

Corporal punishment of children in the State of Palestine

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Child population 2,200,000 (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, some schools and possibly some penal institutions and as a sentence for crime.

Article 62 of the Jordanian Penal Code 1960, applicable in the West Bank, recognises the use of “disciplinary beating of children by their parents in a manner allowed by public customs”, and the English common law defence of “reasonable chastisement” potentially applies in Gaza. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. These defences should be repealed and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

Alternative care settings – Prohibition should 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) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Corporal punishment is unlawful in UNRWA schools and in East Jerusalem. Legislation should now be enacted to clearly prohibit corporal punishment in all education settings, at all levels of education, throughout the State of Palestine. Policy against corporal punishment currently in the form of Ministerial directives to schools should be confirmed through law reform.

Penal institutions – Corporal punishment should be prohibited as a “disciplinary” measure in all institutions accommodating children in conflict with the law.

Sentence for crime – Judicial corporal punishment should be prohibited, including under Israeli Military Orders.

Note: Israel has occupied the Gaza Strip and the West Bank, including East Jerusalem, since 1967. The Palestinian Authority (PA), an “interim self-government” created in 1994, has limited jurisdiction and takes the form of a Fatah-led government in the West Bank and a Hamas-led government in Gaza. The political situation has resulted in a complex legal system. The **West Bank** is divided into three administrative regions, one controlled by the PA, one by Israel, and one with shared control (Israel controlling security matters, the PA civil matters). East Jerusalem, annexed by Israel in 1981, is under full Israeli administration. Different laws therefore apply in different areas, and some laws from the time of Jordanian Rule are in force. The **Gaza Strip** is under the administration of the PA. Laws enacted by the PA are applicable, together with some laws developed under the British Mandate/Egypt Administration.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. In the West Bank (except East Jerusalem), article 62 of the Jordanian Penal Code 1960 states that the law allows “forms of discipline inflicted on children by their parents, as permitted by general custom”. In Gaza, there appears to be no defence for the use of corporal punishment in the British Criminal Code 1936, though it is likely that the English common law defence of “reasonable chastisement” applies.

In both the West Bank (except East Jerusalem) and Gaza, children have legal protection from violence in PA laws. Article 29 of the Amended Basic Law 2003 states that children have the right to “protection from harmful and cruel treatment” and “not to be subjected to beating or cruel treatment by their relatives”, but this is not interpreted as prohibiting all forms of corporal punishment by parents. Article 42 of the Child Law 2004 (amended 2012) states that children “shall have the right to protection from violence, abuse, ill-treatment and exploitation and that the State “shall take all necessary legislative, administrative, social, educational and preventive actions and measures to secure the said right”.

In East Jerusalem, child protection law is the same as for the state of Israel, where corporal punishment is unlawful in the home. In 2000, the Israeli Supreme Court ruled against all violence in childrearing¹ and the “reasonable chastisement” defence was removed from criminal law the same year. However, a poor level of enforcement and discriminatory application of the law to Palestinian children has been documented.

In 2009, a number of new laws had been drafted, including a draft Social Affairs Law, draft amendments to the Child Law, a draft Penal Code, a draft Juvenile Justice Law, and a draft Constitution. The Child Law 2004 was amended in 2012 without addressing corporal punishment. In 2016, the Juvenile Protection Law was signed into law. We have no further information.

A draft Law on the Protection of Family from Violence is being considered. Its provisions would reportedly define violence in the family as “any behaviour carried out in the context of the family by one member against another, or any sex-based act that results in, or is expected to result in, psychological or physical or sexual harm, whether through an act, the threat of such, or compulsion to such, whatever the means used for that purpose, and whether the incident takes place within or outside the home”.² The Personal Status Code is being reviewed.³

¹ *Natalie Bako v The State*

² 7 May 2018, CEDAW/C/PSE/Q/1/Add.1, Reply to list of issues, para. 43

³ 7 May 2018, CEDAW/C/PSE/Q/1/Add.1, Reply to list of issues, para. 9

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings. In the West Bank (except East Jerusalem) and Gaza, the defences for the use of corporal punishment in, respectively, article 62 of the Jordanian Penal Code 1960 and in English common law (see under “Home”) presumably apply to carers in alternative care settings as for parents. The prohibition of all corporal punishment in domestic Israeli law should apply to all alternative care settings in East Jerusalem.

