

Corporal punishment of children in Tunisia

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Child population 3,115,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

Prohibition of corporal punishment

Home

Corporal punishment is unlawful in the home. Article 319 of the Penal Code punishes assault and violence which does not lead to serious or lasting consequences for the victim. Prior to law reform in 2010, it also stated that “correction of a child by persons in authority over him is not punishable”. Law No. 2010-40 of 26 July 2010 amended article 319 to explicitly repeal this clause, making it a criminal offence to assault a child even lightly. Publication of the law in the Official Gazette in July 2010, was accompanied by a statement from the Constitutional Council that the new law is wholly compatible with the Constitution and its effect is to make the provisions against light assault in article 319 of the Penal Code equally applicable to “correction” of children.

Serious assault is punishable under other articles in the Penal Code. The Code of Child Protection 1995 (amended 2006) protects children from “usual ill-treatment”, defined in article 24 as “subjection of the child to torture, repeated violations of his physical integrity, or his detention, or the habit of depriving him of food, or committing any brutal act which is likely to affect the emotional or psychological well being of the child”.

A new Constitution was adopted in 2014. Article 47 states: “Children are guaranteed the rights to dignity, health, care and education from their parents and the state. The state must provide all types of protection to all children without discrimination and in accordance with their best interest.”

A new Law on Domestic Violence was adopted in 2017 which specifically criminalises family violence, but only against women. It does not address corporal punishment of children.

Alternative care settings

Corporal punishment is unlawful in alternative care settings under article 319 of the Penal Code as amended in 2010 (see under “Home”).

Day care

Corporal punishment is unlawful in early childhood care and in day care for older children under article 319 of the Penal Code as amended in 2010 (see under “Home”).

Schools

Corporal punishment is unlawful in schools under article 319 of the Penal Code as amended in 2010 (see under “Home”).

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. Article 319 of the Penal Code as amended in 2010 applies (see under “Home”). Law No. 2001-52 (2001) on the organisation of prisons provides for the physical and moral integrity of detainees, and corporal punishment is not among the permitted disciplinary measures in article 38 of Decree No. 2423 1995 regulating detention centres for children. The Constitution 2014 states that every prisoner “shall have the right to humane treatment that preserves their dignity” (art. 30).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not an available sanction under the Code of Child Protection, the Code of Criminal Procedure (amended 2005) or the Penal Code.

Universal Periodic Review of Tunisia’s human rights record

Tunisia was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendation was made specifically concerning corporal punishment of children. However, the following recommendation was made and accepted by the Government:¹

“Recommends that Tunisia pursue its programmes and consolidated approach in the promotion and protection of all human rights including in the field of education, health and the promotion of the status of women (Syrian Arab Republic) ...”

Examination in the second cycle took place in 2012 (session 13). The following recommendation was made and was accepted by the Government:²

“Enhance measures on public awareness-raising and professional education to support the implementation of the law of 2010 amending article 319 of the Penal Code to remove the clause which provided a legal defence for the use of corporal punishment in child rearing (Indonesia)”

Tunisia’s third cycle examination took place in 2017 (session 27). No relevant recommendation was extended to the Government.

¹ 9 July 2012, A/HRC/8/21, Report of the working group, para. 3(1)

² *ibid.*, para. 114(19)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(16 June 2010, CRC/C/TUN/CO/3, Concluding observations on third report, paras. 7, 8, 40 and 41)

“The Committee notes with appreciation efforts by the State party to implement the 2002 concluding observations of the Committee on the second periodic report of the State party (CRC/C/15/Add.181). Nevertheless, the Committee regrets that some of its concerns and recommendations have been insufficiently or only partly addressed.

“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 on the second periodic report that have not yet been implemented or sufficiently implemented, including those related to corporal punishment (CRC/C/15/Add.181, para. 34)....

“While welcoming that a draft law amending article 339 of the Penal Code is under consideration, the Committee is concerned that by virtue of this provision “castigation inflicted on a child by persons having authority over him or her shall not give rise to punishment”. The Committee is further concerned that corporal punishment remains lawful in the home and in alternative care settings and that, despite internal regulations of the Ministry of Education prohibiting corporal punishment, it continues to be inflicted on children by teachers throughout the State party. Furthermore, the Committee expresses concern that the interpretation of the provision prohibiting “usual ill-treatment” of children is much narrower than the Committee’s interpretation of corporal punishment. It regrets the insufficient information about and awareness of domestic violence and its harmful impact on children.

