

Corporal punishment of children in Myanmar: Briefing for the Universal Periodic Review, 23rd 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 Myanmar, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and during the 1st cycle UPR of Myanmar (which the Government rejected).

We hope the Working Group will note with concern the legality of corporal punishment of children in Myanmar. We hope states will raise the issue during the review in 2015 and make a specific recommendation that Myanmar clearly prohibit all corporal punishment of children in all settings including the home and repeal the defences for its use in the Child Law and the Penal Code.

1 Review of Myanmar in the 1st cycle UPR (2011) and progress since then

1.1 Myanmar was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 10).

The issue of corporal punishment of children was raised in an advanced question by Norway, the compilation of UN information¹ and in the summary of stakeholders' information.² The following recommendation was made:³

“With regard to children, ... to ban corporal punishment in families and schools and other institutions, by organizing educational campaigns; and start reforms in the juvenile justice system, following the Convention and the international standards by increasing the age of criminal responsibility (Uruguay)”

1.2 The Government rejected this recommendation and stated “corporal punishment and humiliating punishment are strictly prohibited in schools in Myanmar”.⁴

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. Since the initial UPR of Myanmar in 2011, there appears to have been no change to the legality of corporal punishment of children, though prohibition is possibly included in the new Early

¹ 15 November 2010, A/HRC/WG.6/10/MMR/2, Compilation of UN information, para. 33

² 18 October 2010, A/HRC/WG.6/10/MMR/3, Summary of stakeholders' information, paras. 11, 30 and 60

³ 24 March 2011, A/HRC/17/9, Report of the working group, para. 107(12)

⁴ 24 March 2011, A/HRC/17/9, Report of the working group, para. 58

Childhood Care and Development Law 2014. With regard to schools, we have been unable to verify Government claims that corporal punishment is prohibited – government directives advise against corporal punishment but there appears to be no prohibition in law. Corporal punishment is lawful in Myanmar in the home, alternative care settings, day care and penal institutions. In 2012, the Committee on the Rights of the Child recommended law reform to end corporal punishment in Myanmar for a third time (see para. 3.1 below). Laws are currently being revised and drafted which provide key opportunities for achieving prohibition of corporal punishment.

2 Legality of corporal punishment in Myanmar

- 2.1 **Summary:** In Myanmar, corporal punishment of children is unlawful as a sentence for crime but it is lawful in the home, alternative care settings, day care, schools and penal institutions. **The current review of the Child Law and the drafting of the new National Education Law provide key opportunities for prohibiting all corporal punishment.**
- 2.2 **Home (lawful):** Article 66 of the Child Law 1993 (revised 1999) provides for “the type of admonition by a parent, teacher or a person having the right to control the child, which is for the benefit of the child”. Article 89 of the Penal Code states that, with certain provisos, “nothing which is done in good faith for the benefit of a person under twelve years of age ... of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person”.
- 2.3 The Child Law 1993 is being reviewed. The Government of Myanmar collaborated with UNICEF to produce an analysis of the situation of children which draws attention to conflict between the Child Law and the Convention on the Rights of the Child, including the lack of explicit prohibition of corporal punishment and the provision for “admonition” of a child; the report recommends amending the Child Law “to remove scope for allowing physical punishment of children”.⁵
- 2.4 **Alternative care settings (lawful):** Corporal punishment is lawful under article 66 of the Child Law 1993 and article 89 of the Penal Code. The Early Childhood Care and Development Law 2014 was enacted in February 2014: we have yet to obtain the full text.
- 2.5 **Day care (lawful):** Corporal punishment is lawful in day care under article 66 of the Child Law 1993 and article 89 of the Penal Code. We have yet to ascertain if the Early Childhood Care and Development Law includes prohibition of corporal punishment.
- 2.6 **Schools (?lawful):** Government directives state that corporal punishment should not be used in schools but there is no explicit prohibition in law and corporal punishment is lawful under article 66 of the Child Law 1993 and article 89 of the Penal Code. In its written replies to the Committee on the Rights of the Child in 2011, the Government stated that the process indicators of a child friendly school include “teachers must practice positive, non-aggressive and alternative discipline” and “therefore” corporal punishment is prohibited in schools.⁶ The concluding observations of the Committee on the Rights of the Child on the third/fourth report indicate that there is prohibition in law⁷ but we have been unable to identify prohibiting legislation. The Government similarly asserted that corporal punishment is prohibited in schools during the Universal Periodic Review of Myanmar in 2011 but gave no specific legal references.⁸ A draft National Education Law is under consideration which provides an immediate opportunity to prohibit corporal punishment in schools.

⁵ Ministry of National Planning and Economic Development & UNICEF (2012), *Situation Analysis of Children in Myanmar*, Nay Pyi Taw: UNICEF/Government of Myanmar

⁶ 12 January 2012, CRC/C/MMR/Q/3-4/Add.1, Reply to list of issues, para. 53

⁷ 14 March 2012, CRC/C/MMR/CO/3-4, Concluding observations on third/fourth report, para. 53

⁸ 24 March 2011, A/HRC/17/9, Report of the working group, para. 58

- 2.7 **Penal institutions (lawful):** Corporal punishment is lawful under the Prisons Act (arts. 46, 47, 50, 51 and 53), including of children under 16. Discipline in training schools and prisons is also provided for in the Rules of the Child Law 2001, but there is no mention of corporal punishment.
- 2.8 **Sentence for crime (unlawful):** Corporal punishment is prohibited as a sentence for children below the age of 16 years under article 45 of the Child Law 1993: “Notwithstanding anything contained in any existing law, a death sentence, transportation for life or a sentence of whipping shall not be passed on any child.” For children aged 16-17 whipping is unlawful under Rule 100 of the Rules of the Child Law 2001. There is no provision for corporal punishment in the Penal Code. However, it appears that provisions for whipping have yet to be repealed from the Criminal Procedure Code (art. 392), the Whipping Act and the Citizenship Act.

3 Recommendations by human rights treaty monitoring bodies

- 3.1 **CRC:** The Committee on the Rights of the Child first raised the issue of corporal punishment in Myanmar in 1997, recommending that laws authorising corporal punishment be repealed.⁹ In 2004¹⁰ and again in 2012¹¹ the Committee reiterated its concerns and recommended prohibition of corporal punishment in all settings in Myanmar, including in the home.

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

⁹ 24 January 1997, CRC/C/15/Add.69, Concluding observations on initial report, para. 28

¹⁰ 30 June 2004, CRC/C/15/Add.237, Concluding observations on second report, paras. 7, 8, 38 and 39

¹¹ 14 March 2012, CRC/C/MMR/CO/3-4, Concluding observations on third/fourth report, paras. 53 and 54