

# **Corporal punishment of children in Burkina Faso: Briefing for the Universal Periodic Review, 44th session, Oct./Nov. 2023**



*From the Global Partnership to End Violence Against Children,  
March 2023*

This submission provides an update on the legality of corporal punishment of children in Burkina Faso since its review in the third cycle UPR in 2018. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care, schools and penal institutions.

**The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.**

**In Burkina Faso, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 3<sup>rd</sup> cycle UPR of Burkina Faso in 2018.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in Burkina Faso. We hope states will raise the issue during the review this year and make a specific recommendation that Burkina Faso accelerates its efforts to enact its Child Protection Code to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.**

## **1 Review of Burkina Faso in the 3<sup>rd</sup> cycle UPR (2018) and progress since**

1.1 Burkina Faso was reviewed in the third cycle of the Universal Periodic Review in 2018 (session 30). Three recommendations to prohibit corporal punishment in all settings were extended.<sup>1</sup> The Government immediately supported the first two recommendations. The final recommendation was later noted without comments.<sup>2</sup>

<sup>1</sup> 6 July 2018, A/HRC/39/4, Report of the Working Group, paras. 125(146), 125(149) and 126(30)

<sup>2</sup> 11 September 2018, A/HRC/39/4/Add.1 Advance unedited version, Report of the Working Group: Addendum

1.2 Following the review, no legislation to explicitly prohibit corporal punishment of children in all settings was adopted. In January 2023, it was reported that the Government was reviewing the draft Child Protection Code which would prohibit all corporal punishment of children.<sup>3</sup> We have no further information.

1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Burkina Faso. We hope states will raise the issue during the review this year and make a specific recommendation that Burkina Faso intensify its efforts to enact a law to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

## 2 Legality of corporal punishment in Burkina Faso

### ***Summary of current law reform and opportunities for achieving prohibition***

Prohibition is still to be achieved in the home, alternative care settings, day care, schools, penal institutions.

A “right of correction” of parents is recognised, though it appears not to be confirmed in written legislation, and legal provisions against violence are not interpreted as prohibiting all corporal punishment in childrearing. The near universal acceptance of corporal punishment in “disciplining” children necessitates a clear statement in law that all corporal punishment, however “light”, is prohibited.

2.1 **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”),<sup>4</sup> 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.

2.2 In May 2014, the National Assembly passed the Law on Protection of Children in Conflict with the Law or in Danger 2014.<sup>5</sup> 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.

<sup>3</sup> Information provided by UNICEF Burkina Faso in January 2023

<sup>4</sup> Second/third state party report to the African Committee of Experts on the Rights and Welfare of the Child, 2012, para. 68

<sup>5</sup> Loi No. 015-2014/AN portant protection de l’enfant en conflit avec la loi ou en danger

- 2.3 A draft Child Protection Code which would prohibit corporal punishment in all settings has been under discussions since 2013. It states 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. The text underwent a technical validation process in November 2016. In January 2023, it was reported that the Government was reviewing the draft Child Protection Code which would prohibit all corporal punishment of children.<sup>6</sup>
- 2.4 In May 2018, during the 31<sup>st</sup> session of the African Committee of Experts on the Rights and Welfare of the Child, the Government indicated that there is a clear legal prohibition of corporal punishment under the Criminal Code and that whenever a case of corporal punishment is reported, it is brought before courts and measures are taken against it.<sup>7</sup>
- 2.5 In November 2019, Burkina Faso became a Pathfinder country with the Global Partnership to End Violence Against Children. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals.
- 2.6 **Alternative care settings (lawful):** There is no prohibition of corporal punishment in alternative care settings, where it is lawful as for parents (see under “Home”). It would be prohibited in the Child Protection Bill (see under “Home”).
- 2.7 **Day care (lawful):** Corporal punishment is prohibited in preschool education settings under Decree No. 2018-333 /MENA/SG on the adoption of the internal regulations of preschool settings in Burkina Faso. However, 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 (see under “Home”).
- 2.8 **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.
- 2.9 **Penal institutions (lawful):** 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.<sup>8</sup>

<sup>6</sup> Information provided by UNICEF Burkina Faso in January 2023

<sup>7</sup> May 2018, ACERWC/RPT(XXXI) 31<sup>st</sup> ordinary session, para. 53

<sup>8</sup> See <http://dggsp.justice.gov.bf/atelier-de-validation-des-textes-dapplication-de-la-loi-10/#more-813>, accessed 5 March 2018

- 2.10 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 (see under “Home”).
- 2.11 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. There is not 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.

### 3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** In its concluding observations on the state party’s second report in 2002<sup>9</sup> and on the state party’s third-fourth report in 2010,<sup>10</sup> the Committee on the Rights of the Child has recommended to Burkina Faso that a legislation is enacted to explicitly prohibit corporal punishment in all settings.
- 3.2 **CAT:** In its concluding observations on the state party’s initial report in 2014,<sup>11</sup> the Committee Against Torture recommended that the Government revise its legislation to prohibit corporal punishment in the home.
- 3.3 **ACERWC:** On two occasions, the African Committee of Experts on the Rights and Welfare of the Child has recommended to Burkina Faso that measures are taken to prohibit and eliminate corporal punishment in all settings: in its concluding observations on the state party’s initial report in 2010,<sup>12</sup> on the state party’s fourth-sixth report in 2019.<sup>13</sup>

*Briefing prepared by End Corporal Punishment on behalf of the Global Partnership to End Violence Against Children*

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<sup>9</sup> 9 October 2002, CRC/C/15/Add.193, Concluding observations on second report, paras. 36, 37 and 51

<sup>10</sup> 9 February 2010, CRC/C/BFA/CO/3-4, Concluding observations on third/fourth report, paras. 40 and 41

<sup>11</sup> 2 January 2014, CAT/C/BFA/CO/1, Concluding observations on initial report, para. 22

<sup>12</sup> Concluding observations on the initial report of Burkina Faso, 2010, in French only

<sup>13</sup> February 2019, Concluding observations on the fourth/sixth report of Burkina Faso, para. 19, in French only