

Corporal punishment of children in the Maldives: 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 the Maldives, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee and during the 1st cycle UPR in 2010 (“partially accepted” by the Government). The Government has stated its commitment to prohibiting corporal punishment.

We hope the Working Group will note with concern the legality of corporal punishment of children in the Maldives. We hope states will raise the issue during the review in 2015 and make a specific recommendation that the Maldives use the opportunities presented by current law reforms, including the Children Bill, to prohibit all forms of corporal punishment of children in all settings, including the home and as a sentence for crime.

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

1.1 The Maldives was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 9). In its national report the Government acknowledged that flogging is administered as a punishment for adultery under Sharia law, particularly on women, and stated it was “looking at ways to ensure that the punishment is not applied in a discriminatory manner”.¹ The issue of corporal punishment of children was raised in the compilation of UN information² and the summary of stakeholders’ information.³ An advanced question was asked by Denmark. During the review, the following recommendations were made:⁴

“Ensure that its new Penal Code is fully consistent with international human rights standards and that it abolishes corporal punishment and the death penalty (United Kingdom);

“Take all measures to end the application of cruel, inhuman or degrading penalties such as flogging (France);/abolish criminal penalties that infringe on the physical integrity of convicts, for example, flogging (Austria);/prohibit the use of public flogging (New Zealand); abolish corporal punishment, in particular public flogging (Brazil)”

¹ 30 August 2010, A/HRC/WG.6/9/MDV/1/Rev.1, National report to the UPR, para. 45

² 10 November 2010, A/HRC/WG.6/9/MDV/2/Rev.1, Compilation of UN information, para. 23

³ 10 August 2010, A/HRC/WG.6/9/MDV/3, Summary of stakeholders’ information, paras. 16, 17 and 18

⁴ 4 January 2011, A/HRC/16/7, Report of the working group, paras. 100(55) and 100(58)

- 1.2 The Government “partially accepted” the first of these recommendations, stating: “The new draft Penal Code currently before the People’s Majlis is the first of its kind, designed to combine Shariah law with international human rights law and best practice. Notwithstanding, the new draft Penal Code does include provisions on corporal punishment.”⁵ In response to the second recommendation, the Government stated: “The Maldives accepts to begin wider consultations on this matter. The Maldives accepts to consult with relevant national and international authorities to assess whether the application of corporal punishment, as currently practiced in the Maldives, is compatible with the Maldives’ international obligations under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (CAT), and also whether the newly-independent judiciary in the country has the capacity, at present, to pass down such punishments in a manner fully consistent with the Maldives Constitution and international human rights law, in particular those provisions dealing with non-discrimination on the basis of gender.”⁶
- 1.3 Prohibiting and eliminating all corporal punishment of children in all settings including the home – 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. However, while there has been some law reform in the Maldives since the initial review in 2010, there has been no change to the legality of corporal punishment of children: it remains lawful in all settings, the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

2 The Government’s commitment to prohibition and opportunities for law reform

- 2.1 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 prohibiting corporal punishment 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 the Maldives.⁷ In reporting to the Human Rights Committee in 2012, the Government confirmed it had “identified the actions and measures to prohibit all corporal punishment in all settings including law reform and an anti-corporal punishment campaign is planned for 2013”.⁸
- 2.2 Recent law reform has failed to achieve prohibition, but there are ongoing opportunities for introducing prohibition of corporal punishment into Maldivian law. A Children’s Bill has been under discussion since at least 2010 and prohibition of corporal punishment was being discussed in this context.⁹ An Education Bill and a Juvenile Justice Bill have also long been under discussion. **We hope members of the Working Group will urge the Maldives to fulfil its obligations under international human rights law by using the opportunities presented by current law reforms, including the Children Bill, to prohibit all forms of corporal punishment in all settings, including the home and as a sentence for crime.**

3 Legality of corporal punishment in the Maldives

- 3.1 **Summary:** In the Maldives, corporal punishment of children is lawful in all settings – the home, alternative care settings, day care, schools, penal institutions, and as a sentence for crime. As

⁵ 14 March 2011, A/HRC/16/7/Add.1, Report of the Working Group: Addendum, para. 100(55)

⁶ 4 January 2011, A/HRC/16/7, Report of the working group, para. 100(58)

⁷ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

⁸ 5 July 2012, CCPR/C/MDV/Q/1/Add.1, Written replies to the Human Rights Committee, para. 74

⁹ National action plan to prohibit all corporal punishment, SAIEVAC workshop on Legal Reform and Corporal Punishment, November 2010, Kathmandu

noted above, the Government has publicly committed to enacting prohibiting legislation but recent law reform re-authorises corporal punishment.

