

Corporal punishment of children in Afghanistan

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Child population 16,716,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Afghanistan's commitment to prohibiting corporal punishment

Afghanistan expressed its commitment to prohibiting all corporal punishment of children, including in the home, at the July 2006 meeting of the South Asia Forum, following the 2005 regional consultation of the UN Study on Violence against Children.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, penal institutions, and as a sentence for crime.

Article 194(6) of the Shiite Personal Status Law 2009 confirms the rights of fathers and teachers to punish sons and students; 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. The above-mentioned article should be repealed and all forms of corporal punishment by parents and others with authority over children prohibited in law.

Alternative care settings – Corporal punishment should be prohibited in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Penal institutions – Corporal punishment should be prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law.

Sentence for crime – 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.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 7 of the Constitution 2004 states that “the state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights” and during examination by the Committee on Economic, Social and Cultural Rights in 2010, the Government indicated that corporal punishment is prohibited in the family.¹ But there is no explicit prohibition of all corporal punishment of children in national law. On the contrary, article 194(6) of the Shiite Personal Status Law 2009 states: “Parents and legal guardians can discipline their children to the extent that does not require dia [blood money/ransom] or [compensation for injury]; however any kind of extreme discipline can result in liability.” Provisions against violence and abuse in 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” (art. 7), but does not prohibit all corporal punishment. A new Penal Code was adopted in 2017 but we are yet to examine the text: we do not know whether the “right of punishment” recognised in article 54(1) of the Penal Code 1976 has been reiterated.

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. In 2010, Government representatives in SAIEVAC (South Asia Initiative to End Violence Against Children) developed a national action plan to achieve prohibition and in 2011 endorsed a report on progress towards prohibiting corporal punishment in South Asia states which included an analysis of the reforms required in Afghanistan.²

The Government reported to the Universal Periodic Review in 2014 that the Civil Code, Juvenile Code and other laws were under review as part of the process of law reform in light of international human rights obligations.³ As of July 2018, the Civil Code was still under review.⁴ A comparative review of national laws in light of the Convention on the Rights of the Child has been carried out⁵ and a comprehensive Law on Children is being drafted and a new draft Shiite Personal Status Law is under discussion.⁶ The Child Act was sent to the Parliament in 2017 for approval.⁷ In November 2018, it was still being considered by Parliament.⁸ A draft Family Protection Law has been under consideration since 2013⁹ and a draft Family Code was being finalised in July 2018.¹⁰ We do not know if prohibition of corporal punishment has been proposed in the context of these reforms.

¹ 21 May 2010, E/C.ER/2010/SR.17, Summary record, para. 9; 15 November 2010, E/C.12/2010/SR.16, Summary record para. 33

² SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

³ 20 November 2013, A/HRC/WG.6/18/AFG/1, National report to the UPR, paras. 11 and 12; 4 April 2014, A/HRC/26/4, Report of the working group, paras. 17 and 132

⁴ July 2018, CRC/C/AFG/2-5, Second/fifth report, para. 53

⁵ 20 November 2013, A/HRC/WG.6/18/AFG/1, National report to the UPR, para. 9

⁶ 20 November 2013, A/HRC/WG.6/18/AFG/1, National report to the UPR, paras. 15 and 87

⁷ July 2018, CRC/C/AFG/2-5, Second/fifth report, para. 13

⁸ 13 November 2018, A/HRC/WG.6/32/AFG/1, National report to the UPR, para. 122

⁹ 30 July 2013, CEDAW/C/AFG/CO/1-2, Concluding observations on initial/second report, paras. 11 and 43; see also July 2018, CRC/C/AFG/2-5, Second/fifth report, para. 35 and 13 November 2018, A/HRC/WG.6/32/AFG/1, National report to the UPR, para. 131

¹⁰ July 2018, CRC/C/AFG/2-5, Second/fifth report, para. 75

Alternative care settings

There is no explicit prohibition of all corporal punishment in alternative care settings. The “right” to discipline in article 94 of the Shiite Personal Status Law 2009 (see under “Home”) presumably applies to all persons with parental authority for children. The Juvenile Code applies to children in need of care and protection and prohibits harsh punishment (art. 7), but it does not explicitly prohibit all corporal punishment.

