

Corporal punishment of children in Senegal

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Child population 7,596,000 (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 and possibly penal institutions.

Article 285 of the Family Code 1989 confirms the right of a person with parental authority to correct a child. 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. The legal defence for the use of corporal punishment in article 285 of the Family Code should be repealed and prohibition of all corporal punishment should be enacted in relation to parents and all those with parental authority.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).

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 – Corporal punishment should be prohibited in all schools, public and private, for children of all ages.

Penal institutions – There should be legal clarity that corporal punishment as a disciplinary measure is prohibited in all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 285 of the Family Code provides for persons with paternal authority to have a “right of correction” over children: “He that exercises paternal power can inflict on children reprimands and corrections to the extent that they are consistent with the child’s age and the improvement of his conduct” (unofficial translation). According to articles 277 and 281, paternal power is exercised by the father only or alternatively by the mother.

Articles 298 and 299 of the Criminal Code 1977 (amended 2016) punish the causing of injury to a child under 15 and the use of violence and assault, the punishments being more severe if the perpetrator is a parent or other person with authority over or custody of the child. However, this protects children only from punishment of some severity – i.e. that which is perceived to cause injury. Corporal punishment that does not appear to cause physical injury is lawful under the above-mentioned “right of correction in the Family Code”.

In its report to the Committee on the Rights of the Child, dated 2012, the Government referred to a National Plan of Action on Law Reform to Criminal Corporal Punishment and All Forms of Violence Against Children.¹ In reporting on the protection of children from corporal punishment to the Universal Periodic Review (UPR) in 2013, the Government again stated that it had devised “a national action plan on legal reform to criminalize corporal punishment and all forms of violence against children”.² However, following the review itself, a recommendation to explicitly prohibit corporal punishment by revising the Family Code was recorded – and accepted by the Government – only as a recommendation to fight against corporal punishment.³ In the context of examination by the Committee on the Elimination of Discrimination Against Women in 2015, the Government was asked if it envisaged amending article 285 of the Family Code in order to prohibit corporal punishment in the home.⁴ In reply, the Government stated that there are severe penalties for acts of corporal punishment and that the social departments of the Ministry of Justice have powers to propose measures aimed at protecting child victims of corporal punishment.⁵ In 2018 in responding to Universal Periodic Review recommendations to repeal article 285 of the Family Code, the Government took an unclear stance, supporting one and noting the other.⁶

In reporting for examination by the Committee on the Rights of the Child in January 2016, the Government stated that “provisions have been made in the Children’s Code project to make effective the prohibition of corporal punishment, even within the family”.⁷ The draft Code does include provisions intended to prohibit corporal punishment (articles 14 and 45), but as at March 2016 the draft does not explicitly repeal the “right of correction” in the Family Code. In February 2017, the Government reported that it planned “to expressly delete article 285 of the Family Code on forms of corporal punishment tolerated within the family”.⁸ But as at May 2017, there seemed to be no formal plans to repeal the “right of correction”, and the legislative process had stalled due to the inclusion of

¹ CRC/C/SEN/3-5 Unedited Version, Third-fifth state party report, para. 36

² 23 July 2013, A/HRC/WG.6/17/SEN/1, National report to the UPR, para. 102

³ 11 December 2013, A/HRC/25/4, Report of the working group, para. 123.64

⁴ 17 November 2014, CEDAW/C/SEN/Q/3-7, List of issues, para. 6

⁵ 17 June 2015, CEDAW/C/SEN/Q3-7/Add.1, Reply to list of issues, paras. 74 and 75

⁶ 12 November 2018, A/HRC/WG.6/31/L.2 Unedited version, Draft report of the Working group, paras. 6(180) and 7(23)

⁷ 29 December 2015, CRC/C/SEN/Q/3-5/Add.1, Reply to list of issues, para. 25

⁸ 16 March 2017, CAT/C/SEN/4, Fourth report, para. 237

controversial inheritance provisions.⁹ Work has resumed on drafting the final version of the Children’s Code, with the aim to introduce it to Parliament by the end of 2018.¹⁰

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings. It is unclear whether the “right of correction” under article 285 of the Family Code 1989 can be transferred to persons caring for a child in alternative care settings.

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. It is unclear whether the “right of correction” under article 285 of the Family Code 1989 can be transferred to persons caring for a child in day care settings.

