

Corporal punishment of children in Somalia

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Child population 5,787,000 (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, schools, penal institutions and as a sentence for crime.

The Penal Code punishes assault that does not result in injury except when the perpetrator is the parent (arts. 439 and 442); the punishments for more serious violence against persons are reduced when the perpetrator is the parent. These provisions should be amended/repealed and explicit prohibition enacted of all corporal punishment by parents and others with children in their care.

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).

Schools – All laws authorising or regulating the infliction of corporal punishment on children in schools should be repealed, and prohibition enacted in relation to all education settings, public and private.

Penal institutions – Prohibition should be enacted in relation to disciplinary measures in all institutions accommodating children in conflict with the law.

Sentence for crime – There should be no provision for corporal punishment as a sentence for crime, including under Shari'a law.

Note: Islamic law, customary law and secular criminal law are applicable in Somalia but there is no coherent, functioning national legal system. Until 2012, the Transitional Federal Government (TFG) was the internationally recognised Government of Somalia, and in 2009 the Transitional Federal Parliament voted to implement Shari’a as the national law. According to the newly elected President, this would be a “moderate” interpretation of Shari’a, but the TFG controls only a part of the capital city of Mogadishu: other areas in South/Central Somalia are under the control of armed opposition groups, mostly al-Shabaab and Hizbul Islam, which impose a strict interpretation of Islamic law. In the north, the autonomous region of Puntland and the self-declared independent Republic of Somaliland are relatively more stable, with functioning governments and legal systems.

Under the Transitional Federal Government, secular legislation in force includes the Transitional Federal Charter 2004, the Penal Code 1962 and the Civil Code 1974. A Provisional Federal Constitution was adopted in August 2012, at which time the Federal Government of Somalia was established, following the end of the interim mandate of the TFG.

In Puntland, the law is based on Shari’a and efforts have been made to harmonise customary law with international human rights standards and Shari’a. The Penal Code 1962 is applicable. In January 2011, the Puntland Government announced it was breaking its ties with the TFG until a legitimate federal authority is in place in Mogadishu which properly represents Puntland as part of the Federation of Somalia. The Puntland Constitution was adopted in April 2012.

Following a referendum in 1991, Somaliland declared its independence but this is not internationally recognised. The Somaliland Constitution was adopted in 2001 and pre-1991 laws are gradually being replaced. In 2009 the Law Reform Commission was established to harmonise Islamic, customary and secular criminal law with the Somaliland Constitution.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 439 of the Penal Code 1962 punishes assault but article 442(2) states: “The parent who commits the act referred to in article 439 shall not be punishable.” Article 442(1) of the Code prescribes reduced punishments for homicide and hurt when the perpetrator is the parent. Articles 431 and 432 punish abuse of measures of correction or discipline and ill-treatment of children and members of the family.

The Provisional Federal Constitution 2012 states that human dignity “is the basis for all human rights” and “is inviolable and must be protected by all” (art. 10). It also states that “every person has the right to person security, and this includes ... all forms of violence, including any form of violence against women, torture, or inhumane treatment” (art. 15), and “every child has the right to be protected from mistreatment, neglect, abuse, or degradation” (art. 29). It is the duty of each citizen “to promote responsible parenthood” (art. 42). There is no indication that these provisions are to be interpreted as prohibiting all corporal punishment of children. The Government reported to the UPR in 2015 that at the end of 2015 the constitutional review process would commence and legislation would be reviewed and harmonised with the Constitution and international standards.¹ In May 2017,

¹ 28 October 2015, A/HRC/WG.6/24/SOM/1, National report to the UPR, para. 10

the Ministry of Constitutional Affairs introduced a masterplan for the review of the Provisional Constitution.²

In 2019, the Government reported that laws and policies were being reviewed and amended to “enhance child rights and child protection”.³ The National Development Plan 2017-2019 plans for the drafting of a “National Children’s Policy and Act ... drawing on Somalia obligations under the CRC as well as the African Charter and other relevant Instruments”, as well as a National Plan of Action for Children to be developed and implemented at national and sub-national level. The drafting of a Child Rights Bill started in November 2017; as of October 2019 it is still ongoing.⁴

In Somaliland, the Constitution 2001 states in article 24(2): “Every person shall have the right to security of his person. Physical punishment and any other injury to the person is prohibited.” Article 128 states that the Constitution “shall be the supreme law of the land, and any law which does not conform to it shall be null and void”. However, further reform is necessary to confirm the applicability of the prohibition to corporal punishment of children in the home and to repeal article 442(2) of the Penal Code. A Family Code is being drafted.⁵

The Puntland Constitution 2012 states that every person has a right to life and to “protection of his/her body and self esteem” (art. 17) but it does not prohibit corporal punishment.

