



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

**BRIEFING ON AFGHANISTAN FOR THE COMMITTEE ON THE
ELIMINATION OF DISCRIMINATION AGAINST WOMEN
PRESESSIONAL WORKING GROUP – October 2012**

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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),¹ addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

This briefing describes the legality of corporal punishment of children in Afghanistan. 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 of treaty monitoring bodies and the opportunities for law reform as described in this briefing, 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 Afghanistan, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Afghanistan, in the concluding observations on the initial/second state party report, that corporal punishment be explicitly prohibited in all settings, including the home, as a matter of priority.**

¹ General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” is available at www2.ohchr.org/english/bodies/crc/comments.htm.

1 Afghanistan's initial/second report to CEDAW

1.1 The initial/second report of Afghanistan to CEDAW (21 December 2011, CEDAW/C/AFG/1-2) provides extensive information concerning violence against women and girls. However, it makes no mention of the violence that may lawfully be inflicted on girls and boys within the family and other settings in the guise of “discipline”.

2 The legality and practice of corporal punishment of children in Afghanistan

2.1 In Afghanistan, corporal punishment of children is unlawful in schools but it is lawful in the home, in alternative care settings and in the penal system, including as a sentence under Shari'a law.

2.2 In the **home**, 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”. The Juvenile Code (2005) prohibits “contemptuous and harsh punishment, even if for correction and rehabilitation purposes” (article 7) but it does not prohibit all forms of corporal punishment, however light. Provisions against violence in the Law on the Elimination of Violence against Women (2009) are not interpreted as prohibiting all corporal punishment in childrearing.

2.3 Qualitative research in 2008 found that physical violence occurred in all 61 case study families, most commonly slapping, verbal abuse, punching, kicking, and hitting with thin sticks, electrical cables and shoes. Less typical violence included shooting at children, tying them up, washing them in cold water outside during winter and public humiliation. Corporal punishment was used on children as young as 2 or 3. No clear difference between punishment of boys and of girls was found, but men were perceived as having more “rights” than women to be violent towards children in the family.²

2.4 Corporal punishment is prohibited in **schools** in article 39 of the Education Act (2008) but it continues to be used. In research in government schools in 2008, children were punished – mostly commonly by being beaten with a stick – in 100% of observed classes in boys' schools and 20% in girls' schools; children were often authorised to beat other children; the level of physical punishment has reportedly fallen since prohibition.³ However, schools continue to have a discipline/guards committee comprising teachers and students with full permission to use physical punishment on children.⁴

2.6 In the **penal system**, corporal punishment is lawful as a sentence for crime under Shari'a law. The Juvenile Code prohibits “contemptuous and harsh punishment” (article 7) but states in article 39 that children aged 12-17 are subject to reduced sanctions in the Penal Code. The Penal Code does not provide for judicial corporal punishment but it applies only to *Tazeeri* crime and penalties: *hodod*, *qassass* and *diat* crimes are punished in accordance with Islamic religious law. Under *Shari'a* law, these offences are punishable with corporal punishment, including flogging and amputation. 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. In 2010,

² Smith, Deborah J. (2008), *Love, Fear and Discipline: Everyday violence toward children in Afghan families*, Kabul: Afghanistan Research and Evaluation Unit

³ Abdul Ahad Samoon, A. A. et al (2011), *Learning without Fear: A Violence Free School Project*, Save the Children & Federal Republic of Germany Foreign Office

⁴ 8 April 2011, CRC/C/AFG/1, Concluding observations on initial report, para. 37

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

2.7 Corporal punishment is lawful as a disciplinary measure in penal institutions. Severe punishment is prohibited under the Juvenile Code (article 7) and 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 neither these laws nor the Law on Juvenile Rehabilitation Centres adopted in 2009 explicitly prohibit corporal punishment.

2.9 There is no explicit prohibition of corporal punishment in **alternative care settings**.

3 Afghanistan's commitment to law reform and current opportunities to achieve it

3.1 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 – the 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.⁶

3.2 In 2011, the Penal Code was being reviewed and the possibility of a new child law and/or revision of existing child-related legislation was being discussed. We do not know if prohibition of corporal punishment has been proposed in this context.

4 Recommendations by human right treaty monitoring bodies

4.1 In its concluding observations on the state party's initial report in 2011, the **Committee on the Rights of the Child** expressed concern at the use of corporal punishment in schools in spite of prohibition and recommended that prohibition of corporal punishment in the family, schools and institutions be enacted and effectively implemented.⁷

4.2 In 2010, following examination of Afghanistan's second to fourth periodic report, the **Committee on Economic, Social and Cultural Rights** recommended that corporal punishment of children be prohibited in all settings.⁸

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

⁶ South Asia Initiative to End Violence against Children with Global Initiative to End All Corporal Punishment of Children & Save the Children Sweden (2011), *Prohibition of Corporal Punishment of Children in South Asia : a progress review*

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

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