

Corporal punishment of children in Burundi: Briefing for the Universal Periodic Review, 29th session, 2018

From the Global Initiative to End All Corporal Punishment of Children, June 2017



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

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 Burundi, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women and the Committee on Economic, Social and Cultural Rights.

We hope the Working Group will note with concern the legality of corporal punishment of children in Burundi. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Burundi clearly prohibit all corporal punishment of children, however light, in every setting of their lives.

1 Review of Burundi in the 2nd cycle UPR (2013) and progress since

- 1.1 Burundi was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 15). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² However no recommendation was made specifically on corporal punishment of children.
- 1.2 Since the review in 2013, the Law on combatting sexual and gender based violence 2016 was enacted: it made no mention of corporal punishment. The draft Code of Child Protection is still being discussed. However, the draft text as it currently stands does not include prohibition, despite suggestions from national civil society. The Code of Persons and of the Family is being revised but there are no indications that the inclusion of prohibition is being considered.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Burundi. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Burundi include in the draft Code of Child Protection a clear prohibition of all corporal punishment of children, however light, in every setting of their lives.**

¹ 12 November 2012, A/HRC/WG.6/15/BDI/2, Compilation of UN information, para. 28

² 8 November 2012, A/HRC/WG.6/15/BDI/3, Summary of stakeholders' views, para. 29

2 Legality of corporal punishment in Burundi

Summary of current law and opportunities for achieving prohibition

Corporal punishment in Burundi is unlawful as a sentence for a crime and possibly in schools. It is lawful in the home, in alternative care and day care settings, and in penal institutions.

- 2.1 **Home (*lawful*):** Articles 512-525 of the Penal Code 2009³ punish crimes against children but corporal punishment is not included. The Code punishes domestic violence, including “whoever submits his spouse, child or other person living in the same household to cruel, inhuman or degrading treatment” (art. 535), but this is not interpreted as prohibiting all corporal punishment in childrearing. Parental authority is regulated in the Code on the Person and the Family 1993: it is silent on the issue of child discipline.
- 2.2 The Convention on the Rights of the Child has been incorporated into national legislation through article 19 of the Constitution 2005, which states: “The rights and duties proclaimed and guaranteed, inter alia, by the Universal Declaration of Human Rights, the International Covenants on human rights and the rights of peoples, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi. These fundamental rights may not be the subject of any restriction or derogation, except in certain circumstances justifiable by the general interest of the protection of a fundamental right.” Article 21 of the Constitution provides for respect for human dignity: “Human dignity is respected and protected. Any violation of human dignity is punishable under the Criminal Code.” Article 25 protects physical integrity: “Every woman and man has the right to life, security of person and physical integrity. No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment.” Article 44 protects children from “ill-treatment, abuse or exploitation”. However, there is no explicit prohibition of corporal punishment in domestic legislation.
- 2.3 In reporting to the Universal Periodic Review in 2012, the Government implied that corporal punishment is prohibited in all settings, including in families.⁴ As already noted, our research indicates that there is no such explicit prohibition in law.
- 2.4 Drafting of a Code of Child Protection has been under way since 2010 and is still under discussion. In November 2014 the draft was undergoing technical validation and did not include prohibition of corporal punishment. Reporting to the Committee on the Elimination of Discrimination Against Women in 2016, the Government stated that a Code on Children’s Rights was being prepared – it seems this referred to the same text.⁵ In February 2017 the draft Code of Child Protection did not include prohibition; however during a Government-organised workshop on its drafting, it was suggested to include a provision prohibiting corporal punishment. This provision now needs to be validated for inclusion by the Government, before the finalised draft is presented to the National Assembly. The Code of Persons and of the Family was under revision in 2016;⁶ we have no further information.

³ Law No. 1/05 of 22 April 2009, on the revision of the Penal Code (Loi N°1 / 05 du 22 avril 2009 portant révision du Code pénal)

⁴ 21 November 2012, A/HRC/WG.15/BDI/1, National report to the UPR, para. 82

⁵ 30 June 2016, CEDAW/C/BDI/Q/5-6/Add.1, Reply to the list of issues on fifth/sixth report, para. 71

⁶ *Ibid.*, para. 51

- 2.5 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment, which is lawful as for parents.
- 2.6 **Day care (lawful):** Corporal punishment is lawful as for parents.
- 2.7 **Schools (?unlawful):** Corporal punishment is reportedly prohibited in schools in regulations.⁷ We have yet to verify this information.
- 2.8 **Penal institutions (lawful):** There is no explicit prohibition of corporal punishment. The new Code of Criminal Procedure promulgated in 2013⁸ did not address the issue.
- 2.9 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in the Penal Code 2009 and the Code of Criminal Procedure 2013.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** Burundi received recommendations concerning prohibition and elimination of corporal punishment of children from the Committee on the Rights of the Child both in 2000 and 2010.⁹
- 3.2 **HRC:** In 2014, the Human Rights Committee recommended that Burundi take legislative measures to put an end to corporal punishment in all settings.¹⁰
- 3.3 **CEDAW:** The Committee on the Elimination of Discrimination Against Women recommended the abolition in practice of corporal punishment in its concluding observations on the fifth/sixth report in 2016.¹¹
- 3.4 **CESCR:** In 2015 the Committee on Economic, Social and Cultural Rights expressed concern at the legality of corporal punishment in Burundi and recommended its prohibition in all settings including the family.¹²

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 1 September 2010, CRC/C/BDI/Q/2/Add.1, Reply to list of issues; 23 September 2014, CCPR/C/BDI/Q/2/Add.1, Reply to list of issues, para. 49

⁸ 23 September 2014, CCPR/C/BDI/Q/2/Add.1, Reply to list of issues, para. 49, para. 50

⁹ 19 October 2010, CRC/C/BDI/CO/2, Concluding observations on second report, paras. 39 and 40; 16 October 2000, CRC/C/15/Add.133, Concluding observations on initial report, paras. 40 and 41

¹⁰ 21 November 2014, CCPR/C/BDI/CO/2, Concluding observations on second report, para. 15

¹¹ 18 November 2016, CEDAW/C/BDI/CO/5-6, Concluding observations on fifth/sixth report, paras. 34 and 35

¹² 9 October 2015, E/C.12/BDI/CO/1 Advance Unedited Version, Concluding observations on initial report, paras. 39 and 40