Day care

There is no explicit prohibition of corporal punishment in all early childhood care and all day care for older children. In the West Bank (except East Jerusalem) and Gaza, the defences for the use of corporal punishment in, respectively, article 62 of the Jordanian Penal Code 1960 and in English common law (see under “Home”) presumably apply to day care as for parents. The prohibition of all corporal punishment in domestic Israeli law should apply to day care in East Jerusalem.

Schools

Schools in Gaza and the West Bank (excluding East Jerusalem) are run by the PA, UNRWA or private bodies. Ministerial directives advise against the use of corporal punishment in government (PA) schools, but there is no explicit prohibition in law. Under article 39 of the Child Law 2004, the State shall “take all arrangements to foster the dignity of the child, particularly when adopting decisions or developing programs, which aim at prohibiting all forms of violence in schools, regardless of the source”, and article 42 protects children from violence, but the Law does not prohibit corporal punishment. In Gaza, education law and regulations passed under the British Mandate apply, and do not prohibit corporal punishment. Similarly, the Jordanian education law and regulations in force in the West Bank do not prohibit corporal punishment. It has been prohibited in UNRWA schools since 1993. In East Jerusalem, education comes under Israeli law, which prohibits corporal punishment.

Penal institutions

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. In Gaza and the West Bank (excluding East Jerusalem), Palestinian Detention Centres and Prisons are governed by the Child Law 2004, which prohibits cruel and degrading treatment and protects human dignity (arts. 68 and 69), but does not explicitly prohibit corporal punishment. Similarly, the Juvenile Protection Law no. 4 of 2016 which also applies in Gaza and PA-controlled areas of the West Bank does not explicitly prohibit corporal punishment but prohibits cruel and degrading treatment. Article 7.3 states (unofficial translation): “It is prohibited to use force with the juvenile except in cases where the rebellion or the ferocity shows that it is required, and only to the extent necessary”. Israeli Detention Centres and Prisons are governed by Israeli military orders. Military Order No. 863 punishes “a soldier who hits or abuses a person under detention”; article 65 of Israeli Military Jurisdiction Law 1995 punishes “a soldier who hits or abuses a person under detention if not necessary”.

In East Jerusalem, corporal punishment is unlawful under Israeli domestic law, but the law is poorly implemented and is frequently applied in a discriminatory way against Palestinian children.⁴

Sentence for crime

Corporal punishment appears to be unlawful as a sentence for crime but there is no explicit prohibition. The Child Law 2004 states that child offenders may not be subjected to any cruel, degrading or humiliating treatment (art. 68) and that young offenders should be treated in a way which protects their honour and dignity (art. 69). Articles 36 and 46 of the 2016 Juvenile Protection Law (applicable in territories controlled by the PA) lists possible sanctions for juveniles and does not include corporal punishment.

In the West Bank (excluding East Jerusalem), the Jordanian Penal Code 1960 does not provide for judicial corporal punishment. The Reformation of Juvenile Law (No. 16) 1954 previously applicable in the West Bank was repealed by the Juvenile Protection Law of 2016. In Gaza, the 2016 Law also repealed the Juvenile Offenders Ordinance 1937 which previously applied and whose article 12 allowed for juveniles to be sentenced to whipping. There is no provision for judicial corporal punishment in the British Penal Code 1936.

In East Jerusalem, judicial corporal punishment is unlawful under Israeli law. Palestinians throughout the West Bank and Gaza, including children and young people, may also be charged with offences under Israeli military law and tried in Israeli military courts. These are governed by Military Orders, applicable to all Palestinians over the age of 12. We have no information regarding sentences available under these Orders, other than detention.

