

# Corporal punishment of children in Myanmar

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Child population 17,885,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Myanmar's commitment to prohibiting corporal punishment

Myanmar adopted a new Child Rights Law in 2019, which included provisions that were reportedly intended to prohibit all corporal punishment of children. Legal analysis is underway to confirm whether prohibition has been achieved.

## Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and schools and penal institutions; some legislation authorising corporal punishment as a sentence for crime is still to be formally repealed.

Article 89 of the Penal Code 1861 states that “nothing which is done in good faith for the benefit of a person under twelve years of age ..., of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person”. This provision should be repealed and there should be clarity in legislation that no degree or kind of corporal punishment of children can be regarded as acceptable or lawful. Prohibition should be enacted of all corporal punishment by adults with authority over children, including within the family home.

*Alternative care settings* – Prohibition should also be enacted of all corporal punishment 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, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

*Schools* – The Government directives against corporal punishment in schools should be confirmed in legislation which clearly prohibits all corporal punishment in all education settings, public and private, at all levels.

*Penal institutions* – Provisions in the Prisons Act authorising whipping of prisoners should be repealed and explicit prohibition of corporal punishment as a disciplinary measure should be enacted in laws applicable to all institutions accommodating children in conflict with the law.

*Sentence for crime* – All provisions for judicial corporal punishment should be repealed, including those in the Criminal Procedure Code, the Citizenship Act and the Rules of the Child Law 2001.

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. Article 89 of the Penal Code states that, with certain provisos, “nothing which is done in good faith for the benefit of a person under twelve years of age ... of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person”.

The Child Law 1993 (revised 1999), including article 66 which provided for “the type of admonition by a parent, teacher or a person having the right to control the child, which is for the benefit of the child”, was repealed by the Child Rights Law 2019. The 2019 Law was drafted after the Government of Myanmar collaborated with UNICEF to produce an analysis of the situation of children, which drew attention to conflict between the Child Law 1993 and the Convention on the Rights of the Child including the lack of explicit prohibition of corporal punishment and the provision for “admonition” of a child, and recommended amending the Child Law 1993 “to remove scope for allowing physical punishment of children”.<sup>1</sup>

Section 69 of the Child Rights Law 2019 states that (unofficial translation): “Parents, guardians and teachers shall guide the child to foster the habits of compliance with conduct or discipline described in section 68 without using any type of punitive measures including corporal punishment.” Section 100(a) punishes corporal punishment with “imprisonment for a term of minimum one month to maximum six months or with a fine of minimum Kyat 100,000 to maximum Kyat 300,000 or with both” (unofficial translation). Section 56 states that (unofficial translation): “No one shall commit physical violence, psychological violence or sexual violence that will inflict either losses or injury in any way upon the child”. Physical violence is defined as (unofficial translation) “any of the following actions done by adults or other children to a child: ... (2) Any form of penalty including corporal punishment” (section 5(v)). Unlike the Child Law 1993, which defined children as under sixteen, article 3(b) of the Child Rights Law 2019 defines a child as “a person who has not attained the age of 18 years”. Corporal punishment is not defined within the law – we are working to establish the exact scope of the ban and whether it applies to all corporal punishment, however light, in all settings. The Law reportedly came into force in July 2019. Implementing Rules are being drafted which may provide some clarity.

The National Plan of Action for Children 2006-2015 aimed to protect children from violence and abuse but made no reference to law reform to prohibit corporal punishment.<sup>2</sup> There seems to be no new National Plan of Action being drafted. A Bill on Violence against Women is being drafted<sup>3</sup> and was planned to be submitted to Parliament during the session starting in October 2017.<sup>4</sup>

### Alternative care settings

Corporal punishment seems to be lawful in alternative care settings under article 89 of the Penal Code (see under “Home”). The policy on Early Childhood Care and Development was published in

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<sup>1</sup> Ministry of National Planning and Economic Development & UNICEF (2012), *Situation Analysis of Children in Myanmar*, Nay Pyi Taw: UNICEF/Government of Myanmar; see also 5 August 2015, A/HRC/WG.6/23/MMR/1, National report to the UPR, para. 75

<sup>2</sup> Union of Myanmar Ministry of Social Welfare Relief & Resettlement & National Committee on the Rights of the Child (2006) Myanmar National Plan of Action for Children 2006-2015

<sup>3</sup> 5 August 2015, A/HRC/WG.6/23/MMR/1, National report to the UPR, para. 75

<sup>4</sup> <https://www.irrawaddy.com/news/burma/new-law-protect-women-girls-violence.html>, accessed 24 October 2017

February 2014: it states that “the prohibition of corporal punishment in all ECCD centres, programmes, preschools and kindergartens and primary schools will be reinforced”.