Schools

Corporal punishment is prohibited in schools for children aged 6-14 in Decree No. 79-11.65 1979 but there is no explicit prohibition in other schools and the authority to “correct” a child article 285 of the Family Code 1989 (see under “Home”) potentially applies.

During the UPR of Senegal in 2009, the Government stated that corporal punishment is prohibited in Koranic schools,¹¹ but gave no details of the relevant law. In 2017, the Government reported to the African Committee of Experts on the Rights and Welfare of the Child that reforms were being considered to regulate the Koranic schools. It seems however that the process is being stalled by religious pressure.¹² During the May 2018 examination of Senegal, the Committee Against Torture expressed concern at the lack of regulation around Koranic schools.¹³ The draft Bill was validated by the Government in June 2018, to soon be introduced in the National Assembly.¹⁴

The Government reported to the Committee on the Elimination of Discrimination Against Women in 2015 that violence by teachers is subject to severe criminal penalties, drawing particular attention to Law No. 99-05 of 29 January 1999 amending articles 299bis, 300, 319, 320, 323, 324 and 327 of the Criminal Code, and to administrative penalties.¹⁵

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition. Article 100 of Decree No. 2001 (relative to the procedure of implementation

⁹ Information provided to the Global Initiative, May 2017

¹⁰ 31 August 2018, A/HRC/WG.6/31/SEN/1, National report to the UPR, para. 26; and communication with the Senegalese Committee for Human Rights, July 2018

¹¹ 5 October 2009, A/HRC/11/24, Report of the working group, para. 60

¹² Information provided to the Global Initiative, May 2017

¹³ [May 2018], CAT/C/SEN/CO/4 Advance unedited version, Concluding observations on fourth report, para. 31

¹⁴ See <http://www.jeuneafrique.com/575577/societe/pourquoi-le-senegal-veut-encadrer-les-ecoles-coraniques/>, accessed 14 June 2018

¹⁵ 17 June 2015, CEDAW/C/SEN/Q3-7/Add.1, Reply to list of issues, para. 114

and adjustment of the sanctions), applicable to prisons, states that “the personnel of the penal institutions can only employ force towards a prisoner in the case of violent resistance (by the inmate) or in the case of inertia to the orders given”. Juvenile justice penal law is being revised.¹⁶

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for it in the Criminal Code or the Criminal Procedure Code.

Universal Periodic Review of Senegal’s human rights record

Senegal was examined in the first cycle of the Universal Periodic Review in 2009 (session 4). During the review, the Government stated that corporal punishment is prohibited in Koranic schools and that one teacher had been convicted for that offence.¹⁷ The following recommendation was made and was accepted by the Government:¹⁸

“Continue efforts and take necessary policy measures to ensure that children are protected from corporal punishment and other forms of violence or exploitation (Sweden)”

The second cycle UPR took place in 2013 (session 17). The Government report to the review that it had devised “a national action plan on legal reform to criminalize corporal punishment and all forms of violence against children”.¹⁹ During the review, Tunisia made the following recommendation: “Revise the Code of the Family to explicitly prohibit corporal punishment in all places.” However, the recommendation as recorded in the report of the working group – and which the Government accepted – was as follows:²⁰

“Continue its efforts to fight against corporal punishment in all places (Tunisia)”

Third cycle examination took place in 2018 (session 31). The following recommendations were made:

“Repeal article 285 of the Family Code which tolerates physical violence against children in the form of reprimands and punishments (Bangladesh)”

“Repeal all provisions that authorize corporal punishment, including article 285 of the Family Code and raise awareness among the general public of the negative consequences of corporal punishment against children (Liechtenstein)”

The Government gave a mixed response, supporting the first one and noting the other.²¹

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 January 2016, CRC/C/SEN/CO/3-5 Advance Unedited Version, Concluding observations on third-fifth report, paras. 5, 35 and 36)

¹⁶ UNICEF (2013), *Annual report – Senegal*

¹⁷ 5 October 2009, A/HRC/11/24, Report of the working group, para. 60

¹⁸ 5 October 2009, A/HRC/11/24, Report of the working group, para. 97(26)

¹⁹ 23 July 2013, A/HRC/WG.6/17/SEN/1, National report to the UPR, para. 102

²⁰ 11 December 2013, A/HRC/25/4, Report of the working group, para. 123.64

²¹ 12 November 2018, A/HRC/WG.6/31/L.2 Unedited version, Draft report of the Working group, paras. 6(180) and 7(23)

“The Committee also welcomes the following institutional and policy measures: ...

k) National Plan of Action for Law Reform to Criminalise Corporal Punishment and All Forms of violence Against Children.

