**BRIEFING ON SENEGAL 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 Senegal. 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 Senegal by the Committee on the Rights of the Child, the Committee Against Torture, and during the Universal Periodic Review, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues in the absence of a report for Senegal, in particular asking what progress is being made on enacting the Children’s Code to explicitly prohibit all corporal punishment of children and repeal the “right of correction”, and**
* **in its concluding observations on Senegal’s fifth state party report, recommend that the Children’s Code is enacted as a matter of priority to prohibit all corporal punishment of children, however light, in all settings including in the home, and repeal the “right of correction”.**

**1 The legality of corporal punishment of children in Senegal**

1.1 ***Summary:*** Corporal punishment of children in Senegal is unlawful in the penal system but it is still not prohibited in the home, in alternative care and day care settings, and in all schools.

1.2 ***Home (lawful):***Corporal punishment is lawful in the home. Article 285 of the Family Code provides for persons with paternal authority to have a “right of correction” over children: “He that exercises paternal power can inflict on children reprimands and corrections to the extent that they are consistent with the child’s age and the improvement of his conduct” (unofficial translation). According to articles 277 and 281, paternal power is exercised by the father only or alternatively by the mother. Articles 298 and 299 of the Criminal Code 1977 (amended 2016) punish the causing of injury to a child under 15 and the use of violence and assault, the punishments being more severe if the perpetrator is a parent or other person with authority over or custody of the child. However, this protects children only from punishment of some severity – i.e. that which is perceived to cause injury. Corporal punishment that does not appear to cause physical injury is lawful under the above-mentioned “right of correction in the Family Code”.

1.3 In its report to the Committee on the Rights of the Child, dated 2012, the Government referred to a National Plan of Action on Law Reform to Criminal Corporal Punishment and All Forms of Violence Against Children.[[1]](#footnote-1) In reporting on the protection of children from corporal punishment to the Universal Periodic Review (UPR) in 2013, the Government again stated that it had devised “a national action plan on legal reform to criminalize corporal punishment and all forms of violence against children”.[[2]](#footnote-2) However, following the review itself, a recommendation to explicitly prohibit corporal punishment by revising the Family Code was recorded – and accepted by the Government – only as a recommendation to fight against corporal punishment.[[3]](#footnote-3) In the context of examination by the Committee on the Elimination of Discrimination Against Women in 2015, the Government was asked if it envisaged amending article 285 of the Family Code in order to prohibit corporal punishment in the home.[[4]](#footnote-4) In reply, the Government stated that there are severe penalties for acts of corporal punishment and that the social departments of the Ministry of Justice have powers to propose measures aimed at protecting child victims of corporal punishment.[[5]](#footnote-5)

1.4 In reporting for examination by the Committee on the Rights of the Child in January 2016, the Government stated that “provisions have been made in the Children’s Code project to make effective the prohibition of corporal punishment, even within the family”.[[6]](#footnote-6) The draft Code does include provisions intended to prohibit corporal punishment (articles 14 and 45), but as at March 2016 the draft does not explicitly repeal the “right of correction” in the Family Code. In February 2017, the Government reported that it planned “to expressly delete article 285 of the Family Code on forms of corporal punishment tolerated within the family”.[[7]](#footnote-7) As at May 2017, there seemed to be no formal plans to repeal the “right of correction”, and the legislative process had stalled due to the inclusion of controversial inheritance provisions.[[8]](#footnote-8) It appears work on a final draft has started again, with the aim to enact the Code by the end of 2018.[[9]](#footnote-9)

1.5 ***Alternative care settings (lawful)***: There is no explicit prohibition of corporal punishment in alternative care settings. It is unclear whether the “right of correction” under article 285 of the Family Code 1989 can be transferred to persons caring for a child in alternative care settings.

1.6 ***Day care (lawful)***: There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. It is unclear whether the “right of correction” under article 285 of the Family Code 1989 can be transferred to persons caring for a child in day care settings.

1.7 ***Schools (partially lawful):***Corporal punishment is prohibited in schools for children aged 6-14 in Decree No. 79-11.65 1979 but there is no explicit prohibition in other schools and the authority to “correct” a child article 285 of the Family Code 1989 potentially applies. The Government reported to the Committee on the Elimination of Discrimination Against Women in 2015 that violence by teachers is subject to severe criminal penalties, drawing particular attention to Law No. 99-05 of 29 January 1999 amending articles 299bis, 300, 319, 320, 323, 324 and 327 of the Criminal Code, and to administrative penalties.

