

Corporal punishment of children in Kuwait: Briefing for the Universal Periodic Review, 35th session, January 2020



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

From the Global Initiative to End All Corporal Punishment of Children, July 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 Kuwait, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture and the Committee on the Elimination of Discrimination against Women.

We hope the Working Group will note with concern the legality of corporal punishment of children in Kuwait. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Kuwait draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and penal institutions.

Article 29 of the Criminal Code and article 6 of the Child Rights Act provide for the “right” of parents to discipline children and legal provisions against violence and assault are not interpreted as prohibiting all corporal punishment. The near universal acceptance of corporal punishment in “disciplining” children necessitates clarity in law that no degree or kind of such punishment is acceptable or lawful. Article 29 of the Criminal Code should be repealed, and prohibition enacted of all corporal punishment, however light and whoever the perpetrator.

Alternative care settings – Prohibition should also be enacted in relation 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).

Penal institutions – Prohibition should be enacted in relation to the disciplinary measures permitted in all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Under examination by the Human Rights Committee in 2011, the Government indicated that corporal punishment is unlawful under the Criminal Code Act No. 16 1960.¹ However, article 29 of the Criminal Code provides for the right of parents to discipline their children, and provisions against violence and abuse in the Criminal Code 1960, the Juveniles Act No. 3 1983, Law No. 413/2009 obliging all physicians to report physical and psychological violence against children, the Personal Status Act No. 51 1984 and the Constitution 1962 are not interpreted as prohibiting corporal punishment in childrearing.

In 2013 a draft Child Act was under discussion which reportedly included prohibition of cruel, inhuman or degrading treatment by persons with authority over a child, including in the home, schools and institutions.² However, in 2015 the Government accepted recommendations to prohibit all corporal punishment made during the Universal Periodic Review of Kuwait but also referred to the authority of the guardian with regard to “simple discipline in accordance with article 6 of the Child Rights Act” (unofficial translation).³ The Child Rights Act No. 21 of 2015 provides in article 3 for the “protection of children from all forms of violence, harm and physical, mental or sexual abuse, including neglect, failure of care and other forms of ill-treatment or exploitation”.⁴ Article 6 of the

¹ 17 August 2011, CCPR/C/KWT/Q/2/Add.1, Reply to list of issues, para. 99

² 5 August 2013, CRC/C/KWT/Q/2/Add.1, Reply to list of issues, Q6; see also 13 April 2015, A/HRC/29/17, Report of the working group, para. 7

³ 4 June 2015, A/HRC/29/17/Add.1, Report of the working group: Addendum

⁴ 17 August 2015, CAT/C/KWT/3, Third report, para. 133

Acts allows for “basic” chastisement that is not “harmful” (unofficial translation) – this provides a defence for the use of so-called “light” corporal punishment in childrearing.

In reporting to the Committee on the Rights of the Child, the Government stated that Law No. 9/2010 on the protection of children from violence and exploitation protects children from all types of abuse.⁵ We have yet to see the text of this law but indications are that it does not explicitly prohibit all corporal punishment in childrearing.

Alternative care settings

Corporal punishment is lawful in alternative care settings. There is no explicit prohibition in law – including in the Juveniles Act 1983 and the Family Fostering Act No. 82 1977 and the Children’s Nurseries Act No. 111 2000 – and the right of parents to discipline children in article 29 of the Criminal Code 1960 (see under “Home”) presumably applies to all with parental authority.

In 2017, the Government reported that the regulations on the homes and institutions providing “residential care for all persons with special needs, including children, whether they are minors, of unknown parentage or have disabilities” prohibit “the use of corporal or psychological punishment”.⁶ We have however been unable to identify such a prohibition in laws or regulations.

Day care

Corporal punishment is lawful in early childhood care and in day care for older children. There is no explicit prohibition in law – including in the Juveniles Act 1983 and the Children’s Nurseries Act No. 111 2000 – and the right of parents to discipline children in article 29 of the Criminal Code 1960 (see under “Home”) presumably applies to all with parental authority.

