

Corporal punishment of children in Saudi Arabia

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Child population 10,560,000 (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, penal institutions and as a sentence for crime.

We have been unable to ascertain whether legislation confirms a “right” of parents and others to use corporal punishment in childrearing, but legal provisions against violence and assault are not interpreted as prohibiting all corporal punishment. The near universal acceptance of corporal punishment in “disciplining” children necessitates clarity in law that no degree or kind of such punishment is acceptable or lawful. Any legal defences of “reasonable chastisement” or similar – in legislation or common law – should be repealed, and prohibition enacted of all corporal punishment, however light and whoever the perpetrator.

Alternative care settings – Legislation should be enacted which prohibits corporal punishment in relation to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited by law 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 – Instructions to schools not to use corporal punishment currently issued in regular circulars should be confirmed through the enactment of legislation which prohibits all corporal punishment and which is applicable to all education settings, public and private, religious and secular, at all levels of education.

Penal institutions – Corporal punishment should be prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law. Provisions for corporal punishment in the Imprisonment and Detention Law 1978, the Detention and Imprisonment Regulations 1977, Ministerial Decree 1354 of 1395 on international regulations for social observation homes and Ministerial Decree 2083 of 1396 on implementing regulations for girls’ and young women’s welfare homes should be repealed.

Sentence for crime – All judicial corporal punishment of persons under 18 at the time of the offence should be prohibited, including under Shari’a law, and all legal provisions authorising or regulating corporal punishment should be repealed.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Provisions against violence and abuse in the Basic Law 1992 are not interpreted as prohibiting corporal punishment in childrearing. The Law on Protection from Abuse 2013 addresses domestic violence, defining domestic abuse as “all forms of exploitation, or bodily, psychological, or sexual abuse, or threat of it, committed by one person against another, including if [that person] has authority, power, or responsibility, or [if there is] a family, support, sponsorship, guardianship, or living dependency relationship between the two [individuals]”. It does not prohibit corporal punishment of children. Regulations implementing the Law are being drafted. It was reported that a Royal Order on Domestic Violence was issued in 2017:¹ we have no further information.

In 2015, the Government reported to the Committee Against Torture that a Child Protection Bill was under consideration which “is primarily intended to reaffirm the provisions of Islamic sharia and the international conventions to which the Kingdom is a party with respect to the protection of children from all forms of abuse and neglect, provision of the requisite care for such children, awareness-raising of the rights of the child and their definition, and the imposition of penalties for anyone violating those rights”.² The Child Protection Act was promulgated in late 2015 and provides for additional protection from abuse and neglect for the child, “to which he may be exposed in his environment (home, school, neighbourhood, public places, care home, educational centre, alternative family, government, private institution or the like), whether at the hands of a person who has guardianship of, authority over or responsibility for the child or who has some other form of relationship with him” (art. 2).³ It states that “maltreatment”, “using abusive language to humiliate or degrade a child” and “any act that may threaten the child's safety or physical or psychological wellbeing” shall be defined as child abuse (art. 3). Although this provides children with some protection from violence and abuse, it does not explicitly prohibit all forms of corporal punishment.

The Government accepted recommendations to prohibit corporal punishment of persons under 18 made during the Universal Periodic Review in 2009; however, it indicated that it considered violence in childrearing to be already unlawful under existing legislation.⁴ This was reiterated in 2018 when the Government referred to the Law on Protection from Abuse 2013 and the Child Protection Act 2015, as well as ministerial directives, to state that corporal punishment was prohibited in the family, schools and penal institutions.⁵

Alternative care settings

During the Universal Periodic Review of Saudi Arabia in 2009, the Government stated that corporal punishment is prohibited in child care institutions,⁶ but we have been unable to identify prohibition in law. Corporal punishment appears to be lawful in institutions and other alternative care settings.

¹ 2 March 2018, CEDAW/C/SR.1582, Summary records of 1582nd meeting

² 12 February 2015, CAT/C/SAU/2, Second state party report, para. 11

³ 12 February 2016, CAT/C/SAU/Q/2/Add.2, Reply to the list of issues on second report, para. 87

⁴ 9 June 2009, A/HRC/11/23/Add.1, Report of the working group: Addendum, paras. 38 and 39

⁵ 9 November 2017, CEDAW/C/SAU/Q/3-4/Add.1, Reply to list of issues, para. 52

⁶ 9 June 2009, A/HRC/11/23/Add.1, Report of the working group: Addendum, paras. 38 and 39

Day care

During the Universal Periodic Review of Saudi Arabia in 2009, the Government stated that corporal punishment is prohibited in nursery schools,⁷ but we have been unable to identify prohibition in law. Corporal punishment appears to be lawful in early childhood care and in day care for older children.

