all corporal punishment provides a legal defence for the use of physical punishment in childrearing. This provision should be repealed/amended so that legislation states clearly that no corporal punishment, however light, is acceptable or lawful. Prohibition should be enacted of all corporal punishment and other inhuman or degrading treatment or punishment, including by parents and all adults with authority over children.

Alternative care settings – Prohibition of corporal punishment 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 – Government policy against the use of corporal punishment in schools should be confirmed in legislation which clearly prohibits it in all education settings, public and private, at all levels.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 7 of the Law for the Promotion and Protection of the Rights of the Child No. 7/2008 states that “no child shall be subjected to negligent, discriminatory, violent and cruel treatment or be subjected to any form of exploitation or oppression” and states that child abuse includes “assault or other deliberate injury” (unofficial translation). But the Law does not prohibit all corporal punishment, and article 17(3) provides for the concept of justifiable discipline: “The child has the right to be disciplined in accordance with their age, physical and mental condition, and no disciplinary action is justified if, by reason of their tender age or other reason, the child is unable to understand the purpose of disciplinary action.”

Article 40(1) of the Constitution 2004 (revised in 2018) states that “all citizens shall have the right to life and to physical and moral integrity, and they shall not be subjected to torture or to cruel or inhuman treatment”, but it is not interpreted as protecting children from all corporal punishment. Similarly, provisions against violence and abuse in the Law on the Jurisdictional Organisation of Minors No. 8/2008, the Family Law 2004 and the Law Against Domestic Violence No. 29/2009 are not interpreted as prohibiting all corporal punishment in childrearing. The new Penal Code, which came into force on 1 July 2015, punishes crimes against physical integrity (art. 170ff) but only when this involves bodily harm; it punishes domestic violence (art. 245ff) but does not include all corporal punishment of children in this. The National Plan of Action for Children 2013-2019 (PNAC II) makes no reference to corporal punishment.

In 2016, the Government expressed its commitment to prohibiting corporal punishment of children in all settings by clearly accepting the recommendation to do so made during the Universal Periodic Review of Mozambique.¹

Alternative care settings

Corporal punishment is lawful in alternative care settings as for parents under the provision for “justifiable discipline” in article 17 of the Law for the Promotion and Protection of the Rights of the Child 2008 (see “Home”, above).

Day care

Corporal punishment is lawful in early childhood care and in day care for older children under the provision for “justifiable discipline” in article 17 of the Law for the Promotion and Protection of the Rights of the Child 2008 (see “Home”, above).

Schools

Government directives advise against the use of corporal punishment in schools, but there is no explicit prohibition in law. Article 34(1) of the Law for the Promotion and Protection of the Rights of the Child 2008 states that the child has the right to education, including “the right to be respected by their teachers in order to be assured of the child’s human dignity” (unofficial translation). The Law also puts a duty on school management to report maltreatment of students (art. 37(1)) but it does not explicitly prohibit corporal punishment. The Law on the National Education System 1983 appears to be silent on the issue (information unconfirmed). Law No. 2001-054 on Primary Education provides for compulsory education for children aged 6-14: it does not prohibit corporal punishment.

Penal institutions

Corporal punishment is explicitly prohibited as a disciplinary measure in penal institutions in article 64(4) of the Law for the Promotion and Protection of the Rights of the Child 2008 (unofficial translation): “It is strictly forbidden to use disciplinary methods that constitute cruel, inhuman or degrading

¹ 12 April 2016, A/HRC/32/6, Report of the working group, para. 128(102)

treatment, including corporal punishment, placement in a dark cell, imprisonment or solitary confinement, reduction in diet....” Other applicable legislation includes Law No. 3/2013 of 16 January, establishing the National Penitentiary Service (SERNAP) and Decrees Nos. 63 and 64 of 6 December 2013 which approve the SERNAP Organic Statute and SERNAP Staff Regulations: we have yet to see the full texts of these laws.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under the Law Abolishing the Penalty of Whipping 1989: article 1 repealed Law No. 5/1983 which had introduced whipping as a judicial sentence, article 2 revoked all sentences of whipping that had not been carried out at the time the Law came into force. The Constitution protects “all citizens” from torture and cruel or inhuman treatment (art. 40) applies and there is no provision for corporal punishment as a sentence of the courts in the Law for the Promotion and Protection of the Rights of the Child 2008.

