

Corporal punishment of children in Niger

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Child population 11,332,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Niger's commitment to prohibiting corporal punishment

In 2011, Niger accepted a recommendation made during its Universal Periodic Review to implement the recommendations of the Committee on the Rights of the Child concerning corporal punishment in children's education. A Children's Code has been drafted which includes clear prohibition of all corporal punishment.

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.

We have been unable to establish whether or not written legislation confirms a "right" of parents and others to physically punish a child, but 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 circular against the use of corporal punishment should be confirmed through the enactment of legislation which clearly prohibits corporal punishment in all education settings, including public and private settings, Koranic schools, etc, and at all levels of education.

Penal institutions – Prohibition should also 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. Provisions against violence and abuse in the Constitution 2010, the Criminal Code 1961 and Act No. 62-11 1962 are not interpreted as prohibiting all corporal punishment of children. Drafting of a Family Code began in 1976 but no new Code has yet been adopted.

In 2011, the Government indicated its commitment to enacting prohibiting legislation by clearly accepting a recommendation made during the Universal Periodic Review of Niger to implement the recommendations of the Committee on the Rights of the Child concerning corporal punishment.¹ In August 2013, the Council of Ministers adopted the Draft Decree Adopting the Child Protection Framework Document which establishes national goals and strategies for strengthening protection of children against violence:² we are enquiring as to whether this provides for the enactment of legislation prohibiting all corporal punishment of children.

A draft Children's Code is under discussion that would prohibit corporal punishment in all settings including the home. Article 256, in the chapter on the right of the child to health, states (unofficial translation): "Every child has the right not to be subjected to torture, cruel, inhuman or degrading treatment or any other form of violence and abuse particularly harmful traditional practices, including corporal punishment." Article 453, in the section on protection from abuse in the family, states: "Physical and psychological abuse, corporal punishment and deliberate neglect are liable to the penalties in paragraph 1 of article 452 above." The article referred to (art. 452) punishes violence, including mild and repeated violence. In April 2017, the Government reported that the draft Children's Code had been submitted to Parliament but was still being debated.³ The Government reported in July 2018 that it was intensifying its awareness-raising efforts to gain active public approval of the Code.⁴ The Committee on the Rights of the Child recommended in October 2018 that Niger expedite the adoption of the draft Children's Code and the Family Code to "harmoniz[e] the national legislation with the Convention".⁵ As of December 2019, the Family Code had still not been adopted.⁶

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings. The draft Children's Code 2012 would prohibit corporal punishment in all forms of alternative care (arts. 256 and 470).

¹ 25 March 2011, A/HRC/17/15, Report of the working group, para. 76(36)

² <http://www.presidence.ne/article/communiqué-du-conseil-des-ministres-du-vendredi-23-aout-2013#sthash.ubABxY0C.dpbs>, accessed 20 January 2016

³ 12 April 2017, CEDAW/C/NER/Q/3-4/Add.1, Reply to list of Issues, paras. 9 and 34

⁴ 26 July 2018, CRC/C/NER/Q/3-5/Add.1, Reply to list of issues, para. 1

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

⁶ 16 May 2019, CCRPR/C/NER/CO/2, Concluding observations on second report, para. 20; 5 December 2018, CCPR/C/NER/Q/2/Add.1, Reply to list of issues, para. 65

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. The draft Children's Code 2012 would prohibit corporal punishment in all forms of day care (arts. 256 and 470).

Schools

Corporal punishment is lawful in schools. There is a ministerial order against its use (Ministerial Circular No. 16/MEN/DEPD of 02 April 1981) but no prohibition in law. The Government confirmed that some cases had been reported in Koranic schools.⁷

The draft Children's Code 2012 would explicitly prohibit corporal punishment in schools in article 256 (see "Home", above) and in article 470, which states: "Corporal punishment and other forms of violence or abuse are prohibited in schools, vocational training and institutions." The same article confirms that the prohibition applies to all institutions, including for children with disabilities, shelters, hospitals and any other place for temporarily or permanently providing childcare.

Penal institutions

Article 2(5) of the 2014 Act on Juvenile Courts reportedly states that the child in conflict with the law must be treated with dignity and cannot be submitted to cruel, inhuman or degrading treatment or any form of violence,⁸ but there is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. We have been unable to check Act No. 2017-08 of 31 March 2017 on the prison system. Corporal punishment would be prohibited in the draft Children's Code 2012 (arts. 256 and 470).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. According to Order No. 99-11 of 11 May 1999, children convicted of an offence may be sentenced to half the penalty that would be applicable to an adult convicted of the same offence (art. 33). The Criminal Code 1961 does not allow for judicial corporal punishment. The Constitution 2010 prohibits all forms of torture and cruel, degrading or inhuman treatment or punishment (art. 12). We have yet to see the text of the Act of 20 November 2014 on Juvenile Courts.

