**BRIEFING ON KUWAIT FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD, SESSION 87 PRE-SESSIONAL WORKING GROUP – June 2020**

*From the Global Initiative to End All Corporal Punishment of Children, February 2020*

**This briefing describes the legality of corporal punishment of children in Kuwait. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, its repeated recommendations on the issue, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, the recommendations to prohibit all corporal punishment made by the Committee on the Elimination of Discrimination Against Women and during the Universal Periodic Review in 2010 and 2015, and the global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee will:**

* **in its List of Issues for Kuwait, raise the issue of corporal punishment of children, in particular asking what steps the Government is taking to draft and enact legislation prohibiting all corporal punishment of children in all settings; and,**
* **in its concluding observations on the third/sixth report of Kuwait, recommend that legislation is immediately drafted and enacted to explicitly prohibit corporal punishment of children, in all settings including the home, and repeal all legal defences, as a matter of priority.**

**1 The report of Kuwait to the Committee on the Rights of the Child**

* 1. At time of writing, Kuwait’s state report was only available in Arabic.

**2 The legality and practice of corporal punishment of children in Kuwait**

2.1 ***Summary:***Corporal punishment of children in Kuwait is unlawful in schools and as a sentence for a crime. It is still lawful in homes, in alternative care and day care settings and in penal institutions.

2.2 ***Home (lawful):*** 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]](#footnote-2) 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.

2.3 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]](#footnote-3) 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]](#footnote-4) 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]](#footnote-5) Article 6 of the 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.

2.4 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]](#footnote-6) We have yet to see the text of this law but indications are that it does not explicitly prohibit all corporal punishment in childrearing.

2.5 ***Alternative care settings (lawful):*** 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 presumably applies to all with parental authority.

2.6 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]](#footnote-7) We have however been unable to identify such a prohibition in laws or regulations.

2.7 ***Day care settings (lawful):*** 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 presumably applies to all with parental authority.

2.8 ***Schools (unlawful):***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]](#footnote-8) In 2011, the Government informed the Human Rights Committee that corporal punishment is prohibited by statute;[[8]](#footnote-9) a similar statement was made to the Committee on the Rights of the Child.[[9]](#footnote-10) 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]](#footnote-11)

2.9 ***Penal institutions (lawful):*** 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]](#footnote-12) 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.

2.10 ***Sentence for crime (unlawful):*** 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]](#footnote-13)

**3 Recommendations by human rights treaty bodies and during the UPR**

3.1 ***CRC:*** 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.[[13]](#footnote-14) These concerns and recommendations were reiterated following examination of the second report in 2013.[[14]](#footnote-15)

3.2 ***CEDAW***: 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.[[15]](#footnote-16)

3.3 ***UPR***: During the Universal Periodic Review of Kuwait in 2010, the Government accepted the recommendation to “take appropriate measures and introduce legislation which would prohibit corporal punishment of children”.[[16]](#footnote-17) In the second cycle review in 2015, a number of recommendations were made to prohibit corporal punishment of children in all settings.[[17]](#footnote-18) The Government accepted the recommendations but in doing so appeared to defend some level of violent punishment of children, stating that “the authority of the guardian in the simple discipline in accordance with article 6 of the Child Rights Act” (unofficial translation).[[18]](#footnote-19)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 17 August 2011, CCPR/C/KWT/Q/2/Add.1, Reply to list of issues, para. 99 [↑](#footnote-ref-2)
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 [↑](#footnote-ref-3)
3. 4 June 2015, A/HRC/29/17/Add.1, Report of the working group: Addendum [↑](#footnote-ref-4)
4. 17 August 2015, CAT/C/KWT/3, Third report, para. 133 [↑](#footnote-ref-5)
5. 5 August 2013, CRC/C/KWT/Q/2/Add.1, Reply to list of issues, Q6 [↑](#footnote-ref-6)
6. 6 July 2017, CEDAW/C/KWT/Q/5/Add.1, Reply to list of issues, para. 7 [↑](#footnote-ref-7)
7. 2 October 1998, CRC/C/SR.489, Summary record of 489th meeting, para. 8 [↑](#footnote-ref-8)
8. 17 August 2011, CCPR/C/KWT/Q/2/Add.1, Reply to list of issues, para. 101 [↑](#footnote-ref-9)
9. 5 August 2013, CRC/C/KWT/Q/2/Add.1, Reply to list of issues, Q6 [↑](#footnote-ref-10)
10. 3 November 2014, A/HRC/WG.6/21/KWT/1, National report to the UPR, para. 31 [↑](#footnote-ref-11)
11. 17 August 2015, CAT/C/KWT/3, Third report, paras. 130, 132 and 134 [↑](#footnote-ref-12)
12. 21 April 2016, CCPR/C/KWT/Q/3/Add.1, Reply to the list of issues on third report [↑](#footnote-ref-13)
13. 26 October 1998, CRC/C/15/Add.96, Concluding observations on initial report, para. 21 [↑](#footnote-ref-14)
14. 29 October 2013, CRC/C/KWT/CO/2, Concluding observations on second report, paras. 41 and 42 [↑](#footnote-ref-15)
15. 17 November 2017, CEDAW/C/KWT/CO/5 Advance unedited version, Concluding observations on fifth report, paras. 14 and 15 [↑](#footnote-ref-16)
16. 16 June 2010, A/HRC/15/15, Report of the Working Group, para. 79 [↑](#footnote-ref-17)
17. 13 April 2015, A/HRC/29/17, Report of the working group, paras. 157(146), 157(147), 157(148) and 157(149) [↑](#footnote-ref-18)
18. 4 June 2015, A/HRC/29/17/Add.1, Report of the working group: Addendum [↑](#footnote-ref-19)