1.8 During the UPR of Senegal in 2009, the Government stated that corporal punishment is prohibited in Koranic schools,[[10]](#footnote-10) but gave no details of the relevant law. In 2017, the Government reported to the African Committee of Experts on the Rights and Welfare of the Child that reforms were being considered to regulate the Koranic schools. It seems however that the process is being stalled by religious pressure.[[11]](#footnote-11) During the May 2018 examination of Senegal, the Committee Against Torture expressed concern at the lack of regulation around Koranic schools.[[12]](#footnote-12) The draft Bill was validated by the Government in June 2018, to soon be introduced in the National Assembly.[[13]](#footnote-13)

1.9 ***Penal institutions (?unlawful):***Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition. Article 100 of Decree No. 2001 (relative to the procedure of implementation and adjustment of the sanctions), applicable to prisons, states that “the personnel of the penal institutions can only employ force towards a prisoner in the case of violent resistance (by the inmate) or in the case of inertia to the orders given”. Juvenile justice penal law is being revised.[[14]](#footnote-14)

1.10 ***Sentence for crime (unlawful):*** Corporal punishment is unlawful as a sentence for crime. There is no provision for it in the Criminal Code or the Criminal Procedure Code.

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

2.1 ***CRC:*** The Committee on the Rights of the Child first recommended that corporal punishment of children be prohibited in the family in Senegal in 1995, following examination of the state party’s initial report.[[15]](#footnote-15) In its concluding observations on the second report in 2006, the Committee recommended prohibition in all settings, including the home.[[16]](#footnote-16) Finally in 2016, the Committee again recommended the prohibition of corporal punishment in all settings as well as the repeal of all provisions authorising corporal punishment, including article 285 of the Family Code.[[17]](#footnote-17)

2.2 ***CAT:*** In 2013, the Committee Against Torture recommended to Senegal that article 285 of the Family Code be amended to explicitly prohibit corporal punishment of children, including in the home.[[18]](#footnote-18)

2.3 ***UPR:*** Senegal was examined in the first cycle of the Universal Periodic Review in 2009. The Government accepted a recommendation to take measures to ensure that children are protected from corporal punishment.[[19]](#footnote-19) The second cycle UPR took place in 2013. The Government reported to the review that it had devised “a national action plan on legal reform to criminalize corporal punishment and all forms of violence against children”.[[20]](#footnote-20) During the review, Tunisia made the following recommendation: “Revise the Code of the Family to explicitly prohibit corporal punishment in all places.” However, the recommendation as recorded in the report of the working group – and which the Government accepted – was to “continue its efforts to fight against corporal punishment in all places (Tunisia)”.[[21]](#footnote-21)

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

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1. CRC/C/SEN/3-5 Unedited Version, Third-fifth state party report, para. 36 [↑](#footnote-ref-1)
2. 23 July 2013, A/HRC/WG.6/17/SEN/1, National report to the UPR, para. 102 [↑](#footnote-ref-2)
3. 11 December 2013, A/HRC/25/4, Report of the working group, para. 123.64 [↑](#footnote-ref-3)
4. 17 November 2014, CEDAW/C/SEN/Q/3-7, List of issues, para. 6 [↑](#footnote-ref-4)
5. 17 June 2015, CEDAW/C/SEN/Q3-7/Add.1, Reply to list of issues, paras. 74 and 75 [↑](#footnote-ref-5)
6. 29 December 2015, CRC/C/SEN/Q/3-5/Add.1, Reply to list of issues, para. 25 [↑](#footnote-ref-6)
7. 16 March 2017, CAT/C/SEN/4, Fourth report, para. 237 [↑](#footnote-ref-7)
8. Information provided to the Global Initiative, May 2017 [↑](#footnote-ref-8)
9. Communication with the *Comité Sénégalais des Droits de l'Homme*, July 2018 [↑](#footnote-ref-9)
10. 5 October 2009, A/HRC/11/24, Report of the working group, para. 60 [↑](#footnote-ref-10)
11. Information provided to the Global Initiative, May 2017 [↑](#footnote-ref-11)
12. [May 2018], CAT/C/SEN/CO/4 Advance unedited version, Concluding observations on fourth report, para. 31 [↑](#footnote-ref-12)
13. See <http://www.jeuneafrique.com/575577/societe/pourquoi-le-senegal-veut-encadrer-les-ecoles-coraniques/>, accessed 14 June 2018 [↑](#footnote-ref-13)
14. UNICEF (2013), *Annual report – Senegal*  [↑](#footnote-ref-14)
15. 27 November 1995, CRC/C/15/Add.44, Concluding observations on initial report, para. 24 [↑](#footnote-ref-15)
16. 20 October 2006, CRC/C/SEN/CO/2, Concluding observations on second report, paras. 36 and 37 [↑](#footnote-ref-16)
17. 29 January 2016, CRC/C/SEN/CO/3-5 Advance Unedited Version, Concluding observations on third-fifth report, paras. 35 and 36 [↑](#footnote-ref-17)
18. 17 January 2013, CAT/C/SEN/CO/3 Concluding observations on third report, para. 15 [↑](#footnote-ref-18)
19. 5 October 2009, A/HRC/11/24, Report of the working group, para. 97(26) [↑](#footnote-ref-19)
20. 23 July 2013, A/HRC/WG.6/17/SEN/1, National report to the UPR, para. 102 [↑](#footnote-ref-20)
21. 11 December 2013, A/HRC/25/4, Report of the working group, para. 123.64 [↑](#footnote-ref-21)