

Corporal punishment of children in Cambodia: Briefing for the Universal Periodic Review, 32nd session, January 2019



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

From the Global Initiative to End All Corporal Punishment of Children, July 2018

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 Cambodia, 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 Cambodia. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Cambodia enact legislation to explicitly prohibit corporal punishment of children in all settings, including in the home, and repeal all legal defences for its use.

1 Review of Cambodia in the 2nd cycle UPR (2014) and progress since

- 1.1 Cambodia was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 18). Although the issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information,² no specific recommendation was made on the issue. The Government did however support several general recommendations on children's rights.³
- 1.2 Since the review, there has been no change in the legality of corporal punishment of children. Although the Action Plan to Prevent and Respond to Violence Against Children 2017-2021 clearly committed the Government to prohibiting all corporal punishment in legislation by the end of 2019, no progress has so far been made.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Cambodia. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Cambodia enact legislation to explicitly prohibit corporal punishment of children in all settings, including in the home, and repeal all legal defences for its use.**

¹ 7 November 2013, A/HRC/WG.6/18/KHM/2, Compilation of UN information, para. 23

² 7 November 2013, A/HRC/WG.6/18/KHM/3, Summary of stakeholders' views, para. 21

³ 27 March 2014, A/HRC/26/16, Report of the working group, paras. 118(26), 118(65), 118(66) and 118(137)

2 Legality of corporal punishment in Cambodia

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Cambodia is prohibited in schools and in the penal system but it is still lawful in the home, and in alternative and day care settings. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including in the home, and all legal defences for its use, including in the Civil Code and in the Law on the Prevention of Domestic Violence and the Protection of Victims 2005, should be repealed.

- 2.1 **Home (*lawful*)**: Corporal punishment is lawful in the home. The Civil Code states that “the parental power holder may personally discipline the child to the extent necessary” (art. 1045, unofficial translation). Article 1079 extends this “right to discipline” to the child’s guardian. Article 8 of the Law on the Prevention of Domestic Violence and the Protection of Victims 2005 states that discipline of children is not considered as violence or domestic violence. Article 48 of the Constitution 1999 states that “the State shall protect the rights of children as stipulated in the Convention on Children”, but legal provisions against violence and abuse in the Constitution 1999 and in the Marriage and Family Law 1989 and the Criminal Code 2010 are not interpreted as prohibiting all corporal punishment in childrearing.
- 2.2 The Government reported to the Universal Periodic Review of Cambodia in 2014 that the Ministry of Social Affairs, Veterans and Rehabilitation and the National Council for Children have set up a working group to “initiate a Law on Child Protection”.⁴ We do not know if prohibition of corporal punishment is being proposed in this context. Under examination by the Human Rights Committee in 2015, the Government confirmed that the law allows parents “to administer minor corporal punishment on their children”.⁵ The Action Plan to Prevent and Respond to Violence Against Children 2017-2021 committed to amending all relevant provisions to prohibit corporal punishment of children in all settings, in particular within the Civil Code and the Law on the Prevention of Domestic Violence and the Protection of Victims 2005, by the end of 2019.
- 2.3 **Alternative care settings (*lawful*)**: Corporal punishment is lawful in alternative care settings under the provision in articles 1045 and 1079 of the Civil Code for a person with parental authority to discipline the child “within necessary scope”.
- 2.4 **Day care (*lawful*)**: Corporal punishment is lawful in day care under the provision in articles 1045 and 1079 of the Civil Code for a person with parental authority to discipline the child “within necessary scope”.
- 2.5 **Schools (*unlawful*)**: Corporal punishment is prohibited in public and private schools in article 35 of the Education Law 2007: “The learner’s rights concerning education are: ... the right to be respected and paid attention on human rights, especially the right to dignity, the right to be free from any form of torture or from physical and mental punishment....” A directive from the Ministry of Education, Youth and Sport, No. 922 MoEYS to the Director of Provincial Education, Youth and Sport on the subject of “Punishment for students” confirms that “physical punishments such as hitting, kneeling down, standing under the sun”, as well as mental punishments such as imposing copying of lessons that is impossible to achieve and making

⁴ 21 November 2013, A/HRC/WG.6/18/KHM/1, National report to the UPR, para. 91

⁵ 23 March 2015, CCPR/C/SR.3139, Summary record of 3139th session, para. 34

students feel bad and humiliated and punishments such as forcing students to do inappropriate tasks, are banned in all educational institutions throughout the country.

2.6 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 5 of the Juvenile Justice Law 2016:⁶ “All persons performing any function concerning to minor shall ensure the observance of the following principles: ... shall be prohibited torture, corporal punishment, or other treatment which is cruel, inhumane, or degrading in all forms” (unofficial translation). Article 2 states that the aims of the Law are to establish rules and procedures to deal with minors who have committed criminal offences. According to article 38 of the Constitution 1999, “Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited”.

2.7 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code or the Criminal Procedure Code 2007.

3 Recommendations by human rights treaty bodies

3.1 **CRC:** In 2011, the Committee on the Rights of the Child recommended that corporal punishment is prohibited in all settings, including the family and that provisions authorising it are repealed.⁷

3.2 **HRC:** The Human Rights Committee has in 2015 expressed concern at the continued legality of corporal punishment in the home and recommended that the Government put an end to its practice in all settings, including through legislative measures.⁸

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.

⁶ <http://unicefcambodia.blogspot.co.uk/2016/09/case-study-long-road-to-juvenile.html>, accessed 15 May 2017

⁷ 3 August 2011, CRC/C/KHM/CO/2-3, Concluding observations on second/third report, paras. 38, 39, 40 and 41

⁸ [April 2015], CCPR/C/KHM/CO/2 Advance Unedited Version, Concluding observations on second report