

DR CONGO

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 19th session, 2014

*From Dr Sharon Owen, Research Coordinator, Global Initiative,
info@endcorporalpunishment.org*



Global Initiative to
**End All Corporal Punishment
of Children**

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 the Democratic Republic of Congo, corporal punishment of children is lawful, despite the repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Government’s acceptance of relevant recommendations during the first cycle UPR in 2009.

We hope the Working Group will note with concern the legality of corporal punishment in DR Congo. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in DR Congo to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

1 The initial review of DR Congo by the Human Rights Council (2009)

- 1.1 DR Congo was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 6). The issue of corporal punishment was included in the compilation of UN information¹ and in the summary of stakeholders’ information² and was raised in an advanced question.³ No recommendations were made specifically concerning corporal punishment but the Government accepted a number of recommendations concerned with protecting children from violence and improving child-related legislation.⁴
- 1.2 Compliance with the Convention on the Rights of the Child and other human rights treaties involves, among other things, enacting legislation to explicitly prohibit all corporal punishment of children in all settings, including the home. But despite the Government’s acceptance of relevant recommendations, there has been no change in the legality of corporal punishment in DR Congo since the UPR in 2009: it remains lawful in the home, penal institutions and alternative care settings.

¹ 18 September 2009, A/HRC/WG.6/6/COD/2, Compilation of UN information, paras. 26 and 34

² 9 September 2009, A/HRC/WG.G/G/COD/3, Summary of stakeholders' information, paras. 18 and 21

³ Advance Question by Germany

⁴ 4 January 2010, A/HRC/13/8, Report of the working group, paras. 94(8), 94(24), 94(29) and 94(41)

1.3 The near universal acceptance of a degree of violent punishment in childrearing and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. **It is for these reasons that we respectfully urge members of the Working Group to specifically recommend prohibition of corporal punishment in the review of DR Congo.**

2 Legality of corporal punishment in DR Congo

2.1 ***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. In 2011, a draft Revised Family Code was under consideration, following a review from a gender perspective: we have no further information.

2.2 ***Schools (unlawful)***: Corporal punishment is unlawful 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.

2.3 ***Penal system – sentence for crime (unlawful)***: Corporal punishment is not among permitted sanctions in the Decree on juvenile delinquency 1950, the Criminal Code 1940 and the Child Protection Code 2009.

2.4 ***Penal system – disciplinary measure in penal institutions (lawful)***: 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.

2.5 ***Alternative care settings (lawful)***: Corporal punishment is lawful under the right of those with parental responsibility to punish the child in the Family Code 1987 (see para. 2.1). According to article 57 of the Child Protection Act 2009, discipline in public and private care institutions should be administered humanely, but corporal punishment is not explicitly prohibited.

3 Recommendations by human rights treaty monitoring bodies

3.1 **CRC:** The Committee on the Rights of the Child has twice recommended law reform to prohibit corporal punishment of children in DR Congo – in its concluding observations on the state party’s initial report in 2001 and on the second report in 2009.⁵

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org
September 2013

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁵ 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