

Corporal punishment of children in Cambodia

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Child population 5,850,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Cambodia's commitment to prohibiting corporal punishment

Cambodia expressed its commitment to prohibiting all corporal punishment of children when it became a Pathfinder country in September 2019, as a senior representative from the Ministry of Social Affairs, Veterans and Youth Rehabilitation confirmed that law reform prohibiting corporal punishment in all settings was a priority. Law reform is also included in the Action Plan to Prevent and Respond to Violence Against Children 2017-2021.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings and day care.

The Civil Code states in article 1045 that “the parental power holder may personally discipline the child to the extent necessary” (unofficial translation), and article 1079 extends this “right to discipline” to guardians. Article 8 of the Law on the Prevention of Domestic Violence and the Protection of Victims 2005 states that traditional discipline of children should not be considered as violence or domestic violence. It is essential that the law is clear that any right under parental authority to discipline a child, whether in the home, schools or alternative care settings, does not include a right to inflict corporal or other humiliating punishment. The law needs should be amended to prohibit all corporal punishment and other cruel or degrading forms of punishment.

Alternative care settings – Corporal punishment should be prohibited in all alternative care settings (foster care, institutions, orphanages, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, preschools, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. The Civil Code states that “the parental power holder may personally discipline the child to the extent necessary” (art. 1045, unofficial translation). Article 1079 extends this “right to discipline” to the child’s guardian. Article 8 of the Law on the Prevention of Domestic Violence and the Protection of Victims 2005 states that discipline of children is not considered as violence or domestic violence. Article 48 of the Constitution 1999 states that “the State shall protect the rights of children as stipulated in the Convention on Children”, but legal provisions against violence and abuse in the Constitution 1999 and in the Marriage and Family Law 1989 and the Criminal Code 2010 are not interpreted as prohibiting all corporal punishment in childrearing.

The Government reported to the Universal Periodic Review of Cambodia in 2014 that the Ministry of Social Affairs, Veterans and Rehabilitation and the National Council for Children have set up a working group to “initiate a Law on Child Protection”.¹ We do not know if prohibition of corporal punishment is being proposed in this context. Under examination by the Human Rights Committee in 2015, the Government confirmed that the law allows parents “to administer minor corporal punishment on their children”.² In 2018, the draft Law on Child Protection was still under discussions.³

The Action Plan to Prevent and Respond to Violence Against Children 2017-2021 committed to amending all relevant provisions to prohibit corporal punishment of children in all settings, in particular within the Civil Code and the Law on the Prevention of Domestic Violence and the Protection of Victims 2005, by 2019. Review of the Law on the Prevention of Domestic Violence and the Protection of Victims 2005 has reportedly begun.⁴ In reporting to the Human Rights Committee in 2019, the Government misleadingly stated that corporal punishment was “a criminal offense (...) punishable by law, even if it is done by parents or guardians”, citing the Law on the Prevention of Domestic Violence and the Protection of Victims 2005.⁵ Upon becoming a Pathfinder country with the Global Partnership to End Violence Against Children in September 2019, Cambodia expressed its commitment to prohibiting all corporal punishment of children, as a senior representative from the Ministry of Social Affairs, Veterans and Youth Rehabilitation confirmed that law reform prohibiting corporal punishment in all settings was a priority. Being a Pathfinder commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals.

Alternative care settings

Corporal punishment is lawful in alternative care settings under the provision in articles 1045 and 1079 of the Civil Code for a person with parental authority to discipline the child “within necessary scope” (see under “Home”).

¹ 21 November 2013, A/HRC/WG.6/18/KHM/1, National report to the UPR, para. 91

² 23 March 2015, CCPR/C/SR.3139, Summary record of 3139th session, para. 34

³ [2018], CRC/C/KHM/5-6, Fifth/sixth report, para. 7

⁴ Information provided to the Global Initiative, June 2019

⁵ 5 August 2019, CCPR/C/KHM/3, Third report, paras. 34 and 35

Day care

Corporal punishment is lawful in day care under the provision in articles 1045 and 1079 of the Civil Code for a person with parental authority to discipline the child “within necessary scope” (see under “Home”).

