**BRIEFING ON NIGER FOR THE COMMITTEE AGAINST TORTURE – 68th session,   
November/December 2019**

*From the Global Initiative to End All Corporal Punishment of Children, October 2019*

**This briefing describes the legality of corporal punishment of children in Niger. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children and the recommendations to prohibit made by the Committee on the Rights of the Child to Niger, as well as the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee Against Torture will:**

* **recommend to Niger, following examination of the state party’s initial report, that the draft Children’s Code is enacted as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including in the home and in institutions.**

**1 Niger’s report to the Committee Against Torture**

* 1. Niger’s initial report does not directly address the question of corporal punishment of children. It does however state that “violence against children in all its forms is banned”.[[1]](#footnote-1) This is misleading as corporal punishment has not been prohibited in every setting: it is unlawful as a sentence for a crime but still lawful in every other setting, including penal institutions. A draft Children’s Code which would prohibit corporal punishment in all settings has been under discussion for several years – the Government of Niger must enact this as a matter of urgency.
  2. **We hope the Committee will raise the issue of prohibition of corporal punishment of children in its review of Niger and recommend that the draft Children’s Code is enacted as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including in the home and in institutions.**

**2 The legality of corporal punishment of children in Niger**

2.1 ***Summary:*** Corporal punishment of children in Niger is unlawful as a sentence for a crime but it is not prohibited in the home, in alternative care and day care settings, in schools and in penal institutions.

2.2 ***Home (lawful):*** Corporal punishment is lawful in the home. Provisions against violence and abuse in the Constitution 2010, the Criminal Code 1961 and Act No. 62-11 1962 are not interpreted as prohibiting all corporal punishment of children. Drafting of a Family Code began in 1976 but no new Code has yet been adopted.

2.3 In 2011, the Government indicated its commitment to enacting prohibiting legislation by clearly accepting a recommendation made during the Universal Periodic Review of Niger to implement the recommendations of the Committee on the Rights of the Child concerning corporal punishment.[[2]](#footnote-2) In August 2013, the Council of Ministers adopted the Draft Decree Adopting the Child Protection Framework Document which establishes national goals and strategies for strengthening protection of children against violence:[[3]](#footnote-3) we are enquiring as to whether this provides for the enactment of legislation prohibiting all corporal punishment of children.

2.4 A draft Children’s Code is under discussion that would prohibit corporal punishment in all settings including the home. Article 256, in the chapter on the right of the child to health, states (unofficial translation): “Every child has the right not to be subjected to torture, cruel, inhuman or degrading treatment or any other form of violence and abuse particularly harmful traditional practices, including corporal punishment.” Article 453, in the section on protection from abuse in the family, states: “Physical and psychological abuse, corporal punishment and deliberate neglect are liable to the penalties in paragraph 1 of article 452 above.” The article referred to (art. 452) punishes violence, including mild and repeated violence. In April 2017, the Government reported that the draft Children’s Code had been submitted to Parliament but was still being debated.[[4]](#footnote-4) The Government reported in July 2018 that it was intensifying its awareness-raising efforts to gain active public approval of the Code.[[5]](#footnote-5) The Committee on the Rights of the Child recommended in October 2018 that Niger expedite the adoption of the draft Children’s Code and the Family Code to “harmoniz[e] the national legislation with the Convention”.[[6]](#footnote-6) As of December 2018, the Family Code had still not been adopted.[[7]](#footnote-7)

2.5 ***Alternative care settings (lawful):*** There is no explicit prohibition of corporal punishment in alternative care settings. The draft Children’s Code 2012 would prohibit corporal punishment in all forms of alternative care (arts. 256 and 470).

2.6 ***Day care settings (lawful):*** There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. The draft Children’s Code 2012 would prohibit corporal punishment in all forms of day care (arts. 256 and 470).