Schools

During the Universal Periodic Review of Saudi Arabia in 2009, the Government stated that corporal punishment is prohibited in government and private schools,⁸ but we have been unable to identify prohibition in law. Schools are instructed not to use corporal punishment in circulars regularly issued by the Ministry of Education,⁹ applicable to all stages of general education and prescribing penalties designed to deter teachers from beating or ill-treating children, but there is no explicit prohibition in legislation.

Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. The Detention and Imprisonment Regulations 1977 prohibit torture or other cruel, inhuman or degrading treatment or punishment but allow for flogging. The Imprisonment and Detention Law 1978 provides for flogging as a punishment for violations of internal regulations. The Ministry of Labour and Social Affairs Decree 1354 of 1395 (1975) on internal regulations for social observation homes (art. 7) and the Ministry of Labour and Social Affairs Decree 2083 of 1396 (1976) on implementing regulations for girls' and young women's welfare homes (art. 9) prescribe in detail how corporal punishment should be carried out.

The Government rejected the recommendation to end corporal punishment of prisoners made during the Universal Periodic Review in 2009.¹⁰ In 2018, the Government declared corporal punishment in penal institutions was prohibited under the Law on Protection from Abuse 2013 and the Child Protection Act 2015 (see under "Home").

Sentence for crime

Corporal punishment (amputation and flogging) is lawful as a sentence for crime, including for child offenders. The main laws governing juvenile justice are the Juvenile Justice Act 1975, the Juvenile Justice Regulations 1969, the Law of Criminal Procedure 2001, and the Basic Law of Governance 1992. A Juveniles Act 2018 was promulgated by Royal Decree no. 113 of 31 July 2018, but we have been unable to examine the text.

All laws are based on Shari'a: there is no written Penal Code and judges have considerable discretion in defining and punishing crime within the bounds of Shari'a. There are three types of offences – *qisas* (punished by retaliation), *hadd* (for which the prescribed penalty is mandatory), and *ta'zir* (for which the punishment is discretionary). The minimum age for criminal responsibility has reportedly been raised from 7 to 12, but reports are inconsistent and the rise does not apply to girls or in *qisas* cases. The law does not require all child offenders to be tried in the juvenile justice system or require

⁷ 9 June 2009, A/HRC/11/23/Add.1, Report of the working group: Addendum, paras. 38 and 39

⁸ 9 June 2009, A/HRC/11/23/Add.1, Report of the working group: Addendum, paras. 38 and 39

⁹ Including Ministerial Circular No. 1821 of 3 April 1996 (information unconfirmed)

¹⁰ 4 March 2009, A/HRC/11/23, Report of the working group, para. 87(24)

judges to base their decisions on children's age at the time of the offence: judicial opinion on when a child can be tried as an adult varies and tends to be based on a child's physical development.

Flogging is mandatory for a number of offences (*hadd*), and can be ordered at the discretion of judges (*ta'zir*). Sentences range from dozens to thousands of lashes, and are usually carried out in instalments, at intervals ranging from two weeks to one month. The Juvenile Justice Regulations 1969 encourage juvenile courts to settle cases without placing children in supervised facilities and to limit penalties to admonishment, guidance, counselling or a reprimand, but under the Juvenile Justice Act 1975 young persons under 18 may be sentenced to corporal punishment, including flogging, stoning and amputation.

Under the Law of Criminal Procedure 2001, amputation is carried out pursuant to a Royal Order issued by the King or his representative, and must be witnessed by representatives of the Administrative Governor, the Court, the Bureau of the Promotion of Virtue and Prevention of Vice, and the police (art. 220). Flogging should also be witnessed by these officials but there is no requirement for a Royal Order (art. 220). In June 2014, Justice Minister Mohammed Al Eissa reportedly defended physical punishments including lashing and amputation, stating that they are based on religious texts and cannot be changed.¹¹ In 2015, the Government reported to the Committee Against Torture that a juvenile justice bill and a new draft Code of Criminal Procedure were under discussion but gave no details.¹² It is unclear whether this juvenile justice bill was the same as the alternative penalties bill mentioned in the 2015 state party report to the Committee on the Rights of the Child;¹³ it has now been enacted as the Juveniles Act 2018.