Day care

Corporal punishment is unlawful in preschool provision under article 39 of the Education Act 2008 (see under “Schools”) but there is no explicit prohibition of all corporal punishment in other early childhood care or in day care for older children. The Juvenile Code applies to children in need of care and protection and prohibits harsh punishment (art. 7), but it does not explicitly prohibit all forms of corporal punishment.

Schools

Corporal punishment is prohibited in schools in article 39 of the Education Act 2008: “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 (art. 52). Despite this ban, there are reports of corporal punishment being still prevalent in schools.¹¹

Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. Severe punishment is prohibited under the Juvenile Code (art. 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” (art. 46), but it does not explicitly prohibit corporal punishment. The Law on Juvenile Rehabilitation Centres 2008 provides for observations on children’s rights in these centres: we do not know if it includes prohibition of corporal punishment.

Sentence for crime

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”, the Juvenile Code 2005 prohibits “contemptuous and harsh punishment” (art. 7) and there appears to be no provision for corporal punishment in the Interim Criminal Code for Courts 2008. However, under article 39 of the Juvenile Code, children aged 12-17 are subject to reduced sanctions specified in the Penal Code.

¹¹ See <https://iwpr.net/global-voices/afghan-boys-still-beaten-school> and <https://www.savethechildren.net/article/save-children-calls-end-corporal-punishment-afghanistan-after-death-high-school-student>, accessed 4 July 2018

We have been unable to examine the Penal Code 2017. It reportedly does not provide for judicial corporal punishment but according to article 2 would apply only to *Tazeeri* crime and penalties: *hodod*, *qassass* and *diat* crimes are punished in accordance with Islamic religious law.¹² Under Shari'a law, these offences are punishable with corporal punishment, including flogging and amputation. Under the previous Penal Code for example, articles 426 and 427 provided 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 confirmed in 2010 that under Shari'a law, *zina* was punishable with harsher sentences including whipping and stoning.¹³ The Constitution provides for sentencing under Shari'a law in article 130: "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.

Universal Periodic Review of Afghanistan's human rights record

Afghanistan was examined in the first cycle of Universal Periodic Review in 2009 (session 5). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:¹⁴

"Incorporate international conventions, to which Afghanistan is a party, into domestic legal reform initiatives and translate these into concrete policies and programmes (Norway);

"Undertake a national process to harmonize legislation, including local laws, with international human rights obligations (Mexico);

"Review all its national legislation to ensure its compliance with the Constitution and international obligations, including to protect the right to privacy and non-discrimination (Czech Republic);

"Establish immediately a process to review all draft legislation, before it is adopted, so as to ensure compliance with Afghanistan's international obligations (New Zealand);

"Give special regard to women and children and enhance their enjoyment of human rights and fundamental freedoms (Jordan);

"Expedite the implementation of all measures to address the situation of vulnerable groups in particular women and children (South Africa);

"Take further steps to eliminate torture and other cruel, inhuman or degrading treatment or punishment and to ensure an effective and impartial judicial system (Denmark);

"Continue its measures to address all forms of violence against women and girls (Brazil);

¹² See <https://law.utexas.edu/humanrights/projects/afghanistans-new-penal-code-whether-or-not-to-codify-hudud-and-qisas/>, accessed 4 July 2018

¹³ 13 June 2010, CRC/C/AFG/1, Initial state party report to the Committee on the Rights of the Child, para. 334

¹⁴ 20 July 2009, A/HRC/12/9, Report of the working group, paras. 95(1), 95(2), 95(3), 95(8), 95(24), 95(32), 95(47), 95(51) and 95(78)

“Take concrete measures to promote and protect the rights of women and children, in particular to facilitate their access to education and health as basic prerequisites for growth and development (Islamic Republic of Iran)”

