**BRIEFING ON BURKINA FASO FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 128th session (March 2020)**

*From the Global Initiative to End All Corporal Punishment of Children, January 2020*

**This briefing describes the legality of corporal punishment of children in Burkina Faso. 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 Burkina Faso by the Committee on the Rights of the Child, the Committee Against Torture, the African Committee of Experts on the Rights and Welfare of the Child and during the Universal Periodic Review in 2013 and 2018, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Burkina Faso, in particular asking what progress is being made on enacting the draft Child Protection Code to** **prohibit all corporal punishment of children in all settings,**
* **in its concluding observations on Burkina Faso’s second state party report, recommend that the draft Child Protection Code is enacted as a matter of priority to prohibit all corporal punishment of children in all settings.**

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

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

1.2 ***Home (lawful):*** Corporal punishment is lawful in the home. The Government has confirmed 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”),[[1]](#footnote-1) 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), the Criminal Code 2018, and in the Law on Violence Against Women and Girls 2015 are not interpreted as prohibiting corporal punishment in childrearing. In 2012, the Code on the Person and the Family were under review: we have no details of proposed amendments. The Government reported in 2017 that the Constitution was under review and that the review of the Code on the Person and the Family was ongoing.[[2]](#footnote-2)

1.3 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,[[3]](#footnote-3) contradicting the information provided to the African Committee in 2012 (see above). The Government then accepted the recommendation made during the review to implement legislation against corporal punishment but rejected the recommendation to prohibit it in all settings.[[4]](#footnote-4) In 2017 in response to a recommendation to explicitly prohibit corporal punishment in legislation, the Government declared that domestic legislation prohibited all violence against children and that awareness-raising sessions were being held on the harmfulness of corporal punishment.[[5]](#footnote-5) Burkina Faso noted without comments a 2018 UPR recommendation to prohibit.[[6]](#footnote-6) As stated above, all corporal punishment of children is not prohibited in domestic legislation.

1.4 In May 2014, the National Assembly passed the Law on Protection of Children in Conflict with the Law or in Danger 2014.[[7]](#footnote-7) The provisions in the Law apply to all children (art. 1), defined as person under 18 (art. 2). Article 5 states (unofficial translation): “Notwithstanding the rules relating to the exercise of parental authority, the child has the right to protection of the law against arbitrary or unlawful interference with his privacy, family, home or correspondence, and against all unlawful attacks on his honour and reputation.” Article 7 states: “The child must be protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.” The Law does not prohibit corporal punishment.

1.5 A draft Child Protection Code is under discussion 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 June 2018, the draft Child Protection Code had not yet been adopted: the text underwent a technical validation process in November 2016, however the Government did accept 2018 UPR recommendations to adopt the Child Protection Code.[[8]](#footnote-8) National consultations initiated during the drafting of the Code were put on hold pending the review of related laws, including the Criminal Code and the Code on the Person and the Family.[[9]](#footnote-9) The Criminal Code adopted in May 2018 did not explicitly prohibit corporal punishment of children.

1.6 Burkina Faso became a Pathfinder country with the Global Partnership to End Violence Against Children in November 2019. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals.

1.7 ***Alternative care settings (lawful):*** There is no prohibition of corporal punishment in alternative care settings, where it is lawful as for parents. It would be prohibited in the Child Protection Bill.

1.8 ***Day care settings (partially lawful):*** Corporal punishment is prohibited in preschool education settings under Decree No. 2008-236/PRES/PM/MEBA/MESSRS/MASSN/MATD (see below) but there is no explicit prohibition in other early childhood care or in day care for older children. It would be prohibited in the Child Protection Bill.

1.9 ***Schools (partially lawful):*** Corporal punishment is unlawful in primary schools but lawful in other schools. It 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.

