**BRIEFING ON MAURITANIA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 124th session (October/November 2018)**

*From the Global Initiative to End All Corporal Punishment of Children, July 2018*

**This briefing describes the legality of corporal punishment of children in Mauritania. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, and those made to Mauritania by the Human Rights Committee, the Committee on the Rights of the Child, the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, and during the Universal Periodic Review of Mauritania in 2010, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues for Mauritania, in particular asking what progress is being made towards enacting prohibition of all corporal punishment of children, in all settings, and**
* **in its concluding observations on Mauritania’s second state party report, recommend that legislation is enacted to prohibit all corporal punishment of children, however light, in all settings including the home and as a sentence for a crime.**

**1 The report of Mauritania to the Human Rights Committee**

* 1. Mauritania’s second periodic report to the Human Rights Committee (CCPR/C/MRT/2) highlights the ministerial decision prohibiting corporal punishment in schools.[[1]](#footnote-1) Although this is a positive step, it is policy, not law. Prohibition of corporal punishment of children must be enacted in legislation in order to provide children with equal legal protection from assault.

**1.2 In light of the state’s obligation to explicitly prohibit corporal punishment in all settings, we hope the Committee will raise this issue in its review of Mauritania and recommend that legislation is immediately enacted to explicitly prohibit all corporal punishment of children, however light, in all settings including the home and as a sentence for a crime.**

**2 The legality of corporal punishment of children in Mauritania**

2.1 ***Summary:*** Corporal punishment of children in Mauritania may be prohibited in some penal institutions, but it is still lawful in all other settings, including in the home and as a sentence for a crime.

2.2 ***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.[[2]](#footnote-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.[[3]](#footnote-3) A draft Act on violence against women is under discussion.[[4]](#footnote-4)

2.3 The Government reported in 2017 to the Committee Against Torture that the draft Child Protection Code criminalised corporal punishment of children.[[5]](#footnote-5) The draft Code was adopted by the National Assembly in June 2017[[6]](#footnote-6) and was to be transmitted to the Senate – but following a referendum in August 2017, the Senate was “repealed”.[[7]](#footnote-7) The Code passed another vote at the National Assembly in December 2017.[[8]](#footnote-8) The Government has declared that the Code had been adopted and promulgated,[[9]](#footnote-9) 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, there is no explicit prohibition. Article 15 states that children “cannot in any instance be submitted to cruel, inhuman or degrading treatment or punishment *which endangers their physical or mental wellbeing*” (emphasis added, unofficial translation). This is in fact protects children from some but not all forms of corporal punishment.

2.4 ***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.

2.5 ***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.

2.6 ***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.

2.7 ***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.

2.8 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.

2.9 ***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). Order No. 2005-015 on the judicial protection of children 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.

2.10 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 the purposes of this provision.

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

3.1 ***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.[[10]](#footnote-10)

3.2 ***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.[[11]](#footnote-11) The Committee reiterated its recommendations in 2009 and expressed concern at Penal Code provisions for whipping and amputation.[[12]](#footnote-12)

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.[[13]](#footnote-13)

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.[[14]](#footnote-14)

3.5 ***UPR:*** Mauritania was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). A number of recommendations were made to prohibit and eliminate corporal punishment of children: the Government did not respond to the recommendations.[[15]](#footnote-15) At the second cycle examination in 2015 (session 23), no recommendations were made specifically concerning corporal punishment of children. However, the Government accepted recommendations to bring national laws into line with international norms and to improve legislation addressing domestic violence.[[16]](#footnote-16)

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

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1. 30 January 2018, CCPR/C/MRT/2, Second report, para. 125 [↑](#footnote-ref-1)
2. “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 [↑](#footnote-ref-2)
3. 4 January 2011, A/HRC/16/17, Report of the working group, paras. 92(30), 92(39), 92(40), 92(42) and 92(45) [↑](#footnote-ref-3)
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 [↑](#footnote-ref-4)
5. 20 February 2017, CAT/C/MRT/2, Second report, para. 143 [↑](#footnote-ref-5)
6. See <http://www.assembleenationale.mr/2017/06/13/adoption-du-projet-de-loi-12517/>, accessed 21 July 2017 [↑](#footnote-ref-6)
7. See <http://www.bbc.co.uk/news/world-africa-40847092>, accessed 4 September 2017 [↑](#footnote-ref-7)
8. 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 [↑](#footnote-ref-8)
9. 13 June 2018, CAT/C/MRT/Q/2/Add.1, Reply to list of issues, para. 164 [↑](#footnote-ref-9)
10. 21 November 2013, CCPR/C/MRT/CO/1, Concluding observations on initial report, para. 16 [↑](#footnote-ref-10)
11. 6 November 2001, CRC/C/15/Add.159, Concluding observations on initial report, paras. 29 and 30 [↑](#footnote-ref-11)
12. 17 June 2009, CRC/C//MRT/CO/2 Concluding observations on second report, paras. 40 and 41 [↑](#footnote-ref-12)
13. 18 June 2013, CAT/C/MRT/CO/1, Concluding observations on initial report, para. 25 [↑](#footnote-ref-13)
14. 11 June 2007, CEDAW/C/MRT/CO/1, Concluding observations on initial report, paras. 29 and 30 [↑](#footnote-ref-14)
15. 4 January 2011, A/HRC/16/17, Report of the working group, paras. 92(30), 92(39), 92(40), 92(42) and 92(45) [↑](#footnote-ref-15)
16. 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) [↑](#footnote-ref-16)