Corporal punishment of children in Guinea-Bissau

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Child population 953,000 (UNICEF, 2020)

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home and day care.

The “right of correction” of children has reportedly been removed from the Civil Code (information unconfirmed). But the near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that no degree of corporal punishment is acceptable or lawful. All legal defences should be repealed and prohibition of all corporal punishment should be enacted in relation to parents and all those with parental authority.

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 38 (c) of the Child Protection Code 2021 prohibits "Physical or psychological violence understood as behaviors that cause physical or psychological harm to the child" (unofficial translation). The definition of physical and psychological violence includes "depreciation or disrespect towards the child through threat, humiliation, manipulation, verbal aggression, ridicule, indifference, exploitation or systematic intimidation that may compromise the child's psychological or emotional development" (art. 38 (c) (i)). We are trying to clarify whether the Child Protection Code 2021 intends to prohibit all forms of corporal punishment, however light. According to the Government, the provision in the Civil Code 1966 for parents to "moderately correct their child in the latter's mistakes" was repealed.[1] Article 1884 of the 2006 edition of the Civil Code still provided for this (unofficial translation): "(1) Both parents have the power to moderately correct their minor children in their failures; (2) If the child is disobedient, has had bad behaviour or is undisciplined, both parents can require the Court to apply the necessary measures, established by special legislation." We are seeking to ascertain if this provision has been repealed from more recent editions of the Code.

There is no explicit prohibition of corporal punishment and provisions against violence and abuse in the Penal Code 1993 are not interpreted as prohibiting corporal punishment of children. The Law Against Domestic Violence 2014 defines domestic violence as all actions and omissions of a criminal nature that, repeatedly or not, cause suffering/pain; it defines physical violence as all acts or omissions that cause injury to the victim's physical integrity. The Law does not prohibit all corporal punishment.[2]

There is an ongoing process of laws being harmonised with the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. In 2013, in the process of drafting a comprehensive Code on the Protection of Children the Government stated its intention to submit a bill to parliament prohibiting corporal punishment.[3] The Government had initially confirmed its commitment to prohibiting corporal punishment in all settings in clearly accepting the recommendation to do so made during the Universal Periodic Review of Guinea-Bissau in 2015.[4] The Global Initiative no longer considers Guinea-Bissau committed to prohibiting all corporal punishment of children without delay. Despite indicating its intention to draft prohibiting legislation in 2013, the Government has not taken any clear action since then to indicate that it is still a priority.

Alternative care settings

Corporal punishment in unlawful in alternative care settings. Article 227 (k) (i) of the Child Protection Code 2021 prohibits corporal punishment and any physical aggression in children's homes.

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. Article 25 (3) of the Child Protection Code of 2021, recommends the development of prevention activities, policies and programmes on violence against children, including in early childhood. But it does not explicitly prohibit corporal punishment in day care.

Schools

Corporal punishment in unlawful in all schools. Article 70 of the Child Protection Code 2021 prohibits Corporal punishment and any physical aggression as well as "verbal or psychological punishments that

[1] 2 December 2011, CRC/C/GNB/2-4, Second-fourth state party report to the Committee on the Rights of the Child, paras. 153 and 154
[2] Madeira, L. F. (2015), Guinea-Bissau: Analysis on Corporal Punishment of Children, prepared for the Global Initiative
[3] 13 June 2013, CRC/C/SR.1804, Summary record of 1804th meeting
[4] 13 April 2015, A/HRC/29/12, Report of the working group, para. 96(74); 24 June 2015, A/HRC/29/12/Add.1, Report of the working group: Addendum, para. 96(74)

violate the child's dignity" in any public, private or community schools. In 2019, the Government also stated that corporal punishment was prohibited in public and private schools under the "modern pedagogical guidelines of the Ministry of Education".[5]

Penal institutions

Corporal punishment is prohibited as a disciplinary measure in penal institutions. Article 324 of the Child Protection Code 2021 prohibits torture or cruel, inhuman or degrading treatment or punishment, as well as physical abuse, in relation to children in conflict with the law.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. The Constitution prohibits torture and other cruel, inhuman and degrading punishment (art. 37), and there is no provision for judicial punishment in the Penal Code 1993.

