



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

BRIEFING ON THE MALDIVES FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Jul 2014

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The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006), addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

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. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

This briefing describes the legality of corporal punishment of children in the Maldives. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, the recommendations to the Maldives by treaty monitoring bodies and during the UPR (accepted by the Government), and the Government’s stated commitment to enacting prohibiting legislation, we hope the Committee on the Elimination of Discrimination Against Women will:

- **raise the issue of corporal punishment of girls in its List of Issues for the Maldives, asking what progress has been made towards ensuring that corporal punishment is prohibited in all settings, including the home and as a punishment under Sharia law, and**
- **recommend to the Maldives, in the concluding observations on the fourth/fifth state party report, that the law clearly prohibit all forms of corporal punishment in all settings, including in the home and as a sentence for crimes under Islamic law.**

1 The state party's report to CEDAW

1.1 At the time of preparing this briefing, the fourth/fifth report of the Maldives to CEDAW is not available.

2 The legality of corporal punishment of children in the Maldives

2.1 **Summary:** In the Maldives, corporal punishment of children – girls and boys – is lawful in all settings, the home, alternative care settings, day care, schools, penal institutions, and as a sentence for crime. The Government has publicly committed to enacting prohibiting legislation, but recent law reform re-authorises corporal punishment.

2.2 **Home (lawful):** There is no legal defence for the use of corporal punishment by parents in the Penal Code 1968 (amended 2002), but legal provisions against violence and abuse – including in the Domestic Violence Act 2012 – are not interpreted as prohibiting corporal punishment of children. The Law on the Protection of the Rights of the Child 1991 prohibits only corporal punishment which is considered to put the child at risk of injury (art. 18). However, the Government has also stated that it has “identified the actions and measures to prohibit all corporal punishment in all settings”,¹ thus confirming the commitment to enacting prohibiting legislation originally made 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. In 2010 a Children’s Bill was being drafted which would reportedly prohibit corporal punishment in all settings.² However, as at May 2014 it appears that no new child law has been enacted.

2.3 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”.

2.4 **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. 2.3, above).

2.5 **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. 2.3, above).

2.6 **Schools (lawful):** There is no explicit prohibition of all corporal punishment in schools. 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 introduce a legal defence for the use of corporal punishment by teachers (see para. 2.3, above). An Education Bill has been under discussion since 2009: it was reviewed by the Committee on National Development in October 2012 and recommendations for further amendments were made but we have no detailed information on the proposed provisions.

2.7 **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

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

² National action plan to prohibit all corporal punishment, SAIEVAC workshop on Legal Reform and Corporal Punishment, November 2010, Kathmandu

punishment in institutions (see para. 2.3, above). The Prisons and Parole Act 2013 was adopted in December 2013. We have yet to see the final text: as a draft it included explicit prohibition of corporal punishment (art. 163) but it appeared to apply to adults only.

2.8 **Sentence for crime (lawful):** Corporal punishment is lawful as a sentence for crime, including for girls. The Law on the Protection of the Rights of the Child 1991 prohibits cruel and degrading punishment of children, and the current Penal Code does not authorise judicial corporal punishment. However, the Penal Code does not apply to offences under Sharia law or to certain other offences. 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 Sharia law. The Disobedience Law also provides for corporal punishment as a sentence.

2.9 A review commissioned by the Attorney General recommended the abolition of flogging,³ 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 Sharia 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.⁴ A Juvenile Justice Bill has long been under discussion: we have no details of its provisions. The failure to pass this and other 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. The Government expressed “deep concern”, referred to the Convention on the Rights of the Child and announced the establishment of a Committee to review existing child protection mechanisms, particularly legislation.

3 Recommendations by human right treaty monitoring bodies and during the UPR

3.1 **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.⁵

3.2 **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.⁶

3.3 **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.⁷

3.4 **UPR:** The Maldives was examined in the first cycle of the Universal Periodic Review in 2010. During the review, the Government stated it had no plans to abolish flogging under Sharia law but was concerned that it was being imposed in a discriminatory way against women and a moratorium was being considered.⁸ The Government partially accepted recommendations on corporal punishment, stating that the new draft Penal Code is “designed to combine Shariah law

³ Robinson, Paul H. & Diver, C. S. (2004), *Report on the Criminal Justice System of the Republic of Maldives: Proposals for Reform*, para. 6.4

⁴ Alder, C. & Polk, K. (2004), *Strategic Plan for the Reform of the Juvenile Justice System*, p.7

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

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

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

⁸ 4 January 2011, A/HRC/16/7, Report of the working group, paras. 33 and 68

with international human rights law and best practice” but also “notwithstanding, the new draft Penal Code does include provisions on corporal punishment.”⁹

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⁹ 14 March 2011, A/HRC/16/7/Add.1, Report of the working group: Addendum, para. 100(55)