

BRIEFING ON SENEGAL FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Nov 2014

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Prohibiting corporal punishment of children – a key element in combating domestic and other violence against women and girls

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child has emphasised, addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.¹

The near universal acceptance of a degree of violent punishment in childhood 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. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

“In almost all countries, parents and other caregivers are the most commonly cited perpetrators of physical violence against adolescent girls.”

UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, p. 51

This briefing describes the legality of corporal punishment of children in Senegal, where the law fails to protect children from violence at the hands of those closest to them. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the recommendations made by treaty bodies and during the UPR, we hope the Committee on the Elimination of Discrimination Against Women will:

- **raise the issue of corporal punishment of girls in its List of Issues for Senegal, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Senegal, in the concluding observations on the third-seventh state party report, that legislation prohibiting corporal punishment in the home and all other settings, including repeal of the “right of correction”, be adopted as a matter of priority.**

¹ Committee on the Rights of the Child, General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2, and 37, inter alia), para. 31

1 The state party's report to CEDAW

- 1.1 According to the third to seventh state party report of Senegal to CEDAW, legal protection against domestic violence is afforded by provisions against spousal assault and domestic violence in the Criminal Code (articles 298 and 299), as amended in 1999.² The report makes no mention of violence that may awfully be inflicted on girls and boys in the guise of “discipline”. The report alludes to inequalities in the home enshrined in law by way of the Family Code, by which the father exercises parental authority as head of the family (article 277) and a husband has “marital power” over his wife (article 152). It does not mention the fact that paternal authority includes the right to inflict “correction” on a child (article 285 of the Family Code).
- 1.2 Fully combating domestic violence against women must involve prohibiting and eliminating the infliction of violent punishment on girls and boys within the home. Yet Governments frequently evade or ignore this fundamental human rights obligation. **We hope the Committee will raise the issue in its list of issues for Senegal and during the review, and recommend specifically that legislation prohibiting corporal punishment in the home and all other settings, including repeal of the “right of correction”, be adopted as a matter of priority.**

2 Laws on violence against women and corporal punishment of children in Senegal

Summary

- 2.1 Children in Senegal are not legally protected from all corporal punishment in the home, alternative care settings or in day care. Legislation prohibiting corporal punishment in schools does not apply to all school children. The Criminal Code provisions against domestic violence cannot be considered to provide adequate legal protection from violence within the home while girls and boys may be punished in the name of “correction”. Prohibition of all corporal punishment in the home requires repeal of the right of correction from the Family Code.

Laws protecting women and children from violence

- 2.2 Articles 298 and 299 of the Criminal Code 1977 punish the causing of injury to a child under 15 and the use of violence and assault, the punishments being more severe if the perpetrator is a parent or other person with authority over or custody of the child. However, this protects children only from punishment of some severity – i.e. that which is perceived to cause injury. Corporal punishment that does not appear to cause physical injury is lawful under “right of correction in the Family Code” (see para. 2.4, below).
- 2.3 In reporting on the protection of children from corporal punishment to the Universal Periodic Review in 2013, the Government stated that it had devised “a national action plan on legal reform to criminalize corporal punishment and all forms of violence against children”.³ We have no further information on this plan and we note that following the review itself, a recommendation to explicitly prohibit corporal punishment by revising the Family Code was recorded – and accepted by the Government – only as a recommendation to “fight against” corporal punishment.⁴

The legality of corporal punishment of children

- 2.4 Article 285 of the Family Code provides for persons with paternal authority to have a “right of correction” over children: “He that exercises paternal power can inflict on children reprimands and punishments to the extent that they are consistent with the child’s age and the improvement of his conduct.” The acceptance of physical punishment in childrearing and the absence of a law

² 13 December 2013, CEDAW/C/SEN/3-7, Third-seventh state party report, para. 48 and page 72

³ 23 July 2013, A/HRC/WG.6/17/SEN/1, National report to the UPR, para. 102

⁴ 11 December 2013, A/HRC/25/4, Report of the working group, para. 123.64

explicitly prohibiting corporal punishment, means that this article will be interpreted as condoning some level of physical punishment in childrearing and education.

- 2.5 Corporal punishment is prohibited in schools for children aged 6-14 in Decree No. 79-11.65 1979 but there is no explicit prohibition in other schools and the authority to “correct” a child article 285 of the Family Code 1989 (see above) potentially applies.

3 The experience of corporal punishment of children in Senegal

- 3.1 Research has documented widespread use of corporal punishment in childrearing in Senegal. For example, a study by the African Child Policy Forum in Burkina Faso, Cameroon, Democratic Republic of the Congo, Nigeria and Senegal found that hitting, beating and forced hard work were the most prevalent forms of violence against girls, and that most of the physical violence experienced by girls was corporal punishment. The study involved a survey of 3,025 young women (nearly 600 per country) aged 18-24 about the violence they had experienced in childhood. In Senegal, 52% of respondents had been hit, 79% beaten, 21% kicked, 25% denied food and 16% choked or burned. Parents and close relatives were the most common perpetrators of physical violence.⁵
- 3.2 According to statistics from UNICEF relating to the period 2001-2007, of girls and women aged 15-49, 65% think that a husband is justified in hitting or beating his wife under certain circumstances.⁶

4 Recommendations by human right treaty monitoring bodies and during the UPR

- 4.1 **CRC:** The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Senegal and recommended that it be prohibited in the family and other settings – in its concluding observations on the initial report in 1995 and on the second report in 2006.⁷
- 4.2 **CAT:** In 2013, the Committee Against Torture recommended to Senegal that article 285 of the Family Code be amended to explicitly ban corporal punishment, including in the home.⁸
- 4.3 **UPR:** Senegal was reviewed in the first cycle of the Universal Periodic Review in 2009. The Government accepted a recommendation to take measures to protect children from corporal punishment.⁹ At the second cycle review in 2013, a recommendation to “fight against” corporal punishment in all settings was accepted by the Government.¹⁰

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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October 2014

⁵ The African Child Policy Forum (2010), *Childhood Scars in Africa: A Retrospective Study on Violence Against Girls in Burkina Faso, Cameroon, Democratic Republic of the Congo, Nigeria and Senegal*, Addis Ababa: The African Child Policy Forum

⁶ UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF

⁷ 27 November 1995, CRC/C/15/Add.44, Concluding observations on initial report, para. 24; 20 October 2006, CRC/C/SEN/CO/2, Concluding observations on second report, paras. 36 and 37

⁸ 17 January 2013, CAT/C/SEN/CO/3 Concluding observations on third report, para. 15

⁹ 5 October 2009, A/HRC/11/24, Report of the working group, para. 97(26)

¹⁰ 11 December 2013, A/HRC/25/4, Report of the working group, para. 123.64