“The Committee welcomes the various measures undertaken by the State party to address and eliminate corporal punishment against children. The Committee also notes with appreciation the existence of a child helpline. However, the Committee is concerned about:

a) the absence of full and explicit prohibition of corporal punishment in the home, schools, including *daaras*, penal institutions, and alternative care settings;

b) the lack of protection and assistance provided to child victims of corporal punishment and violence; and

c) the lack of effectiveness of awareness-raising programmes to combat corporal punishment and other forms of violence against children.

“With reference 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 (CRC/C/GC/8), the Committee recommends that the State party:

a) repeal all provisions that authorise corporal punishment, including article 285 of the Family Code which appears to condone physical violence against children to ‘a degree compatible with the child’s age and the correction of his/her behaviour’;

b) ensure that corporal punishment is explicitly prohibited in all settings, including within the family, in schools, including in *daaras*, penal institutions, and alternative care settings, and ensure their effective implementation;

c) sensitize and educate parents, guardians and professionals working with and for children, by carrying out public educational campaigns about the harmful impact of corporal punishment and promote positive, non-violent forms of discipline as an alternative to corporal punishment; and

d) ensure the involvement and participation of the whole society, including children, in the design and implementation of preventive strategies with regard to the corporal punishment of children.”

Committee on the Rights of the Child

(20 October 2006, CRC/C/SEN/CO/2, Concluding observations on second report, paras. 36 and 37)

“While noting that corporal punishment is prohibited in schools, the Committee is concerned that corporal punishment within the family is not prohibited by law and that corporal punishment is used in schools and other institutional settings.

“The Committee recommends that the State party, taking into account 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:

a) amend all relevant laws to ensure that corporal punishment is explicitly prohibited in all settings, including the family, penal institutions, and alternative care settings, and ensure the effective implementation of these laws, including in schools; and

b) sensitize and educate parents, guardians and professionals working with and for children, by carrying out public educational campaigns about the harmful impact of corporal punishment and promote positive, non-violent forms of discipline as an alternative to corporal punishment.”

Committee on the Rights of the Child

(27 November 1995, CRC/C/15/Add.44, Concluding observations on initial report, para. 24)

“The Committee recommends that the State party ensure that national legislation conforms fully to the provisions and principles of the Convention, in the light of the concerns identified by the Committee and of the study on a comprehensive law reform conducted under the auspices of UNICEF. The principles of the Convention including those relating to the best interests of the child and the prohibition of discrimination and of participation of children in matters affecting them should be reflected in domestic law. Specific provisions should be included with a view to clearly forbidding female genital mutilation and any form of torture or cruel, inhuman or degrading treatment or punishment, as well as any form of corporal punishment within the family. Adequate legislative and other measures should also be taken to establish a complaints procedure for children whose fundamental rights have been violated.”

Committee Against Torture

(17 January 2013, CAT/C/SEN/CO/3 Concluding observations on third report, para. 15)

“The Committee ... remains concerned about the reported persistence of corporal punishment in Senegal (arts. 11 and 16).

The State party should: ...

c) amend the Family Code, particularly article 285, to explicitly ban corporal punishment anywhere at all, including in the home, and punish offenders in accordance with the law, while offering legal protection and psychological help to child victims.”

Prevalence/attitudinal research in the last ten years

Research conducted in Dakar City in 2015-16 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme, found on average 74% of children aged 1-14 years experienced some form of violent discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 68% of children experienced psychological aggression, 61% physical punishment and 24% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Boys experienced more severe physical punishment than girls (27% compared to 20%) and older children experienced more severe physical punishment than younger children (27% of 10-14 year olds compared to 21% of 3-4 year olds). Only 12.5% of children experienced only non-violent forms of discipline.

