

Corporal punishment of children in Mauritania: Briefing for the Universal Periodic Review, 37th session, November 2020



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

From the Global Initiative to End All Corporal Punishment of Children, July 2020

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 Mauritania, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture, the Human Rights Committee and the Committee on the Elimination of Discrimination Against Women.

We hope the Working Group will note with concern the legality of corporal punishment of children in Mauritania. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Mauritania draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home and as a sentence for a crime.

1 Review of Mauritania in the 2nd cycle UPR (2015) and progress since

- 1.1 Mauritania was reviewed in the second cycle of the Universal Periodic Review in 2015 (session 23). Although the issue of corporal punishment of children was raised in the summary of stakeholders' information,¹ no recommendations were made specifically on the issue. However, the Government accepted recommendations to bring national laws into line with international norms and to improve legislation addressing domestic violence.²
- 1.2 Since the review, there have been no changes on the legality of corporal punishment. The Child Protection Code 2015, which had been reported by the Government to prohibit all corporal punishment of children, does not include a clear and explicit ban of all corporal punishment.
- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Mauritania. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Mauritania draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home and as a sentence for a crime.**

2 Legality of corporal punishment in Mauritania

¹ 17 August 2015, A/HRC/WG.6/23/MRT/3, Summary of stakeholders' views, para. 74

² 23 December 2015, A/HRC/31/6, Report of the working group, paras. 126(1), 126(2), 126(3), 126(4), 126(12), 126(39), 126(40) and 126(41)

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Mauritania is not fully prohibited in any setting. It may be unlawful in the penitentiary system, but it is still lawful in the home, in alternative care, in day care settings, in schools, in some penal institutions and as a sentence for a crime. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home and as a sentence for a crime.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. Provisions against violence and abuse in the Criminal Code 1983, the law “sur la traite des personnes” 2003, the Personal Status Code 2001 and the Constitution 1991 are not interpreted as prohibiting all corporal punishment of children. Order No. 2005-015 of 5 December 2005 on the judicial protection of children states that the subjection of children to torture or to acts of barbarity shall be punishable by “six years’ rigorous imprisonment” and provides for harsh sentences if the offence is committed repeatedly or if it results in damage, mutilation, disability or death (art. 11), but it does not prohibit corporal punishment. In 2009, a Fatwa was issued against corporal punishment of children but it has not been followed by law reform.³ A draft Act on violence against women is under discussion.⁴
- 2.2 The Government did not respond to recommendations to prohibit all corporal punishment of children made during the Universal Periodic Review of Mauritania in 2010.⁵ It reported in 2016 that corporal punishment was prohibited in homes and schools but did not specify legislation.⁶ The Government reported in 2017 to the Committee Against Torture that the draft Child Protection Code criminalised corporal punishment of children,⁷ which led the Committee to mistakenly welcome its prohibition.⁸ The draft Code was adopted by the National Assembly in June 2017⁹ and was to be transmitted to the Senate – but following a referendum in August 2017, the Senate was “repealed”.¹⁰ The Code passed another vote at the National Assembly in December 2017.¹¹ The Government has declared that the Code had been adopted and promulgated,¹² but we have been unable to confirm whether it has indeed been gazetted. Despite the Government’s declarations that the Code prohibits all corporal punishment of children,¹³ there is no explicit prohibition. Article 15 states that children “cannot in any instance

³ “On the Prohibition of Excessive Child Beating in Islamic *Shariah* (Law): Abstract of a comprehensive social, educational and legal study of the negative impact of child beating, and the rules governing it in Islamic *Shariah* (law)”, prepared by Professor Imam Hadd Amin Ould Al-Salek, Imam of the Old Mosque, Nouakchott, and President of the Imams and Ulema Coalition for the Rights of Women and Children in Mauritania, June 2009

⁴ 6 August 2015, A/HRC/WG.6/23/MRT/1, National report to the UPR, para. 54; see also 23 March 2016, A/HRC/31/2 Advance unedited version, Draft report of the Human Rights Council on its 31st session, para. 288

⁵ 4 January 2011, A/HRC/16/17, Report of the working group, paras. 92(30), 92(39), 92(40), 92(42) and 92(45)

⁶ [2016], Initial report on the implementation of the African Charter on the Rights and Welfare of the Child, paras. 37 and 123

⁷ 20 February 2017, CAT/C/MRT/2, Second report, para. 143

⁸ [August 2018], CAT/C/MRT/CO/2 Advance unedited version, Concluding observations on second report, para. 4(f)

⁹ See <http://www.assembleenationale.mr/2017/06/13/adoption-du-projet-de-loi-12517/>, accessed 21 July 2017

¹⁰ See <http://www.bbc.co.uk/news/world-africa-40847092>, accessed 4 September 2017

¹¹ See “ L’Assemblée nationale adopte le projet de loi portant code général de la protection de l’enfant » <http://fr.ami.mr/Depeche-43216.html>, accessed 31 January 2018

¹² 13 June 2018, CAT/C/MRT/Q/2/Add.1, Reply to list of issues, para. 164; 12 July 2018, CRC/C/MRT/Q/3-5/Add.1, Reply to list of issues, para. 45; 30 April 2019, CCPR/C/MRT/Q/2/Add.1, Reply to list of issues, para. 39

