

Corporal punishment of children in New Caledonia

LAST UPDATED July 2020

Also available online at

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Child population (0-14) 63,698 (Government of France, 2014)

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

Customary law recognises a “right of correction”. This provision must be explicitly repealed and a clear law enacted prohibiting all corporal punishment in raising and disciplining children, including by parents, teachers and all adults with parental authority over 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 – Prohibition should be enacted in relation to all education settings, public and private, in addition to repeal of the “right of correction” in customary law.

Penal institutions – Prohibition should be enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Note: New Caledonia is a special collectivity of France which has increasingly adopted autonomy over areas of governance. Organic Law No. 99-209 of 19 March 1999 laying down the status of New Caledonia sets out a number of issues on which the country shall enact its own legislation (section 99). In 1987, independence from France was rejected by referendum; a second referendum on independence is expected to be held between 2014 and 2018.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home under the “right of correction” in customary law. For example, in 1819 the French Supreme Court ruled that parents have this right;¹ a ruling in 1967 stated that this right does not apply when the child’s health is placed at risk.² Provisions against violence and abuse in the Criminal Code 1994, the Civil Code, Act No. 2007-293 reforming child welfare and Act No. 2006-399 concerning domestic violence and violence against children are not interpreted as prohibiting all corporal punishment in childrearing.

The Law on the prohibition of ordinary educational violence (*violences éducatives ordinaires*, which is the French term for corporal punishment) which was adopted by the French Parliament in July 2019 and prohibits all corporal punishment of children, does not apply in New Caledonia.

In 2013, a complaint was brought against France by the Association for the Protection of All Children (APPROACH) Ltd, under the collective complaints procedure of the European Committee of Social Rights.³ The complaint alleged that, in breach of the European Social Charter, there is no explicit and effective prohibition of all corporal punishment in the family, schools and other settings and that France has failed to act with due diligence to eliminate such punishment in practice. The complaint was registered by the Committee in February 2013; it was declared admissible on 2 July 2013. The Committee published its decision in March 2015. It found that the situation in France is in violation of article 17 of the Charter because “there is no sufficiently clear, binding and precise prohibition of corporal punishment set out in French law”.⁴

In May 2013, France accepted the recommendations to prohibit corporal punishment of children in all settings made during the UPR earlier in 2013.⁵ A draft amendment to a new Family Law which would prohibit all corporal punishment by persons with parental authority was under discussion in 2014 but failed to progress through Parliament. In November 2014, Minister for Families Laurence Rossignol called for renewed debate on corporal punishment in the home and schools.⁶ However, the Law on Child Protection voted in March 2016 did not include prohibition of corporal punishment of children.

In its first report to the UN Committee on the Rights of the Child, the Office of the Defender of Rights, an independent constitutional authority, confirmed that many parents consider smacking and slapping children “harmless” and “a means of educating them”, and that such acts are “only punishable if their nature and consequences go beyond the limits of the ‘right to correct’”.⁷ The report calls for prohibition in all settings, including the home.

Article 222 of the Equality and Citizenship Law voted on 22 December 2016 aimed to amend article 371-1 of the Civil Code to state that parental authority must be exercised (unofficial translation) “with all due respect owed to [the child] and excluding all cruel, degrading or humiliating treatment, including any use of corporal violence”. However on 26 January 2017 the Constitutional Court annulled article 222 on a legal technicality, arguing that the amendment that had added article 222 to the Equality and Citizenship Bill had no link with the original text and thus was unconstitutional.

¹ Cour de Cassation, Criminal Chamber, 17 December 1819, S. 1819-1821, chron., p. 152

² Cour de Cassation, Criminal Chamber, 21 February 1967, Bull. Crim., No. 73

³ Collective complaint No. 92/2013, Association for the Protection of All Children (APPROACH) Ltd v France

⁴ Collective Complaint No. 92/2013, Association for the Protection of All Children (Approach) v France, Decision on the Merits, Adoption 12 September 2014, Notification 3 November 2014, Publicity 4 March 2015, para. 37

⁵ 28 May 2013, A/HRC/23/3/Add.1, Report of the working group: Addendum, para. 10

⁶ Reported in The Local, 19 November 2014, <http://www.thelocal.fr/20141119/minister-calls-for-new-debate-over-spanking-in-france>, accessed 4 December 2014

⁷ Report by the Defender of Rights to the United Nations Committee on the Rights of Children – February 27, 2015, para. 48

Alternative care settings

Corporal punishment is lawful in alternative care settings under the customary “right of correction”.