1.10 ***Penal institutions (?unlawful):*** Corporal punishment is considered unlawful as a disciplinary measure in penal institutions under Law No. 010-2017 on the penitentiary regime in Burkina Faso, although there is no explicit prohibition. Article 23 of the law states that all inmates must be treated with respect to their human dignity and article 24 prohibits all forms of torture and cruel, inhuman and degrading treatment. According to its article 151, regulations are to be adopted to specify disciplinary rules in penal institutions – as of November 2017, the regulations were still under discussions.[[10]](#footnote-10)

1.11 Law No 010-2017 repealed Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organisation, rules and regulations of detention facilities, which did not include corporal punishment among the disciplinary measures that may be imposed on juveniles but allowed for the use of force by prison staff in certain circumstances, including “in case of physical apathy following orders” (unofficial translation). Corporal punishment in penal institutions would be prohibited in the Child Protection Bill.

1.12 ***Sentence for crime (unlawful):*** Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Law on Protection of Children in Conflict with the Law or in Danger 2014 or the Criminal Code. Article 2 of the Constitution 1991 prohibits inhuman, cruel, degrading and humiliating treatment, and physical or mental torture.

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

2.1 ***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[[11]](#footnote-11) and on the third/fourth report in 2010.[[12]](#footnote-12)

2.2 ***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.[[13]](#footnote-13)

2.3 ***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.[[14]](#footnote-14)

2.4 ***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.[[15]](#footnote-15) In 2018, the Government accepted a recommendation to intensify efforts to combat corporal punishment but noted another to explicitly prohibit corporal punishment in all settings.[[16]](#footnote-16)

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

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1. Second/third state party report to the African Committee of Experts on the Rights and Welfare of the Child, 2012, para. 68 [↑](#footnote-ref-1)
2. 16 June 2017, CEDAW/C/BFA/Q/7/Add.1, Reply to list of issues, paras. 1 and 75 [↑](#footnote-ref-2)
3. 8 July 2013, A/HRC/24/4, Report of the working group, paras. 18 and 66 [↑](#footnote-ref-3)
4. 8 July 2013, A/HRC/24/4, Report of the working group, paras. 135(106) and 138(6) [↑](#footnote-ref-4)
5. [December 2017], CAT/C/BFA/2, Second report, paras. 109 and 110 [↑](#footnote-ref-5)
6. 6 July 2018, A/HRC/39/4, Report of the Working Group, para. 126(30); 11 September 2018, A/HRC/39/4/Add.1 Advance unedited version, Report of the Working Group: Addendum [↑](#footnote-ref-6)
7. Loi No. 015-2014/AN portant protection de l’enfant en conflit avec la loi ou en danger [↑](#footnote-ref-7)
8. 6 July 2018, A/HRC/39/4, Report of the Working Group, para. 125(146) [↑](#footnote-ref-8)
9. 2 March 2018, A/HRC/WG.6/30/BFA/1, National report to the UPR, para. 79 [↑](#footnote-ref-9)
10. See <http://dggsp.justice.gov.bf/atelier-de-validation-des-textes-dapplication-de-la-loi-10/#more-813>, accessed 5 March 2018 [↑](#footnote-ref-10)
11. 9 October 2002, CRC/C/15/Add.193, Concluding observations on second report, paras. 36, 37 and 51 [↑](#footnote-ref-11)
12. 29 January 2010, CRC/C/BFA/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 40 and 41 [↑](#footnote-ref-12)
13. 2 January 2014, CAT/C/BFA/CO/1, Concluding observations on initial report, para. 22 [↑](#footnote-ref-13)
14. Concluding observations on the initial report of Burkina Faso, 2010 [↑](#footnote-ref-14)
15. 8 July 2013, A/HRC/24/4, Report of the working group, paras. 135(106) and 138(6) [↑](#footnote-ref-15)
16. 6 July 2018, A/HRC/39/4, Report of the Working Group, paras. 125(146), 125(149) and 126(30); 11 September 2018, A/HRC/39/4/Add.1 Advance unedited version, Report of the Working Group: Addendum [↑](#footnote-ref-16)