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End Corporal Punishment

Corporal punishment of children in Iraq: Briefing for the Universal Periodic Review, 48th session, Jan./Feb. 2025

From End Corporal Punishment, July 2024

This submission provides an update on the legality of corporal punishment of children in Iraq since its review in the third cycle UPR in 2019. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care, schools and penal institutions.

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 Iraq, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and other human rights treaty bodies.

We hope the Working Group will note with concern the legality of corporal punishment of children in Iraq. We hope states will raise the issue during the review in 2025 and make a specific recommendation that Iraq accelerates its efforts to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Iraq in the 3rd cycle UPR (2019) and progress since

1.1 Iraq was reviewed in the third cycle of the Universal Periodic Review in 2019 (session 34). A recommendation to prohibit corporal punishment in all settings was made and supported by the Government.[1] The Government added that corporal punishment would be prohibited "in all circumstances save where corporal punishment is taken to mean the death penalty".[2]

1.2 Following the review, no legislation to explicitly prohibit corporal punishment of children in all settings has been adopted.

[1] 20 December 2019, A/HRC/43/14, Report of the Working Group, para. 147(155)
[2] 26 December 2019, A/HRC/43/14/Add.1, Report of the Working Group: Addendum

1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Iraq. We hope states will raise the issue during the review in 2025 and make a specific recommendation that Iraq intensify its efforts to enact a law to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.

2 Legality of corporal punishment in Iraq

Summary of current law and opportunities for achieving 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.

2.1 ***Home (lawful):*** 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…."

2.2 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.

2.3 In Iraqi Kurdistan, the Family Violence Law 2011[3] 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

[3] Law No. 8/2011

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).

2.4 In 2019, the Federal Supreme Court[4] ruled against an application which sought to find article 41 of the Penal Code to be unconstitutional. The Court found that the right of discipline of a husband, parents, and teachers was granted "within the limits of what is specified by Sharia, law and custom". It ruled that the process of discipline as provided by article 41 is "variable in method and in its concept by time and place clearly, and does not mean in any way the concept of (the domestic violence) intended…"

2.5 ***Alternative care settings (lawful):*** Corporal punishment is lawful in alternative care settings under article 41(1) of the Iraqi Penal Code 1969 (see under "Home").

2.6 ***Day care (lawful):*** 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").

2.7 ***Schools (lawful):*** 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 punishment[5] 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.[6]

2.8 ***Penal institutions (lawful):*** 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.

2.9 ***Sentence for crime (unlawful):*** 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 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

[4] *8 April 2019, Fras Sami Rashied v Speaker of the Parliament, Federal Supreme Court, Ref. 27/federal/media/2019*
[5] 9 December 1996, CRC/C/41/Add.3, Initial state party report, para. 106
[6] 27 January 2015, CRC/C/SR.1958, Summary record of 1958th meeting, para. 45

subjected to amputation of hands or feet and 102 who had been branded.[7]

3 Recommendations by human rights treaty bodies

3.1 ***CRC***: On two occasions, the Committee on the Rights of the Child has recommended to Iraq that legislation be enacted to explicitly prohibit corporal punishment in all settings: in its concluding observations on the state party's initial report in 1998,[8] and on the second-fourth report in 2015.[9]

3.2 ***HRC:*** The Human Rights Committee recommended that Iraq revoke all laws and decrees which authorize the imposition of judicial corporal punishment, in its 1997 concluding observations[10] on the state party's fourth report.[11]

3.3 ***CRPD:*** The Committee on the Rights of Persons with Disabilities recommended that the Government amend its Criminal Code and adopt a legislation to prohibit all corporal punishment, in its concluding observation on the state party's initial report in 2019.[12]

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[7] 12 December 2013, CCPR/C/IRQ/5, Fifth state party report, para. 14
[8] 26 October 1998, CRC/C/15/Add.94, Concluding observations on initial report, para. 20
[9] 4 February 2015, CRC/C/IRQ/CO/2-4, Concluding observations on second-fourth report, paras. 38 and 39
[10] 25 July 2006, CAT/C/QAT/CO/1, Concluding observations on initial report, para. 12
[11] 19 November 1997, CCPR/C/79/Add.84, Concluding observations on fourth report, para. 12
[12] 23 October 2019, CRPD/C/IRQ/CO/1, Concluding observations on initial report, paras. 29 and 30