Prevalence/attitudinal research in the last ten years

A survey carried out in 2014 by the Palestinian Central Bureau of Statistics in collaboration with Ministry of Health, as part of the global MICS programme found 92% of children age 1-14 years had been subjected to at least one form of psychological or physical punishment by household members during the month preceding the survey. About 74% of children had experienced physical punishment and 23% severe physical punishment (hitting the child on the head, ears or face or hitting the child hard and repeatedly), which was more common for boys (27%) than girls (19%). Only 6% of children had experienced only non-violent forms of discipline.

(Palestinian Central Bureau of Statistics (2015), Palestinian Multiple Indicator Cluster Survey 2014, Final Report, Ramallah, Palestine: Palestinian Central Bureau of Statistics)

According to UNICEF statistics collected in 2010, 93% of children aged 2-14 experienced “violent discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Three quarters experienced physical punishment and 90% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A smaller percentage (21%) of mothers and caregivers thought that physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)

⁴ DCI International – Palestine Section (2008), *Palestinian Child Prisoners 2007*; Trojan, V. (2008), *Child Rights Situation Analysis: Right to Protection in the occupied Palestinian territory – 2008*, Ramallah/Jerusalem: DCI-Palestine/Save the Children Sweden

A booklet containing testimony from Israeli soldiers who served in the West Bank and Gaza Strip between 2005 and 2011 documents Palestinian children being beaten, kicked, shackled, blindfolded, threatened with guns, shot and killed on the street and in police and army custody.

(Breaking the Silence (2012), *Children and Youth: Soldiers' Testimonies 2005-2011*, Breaking the Silence)

A report based on the sworn testimony of 311 children held in Israeli military detention between January 2008 and January 2012 documented systematic ill-treatment of children during their arrest, transfer and interrogation. Sixty-three per cent of the children were detained inside Israel; 95% had their hands tied, often very painfully, 90% were blindfolded. Three quarters experienced physical violence such as being pushed, slapped or kicked, 57% experienced threats and 54% verbal violence. In 12% of cases children reported being held in solitary confinement for an average of 11 days. The report found that when the totality of the evidence was considered, the pattern of systematic ill-treatment which emerges, amounts to cruel, inhuman or degrading treatment or punishment and in some cases, torture, as defined in the UN Convention against Torture.

(DCI Palestine (2012), *Bound, Blindfolded and Convicted: Children held in military detention*)

Research which included a survey with 306 students in three schools and focus groups with 88 students, teachers, counsellors and principals found that 36.6% of students had often seen a teacher hit students or been hit themselves: 37.6% reported that this happened sometimes, 25.7% rarely. A fifth (22.2%) had heard a teacher insult students or been insulted themselves often, 30.6% sometimes and 47.1% rarely.

(Riyada Consulting and Training (2010), *Level of Violence in UNRWA Schools in the West Bank – Protective Sphere for Palestinian Children*, Save the Children UK)

A 2009 report by Defence for Children International – Palestine Section documented widespread and systematic violations of the rights of Palestinian children in Israeli custody in the occupied Palestinian territory, including corporal punishment. Children reported being kicked, hit, beaten with guns and tied up.

(DCI-Palestine (2009), *Palestinian Child Prisoners: The systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities*)

In research on violence in educational settings which involved 1,723 children in 15 schools in five districts in the occupied West Bank and Gaza, 80% of students in school grades 1-3, 15% in grades 4-6 and 30% in grades 7-10 said they were “exposed to beating” at school.

(MaDad (2009), *Protective Sphere for Palestinian Children Project: Executive Summary – the Participatory Action Research report*, Save the Children UK)

In a survey of 679 parents in the south of the Gaza Strip in 2007, nearly 100% admitting to inflicting corporal punishment and/or verbal punishment on their children.

(Survey results conducted during the “Community-Based Child Protection” project, Al Shoka, South Gaza Strip, Palestinian Centre for Democracy and Conflict Resolution and SCS (2007), on file at the DCI-Palestine Ramallah office, reported in Trojan, V. (2008), *Child Rights Situation Analysis: Right to Protection in the occupied Palestinian territory – 2008*, Ramallah/Jerusalem: DCI-Palestine/Save the Children Sweden)