



Global Initiative to  
**End All Corporal Punishment  
of Children**

## **AFGHANISTAN – COUNTRY REPORT**

Child population: 14,897,000 (UNICEF, 2009)

### **Summary of necessary legal reform to achieve full prohibition**

#### ***Settings where explicit prohibition is necessary***

home, penal system, alternative care settings

#### ***Is there a legal defence for corporal punishment which must be repealed?***

Yes – Article 54(1) of the Penal Code (1976) confirms the rights of fathers and teachers to punish sons and students, and legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing. The near universal acceptance of corporal punishment in “disciplining” children necessitates clarity in law that all corporal punishment, however light, is prohibited. Article 54(1) should be repealed and explicit prohibition enacted of all forms of corporal punishment by parents and others with authority over children.

#### ***Other legislative measures necessary***

*Penal system* – The law should make clear that no child convicted of an offence can be sentenced to any form of corporal punishment, including under Islamic law. Explicit prohibition should also be enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

*Alternative care* – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc, in addition to repeal of article 54(1) of the Penal Code.

# DETAILED COUNTRY REPORT

## Legality of corporal punishment

### Home

Corporal punishment is lawful in the home. During examination by the Committee on Economic, Social and Cultural Rights in 2010, the Government indicated that corporal punishment is prohibited in the family. However, article 54(1) of the Penal Code (1976) confirms the “right” of “punishment of son and student by father and teacher, provided the punishment is within the limits of religious and other laws” and provisions against violence and abuse in the Penal Code and the Law on the Elimination of Violence against Women (2009) are not interpreted as prohibiting all corporal punishment in childrearing. The Juvenile Code (2005) prohibits “contemptuous and harsh punishment, even if for correction and rehabilitation purposes” (article 7), but does not prohibit all corporal punishment.

At a meeting of the South Asia Forum in July 2006, following the regional consultation in 2005 of the UN Secretary General’s Study on Violence against Children, the Government made a commitment to prohibiting corporal punishment of children in all settings, including the home. As at September 2011, the Penal Code was under review and the possibility of a new child law and/or revision of existing child-related legislation was being discussed.

### Schools

Corporal punishment is prohibited in schools in article 39 of the Education Act (2008), which states: “Every kind of physical and psychological punishment of students is prohibited even for their correction and chastisement. Violators shall be prosecuted in accordance with the legal provision.” Provisions contrary to the Act are repealed (article 52).

### Penal system

Corporal punishment is lawful as a **sentence for crime** under *Shari’a* law. Article 29 of the Constitution (2004) prohibits “punishment contrary to human dignity” and the Juvenile Code prohibits “contemptuous and harsh punishment” (article 7). However, article 39 of the Code states that children aged 12-17 are subject to reduced sanctions specified in the Penal Code. The Penal Code does not provide for judicial corporal punishment but according to article 1 it applies only to *Tazeeri* crime and penalties: *hodod*, *qassass* and *diat* crimes are punished in accordance with Islamic religious law. Under *Shari’a* law, these offences are punishable with corporal punishment, including flogging and amputation. Articles 426 and 427 of the Penal Code, for example, provide for imprisonment as punishment for sexual intercourse outside marriage (*zina*), but only when the conditions of *hadd* have not been met or the charge of *hadd* is dropped. The Government has confirmed that under *Shari’a* law, *zina* is punishable with harsher sentences including whipping and stoning (13 June 2010, CRC/C/AFG/1, Initial state party report to the Committee on the Rights of the Child, para. 334). The Constitution provides for sentencing under *Shari’a* law in article 130, which states: “In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.” *Shari’a* law typically regards the onset of puberty as the age at which liability for criminal punishments is attained.

Corporal punishment is lawful as a **disciplinary measure** in penal institutions. Severe punishment is prohibited under the Juvenile Code (article 7) but there is no explicit prohibition of all corporal punishment. The Law on Prisons and Detention Centres (2005) does not provide for corporal

punishment and states that force can be used only if “the detainee or prisoner is escaping, resisting or attacking others or causes disorder which cannot be prevented by any other means but use of force” (article 46), but it does not explicitly prohibit corporal punishment. A Law on Juvenile Rehabilitation Centres was adopted in 2009 but we do not know if it explicitly prohibits corporal punishment.

### **Alternative care**

The Juvenile Code applies to children in need of care and protection and prohibits harsh punishment (article 7), but it does not explicitly prohibit all corporal punishment in all alternative care settings.

