

# Ending family violence in the State of Palestine – challenging physical punishment of girls and boys

Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 70<sup>th</sup> session, from the Global Initiative to End All Corporal Punishment of Children ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)), September 2017



Global Initiative to  
End All Corporal Punishment  
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## Introduction: family violence in the State of Palestine and CEDAW's examination of the initial state party report

There is no family violence legislation in the State of Palestine. Violent punishment is prohibited in East Jerusalem but legal defences to its use remain in Gaza and in the West Bank.

**We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of the State of Palestine. In particular, we hope the Committee will:**

- in its list of issues for the State of Palestine, ask what steps are being taken to ensure that all violent punishment of children is prohibited in legislation as a matter of priority, and
- in its concluding observations on the initial state party report, recommend that the State of Palestine ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members, including the violent punishment of girls and boys, and to repeal all legal defences for its use.

The remainder of this briefing provides further details on the current law relating to family violence and corporal punishment of children in the State of Palestine.

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# 1 Laws on domestic violence and corporal punishment of children in the State of Palestine

## Summary

1.1 There is no legislation that specifically addresses family violence. Violent punishment of girls and boys is unlawful in the home in East Jerusalem but the Jordanian Penal Code 1960 applicable in the rest of the West Bank recognises a legal defence to the use of violence in childrearing, and it is likely that the British notion of “reasonable chastisement” applies in Gaza.

## Detail

1.2 Israel has occupied the Gaza Strip and the West Bank, including East Jerusalem, since 1967. The Palestinian Authority (PA), an “interim self-government” created in 1994, has limited jurisdiction and takes the form of a Fatah-led government in the West Bank and a Hamas-led government in Gaza. The political situation has resulted in a complex legal system. The West Bank is divided into three administrative regions, one controlled by the PA, one by Israel, and one with shared control (Israel controlling security matters, the PA civil matters). East Jerusalem, annexed by Israel in 1981, is under full Israeli administration. Different laws therefore apply in different areas, and some laws from the time of Jordanian Rule are in force. The Gaza Strip is under the administration of the PA. Laws enacted by the PA are applicable, together with some laws developed under the British Mandate/Egypt Administration.

1.3 Corporal punishment is lawful in the home. In the West Bank (except East Jerusalem), article 62 of the Jordanian Penal Code 1960 states that the law allows “forms of discipline inflicted on children by their parents, as permitted by general custom”. In Gaza, there appears to be no defence for the use of corporal punishment in the British Criminal Code 1936, though it is likely that the English common law defence of “reasonable chastisement” applies.

1.4 In both the West Bank (except East Jerusalem) and Gaza, children have legal protection from violence in PA laws. Article 29 of the Amended Basic Law 2003 states that children have the right to “protection from harmful and cruel treatment” and “not to be subjected to beating or cruel treatment by their relatives”, but this is not interpreted as prohibiting all forms of corporal punishment by parents. Article 42 of the Child Law 2004 (amended 2012) states that children “shall have the right to protection from violence, abuse, ill-treatment and exploitation and that the State “shall take all necessary legislative, administrative, social, educational and preventive actions and measures to secure the said right”.

1.5 In East Jerusalem, child protection law is the same as for the state of Israel, where corporal punishment is unlawful in the home. In 2000, the Israeli Supreme Court ruled against all violence in childrearing<sup>1</sup> and the “reasonable chastisement” defence was removed from criminal law the same year. However, a poor level of enforcement and discriminatory application of the law to Palestinian children has been documented.

1.6 In 2009, a number of new laws had been drafted, including a draft Social Affairs Law, draft amendments to the Child Law, a draft Penal Code, and a draft Constitution. The Child Law 2004 was amended in 2012 without addressing corporal punishment. We have no further information.

**1.7 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the State of Palestine to enact legislation as a matter of priority to clearly prohibit all corporal punishment of girls and boys throughout the territory and repeal any legal defence for its use.**

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<sup>1</sup> *Natalie Bako v The State*

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*  
[www.endcorporalpunishment.org](http://www.endcorporalpunishment.org); [info@endcorporalpunishment.org](mailto:info@endcorporalpunishment.org)