

Corporal punishment of children in Burkina Faso: Briefing for the Universal Periodic Review, 30th session, 2018

From the Global Initiative to End All Corporal Punishment of Children, September 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 Burkina Faso, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture, the African Committee of Experts on the Rights and the Welfare of the Child and during the 2nd cycle UPR of Burkina Faso in 2013.

We hope the Working Group will note with concern the legality of corporal punishment of children in Burkina Faso. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Burkina Faso enact the draft Child Protection Code to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal the “right of correction”, as a matter of urgency.

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

- 1.1 Burkina Faso was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 16). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² During the review, the Government misleadingly stated that corporal punishment was prohibited in the home and other settings.³ Recommendations on corporal punishment were extended: the Government accepted a recommendation on the implementation of the “laws against corporal punishment” but rejected one to explicitly prohibit its use in all settings.⁴
- 1.2 Since the review in 2013, the 2014 Law on Protection of Children in Conflict with the Law or in Danger was enacted, but it does not explicitly prohibit corporal punishment. The draft Child Protection Code which has been in discussions since 2012 and would achieve prohibition has still not been enacted.

¹ 8 February 2013, A/HRC/WG.6/16/BFA/2, Compilation of UN information, para. 29

² 29 January 2013, A/HRC/WG.6/16/BFA/3, Summary of stakeholders' views, para. 22

³ 8 July 2013, A/HRC/24/4, Report of the working group, paras. 18 and 66

⁴ 8 July 2013, A/HRC/24/4, Report of the working group, paras. 135(106) and 138(6)

- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Burkina Faso. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Burkina Faso enact the draft Child Protection Code to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal the “right of correction”, as a matter of urgency.**

2 Legality of corporal punishment in Burkina Faso

Summary of current law and opportunities for achieving prohibition

In Burkina Faso, corporal punishment of children is lawful in the home, alternative care, in some day care settings, and in some schools. It is unlawful in the penal system, although full prohibition in penal institutions requires confirmation. The draft Child Protection Code should be enacted and implemented as a matter of priority to clearly prohibit corporal punishment in all settings and explicitly repeal the “right of correction”.

- 2.1 **Home (lawful):** 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”),⁵ 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 – and in the Law on Violence Against Women and Girls 2015 are not interpreted as prohibiting corporal punishment in childrearing. The Government reported to the Committee on the Elimination of Discrimination Against Women in 2017 that the draft Criminal Code was awaiting approval from the Cabinet and that the review of the Code on the Person and the Family was ongoing.⁶ It also reported the Constitution was under review.⁷
- 2.2 During the Universal Periodic Review of Burkina Faso in 2013, the Government repeatedly asserted that corporal punishment is prohibited in all settings, including the home,⁸ contradicting the information provided to the African Committee in 2012. The Government then accepted the recommendation made during the review to implement legislation against corporal punishment but rejected the recommendation to prohibit it in all settings.⁹
- 2.3 In May 2014, the National Assembly passed the Law on Protection of Children in Conflict with the Law or in Danger 2014.¹⁰ The provisions in the Law apply to all children (art. 1), defined as person under 18 (art. 2). Article 5 states (unofficial translation): “Notwithstanding the rules relating to the exercise of parental authority, the child has the right to protection of the law against arbitrary or unlawful interference with his privacy, family, home or correspondence, and against all unlawful attacks on his honour and reputation.” Article 7 states: “The child must be protected against all forms of discrimination or punishment on the basis of the status, activities,

⁵ Second/third state party report to the African Committee of Experts on the Rights and Welfare of the Child, 2012, para. 68

⁶ 16 June 2017, CEDAW/C/BFA/Q/7/Add.1, Reply to list of issues, paras. 34 and 75

⁷ 16 June 2017, CEDAW/C/BFA/Q/7/Add.1, Reply to list of issues, para. 1

⁸ 8 July 2013, A/HRC/24/4, Report of the working group, paras. 18 and 66

⁹ 8 July 2013, A/HRC/24/4, Report of the working group, paras. 135(106) and 138(6)

¹⁰ Loi No. 015-2014/AN portant protection de l’enfant en conflit avec la loi ou en danger

expressed opinions, or beliefs of the child's parents, legal guardians, or family members." The Law does not prohibit corporal punishment.

2.4 A draft Child Protection Code is under discussion which would prohibit corporal punishment in all settings, stating in article 220 (unofficial translation): "Physical punishment at home, at school, in the street or in other institutions is prohibited with respect to the child. Corporal punishment means any physical punishment inflicted on children by parents, teachers or others, by means of blows or injuries, mutilation, imprisonment, marking, shaving hair or other violent, humiliating and degrading ways." Articles 221 and 222 provide sanctions for perpetrators of corporal punishment. As at May 2017, the draft Child Protection Code had not yet been adopted: the text underwent a technical validation process in November 2016.

2.5 **Alternative care settings (lawful):** There is no prohibition of corporal punishment in alternative care settings, where it is lawful as for parents. It would be prohibited in the Child Protection Bill.

2.6 **Day care (partially lawful):** Corporal punishment is prohibited in preschool education settings under Decree No. 2008-236/PRES/PM/MEBA/MESSRS/MASSN/MATD but there is no explicit prohibition in other early childhood care or in day care for older children. It would be prohibited in the Child Protection Bill.

2.7 **Schools (partially lawful):** Corporal punishment is unlawful in primary schools but lawful in other schools. It 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 (art. 47), but it does not explicitly prohibit corporal punishment.

2.8 **Penal institutions (?unlawful):** Corporal punishment is considered unlawful as a disciplinary measure in penal institutions under the Code of Criminal Procedure and its implementing legislation, Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organisation, rules and regulations of detention facilities, article 37 of 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, there is no explicit prohibition of corporal punishment 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). It would be prohibited in the Child Protection Bill.

2.9 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in the Law on Protection of Children in Conflict with the Law or in Danger 2014 or the Criminal Code. Article 2 of the Constitution 1991 prohibits inhuman, cruel, degrading and humiliating treatment, and physical or mental torture.

3 Recommendations by human rights treaty bodies

3.1 **CRC:** The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Burkina Faso and recommended that it be prohibited in the home and

all other settings – in concluding observations on the state party’s second report in 2002¹¹ and on the third/fourth report in 2010.¹²

3.2 **CAT:** In 2014, the Committee Against Torture expressed concern at corporal punishment of children in their homes in Burkina Faso and recommended this be addressed by law reform and awareness raising.¹³

3.3 **ACERWC:** In 2010, the African Committee of Experts on the Rights and Welfare of the Child raised the issue of corporal punishment in its examination of Burkina Faso and recommended that measures be strengthened to eradicate it, particularly in schools.¹⁴

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.

¹¹ 9 October 2002, CRC/C/15/Add.193, Concluding observations on second report, paras. 36, 37 and 51

¹² 29 January 2010, CRC/C/BFA/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 40 and 41

¹³ 2 January 2014, CAT/C/BFA/CO/1, Concluding observations on initial report, para. 22

¹⁴ Concluding observations on the initial report of Burkina Faso, 2010