The second cycle review of Afghanistan took place in 2014 (session 18). No specific recommendations on corporal punishment of children were made, but the following recommendations were made and were accepted by the Government:¹⁵

“To further build up on its effort to fully protect human rights in the country (Ethiopia);

“Make further efforts to ensure the implementation of the legal framework which guarantees human rights, including the Constitution (Japan);

“Further fulfil the internationally taken human rights obligations as well as integrate them into the national legislation (Kazakhstan);

“Further strengthen its efforts to review its legislative framework and make necessary adjustments to it in order to ensure that it is in conformity with Afghanistan’s international human rights obligations (Norway);

“Accelerate domestication process of international human rights laws to which Afghanistan is a member, in particular the International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child (Viet Nam);

“Continue the process of making domestic laws compliant with the international conventions to which Afghanistan is party (Bahrain);

“Continue adopting measures aiming at the protection of children and youth, in particular on their right to education (Cuba);

“Continue efforts in child rights protection and improving children’s conditions, especially in the education and healthcare fields (Qatar);

“Continue efforts in adopting required measures to ensure child care, including for disabled children, and ensure their rights in education and health (Yemen);

“Step-up efforts in the protection of the rights of children, including continuing its measures in combating violence against children (Malaysia);

“Ensure that a framework policy to protect child rights according to international standards is adopted and a national campaign to promote awareness of child rights is undertaken (Greece)”

Third cycle examination took place in 2019 (session 32). The following recommendations were extended:¹⁶

“Build on achievements in prevention of torture by prohibiting all forms of corporal punishment (Ukraine)”

“Prohibit all forms of corporal punishment (Portugal)”

“Explicitly prohibit corporal punishment of children in all settings (Montenegro)”

¹⁵ 4 April 2014, A/HRC/26/4, Report of the working group, paras. 136(1), 136(3), 136(4), 136(5), 136(6), 136(7), 136 (107), 136(108), 136(109), 136(112) and 136(130)

¹⁶ 6 February 2019, A/HRC/WG.6/32/L.2 Unedited version, Draft report of the Working Group, paras. 136(86), 136(89) and 136(236)

The Government will examine the recommendations and respond by the 41st session of the Human Rights Council in June 2019.

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 Against Torture

(12 June 2017, CAT/C/AFG/CO/2, Concluding observations on second report, paras. 21, 23, 24, 39 and 40)

“While noting the State party’s efforts to combat non-State armed insurgency and terrorist groups, the Committee deplores the presence of a wide range of armed groups, including the Taliban, Da’esh and Hizb-i Islami, perpetrating severe human rights abuses, including extrajudicial killing and corporal punishment, such as flogging and stoning. The Committee is concerned by the numerous reports

documenting the increase of propaganda promoting violent extremism in Afghanistan, including in some educational institutions, fostering the adherence and support of part of the Afghan population to the Taliban. It also deplores the deliberate attacks on civilians perpetrated by those groups, causing a large number of deaths and injuries among civilians, as indicated in the reports of UNAMA and the most recent report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan (A/HRC/34/41) (arts. 2, 4 and 12-14).”

“While welcoming the delegation’s affirmations that the new Law on the Prohibition of Torture now includes a definition of torture that is identical with article 1 of the Convention, the Committee remains concerned that the legislation is not yet fully harmonized with the Convention, notably with regard to the lenient penalties, such as midterm sentences ranging from 3 to 5 years’ imprisonment for the crime of torture under the Penal Code. The Committee furthermore deplores:

- (a) The absence of clear legal provisions ensuring that other forms of cruel, inhuman or degrading treatment or punishment are also clearly prohibited and criminalized as separate offences;
- (b) The absence of legal provisions ensuring that victims have access to reporting mechanisms without fear of intimidation or reprisals from authorities;
- (c) That the Penal Code does not clearly prohibit corporal punishment, including flogging, amputation of limbs and stoning, practices which amount to torture and cruel, inhuman or degrading treatment or punishment (arts. 1, 2 and 4).

