

AFGHANISTAN

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 18th session, 2014

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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Afghanistan, corporal punishment of children is lawful, despite the state's longstanding commitment to prohibition in the context of the UN Study on Violence against Children, the Government's acceptance of recommendations to harmonise national legislation with international human rights obligations and to promote the rights of the child made during the UPR in 2009, and the recommendations to prohibit corporal punishment by the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights.

We hope the Working Group will note with concern the legality of corporal punishment in Afghanistan. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Afghanistan to explicitly prohibit corporal punishment of children in the home and all other settings as a matter of priority.

1 The initial review of Afghanistan by the Human Rights Council (2009)

- 1.1 Afghanistan was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 5). No recommendations were made specifically concerning corporal punishment of children, though the issue was addressed in the summary of stakeholders' information.¹ General recommendations were made concerning the harmonisation of domestic law with international human rights obligations and the promotion of the rights of the child:² the Government accepted these recommendations.
- 1.2 Prohibiting and eliminating corporal punishment of children is a key obligation under the Convention on the Rights of the Child and other international human rights instruments. In 2011, the Committee on the Rights of the Child expressed its concern to Afghanistan that corporal punishment continues to be used in schools and that, despite prohibition,

¹ 24 February 2009, A/HRC/WG.6/5/AFG/3, Summary of stakeholders' information, para. 14

² 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) and 95(51)

schools continue to give permission to teachers to inflict physical punishment on students. The Committee recommended explicit prohibition of corporal punishment in schools and other settings, including the home and all institutions.³ In 2010, the Committee on Economic, Social and Cultural Rights recommended to Afghanistan that corporal punishment of children be prohibited in all settings.⁴

- 1.3 But despite the Government's acceptance of the relevant recommendations in the first cycle UPR, corporal punishment in Afghanistan may lawfully be inflicted on children in the home, alternative care settings, penal institutions and as a sentence for crime under Shari'a law.
- 1.4 The obligation to reform the law to prohibit corporal punishment, including in the home, is one frequently ignored or evaded by governments. The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a "right" to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. **It is for these reasons that we respectfully urge members of the Working Group to specifically recommend prohibition of corporal punishment in the review of Afghanistan.**

2 Legality of corporal punishment in Afghanistan

- 2.1 **Home (lawful):** Legislation protects children from severe corporal punishment but not from all corporal punishment by parents. Article 54(1) of the Penal Code 1976 confirms the "right" of "punishment of son and student by father and teacher, provided the punishment is within the limits of religious and other laws"; 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." The Juvenile Code 2005 prohibits "contemptuous and harsh punishment, even if for correction and rehabilitation purposes" (article 7), but does not prohibit all corporal punishment. Provisions against violence and abuse in the Penal Code 1976 and the Law on the Elimination of Violence against Women 2009 are not interpreted as prohibiting all corporal punishment in childrearing.
- 2.2 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.
- 2.3 In 2011, the Penal Code was under review, a draft Family Protection Law was under consideration and the possibility of a new child law and/or revision of existing child-

³ 8 April 2011, CRC/C/AFG/1, Concluding observations on initial report, paras. 35, 36, 37, 38, 47 and 61

⁴ 7 June 2010, E/C.12/AFG/CO/2-4, Concluding observations on second to fourth report, para. 28

related legislation was being discussed. Such reforms would provide a key opportunity to enact the necessary prohibiting legislation.

2.4 ***Schools (prohibited)***: Corporal punishment is explicitly prohibited in schools in article 39 of the Education Act 2008.

2.5 ***Penal system – sentence for crime (lawful)***: Corporal punishment is lawful under Shari’a law. The Juvenile Code 2005 prohibits “contemptuous and harsh punishment” (article 7) but according to article 39, children aged 12-17 are subject to reduced sanctions in the Penal Code 1976. The Penal Code applies only to *Tazeeri* crime and penalties: *hodod*, *qassass* and *diat* crimes are punished in accordance with Islamic religious law, including corporal punishment. Articles 426 and 427 of the Penal Code, for example, provide 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 Constitution provides for sentencing under Shari’a law in article 130. In 2010, the Government confirmed to the Committee on the Rights of the Child that under Shari’a law, *zina* is punishable with harsher sentences including whipping and stoning.⁵ Shari’a law typically regards the onset of puberty as the age at which liability for criminal punishments is attained.

2.6 ***Penal system – disciplinary measure in penal institutions (lawful)***: Severe punishment is prohibited under the Juvenile Code (article 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” (article 46), but it does not explicitly prohibit corporal punishment.

2.7 ***Alternative care settings (lawful)***: The Juvenile Code applies to children in need of care and protection and prohibits harsh punishment (article 7), but it does not explicitly prohibit all corporal punishment in all alternative care settings.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, 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, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

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