

Ending family violence in Madagascar – confronting physical punishment of girls and boys



Information for the Committee on the Elimination of Discrimination Against Women from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), September 2015

Introduction: family violence in Madagascar and CEDAW's examination of the sixth/seventh state party report

Violent punishment of children has a long and deep rooted history of social and legal acceptance. Even to this day, unless it is severe it is not readily perceived as “violence” per se or as an assault on a child’s human dignity. Except in states where it has been explicitly challenged through law reform and public education and awareness raising, it remains taken for granted in childrearing. For all these reasons, unless the law sends a clear message that all physical punishment, however light, is prohibited, it will continue to be considered lawful. In Madagascar, law reforms currently under way provide immediate opportunities for achieving prohibition, but indications to date are that the intention is to limit rather than to prohibit all corporal punishment.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Madagascar. In particular, we hope the Committee will:

- **in its concluding observations on the sixth/seventh state party report, recommend that Madagascar ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members, including clear prohibition of all physical punishment of children.**

The remainder of this briefing provides the following further details:

1. Information provided to CEDAW by Madagascar in respect of corporal punishment
 2. The current law relating to family violence and corporal punishment of children in Madagascar and immediate opportunities for reform
 3. Treaty body and UPR recommendations on the issue made to Madagascar to date.
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1 Information provided by Madagascar to CEDAW in respect of corporal punishment

1.1 Madagascar’s sixth/seventh state party report describes a number of efforts to combat violence against women and measures aimed at addressing the idea of inferiority of women relative to men; it also refers to legal protections in the Constitution 2010 and in the Penal Code 1972.¹ But there is no mention of efforts to prohibit and eliminate physical violence against girls and boys which may lawfully be inflicted in the guise of discipline in the home and elsewhere and which constitutes a key mechanism by which inequalities in interpersonal relationships are established and perpetuated through childhood and into adulthood.

1.2 The list of issues for Madagascar adopted by the Committee asks whether the state party plans

¹ 10 April 2014, CEDAW/C/MDG/6-7, Sixth/seventh state party report, paras. 36ff, 71ff and 122ff

to adopt a “comprehensive” law to combat violence against women.² The Government’s reply describes efforts to address violence against women but again makes no reference to violent punishment of children. No plan to tackle gender-based violence and no law aimed at prohibiting domestic violence and other violence against women can be considered comprehensive while it fails to protect all persons in the home from violent assault, even if that is imposed in the guise of “discipline”.

2 Laws on domestic violence and corporal punishment of children in Madagascar and immediate opportunities for prohibiting violent punishment of girls and boys

Summary

2.1 In Madagascar, there is no prohibition of corporal punishment in the home and other care settings. Girls – and boys – in these settings may be lawfully subject to violent assault in the guise of “discipline”. The Criminal Code is currently being reviewed: this provides an immediate opportunity to fully prohibit physical punishment of children.

Detail

2.2 Act No. 2007-023 on the Rights and Protection of the Child states that no child shall be subjected to any form of violence (art. 4, unofficial translation) and defines child abuse as “all forms of violence, injury or physical or moral abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual violence perpetrated against a child by his parents, legal representatives or any other person, and sanctions against children in the family, schools and community which impair their physical or moral integrity” (art. 67), but it does not explicitly prohibit all corporal punishment. Provisions against violence and abuse in the Criminal Code 1972 are not interpreted as prohibiting all corporal punishment in childrearing.

2.3 Under examination by the African Committee of Experts on the Rights of the Child in 2015, the Government reported that the Criminal Code is under review but indicated that this was with a view to limiting rather than fully prohibiting corporal punishment of children.³

2.4 Protecting children from violent punishment in the home in Madagascar requires clear prohibition of all corporal punishment. The review of the Criminal Code provides a key opportunity for explicitly prohibiting corporal punishment of children by parents and thereby sending a clear message that the family home is a place where no form of violence is tolerated.

3 Recommendations by human right treaty monitoring bodies

3.1 Madagascar has received recommendations concerning prohibition and elimination of corporal punishment of children from the Committee on the Rights of the Child (2012, 2003)⁴ and during the Committee Against Torture (2011).⁵

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org
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² 16 March 2015, CEDAW/C/MDG/Q/6-7, Sixth/seventh state party report, para. 5

³ Examination of state party report to the ACERWC, June 2015

⁴ 8 March 2012, CRC/C/MDG/CO/3-4, Concluding observations on third/fourth report, paras. 37 and 38); 27 October 2003, CRC/C/15/Add.218, Concluding observations on second report, paras. 45 and 46

⁵ 21 December 2011, CAT/C/MDG/CO/1, Concluding observations on initial report, para. 13