**BRIEFING ON MAURITANIA FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
SESSION 79 PRE-SESSIONAL WORKING GROUP – February 2018**

*From the Global Initiative to End All Corporal Punishment of Children, October 2017*

**This briefing describes the legality of corporal punishment of children in Mauritania. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, its previous recommendations to Mauritania on the issue, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, the recommendations made by the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women and during the UPR of Mauritania in 2010, and the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee will:**

* **in its List of Issues for Mauritania, raise the issue of corporal punishment of children, in particular asking what steps are being taken to enact the Child Protection Code to prohibit all corporal punishment of children in all settings; and,**
* **in its concluding observations on the third/fifth report of Mauritania, recommend that the draft Child Protection Code be immediately enacted to explicitly prohibit corporal punishment of children in all settings, including the home and as a sentence for a crime.**

**1 The report of Mauritania to the Committee on the Rights of the Child**

* 1. Mauritania’s third/fifth state party report mistakenly states that corporal punishment of children is prohibited,[[1]](#footnote-1) although it is currently lawful in all settings.
	2. A draft Child Protection Code which would reportedly criminalise corporal punishment is being discussed: it was adopted by the National Assembly before the repeal of the Senate. It is unclear what impact this has had on the enactment of the draft Code.

**2 The legality and practice of corporal punishment of children in Mauritania**

2.1 ***Summary:***Corporal punishment in Mauritania is not fully prohibited in any setting: a fatwa was issued in 2009 to condemn corporal punishment but this has not been translated into law. A Child Protection Code which would reportedly criminalise corporal punishment has been adopted by the National Assembly – however the Senate was “repealed” by constitutional reform before it was able to examine the draft Code. The current status of the draft Code is unclear.

2.2 ***Home (lawful):*** Provisions against violence and abuse in the Criminal Code 1983, the law “sur la traite des personnes” 2003, the Personal Status Code 2001 and the Constitution 1991 are not interpreted as prohibiting all corporal punishment of children. Order No. 2005-015 of 5 December 2005 on the judicial protection of children states that the subjection of children to torture or to acts of barbarity shall be punishable by six years’ rigorous imprisonment” and provides for harsh sentences if the offence is committed repeatedly or if it results in damage, mutilation, disability or death (art. 11), but it does not prohibit corporal punishment. In 2009, a Fatwa was issued against corporal punishment of children but it has not been followed by law reform.[[2]](#footnote-2) A draft Act on violence against women is under discussion.[[3]](#footnote-3)

2.3 A draft Child Protection Code is currently under discussion – the Government reported in 2017 to the Committee Against Torture that the draft Code criminalised corporal punishment of children.[[4]](#footnote-4) We have not yet been able to study the text to confirm this. The draft Code was adopted by the National Assembly in June 2017[[5]](#footnote-5) and was to be transmitted to the Senate – however this had been put on hold until the political tensions between the Senate and the Government are resolved. Following a referendum in August 2017, the Senate was “repealed”.[[6]](#footnote-6) It is unclear what impact this will have on the adoption of the draft Child Protection Code.

2.4 ***Alternative care settings (lawful):*** Presumably, the Fatwa against corporal punishment would apply to alternative care settings, including in the *kafalah* system, but there is no explicit prohibition of corporal punishment in law.

2.5 ***Day care settings (lawful):*** Presumably, the Fatwa against corporal punishment would apply to early childhood care and to day care for older children, but there is no explicit prohibition of corporal punishment in law.

2.6 ***Schools (lawful):***The Ministry of Education has stated that corporal punishment should not be used (Decision No. 701 MEN/PR of 4 November 1968, art. 17), but there is no explicit prohibition in law. Applicable law includes Act No. 099-012 of 26 April 1999 on the reform of the education system and Act No. 2001-054 of 19 July 2001 on compulsory basic education: we have yet to examine the full texts of these Acts.

2.7 ***Penal institutions (lawful):*** There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions, though there is protection more generally from violence. The Code of Criminal Procedure 2007 states in article 58: “Any person deprived of his or her liberty as a result of arrest or detention or any other form of deprivation of liberty must be treated in accordance with respect for human dignity. Mental or physical ill-treatment of detainees … are prohibited.” Article 15 of the National Police Regulations Act No. 2010-07 of 20 January 2010 prohibits “all cruel or degrading treatment that violates human rights”. Decree No. 2003-1524 (2003) on the structural regulations of rehabilitation centres for children in conflict with the law contains provisions on the rights of the child but we have no further details.

