

Corporal punishment of children in Iran: Briefing for the Universal Periodic Review, 20th session, 2014

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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 Iran, corporal punishment of children is currently lawful, despite repeated recommendations by the Committee on the Rights of the Child and the Human Rights Committee. The new Penal Code does not prohibit corporal punishment of children, including as a sentence for crime.

We hope the Working Group will note with concern the legality of corporal punishment of children in Iran. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Iran to use the law reforms currently under way to explicitly prohibit corporal punishment in the home and all other settings, including as a sentence under Islamic law and including explicit repeal of the right of “correction” in the Civil and Penal Codes and the Act on Protection of Children and Adolescents.

1 The initial review of Iran by the Human Rights Council (2010)

- 1.1 Iran was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was raised in the compilation of UN information¹ and the summary of stakeholders information.² The Government rejected the recommendation to end cruel punishments, stating that “the term of ‘cruel punishment’ is applicable to none of the punishments stipulated in the laws of the country”.³
- 1.2 As a state party to the Convention on the Rights of the Child, Iran is under a legal obligation to prohibit and eliminate all corporal punishment of children in all settings, including the home. The meaning of corporal punishment in this respect is set out clearly in General Comment No. 8 adopted by the Committee on the Rights of the Child in 2006.⁴

¹ 25 November 2009, A/HRC/WG.6/7/IRN/2, Compilation of UN information, paras. 7, 26, 31 and 34

² 30 November 2009, A/HRC/WG.6/7/IRN/3, Summary of stakeholders' information, paras. 26, 32 and 45

³ 3 June 2010, A/HRC/14/12/Add.1, Report of the working group: Addendum, para. 19

⁴ Committee on the Rights of the Child (2006), General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)”, para. 11: “The Committee defines ‘corporal’ or ‘physical’ punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also

The obligation to prohibit is fulfilled only when punishments such as these are no longer lawful, regardless of disputes about terminology.

- 1.3 Corporal punishment of children has long been lawful in Iran – in the home and care settings as well as in the penal system as a sentence under Islamic law. Efforts have been made to strengthen children’s legal protection from violence, but legislation continues to provide for the right of parents and others to impose corporal punishment on children. Recent moves to reform the penal laws, including in relation to juvenile justice, have not achieved prohibition of all corporal punishment of children convicted of crimes under Islamic law. **We respectfully urge members of the Working Group to remind Iran of its obligations to prohibit all corporal punishment of children and to make specific recommendations that legislation is enacted to explicitly prohibit corporal punishment in all settings, including the home and as a sentence for crime, and to repeal all laws providing for a right of “correction”.**

2 Legality and practice of corporal punishment in Iran

- 2.1 **Summary:** Corporal punishment of children in Iran is prohibited in penal institutions, but it is not prohibited in the home, alternative care settings, day care, schools and as a sentence for crime. A new Penal Code was adopted in 2013: we have been unable to obtain an official English translation and our analysis is therefore preliminary and tentative, but it appears that the new Code permits corporal punishment of children by parents and legal guardians in the home and other settings, as well as its imposition for crimes under Islamic law.
- 2.2 **Home (lawful):** Article 1179 of the Civil Code 1935 (amended 1991) states: “Parents are entitled to punish their children but they must not abuse this right by punishing their children beyond the limits of correction.” The Islamic Penal Code 1991 as amended to 2012 provided for the right of parents to impose corporal punishment, stating in article 59 that “acts committed by parents and legal guardians of minors and insane people in order to chastise or protect them” are not considered an offence “provided that chastisement and protection are exercised within the customary limit”. This provision appears to be reiterated in the Penal Code 2013, with article 158 stating that it is not an offence when parents or legal guardian discipline their children “provided that the disciplinary measures are within the bounds of religion and custom” (unofficial translation).
- 2.3 The Act on Protection of Children and Adolescents 2002 prohibits “all kinds of abuse leading to physical, mental or moral damage to the child endangering their physical or mental health” (art. 2), but states that “actions under the framework of article 59 of Islamic Punishment Laws ratified on 07/09/1370 (1991) and article 1179 of civil law ratified on 19/01/1314 (1935) are excluded from this law” (art. 7). The Act is being revised but proposed amendments do not include prohibition of all corporal punishment. As at March 2013, a Bill to amend the Act on Protection of Children and Adolescents had

involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”

been approved and submitted to Parliament.⁵ According to the Government's 2013 report to the Committee on the Rights of the Child, it broadens the concepts of torture and inhuman treatment of children to include continuous bullying of them and further protects children by punishing "excessive misinterpretation" of the Civil and Penal Code articles allowing "reasonable punishment or punishment for correction or protection purposes".⁶

2.4 According to UNICEF statistics collected between 2005 and 2012, 79% of children aged 2-14 experienced "violent discipline" (physical punishment and/or psychological aggression) in the home in the month prior to the survey: 81% of boys and 77% of girls.⁷

2.5 **Alternative care settings (lawful):** Corporal punishment is lawful under provisions for "correction" of children in the Civil Code 1935 (art. 1179), the Islamic Penal Code 2013 (art. 158) and the Child Protection Law 2002 (art. 7) (see above, paras. 2.2 and 2.3). The Act on Protection of Children and Adolescents Lacking a Competent Guardian was adopted in October 2013. To our knowledge, it does not prohibit corporal punishment (unconfirmed).