Day care

Corporal punishment is lawful in alternative care settings under the customary “right of correction”. In 2003 the Supreme Court confirmed that nannies and babysitters have this right.

Schools

There is no explicit prohibition in law of corporal punishment in schools and “light correction” is tolerated in the same way as it is for parents. In 1908, the French Supreme Court confirmed that teachers have a “right of correction”;⁸ a ruling in 2000 stated that this did not apply to habitual and “non-educational” corporal punishment.⁹ A 2002 case found that a teacher did not have the right to habitually pull pupils’ hair, kick their behinds and slap their faces but did not rule out all corporal punishment.¹⁰

According to the national report to the European Committee of Social Rights in 2010, judicial decisions have acknowledged the “right of correction” by parents, teachers and educators and laid down the conditions that it must be (i) harmless, (ii) of moderate intensity (slaps, clothes seized, ears and hair pulled) and (iii) aimed at maintaining school order and discipline.¹¹

Penal institutions

As in France, corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition in legislation. The Code of Criminal Procedure 1994 provides for respect for human dignity (article D.189) and prohibits violence towards detainees (article D.220). A decree of 4 April 1996 and its implementing circular of 12 April 1996 prohibit cruel, inhuman or degrading punishment.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in criminal law.

Universal Periodic Review of France’s human rights record

France was examined in the first cycle of the Universal Periodic Review in 2008 (session 2). No recommendations were made concerning corporal punishment of children.

Review in the second cycle took place in 2013 (session 15). The following recommendations were made:¹²

“Take all the necessary legal measures to explicitly ban the corporal punishment of children in all settings, including the family, schools and institutions (Uruguay);

⁸ Cour de Cassation, Criminal Chamber, 4 December 1908, Bull. Crim., No. 482

⁹ Court of Appeal, Nancy, 17th January 2000

¹⁰ Cour de Cassation, Criminal Chamber, November 26 2002, case n° 02-81727

¹¹ 16 December 2010, RAP/RCha/FR/X(2010), pp. 54-55

¹² 21 March 2013, A/HRC/23/3, Report of the working group, paras. 120(116), 120(117) and 120(118)

“Introduce legislation to explicitly prohibit all corporal punishment of children as recommended by the Committee on the Rights of the Child (Finland);

“Consider introducing provisions explicitly prohibiting corporal punishment against children (Poland)”

The Government accepted the recommendations.¹³ France’s 2016 mid-term report refers to the 2015 European Committee of Social Rights decision finding France in breach of the Charter and highlights the Government’s disagreement with that outcome, stating that “the state of current legislation protects children against all violence” (unofficial translation).¹⁴

Third cycle examination took place in 2018 (session 29). The following recommendations were extended:¹⁵

“Prohibit explicitly corporal punishment in all settings, including in the family and in care settings (Liechtenstein);

“Adopt legislation explicitly prohibiting all forms of corporal punishment of children and to sanction perpetrators of such violence against children (Sweden);

“Prohibit clearly and explicitly corporal punishment of children in any setting, including at home (Uruguay);

“Prohibit expressly all corporal punishment of children in all settings (Andorra);

“Prohibit explicitly corporal punishment in all settings in order to further strengthen the protection of children (Denmark);

“Prohibit explicitly corporal punishment of children in all settings, including in the home (Estonia)”

The Government partially accepted all of the above recommendations, stating that it generally accepted “the wording and intention” of the recommendations it had partially accepted but could not fully implement them, “either because it does not agree with part of the recommendation, although it could implement the other part, or because of legal or constitutional obstacles that prevent the full implementation of the recommendation”.¹⁶ In relation to the recommendations on corporal punishment, France declared it already had enacted (unofficial translation) “domestic criminal legislation which criminalised and severely punished all forms of violence against children” and highlighted that, for parents who have used corporal punishment, “it is not a solution to send them in front of a judge (...) To promote an education without violence is first and foremost about convictions and growing as a society”.¹⁷ Additionally, France committed to submitting a mid-term implementation report by 2021.¹⁸

Recommendations by human rights treaty bodies

Note: It appears the Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities and the European Social Charter all apply in New Caledonia, as they do in France.