We are working to establish the impact of the Child Rights Law 2019 on the legality of corporal punishment of children in all settings, including alternative care.

### **Day care**

Corporal punishment seems to be lawful in day care under article 89 of the Penal Code (see under “Home”). The policy on Early Childhood Care and Development was published in February 2014: it states that “the prohibition of corporal punishment in all ECCD centres, programmes, preschools and kindergartens and primary schools will be reinforced”.

We are working to establish the impact of the Child Rights Law 2019 on the legality of corporal punishment of children in all settings, including day care.

### **Schools**

Government directives state that corporal punishment should not be used in schools but this is undermined by article 89 of the Penal Code (see under “Home”). In its written replies to the Committee on the Rights of the Child in 2011, the Government stated that the process indicators of a child friendly school include “teachers must practice positive, non-aggressive and alternative discipline” and “therefore” corporal punishment is prohibited in schools.<sup>5</sup> The concluding observations of the Committee on the Rights of the Child on the third/fourth report indicate that there is prohibition in law<sup>6</sup> but we have been unable to identify prohibiting legislation. The Government similarly asserted that corporal punishment is prohibited in schools during the Universal Periodic Review of Myanmar in 2011 but gave no specific legal references.<sup>7</sup> However, the National Education Law 2014, while setting out the objectives and principles of education and educational rights and responsibilities, does not prohibit corporal punishment.

We are working to establish the impact of the Child Rights Law 2019 on the legality of corporal punishment of children in all settings, including schools.

### **Penal institutions**

Corporal punishment seems to be lawful as a disciplinary measure in prisons under the Prisons Act (arts. 46, 47, 50, 51 and 53), including of children under 16. Discipline in training schools and prisons is also provided for in the Rules of the Child Law 2001, but there is no mention of corporal punishment. In addition, article 89 of the Penal Code (see under “Home”) potentially applies.

We are working to establish the impact of the Child Rights Law 2019 on the legality of corporal punishment of children in all settings, including penal institutions.

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<sup>5</sup> 12 January 2012, CRC/C/MMR/Q/3-4/Add.1, Reply to list of issues, para. 53

<sup>6</sup> 14 March 2012, CRC/C/MMR/CO/3-4, Concluding observations on third/fourth report, para. 53

<sup>7</sup> 24 March 2011, A/HRC/17/9, Report of the working group, para. 58

## **Sentence for crime**

Corporal punishment seems to be unlawful as a sentence for a crime, as the sanctions listed in articles 88, 89 and 90 of the Child Rights Law 2019 – which applies to all children under 18 – do not include corporal punishment. Corporal punishment was previously prohibited as a sentence for crime for children below the age of 16 years under article 45 of the Child Law 1993: “Notwithstanding anything contained in any existing law, a death sentence, transportation for life or a sentence of whipping shall not be passed on any child.” The Child Law 1993 was repealed by the Child Rights Law 2019 (see under “Home”), in which this explicit prohibition of judicial corporal punishment was not repeated. There is no provision for corporal punishment in the Penal Code 1861.

Rule 100 of the Rules of the Child Law 2001 still provides for whipping for 16-17 year olds – it is unclear whether these Rules are still in force. Rule 100 and other provisions for whipping in the Criminal Procedure Code (art. 392) and the Citizenship Act have yet to be formally repealed. Corporal punishment was previously also authorised for Penal Code offences under the Whipping Act 1909. In 2014, the Whipping Act was repealed by the Law Repealing the Whipping Act 2014.

## **Universal Periodic Review of Myanmar’s human rights record**

Myanmar was examined in the first cycle of the Universal Periodic Review in 2011 (session 10). The following recommendation was made:<sup>8</sup>

“With regard to children, ... to ban corporal punishment in families and schools and other institutions, by organizing educational campaigns; and start reforms in the juvenile justice system, following the Convention and the international standards by increasing the age of criminal responsibility (Uruguay)”

The Government rejected the recommendation and stated that “corporal punishment and humiliating punishment are strictly prohibited in schools in Myanmar”.<sup>9</sup>

Examination in the second cycle took place in 2015 (session 23). No recommendations were made specifically on corporal punishment of children. However, the Government accepted recommendations to expedite the redrafting of the Child Law and to improve legislation against domestic violence.<sup>10</sup>

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

### ***Committee on the Rights of the Child***

(14 March 2012, CRC/C/MMR/CO/3-4, Concluding observations on third/fourth report, paras. 53 and 54)

“While noting the legal provisions prohibiting corporal punishment in schools and welcoming the ongoing discussion in the State party with a view to prohibiting corporal punishment in all settings, the Committee is concerned that corporal punishment is still lawful within the family and in alternative care settings and is a disciplinary measure in prisons, including for children under 16 years of age.

