

**BRIEFING ON BURKINA FASO FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 115th session (Oct/Nov 2015)**

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**This briefing describes the legality of corporal punishment of children in Burkina Faso. In light of the obligation under international human rights law to prohibit all corporal punishment of children, and the recommendations to Burkina Faso by the Committee on the Rights of the Child, the Committee Against Torture, the African Committee of Experts on the Rights of the Child and during the Universal Periodic Review (accepted by the Government), we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues for Burkina Faso, in particular asking what steps are being taken to ensure that the draft Child Protection Code includes prohibits all corporal punishment and to expedite its adoption, and**
* **recommend, in the concluding observations on the initial report, that all efforts are made to ensure prohibition of all corporal punishment, including in the home, and explicit repeal of the “right of correction” are included in the draft Child Protection Code and that this law is enacted as a matter of priority.**

**1 Burkina Faso’s report to the Human Rights Committee**

1.1 At the time of drafting this briefing, Burkina Faso’s initial state party report to the Human Rights Committee is not available.[[1]](#footnote-1)

**2 The legality of corporal punishment of children in Burkina Faso**

2.1 ***Summary:***In Burkina Faso, corporal punishment of children is unlawful in primary schools, as a sentence for crime and possibly in penal institutions, but it is lawful in the home, alternative care settings, day care and post-primary education. A draft Child Protection Code is under discussion which would prohibit corporal punishment in all settings. **We hope the Committee will urge the state party to adopt the new Code, including the provisions against corporal punishment, as a matter of priority.**

2.2 ***Home (lawful):*** In 2012, the Government confirmed to the African Committee of Experts on the Rights and Welfare of the Child 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”)[[2]](#footnote-2) 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. UNICEF’s major 2010 analysis of data on child discipline from 2005-2006 found that 83% of 2-14 year olds in Burkina Faso had experienced violent “discipline” in the home in the month prior to the survey, with more than one in five being severely punished (hit or slapped on the face, hear or ears, or hit repeatedly with an implement).[[3]](#footnote-3)

2.3 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,[[4]](#footnote-4) contradicting the information provided to the African Committee in 2012 (see para. 2.2). The Government then rejected the recommendation made during the review to prohibit corporal punishment in all settings.[[5]](#footnote-5) Nevertheless, a draft Child Protection Code is under discussion (2013) 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 2014, the process of this law reform had been suspended: we are seeking further information.

2.4 ***Alternative care settings (lawful):***There is no prohibition of corporal punishment in alternative care settings (care institutions, foster care, places of safety, etc), where it is lawful as for parents.

2.5 ***Day care (partial prohibition):*** Corporal punishment is prohibited in preschool education settings under Decree No. 2008-236/PRES/PM/MEBA/MESSRS/MASSN/MATD (see para. 2.6) but there is no explicit prohibition in other early childhood care or in day care for older children.

2.6 ***Schools (partial prohibition):***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 (art. 47), but it does not explicitly prohibit corporal punishment.

2.7 ***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).

2.8 ***Sentence for crime (unlawful):***There is no provision for judicial corporal punishment in Act No. 19/61 on juvenile offenders and children at risk or the Criminal Code.

**3 Recommendations by human rights treaty bodies and during the UPR**

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 2002[[6]](#footnote-6) and on the third/fourth report in 2010.[[7]](#footnote-7)

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.[[8]](#footnote-8)

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.[[9]](#footnote-9)

3.4 ***UPR:*** Recommendations were made concerning corporal punishment during the Universal Periodic Review of Burkina Faso in 2013. While the Government accepted a recommendation to implement existing law, it rejected the recommendation to prohibit corporal punishment in all settings including the home and care settings.[[10]](#footnote-10)

*Briefing* *prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=948&Lang=en>, accessed 7 August 2015 [↑](#footnote-ref-1)
2. Second/third state party report to the African Committee of Experts on the Rights and Welfare of the Child, 2012, para. 68 [↑](#footnote-ref-2)
3. UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF [↑](#footnote-ref-3)
4. 8 July 2013, A/HRC/24/4, Report of the working group, paras. 18 and 66 [↑](#footnote-ref-4)
5. 8 July 2013, A/HRC/24/4, Report of the working group, paras. 135(106) and 138(6) [↑](#footnote-ref-5)
6. 9 October 2002, CRC/C/15/Add.193, Concluding observations on second report, paras. 36, 37 and 51 [↑](#footnote-ref-6)
7. 29 January 2010, CRC/C/BFA/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 40 and 41 [↑](#footnote-ref-7)
8. 2 January 2014, CAT/C/BFA/CO/1, Concluding observations on initial report, para. 22 [↑](#footnote-ref-8)
9. Concluding observations on the initial report of Burkina Faso, 2010 [↑](#footnote-ref-9)
10. 8 July 2013, A/HRC/24/4, Report of the working group, paras. 135(106) and 138(6) [↑](#footnote-ref-10)