

Corporal punishment of children in Madagascar: Briefing for the Universal Periodic Review, 20th session, 2014

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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 Madagascar, corporal punishment of children is lawful, despite recommendations that it should be prohibited by the Committee on the Rights of the Child and the Committee Against Torture. We note that no recommendations to prohibit corporal punishment were made during the UPR of Madagascar in 2010: we hope Madagascar will receive a recommendation on this fundamental right of children during the review in 2014.

We hope the Working Group will note with concern the legality of corporal punishment of children in Madagascar. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted to explicitly prohibit corporal punishment in the home and all settings.

1 The initial review of Madagascar by the Human Rights Council (2010)

- 1.1 Madagascar was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was raised in the summary of stakeholders' information.¹ No recommendations were made specifically on corporal punishment but the Government accepted recommendations to fulfil its obligations under the Convention on the Rights of the Child and recommendations generally to address violence against children.²
- 1.2 Compliance with the Convention on the Rights of the Child and other human rights treaties involves enacting legislation to explicitly prohibit all corporal punishment of children in all settings, including the home. Unfortunately, this is an obligation frequently ignored or evaded by Governments. The longstanding and near universal acceptance of some degree of violent punishment in childrearing and education – among lawmakers and other professionals as among the general public – can challenge efforts to achieve prohibition. It also typically means that some forms of physical punishment are not readily perceived as

¹ 24 November 2009, A/HRC/WG.6/7/MDG/3, Summary of stakeholders' information, para. 13

² 26 March 2010, A/HRC/14/13, Report of the working group, paras. 72(6), 72(37), 72(38), 72(39) and 72(40)

being “violent” (or “harmful” or “abusive”, etc), which is why it is so important that prohibition of corporal punishment is explicit and why legal provisions against “all forms of violence” are inadequate in this respect. **For all these reasons, we respectfully urge members of the Working Group to make specific recommendations to Madagascar that legislation is enacted to explicitly prohibit all corporal punishment of children in the home.**

2 Legality and practice of corporal punishment in Madagascar

- 1.1 **Summary:** Corporal punishment of children in Madagascar is unlawful as a sentence for crime and possibly in schools, but it is lawful in the home, alternative care settings, day care and penal institutions.
- 1.2 **Home (lawful):** The Constitution 2007 states in its Preamble that the Convention on the Rights of the Child and other treaties are considered an integral part of Madagascan law, but domestic law has not been amended to prohibit corporal punishment in all settings. Act No. 2007-023 on the Rights and Protection of the Child states that no child shall be subjected to any form of violence (art. 4, unofficial translation) and defines child abuse as “all forms of violence, injury or physical or moral abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual violence perpetrated against a child by his parents, legal representatives or any other person, and sanctions against children in the family, schools and community which impair their physical or moral integrity” (art. 67), but it does not explicitly prohibit all corporal punishment. Provisions against violence and abuse in the Criminal Code 1972 and the Constitution are not interpreted as prohibiting all corporal punishment in childrearing.
- 1.3 A study involving 100 4-17 year olds who had experienced violence and 30 parents and other family members, found that 52% of the children had been beaten with an object such as a belt or a broom, 49% hit with a hand, most commonly on the back or the head, and 19% had been pinched or had a part of their body twisted. Other types of violence which children experienced included being insulted and threatened, having their hair pulled and being attacked with a knife. Parents were the most common perpetrators: of the 100 children, 43 had experienced violence from their biological mother, 30 from their biological father and 7 from both. Other perpetrators included grandparents, step-parents, uncles, aunts and older siblings; 35% of the children experienced violence every day, 9% every week, 5% every month and 50% “sometimes”.³
- 1.4 **Alternative care settings (lawful):** Corporal punishment is lawful as for parents.
- 1.5 **Day care (lawful):** Corporal punishment is lawful as for parents.
- 1.6 **Schools (?unlawful):** Corporal punishment is reportedly unlawful in schools under article 11 of Ministerial Decree No. 5246-96 MEN (1996):⁴ we have yet to verify that prohibition is explicit. Act 2004-004 of 26 July 2004 on Free and Compulsory Primary Education does not address the issue.
- 1.7 **Penal institutions (lawful):** There is no explicit prohibition of corporal punishment. Discipline in prisons is regulated by Decree No. 2006-015 on the general organisation of

³ Plate Forme de la Société Civile pour l’Enfance & Centre d’Etudes et de Recherches Juridiques (2011), *La violence a l’égard des enfants au sein de la famille en situation précaire a Antananarivo*, Antananarivo: Plate Forme de la Société Civile pour l’Enfance & Centre d’Etudes et de Recherches Juridiques, Université d’Antananarivo

⁴ 3 November 2009, A/HRC/WG.6/7/MDG/1, National report submitted to the Universal Periodic Review

the prison service. There is no provision for corporal punishment as a disciplinary measure (arts. 135 to 138).

1.8 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in criminal law.

3 Recommendations by human rights treaty bodies

3.1 **CRC:** The Committee on the Rights of the Child has twice recommended prohibition of corporal punishment in Madagascar – following examination of the state party’s second report in 2003 and the third/fourth report in 2012.⁵

3.2 **CAT:** In 2011, the Committee Against Torture recommended prohibition of corporal punishment of children in Madagascar.⁶

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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁵ 27 October 2003, CRC/C/15/Add.218, Concluding observations on second report, paras. 45 and 46 ; 8 March 2012, CRC/C/MDG/CO/3-4, Concluding observations on third/fourth report, paras. 37 and 38

⁶ 21 December 2011, CAT/C/MDG/CO/1, Concluding observations on initial report, para. 13