Schools

Corporal punishment is unlawful in schools. During examination by the Committee on the Rights of the Child in 1998, the Government stated that a statute dating back to the 1960s prohibited corporal punishment by teachers or school principals.⁷ In 2011, the Government informed the Human Rights Committee that corporal punishment is prohibited by statute;⁸ a similar statement was made to the Committee on the Rights of the Child.⁹ In reporting to the Universal Periodic Review in 2015, the Government stated that the prohibition is included in the School System Regulations, which states in the Preamble that “corporal punishment and hurtful or humiliating remarks are totally inadmissible; a calm, impassive and even-tempered approach must be adopted; penalties should be imposed in a fair and equitable manner and not on the basis of mere suspicion; punishment must be viewed within a proper pedagogic context and should be carefully designed to prevent, correct and remedy unacceptable modes of behaviour; if a student’s personality or educational performance is adversely affected by the imposition of any form of punishment, the school’s psychosociologist must study the case and formulate a remedial course of action”.¹⁰

⁵ 5 August 2013, CRC/C/KWT/Q/2/Add.1, Reply to list of issues, Q6

⁶ 6 July 2017, CEDAW/C/KWT/Q/5/Add.1, Reply to list of issues, para. 7

⁷ 2 October 1998, CRC/C/SR.489, Summary record of 489th meeting, para. 8

⁸ 17 August 2011, CCPR/C/KWT/Q/2/Add.1, Reply to list of issues, para. 101

⁹ 5 August 2013, CRC/C/KWT/Q/2/Add.1, Reply to list of issues, Q6

¹⁰ 3 November 2014, A/HRC/WG.6/21/KWT/1, National report to the UPR, para. 31

Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions under the Prison Regulation Act No. 26 of 1962. The Government reported to the Committee Against Torture in 2015 that prisoners could be subjected to corporal punishment for breaching prison regulations and that “strict controls” were placed upon these punishments. The Government also reported that the Ministerial Decision No. 42 of 2004 did not include corporal punishment as a sanction for “breaches or misconduct” in a “juvenile care facility”.¹¹ However this is policy and does not include explicit prohibition – it is unclear how this affects the provisions of the Prison Regulation Act. There is no explicit prohibition in the Juveniles Act 1983.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for it in the Juveniles Act 1983, the Criminal Code 1960 or the Criminal Procedure Code 1960. Article 31 of the Constitution 1962 prohibits torture and degrading treatment. In 2001 draft legislation was under discussion which would have amended the Criminal Code to comply with Islamic law, including penalties of amputation and flogging. The Code has been amended a number of times since 2001 but it appears that Islamic punishments have not been enacted (unconfirmed). Juvenile Justice Act no. 11 of 2015 has now been passed and does not address corporal punishment.¹²

Universal Periodic Review of Kuwait’s human rights record

Kuwait was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). The following recommendation was made and was accepted by the Government:¹³

“Take appropriate measures and introduce legislation which would prohibit corporal punishment of children (Slovenia)”

The second cycle review took place in 2015 (session 21). In its national report, the Government described the Regulation prohibiting corporal punishment in schools.¹⁴ During the review, the following recommendations were made:¹⁵

“Prohibit corporal punishment of children at home and other alternative care settings, as it had committed to do in the UPR (Albania);

“Prohibit corporal punishment of children in all settings (Slovenia);

“Approve the new Law on Childhood and include the prohibition of corporal punishment in all settings (Uruguay);

¹¹ 17 August 2015, CAT/C/KWT/3, Third report, paras. 130, 132 and 134

¹² 21 April 2016, CCPR/C/KWT/Q/3/Add.1, Reply to the list of issues on third report

¹³ 16 June 2010, A/HRC/15/15, Report of the working group, para. 79(10)

¹⁴ 3 November 2014, A/HRC/WG.6/21/KWT/1, National report to the UPR, para. 31

¹⁵ 13 April 2015, A/HRC/29/17, Report of the working group, paras. 157(146), 157(147), 157(148) and 157(149)

“Eliminate corporal punishment as a disciplinary measure in the home and take measures to establish a complaints and investigation procedure for acts of violence against children (Mexico)”

The Government accepted the recommendations but in doing so noted “the authority of the guardian in the simple discipline in accordance with article 6 of the Child Rights Act” (unofficial translation).¹⁶

Recommendations by human rights treaty bodies

Kuwait’s initial report to the Committee on the Rights of the Child was examined in 1998. The Committee expressed concern about corporal punishment and recommended law reform to prohibit it in the family, schools, other institutions and in society generally.¹⁷ These concerns and recommendations were reiterated following examination of the second report in 2013.¹⁸

In 2017, the Committee on the Elimination of Discrimination Against Women expressed concern at the Penal Code provision which allows for physical discipline and recommended its abolition.¹⁹

Prevalence/attitudinal research in the last ten years

None identified.

¹⁶ 4 June 2015, A/HRC/29/17/Add.1, Report of the working group: Addendum

¹⁷ 26 October 1998, CRC/C/15/Add.96, Concluding observations on initial report, para. 21

¹⁸ 29 October 2013, CRC/C/KWT/CO/2, Concluding observations on second report, paras. 41 and 42

¹⁹ 17 November 2017, CEDAW/C/KWT/CO/5 Advance unedited version, Concluding observations on fifth report, paras. 14 and 15