

**BRIEFING ON MAURITANIA FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 62nd session (Nov/Dec 2017)**

*From the Global Initiative to End All Corporal Punishment of Children,* [*June*](mailto:info@endcorporalpunishment.org) *2017*

**This briefing describes the legality of corporal punishment of children in Mauritania. 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, the recommendations made to Mauritania by the Committee on the Rights of the Child in 2001 and 2009, the Committee on the Elimination of Discrimination Against Women in 2007, the Committee Against Torture in 2013 and the Human Rights Committee in 2013, the recommendations to prohibit made during the Universal Periodic Review 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 Against Torture will:**

* **raise the issue of corporal punishment of children in its List of Issues for Mauritania, in particular asking what progress is being made on ensuring that prohibition of corporal punishment of children in all settings is included in the draft Child Protection Code, and**
* **recommend, in the concluding observations on the second periodic state report, that Mauritania enact the Child Protection Code as a matter of priority to clearly prohibit corporal punishment in the home and all other settings.**

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

* 1. Mauritania’s second periodic report to the Committee Against Torture (CAT/C/MRT/2) answers the Committee’s previous recommendation to prohibit all corporal punishment by mentioning a draft Child Protection Code which would criminalise corporal punishment.[[1]](#footnote-1) The report further mentions policies which condemn corporal punishment in schools and homes and the existence of awareness-raising campaigns.[[2]](#footnote-2)
  2. We welcome the Government’s decision to draft a Child Protection Code and hope the enacted Code will indeed contain a clear and explicit prohibition of all corporal punishment of children, however light, in every setting including the home.
  3. **We hope the Committee will raise the issue of corporal punishment of children in its review of Mauritania and recommend that clear and explicit prohibition of all corporal punishment is included in the draft Child Protection Code, and that the Code is enacted as a matter of priority.**

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

2.1 ***Summary:***Corporal punishment of children in Mauritania is not fully prohibited in any settings. A fatwa was issued in 2009 against corporal punishment but prohibition has yet to have been explicitly included in domestic legislation. A draft Child Protection Code is currently under discussion.

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.[[3]](#footnote-3) A draft Act on violence against women is under discussion.[[4]](#footnote-4) 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.[[5]](#footnote-5)

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

2.4 ***Schools (?unlawful):***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.

2.5 ***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”.

2.6 ***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. 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 ***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.[[6]](#footnote-6)

3.2 ***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)

3.3 ***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.[[9]](#footnote-9)

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.[[10]](#footnote-10)

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.[[11]](#footnote-11) 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.[[12]](#footnote-12)

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

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1. 20 February 2017, CAT/C/MRT/2, Second report, para. 143 [↑](#footnote-ref-1)
2. Ibid, para. 144 [↑](#footnote-ref-2)
3. “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-3)
4. 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-4)
5. 20 February 2017, CAT/C/MRT/2, Second report, para. 143 [↑](#footnote-ref-5)
6. 18 June 2013, CAT/C/MRT/CO/1, Concluding observations on initial report, para. 25 [↑](#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. 21 November 2013, CCPR/C/MRT/CO/1, Concluding observations on initial report, para. 16 [↑](#footnote-ref-9)
10. 11 June 2007, CEDAW/C/MRT/CO/1, Concluding observations on initial report, paras. 29 and 30 [↑](#footnote-ref-10)
11. 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-11)
12. 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-12)