### **Prevalence research**

Qualitative research into adults’ perspectives on everyday physical violence against children within the family, published in 2008, involved interviews with more than 200 men and women from 61 families in urban and rural areas in four provinces, plus 56 focus group discussions and 46 interviews with key informants. Physical violence occurred within all 61 case study families, most commonly slapping, verbal abuse, punching, kicking, and hitting with thin sticks, electrical cables and shoes. Less typical forms of violence included shooting at children, tying them up, washing them in cold water outside during winter and public humiliation. Corporal punishment was used on children as young as 2 or 3. No clear difference between punishment of boys and of girls was found, but men were perceived as having more “rights” than women to be violent towards children in the family. (Smith, Deborah J., (2008), *Love, Fear and Discipline: Everyday violence toward children in Afghan families*, Kabul: Afghanistan Research and Evaluation Unit)

In a survey of almost 250 children in juvenile rehabilitation centres in 22 provinces, 48% reported being beaten during their arrest (11% of girls arrested and 55% of boys); 8% reported verbal abuse; 62% reported being handcuffed during arrest (72% of boys and 5% of girls). Over a third of children (36%) reported being ill-treated in police custody. Children under 16 were as likely to report having been beaten as older children. (Afghanistan Independent Human Rights Commission/UNICEF (2008), *Justice for Children: The situation of children in conflict with the law in Afghanistan*)

In a survey by Save the Children reported in 2003, 82% of children interviewed reported that slapping, kicking and hitting with a stick are common forms of punishment. Hair and ear pulling were reported by nearly 6% of children. Over half reported being hit or severely beaten for being noisy or naughty, almost a quarter for not learning their school lessons, and nearly one in ten for disobeying adults. (Save the Children Sweden Afghanistan (2003), *Mini Survey Report on Corporal Punishment*, Kabul: Save the Children, cited in Jabeen, F. (2004), *Corporal/physical and psychological punishment of girls and boys in South and Central Asia Region*, Save the Children Sweden Denmark)

A study involving 2080 questionnaires and focus group discussions with children in orphanages found that violence against children was sometimes cited as a major concern, and many references were made to corporal punishment in the home and in schools. (Ministry of Labour and Social Affairs and UNICEF Afghanistan (2003), *Children deprived of parental care in Afghanistan – whose responsibility?*)

### **Recommendations by human rights treaty bodies**

*Committee on the Rights of the Child*

(8 April 2011, CRC/C/AFG/1, Concluding observations on initial report paras. 35, 36, 37, 38, 47 and 61)

“The Committee ... expresses grave concern that children are being handcuffed and shackled in juvenile rehabilitation centres, during transportation to court or hospital, and at night, allegedly for security reasons or as a form of punishment.

“The Committee ... urges the State party to systematically train police, prison staff and other authorities on human rights of children, and ensure physical and psychological recovery and social reintegration of child victims of ill-treatment....

“The Committee notes with concern that in spite of the prohibition contained in the Education Law against all kinds of physical and psychological punishment of students, such practices continue to be common in the State party’s schools. The Committee is particularly concerned that all schools continue to have a discipline/guards committee, comprised of teachers and students, with full permission to use physical punishment on school children.

“The Committee urges the State party to unequivocally prohibit by law corporal punishment in the family, schools and institutions for children, and ensure that those laws are effectively implemented, and that legal proceedings are systematically initiated against those responsible for mistreating children. The Committee also calls on the State party to introduce public education, awareness-raising and social mobilization campaigns on the harmful effects of corporal punishment, with a view to changing the general attitude towards this practice, and to promote positive, non-violent, participatory forms of child-rearing and education as an alternative to corporal punishment. In this regard, the Committee draws the attention of the State party to its General comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8).

“The Committee notes with deep concern that in spite of widespread abuse and neglect of children and women in the home, domestic violence has not been criminalized in the State party, and that the Penal Code even allows the father to discipline family members, including children, without incurring penalties....

“The Committee recommends that the State party: ...

g) end corporal punishment and other forms of violence in school, including bullying, through teacher training, school-specific action plans, and closer inspection of schools....”

### *Committee on Economic, Social and Cultural Rights*

(7 June 2010, E/C.12/AFG/CO/2-4, Concluding observations on second to fourth report, para. 28)

“The Committee, while taking note of the National Strategy for Children at Risk adopted in 2006, remains concerned at the extent of violence against children, including forced and child marriage. It regrets that a high number of children, having a living parent, remain unnecessarily in care institutions (art. 10).

The Committee recommends that the State party: (a) intensify its efforts to combat violence against children and to prohibit corporal punishment of children in all settings....”

## **Universal Periodic Review**

Afghanistan was examined in the first cycle of Universal Periodic Review in 2009. No recommendations were made concerning corporal punishment of children. Examination in the second cycle is scheduled for 2014.

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