Schools

Corporal punishment is prohibited in public and private schools in article 35 of the Education Law 2007: “The learner’s rights concerning education are: ... the right to be respected and paid attention on human rights, especially the right to dignity, the right to be free from any form of torture or from physical and mental punishment....” A directive from the Ministry of Education, Youth and Sport, No. 922 MoEYS to the Director of Provincial Education, Youth and Sport on the subject of “Punishment for students” confirms that “physical punishments such as hitting, kneeling down, standing under the sun”, as well as mental punishments such as imposing copying of lessons that is impossible to achieve and making students feel bad and humiliated and punishments such as forcing students to do inappropriate tasks, are banned in all educational institutions throughout the country. Article 12 of the Sub-Decree on the Teachers Professional Code reportedly states that “teachers shall not physically and emotionally punish the learners that possible affect their learning”.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 5 of the Juvenile Justice Law 2016: ⁶ “All persons performing any function concerning to minor shall ensure the observance of the following principles: ... shall be prohibited torture, corporal punishment, or other treatment which is cruel, inhumane, or degrading in all forms” (unofficial translation). Article 2 states that the aims of the Law are to establish rules and procedures to deal with minors who have committed criminal offences.

According to article 38 of the Constitution 1999, “Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited”.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code or the Criminal Procedure Code 2007.

Universal Periodic Review of Cambodia’s human rights record

Cambodia was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁷

“Continue legal and judicial reforms and harmonization of the laws with international human rights instruments (Morocco);

⁶ <http://unicefcambodia.blogspot.co.uk/2016/09/case-study-long-road-to-juvenile.html>, accessed 15 May 2017

⁷ 4 January 2010, A/HRC/13/4, Report of the working group, paras. 82(5), 82(80) and 82(82)

“Continue the development of specific legislation to promote and protect the rights of the child, including civil society participation, preventive measures in education and reinsertion into society of minors in difficult situations (Spain);

“Continue to seek technical assistance in drafting legislation in the field of children’s rights (Slovenia)”

The second cycle review took place in 2014 (session 18). No recommendations were made specifically on corporal punishment of children but the Government accepted a number of relevant recommendations related to children’s rights, including the following:⁸

“Adopt and implement laws that prohibit all forms of ill-treatment of children and that protect them from forced labour, sexual exploitation and abuse (Portugal);

“Reform national legislation with the aim of improving the protection of children and women from violence and above all domestic violence (Russian Federation);

“Take the necessary measures to ensure that children and minors in rehabilitation centres and youth centres are not in any way submitted to torture or ill-treatment, in conformity with the provisions of the Convention on the Rights of the Child (Belgium);

“Continue taking measures to protect social rights, including the rights of children, women and persons with disabilities (Uzbekistan)”

Third cycle examination took place in 2019 (session 32). No recommendation was issued specifically on corporal punishment of children but Cambodia received several general recommendations on children’s rights:⁹

“Intensify efforts to improve human rights for women and combat human trafficking, domestic violence and exploitation of women and children (Norway);

“Strengthen efforts to protect the rights of the most vulnerable groups, such as women, children and persons with disabilities, also in order to prevent and combat child labour and sexual exploitation, as well as other forms of violence, including domestic violence (Italy);

“Reform the national legislation with a view to strengthening the protection of women and children against family violence (Russian Federation);

“Reinforce the judicial mechanisms to fight sexual and family violence and human trafficking and carry out a program for awareness raising and education on these issues (Togo);

“Continue strengthening laws and mechanisms that prohibit all forms of ill-treatment of children and that protect them from forced labour, sexual exploitation and abuse (Brunei Darussalam)”

The Government supported the recommendations.¹⁰

⁸ 27 March 2014, A/HRC/26/16, Report of the working group, paras. 118(26), 118(65), 118(66) and 118(137)

