

Corporal punishment of children in Comoros: Briefing for the Universal Periodic Review, 32nd session, January 2019



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

From the Global Initiative to End All Corporal Punishment of Children, July 2018

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Comoros, corporal punishment of children is still lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in Comoros. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Comoros fulfil its previous UPR commitment and enact legislation to explicitly prohibit corporal punishment of children in all settings, including in the home, and repeal all legal defences for its use.

1 Review of Comoros in the 2nd cycle UPR (2014) and progress since

- 1.1 Comoros was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 18). The issue of corporal punishment of children was raised in the summary of stakeholders' information.¹ Comoros' national report declared that corporal punishment was not a practice in Comorian society² but nevertheless the Government accepted several recommendations to prohibit corporal punishment in all settings, stating that "the new criminal code currently being adopted contains provisions to criminalize corporal punishment".³
- 1.2 Since the review, there has been no change in the legality of corporal punishment of children. The Government declared in 2017 that the new Criminal Code had been adopted in 2014 to prohibit corporal punishment; however the Code is yet to be promulgated by the President and it is unclear whether it repeals the legal defence for corporal punishment within the Family Code.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Comoros. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Comoros enact legislation to explicitly prohibit corporal punishment of children in all settings, including in the home, and repeal all legal defences for its use.**

¹ 7 November 2013, A/HRC/WG.6/18/COM/3, Summary of stakeholders' views, paras. 22, 23 and 24

² 8 November 2013, A/HRC/WG.6/18/COM/1, National report to the UPR, paras. 62, 118, 119 and 120

³ 15 April 2014, A/HRC/26/11/Add.1, Report of the working group: Addendum, para. 13

2 Legality of corporal punishment in Comoros

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Comoros is prohibited as a sentence for a crime but it is still lawful in the home, in alternative and day care settings, in schools and in penal institutions. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including in the home, and all legal defences for its use, including in the Family Code 2005, should be repealed.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. According to the provisions on parental authority in the Family Code 2005, parents and those to whom parental authority is delegated have the power “to admonish excluding abuse and torture” (“Leur pouvoir consiste à le sermonner en excluant les sévices et la torture”) (art. 106). Articles 297 and 298 of the Penal Code 1982 punish violence against children with the exception of “minor” violence; minor violence is punished under article 12(7) of Law No. 81/007 (the Code des contraventions 1981) but there is no indication that this would apply to physical punishment of children by parents. Provisions against violence and abuse in the Family Code, the Child Protection Code 2005 and the Constitution 2001 (amended 2009), which asserts the child’s right to protection from all forms of violence, are not interpreted as prohibiting all corporal punishment in childrearing.
- 2.2 The Government both accepted and rejected recommendations to prohibit corporal punishment in the home and schools made during the Universal Periodic Review (UPR) in 2009.⁴ However, in 2014 the Government indicated its commitment to enacting prohibiting legislation by clearly accepting recommendations made during the 2nd cycle UPR to prohibit corporal punishment in all settings, stating that the new Criminal Code under discussion “contains provisions to criminalise corporal punishment”.⁵ The draft amendments were submitted to Parliament in October 2013. In accepting the 2014 recommendations, the Government stated that it would “do everything in its power to achieve the objectives contained in these recommendations” and in this connection requested support from the international community.⁶ The Government reported to the African Committee of Experts on the Rights and Welfare of the Child in May 2017 that the new Criminal Code had been adopted in 2014 and prohibits all corporal punishment – however the Code has not yet been promulgated by the President and so is not in force. We have not been able to obtain a copy of the text to verify this information and to ascertain if the “power to admonish” in the Civil Code is addressed.
- 2.3 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under the power of those with parental authority “to admonish” children in article 106 of the Family Code 2005.
- 2.4 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under the power of those with parental authority “to admonish” children in article 106 of the Family Code 2005.

⁴ 3 June 2009, A/HRC/12/16, Report of the working group, paras. 65(31) and 66(2)

⁵ 15 April 2014, A/HRC/26/11/Add.1, Report of the working group: Addendum, para. 13; see also 8 November 2013, A/HRC/WG.6/18/COM/1, National report to the UPR, para. 120

⁶ 19 September 2014, A/HRC/26/2 Advance Unedited Version, Report of the Human Rights Council on its twenty-sixth session, para. 661

- 2.5 **Schools (lawful)**: There is no explicit prohibition of corporal punishment in schools.
- 2.6 **Penal institutions (lawful)**: There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.
- 2.7 **Sentence for crime (unlawful)**: Corporal punishment as a sentence for crime is unlawful: there is no provision for judicial corporal punishment in the Penal Code 1982 and the Child Protection Code 2005. We have yet to confirm that corporal punishment cannot be imposed under Shari'a law or in traditional community justice systems.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC**: In 2000, the Committee on the Rights of the Child expressed concern at the widespread acceptance and use of corporal punishment in homes and schools, and recommended that corporal punishment be prohibited in law.⁷

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

⁷ 23 October 2000, CRC/C/15/Add.141, Concluding observations on initial report, paras. 31 and 32