



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

MALDIVES – COUNTRY REPORT

Child population: 110,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, schools, penal system, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

The current Penal Code does not include a legal defence for the use of physical punishment, but section 44(a) of the draft Penal Code authorises the use of force by parents and others for the purpose of punishing children. This provision should not be enacted, and explicit prohibition of all corporal punishment, however light, should be enacted in relation to parents and all adults with authority over children.

Other legislative measures necessary

Schools – Explicit prohibition in legislation applicable to all education settings (public and private) is necessary, and the draft Penal Code should be re-drafted so as not to authorise the use of force by teachers to punish children.

Penal system – All judicial corporal punishment of children and young people under 18 should be prohibited, including under *Shari'a* law. Explicit prohibition of corporal punishment should also be enacted in relation to the disciplinary measures used in all institutions accommodating children in conflict with the law, and section 44(a) of the draft Penal Code should not be enacted.

Alternative care settings – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc, and section 44(a) of the draft Penal Code should not be enacted.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 18 of the Law on the Protection of the Rights of the Child (1991) and article 18 of the Family Law (2000) prohibit only severe punishment which may harm the child. There is no legal defence for the use of corporal punishment by parents in the existing Penal Code (amended 2002), but legal provisions against violence and abuse are not interpreted as prohibiting corporal punishment of children.

At a meeting of the South Asia Forum in July 2006, following on from the regional consultation in 2005 of the UN Secretary General's Study on Violence against Children, the Government made a commitment to prohibition in all settings, including the home. A new Penal Code (2006) has been drafted, however, which would introduce a legal defence for the use of corporal punishment in the home and other settings. Section 44(a) of the draft states that "a parent, legal guardian, teacher or other person similarly responsible for the care or supervision of a minor, or a person acting at the request of a person with such responsibility" may justifiably use force on a child for the "prevention or punishment of his misconduct", provided that the force used "does not create a substantial risk of causing death, serious bodily injury, extreme or unnecessary pain or mental distress, or humiliation". The draft was still under discussion in 2011. In 2010 a Children's Bill and a Domestic Violence Bill were also being drafted; we have no details of the proposed provisions, but the Children's Bill would reportedly prohibit corporal punishment in all settings (National action plan to prohibit all corporal punishment, SAIEVAC workshop on Legal Reform and Corporal Punishment, November 2010, Kathmandu).

Schools

There is no explicit prohibition of corporal punishment in schools. Article 10 of the Law on the Protection of the Rights of the Child states that punishment in school "should be appropriate to the child's age and should not affect them physically or psychologically." The Ministry of Education has stated that corporal punishment should not be used, but the draft Penal Code introduces a legal defence for the use of corporal punishment by teachers (see above). As at November 2010, an Education Bill was due to be tabled in parliament, but we have no further details.

Penal system

Corporal punishment is lawful as a **sentence for crime**. The Law on the Protection of the Rights of the Child prohibits cruel and degrading punishment on children, and the Penal Code does not authorise judicial corporal punishment. However, the Penal Code does not apply to offences under *Shari'a* law or to certain other offences. The Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors (2006) states that children from the age of puberty may be held criminally responsible for committing apostasy, revolution against the state, fornication, falsely accusing a person of fornication, consumption of alcohol, unlawful intentional killing and other offences relating to homicide (articles 4 and 5). These are offences for which *hadd* is prescribed in Islam, including flogging. From the age of 15, children can be convicted of a wider range of offences under *Shari'a* law. The Disobedience Law provides for corporal punishment as a sentence but we have no further information.

A review commissioned by the Attorney General recommended the abolition of flogging, but the draft Penal Code authorises lashes for certain offences (articles 411, 413, 612 and 616). Another review recommended the drafting of a new Juvenile Justice Act and foresaw the abolition of flogging for

juveniles and adults. As at September 2011, a draft juvenile justice bill was under discussion but we have no details of its provisions.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions. The draft Penal Code would legalise corporal punishment in institutions (see above). As at February 2010, a Prisons Bill was under consideration but we have no further information.

Alternative care

Corporal punishment is lawful in alternative care settings. The draft Penal Code would provide a legal defence for the use of force to punish children in institutions and other care settings. As at November 2010, regulations for children's homes were being drafted which would reportedly prohibit corporal punishment.

