

# Corporal punishment of children in Iraq: Briefing for the Universal Periodic Review, 34<sup>th</sup> session, November 2019



GLOBAL INITIATIVE TO  
**End All Corporal  
Punishment of Children**

*From the Global Initiative to End All Corporal Punishment of Children, March 2019*

**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 still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Human Rights Committee.**

**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 2019 and make a specific recommendation that Iraq draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.**

## **1 Review of Iraq in the 2<sup>nd</sup> cycle UPR (2014) and progress since**

- 1.1 Iraq was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 20). Although the issue of corporal punishment of children was raised in the summary of stakeholders' information,<sup>1</sup> no recommendation was issued specifically on corporal punishment. Since the review, there has been no change in the legality of corporal punishment.
- 1.2 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Iraq. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Iraq draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.**

<sup>1</sup> 31 July 2014, A/HRC/WG.6/20/IRQ/3, Summary of stakeholders' views, para. 38

## 2 Legality of corporal punishment in Iraq

### ***Summary of current law and reforms needed to achieve prohibition***

Corporal punishment in Iraq is prohibited in detention and prison facilities and as a sentence for a crime but it is still lawful in the home, in alternative care and day care settings, in schools and in all other penal institutions. Legislation should be enacted to explicitly prohibit all corporal punishment of children in all settings, including the home, and repeal all legal defences for its use, including in the Iraqi Penal Code.

- 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....” 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.
- 2.2 In March 2013, the Government reported that a domestic violence law had been passed;<sup>2</sup> 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.<sup>3</sup> 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.
- 2.3 In Iraqi Kurdistan, the Family Violence Law 2011<sup>4</sup> 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).
- 2.4 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.<sup>5</sup> In January 2015, the Cabinet approved a draft domestic abuse law which reportedly addresses violence against women and children:<sup>6</sup> we do not know if

<sup>2</sup> 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

<sup>3</sup> 22 August 2014, A/HRC/WG.6/20/IRQ/1, National report to the UPR, paras. 20 and 62

<sup>4</sup> Law No. 8/2011

<sup>5</sup> 22 August 2014, A/HRC/WG.6/20/IRQ/1, National report to the UPR, para. 26

<sup>6</sup> [http://al-shorfa.com/en\\_GB/articles/meii/newsbriefs/2015/01/16/newsbrief-09](http://al-shorfa.com/en_GB/articles/meii/newsbriefs/2015/01/16/newsbrief-09), accessed 28 February 2015

prohibition of corporal punishment is included in the draft. A draft law on domestic violence relevant to central and southern Iraq is also under discussion.<sup>7</sup>

- 2.5 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under article 41(1) of the Iraqi Penal Code 1969.
- 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.
- 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<sup>8</sup> 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.<sup>9</sup>
- 2.8 **Penal institutions (partially 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 subjected to amputation of hands or feet and 102 who had been branded.<sup>10</sup>

### 3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child first raised the issue of corporal punishment of children in Iraq in 1998, recommending its prohibition at all levels of society.<sup>11</sup> The Committee examined the second-fourth report in 2015 and expressed concern at the routine subjection of children to corporal punishment; the Committee recommended prohibition in all settings.<sup>12</sup>

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<sup>7</sup> 9 October 2015, E/C.12/IRQ/CO/4, Concluding observations on fourth report, para. 40

<sup>8</sup> 9 December 1996, CRC/C/41/Add.3, Initial state party report, para. 106

<sup>9</sup> 27 January 2015, CRC/C/SR.1958, Summary record of 1958th meeting, para. 45

<sup>10</sup> 12 December 2013, CCPR/C/IRQ/5, Fifth state party report, para. 14

<sup>11</sup> 26 October 1998, CRC/C/15/Add.94, Concluding observations on initial report, para. 20

<sup>12</sup> 4 February 2014, CRC/C/IRQ/CO/2-4 Advance Unedited Version, Concluding observations on second-fourth report, paras. 38 and 39

3.2 **HRC:** In 1997, the Human Rights Committee expressed concern at cruel punishments such as amputation and branding in Iraq, recommending they be immediately ceased and laws authorising them revoked without delay.<sup>13</sup>

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*  
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*The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.*

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<sup>13</sup> 19 November 1997, CCPR/C/79/Add.84, Concluding observations on fourth report, para. 12