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<sup>8</sup> 24 March 2011, A/HRC/17/9, Report of the working group, para. 107(12)

<sup>9</sup> 24 March 2011, A/HRC/17/9, Report of the working group, para. 58

<sup>10</sup> 23 December 2015, A/HRC/31/13, Report of the working group, paras. 143(15) and 143(68)

“With reference 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, the Committee recalls its previous concluding observations (CRC/C/15/Add.237) and urges the State party to:

- a) ensure that legal provisions prohibiting corporal punishment in school are effectively implemented and that legal proceedings are systematically initiated against those responsible for ill-treating children;
- b) withdraw provisions of the Child Law and the Penal Code authorizing corporal punishment and prohibit unequivocally by law and without any further delay corporal punishment in all settings, including the family, penal institutions, and alternative care settings;
- c) strengthen sustained public education, awareness-raising and social mobilization programmes involving children, families, communities and religious leaders on both the physical and psychological harmful effects of corporal punishment with a view to changing the general attitude towards this practice and promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment; and
- d) ensure the involvement and participation of the whole society, including children, in the design and implementation of preventive strategies against violence and other forms of abuse.”

### ***Committee on the Rights of the Child***

(30 June 2004, CRC/C/15/Add.237, Concluding observations on second report, paras. 7, 8, 38 and 39)

“The Committee is aware of the efforts undertaken by the State party to amend the Child Law (1993), in particular, the enactment of the Rules and Regulations related to the Child Law in 2001, in order to fully harmonize it with the provisions and principles of the Convention, but is of the view that the Child Law is still not in full compliance with the Convention. The Committee ... remains concerned at the fact that the Village and Town Acts are still in existence. This concern is also reiterated regarding the existence of the Citizenship Act and the Whipping Act, despite previous recommendations of the Committee to amend or repeal them.

“In light of the previous recommendations (CRC/C/15/Add.69, para. 28), the Committee recommends that the State party:

- b) repeal the Whipping Act and amend the Citizenship Act and the Village and Town Acts....

“The Committee is deeply concerned that article 66 (d) of the 1993 Child Law provides for possible ‘admonition by a parent, teacher, or other person having the right to control the child’ and that corporal punishment continues to be regarded as acceptable in society. The Committee is also concerned that the State party has not repealed the Whipping Act and that the orders prohibiting corporal punishment in schools do not seem to be effective.

“The Committee strongly recommends that the State party repeal article 66 (d) of the 1993 Child Law and prohibit corporal punishment in the family, the schools and other institutions, and undertake education campaigns to educate families and professionals on alternative forms of discipline.”

### ***Committee on the Rights of the Child***

(24 January 1997, CRC/C/15/Add.69, Concluding observations on initial report, para. 28)

“The Committee recommends that the State party undertake a comprehensive review of the national legislation to bring it into conformity with the principles and provisions of the Convention, especially

in the areas of non-discrimination, citizenship, freedom of association, corporal punishment, child labour, adoption and the administration of juvenile justice. The Committee also recommends that the Citizenship Act, the Village and Towns Acts and the Whipping Acts be repealed....”

### ***Committee on the Rights of Persons with Disabilities***

(22 October 2019, CRPD/C/MMR/CO/1, Concluding observations on initial report, paras. 29 and 30)

“The Committee is concerned about: ... (b)The lack of specific legislation, policies and programmes to protect persons with disabilities, particularly women and children with disabilities and persons with intellectual or psychosocial disabilities, from all forms of exploitation, violence and abuse, including gender-based violence and corporal punishment...

“The Committee recommends that the State party:... (b) Adopt and implement legislation, policies and programmes to protect all persons with disabilities, particularly women and children with disabilities and persons with intellectual or psychosocial disabilities, from all forms of exploitation, violence and abuse, including gender-based violence and corporal punishment...”

### **Prevalence/attitudinal research in the last ten years**

Corporal punishment is widespread in the family home and in primary schools, according to a 2012 situation analysis of children in Myanmar. In the home, children are punished by being slapped and beaten with implements. In a baseline study carried out in primary schools in 2007 as part of a UNICEF child-friendly schools program, 82% of students said they were beaten if they “did something wrong” and 62% of teachers told their students they would be beaten if they did not perform well in a test. More than 40% of teachers caned students more than once a week. Although some schools reported declining rates of corporal punishment following the child-friendly schools program, 50% still used physical punishment. The situation analysis notes that corporal punishment is lawful and recommends prohibition.

(Ministry of National Planning and Economic Development & UNICEF (2012), *Situation Analysis of Children in Myanmar July 2012*, Nay Pyi Taw: UNICEF)