During the 2018 Universal Periodic Review of Saudi Arabia, the Government declared that (unofficial translation) "the Convention against Torture has removed from the concept of torture pain or suffering resulting from or incidental to legal sanctions".¹⁴

Universal Periodic Review of Saudi Arabia's human rights record

Saudi Arabia was examined in the first cycle of the Universal Periodic Review in 2009 (session 4). The following recommendations were made:¹⁵

"... Review its practice of imposing capital and corporal punishment and prohibit any form of corporal punishment (Germany, Austria); consider to end the use of corporal punishment for person under 18 and to establish a moratorium on executions of persons having committed crimes before the age of 18 (Austria)"

The Government accepted this recommendation, stating: "The Kingdom accepts this recommendation in accordance with its commitments undertaken under the Convention on the Rights of the Child. Corporal punishment is prohibited in all governmental and private schools as well as in nursery schools and child care institutions. Under the regulations any form of violence against

¹¹ Reported in arabianBusiness.com, 11 June 2014 (www.arabianbusiness.com/saudi-minister-says-beheading-lashings-cannot-be-changed--553582.html#.U5q-FBbWLZ6, accessed 13 June 2014)

¹² 12 February 2015, CAT/C/SAU/2, Second state party report, paras. 114 and 115

¹³ 8 April 2015, CRC/C/SAU/3-4, Third/fourth report, para. 321

¹⁴ 26 February 2019, A/HRC/40/4/Add.1 Advance version, Report of the Working Group: Addendum

¹⁵ 4 March 2009, A/HRC/11/23, Report of the working group, para. 87(23)

children, including violence by parents, even for disciplinary purposes, constitutes a criminal offence.”¹⁶

The Government rejected the recommendation to end corporal punishment of prisoners,¹⁷ stating that this “does not constitute a current practice, particularly as the Kingdom is a party to the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment as well as the Convention on the Rights of the Child”.¹⁸

Examination in the second cycle took place in 2013 (session 17). The following recommendations were made:¹⁹

“Draft and implement a penal code and amend the Law of Criminal Procedure to comply with all its obligations under international law, including prohibitions on judicially sanctioned corporal punishment and the execution of juvenile offenders (Canada);

“Refrain from imposing the death penalty, corporal punishment and life imprisonment for crimes committed by persons under the age of 18 (Czech Republic);

“Abolish juvenile death penalty and corporal punishment (Albania);

“Abolish completely the penalty of corporal punishment (Switzerland); abolish corporal punishments such as lashes and amputation (Sweden)”

The Government rejected the recommendations to prohibit corporal punishment stating that it “does not fall within the definition of torture and other degrading treatment within the meaning of article 1 of the Convention against Torture”.²⁰

Third cycle examination took place in 2018 (session 31). The following recommendations were made:²¹

“Abolish the death penalty and corporal punishment (Switzerland)”

“Abolish all forms of corporal punishment for all persons, including children and detainees, in all settings (Estonia);

“Repeal laws that allow stoning, amputation, and flogging of children (Montenegro)”

The Government noted the first of the recommendations and expressed partial support to the other two.²²

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(25 October 2016, CRC/C/SAU/CO/3-4, Concluding observations on third/fourth report, para. 28)

“In view of the fact that corporal punishment remains lawful in all settings in spite of the adoption of the Child Protection Act of 2014, the Committee reiterates its recommendation that the State party prohibit all forms of corporal punishment in all settings, including the family (see CRC/C/SAU/CO/2,

¹⁶ 9 June 2009, A/HRC/11/23/Add.1, Report of the working group: Addendum, paras. 38 and 39

¹⁷ 4 March 2009, A/HRC/11/23, Report of the working group, para. 87(24)

¹⁸ 9 June 2009, A/HRC/11/23/Add.1, Report of the working group: Addendum, para. 40

¹⁹ 26 December 2013, A/HRC/25/3, Report of the working group, paras. 138(45), 138(127), 138(128) and 137(129)

²⁰ 28 February 2014, A/HRC/25/3/Add.1, Report of the working group: Addendum, paras. 14, 15 and 16

²¹ 26 December 2018, A/HRC/40/4, Report of the Working Group, paras. 122(115), 122(118) and 122(119)

²² 26 February 2019, A/HRC/40/4/Add.1 Advance version, Report of the Working Group: Addendum

para. 45). The Committee recommends that the State party introduce sustained public education, awareness-raising and social mobilization programmes involving children, families, communities and religious leaders on the physically and psychologically harmful effects of corporal punishment with a view to changing the general attitude towards this practice and promoting positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment.”

Committee on the Rights of the Child

(17 March 2006, CRC/C/SAU/CO/2, Concluding observations on second report, paras. 42, 43, 44, 45, 73, 74 and 75)

“While noting articles 2 and 13 of the Code of Criminal Procedure promulgated in Royal Decree No. M/39 of 15 October 2001 which prohibit torture or degrading treatment and the State party’s reassurance that corporal punishment is not imposed upon minors, the Committee is concerned at reports of extrajudicial and summary floggings of teenagers suspected of behaviour deemed immoral and acts of police brutality.

“The Committee urges the State party to take all necessary steps for the immediate abolition of extrajudicial and summary floggings of teenagers, and also other forms of cruel, inhuman or degrading punishments imposed on persons having committed a crime when under the age of 18 years, including acts of police brutality.

“While noting with appreciation the regular circulars issued by the Ministry of Education, which prohibit the beating or ill-treatment of children during all stages of general education and prescribe penalties designed to deter teachers from committing such acts, the Committee notes with concern that corporal punishment is lawful and widely used in the home and that it is a lawful penal sanction.

“The Committee recommends that the State party take legislative measures to prohibit all forms of corporal punishment in all settings, including the family. It further recommends that the State party carry out public education campaigns about the negative consequences of corporal punishment on children and promote positive, non-violent forms of discipline as an alternative to corporal punishment.

“The Committee is encouraged by the State party’s efforts to reform its juvenile justice system, inter alia, through adoption of the new Code of Criminal Procedure and Practice for Lawyers in 2001.... As noted in paragraph 32, the Committee is deeply concerned about reports that persons are sentenced to death for crimes committed while under the age of 18, and at the fact that capital and corporal punishment can be imposed on persons having committed a crime when under 18 years of age at the discretion of the judge.

“The Committee urges the State party to ensure the full implementation of juvenile justice standards in particular articles 37, 40 and 39 of the Convention, and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System, and take into account the recommendations adopted by the Committee on its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238).

“The Committee refers to its recommendations made in paragraphs 33 on right to life and capital punishment and 43 on protection from torture, inhuman or degrading treatment or punishment and it urges the State party to:

a) critically review its legislation with a view to abolishing the imposition of capital and corporal punishment on persons having committed crimes when under 18 years of age at the sole discretion of the judge; ...

c) amend the Detention and Imprisonment Regulations (1977) and the Juvenile Justice and Social Surveillance Centre Regulations to prohibit flogging or any other form of corporal punishment for persons under 18 deprived of their liberty....”

Committee on the Rights of the Child

(22 February 2001, CRC/C/15/Add.148, Concluding observations on initial report, paras. 33, 34, 35 and 36)

“In light of article 37 (a) of the Convention, the Committee is seriously concerned that persons under 18 may be subject while in detention to corporal punishment, such as flogging, under article 28 of the 1977 Detention and Imprisonment Regulations. It is also disturbed that persons who committed crimes when they were under 18 may be sentenced to a variety of methods of cruel, inhuman or degrading treatment or punishment such as flogging, stoning and amputation, which are systematically imposed by judicial authorities. The Committee finds that application of such measures is incompatible with the Convention...

“The Committee recommends that the State party take all necessary steps to end the imposition of corporal punishment, including flogging and other forms of cruel, inhuman or degrading treatment and punishment on persons who may have committed crimes when they were under 18. It also recommends that the State party take all appropriate measures to ensure that law enforcement officials respect and protect human dignity and maintain and uphold the human rights of all persons in the course of their duties.

“In light of articles 19 and 39 of the Convention, the Committee is concerned at the incidence of ill-treatment of children in schools and within the family. It is further concerned that domestic violence is a problem in Saudi Arabia and that this has harmful consequences on children.

“The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse, against children in the family, the schools and care institutions. The Committee recommends that these measures be accompanied by public education campaigns about the negative consequences of ill-treatment of children and the promotion of positive, non-violent forms of discipline as an alternative to corporal punishment....”

Committee Against Torture

(8 June 2016, CAT/C/SAU/CO/2, Concluding observations on second report, paras. 10 and 11)

“The Committee is deeply concerned that the State party continues to sentence individuals to and to impose corporal punishment, including flogging/lashing and amputation of limbs — practices that are in breach of the Convention. The Committee is concerned that the penalties provided by law in the State party include these and other forms of corporal punishment, which amount to torture and cruel, inhuman or degrading treatment or punishment under the Convention.

“The State party should immediately put an end to the practices of flogging/lashing, amputation of limbs and any other form of corporal punishment. In addition, the State party should amend its legislation in order to abolish all such forms of corporal punishment as they amount to torture and cruel, inhuman or degrading treatment or punishment, in violation of the Convention.”

Committee Against Torture

(12 June 2002, CAT/C/CR/28/5, Concluding observations on initial report, paras. 3, 4 and 8)

“The Committee welcomes the following:

c) the State party’s expression that its domestic law provides that no exceptional circumstances, including superior orders, may be invoked as a defence to a charge of torture, the reassurance that statements obtained by torture are inadmissible in proceedings, and the oral assurance that confessions are revocable at any point of proceedings. The State party’s reassurance that corporal punishments are not imposed upon minors was noted;...

“The Committee is concerned about the following:

b) the sentencing to, and imposition of, corporal punishments by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention.

“The Committee recommends, in particular, that the State party:

b) re-examine its imposition of corporal punishments, which are in breach of the Convention....”

Committee on the Elimination of Discrimination Against Women

(9 March 2018, CEDAW/C/SAU/CO/3-4 Advance unedited version, Concluding observations on third/fourth report, paras. 31, 32, 33 and 34)

“The Committee notes the enactment, in 2013, of the Protection from Abuse Act, which criminalizes domestic violence and the establishment of shelters across the country. It notes with concern, however:

(e) The persistent use by male guardians of physical violence to discipline women and children under their guardianship;...

“Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party:

(c) Review and repeal all legal provisions that exculpate perpetrators of domestic violence, including male guardians;...

“The Committee is concerned that women and girls who are victims of sexual abuse risk facing criminal proceedings if they press charges, since the reporting of rape or sexual assault, if not proved, can be considered a confession of sexual relations outside of marriage (*zina*) or adultery, which are punishable by flogging or stoning and, in some instances, death in the State party.

“The Committee recommends that the State party amend its legislation to ensure that victims of sexual abuse are not punished if they press charges that later cannot be proved, and immediately release and compensate women and girls who have been convicted of and are serving sentences for *zina* or adultery offences, especially migrant women who are victims of sexual violence and abuse.”

Committee on the Rights of Persons with Disabilities

(13 May 2019, CRPD/C/SAU/CO/1, Concluding observations on initial report, paras. 11, 12, 27 and 28)

“The Committee is concerned about:

(a) The lack of specific protection for children with disabilities in legislation, implementing regulations and policies, including in the Child Protection Act and the Protection against Abuse Act;

(b) Corporal punishment, discrimination, stereotypes and marginalization concerning children with disabilities...

“The Committee recommends that the State party:

(a) Review the Child Protection Act and the Protection against Abuse Act to introduce specific provisions protecting the rights of children with disabilities, and mainstream the rights of children with disabilities, including the principle of the best interests of the child, into national policies, plans and programmes regarding children and young persons;

(b) Prohibit violence against children with disabilities, including corporal punishment, impose sanctions for perpetrators and adopt and implement a strategy to combat stereotyping of and discrimination against children with disabilities...”

“The Committee is concerned about:

(a) Violence against and abuse and cruel, inhuman or degrading treatment or punishment of persons and children with disabilities, including through corporal punishment, in homes, schools, day-care centres and alternative care settings...

“The Committee recommends that the State party:

(a) Adopt legislation that prohibits all forms of violence and corporal punishment in all settings, including in homes, schools, day-care centres and alternative care settings, train medical and research personnel on the human rights-based approach to disability and investigate, prosecute and punish perpetrators of violence and corporal punishment...”

Prevalence/attitudinal research in the last ten years

Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System is one of a series of reports published by Human Rights Watch following an examination of the criminal justice system during the first fact-finding visit to Saudi Arabia by an international human rights organisation. Interviews with Saudi officials, detainees, lawyers and families revealed that judges regularly try children without the presence of lawyers or sometimes even guardians, even for crimes punishable by death, flogging, or amputation. Flogging is a very common sentence for crimes and there is no minimum age for corporal punishment. Corporal punishment is also used in detention centres for both girls and boys. The report calls on Saudi Arabia to adopt a written penal code and to prohibit all corporal punishment of persons under 18 at the time of the offence.

(Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System*, www.hrw.org/en/reports/2008/03/24/adults-their-time-0)