Universal Periodic Review of Mozambique’s human rights record

Mozambique was examined in the first cycle of the Universal Periodic Review process in 2011 (session 10). No recommendations were made specifically concerning corporal punishment of children.

Examination in the second cycle took place in 2016 (session 24). The following recommendations were made and were accepted by the Government:²

“Adopt strategies to combat harmful practices such as debt bondage of children and corporal punishment (Turkey);

“Prohibit corporal punishment of children in all settings (Slovenia)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(1 October 2019, CRC/C/MOZ/CO/3-4 Advance unedited version, Concluding observations on third/fourth report, paras. 4 and 25)

“The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party’s attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: ... violence against children (paras. 25-29)...”

“Noting with deep concern the extensive use of corporal punishment and the application of legal provisions which are interpreted as justification for such forms of discipline, the Committee urges the State party to:

- a) Prioritize the explicit prohibition, through legislative and administrative measures, of corporal punishment in all settings, including in the home, in schools and in day-care and alternative care settings
- b) Repeal all legislative provisions, including Article 24 of the Law on the Promotion and Protection of Children’s Rights, Article 51 of the Regulation on Basic Education and Article 179 of the Penal Code, which are interpreted as a justification for the use of corporal punishment
- c) Strengthen its efforts to train parents, teachers, professionals working with children and the public on positive, non-violent forms of discipline and respect for children’s right to human dignity and physical integrity, with a view to eliminating the acceptance of the use of corporal punishment

² 12 April 2016, A/HRC/32/6, Report of the working group, paras. 128(101) and 128(102)

Committee on the Rights of the Child

(4 November 2009, CRC/C/MOZ/CO/2, Concluding observations on second report, paras. 8, 47, 48 and 75)

“The Committee refers the State party to its general comment No. 5 (2003) on general measures of implementation for the Convention on the Rights of the Child and recommends that it take all necessary measures to address the recommendations from the concluding observations of the initial report that have not yet been implemented or sufficiently implemented, including those related to the allocation of resources, children with disabilities, children living on the street, child labour, corporal punishment, and child abuse and neglect....

“The Committee is concerned that corporal punishment remains lawful in the home and schools and is often considered the only way to discipline children. The Committee is also concerned that the Child Rights Protection Law does not explicitly prohibit corporal punishment at home and in schools. The Committee is further concerned that in spite of internal regulations of the Ministry of Education prohibiting corporal punishment, it continues to be inflicted on children by teachers and parents throughout the State party.

“Recalling its previous recommendation (CRC/C/15/Add.172, para. 39 (b)), the Committee draws the attention of the State party 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, according to which eliminating violent and humiliating punishment of children is an immediate and unqualified obligation of States parties. The Committee therefore urges the State party:

- a) to explicitly prohibit by law corporal punishment in the family, schools and institutions and ensure that those laws are effectively implemented and that legal proceedings are systematically initiated against those responsible for mistreating children;
- b) to conduct a comprehensive study to assess the causes, nature and extent of corporal punishment throughout the State party; and
- c) to 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 promoting positive, non-violent, participatory values and forms of child-rearing and education.

“The Committee notes with satisfaction the creation of the National Refugee Support Institute by Decree No. 51/2003 of 24 December 2003 with the aim, notably, of ensuring the enjoyment by refugee children of their rights to education, health care, social security and protection, as well as the establishment within the Marratane refugee centre of a primary school and a health centre. The Committee is, however, concerned at the high level of ethnic tension and violence among children in the camp and in the school, where corporal punishment is inflicted by teachers on children....”

Committee on the Rights of the Child

(7 February 2002, CRC/C/15/Add.172, Concluding observations on initial report, paras. 38 and 39)

“The Committee is concerned:

- a) at acts of violence and abuse, including sexual abuse, committed against children in schools and alternative care institutions and by members of the public or the police force in the streets and that boys are not as well protected from sexual offences as girls;
- b) that corporal punishment is widely practised in the home, in schools and in other public institutions, such as prisons, and in alternative care contexts....

