

Corporal punishment of children in Libya

LAST UPDATED August 2017

Also available online at

www.endcorporalpunishment.org

Child population 2,187,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of 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.

There appears to be no legal defence that confirms a “right” of parents and others to punish or correct a child, but legal provisions against violence and abuse are not interpreted as prohibiting corporal punishment of children. The near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that no degree of corporal punishment is acceptable or lawful. All legal defences should be repealed and prohibition of all corporal punishment should be enacted in relation to parents and all those with parental authority.

Alternative care settings – Prohibition should be enacted in legislation applicable to 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, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Penal institutions – Prohibition should also be enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Sentence for crime – All judicial corporal punishment of children (under 18) convicted of an offence should be prohibited, including under Islamic law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. There appears to be no confirmation in law of a “right” of parents and other to punish or correct a child but there is no explicit prohibition of all corporal punishment. Article 397 of the Penal Code 1953 punishes the use of “improper methods of discipline and education” and article 398 punishes “ill-treatment of family members and children”, but the Code does not prohibit all corporal punishment. Law No. 5 of 1997 on Child Protection – applicable to children under 16 – does not prohibit corporal punishment; nor does Law No. 20 of 1991 on Promotion of Freedom (incorporating the Great Green Document on Human Rights 1988) or the Constitution 1969.

A review of child-related legislation has been carried out with the support of UNICEF.¹ A new Constitution is being drafted, and proposals have been made for inclusion of articles on child rights:² we do not know if the proposals include prohibition of corporal punishment.

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings: corporal punishment is lawful as in the home.

Day care

Corporal punishment is unlawful in preschool provision under the Regulations concerning Primary and Preparatory (Basic) Education. However, there is no explicit prohibition of corporal punishment in other early childhood care and in day care for older children.

Schools

Corporal punishment is prohibited in schools under the School Discipline Ordinance for Schools, the Regulations concerning Primary and Preparatory (Basic) Education, the Regulations concerning Secondary (Intermediate) Education 1979 and the Regulation concerning Student Discipline 1983, though we have yet to confirm that the prohibitions are explicit. Law No. 134 of 1970 on Education provides for the Minister of Education and National Guidance to make rules for the discipline of students. Law No. 95 of 1975 on Compulsory Education is silent on the issue.

Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. Principle 2 of the Great Green Document on Human Rights 1988 states: “Jamahiri society prohibits penalties that detract from human dignity and are detrimental to human well-being, such as hard labour and long-term imprisonment. Jamahiri also prohibits the infliction of physical or mental harm on the person of a prisoner...” But there is no explicit prohibition of corporal punishment in this or in Law No. 5 of 1953 on Reform and Rehabilitation Institutions.

¹ *Children’s Rights in Libya: Assessing compliance of domestic legislation with international human rights standards*, referenced in UNICEF (2013), *Annual report – Libya*

² UNICEF (2013), *Annual report – Libya*

The Rules on the Treatment of Detainees prohibit “any form of physical, sexual or mental violence against any detainee” and “humiliating or degrading treatment such as displaying them in a publicly humiliating fashion” and states: “The detaining authority must ensure detainees are not subjected to: - any acts of violence, intimidation or humiliation, - cruel, inhumane, humiliating, or degrading treatment”. But these are guidelines not law.

Sentence for crime

Corporal punishment is lawful as a sentence for crime. There is no provision for corporal punishment in the Penal Code 1953 but the law provides for corporal punishment to be imposed under Shari’a law and protection from such punishment for persons under 18 appears to be incomplete.

Law No. 70 of 1973 on the Establishment of the *Had of Zina* and the Amendment of several articles of the Penal Code prescribes lashes as punishment for *zina* (sexual relations outside of marriage). It states in article 2 that the offender must have reached the age of 18, presumably exempting younger persons from the punishment of flogging (unconfirmed) – but in article 3 it states that if the offender is between 7 and 15 the measures that may be imposed as “guidance and awareness and reprimands” and if the offender is between 15 and 18 the measure is “severe beatings”.