2.8 ***Sentence for crime (lawful):*** The Constitution states in article 13 that “Any form of mental or physical violence is prohibited” but the Criminal Code 1983 provides for punishments of amputation and flogging (e.g. art. 7). Order No. 2005-015 on the judicial protection of children states that the penalties imposed on children aged 15 to 18 convicted of an offence may not exceed half of the adult sentences, but it does not prohibit corporal punishment.

2.9 Article 285 of the Criminal Code states that “any adult who deliberately inflicts injury on, strikes, amputates a limb of, or inflicts any form of violence on an innocent person shall be punished by qisas [retribution in kind].” We have yet to ascertain the age at which adulthood is defined for the purposes of this provision.

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

3.1 ***CRC:*** The Committee on the Rights of the Child recommended in 2001 that corporal punishment of children in Mauritania be prohibited in the family, schools and other institutions.[[7]](#footnote-7) The Committee reiterated its recommendations in 2009 and expressed concern at Penal Code provisions for whipping and amputation.[[8]](#footnote-8)

3.2 ***CAT:*** In 2013, the Committee Against Torture expressed concern at the legality and widespread use of corporal punishment in childrearing, and recommended that corporal punishment be prohibited in all settings including the home.[[9]](#footnote-9)

3.3 ***HRC:*** The Human Rights Committee recommended in 2013 that Mauritania take measures to end corporal punishment and encourage the use of positive, non-violent discipline.[[10]](#footnote-10)

3.4 ***CEDAW:*** In 2007,the Committee on the Elimination of Discrimination Against Women expressed concern about the persistence of patriarchal attitudes that consider physical chastisement of family members acceptable.[[11]](#footnote-11)

3.5 ***UPR:*** Mauritania was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). A number of recommendations were made to prohibit and eliminate corporal punishment of children: the Government did not respond to the recommendations.[[12]](#footnote-12) At the second cycle examination in 2015 (session 23), no recommendations were made specifically concerning corporal punishment of children. However, the Government accepted recommendations to bring national laws into line with international norms and to improve legislation addressing domestic violence.[[13]](#footnote-13)

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

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1. [June 2016], CRC/C/MRT/3-4, Third/fourth report, para. 94 [↑](#footnote-ref-1)
2. “On the Prohibition of Excessive Child Beating in Islamic *Shariah* (Law): Abstract of a comprehensive social, educational and legal study of the negative impact of child beating, and the rules governing it in Islamic *Shariah* (law)”, prepared by Professor Imam Hadd Amin Ould Al-Salek, Imam of the Old Mosque, Nouakchott, and President of the Imams and Ulema Coalition for the Rights of Women and Children in Mauritania, June 2009 [↑](#footnote-ref-2)
3. 6 August 2015, A/HRC/WG.6/23/MRT/1, National report to the UPR, para. 54; see also 23 March 2016, A/HRC/31/2 Advance unedited version, Draft report of the Human Rights Council on its 31st session, para. 288 [↑](#footnote-ref-3)
4. 20 February 2017, CAT/C/MRT/2, Second report, para. 143 [↑](#footnote-ref-4)
5. See <http://www.assembleenationale.mr/2017/06/13/adoption-du-projet-de-loi-12517/>, accessed 21 July 2017 [↑](#footnote-ref-5)
6. See <http://www.bbc.co.uk/news/world-africa-40847092>, accessed 4 September 2017 [↑](#footnote-ref-6)
7. 6 November 2001, CRC/C/15/Add.159, Concluding observations on initial report, paras. 29 and 30 [↑](#footnote-ref-7)
8. 17 June 2009, CRC/C//MRT/CO/2 Concluding observations on second report, paras. 40 and 41 [↑](#footnote-ref-8)
9. 18 June 2013, CAT/C/MRT/CO/1, Concluding observations on initial report, para. 25 [↑](#footnote-ref-9)
10. 21 November 2013, CCPR/C/MRT/CO/1, Concluding observations on initial report, para. 16 [↑](#footnote-ref-10)
11. 11 June 2007, CEDAW/C/MRT/CO/1, Concluding observations on initial report, paras. 29 and 30 [↑](#footnote-ref-11)
12. 4 January 2011, A/HRC/16/17, Report of the working group, paras. 92(30), 92(39), 92(40), 92(42) and 92(45) [↑](#footnote-ref-12)
13. 23 December 2015, A/HRC/31/6, Report of the working group, paras. 126(1), 126(2), 126(3), 126(4), 126(12), 126(39), 126(40) and 126(41) [↑](#footnote-ref-13)