(Agence Nationale de la Statistique et de la Démographie (ANSD) & UNICEF (2016), *MICS V Dakar Enquête par grappes à indicateurs multiples 2015-2016, Rapport final*, Dakar, Sénégal : ANSD & UNICEF)

In 2016, Human Rights Watch conducted a detailed analysis of credible media reports on children living in residential Quranic schools – known as *talibés* – as well as interviews with Senegalese NGOs, activists, child protection experts and government officials. They found many Quranic teachers regularly administer corporal punishment, and numerous children have died as a result of abuse or neglect. During the first half of 2016, at least five children died, allegedly as a result of beatings meted out by their teachers or in traffic accidents while being forced to beg. Lessons are often punctuated by corporal punishment, and failure to bring back daily quotas of money can result in severe beatings. In June 2016, a 13 year-old *talibé* died after his teacher severely beat him with a rubber whip twice in one day for failing to memorise a verse of the Quran.

(Human Rights Watch, "Senegal: New Steps to Protect Talibés, Street Children", 28 July 2016, <https://www.hrw.org/news/2016/07/28/senegal-new-steps-protect-talibes-street-children>)

Eighty per cent of children involved in a 2012 study by Plan International said teachers were the main perpetrators of violence in schools.

(Plan International West Africa (2012), *Because I am a Girl 2012 Research: Overall Report – Girls' Retention and Performance in Primary and Secondary Education: Makers and Breakers*, Dakar: Plan International West Africa, cited in Greene, M. et al (2012), *A Girl's Right to Learn Without Fear: Working to End Gender-Based Violence at School*, Toronto: Plan Canada)

A report by Human Rights Watch documented physical punishment and other severe violations of the rights of at least 50,000 children (talibés), mostly boys under 12, attending residential Quranic schools in Senegal. The children, who were forced by the teachers who serve as their guardians (marabouts) to beg on the streets, experienced severe physical punishment including being beaten with electric cables or clubs for not bringing back the quota of money and food set by the marabouts.

(Human Rights Watch (2010), *Off the Backs of the Children: Forced Begging and Other Abuses against Talibés in Senegal*)

A 2010 African Child Policy Forum report on violence against children with disabilities in Cameroon, Ethiopia, Senegal, Uganda and Zambia documented a very high level of violence. Nearly a thousand 18-24 year olds took part in the study across the five countries, reporting on their experiences as children. In Senegal, 60% had experienced at least one type of physical violence during their childhood. The most commonly experienced physical violence was being hit, punched, kicked or beaten, followed by being choked, burnt or stabbed. The most common perpetrators of physical violence were mothers (20.5%) and fathers (15.8%). Across the five countries, 23% of the young people said they had experienced physical violence which was "mostly discipline, reasonable and justified", 27% physical violence which was "mostly discipline but not reasonable or justified"; 26% said they had experienced emotional violence which was "discipline, but not reasonable or justified", 22% emotional violence that was "disciplinary, reasonable and justified". Across all five countries, 54% of those who had been physically beaten said they had suffered broken bones, teeth, bleeding or bruising; 2% had been permanently disabled; 21% required medical attention; 13% had to miss school or work, and 20% had needed rest at home. For all five countries, the majority of respondents with physical, visual and intellectual disabilities experienced physical violence more than 10 times. The report recommends prohibition of all corporal punishment, including in the home, as a way to minimise the risk of violence against children with disabilities.

(The African Child Policy Forum (2010), *Violence Against Children With Disabilities in Africa: Field Studies from Cameroon, Ethiopia, Senegal, Uganda and Zambia*, Addis Ababa: The African Child Policy Forum)

A study by the African Child Policy Forum in Burkina Faso, Cameroon, Democratic Republic of the Congo, Nigeria and Senegal found that hitting, beating and forced hard work were the most prevalent forms of violence against girls, and that most of the physical violence experienced by girls was corporal punishment. The study involved a survey of 3,025 young women (nearly 600 per country) aged 18-24 about the violence they had experienced in their childhood. In Senegal, 52% had been hit during their childhood, 79% beaten, 21% kicked, 25% denied food and 16% choked or burned. Parents and close relatives were the most common perpetrators of physical violence.

(The African Child Policy Forum (2010), *Childhood Scars in Africa: A Retrospective Study on Violence Against Girls in Burkina Faso, Cameroon, Democratic Republic of the Congo, Nigeria and Senegal*, Addis Ababa: The African Child Policy Forum)