

# BRIEFING ON MADAGASCAR FOR THE HUMAN RIGHTS COMMITTEE, 120th session (July 2017)

From the *Global Initiative to End All Corporal Punishment of Children*, June 2017



Global Initiative to  
End All Corporal Punishment  
of Children

**This briefing describes the legality of corporal punishment of children in Madagascar. In light of the obligation under international human rights law to prohibit all corporal punishment of children, and the recommendations made to Madagascar by the Committee on the Rights of the Child, the Committee Against Torture and the African Committee of Experts on the Rights and Welfare of the Child, we hope the Human Rights Committee will recommend, in the concluding observations on the fourth report, that all efforts are made to enact legislation clearly prohibiting all corporal punishment of children, however light, in all settings.**

## 1 Madagascar's report to the Human Rights Committee

1.1 The fourth state party report of Madagascar provides information on its child protection mechanisms – however the report is silent on the issue of corporal punishment of children.<sup>1</sup> Although the List of Issues enquired about the steps taken towards the prohibition of corporal punishment of children,<sup>2</sup> Madagascar's reply to the List of Issues did not respond.

**1.2 Madagascar holds an international obligation to explicitly prohibit, in law, all corporal punishment of children. The state party must fulfil this obligation as a matter of priority.**

## 2 The legality of corporal punishment of children in Madagascar

2.1 **Summary:** In Madagascar, corporal punishment of children appears to be unlawful in schools and as a sentence for a crime, but it is lawful in the home, in alternative care and day care settings and in penal institutions.

2.2 **Home (lawful):** The Constitution 2010 states in its Preamble that the Convention on the Rights of the Child and other treaties are considered an integral part of Madagascar law, but domestic law has not been amended to prohibit corporal punishment in all settings. Article 8 states that “no one may be submitted to torture or to cruel, inhuman or degrading penalties or treatments” and article 17 protects the dignity of the person but these provisions are not interpreted as prohibiting all forms of corporal punishment.

2.3 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

<sup>1</sup> 21 December 2015, CCPR/C/MDG/4, Fourth report

<sup>2</sup> 2 December 2016, CCPR/C/MDG/Q/4, List of issues on fourth report, para. 14

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 are not interpreted as prohibiting all corporal punishment in childrearing.

- 2.4 Under examination by the African Committee of Experts on the Rights of the Child in 2015, the Government reported that the Criminal Code is under review but indicated that this was with a view to limiting rather than fully prohibiting corporal punishment of children.<sup>3</sup>
- 2.5 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings as for parents.
- 2.6 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children as for parents.
- 2.7 **Schools (?unlawful):** Corporal punishment is reportedly unlawful in schools under Article 11 of Ministerial Decree No. 5246-96 MEN (1996).<sup>4</sup> 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.
- 2.8 **Penal institutions (lawful):** There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. Discipline in prisons is regulated by Decree No. 2006-015 on the general organisation of the prison service. There is no provision for corporal punishment as a disciplinary measure but persons over 16 may be placed in isolation as a disciplinary measure (arts. 135 to 138). Article 13 of the Constitution 2010 prohibits “all physical brutality to apprehend a person or to keep them in detention” but it does not prohibit all corporal punishment. Law no. 2016-018 on the protection of children in conflict with the law protects children from torture and cruel, inhuman and degrading treatments (art. 6) but this is not interpreted as prohibiting all corporal punishment.
- 2.9 **Sentence for crime (unlawful):** There is no provision for corporal punishment in the Criminal Code 1972, the Code of Criminal Procedure 1962 and Act No. 62-038 on the protection of children.

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

- 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.<sup>5</sup>
- 3.2 **CAT:** In 2011, the Committee Against Torture recommended prohibition of corporal punishment of children in Madagascar.<sup>6</sup>
- 3.3 **ACERWC:** The African Committee of Experts on the Rights and the Welfare of the Child recommended in 2015 that Madagascar bans corporal punishment of children in all settings.<sup>7</sup>
- 3.4 **UPR:** During the Universal Periodic Review of Madagascar in 2010, 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 to address violence

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<sup>3</sup> Examination of state party report to the ACERWC, June 2015

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

<sup>5</sup> 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

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

<sup>7</sup> [August 2015], ACERWC, Concluding observations on initial report, paras. 25 and 26

against children, including through legislative measures.<sup>8</sup> At the second review in 2014, the Government accepted recommendations to bring its national legislation into line with international human rights standards and to address violence against children.<sup>9</sup>

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<sup>8</sup> 26 March 2010, A/HRC/14/13, Report of the working group, paras. 72(6), 72(37), 72(38), 72(39) and 72(40)

<sup>9</sup> 23 December 2014, A/HRC/28/13, Report of the working group, paras. 108(40) and 108(88)