

**BRIEFING ON THE DEMOCRATIC REPUBLIC OF CONGO FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 119th session (March 2017)**

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**This briefing describes the legality of corporal punishment of children in the Democratic Republic of Congo. In light of the state’s 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 the recommendations to DR Congo by the Committee on the Rights of the Child in 2001 and 2009, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues for DR Congo, in particular asking what steps have been taken to ensure legislation is enacted which clearly prohibits all corporal punishment of children, including in the home, and**
* **recommend, in the concluding observations on the fourth state party report, that the Family Code be amended to repeal the provision allowing punishment of children and that legislation be immediately enacted to explicitly prohibit corporal punishment of children in all settings, including the home.**

**1 The report of DR Congo to the Human Rights Committee**

1.1 DR Congo’s fourth state party report to the Human Rights Committee (CCPR/C/COD/4) provides little information on children’s protection from violence and does not address the issue of corporal punishment, which in the country may lawfully be inflicted on children in the guise of “discipline”.

**1.2 We hope the Committee will raise the issue of corporal punishment of children in its review of DR Congo and recommend that the Family Code be amended to repeal the provision allowing punishment of children and that legislation be immediately enacted to explicitly prohibit corporal punishment of children in all settings, including the home.**

**2 The legality of corporal punishment of children in DR Congo**

2.1 ***Summary:***Corporal punishment of children in DR Congo is unlawful in schools and as a sentence for crime, but it is not fully prohibited in the home, alternative care, day care and penal institutions. The Family Code 1987 authorises punishment of children by those with parental authority; its 2016 revision did not repeal this provision.

2.2 ***Home (lawful):*** Article 326(4) of the Family Code 1987 states that “a person exercising parental authority may inflict reprimands and punishments on the child to an extent compatible with its age and the improvement of its conduct”. Provisions against violence and abuse in the Criminal Code 1940, the Family Code 1987 and the Constitution 2006 are not interpreted as prohibiting all corporal punishment in childrearing. Article 57 of the Child Protection Code 2009 confirms the right of the child to protection from all forms of violence and states that discipline in the home, schools and institutions should be administered with respect for the child’s humanity but it does not explicitly prohibit corporal punishment and is diminished by the authorisation contained in the Family Code.

2.3 In 2011, a draft Revised Family Code was under consideration, following a review from a gender perspective. In 2016, the Law amending and supplementing Law No. 87-010 of 1 August 1987 on the Family Code (Loi modifiant et completant la Loi N°87-010 Du 1er Aout 1987 portant Code de la Famille) was passed. The new law did not repeal Article 326(4) and does not mention corporal punishment.

2.4 ***Alternative care and day care settings (lawful):*** Corporal punishment in alternative care settings and day care settings is lawful under the right of those with parental responsibility to punish the child in article 326 of the Family Code 1987. According to article 57 of the Child Protection Code 2009, discipline in public and private care institutions should be administered humanely but corporal punishment is not explicitly prohibited.

2.5 ***Schools (unlawful):***Corporal punishment is unlawful in schools under Ministerial decision No. MINEPSP/CABMIN/00100940/90 of 1 September 1990 establishing internal regulations for students, which does not include corporal punishment among permitted penalties. Article 57 of the Child Protection Code 2009 states that discipline in schools should be administered humanely, but it does not explicitly prohibit corporal punishment.

2.6 ***Penal institutions (lawful):*** Corporal punishment is lawful as a disciplinary measure in penal institutions. There are various prohibitions of ill-treatment of detainees, including in Decree-Law No. 017-2002 setting out the code of conduct for state officials, circular No. 04/008/JM/PHR/70 on intervention by judicial police officers (1970) and the Constitution 2006, and article 57 of the Child Protection Code 2009 states that discipline of children should be carried out humanely, but there is no explicit prohibition of corporal punishment in law. According to the 2014 report of the working group on the Universal Periodic Review, law reform is being pursued in regards to prisons.[[1]](#footnote-1)

2.7 ***Sentence for crime (unlawful):*** Corporal punishment was prohibited as a sentence for crime in 1960. It is not among permitted sanctions in the Decree on juvenile delinquency 1950, the Criminal Code 1940 and the Child Protection Code 2009. The Congolese Charter of Human Rights states that “physical or mental torture and cruel, inhuman or degrading treatment, are prohibited” (art. 19).

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

3.1 ***CRC:*** The Committee on the Rights of the Child has recommended both in 2001 and 2009 that DR Congo took legal action to explicitly prohibit corporal punishment of children in all settings.[[2]](#footnote-2)

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

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1. 7 July 2014, A/HRC/27/5, Report of the working group [↑](#footnote-ref-1)
2. 9 July 2001, CRC/C/15/Add.153, Concluding observations on initial report, paras. 38 and 39; 10 February 2009, CRC/C/COD/CO/2, Concluding observations on second report, paras. 39 and 40 [↑](#footnote-ref-2)