

# Corporal punishment of children in Western Sahara

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Child population 198,000 (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, and schools. Prohibition in the penal system requires confirmation.

We have been unable to establish whether or not legislation confirms a right of parents to administer punishment or correction on their children. 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. All legal defences for the use of corporal punishment should be repealed and explicit prohibition of all corporal punishment should be enacted in relation to parents and all those with parental authority.

*Alternative care settings* – Corporal punishment should be prohibited in 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, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

*Schools* – Explicit prohibition of corporal punishment should be enacted in relation to all education settings, public and private. All laws authorising or regulating corporal punishment in schools should be repealed.

*Penal institutions* – Explicit prohibition should be enacted in laws applicable to all institutions accommodating children in conflict with the law.

*Sentence for a crime* – Corporal punishment should be explicitly prohibited as a sentence for a crime.

**Note:** Western Sahara is a disputed territory, and is on the United Nations' list of non-self-governing territories. The majority of the territory has been controlled by Morocco since 1975, including the major cities; the remainder is controlled by the Sahrawi Arab Democratic Republic (SADR). The administrative divisions of SADR include Wilayah and Daerah; three Moroccan regions are within or partially within Western Sahara – Guelmim-Oued Noun Region, Laâyoune-Sakia El Hamra Region and Dakhla-Oued Ed-Dahab Region. We have assumed that Moroccan legislation is applicable in the Moroccan-controlled part of the territory, but we have been unable to confirm this or details of any other relevant legislation.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. The Constitution 1999 of the SADR prohibits violations of human dignity or honour and torture or physical or psychological violence (art. 28), and guarantees children's right to education (art. 36). Its article 39 recognises the importance of the family unit and highlights children's need for protection; article 50 states that the protection and promotion of the family, including the education of children, is the duty of parents. It appears that the Penal Code of the SADR criminalises assault, but this is not interpreted as prohibiting all corporal punishment.<sup>1</sup>

### **Alternative care settings**

It appears that there is no explicit prohibition of corporal punishment in alternative care settings, but have been unable to confirm this.

### **Day care**

We suspect that there is no explicit prohibition of corporal punishment in day care settings but have been unable to confirm this.

### **Schools**

We believe that there is no explicit prohibition in legislation of corporal punishment in educational settings, as under Moroccan law, but have been unable to confirm this.

### **Penal institutions**

We suspect that corporal punishment is unlawful as a disciplinary measure in penal institutions, as under Moroccan law, but have been unable to verify this. There have been reports of torture on detained Saharans, including on children.<sup>2</sup>

Prisons are governed by SADR Law No. 97-07 of 9 November 1996 establishing the status of prisons. It sets out the rules for the treatment of prisoners, including enforcement of the sentences within limits guaranteeing physical integrity and honour and without using physical or oral violence on prisoners.<sup>3</sup> There does not appear to be an explicit prohibition of corporal punishment.

### **Sentence for crime**

We suspect that corporal punishment is unlawful as a sentence for crime, as under Moroccan law, but have been unable to verify this.

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<sup>1</sup> October 2011, Periodic report of the SADR to the African Commission on Human and Peoples' Rights, paras. 72, 83, 121, 131 and 167.

<sup>2</sup> 1 April 2011, S/2011/249, Report of the Secretary-General on the situation concerning Western Sahara, para. 92; see also <https://www.amnesty.org.uk/blogs/childrens-human-rights-network/morocco-child-tortured-and-detained-western-sahara>, accessed 3 August 2017

<sup>3</sup> 2002, Initial report of SADR to the African Commission on Human and Peoples' Rights

## **Universal Periodic Review of Western Sahara's human rights record**

Western Sahara is not a UN member state and as such does not undergo the Universal Periodic Review independently; rather it is examined with Morocco.

## **Recommendations by human rights treaty bodies**

Western Sahara has not ratified any UN human rights treaties and so does not undergo examination by the treaty monitoring bodies. It has ratified the African Charter on Human and Peoples' Rights but no recommendation on corporal punishment has yet been extended by the African Commission on Human and Peoples' Rights.

## **Prevalence/attitudinal research in the last ten years**

None identified.