Prevalence research

An unpublished large scale 2009 UNICEF study found that 47% of children had experienced physical or emotional punishment at home, at school or in the community. The study involved almost 17,035 people in 2500 households and 2000 children in schools. Thirty per cent of children at secondary school had been hit by at least one of their caregivers, 21% with an object; 8% of school students had been physically punished by their teachers. (Reported in *Minivan News*, 21 February 2011)

According to statistics from UNICEF relating to the period 2001-2007, of girls and women aged 15-49, 70% think that a husband is justified in hitting or beating his wife under certain circumstances. (UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(13 July 2007, CRC/CDV/CO/3, Concluding observations on second/third report, paras. 55, 56, 62, 63, 98 and 99)

“The Committee is concerned at the information that section 44 of the new draft Penal Code would legalize corporal punishment of children at home, schools and institutions. The Committee is also seriously concerned that, contrary to article 37 (a) of the Convention, under applicable law of the State party, persons who have reached puberty may be subject to flogging.

“In the light of the consideration of the new draft Penal Code, the Committee urges the State party to take all the necessary measures to ensure that persons who committed crimes while under the age of 18 are not subjected to any form of corporal punishment, including as a sentence for offences, and that corporal punishment as a disciplinary measure is prohibited by law in the home, alternative care settings and justice institutions, schools and workplace settings. It recommends that the State party take other appropriate measures, such as positive education and training programmes as well as public awareness raising campaigns, to eliminate this practice which directly conflicts with the equal and inalienable rights of the child to respect for her/his human dignity and physical integrity. Finally, it draws the attention of the State party to the Committee's 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 welcomes the information that the State party is in the process of establishing child helpline services. The Committee regrets that insufficient measures are being taken to address the serious problem of violence against children, child abuse, including sexual abuse, and ill-treatment of children in the State party. The Committee notes with concern that the legal framework fails to provide full protection against sexual abuse and that it also shifts responsibility on producing evidence to a

victim. It also notes with concern that domestic violence is widely tolerated in Maldivian society and that Maldivian legislation does not expressly prohibit corporal punishment in the family....

“In the light of article 19, other relevant provisions of the Convention and taking into account the recommendations of the Committee adopted on its days of general discussion on children and violence (CRC/C/100, para. 866 and CRC/C/111, paras. 701-745), the Committee urges the State party to:

a) undertake a national study on domestic violence, ill-treatment of children and child abuse in the home assessing the scope and nature of this problem as well as the impact of legal measures to address violence against children with a view to prohibiting all forms of physical, sexual and mental violence against children, including sexual abuse in the family....

“Despite these positive steps taken, the Committee notes with concern that: ...

c) children from the age of 7 years can be held liable for *haddu* offences and consequently they can be exposed to a death penalty;

d) corporal punishment is lawful as a sentence for crime and for disciplinary purposes....

“The Committee recommends that the State party continue and strengthen its efforts to ensure the full implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), taking into account the Committee’s newly adopted General Comment No. 10 on children’s rights in juvenile justice (CRC/C/GC/10). It recommends that the State party:

a) expedite its efforts to draft and enact a Juvenile Justice Act and ensure that the provisions of this Act fully comply with the provisions and principles of the Convention as well as other international standards on the administration of juvenile justice, including the hearing of the child during criminal justice proceedings; ...

e) abolish the use of corporal punishment as a sentence for crime and for disciplinary purposes....”

Universal Periodic Review

The Maldives was examined in the first cycle of the Universal Periodic Review in 2010. During the review, the Government stated that it had no plans to abolish flogging under Shari’a law but was concerned that it was being imposed in a discriminatory way against women and a moratorium was being considered (A/HRC/WG.6/9/L.5, Draft Report of the Working Group, paras. 33 and 68). The Government partially accepted recommendations on the issue (A/HRC/WG.6/9/L.5, Draft Report of the Working Group, paras. 100(55) and 100(58)), stating that the new draft Penal Code was intended to combine Shari’a law with international human rights obligations, although it includes provisions for corporal punishment, and that the Maldives will consult with national and international authorities on the compatibility of corporal punishment with the Maldives Constitution and international human rights law (A/HRC/16/7/Add.1, Report of the Working Group: Addendum, paras. 100(55) and 100(58)). Examination in the second cycle is scheduled for 2015.

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