¹³ 12 July 2018, CRC/C/MRT/Q/3-5/Add.1, Reply to list of issues, para. 46; see also 30 April 2019, CCPR/C/MRT/Q/2/Add.1, Reply to list of issues, paras. 51 and 58

be submitted to cruel, inhuman or degrading treatment or punishment *which endangers their physical or mental wellbeing*” (emphasis added, unofficial translation), and articles 79 and 80 prohibit torture and cruel, inhuman or degrading treatment. This in fact protects children from some but not all forms of corporal punishment. In 2018, the National Commission for Human Rights recommended that the Government review the Penal Code to explicitly prohibit all corporal punishment in all settings, including the home.¹⁴

- 2.3 **Alternative care settings (lawful)**: Presumably, the Fatwa against corporal punishment would apply to alternative care settings, including in the *kafalah* system, but there is no explicit prohibition of corporal punishment in law.
- 2.4 **Day care (lawful)**: Presumably, the Fatwa against corporal punishment would apply to early childhood care and to day care for older children, but there is no explicit prohibition of corporal punishment in law.
- 2.5 **Schools (lawful)**: The Ministry of Education has stated that corporal punishment should not be used (Decision No. 701 MEN/PR of 4 November 1968, art. 17), but there is no explicit prohibition in law. Applicable law includes Act No. 099-012 of 26 April 1999 on the reform of the education system and Act No. 2001-054 of 19 July 2001 on compulsory basic education: we have yet to examine the full texts of these Acts.
- 2.6 **Penal institutions (?partially lawful)**: Article 136 of the Child Protection Code, which applies to children in the penitentiary system, states (unofficial translation): “(...) It is prohibited even for disciplinary reasons to inflict to a minor detainee cruel, inhuman or degrading treatment such as: corporal punishment, ... and any punishment which can be harmful to the mental or physical health of the minor.” It is unclear whether this would apply to all children involved in penal proceedings, in particular those sentenced to the institutions for juvenile offenders provided for in articles 130 and 131 of the 2005 Order on the judicial protection of children. We have been unable to confirm whether the Code has been gazetted.
- 2.7 The Code of Criminal Procedure 2007 provides a more general protection from violence, stating in article 58: “Any person deprived of his or her liberty as a result of arrest or detention or any other form of deprivation of liberty must be treated in accordance with respect for human dignity. Mental or physical ill-treatment of detainees ... are prohibited.” Article 15 of the National Police Regulations Act No. 2010-07 of 20 January 2010 prohibits “all cruel or degrading treatment that violates human rights”. Decree No. 2003-1524 (2003) on the structural regulations of rehabilitation centres for children in conflict with the law contains provisions on the rights of the child but we have no further details.
- 2.8 **Sentence for crime (lawful)**: Corporal punishment is lawful as a sentence for crime. The Constitution states in article 13 that “Any form of mental or physical violence is prohibited” but the Criminal Code 1983 provides for punishments of amputation and flogging (e.g. art. 7). The Government reported in 2016 that the Order No. 2005-015 on the judicial protection of children prohibited corporal punishment of children.¹⁵ In fact, the Order states that the penalties imposed on children aged 15 to 18 convicted of an offence may not exceed half of the adult sentences, but it does not prohibit corporal punishment.
- 2.9 Article 285 of the Criminal Code states that “any adult who deliberately inflicts injury on, strikes, amputates a limb of, or inflicts any form of violence on an innocent person shall be punished by qisas [retribution in kind].” We have yet to ascertain the age at which adulthood is defined for

¹⁴ [September 2018], Submission of the National Commission for Human Rights to the Committee on the Rights of the Child

¹⁵ [2016], Initial report on the implementation of the African Charter on the Rights and Welfare of the Child, para. 155

the purposes of this provision.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child recommended in 2001 that corporal punishment of children in Mauritania be prohibited in the family, schools and other institutions.¹⁶ The Committee reiterated its recommendations in 2009 and expressed concern at Penal Code provisions for whipping and amputation.¹⁷ This was repeated a third time in 2018.¹⁸
- 3.2 **HRC:** The Human Rights Committee recommended in 2013 that Mauritania take measures to end corporal punishment and encourage the use of positive, non-violent discipline.¹⁹ In 2019, the Committee recommended that Mauritania repeal provisions allowing flogging and amputation.²⁰
- 3.3 **CAT:** In 2013, the Committee Against Torture expressed concern at the legality and widespread use of corporal punishment in childrearing, and recommended that corporal punishment be prohibited in all settings including the home.²¹ In 2018, it expressed concern at the legality of corporal punishment as a sentence for a crime and recommended its abolition.²²
- 3.4 **CEDAW:** In 2007, the Committee on the Elimination of Discrimination Against Women expressed concern about the persistence of patriarchal attitudes that consider physical chastisement of family members acceptable.²³

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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.

¹⁶ 6 November 2001, CRC/C/15/Add.159, Concluding observations on initial report, paras. 29 and 30

¹⁷ 17 June 2009, CRC/C//MRT/CO/2 Concluding observations on second report, paras. 40 and 41

¹⁸ 11 October 2018, CRC/C/MRT/CO/3-5 Advance unedited version, Concluding observations on third/fifth report, para. 25

¹⁹ 21 November 2013, CCPR/C/MRT/CO/1, Concluding observations on initial report, para. 16

²⁰ 23 August 2019, CCPR/C/MRT/CO/2, Concluding observations on second report, paras. 28 and 29

²¹ 18 June 2013, CAT/C/MRT/CO/1, Concluding observations on initial report, para. 25

²² [August 2018], CAT/C/MRT/CO/2 Advance unedited version, Concluding observations on second report, paras. 34 and 35

²³ 11 June 2007, CEDAW/C/MRT/CO/1, Concluding observations on initial report, paras. 29 and 30