Committee on the Rights of the Child

(29 January 2016, CRC/C/FRA/CO/5 Advance Unedited Version, Concluding observations on fifth report, paras. 6 and 44)

¹³ 28 May 2013, A/HRC/23/3/Add.1, Report of the working group: Addendum, para. 10

¹⁴ [2016], National mid-term report, pp. 69-70

¹⁵ 11 April 2018, A/HRC/38/4, Report of the working group, paras. 145(236), 145(237), 145(238), 145(239), 145(240) and 145(241)

¹⁶ 10 May 2018, A/HRC/38/4/Add.1, Report of the working group: Addendum, paras. 5 and 28

¹⁷ March 2018, Annex to the Addendum: France’s responses to UPR recommendations

¹⁸ 10 May 2018, A/HRC/38/4/Add.1, Report of the working group: Addendum, para. 36

“The Committee recommends that the State party adopt all the measures necessary to address those previous recommendations that have been partly, insufficiently, or not implemented at all (CRC/C/FRA/CO/4), such as those relating to corporal punishment, minimum age of responsibility, the juvenile justice system, and unaccompanied migrant children, and regrets in particular that the State party has not withdrawn its reservation to article 30 and its two declarations to articles 6 and 40.

“The Committee reiterates its recommendation to the State party to explicitly prohibit corporal punishment in all settings, including in the family, in schools, day cares and in alternative care (CRC/C/FRA/CO/4, para. 58). In the light of its general comment no. 8 (2006) on the right of the child to protection from corporal punishment, the Committee reminds the State party that no violence against children is justifiable and that corporal punishment is a form of violence, invariably degrading and preventable, and urges the State party to promote positive, non-violent and participatory forms of child-rearing and discipline, including through public education campaigns.”

Committee on the Rights of the Child

(22 June 2009, CRC/C/FRA/CO/4, Concluding observations on third/fourth report of France, paras. 6, 57 and 58)

“The Committee regrets that some of the concerns and recommendations it made upon consideration of the second periodic report have been insufficiently addressed, particularly those relating to ... corporal punishment....

“While taking note of the assertion by the State party that all forms of physical corporal punishment are prohibited in the French Penal Code, the Committee reiterates its concern that corporal punishment, in particular in the home, as well as in schools, remains widespread, especially in the Overseas Departments and Territories, and that a specific provision to prohibit explicitly corporal punishment against children is still missing.

“Reiterating its previous recommendation and in accordance with its general comment No. 8 (2006), the Committee recommends that the State party explicitly prohibit corporal punishment in all settings, including in the family, in schools, in institutions and other childcare settings, increase awareness-raising in this respect and promote the value of education without violence according to article 28, paragraph 2, of the Convention. In this endeavour, the Committee further recommends that the State party follow-up on the campaign of the Council of Europe to achieve full prohibition of all forms of corporal punishment which it has signed up for.”

Committee on the Rights of the Child

(30 June 2004, CRC/C/15/Add.240, Concluding observations on second report of France, paras. 38 and 39)

“The Committee welcomes the fact that the State party considers corporal punishment totally unacceptable and inadmissible, however it remains concerned that corporal punishment is not explicitly prohibited in the family, in schools, in institutions and in other childcare settings.

“The Committee encourages the State party to expressly prohibit corporal punishment by law in the family, in schools, in institutions and in other childcare settings. It further recommends awareness-raising and promotion of positive, non-violent forms of discipline, especially in families, schools and care institutions in light of article 28, paragraph 2, of the Convention.”

Committee on the Rights of the Child

(25 April 1994, CRC/C/15/Add.20, Concluding observations on initial report of France, para. 24)

“The Committee would also like to suggest that further awareness-raising and educational measures be undertaken to prevent child abuse and the physical punishment of children.”

European Committee of Social Rights

(March 2020, Conclusions 2019)

“In its previous conclusion (Conclusions 2011) the Committee held that the situation was not in conformity with the Charter as all forms of corporal punishment of children were not prohibited. It recalls that it found in the follow up to *APPROACH v. France*, Complaint no.92/20113, decision on the merits of 4 December 2014, Findings 2018 that the situation had not been brought into conformity with the Charter.

“The Committee notes that the Law on the prohibition of ordinary educational violence (*violences éducatives ordinaires*) was adopted unanimously by the Senate in July 2019. It amends article 371-1 of the Civil Code and provides that: “Parental authority is exercised without any physical or psychological violence”. However, as this development took place outside the reference period the Committee will review it next time it examines Article 17.1 of the Charter.