Alternative care settings

Corporal punishment is not prohibited in alternative care settings. The Provisional Federal Constitution 2012 states that “State power must not be exercised in a manner that violates human dignity” (art. 10) and protects every person from “all forms of violence” (art. 15) and children from “mistreatment, neglect, abuse, or degradation” (art. 29) but there is no indication that this protects children from all corporal punishment.

In Somaliland, corporal punishment is possibly unlawful in institutions under the prohibition of physical punishment in the Constitution 2001 (art. 24) but further law reform is necessary to confirm its applicability to all forms of care.

In Puntland, the Constitution 2012 states every person’s right to “protection of his/her body and self esteem” (art. 17) but it does not prohibit corporal punishment.

Day care

Corporal punishment is lawful in day care in Somalia. The Provisional Federal Constitution 2012 states that “State power must not be exercised in a manner that violates human dignity” (art. 10) and protects every person from “all forms of violence” (art. 15) and children from “mistreatment, neglect, abuse, or degradation” (art. 29) but there is no indication that this protects children from all corporal punishment.

² <http://reliefweb.int/report/somalia/constitutional-review-process-kicked-somalia>, 6 June 2017

³ 16 October 2019, CRC/C/SOM/1, Initial report, para. 22

⁴ 16 October 2019, CRC/C/SOM/1, Initial report, paras. 34 and 37

⁵ For example, see Hassan Adan Abdi (2010), *Situation Analyses Report, Legal Technical Consultancy: Family Code*, Ministry of Family Affairs and Social Development, Republic of Somaliland, and <http://www.somalilandlaw.com> (accessed 13 January 2014)

In Somaliland, corporal punishment is possibly unlawful in institutions under the prohibition of physical punishment in the Constitution 2001 (art. 24) but further law reform is necessary to confirm its applicability to all forms of care.

In Puntland, the Constitution 2012 states every person's right to "protection of his/her body and self esteem" (art. 17) but it does not prohibit corporal punishment.

Schools

Corporal punishment is lawful in schools. As of October 2019, an Education Act was being drafted.⁶

In Puntland, the Ministry of Education issued a Decree stating that corporal punishment should not be used but there is no prohibition in law. The Provisional Federal Constitution 2012 states that "State power must not be exercised in a manner that violates human dignity" (art. 10) and protects every person from "all forms of violence" (art. 15) and children from "mistreatment, neglect, abuse, or degradation" (art. 29) but there is no indication that this protects children from all corporal punishment.

Corporal punishment appears to be unlawful in Somaliland under the prohibition of physical punishment in article 24 of the Somaliland Constitution 2001 (unconfirmed).

Penal institutions

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions, though the Transitional Charter of the Somali Republic prohibits "physical or moral violence or action against a person subject to restriction of personal liberty" (art. 16). The Provisional Federal Constitution 2012 states that "State power must not be exercised in a manner that violates human dignity" (art. 10) but there is no indication that this, or the protection from violence, abuse and degradation (arts. 15 and 29) protect children from all corporal punishment. A Juvenile Justice Bill is being drafted to "protect the rights of children in conflict with the law".⁷

In Somaliland, corporal punishment is unlawful in penal institutions under article 24 of the Constitution 2001.

In Puntland, the Constitution 2012 states every person's right to "protection of his/her body and self esteem" (art. 17), the right of an accused person "to protection, security and human dignity" (art. 26) and the "entitlement" of a convicted person "to the universal rights guaranteed to prisoners worldwide" (art. 27), but it does not prohibit corporal punishment.

Sentence for crime

Corporal punishment is lawful as a sentence for crime under Islamic law, except possibly in Somaliland.

The Somali Penal Code and the national Juvenile Courts and Reformatories Law 1970 make no provision for judicial corporal punishment. The Provisional Federal Constitution 2012 states that

⁶ 16 October 2019, CRC/C/SOM/1, Initial report, para. 253

⁷ 16 October 2019, CRC/C/SOM/1, Initial report, para. 46

“State power must not be exercised in a manner that violates human dignity” (art. 10): we do not know if this is interpreted as prohibiting judicial corporal punishment.