Universal Periodic Review of Niger's human rights record

Niger was examined in the first cycle of the Universal Periodic Review in 2011 (session 10). The following recommendation was made and was accepted by the Government:⁹

⁷ 26 July 2018, CRC/C/NER/Q/3-5/Add.1, Reply to list of issues, para. 12

⁸ [March 2017], Second report to the African Committee of Experts on the Rights and Welfare of the Child, para. 281

⁹ 25 March 2011, A/HRC/17/15, Report of the working group, para. 76(36)

“Implement the recommendations made by the Committee on the Rights of the Child, especially eradicate traditional practices such as female genital mutilation, sexual exploitation, corporal punishment in children’s education and forced child begging (Ecuador)”

Examination in the second cycle took place in 2016 (session 24). No recommendations were made specifically on corporal punishment of children. However, the Government accepted a recommendation to “harmonise national laws with international regulations on rights of women and children”.¹⁰

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(11 October 2018, CRC/C/NER/CO/3-5 Advance unedited version, Concluding observations on third/fifth report, para. 22)

“With reference to its general comment No. 8 (2006) on corporal punishment, the Committee recalls its previous recommendation (CRC/C/NER/CO/2, para 38) and urges the State party to:

- (a) Explicitly prohibit corporal punishment by law in all settings including in the home and in Koranic schools, and ensure that those laws are effectively implemented and that legal proceedings are systematically initiated against those responsible for mistreating children;
- (b) Conduct a comprehensive study to assess the causes, nature and extent of corporal punishment;
- (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, nonviolent, participatory forms of child-rearing and education;
- (d) Ensure that an educational programme be undertaken against corporal punishment, insisting both on child rights and the psychological aspects;
- (e) Ensure recovery and social reintegration of victims of corporal punishment;
- (f) Take appropriate measures to address ill-treatment of children in Koranic schools and prosecute perpetrators in accordance with the criminal law.”

Committee on the Rights of the Child

(18 June 2009, CRC/C/NER/CO/2, Concluding observations on second report, paras. 5, 6, 37 and 38)

“The Committee welcomes efforts by the State party to implement the Committee’s concluding observations on the State party’s initial report. Nevertheless, the Committee regrets that some of its concerns and recommendations have been insufficiently or only partly addressed, including those related to ... corporal punishment....

“The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the initial report that have not yet been implemented or sufficiently implemented, and to provide adequate follow-up to the recommendations contained in the present concluding observations on the second periodic report.

“The Committee is concerned that the provisions against violence and abuse in the Constitution and the Criminal Code are not interpreted as prohibiting corporal punishment in child-rearing, and that

¹⁰ 12 April 2016, A/HRC/32/5, Report of the working group, para. 120(32)

there is no explicit prohibition of corporal punishment in schools and alternative care settings. The Committee is also deeply concerned about all forms of violence inflicted upon children in Koranic schools and their detrimental consequences on children, including physical and mental disability.

“The Committee draws the attention of the State party to 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 and recommends that it:

- a) explicitly prohibit corporal punishment by law 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) conduct a comprehensive study to assess the causes, nature and extent of corporal punishment;
- 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;
- d) ensure that an educational programme be undertaken against corporal punishment, insisting both on child rights and the psychological aspects;
- e) ensure recovery and social reintegration of victims of corporal punishment;
- f) take appropriate measures to address ill-treatment of children in Islamic Schools and prosecute perpetrators in accordance with the criminal law. ”

Committee on the Rights of the Child

(13 June 2002, CRC/C/15/Add.179, Concluding observations on initial report, paras. 44 and 45)

“The Committee is concerned at the lack of awareness of and information on domestic violence, ill-treatment and abuse (sexual, physical and psychological) of children, and the insufficient financial and human resources allocated to programmes to combat the abuse of children.

“In the light of article 19, the Committee recommends that the State party:

- b) prohibit corporal punishment at home, in schools, in institutions and in the penal procedures....”

Human Rights Committee

(16 May 2019, CCPR/C/NER/CO/2, Concluding observations on second report, paras. 44 and 45)

“While noting the information provided by the State party on the regulatory framework on child labour, the Committee remains concerned about:

- (a) the large number of children employed as domestic workers who are at risk of abuse;
- (b) the number of children in street situations, who are also at risk of all forms of violence;
- (c) the specific situation of talibé children handed over to marabouts in Qur’anic schools and forced to beg; and
- (d) the persistence of the practice of child slavery based on descent. Lastly, the Committee notes with concern that corporal punishment is still permitted at home and in schools, including Qur’anic schools (arts. 6, 7, 8, 16 and 24).

“The State party should take the necessary measures to:

- (a) protect minors against all forms of abuse, including through the care and rehabilitation of children in street situations or involved in begging;
- (b) publicly condemn the practice of forced begging and raise awareness of the issue among religious and traditional leaders and parents with a view to eradicating this practice;
- (c) continue its efforts to strictly control and regulate child labour;
- (d) enforce the criminalization of slavery by systematically prosecuting all perpetrators of the crime of child slavery based on descent; and
- (e) take practical steps, including through legislative measures, to put an end to corporal punishment in all settings.”

Committee on the Rights of Persons with Disabilities

(1 May 2019, CRPD/C/NER/CO/1, Concluding observations on initial report, paras. 11 and 12)

“The Committee is concerned that:... (b) Children with disabilities lack access to social and health-care services and equal education opportunities, particularly inclusive education, and experience high levels of abuse and violence, including corporal punishment at home, in schools and in residential institutions;

“The Committee recommends that the State party:

- (a) Adhere to the Convention in the implementation of targets 16.2 and 16.7 of Sustainable Development Goal 16;
- (b) Adopt legislation and measures for children with disabilities to enjoy their rights and adequately protect them from abuse, violence and exploitation, and sanction perpetrators;
- (c) Effectively implement the framework document for the protection of the child (2013), develop a national plan for the care of children with disabilities, mainstream disability rights in strategies and action plans regarding children, prohibit corporal punishment of children with disabilities in all settings and implement awareness-raising campaigns and education, especially in schools and at the community level to eliminate discrimination against children with disabilities...”

Prevalence/attitudinal research in the last ten years

According to UNICEF statistics collected between 2005 and 2013, 82% of children aged 2-14 experienced “violent discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Two thirds (66%) experienced physical punishment and 77% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A smaller percentage (45%) 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)