⁹ 5 April 2019, A/HRC/41/17, Report of the Working Group, paras. 110(171), 110(180), 110(185), 110(186) and 110(192)

¹⁰ 18 April 2019, A/HRC/41/17/Add.1, Report of the Working Group: Addendum

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(3 August 2011, CRC/C/KHM/CO/2-3, Concluding observations on second/third report, paras. 38, 39, 40 and 41)

“The Committee expresses deep concern about allegations that children and adolescents addicted to drugs, children with mental disabilities and children in street situations have been subjected to torture and ill-treatment, including widespread beatings, whippings and administration of electric shock in drug rehabilitation and youth centres where some of them had been forcibly placed.

“The Committee urges the State party to:

- a) ensure that children in any form of arbitrary detention, whether in drug treatment and rehabilitation, social rehabilitation or any other type of Government run centre are released without delay;
- b) ensure prompt investigation into allegations of ill treatment and torture of children in those centres and ensure that perpetrators are brought to justice;
- c) set up an independent child-sensitive mechanism to receive complaints against law enforcement officers and to provide victims with redress as already recommended by the Committee against Torture (CAT/C/KHM/CO/2, para. 20).

“While noting that the State party has adopted various legislation to prohibit corporal punishment, the Committee is however concerned that article 1045 of the Civil Code allows a “parental power holder to personally discipline the child to the extent necessary” and that article 8 of the Law on the Prevention of Domestic Violence and Protection of the Victims implicitly authorizes corporal punishment of children for disciplinary purposes. The Committee expresses concern that physical punishment is frequently viewed as a culturally acceptable form of discipline by parents and teachers and widely practiced in the State party.

“The Committee urges the State party to:

- a) repeal article 1045 of the Civil Code and provisions of the Law on the Prevention of Domestic Violence and Protection of the Victims authorizing corporal punishment of children;
- b) enact legislation to explicitly prohibit corporal punishment of children in all settings, including within the family;
- c) ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are systematically initiated against those responsible for violence against children;
- d) introduce public education, awareness-raising and social mobilization campaigns on the harmful effects of corporal punishment with a view to changing the general attitude towards this practice and promote positive, non-violent, participatory forms of child-rearing and education as an alternative to corporal punishment;
- e) refer to the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

Human Rights Committee

([April 2015], CCPR/C/KHM/CO/2 Advance Unedited Version, Concluding observations on second report)

"While recognizing that corporal punishment is prohibited in schools and the penal system, the Committee is concerned that its use remains legal in the home, where it traditionally continues to be accepted and practiced as a form of discipline by parents and guardians (art. 7 and 24).

The State party should take practical steps, including through legislative measures, where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects."

Human Rights Committee

(27 July 1999, CCPR/C/79/Add.108, Concluding observations on initial report, para. 15)

"The Committee is concerned at reports that children are detained in juvenile detention facilities for considerable periods without charge, and without access to a lawyer or to court. It is particularly concerned that these children are subjected to beatings and to ill-treatment.

The State party should ensure strict observance of articles 7, 9 and 10 and should take appropriate measures to ensure protection of children in accordance with article 24 of the Covenant."

Prevalence/attitudinal research in the last ten years

In a 2017 study on the socioeconomic and cultural factors that influence parents' acceptance of corporal punishment of children, involving 2,585 male and female participants, Cambodian mothers were more likely to accept corporal punishment than fathers and both were more likely to accept it for boys than girls. In total, 74% of mothers accepted physical punishment of sons, compared to 57% of fathers; 70% of mothers accepted physical punishment of daughters, compared to 47% of fathers. The main factor contributing to acceptance was found to be acceptance of violence against wives. The study also showed there are cultural differences in the reason for punishment; where mothers and fathers agreed sons (more than daughters) should be punished for 'disobedience', 'being impolite' and 'embarrassing the family', daughters were said to be more deserving of punishment for reasons such as 'not doing housework' and 'not taking care of younger siblings'.