Law No. 13 of 1995 on Theft and *haraba* (banditry) provides for punishments of amputation of the right hand and for cross amputation (right hand and left foot). It was amended by Law No. 10 of 2001 possibly to state that the offender must have reached the age of 18, but we have yet to confirm that this effectively rules out all forms of corporal punishment for this offence.

Law No. 52 of 1974 on *had alqadhaf* (defamation) provides for punishment of flogging: we have yet establish its application to persons under 18. Law No. 89 of 1974 on Prohibition of Alcohol Consumption was repealed by Law No. 4 of 2002 on Alcohol, which makes no provision for corporal punishment.

During the Universal Periodic Review (UPR) of Libya in 2010, the Government stated its intention to repeal judicial corporal punishment in the context of reviewing the Penal Code.³ In April 2013, the Libyan National Congress approved Law No. 10 of 2013 concerning the Criminalization of Torture, Forced Abduction and Discrimination but to our knowledge this does not prohibit corporal punishment as a sentence for crime. Similarly, other recent penal laws – Law No. 37 of 2012 on Criminalisation of the Glorification of the Dictator and Law No. 38 of 2012 on Certain Matters Relating to Transitional Justice – do not prohibit judicial corporal punishment. A draft law amending legal sanctions and military actions was under discussion in 2013 but we have yet to ascertain if it would repeal judicial corporal punishment. The Higher Judicial Institute, with UNICEF support, has developed a draft juvenile justice law.⁴

In reporting on judicial corporal punishment to the UPR in 2015, the Government confirmed that the law still allows for flogging as a punishment for adultery and false accusation.⁵ Efforts are being made to address this: “The legislature has identified those punitive laws that must be brought into line with international human rights standards. The Ministry of Justice and UNODC are working together to review the laws of Libya. To that end, committees have been formed and workshops held with the

³ 4 January 2011, A/HRC/16/15, Report of the working group of the UPR, para. 88

⁴ UNICEF (2013), *Annual report – Libya*

⁵ 5 May 2015, A/HRC/WG.6/22/LBY/1, National report to the UPR, paras. 78 and 79

support of UNSMIL and the National Council for Civil Liberties and Human Rights.”⁶ However, the Government simply “noted” a recommendation made during the UPR to amend legislation allowing for corporal punishment.⁷

Universal Periodic Review of Libya’s human rights record

Libya was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). During the review the Government stated that the Penal Code is being reviewed and judicial corporal punishment will be repealed: “Regarding corporal punishment, the relevant penalties or sanctions had not been applied for more than 40 years, except in two cases regarding *haraba*, which was the most serious crime of terrorism. The Penal Code was under review, and such punishment would be repealed.”⁸ The following recommendations were made during the review:⁹

“Revoke provisions of the national law enabling the use of corporal punishment (Czech Republic);

“Abolish corporal punishment, both in law and in practice (Switzerland)”

The Government neither accepted nor rejected the recommendations but stated, apparently contradicting the remarks noted above, that “nothing in the Libyan Penal Code provides for corporal punishment”.¹⁰

Examination in the second cycle took place in 2015 (session 22). In its national report the Government confirmed the legality of flogging as a sentence of the courts but stated that the relevant laws are being reviewed.¹¹ During the review, the following recommendation was made:¹²

“Amend legislation that allows corporal punishment, including amputation, and criminalize torture (Spain)”

The Government “noted” the recommendation.¹³

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(4 July 2003, CRC/C/15/Add.209, Concluding observations on second report, paras. 33, 34 and 46)

“The Committee welcomes the prohibition of corporal punishment in schools and takes note of the information that measures have been adopted to report and investigate maltreatment of children. Nevertheless, it is concerned at the lack of information on the actual situation in the State party with respect to ill-treatment of children within the family. Further, it regrets the lack of information on prevention and awareness-raising activities.