“The Committee requests the State party:

- (a) To ensure that the new Law on the Prohibition of Torture including a definition of torture that covers all the elements contained in article 1 of the Convention is properly enforced under its jurisdiction;
- (b) To ensure that penalties for torture and statutory limitations are commensurate with the gravity of the crime;
- (c) To amend its legislation in order to prohibit and establish other acts of cruel, inhuman or degrading treatment or punishment as separate offences;
- (d) To legally ensure that victims have access to reporting mechanisms of which they may avail themselves without fear of intimidation or reprisals from authorities;
- (e) To amend its legislation in order to clearly prohibit all forms of corporal punishment, as they amount to torture and cruel, inhuman or degrading treatment or punishment, in violation of the Convention.”

“While taking note of the State party’s affirmations that informal parallel judicial mechanisms, in particular *jirga* courts, may only hear civil cases and commending that the Government strives to build the capacity of ordinary courts in rural areas to reduce the number of cases referred to *jirga* courts or any other parallel justice system, the Committee is seriously concerned by the sentences still imposed by *jirga* courts and other forms of dispute resolution systems on the Afghan population, in particular on women, notably for so-called “moral crimes”, including the death sentence and corporal punishment, that amount to torture or cruel, inhuman or degrading treatment or punishment (arts. 2, 4 and 16).

“The State party should:

- (a) Set up an effective system for monitoring and revising decisions of *jirga* courts in order to ensure that State officials do not recognize or carry out the judgments of parallel judicial mechanisms that exculpate perpetrators from crimes committed in the name of so-called “honour”, that call for

women to be subjected to corporal punishment or that are otherwise inconsistent with the State party's obligations under the Convention"

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...."

Prevalence/attitudinal research in the last ten years

According to statistics collected in 2010-2011 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 74.4% of children aged 2-14 experienced violent "discipline" (physical punishment and/or psychological aggression) in the home in the month prior to the survey. More than two thirds (68.4%) experienced physical punishment, while a smaller percentage (40.9%) of mothers and caregivers thought physical punishment was necessary in childrearing. Nearly four children in ten (38.4%) experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement), 61.5% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted).

(Central Statistics Organisation & UNICEF (2012), *Afghanistan Multiple Indicator Cluster Survey 2010-2011: Final Report*, Kabul: Central Statistics Organisation & UNICEF)

Surveys carried out in three government schools in Jalalabad and 20 government schools in Mazar-i-Sharif in 2008 found very high levels of physical punishment, with children punished in 100% of observed classes in boys' schools and 20% in girls' schools. Humiliating punishment including verbal abuse was also very common, and children were often authorised by the school to beat other children. Being beaten with a stick was identified as the most common method of "discipline" for both girls and boys. Over 50% of teachers believed they had the right to beat students, and the vast majority of teachers believed physical punishment was essential and unavoidable. However there was a strong desire among the majority of teachers to learn alternatives to physical punishment. Following legal prohibition of school corporal punishment in 2008 and a two year project which aimed to develop and implement child protection systems in the schools in question, including through monitoring and reporting mechanisms and education and training of teachers and children, the prevalence of physical and humiliating punishment fell.

(Abdul Ahad Samoon, A. A. et al (2011), *Learning without Fear: A Violence Free School Project*, Save the Children & Federal Republic of Germany Foreign Office)

Qualitative research into adults' perspectives on everyday physical violence against children in 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. The study found that violence against children is widely used and recognised, though to a significant degree is not regarded with approval. Physical violence existed within all 61 case study families, most commonly slapping, verbal abuse, punching, kicking, and hitting with thin sticks, electrical cables and shoes. More unusual types of violence included shooting at children, tying them

up, washing them in cold water outside during winter and public humiliation. Corporal punishment was inflicted on children as young as 2 or 3 years. No clear difference between punishment of boys and of girls was found, but men were perceived as having more “rights” to be violent towards children than women in the family.

(Smith, D. J. (2008), *Love, Fear and Discipline: Everyday violence toward children in Afghan families*, Kabul: Afghanistan Research and Evaluation Unit)