

BURKINA FASO

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 16th session, 2013

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Global Initiative to
**End All Corporal Punishment
of Children**

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Burkina Faso, despite the Government’s acceptance of the recommendation to implement international instruments concerning the protection of the child made during the UPR in 2008 and the repeated recommendations to prohibit corporal punishment by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment in Burkina Faso. We hope states will raise the issue during the review in 2013 and recommend to Burkina Faso that legislation is enacted to explicitly prohibit corporal punishment of children in the home and in all schools and care settings as a matter of priority.

1 The initial review of Burkina Faso by the Human Rights Council (2008)

1.1 Burkina Faso was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). The issue of corporal punishment of children was included in the compilation of UN information¹ and the summary of stakeholders' information.² No recommendations were made specifically concerning corporal punishment of children, but the following recommendations were made and were accepted by the Government:³

“Submit regularly reports to treaty bodies (Gabon), take further steps to present periodic reports to the treaty bodies and implement the recommendations in a timely fashion (United Kingdom);

“Effectively implement the international instruments ratified that focus on the protection of the child and children's rights (Italy); make further efforts to ensure that the social services provided for children remain a priority (Djibouti) and take appropriate measures to protect the most vulnerable children, particularly girls, disabled children and rural children, and ensure effective protection of children against sexual abuse, all forms of violence and exploitation, trafficking and child labour (Luxembourg)”

1.2 Prohibiting corporal punishment of children in all settings, including the home, is an obligation of states under the Convention on the Rights of the Child and other treaties, though it is one frequently ignored or evaded by governments. The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Burkina Faso and recommended its prohibition by law, including in the home.⁴ In 2010, the African Committee of Experts on the Rights of the Child recommended that the Government strengthen its efforts to eradicate corporal punishment, particularly in schools.⁵

1.3 Despite the Government's acceptance of recommendations relevant to the issue, no legislation has been adopted to prohibit corporal punishment of children in the home or other setting since the review in 2008. Moreover, while the Government has long stated that corporal punishment is unlawful in schools, examination of the relevant law has revealed that the prohibiting legislation does not apply to all schools. A draft new Code of Child Protection is under discussion, but as at May 2012 it did not include prohibition of corporal punishment.

2 Legality and practice of corporal punishment in Burkina Faso

2.1 Corporal punishment is lawful in the **home**. The Government has confirmed that the law recognises a “right to correction of parents towards their children” (“le droit de correction des parents à l'égard de leurs enfants”) (Second/third state party report to the African Committee of Experts on the Rights and Welfare of the Child, 2012, para. 68), though it would appear that this “right” is not explicitly confirmed in criminal or civil law (information unconfirmed). Provisions against violence and abuse in the Children's Code (2006) – a compilation of laws relating to children – are not interpreted as prohibiting corporal punishment in childrearing.

¹ 6 October 2008, A/HRC/WG.6/3/BFA/2, Compilation of UN information, para. 18

² 15 September 2008, A/HRC/WG.6/3/BFA/3, Summary of stakeholders' information, para. 18

³ 7 January 2009, A/HRC/10/80, Report of the Working Group, paras. 98(5) and 98(15)

⁴ 9 October 2002, CRC/C/15/Add.193, Concluding observations on second report, paras. 36, 37 and 51; 29 January 2010, CRC/C/BFA/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 40 and 41

⁵ Concluding observations on the initial report of Burkina Faso, 2010

2.2 UNICEF's major analysis of data on child discipline in the home found that 83% of 2-14 year olds experienced violent "discipline" (physical punishment and/or psychological aggression) in 2005-2006; more than one in five experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement).⁶ A comparative study of young women by the African Child Policy Forum found that 91% of respondents in Burkina Faso had been hit during their childhood, 88% beaten, 51% kicked, 51% denied food, 27% choked or burned and 43% forced to do hard work.⁷

2.3 Corporal punishment is explicitly prohibited in primary **schools** in Decree No. 2008-236/PRES/PM/MEBA/MESSRS/MASSN/MATD of 8 May 2008 on the organisation of primary education, article 66 of which states: "Corporal punishment is expressly prohibited in schools under penalty of disciplinary action, without prejudice to criminal penalties in accordance with applicable laws." However, there is no law explicitly prohibiting corporal punishment at secondary level. Act No. 013-2007/AN of 30 July 2007 on Education Policy prohibits all forms of violence (article 47), but it does not explicitly prohibit corporal punishment.

2.4 In the **penal system**, corporal punishment is unlawful as a sentence for crime: there is no provision for judicial corporal punishment in criminal law. It is considered unlawful as a disciplinary measure in penal institutions under article 37 of the "Kiti AN VI 103 du 1er décembre 1988 portant organisation, régime et réglementation des établissements pénitentiaires au Burkina Faso" which does not include corporal punishment among the disciplinary measures that may be imposed on juveniles. Similarly there is no provision for corporal punishment in article 92, which sets out the punishments which may be imposed by the head of the establishment. However, corporal punishment is not explicitly prohibited and article 86 allows for the use of force by prison staff in certain circumstances, including "in case of physical apathy following orders" (unofficial translation).

2.5 With regard to **alternative care settings**, corporal punishment is prohibited in pre-school education settings under the above mentioned Decree but it is not explicitly prohibited in other forms of care.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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⁶ UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

⁷ 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