- 3.2 **Home (lawful):** Legal provisions against violence and abuse – including in the Domestic Violence Act 2012 – are not interpreted as prohibiting corporal punishment of children. In information provided to the Human Rights Committee in 2012, the Government asserted that the Law on the Protection of the Rights of the Child 1991 “prohibits corporal punishment in homes, schools and the penal system of any person under the age of 18”.¹⁰ In fact, article 18 of the Law prohibits only punishment of a degree which is considered to harm the child: “No child shall, even as a measure of discipline, be subjected to punishment which may cause physical injury or which may be detrimental to the health of the child.”
- 3.3 In April 2014, a new Penal Code was adopted, which is expected to come into force in April 2015. We have yet to see the final full text, but in its draft form it introduced a legal defence for the use of corporal punishment in the home and other settings. Section 44(a) of the draft states 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”.
- 3.4 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings. In its draft form, the new Penal Code would provide a legal defence for the use of force to punish children in institutions and other care settings (see para. 3.3, above).
- 3.5 **Day care (lawful):** There is no explicit prohibition of corporal punishment in early childhood care or in day care for older children. In its draft form, the new Penal Code would provide a legal defence for the use of force to punish children in day care settings (see para. 3.3, above).
- 3.6 **Schools (lawful):** There is no explicit prohibition of all corporal punishment. Article 10 of the Law on the Protection of the Rights of the Child 1991 states that punishment in school “must be appropriate to the age of the child and should not be physically or psychologically harmful to the child”. The Ministry of Education has stated that corporal punishment should not be used, but in its draft form the new Penal Code would allow teachers to use force for the “prevention or punishment of [the child’s] misconduct”.
- 3.7 **Penal institutions (lawful):** There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. The draft Penal Code would legalise corporal punishment in institutions (see para. 3.3). The Prisons and Parole Act 2013 was adopted in December 2013: we have yet to see the final text. In its draft form, the Bill included explicit prohibition of corporal punishment (art. 163) but it appeared to apply to adults only. We are not aware of comparable legislation being drafted in relation to children in detention.
- 3.8 **Sentence for crime (lawful):** The Law on the Protection of the Rights of the Child 1991 prohibits cruel and degrading punishment on children but the Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors 2006 states that children from the age of puberty may be held criminally responsible for committing apostasy, revolution against the state, fornication, falsely accusing a person of fornication, consumption of alcohol, unlawful intentional killing and other offences relating to homicide (arts. 4 and 5). These are offences for which *hadd* is prescribed in Islam, including flogging. From the age of 15, children can be convicted of a wider range of offences under Shari’a law. The Disobedience Law also provides for corporal punishment as a sentence.

¹⁰ 5 July 2012, CCPR/C/MDV/Q/1/Add.1, Written replies to the Human Rights Committee, para. 73

3.9 A review commissioned by the Attorney General recommended the abolition of flogging,¹¹ but in its draft form the new Penal Code authorised lashes for certain offences (arts. 411, 413, 612 and 616), and in April 2013 was further amended to provide for Shari'a punishments including amputations: we are seeking confirmation that these provisions are also in the Code as adopted in April 2014. Another review recommended the drafting of a new Juvenile Justice Act and foresaw the abolition of flogging for juveniles and adults.¹² The failure to pass new legislation was noted by the Government in a media statement it issued on 28 February 2013 in response to a 15 year old girl being sentenced by the Juvenile Court to flogging.

4 Recommendations by human rights treaty monitoring bodies

4.1 **CRC:** In 2007, the Committee on the Rights of the Child expressed concern that the draft Penal Code then under discussion would authorise corporal punishment of children in all settings. The Committee recommended that corporal punishment be abolished as a sentence for crime and for disciplinary purposes and that the draft Penal Code be amended to comply with international human rights standards.¹³

4.2 **HRC:** In 2012, the Human Rights Committee recommended that flogging be abolished in the Maldives and that corporal punishment be explicitly prohibited in all institutional settings.¹⁴

4.3 **SPT:** Following a visit to the Maldives, the Subcommittee on Prevention of Torture recommended in 2009 that all corporal punishment of children be prohibited, as a sentence for crime and as a disciplinary measure.¹⁵

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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September 2014

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.

¹¹ Robinson, Paul H. & Diver, C. S. (2004), *Report on the Criminal Justice System of the Republic of Maldives: Proposals for Reform*, para. 6.4

¹² Alder, C. & Polk, K. (2004), *Strategic Plan for the Reform of the Juvenile Justice System*, p.7

¹³ 13 July 2007, CRC/CDV/CO/3, Concluding observations on second/third report, paras. 55, 56, 62, 63, 98 and 99

¹⁴ 31 August 2012, CCPR/C/MDV/CO/1, Concluding observations on initial report, para. 16

¹⁵ 26 February 2009, CAT/OP/MDV/1, Report on first periodic visit, para. 26, 27, 28, 29, 192, 194, 195, 196, 207 and 248