(Reported in "Study explores Cambodia's use of corporal punishment", *The Phnom Penh Post*, 1 March 2017
<https://www.phnompenhpost.com/national/study-explores-cambodias-use-corporal-punishment>)

More mothers than fathers approved of corporal punishment of sons (74% compared to 57%) and daughters (70% of mothers compared to 47% of fathers). Both mothers and fathers approved of punishing sons (more than daughters) for 'disobedience', 'being impolite' and 'embarrassing the family'. However, for 'not doing housework' and 'not taking care of younger siblings', both parents were more approving of punishing girls than boys. Mothers were found to be more likely to approve of physical punishment of sons or daughters if they have more than two children, have no education or only primary education, do not have wealthy class status and/or live in rural areas. The same factors applied to fathers' approval of physical punishment of children, except the number of children.

(Seng Tola (2016), *Predictors of Parents' Perception of Physical Punishment of Children in Cambodia*, Seoul: EWha Womans University)

In a cross-sectional survey to estimate the burden of violence against children in Cambodia, children in the qualitative research described a wide range of ways that physical discipline can be meted out by teachers as punishment for unapproved behaviour, ranging from minor indiscretions to serious misbehaviours. Direct physical punishments included being beaten with a belt, hit on their body or hit with a ruler on the ends of fingernails, or forced to punch the table or whiteboard or bang the ends of their fingernails on a hard surface. Non-contact physical punishments included being made to stand on one leg during break time, stand for long periods of time including under the sun, run around the school, do push-ups, crawl across the floor, raise their hand and keep their mouth open, or do labour activities such as clean toilets, fetch water and water flowers or cut the grass.

(Ministry of Women's Affairs, UNICEF Cambodia, US Centers for Disease Control and Prevention. *Findings from Cambodia's Violence Against Children Survey 2013* (Cambodia: Ministry of Women's Affairs, 2014)

A total of 1,408 Cambodian students aged 12–17 years participated in a survey conducted between October 2013 and March 2014. The survey found that 17% of boys and 9% of girls had experienced physical violence (been hit, beaten, slapped or kicked) by teachers in the last 6 months at school. Almost 2% of all students surveyed had been locked in the toilet by a teacher. Less than 24% of all children that experienced violence by a teacher reported it to a parent/guardian.

(International Center for Research on Women (ICRW) and Plan International (2014), *Are Schools Safe and Gender Equal Spaces? Findings from a baseline study of school related gender-based violence in five countries in Asia*, Plan International)

A 2013 Human Rights Watch report documented severe physical punishment in “drug detention centres”, where people who use drugs and others considered “undesirable” by the authorities – including children and adults living or working on the street – are detained. Punishments included beating, punching and kicking detainees, shocking them with electric batons and forcing them to do painful physical exercises such as crawling on the ground. The report was based on interviews with 33 people who had been held in drug detention centres between 2011 and 2013, including three who were detained when they were under 18. According to government statistics cited in the report, at any one time around 1,000 people are held in the eight drug detention centres in Cambodia, of whom at least 10% are children.

(Human Rights Watch (2013) *“They Treat Us Like Animals”*: Mistreatment of Drug Users and “Undesirables” in Cambodia’s Drug Detention Centers, NY: HRW)

An investigation by SISHA, an anti-trafficking and exploitation organisation, revealed that children in orphanages were being beaten and subjected to other forms of violent punishment.

(Reported in *Sydney Morning Herald*, 7 April 2013)

A 2010 Human Rights Watch report found that in Cambodia brutal physical punishment, including beatings and the administration of electrical shocks, is inflicted on children and adults who are detained in “drug detention centres”, which are used to keep the streets clear of “undesirables” such as street children, drug addicts, gamblers, alcoholics and mentally ill people.

(Human Rights Watch (2010), *“Skin on the Cable”*: The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia)