

Corporal punishment of children in Iraq

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Child population 17,270,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

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

The legal defence for the use of corporal punishment by parents and teachers in article 41(1) of the Iraqi Penal Code should be repealed and prohibition enacted of corporal punishment by all persons with authority over children.

Alternative care setting – Prohibition should also be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

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

Schools – Corporal punishment should be prohibited in all education settings, public and private.

Penal institutions – Prohibition should be enacted in laws applicable to all institutions accommodating children in conflict with the law.

Note: Iraqi Kurdistan is an autonomous region within the federal Iraq Republic which has its own local government and parliament. It should not be confused with the province of Kurdistan, which is not self-governing.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 41 of the Iraqi Penal Code 1969 states: “There is no crime if the act is committed while exercising a legal right. The following are considered to be in exercise of a legal right: (1) The punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom....”

The Constitution 2005 states that “all forms of violence and abuse in the family, school and society shall be prohibited” (art. 29(4)) and that “all forms of psychological and physical torture and inhumane treatment are prohibited” (art. 39(1)) but neither these nor the provisions against violence and abuse in the Juveniles Welfare Law 1983 are interpreted as prohibiting all corporal punishment in childrearing.

In March 2013, the Government reported that a domestic violence law had been passed;¹ in reporting to the Universal Periodic Review of Iraq in 2014, the Government stated that a draft domestic violence law is under consideration in the State Consultative Council and is still at the preliminary stage of deliberation.² A draft new personal status law is under discussion. To our knowledge there have been no proposals to prohibit corporal punishment of children in the context of these reforms.

In Iraqi Kurdistan, the Family Violence Law 2011³ law defines domestic violence as “any abusive, coercive, forceful or threatening act or word, on basis of gender, that brings harm physically, sexually and psychologically and negatively affects the rights or freedom of an individual related to the family by marriage, law and kinship” (art. 1, unofficial translation). While this would appear to prohibit only gender-based violence, the following article includes in the list of types of violence “beating family members and children using any excuse” and “humiliation, insult, the use of swear words by parents, treating a member with inferiority, bringing harm, putting psychological pressure on them, violating the rights, and acting duress in marital cohabitation” (art. 2(12) and (13)). It appears that the law is not interpreted as prohibiting all corporal punishment in childrearing (unconfirmed).

According to the Government’s report to the UPR in 2014, Iraq is drafting a law on children “in the centre and regional areas in line with its international obligations”, and consultations on the draft have been carried out.⁴ In January 2015, the Cabinet approved a draft domestic abuse law which reportedly addresses violence against women and children:⁵ we do not know if prohibition of corporal punishment is included in the draft. The Government reported in 2019 that a Bill on Domestic Violence was before the Council of Representatives,⁶ and a draft law on the rights of the

¹ Statement by H.E. Mr Hamid Al Bayati, Permanent Representative of the Republic of Iraq to the United Nations To The fifty-seventh session of the Commission on the Status of Women, New York, 4 to 15 March 2013

² 22 August 2014, A/HRC/WG.6/20/IRQ/1, National report to the UPR, paras. 20 and 62

³ Law No. 8/2011

⁴ 22 August 2014, A/HRC/WG.6/20/IRQ/1, National report to the UPR, para. 26

⁵ http://al-shorfa.com/en_GB/articles/meii/newsbriefs/2015/01/16/newsbrief-09, accessed 28 February 2015

⁶ 22 August 2019, A/HRC/WG.6/34/IRQ/1, National report to the UPR, para. 190

child was being prepared.⁷ A draft law on domestic violence relevant to central and southern Iraq is also under discussion.⁸

In 2020, the Government supported a UPR recommendation to prohibit corporal punishment in all settings, stating that corporal punishment was prohibited in all circumstances.⁹

Alternative care settings

Corporal punishment is lawful in alternative care settings under article 41(1) of the Iraqi Penal Code 1969 (see under “Home”).

Day care

Corporal punishment is lawful in early childhood care and in day care for older children under article 41(1) of the Iraqi Penal Code 1969 (see under “Home”).

Schools

Corporal punishment is lawful in schools under the confirmation of teachers’ “legal right” to discipline children in article 41 of the Iraqi Penal Code 1969. According to the initial report to the Committee on the Rights of the Child in 1996, school regulations explicitly prohibit corporal punishment¹⁰ but we have been unable to verify this information. In dialogue with the Committee on the Rights of the Child in 2015 the Government stated that corporal punishment is “strictly prohibited” but again gave no details.¹¹

Penal institutions

Corporal punishment is explicitly prohibited as a disciplinary measure in detention and prison facilities by CPA Memorandum No. 2 Management of Detention and Prison Facilities 2003, section 11(8): “Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.” There appears to be no explicit prohibition in other institutions accommodating children in conflict with the law, including the Surveillance Centre, the Rehabilitation School for Preadolescents, the Rehabilitation Centre for Adolescents, and the Juvenile Rehabilitation Centre. The Juveniles Welfare Law 1983 is silent on the issue.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under the Coalition Provisional Authority (CPA) Order No. 7 Penal Code 2003, section 3(2), which prohibits torture and cruel, degrading or

⁷ 21 November 2019, A/HRC/WG.6/34/L.11 Unedited version, Draft report of the Working Group, para. 13

⁸ 9 October 2015, E/C.12/IRQ/CO/4, Concluding observations on fourth report, para. 40

⁹ 20 December 2019, A/HRC/43/14, Report of the Working Group, para. 147(155); 26 December 2019, A/HRC/43/14/Add.1, Report of the Working Group: Addendum

¹⁰ 9 December 1996, CRC/C/41/Add.3, Initial state party report, para. 106

¹¹ 27 January 2015, CRC/C/SR.1958, Summary record of 1958th meeting, para. 45

inhuman treatment or punishment, and the Constitution 2005. There is no provision for judicial corporal punishment in the Juveniles Welfare Law 1983. Act No. 5 of 2009 revoked Revolutionary Command Decree No. 109 of 18 August 1994, which stated that persons who had had their hand amputated for crime should be branded. The 2009 Act provided for compensation for to victims of amputation and disfigurement: Ministry of Human Rights data documents 200 persons who had been subjected to amputation of hands or feet and 102 who had been branded.¹²

Universal Periodic Review of Iraq’s human rights record

Iraq was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:¹³

“Harmonize its Constitution and legislation with the accepted international law standards (Slovenia);

“Strengthen efforts to harmonize national human rights legislation with the relevant international instruments (Libyan Arab Jamahiriya);

“Bring the national law to conformity with the international human rights standards (Ukraine);

“Undertake additional measures to protect rights of women and children (Ukraine).”

Examination in the second cycle took place in 2014 (session 20). No recommendations were made specifically on corporal punishment of children.

Third cycle examination took place in 2019 (session 34). The following recommendation was made:¹⁴

“Prohibit corporal punishment explicitly in all settings, and ensure that laws prohibiting corporal punishment are implemented (Montenegro)”

The Government later expressed partial support for the recommendation, stating it was “supported in that corporal punishment is prohibited in all circumstances save where corporal punishment is taken to mean the death penalty”.¹⁵

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(4 February 2015, CRC/C/IRQ/CO/2-4, Concluding observations on second-fourth report, paras. 38 and 39)

“The Committee is concerned that children are routinely subjected to corporal punishment in the State party and that corporal punishment remains lawful in schools, in alternative care settings, and that while it is prohibited in detention and prison facilities, it is not explicitly prohibited in other institutions accommodating children in conflict with the law, including the Surveillance Centre, the Rehabilitation School for Preadolescents, the Rehabilitation Centre for Adolescents and the Juvenile Rehabilitation Centre. The Committee furthermore notes with concern that corporal punishment remains lawful in the home and that a husband has the legal right to discipline his wife by beating

¹² 12 December 2013, CCPR/C/IRQ/5, Fifth state party report, para. 14

¹³ 15 March 2010, A/HRC/14/14, Report of the working group, paras. 81(5), 81(8), 81(9) and 81(21)

¹⁴ 20 December 2019, A/HRC/43/14, Report of the Working Group, para. 147(155)

¹⁵ 26 December 2019, A/HRC/43/14/Add.1, Report of the Working Group: Addendum

according to article 41 of the Penal Code (Act No. 111 (1969)).