⁶ 5 May 2015, A/HRC/WG.6/22/LBY/1, National report to the UPR, para. 77

⁷ 22 July 2015, A/HRC/30/16, Report of the working group, para. 137(127); www.upr-info.org, *Libya’s responses to recommendations (as of 29.09.2015)*; as at 4 October 2015, Addendum to the working report available only in Arabic

⁸ 4 January 2011, A/HRC/16/15, Report of the working group of the UPR, para. 88

⁹ 4 January 2011, A/HRC/16/15, Report of the working group of the UPR, paras. 95(24) and 95(25)

¹⁰ 22 February 2012, A/HRC/16/15/Add.1, Report of the working group: Addendum, para. 7

¹¹ 5 May 2015, A/HRC/WG.6/22/LBY/1, National report to the UPR, para. 77

¹² 22 July 2015, A/HRC/30/16, Report of the working group, para. 137(127)

¹³ www.upr-info.org, *Libya’s responses to recommendations (as of 29.09.2015)*; as at 4 October 2015, Addendum to the working report available only in Arabic

“The Committee recommends that the State party:

- a) conduct a comprehensive study to assess the nature and extent of ill-treatment and abuse of children, as well as other domestic violence, and use the results to design policies and programmes to address this issue;
- b) carry out preventive public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment;
- c) take the necessary measures to prevent violence against, and abuse of, children....

“The Committee recommends that the State party:

- c) take legislative measures formally to abolish flogging as a punishment....”

Committee on the Rights of the Child

(4 February 1998, CRC/C/15/Add.84, Concluding observations on initial report, paras. 14 and 29)

“The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, at home. In the view of the Committee, this contravenes the principles and provisions of the Convention.

“The Committee suggests that the State party take all appropriate measures, including of a legislative nature, with the aim of prohibiting corporal punishment at home. The Committee also suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention....”

Committee Against Torture

(11 May 1999, A/54/44, paras. 176-189, Concluding observations on third report, paras. 180 and 189)

“The Committee notes with satisfaction that application of corporal punishment has not been used in recent years.

“Although corporal punishment has not been practised in recent years, it should be abolished by law.”

Human Rights Committee

(15 November 2007, CCPR/C/LBY/CO/4, Concluding observations on fourth report, paras. 16 and 17)

“The Committee remains deeply concerned that corporal punishment such as amputation and flogging are prescribed by law even if rarely applied in practice. They constitute a clear violation of article 7 of the Covenant. (art. 7)

The State party should immediately stop the imposition of all corporal punishment and repeal the legislations for its imposition without delay, as stipulated in the previous concluding observations of the Committee.

“The Committee notes with concern that the continued practice and legal provisions regarding *qisas* (retribution) and *diyah* (payment), which may contribute to impunity, remain in force. (arts. 2, 7, 10 and 14)

The State party should review the laws and practice of *qisas* and the *diyah* in light of the Covenant.”

Human Rights Committee

(6 November 1998, CCPR/C/79/Add.101, Concluding observations on third report, para. 11)

“Furthermore, the Committee recalls that flogging, which is recognized in the Libyan Arab Jamahiriya as a penalty for criminal offences, is incompatible with article 7 of the Covenant. The imposition of such punishment should cease immediately and all laws and regulations providing for its imposition should be repealed without delay. Amputation, although not used in practice, according to the Delegation, should be formally abolished.”

Human Rights Committee

(23 November 1994, CCPR/C/79/Add.45, Concluding observations on second report, para. 9)

“The Committee is seriously concerned at information it has received from United Nations and other reliable sources concerning summary or extra-judicial execution and torture perpetrated by the Libyan security forces. It deplores the introduction of cruel punishments such as flogging and amputation. The practice of arbitrary arrest and detention, the detention of persons sentenced after unfair trials and the length of pre-trial detention are also matters of serious concern. The Committee regrets the lack of information about certain identified people who are said to be held in incommunicado detention without trial for lengthy periods and of persons who oppose the government and are said to have disappeared.”

Prevalence/attitudinal research in the last ten years

None identified.