“Recalling its previous recommendation (CRC/C/15/Add.181, para. 34), 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 amend the penal code so as to explicitly prohibit by law all forms of corporal punishment in all settings and ensure that those laws are effectively implemented and that legal proceedings are systematically initiated against those responsible for mistreating children;
- b) to amend the definition of “usual ill-treatment” so as to ensure that it is in line with the Committee’s interpretation of corporal punishment and other cruel or degrading forms of punishment as per general comment No. 8 (2006);
- c) to conduct a comprehensive study to assess the causes, nature and extent of corporal punishment throughout the State party and design policies and programmes to address it;
- d) to introduce public education, awareness-raising and social mobilization campaigns on the harmful effects of corporal punishment and domestic violence 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.”

Committee on the Rights of the Child

(13 June 2002, CRC/C/15/Add.18, Concluding observations on second report, paras. 33 and 34)

“While noting the provision in the Code of Child Protection regarding ill-treatment (art. 24) and the relevant provision in the Penal Code (art. 224), as well as the Ministerial Circular of December 1997 banning all forms of corporal punishment and practices hurting the dignity of children, the Committee is concerned that, as noted by the delegation, corporal punishment is only a crime if it is prejudicial to the health of the child. It notes with concern that violence as a means of discipline in the home and at school continues to be acceptable in the State party. The Committee regrets that no follow-up to the Committee’s previous recommendation has been initiated to protect children from ill-treatment (ibid., para. 17). The Committee is furthermore concerned that there is insufficient information about and awareness of domestic violence and its harmful impact on children.

“The Committee urges the State party to:

- a) take all legislative measures to prohibit in the most effective way possible all forms of physical and mental violence, including corporal punishment and sexual abuse, against children in the family, in the schools and in institutions;
- b) conduct a study to assess the nature and extent of ill-treatment and abuse of children, and design policies and programmes to address it;
- c) carry out public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment....”

Committee on the Rights of the Child

(21 June 1995, CRC/C/15/Add.39, Concluding observations on initial report, para. 17)

“As far as protection from ill-treatment is concerned, the Committee recommends that the social preventive approach be strengthened and that further measures be undertaken to educate parents about their responsibilities towards their children, including through the provision of family education which should emphasize the equal responsibilities of both parents and contribute to the prevention of the use of corporal punishment.”

Committee on the Rights of Persons with Disabilities

(13 May 2011, CRPD/C/TUN/CO/1, Concluding observations on initial report, paras. 6, 16 and 17)

“The Committee welcomes the amendment of article 319 of the Penal Code in 2010, which prohibits all forms of violence against children, regardless of who the perpetrator – including parents or tutors – may be.

“The Committee is particularly concerned at the low rate of reporting (*signalement*) of cases of habitual mistreatment of children, including children with disabilities, which may amount to situations of danger, in view of the results of the Multiple Indicator Cluster Survey (MICS 2006) which indicated that 94 per cent of children aged between 2 and 14 years are disciplined in the home through violent means, whether verbal, physical, or through deprivation.

“The Committee recommends that the State party:

- a) evaluate the phenomenon of violence against boys and girls with disabilities, and compile systematic disaggregated data (see paragraph 39 below) with a view to better combating it;
- b) ensure that institutions providing care for children with disabilities are staffed with specially trained personnel, subject to appropriate standards, regularly monitored and evaluated, and establish complaint procedures accessible to children with disabilities;

- c) establish independent follow-up mechanisms; and
- d) take steps to replace institutional care for boys and girls with disabilities with community-based care.”

Prevalence/attitudinal research in the last ten years

A survey conducted during 2011-2012 found over 93% of children aged 2-14 years subjected to some form of violent “discipline” (psychological or physical punishment) by household members during the month preceding the survey; over 73% experienced physical punishment, 32% severe physical punishment (hit on the head, bottom, ears or face or hard and repeatedly). Boys are more likely to experience any and severe physical punishment (77% and 35% respectively) than girls (70% and 28% respectively), and children in the poorest households are far more likely to experience severe physical punishment (40%) than those in the richest (20%). In contrast to actual prevalence (73%), 44% of mothers/carers said they believe physical punishment is needed to raise a child properly. Only 5% of children experienced only non-violent forms of discipline.

(Ministère du Développement et de la Coopération Internationale (MDCI), Institut National de la Statistique (INS) & UNICEF (2013), *Suivi de la situation des enfants et des femmes en Tunisie- Enquête par grappes à indicateurs multiples 2011-2012, Rapport Final*)

According to UNICEF statistics collected between 2005 and 2012, 93% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey.

(UNICEF (2014), *The State of the World’s Children 2014 in Numbers: Every Child Counts*, NY: UNICEF)