

Corporal punishment of children in Libya: Briefing for the Universal Periodic Review, 22nd session, 2015

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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 Libya, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture, and the Human Rights Committee and during the 1st cycle UPR in 2010.

We hope the Working Group will note with concern the legality of corporal punishment of children in Libya. We hope states will raise the issue during the review in 2015 and make a specific recommendation to Libya that all corporal punishment be prohibited in all settings, including the home and in the penal system.

1 Review of Libya in the 1st cycle UPR (2010) and progress since then

1.1 Libya was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 9). The issue of corporal punishment was raised in the compilation of UN information,¹ the summary of stakeholders' information² and in an advanced question by the Netherlands. During the review the Government stated that the Penal Code was being reviewed and that judicial corporal punishment would be repealed: "Regarding corporal punishment, the relevant penalties or sanctions had not been applied for more than 40 years, except in two cases regarding *haraba*, which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 The Penal Code was under review, and such punishment would be repealed."³ The following recommendations were made during the review:⁴

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

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

¹ 21 July 2010, A/HRC/WG.6/9/LBY/2, Compilation of UN information, para. 25

² 15 July 2010, A/HRC/WG.6/9/LBY/3, Summary of stakeholders' information, paras. 6, 7 and 8

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

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

- 1.2 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”.⁵
- 1.3 Despite the Government’s stated intention during the review to repeal the provisions authorising judicial corporal punishment, it appears that no such law reform has been achieved. 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. In April 2013, consultations were held by the Higher Judicial Institute with UNICEF support on drafting a Juvenile Justice Law.
- 1.4 Prohibiting and eliminating all corporal punishment of children in all settings – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments. Yet corporal punishment of children remains lawful in almost all settings in Libya. **We hope members of the Working Group will urge Libya to fulfil its obligations under international human rights law by drafting and enacting legislation clearly prohibiting corporal punishment of children in all settings, including the home and in the penal system.**

2 Legality of corporal punishment in Libya

- 2.1 **Summary:** Corporal punishment of children in Libya is unlawful in schools and in preschools but it is lawful in the home, alternative care settings, day care and the penal system, including as a sentence for crime.
- 2.2 **Home (lawful):** 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.
- 2.3 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment: corporal punishment is lawful as in the home.
- 2.4 **Day care (partially prohibited):** 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.
- 2.5 **Schools (unlawful):** Corporal punishment is prohibited 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.

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

- 2.6 **Penal institutions (lawful):** 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. 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.
- 2.7 **Sentence for crime (lawful):** There is no provision for judicial corporal punishment in the Penal Code 1953 but corporal punishment may be imposed under Shari’a law and protection from such punishment for persons under 18 appears to be incomplete.
- 2.8 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”.
- 2.9 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.
- 2.10 Law No. 52 of 1974 on *had alqadhaf* (defamation) provides for punishment of flogging: we have yet to 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.

3 Recommendations by human rights treaty monitoring bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has twice recommended to Libya that corporal punishment be prohibited in all settings, including the home – in its concluding observations on the state party’s initial report in 1998⁶ and on the second report in 2003.⁷
- 3.2 **CAT:** In 1999, the Committee Against Torture recommended that corporal punishment in the penal system be abolished by law in Libya.⁸
- 3.3 **HRC:** The Human Rights Committee has three times expressed concern at the legality of cruel punishments such as flogging and amputation in Libya and has recommended law reform to prohibit them – following examination of the second state party report in 1994,⁹ the third report in 1998¹⁰ and the fourth report in 2007.¹¹

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

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

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

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

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

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

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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.