

BRIEFING ON SOMALIA FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 62nd session (Nov/Dec 2017)

From the Global Initiative to End All Corporal Punishment of Children, June 2017



Global Initiative to
End All Corporal Punishment
of Children

This briefing describes the legality of corporal punishment of children in Somalia. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General's Study on Violence against Children, the relevant recommendations made to Somalia during the UPR in 2016, and the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee Against Torture will:

- **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Somalia, in particular asking what progress is being made on ensuring that legislation which prohibits corporal punishment of children in all settings – including in the home and as a sentence for a crime – is drafted and enacted as a matter of priority, and**
- **recommend, in the concluding observations on the initial state party report, that Somalia enact legislation explicitly prohibiting all corporal punishment of children in all settings and throughout the territory, as a matter of priority.**

1 The legality of corporal punishment of children in Somalia

- 1.1 Summary:** In Somalia, corporal punishment is unlawful under the Somaliland Constitution in some settings, but it is not prohibited elsewhere in Somalia. Children may lawfully be hit and hurt in the guise of “discipline” in the home, alternative care settings, day care, schools and in the penal system.
- 1.2 Home (lawful):** Article 439 of the Penal Code 1962 punishes assault but article 442(2) states: “The parent who commits the act referred to in article 439 shall not be punishable.” Article 442(1) of the Code prescribes reduced punishments for homicide and hurt when the perpetrator is the parent. Articles 431 and 432 punish abuse of measures of correction or discipline and ill-treatment of children and members of the family.
- 1.3 The Provisional Federal Constitution 2012** states that human dignity “is the basis for all human rights” and “is inviolable and must be protected by all” (art. 10). It also states that “every person has the right to person security, and this includes ... all forms of violence, including any form of violence against women, torture, or inhumane treatment” (art. 15), and “every child has the right to be protected from mistreatment, neglect, abuse, or degradation” (art. 29). It is the duty of each citizen “to promote responsible parenthood” (art. 42). There is no indication that these provisions are to be interpreted as prohibiting all corporal punishment of children. The Government reported

- 1.11 In Somaliland, corporal punishment is unlawful in penal institutions under article 24 of the Constitution 2001. In Puntland, the Constitution 2012 states every person's right to "protection of his/her body and self esteem" (art. 17), the right of an accused person "to protection, security and human dignity" (art. 26) and the "entitlement" of a convicted person "to the universal rights guaranteed to prisoners worldwide" (art. 27), but it does not prohibit corporal punishment.
- 1.12 **Sentence for crime (lawful):** Corporal punishment is lawful as a sentence for crime under Islamic law, except possibly in Somaliland. The Somali Penal Code and the national Juvenile Courts and Reformatories Law 1970 make no provision for judicial corporal punishment. The Provisional Federal Constitution 2012 states that "State power must not be exercised in a manner that violates human dignity" (art. 10): we do not know if this is interpreted as prohibiting judicial corporal punishment. There are numerous reports of the imposition of harsh punishments in Somalia. Many – but not all – concern extrajudicial punishments imposed by the armed opposition groups in South/Central Somalia.² There are also reports of amputations and flogging.³ Amputations carried out by al-Shabaab and Hizbul Islam are often in public before large crowds including children.⁴
- 1.13 In Somaliland, the judicial corporal punishment is unlawful under article 24 of the Constitution 2001 and article 2 of the Juvenile Justice Law 2007. The Puntland Constitution 2012 states that "no one can be subjected to a punishment that was not decreed by a competent court of Law" (art. 25) and that "any person sentence by a court of Law shall have the right to protection, security and dignity as a human being" and "every prisoner shall be entitled to the universal rights granted to prisoners worldwide" (art. 27). There is no explicit prohibition of corporal punishment and it is not clear that the Constitutional provisions are intended to protect persons in conflict with the law from being sentenced to corporal punishment.

3 Recommendations during the UPR

- 3.1 **UPR:** Somalia was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 11). The Government accepted the recommendation to stop amputations and floggings in the context of the conflict.⁵ Examination in the second cycle took place in 2016 (session 24). Two recommendations were made on the prohibition of corporal punishment. The Government "noted" the recommendations, and stated that the one related to the prohibition in "all settings, including the home" was "too broadly formulated".⁶

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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² For example, see A/HRC/12/44, 17 September 2009, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*

³ For example, see A/HRC/13/65, 23 March 2010, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*; A/HRC/12/44, 17 September 2009, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*; Human Rights Watch (2010), *Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia*, NY: Human Rights Watch

⁴ www.handsoffcain.info/, accessed 21 February 2011

⁵ SPR/UNOG/000431/11, Information provided by the Government on pending recommendations, para. 98.71

⁶ 13 April 2016, A/HRC/32/12, Report of the working group, paras. 136(25) and 136(73)