

Corporal punishment of children in Somalia: Briefing for the Universal Periodic Review, 24th session, 2016

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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. Somalia is in the process of ratifying the Convention on the Rights of the Child.

We hope the Working Group will note with concern that corporal punishment of children is lawful in Somalia. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Somalia clearly prohibit all corporal punishment of children in all settings including the home.

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

- 1.1 Somalia was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 11). The issue of corporal punishment in society generally was raised in the compilation of UN information¹ and corporal punishment of children specifically was raised in the summary of stakeholders' information.² The Government accepted the recommendation to stop amputations and floggings in the context of the conflict.³
- 1.2 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 UPR in 2011, the Provisional Federal Constitution 2012 has been adopted which confirms every person's right to be protected from "all forms of violence" but it does not explicitly prohibit all corporal punishment in childrearing. Similarly, the Puntland Constitution 2012 provides general protection for every person's physical integrity but does not specifically prohibit corporal punishment of children. It is essential that prohibition of corporal punishment is clear and explicit in law so as to send a clear message which counters the widespread and longstanding acceptance of its use in childrearing and education.
- 1.3 **We hope the Working Group will note with concern that corporal punishment of children is lawful in Somalia. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Somalia clearly prohibit all corporal punishment of children in all settings including the home.**

¹ 21 February 2011, A/HRC/WG.6/11/SOM/2, Compilation of UN information, para. 23

² 21 February 2011, A/HRC/WG.6/11/SOM/3, Summary of stakeholders' information, para. 32

³ SPR/UNOG/000431/11, Information provided by the Government on pending recommendations, para. 98.71

2 Legality of corporal punishment in Somalia

- 2.1 **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 the penal system.
- 2.2 **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.
- 2.3 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.
- 2.4 In Somaliland, the Constitution 2001 states in article 24(2): “Every person shall have the right to security of his person. Physical punishment and any other injury to the person is prohibited.” Article 128 states that the Constitution “shall be the supreme law of the land, and any law which does not conform to it shall be null and void”. However, further reform is necessary to confirm the applicability of the prohibition to corporal punishment of children in the home and to repeal article 442(2) of the Penal Code. The Puntland Constitution 2012 states that every person has a right to life and to “protection of his/her body and self esteem” (art. 17) but it does not prohibit corporal punishment.
- 2.5 **Alternative care settings (lawful):** The Provisional Federal Constitution 2012 states that “State power must not be exercised in a manner that violates human dignity” (art. 10) and protects every person from “all forms of violence” (art. 15) and children from “mistreatment, neglect, abuse, or degradation” (art. 29) but there is no indication that this protects children from all corporal punishment.
- 2.6 In Somaliland, corporal punishment is possibly unlawful in institutions under the prohibition of physical punishment in the Constitution 2001 (art. 24) but further law reform is necessary to confirm its applicability to all forms of care. In Puntland, the Constitution 2012 states every person’s right to “protection of his/her body and self esteem” (art. 17) but it does not prohibit corporal punishment.
- 2.7 **Day care (lawful):** The Provisional Federal Constitution 2012 states that “State power must not be exercised in a manner that violates human dignity” (art. 10) and protects every person from “all forms of violence” (art. 15) and children from “mistreatment, neglect, abuse, or degradation” (art. 29) but there is no indication that this protects children from all corporal punishment.
- 2.8 In Somaliland, corporal punishment is possibly unlawful in institutions under the prohibition of physical punishment in the Constitution 2001 (art. 24) but further law reform is necessary to confirm its applicability to all forms of care. In Puntland, the Constitution 2012 states every person’s right to “protection of his/her body and self esteem” (art. 17) but it does not prohibit corporal punishment.
- 2.9 **Schools (unlawful):** In Puntland, the Ministry of Education issued a Decree stating that corporal punishment should not be used but there is no prohibition in law. The Provisional Federal Constitution 2012 states that “State power must not be exercised in a manner that violates human

dignity” (art. 10) and protects every person from “all forms of violence” (art. 15) and children from “mistreatment, neglect, abuse, or degradation” (art. 29) but there is no indication that this protects children from all corporal punishment. Corporal punishment appears to be unlawful in Somaliland under the prohibition of physical punishment in article 24 of the Somaliland Constitution 2001 (unconfirmed).

- 2.10 **Penal institutions (lawful):** There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions, though the Transitional Charter of the Somali Republic prohibits “physical or moral violence or action against a person subject to restriction of personal liberty” (art. 16). The Provisional Federal Constitution 2012 states that “State power must not be exercised in a manner that violates human dignity” (art. 10) but there is no indication that this, or the protection from violence, abuse and degradation (arts. 15 and 29) protect children from all corporal punishment.
- 2.11 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.
- 2.12 **Sentence for crime (unlawful):** 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. Many – but not all – concern extrajudicial punishments imposed by the armed opposition groups in South/Central Somalia.⁴ There are also reports of amputations and flogging.⁵ Amputations carried out by al-Shabaab and Hizbul Islam are often in public before large crowds including children.⁶
- 2.13 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.

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.

⁴ 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*

⁵ 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

⁶ www.handsoffcain.info/, accessed 21 February 2011