2.6 **Day care (partially prohibited):** Corporal punishment is prohibited in day care centres (kindergartens) in article 8(23) of the Amended Regulations for Establishment, Management and Dissolution of All Forms of Day Care Centres 2008, which in the context of rules and regulations refers to the "absence of any kind of humiliation and any kind of punishment and corporal punishment of children". Corporal punishment is lawful in other early childhood care and in day care for older children under provisions for "correction" of children in the Civil Code 1935 (art. 1179), the Islamic Penal Code 2013 (art. 158) and the Child Protection Law 2002 (art. 7) (see above, paras. 2.2 and 2.3).

2.7 **Schools (lawful):** A Government Directive advises against the use of corporal punishment in schools but there appears to be no explicit prohibition in legislation. The Schools Executive Directive ratified by the Higher Council of Education on 10 August 2000 states that "disciplining students must be conducted in a manner that students realize how they have been at fault and encourage them for demonstration of positive behaviour" (art. 75). Article 76 of the Directive sets out disciplinary measures which may be taken, and these do not include corporal punishment. Article 77 states: "Any other type of disciplining including verbal abuse, corporal punishment, and assigning classwork/homework as a measure for disciplining is prohibited and to be avoided."

2.8 **Penal institutions (unlawful):** Corporal punishment is prohibited in juvenile correction centres. Article 169 of the Executive Regulations of the Prisons Organisation, Correction and Security Measures 2005 states: "Aggressive behaviour, verbal abuse of the accused and convicts or administering harsh and insulting disciplinary measures are forbidden in any manner in institutions and prisons."

2.9 **Sentence for crime (lawful):** The Islamic Penal Code 1991, as amended to 2012, included extensive provision for judicial corporal punishment, including children – including lashing, retaliation for injury and amputation. Crimes punishable by corporal punishment included *had* and *ta'zir* offences. The Code itself set out how these punishments were to be inflicted, with further details provided in the Directive on Implementation Regulations for Sentences of Retribution-in-Kind, Stoning, Murder, Crucifixion, Death Penalty, and Flogging 2003 (arts. 27 to 35). Our preliminary analysis of the new Penal Code 2013

⁵ [March 2013], Advance Unedited Version, Third state party report to the Committee on the Rights of the Child

⁶ [March 2013], Advance Unedited Version, Third state party report, page 25

⁷ UNICEF (2014), *The State of the World's Children 2014 in Numbers: Every Child Counts*, NY: UNICEF

suggests that while there have been some limitations on punishment of children, persons under 18 remain liable to corporal punishment for some crimes.

- 2.10 Under the new Penal Code 2013, children below the age of puberty are not criminally responsible. As in the Civil Code 1935 (art. 1210), the Penal Code defines puberty as age 9 for girls and 15 for boys (art. 147). Children below the age of puberty are subject to measures of [?security] and education (art. 148). Articles 88 to 95 of the new Code set out the measures applicable to older children and adolescents. Children below the age of 15 convicted of a crime, including *had* or retribution crimes, may be subjected to a number of measures, including strict supervision by parents or legal guardians; corporal punishment is not among the measures listed (art. 88). A list of measures applicable to children aged between 15 and 18 similarly appears not to include corporal punishment (art. 89) (unconfirmed). Article 91 addresses the conviction of persons under 18 of *had* or *qisas* crimes but we have yet to obtain a meaningful translation of this provision (traditionally, these crimes attract corporal punishment). It appears from other articles in the Code (e.g. articles 233ff, 244ff) that punishments stipulated for *had* crimes, including lashing, stoning and amputation, may be imposed from the age of 15 (unconfirmed).
- 2.11 In 2013, the Government reported to the Committee on the Rights of the Child that the Head of the Judiciary has issued a “circular to prohibit applying *qisas* (death or corporal punishment for the crime of murder) on children and adolescents”.⁸ As at March 2013, a draft Bill on Prosecution of Crimes Committed by Children is under discussion which states that irrespective of their sex, children up to 9 years old are exempt from criminal liability, children aged 9-12 may be subject to training-corrective measures, children aged 12-15 may be subject to training-punishment measures and children aged 15-18 might be subject to minimized punishments.⁹ We have no further details but it appears that these reforms, like the provisions in the new Penal Code, limit but would not prohibit all corporal punishment of children.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has twice recommended to Iran that all corporal punishment of children be prohibited, including in the home – in its concluding observations on the state party’s initial report in 2000¹⁰ and on the second report in 2005.¹¹
- 3.2 **HRC:** In 1993, the Human Rights Committee recommended abolition of punishments of flogging, lapidation and amputation in Iran.¹² In 2011, the Committee recommended both abolition of judicial corporal punishments and prohibition of corporal punishment of children in the home and in alternative care settings.¹³

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March 2014

⁸ [March 2013], Advance Unedited Version, Third state party report, page 91

⁹ Report to CRC, Advance Unedited Version, Third state party report, page 80

¹⁰ 28 June 2000, CRC/C/15/Add.123, Concluding observations on initial report, paras. 37, 38, 39 and 40

¹¹ 31 March 2005, CRC/C/15/Add.254, Concluding observations on second report, paras. 45, 46, 47, 48, 72 and 73

¹² 3 August 1993, CCPR/C/79/Add.25, Concluding observations on second report, paras. 5, 11 and 19

¹³ 29 November 2011, CCPR/C/IRN/CO/3, Concluding observations on third report, para. 16

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.