2.7 ***Schools (lawful):*** Corporal punishment is lawful in schools. There is a ministerial order against its use (Ministerial Circular No. 16/MEN/DEPD of 02 April 1981) but no prohibition in law. The Government confirmed that some cases had been reported in Koranic schools.[[8]](#footnote-8)

2.8 The draft Children’s Code 2012 would explicitly prohibit corporal punishment in schools in article 256 (see above) and in article 470, which states: “Corporal punishment and other forms of violence or abuse are prohibited in schools, vocational training and institutions.” The same article confirms that the prohibition applies to all institutions, including for children with disabilities, shelters, hospitals and any other place for temporarily or permanently providing childcare.

2.9 ***Penal institutions (lawful):*** Article 2(5) of the 2014 Act on Juvenile Courts reportedly states that the child in conflict with the law must be treated with dignity and cannot be submitted to cruel, inhuman or degrading treatment or any form of violence,[[9]](#footnote-9) but there is no explicit prohibition of corporal punishment as a disciplinary measurein penal institutions. It would be prohibited in the draft Children’s Code 2012 (arts. 256 and 470).

2.10 ***Sentence for crime (unlawful):*** Corporal punishment is unlawful as a sentence for crime. According to Order No. 99-11 of 11 May 1999, children convicted of an offence may be sentenced to half the penalty that would be applicable to an adult convicted of the same offence (art. 33). The Criminal Code 1961 does not allow for judicial corporal punishment. The Constitution 2010 prohibits all forms of torture and cruel, degrading or inhuman treatment or punishment (art. 12). We have yet to see the text of the Act of 20 November 2014 on Juvenile Courts.

**3 Recommendations by human rights treaty bodies**

3.1 ***CRC:***The Committee on the Rights of the Child has on three occasions recommended to Niger that corporal punishment of children be prohibited in all settings including the home – in its concluding observations on the initial state party report in 2002, on the second report in 2009 and on the third/fifth report in 2018.[[10]](#footnote-10)

3.2 ***UPR***: In 2011, the Government accepted an Universal Periodic Review recommendation to “implement the recommendations made by the Committee on the Rights of the Child, especially eradicate traditional practices such as… corporal punishment in children’s education”.[[11]](#footnote-11)

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

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1. 12 December 2018, CAT/C/NER/1, Initial report, para. 30 [↑](#footnote-ref-1)
2. 25 March 2011, A/HRC/17/15, Report of the working group, para. 76(36) [↑](#footnote-ref-2)
3. <http://www.presidence.ne/article/communique-du-conseil-des-ministres-du-vendredi-23-aout-2013#sthash.ubABxY0C.dpbs>, accessed 20 January 2016 [↑](#footnote-ref-3)
4. 12 April 2017, CEDAW/C/NER/Q/3-4/Add.1, Reply to list of Issues, paras. 9 and 34 [↑](#footnote-ref-4)
5. 26 July 2018, CRC/C/NER/Q/3-5/Add.1, Reply to list of issues, para. 1 [↑](#footnote-ref-5)
6. 11 October 2018, CRC/C/NER/CO/3-5 Advance unedited version, Concluding observations on third/fifth report, para. 5 [↑](#footnote-ref-6)
7. 5 December 2018, CCPR/C/NER/Q/2/Add.1, Reply to list of issues, para. 65 [↑](#footnote-ref-7)
8. 26 July 2018, CRC/C/NER/Q/3-5/Add.1, Reply to list of issues, para. 12 [↑](#footnote-ref-8)
9. [March 2017], Second report to the African Committee of Experts on the Rights and Welfare of the Child, para. 281 [↑](#footnote-ref-9)
10. 11 October 2018, CRC/C/NER/CO/3-5 Advance unedited version, Concluding observations on third/fifth report, para. 22; 18 June 2009, CRC/C/NER/CO/2, Concluding observations on second report, paras. 5, 6, 37 and 38; 13 June 2002, CRC/C/15/Add.179, Concluding observations on initial report, paras. 44 and 45 [↑](#footnote-ref-10)
11. 25 March 2011, A/HRC/17/15, Report of the working group, para. 76(36) [↑](#footnote-ref-11)