Universal Periodic Review of Guinea-Bissau's human rights record

Guinea-Bissau was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:[6]

> "Reaffirm its commitments to international human rights instruments through their transposition or integration into its national legislation, and intensify its efforts to submit its overdue reports to the treaty bodies (Spain);
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> "Amend and/or adopt and implement legislation providing for the full application of the juvenile justice infrastructure and system, in accordance with the provisions of CRC and other international standards (Germany);
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> "Ensure that the provisions of all international human rights treaties, once ratified, are incorporated into domestic law (Netherlands);
>
> "Consider reviewing strategies aimed at the protection of children, with a view to developing a comprehensive plan for the care of children, and to aligning them with the provisions of CRC and all applicable international human rights instruments to which Guinea-Bissau is party (South Africa);
>
> "Adopt and duly implement all measures necessary to prevent torture and other inhuman or degrading treatment, and ensure due accountability for perpetrators of such human rights violations (Slovakia)"

The second cycle review took place in 2015 (session 21). During the review, the following recommendation was made:[7]

> "Explicitly prohibit corporal punishment of children in all settings (Slovenia)"

The Government accepted the recommendation.[8]

Third cycle examination took place in 2020 (session 35). The following recommendation was extended:[9]

> "Combat girls' early school dropout by eradicating harmful practices such as early and forced marriages, child labour and corporal punishment at schools (Gabon)"

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[5] [October 2019], Initial report to the African Committee of Experts on the Rights and Welfare of the Child, para. 25
[6] 16 June 2010, A/HRC/15/10, Report of the working group, paras. 65(14), 65(15), 65(16), 65(26) and 65(81)
[7] 6 February 2015, A/HRC/WG.6/21/L.9, Draft report of the working group, para. 96(74)
[8] 24 June 2015, A/HRC/29/12/Add.1, Report of the working group: Addendum, para. 96(74)
[9] 5 February 2020, A/HRC/WG.6/35/L.8 Unedited version, Draft report of the Working Group, para. 119(135)

The Government will examine the recommendation and respond by the 44th session of the Human Rights Council in June 2020.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(8 July 2013, CRC/C/GNB/CO/2-4, Concluding observations on second-fourth report, paras. 36, 37, 62 and 63)

"The Committee notes that, although corporal punishment is prohibited in schools, it remains lawful in the home and alternative care settings. The Committee regrets that the State party report provides limited information on corporal punishment.

"Taking due note of the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee recommends that the State party:

a) consider enacting legislation to explicitly prohibit corporal punishment of children in all settings, including within the family and in alternative care settings;

b) ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are systematically initiated against those responsible for violence against children; and

c) introduce public education, awareness-raising and social mobilization campaigns on the harmful effects of corporal punishment with a view to changing the general attitude towards this practice and promote positive, non-violent, participatory forms of child-rearing and education as alternative forms of discipline.

"The Committee takes note of the progress in access to education with a net attendance ratio (NAR) that increased by 26 percentage points between 2002 and 2010. Nevertheless, the Committee is concerned that: ...

e) there are cases of corporal punishment and bullying in schools....

"The Committee recommends that the State party: ...

f) initiate regulations banning all forms of violence in schools, and establish a complaints mechanism to report incidents of corporal punishment as well as bullying, peer violence and harassment, and introduce non-violent forms of discipline as an alternative to corporal punishment...."

Committee on the Rights of the Child

(13 June 2002, CRC/C/15/Add.177, Concluding observations on initial report, paras. 4, 30 and 31)

"The Committee also welcomes: ... the prohibition, under law, of corporal punishment in the family and schools and other contexts.

"The Committee is concerned that:

b) ... corporal punishment is widely practiced in the family.

"The Committee recommends that the State party:

c) ... combat the practice of corporal punishment of children in the family, including through the use of information campaigns on the harm it can cause and on the importance of alternative measures of discipline."

African Committee of Experts on the Rights and Welfare of the Child

([January 2023], Concluding observations on initial report, paras. 41, 42 and 43) (unofficial translation)

"...The Committee also commends the State party for prohibiting all forms of corporal punishment through the Children's Code which explicitly prohibits corporal punishment in schools and penal institutions.

"The Committee notes that corporal punishment appears to still be tolerated in some settings. The Committee recommends that the State party raise awareness among teachers, parents, caregivers, and stakeholders about the legislative provisions concerning the prohibition of corporal punishment and the negative impact of corporal punishment on children's well-being.

"The Committee also recommends that the State party sanction individuals who commit corporal punishment and ensure that perpetrators are brought to justice, ensuring that victims have access to adequate remedies in law. The Committee also recommends that the State party have mechanisms in place monitoring in schools and other environments to monitor the disciplinary procedures and ensure that children are not subjected to corporal punishment."

Prevalence/attitudinal research in the last ten years

Research conducted in 2014 as part of UNICEF's Multiple Indicator Cluster Surveys (MICS) programme, found on average 82% of 1-14 year-old children experienced some form of violent discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 66% of children experienced psychological aggression, 72% physical punishment and 18% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Physical punishment of children was less common in the south province (55%) than the rest of the country (74%), and less common for children aged 1-2 (60%) than those aged 3-9 (76%) or 10-14 (70%). Only 12% of children experienced only non-violent forms of discipline.

(Ministério da Economia e Finanças & Direcção Geral do Plano/Instituto Nacional de Estatística (INE) (2016), Inquérito aos Indicadores Múltiplos (MICS5) 2014, Relatório Final, Bissau, Guiné-Bissau: Ministério da Economia e Finanças & Direcção Geral do Plano/ Instituto Nacional de Estatística (INE))

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