

Corporal punishment of children in Djibouti

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Child population 344,000 (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, penal institutions and possibly schools.

Article 475 of the Civil Code 2018 refers to parents' "right of education over the child". This provision should be amended to provide clarity in law that no form of corporal punishment is acceptable in childrearing, and prohibition should be enacted of all corporal punishment by parents and others with children in their care.

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 – Legislation should prohibit corporal punishment in all education settings (public and private).

Penal institutions – Prohibition should also be enacted in relation to disciplinary measures in all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 475 of the Civil Code Act No. 003/AN/18/8 L 2018 states (unofficial translation): “[Parental] authority belongs to the father and mother to protect the child’s safety, health and morality. They have right and duty of custody, surveillance and education over the child.” This provision should be amended to clearly exclude the use of corporal punishment in “educating” the child, as the near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. There appears to be no confirmation in the Family Code Act No. 152/AN/02 2002 (amended 2014) or the Criminal Code Act No. 59/AN/94 1995 of a “right” of parents to punish/discipline children.

The Code on the Legal Protection of Minors (Act No. 95/AN/15/7 L) was adopted in 2015. It defines mistreatment of a child as “torture, violation of their physical integrity, detention, denying the child food, or committing any act of brutality which may impact the child’s affective, moral or psychological balance” (art. 14, unofficial translation). Article 15 states that (unofficial translation) “is considered a victim of mistreatment the child who suffered bodily injury and/or cruel punishment”. These and other provisions against violence and abuse in this Code, the Civil Code 2018, the Family Code 2002, the Criminal Code 1995 and in the Constitution 1992 are not interpreted as prohibiting corporal punishment in childrearing.

Reporting to the Committee on the Rights of the Child in 2019, Djibouti misleadingly declared that corporal punishment and other forms of cruel or degrading punishment were prohibited under the Constitution and the Code on the Legal Protection of Minors, referring particularly to article 14 of the latter.¹

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings. Corporal punishment is lawful as for parents.

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children.

Schools

Corporal punishment is reportedly prohibited in schools by regulations applicable to all education institutions,² but we have been unable to confirm this. There is no prohibition of corporal punishment in the Education System Act No. 96/AN/00/4ème L 2000.

¹ [2019], CRC/C/DJI/3-5, Third-fifth report, pages 33 and 34

² 23 September 2008, CRC/C/SR.1347, Summary record of examination by the Committee on the Rights of the Child, para. 48

Penal institutions

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions, including in the Code on the Legal Protection of Minors 2015. The Criminal Code and the Code of Criminal Procedure are being reviewed.³

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Code of Criminal Procedure Act No. 59/AN/94 or the Criminal Code Act No. 59/AN/94 1995.

Universal Periodic Review of Djibouti's human rights record

Djibouti was examined in the first cycle of the Universal Periodic Review in 2009 (session 4). The following recommendations were made:⁴

“Adopt and implement the legislation and policies concerning children, especially concerning birth registration, violence against children, juvenile justice, street children to name just a few (Slovenia) and to consider legislation which prohibits all forms of violence against children, including corporal punishment, and which promotes alternative forms of discipline (Brazil)”

The Government did not formally accept or reject the recommendation.

The second cycle review took place in 2013 (session 16). No recommendations were made specifically on corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁵

“Continue its on-going review of national laws to ensure that they are in line with its international human rights law obligations (Turkmenistan);

“Strengthen programs aiming at the promotion and protection of children rights (Algeria);

“Redouble efforts to prevent, combat and punish violence against women and children and to fight effectively against traditional practices harmful to women, particularly in rural areas (Togo)”

Third cycle examination took place in 2018 (session 30). The following recommendations were extended:⁶

“Fully implement the Code of Legal Protection of Minors and take measures towards eradicating harmful practices such as child marriage and corporal punishment of children in all settings (Namibia)”

“Put to an end corporal punishment of children in all settings and encourage non-violent forms of discipline (Zambia);

³ 11 July 2018, A/HRC/39/10, Report of the Working Group, para. 9

⁴ 5 October 2009, A/HRC/11/16, Report of the working group, para. 68(5)

⁵ 8 July 2013, A/HRC/24/10, Report of the working group, paras. 143(20), 143(73) and 143(81)

⁶ 11 July 2018, A/HRC/39/10, Report of the Working Group, paras. 129(180), 129(190) and 129(191)

“Enhance and develop legislation concerning the protection of children, particularly abolishing corporal punishment against them (Lebanon)”

The Government supported the recommendations.⁷

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(7 October 2008, CRC/C/DJI/CO/2, Concluding observations on second report, paras. 35 and 36)

“While the Committee takes note of the State party’s indication that corporal punishment has been forbidden in schools and that the Educational Plan of Action 2006-2008 lauds the implementation of measures prohibiting corporal punishment the Committee is concerned that children are still subjected to corporal punishment, particularly in the home.

“The Committee recommends that the State party explicitly prohibit by law all forms of violence against children, including corporal punishment, in all settings, including in the family, schools, alternative childcare and places of detention, and implement those laws effectively. It also recommends that the State party intensify its awareness-raising campaigns in order to promote the use of alternative forms of discipline in a manner consistent with the child’s human dignity and in accordance with the Convention, taking into account 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.”

Committee Against Torture

(22 December 2011, CAT/C/DJI/CO/1, Concluding observations on initial report, para. 23)

“The Committee notes with concern that the use of corporal punishment as a disciplinary measure in the home is not prohibited, according to the interpretation of the provisions of the Criminal Code (1995), the Family Code (2002) and the Constitution (art. 16).

The State party should consider amending its Criminal Code and revised Family Code to prohibit the use of corporal punishment in all settings, including the home, and to raise public awareness of positive, participatory and non-violent forms of discipline.”

Human Rights Committee

(19 November 2013, CCPR/C/DJI/CO/1, Concluding observations on initial report, para. 14)

“The Committee expresses concern that corporal punishment is not explicitly prohibited in the State party. It expresses concern that it is tolerated in the home, where it is traditionally practised although unreported (arts. 7 and 24).

The State party should take practical steps to put an end to corporal punishment of children in all settings, including in the home. It should encourage non-violent forms of discipline and conduct public information campaigns to raise awareness of the harmful effects of any form of violence against children.”

⁷ 28 August 2018, A/HRC/39/10/Add.1 Advance unedited version, Report of the Working Group: Addendum, paras. 6 and 7

Prevalence/attitudinal research in the last ten years

None identified.