“The Committee notes that there was no change to the situation during the reference period which it had previously found not to be in conformity with the Charter. Therefore, it reiterates its previous findings of non-conformity on this ground.

...

“The Committee concludes that the situation in France is not in conformity with Article 17§1 of the Charter on the grounds that:

- not all forms of corporal punishment of children were prohibited in all settings during the reference period;
- the maximum length of pre-trial detention is excessive;
- bone testing is used to determine the age of unaccompanied children;
- migrant children unaccompanied minors may be detained in inappropriate settings”

European Committee of Social Rights

(January 2012, Conclusions 2011)

“In its previous conclusion (Conclusions 2005) the Committee held that the situation was not in conformity with the Charter as all forms of corporal punishment of children were not prohibited. In this connection the Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2005) 25, §78) that there is no specific prohibition of corporal punishment but under the Criminal Code any act of violence is prohibited. The French authorities consider that there is no need for further legislation.

“In its previous conclusion the Committee asked what were the implications of the 2000 judicial ruling which stated that corporal punishment which is repetitive and not educational is not covered by the ‘right to correction’ for teachers and for parents. According to the report some judicial decisions in fact acknowledged the use of ‘right of correction’ by parents, teachers and educators, provided that it is harmless, moderate (spank, clothes seized, ears and hair pulled) and aims at maintaining school order and discipline. However, if the objective is to humiliate the student, if the correction causes physical damage or if it is too degrading, courts tend to convict the adult.

“The Committee notes from another source that a survey by the Union of Families in Europe (UFE) of 2,000 grandparents, parents and children found that 96% of children have been smacked; 84% of grandparents and 87% of parents have administered the corporal punishment. One in ten parents admitted to punishing their children with a ‘martinet’ (a small whip); 30% of children said they had been punished with a martinet. Corporal punishment is lawful in alternative care settings under the customary ‘right of correction’. In 2003 the Court of Cassation confirmed that nannies and babysitters have this right.

“According to the report a draft law to include the prohibition of corporal punishment, including spanking, in the Civil Code has been brought to the National Assembly in 2010. The Committee wishes to be informed about the outcome.

“The Committee recalls that to comply with Article 17 with respect to the corporal punishment of children, States’ domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being

of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, States must act with due diligence to ensure that such violence is eliminated in practice.

“The Committee holds that there has been no change to the situation which it has previously found not to be in conformity with the Charter. Therefore it reiterates its previous finding of non-conformity on this ground....

“The Committee concludes that the situation in France is not in conformity with Article 17§1 of the Charter on the grounds that:

- all forms of corporal punishment of children are not prohibited....”

European Committee of Social Rights

(March 2005, Conclusions 2005)

“In the previous conclusion the Committee noted that the Penal Code prohibits violence against the person and provides for increased penalties where the victim is under 15 years of age or where the perpetrator is related to the child or has authority over the child, but does not necessarily cover all forms of corporal punishment which it found not to be in conformity with the Revised Charter. The Committee finds no information in the report that the situation has changed. The Committee notes therefore that corporal punishment is not prohibited in the home or in institutions and other childcare settings and that this situation is not in conformity with the Revised Charter.

“The Committee notes from another source that High Court ruling of 1889 allowed a ‘right to correction’ for teachers and for parents. A 2000 judicial ruling stated that corporal punishment which is repetitive and not educational is not covered by this right. The Committee asks the next report to explain the implications of the 2000 judicial ruling with regard to the use of corporal punishment in the home.

...

“The Committee concludes that the situation in France is not in conformity with Article 17.1 of the Revised Charter on the grounds that:

- corporal punishment of children is not prohibited....”

European Committee of Social Rights

(1 October 2003, Conclusions 2003 Vol. 1, page 173)

“As regards corporal punishment of children, the Committee notes that according to the report corporal punishment of children is not explicitly prohibited in the home, in school or in other institutions. Although the Penal Code prohibits violence against the person and provides for increased penalties where the victim is under 15 years of age or where the perpetrator is related to the child or has authority over the child. The Committee notes that these provisions of the Penal Code do not necessarily cover all forms of corporal punishment and therefore finds that the situation is not in conformity with the Revised Charter....

“The Committee concludes that the situation in France is not in conformity with Article 17.1 of the Revised Charter as the corporal punishment of children is not prohibited.”

European Committee of Social Rights

(1 January 2001, Conclusions XV-2 vol. 1, pages 220-225)

“The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere....”

Prevalence/attitudinal research in the last ten years

None identified.

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