



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

MALDIVES

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 9th session, 2010

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Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

The Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org) has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies, and regional human rights mechanisms, have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

Summary

This briefing describes the legality of corporal punishment of children in Maldives despite the concerns and recommendations of the Committee on the Rights of the Child. We hope the Review will highlight the importance of prohibition of all corporal punishment of children, including within the family home and as a judicial sentence under Islamic law, and strongly recommend that the government enact and implement legislation to ensure *complete* prohibition.

1 Legality of corporal punishment in Maldives

1.1 Corporal punishment is lawful in the **home**. The Law on the Protection of the Rights of the Child (1991) (article 18) and the Family Law (2000) (article 18) prohibit only severe punishment which may harm the child. 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. However, the draft Penal Code (2006) would introduce a legal defence for the use of corporal punishment in the home and other settings, stating in section 44 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 Code was submitted to parliament in 2006 but was delayed at Committee stage. As at June 2009, it was due to be re-submitted under the new government, but we have no further information.

1.2 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 would introduce a legal defence for the use of corporal punishment by teachers (see above). An Education Bill was due to be tabled in parliament in 2007, but we have no further details.

1.3 In the **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 include judicial corporal punishment for crimes that fall outside of *Shari'a* law. However, under the Penal Code, the Sentencing Guidelines 298 ("Rules on Investigation Adjudication and Sentencing in Respect of Offences Committed by Minors") and the Rules for Sentencing No. 6 (2003), the *Hadd* punishments of Islamic law, including corporal punishment, are applicable to any person who has reached puberty for crimes of apostasy, rebellion, fornication, defamation, drinking, theft and offences relating to homicide. The draft Penal Code does not allow for retribution or amputation but authorises lashes. There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions; it would be lawful under the draft Penal Code.

1.4 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.

2 Recommendations by human rights treaty monitoring bodies

2.1 In 2007, following examination of the state party's second/third report, the **Committee on the Rights of the Child** expressed concern that section 44 of the draft Penal Code would legalise corporal punishment of children and that those who have reached puberty may be sentenced to flogging (CRC/CDV/CO/3, para. 55). The Committee recommended prohibition of corporal punishment in all settings, including in the home and as a sentence of the courts (paras. 56, 98 and 99).