“With reference to general comment No. 8 (2006) on protection from corporal punishment, the Committee urges the State party to explicitly prohibit corporal punishment in all settings and to:

a) ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are promptly initiated and systematically conducted against those responsible of mistreating children; and

b) introduce sustained public education, awareness-raising and social mobilization programmes, involving children, families, communities and religious leaders, on both the physical and psychological harmful effects of corporal punishment with a view to changing the attitude towards this practice and promote positive, non-violent and participatory forms of child-rearing and discipline.”

Committee on the Rights of the Child

(26 October 1998, CRC/C/15/Add.94, Concluding observations on initial report, para. 20)

“In the light of article 19 of the Convention, the Committee expresses its concern that corporal punishment is not expressly prohibited in domestic legislation. The Committee recommends that the State party take all appropriate measures, including of a legislative nature, with the aim of prohibiting corporal punishment at all levels of society. The Committee also suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28.2.”

Human Rights Committee

(19 November 1997, CCPR/C/79/Add.84, Concluding observations on fourth report, para. 12)

“The Committee is deeply concerned that Iraq has resorted to the imposition of cruel, inhuman and degrading punishments, such as amputation and branding, which are incompatible with article 7 of the Covenant. Similarly, the Committee is deeply concerned by Revolutionary Command Council Decree No. 109 of 18 August 1994, which stipulates that any person whose hand has been amputated for a crime thus punishable by law shall be branded between the eyebrows with an ‘X’ symbol, by the application of this decree retroactively to persons whose hands have already been amputated, and by the explanation given by the delegation that this punishment was imposed to distinguish convicted offenders from persons mutilated in the war. In this regard:

The imposition of such punishments should cease immediately, and all laws and decrees providing for their imposition, including RCC Decree No. 109 of 1994, should be revoked without delay.”

Committee on the Rights of Persons with Disabilities

(23 October 2019, CRPD/C/IRQ/CO/1, Concluding observations on initial report, paras. 29 and 30)

“The Committee is concerned about: ... (c) Corporal punishment being regarded as legal under article 41 (1) of the Criminal Code when it involves the corporal punishment of women by their husbands or of children by their parents or teachers, albeit “within certain limits prescribed by law or by custom”...

“The Committee recommends that the State party: ... (c) Amend or repeal article 41 (1) of the Criminal Code, enact legislation to prohibit all forms of corporal punishment in all settings and

enforce the prohibition of violence and torture enshrined in articles 29 (4) and 37 (1) (c) of the Constitution and articles 333 and 421 of the Criminal Code...”

Prevalence/attitudinal research in the last ten years

According to statistics collected in 2011 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 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. More than six in ten (63.1%) experienced physical punishment, while a smaller percentage (22.2%) of mothers and caregivers thought physical punishment was necessary in childrearing. More than a quarter (27.7%) of children experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement); 74.8% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted).

(Central Statistics Organisation & Kurdistan Regional Statistics Office (2012), *Iraq Multiple Indicator Cluster Survey 2011, Final Report*, Baghdad: Central Statistics Organisation & Kurdistan Regional Statistics Office)

A 2008 analysis of the situation of children’s rights in Iraq involved around 750 children and their families in nine areas of the country, through questionnaires and focus groups. The study found a high level of family violence, especially for girls. Corporal punishment in schools was common – e.g. 48% of teachers in the South Region of the country said they had used physical violence to “discipline” children. In the Central Region, 83% of children’s drawings showed negative images of life in school, at home and in neighbourhoods, with many references to violence. Adults were asked to whom children could turn for support if they were victims of violence. In the Central Region the police, political parties and CSOs were mentioned. Tribal and religious leaders were mentioned in the Central and South Regions, but family members and teachers were not mentioned in either region. In the North, around 30% of adults believed children could approach their families for help if they experienced violence in school.

(Save the Children UK (2008), *Iraq: A Child Rights Situation Analysis*)