

Corporal punishment of children in Iraq: Briefing for the Universal Periodic Review, 20th session, 2014

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Global Initiative to
**End All Corporal Punishment
of Children**

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 that it should be prohibited by the Committee on the Rights of the Child. We note that no recommendations were made on protection of children from corporal punishment during the initial review of Iraq in 2010: we hope Iraq’s violation of this fundamental human right will be addressed in the second cycle review.

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 2014 and make a specific recommendation that legislation is enacted to explicitly prohibit corporal punishment in the home and all settings and that the “right to discipline” is explicitly repealed from the Iraqi Penal Code.

1 The initial review of Iraq by the Human Rights Council (2010)

- 1.1 Iraq was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was raised in the compilation of UN information¹ and the summary of stakeholders information.² No recommendations were made specifically on corporal punishment, but the Government accepted a number of recommendations to harmonise its legislation with international human rights standards.³
- 1.2 Prohibition and elimination of corporal punishment of children in all settings, including the home, is a fundamental obligation on states under the Convention on the Rights of the Child and other international treaties. But despite the Government’s positive commitment to harmonise its national laws with international standards, there has been no change in the legality of corporal punishment of children since the review in 2010: it remains lawful for children to be hit in the guise of “discipline” in their homes and schools, in alternative care settings and day care, and in some penal institutions.

¹ 1 December 2009, A/HRC/WG.6/7/IRQ/2, Compilation of UN information, para. 22

² 1 December 2009, A/HRC/WG.6/7/IRQ/3, Summary of stakeholders' information, paras. 24 and 45

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

1.3 The human rights obligation to prohibit and eliminate all corporal punishment of children is one which is frequently ignored or evaded by Governments. The longstanding and near universal acceptance of some degree of violent punishment in childrearing and education – among lawmakers and other professionals as among the general public – can challenge efforts to achieve prohibition. One effect of this traditional acceptance of corporal punishment is that unless there is specific reference to corporal or physical punishment, measures aimed at protecting children from “violence” or “abuse” etc are typically understood as not applying to physical punishment intended to “discipline” children. **For this reason, we respectfully urge members of the Working Group to make specific recommendations to Iraq that legislation is enacted which explicitly prohibits all corporal punishment of children in the home, including through repeal of the “right to discipline”.**

2 Legality and practice of corporal punishment in Iraq

2.1 **Summary:** Corporal punishment of children in Iraq is unlawful as a sentence for crime but it is lawful in the home, alternative care settings, day care, schools and penal institutions.

2.2 **Home (lawful):** The Iraqi Penal Code 1969 confirms that “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” is a “legal right” (art. 41). 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 there is no indication that these provisions are interpreted as prohibiting all forms of physical punishment of children and there is no explicit repeal of the “right to discipline”.

2.3 In Kurdistan, the Family Violence Law 2011 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)). We are currently investigating whether the law is intended to prohibit all corporal punishment in childrearing in Kurdistan and, if so, its effectiveness in light of the “right to discipline” of parents over children and of husbands over their wives in the Iraqi Penal Code (see para. 2.2).

2.4 Research reveals a high prevalence of corporal punishment of children in Iraq. For example, UNICEF’s major 2010 analysis of data from 2005-2006 found that 85% of 2-14 year olds had experienced violent “discipline” (physical punishment and/or psychological aggression) in the month prior to the survey; three children in ten experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement).⁴ Statistics collected under round 4 of the UNICEF Multiple

⁴ UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

Indicator Cluster Survey programme (MICS4) in 2011 revealed that 79% of 2-14 year olds had been violently “disciplined” (with physical punishment and/or psychological aggression); 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).⁵

- 2.5 **Alternative care settings (lawful):** Corporal punishment is lawful under the “right to discipline” in article 41(1) of the Iraqi Penal Code 1969 (see para 2.2).
- 2.6 **Day care (lawful):** Corporal punishment is lawful under the “right to discipline” in article 41(1) of the Iraqi Penal Code 1969 (see para. 2.2).
- 2.7 **Schools (lawful):** Corporal punishment is lawful under the “right to discipline” in article 41 of the Iraqi Penal Code 1969 (see para. 2.2). According to the initial report to the Committee on the Rights of the Child in 1996, school regulations explicitly prohibit corporal punishment⁶ but we have been unable to verify this information, and any prohibition would be undermined by the “right to discipline”.
- 2.8 **Penal institutions (unlawful):** Corporal punishment is explicitly prohibited in detention and prison facilities by CPA Memorandum No. 2 Management of Detention and Prison Facilities 2003, section 11(8). 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.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** In 1998, the Committee on the Rights of the Child expressed concern at the legality of corporal punishment of children in Iraq and recommended it be prohibited at all levels of society.⁷
- 3.2 **HRC:** In 1997, the Human Rights Committee recommended abolition of judicial corporal punishment.⁸

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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

⁵ Central Statistics Organisation & Kurdistan Regional Statistics Office (2012), *Iraq Multiple Indicator Cluster Survey 2011, Final Report*, Baghdad: Central Statistics Organisation & Kurdistan Regional Statistics Office

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

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

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

Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.