**Briefing on Niger for the Committee on the Rights of Persons with Disabilities, 21st session, March-April 2019**

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

**(a) About the Global Initiative to End All Corporal Punishment of Children**

1. The Global Initiative ([www.endcorporalpunishment.org)](http://www.endcorporalpunishment.org)) promotes universal prohibition and elimination of corporal punishment in fulfilment of states’ obligations under the UN Convention on the Rights of the Child and other international treaties. Our aims are supported by UNICEF, UNESCO, human rights institutions and international and national NGOs. Since 2002, the Global Initiative has regularly briefed the Committee on the Rights of the Child on this issue, and since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Human Rights Council; we have briefed the Committee on the Rights of Persons with Disabilities since the beginning of its work.

**(b) Summary**

2. Corporal punishment of children in Niger is unlawful as a sentence for a crime but it is not yet fully prohibited in the home, in alternative care and day care settings, in schools and in penal institutions, in violation of the fundamental right of all children to protection from corporal punishment and other cruel or degrading forms of punishment.

3. With reference to **articles 7, 15, 16 and 17** of the Convention on the Rights of Persons with Disabilities, and in light of the particular vulnerability of children with disabilities to corporal punishment by adults, the jurisprudence of the UN treaty bodies, the emphasis on eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children and the importance of the issue to achieving target 16.2 on ending violence against children in the 2030 Sustainable Development Goals, we hope the Committee on the Rights of Persons with Disabilities will recommend to the Government of Niger, in the Committee’s concluding observations on the initial report, that “**the draft Children’s Code is enacted as a matter of priority to prohibit all corporal punishment of children, however light and in all settings including the home, and that measures are put in place to ensure the law is properly implemented**”.

**(c) Detailed briefing**

**The right of children with disabilities not to be subjected to corporal punishment**

4. The Convention on the Rights of Persons with Disabilities confirms that children with disabilities should enjoy all human rights and fundamental freedoms on an equal basis with other children (art. 7). The Convention also states that all persons have the rights to freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15), to freedom from exploitation, violence and abuse within and outside the home (art. 16) and to respect for their physical and mental integrity (art. 17). The jurisprudence of treaty monitoring bodies, led by the Committee on the Rights of the Child monitoring the Convention on the Rights of the Child, is clear that these rights put an obligation on states parties to prohibit and eliminate all corporal punishment of children, including within the family. Despite this obligation, Niger’s initial state report does not address corporal punishment of children.

5. As confirmed in the UN Secretary General’s Study on Violence against Children, children with disabilities are particularly vulnerable to violence, including corporal punishment, and corporal punishment is a significant cause of impairment among children.[[1]](#footnote-1) Yet the obligation to prohibit corporal punishment is frequently ignored or evaded by governments. The near universal acceptance of violence in childrearing together with deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. It also means that corporal punishment – at least to some degree – is not readily perceived as violence in the same way as, for example, sexual and other socially unacceptable forms of violence.

6. The 2030 Sustainable Development Goals include target 16.2 on ending all forms of violence against children. Violent punishment is the most common form of violence against children: ending it through the adoption and implementation of legislation prohibiting it in all settings including the home is critical.

## The legality of corporal punishment of children with disabilities in Niger

7. In Niger, corporal punishment of children is prohibited as a sentence for a crime but it is still lawful in all other settings, including in the home and in alternative care institutions.

8. *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.

9. 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.

10. 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)

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

12. *Corporal punishment is lawful in day care settings*. 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).

13. *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) 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.

14. *Corporal punishment is lawful as a disciplinary measure in penal institutions.* 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).

15. *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.

## Recommendations by human rights treaty monitoring bodies and during the UPR

16. 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)

17. 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*

[*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)*;* *info@endcorporalpunishment.org*

1. Pinheiro, P. S. (2006), *World Report on Violence against Children*, Geneva: United Nations. See also Krug E. G. et al (eds) (2002), *World Report on Violence and Health,* Geneva: World Health Organisation [↑](#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. 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)