“The Committee recommends that the State party:

- a) take action to address acts of violence and abuse, including sexual abuse, committed against children in the family, in schools and in the streets through, inter alia, the use of training and information campaigns on the impact of violence on children, children’s rights and the prosecution of perpetrators;
- b) take action to end the practice of corporal punishment in the home, in schools and in all other contexts, including through legislative and administrative measures, as well as public education

initiatives to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment;

c) make every effort to ensure the provision of treatment and rehabilitation to the victims of violence and abuse....”

Committee Against Torture

(10 December 2013, CAT/C/MOZ/CO/1, Concluding observations on initial report, paras. 25 and 27)

“... The Committee is also concerned at reports of corporal punishment (whipping) inflicted by some traditional authorities. Furthermore, it regrets the lack of information on the steps taken to ensure that customary law in Mozambique is not incompatible with the State party’s obligations under the Convention (art. 16).

The State party should:

- a) strengthen its efforts to prevent and combat harmful traditional practices, particularly in rural areas, and ensure that such acts are investigated and the alleged perpetrators prosecuted and, if convicted, punished with appropriate sanctions;
- b) provide victims with legal, medical, psychological and rehabilitative services and compensation, and create the conditions for them to report complaints without fear of reprisal; and
- c) provide judges, prosecutors, law enforcement officials and traditional authorities with training on the strict application of the relevant legislation criminalizing harmful traditional practices and other forms of violence against women and children.

In general, the State party should ensure that its customary law and practices are compatible with its human rights obligations, particularly those under the Convention. In its next periodic report, the State party should provide information on the hierarchy between traditional practices and codified law, especially with regard to forms of discrimination against women and children.

“While recognizing that corporal punishment has been abolished as a penalty for crime and that it is prohibited in penal institutions, the Committee is concerned that it is not explicitly prohibited in the home, schools and all care settings (art. 16).

The Committee recommends that the State party prohibit the corporal punishment of children in all settings, conduct public awareness-raising campaigns about its harmful effects, and promote positive non-violent forms of discipline as an alternative to corporal punishment.”

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

([December 2014], Concluding observations on initial report, para. 29)

“The Committee appreciates the prohibition of corporal punishment as a sentence and recommends the State Party to explicitly ban corporal punishment in all settings including in school, the home and in alternative care centres. The State Party should ensure the respect of children’s right to be protected from violence. The Committee also calls upon the State Party to encourage positive discipline and to support families through awareness raising and training for those who are working for and with children such as teachers and care givers.”

Prevalence/attitudinal research in the last ten years

A study involving more than 1,000 girls in Ghana, Kenya and Mozambique analysed the impact of ActionAid’s 2008-2013 project “Stop Violence Against Girls in School”. The project included awareness raising and lobbying for the adoption and implementation of legal and policy measures that ensure education is free from corporal punishment in the three countries. The study found that in 2013 the use of some forms of corporal punishment had reduced since the baseline survey carried out in 2009. In Mozambique in 2009, 52% of girls had been whipped or caned in the past 12 months; by 2013, this had dropped to 29%. Girls’ most recent experiences of corporal punishment usually took place in school.

The study recommends prohibition of corporal punishment in schools and measures to implement the prohibition.

(ActionAid International (2013), Stop Violence Against Girls in School: A cross-country analysis of change in Ghana, Kenya and Mozambique, Johannesburg: ActionAid)

In 2009, over 2,600 children aged 6-18 took part in a survey, while 168 children drew pictures and talked about the last time they were punished at home and at school. One child in three had been hit with a hand at home in the past two weeks, 37% beaten with an object; 6-8 year olds were more likely to have been hit than older children, and children from low income families were more likely to have been hit than children from high income families. About one child in three had been hit with a hand at school in the past two weeks, 40% hit with an object.

(Clacherty, G. et al (2009), Children's Experiences of Punishment in Mozambique: A Qualitative and Quantitative Survey, Pretoria: Save the Children Sweden)

End Corporal Punishment acts as a catalyst for progress towards universal prohibition and elimination of corporal punishment of children. We support and analyse national progress, monitor legality and implementation worldwide, partner with organisations at all levels, and engage with human rights treaty body systems. End Corporal Punishment is hosted by the World Health Organization and supported by a multi-partner Advisory Committee.