We have no details of the application of corporal punishment under Islamic law as envisaged when the Transitional Federal Parliament voted to adopt Shari’a as the national law in 2009. There are numerous reports of the imposition of harsh punishments in Somalia. Many – but not all – concern extrajudicial punishments imposed by the armed opposition groups in South/Central Somalia.⁸ There are also reports of amputations and flogging.⁹ Amputations carried out by al-Shabaab and Hizbul Islam are often in public before large crowds including children.¹⁰

In Somaliland, the judicial corporal punishment is unlawful under article 24 of the Constitution 2001 and article 2 of the Juvenile Justice Law 2007.

The Puntland Constitution 2012 states that “no one can be subjected to a punishment that was not decreed by a competent court of Law” (art. 25) and that “any person sentence by a court of Law shall have the right to protection, security and dignity as a human being” and “every prisoner shall be entitled to the universal rights granted to prisoners worldwide” (art. 27). There is no explicit prohibition of corporal punishment and it is not clear that the Constitutional provisions are intended to protect persons in conflict with the law from being sentenced to corporal punishment. In 2009 a new juvenile justice law was being drafted in Puntland: we have no further information.

Universal Periodic Review of Somalia’s human rights record

Somalia was examined in the first cycle of the Universal Periodic Review in 2011 (session 11). The Government accepted the recommendation to stop amputations and floggings in the context of the conflict.¹¹

Examination in the second cycle took place in 2016 (session 24). The following recommendations were made:¹²

“Ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and prohibit explicitly corporal punishment of children in all settings, including the home (Estonia);

“Prohibit the application of the death penalty, life imprisonment and corporal punishment on offences committed by minors (Mexico)”

The Government “noted” the recommendations, and stated that the first of these was “too broadly formulated”.

⁸ For example, see A/HRC/12/44, 17 September 2009, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*

⁹ For example, see A/HRC/13/65, 23 March 2010, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*; A/HRC/12/44, 17 September 2009, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*; Human Rights Watch (2010), *Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia*, NY: Human Rights Watch

¹⁰ www.handsoffcain.info/, accessed 21 February 2011

¹¹ SPR/UNOG/000431/11, Information provided by the Government on pending recommendations, para. 98.71

¹² 13 April 2016, A/HRC/32/12, Report of the working group, paras. 136(25) and 136(73)

Recommendations by human rights treaty bodies

Somalia is one of the very few states which are yet to receive a recommendation on corporal punishment, having only ratified the UN Convention on the Rights of the Child in 2015.

Prevalence/attitudinal research in the last ten years

A survey conducted in the Northeast Zone in 2011 found 75% of children aged 2-14 years were subjected to some form of violent “discipline” (psychological or physical punishment) by household members during the month preceding the survey; 66% experienced physical punishment, 26% severe physical punishment (being hit on the head, bottom, ears or face or hard and repeatedly). Older children (10-14 years) were more likely to experience any and severe physical punishment (69% and 31% respectively) compared to younger children (2-4 years; 55% and 21% respectively). In contrast to actual prevalence (66%) only 34% of respondents said they believe physical punishment is needed to raise a child properly. Only 16% of children experienced only non-violent forms of discipline.

(Ministry of Planning and International Cooperation & UNICEF Somalia (2014), *Northeast Zone Multiple Indicator Cluster Survey 2011, Final Report*, Nairobi, Kenya: Ministry of Planning and International Cooperation & UNICEF Somalia)

A survey conducted in Somaliland in 2011 found 78% of children aged 2-14 years were subjected to some form of violent “discipline” (psychological or physical punishment) by household members during the month preceding the survey; 70% experienced physical punishment and 31% severe physical punishment (being hit on the head, bottom, ears or face or hard and repeatedly). In contrast, 30% of respondents said they believe physical punishment is needed to raise a child properly. Only 16% of children experienced only non-violent forms of discipline.

(Somaliland Ministry of Planning and National Development & UNICEF Somalia (2014), *Somaliland Multiple Indicator Cluster Survey 2011, Final Report*, Nairobi, Kenya: Somaliland Ministry of Planning and National Development & UNICEF Somalia)