

# Corporal punishment of children in Yemen: Briefing for the Universal Periodic Review, 32<sup>nd</sup> 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 Yemen, 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, the Human Rights Committee and the Committee on Economic, Social, and Cultural Rights.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in Yemen. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Yemen enact legislation to explicitly prohibit corporal punishment of children in all settings, including in the home and as a sentence for a crime, and repeal all legal defences for its use.**

## **1 Review of Yemen in the 2<sup>nd</sup> cycle UPR (2014) and progress since**

- 1.1 Yemen 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 information<sup>1</sup> and in the summary of stakeholders' information,<sup>2</sup> no specific recommendation was made on the issue. The Government did however support several general recommendations on children's rights.<sup>3</sup>
- 1.2 The current political and humanitarian crisis has meant that no change in the legality of corporal punishment of children could happen. Since Yemen's last review, no progress has been made on the draft Children's Rights Law, which would have prohibited the sentencing of children to judicial corporal punishment.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Yemen. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Yemen enact legislation to explicitly prohibit corporal punishment of children in all settings, including in the home and as a sentence for a crime, and repeal all legal defences for its use.**

<sup>1</sup> 11 November 2018, A/HRC/WG.6/18/YEM/2, Compilation of UN information, paras. 28 and 32

<sup>2</sup> 7 November 2013, A/HRC/WG.6/18/YEM/3, Summary of stakeholders' views, para. 29

<sup>3</sup> 7 April 2014, A/HRC/26/8, Report of the working group, paras. 115(19), 115(20), 115(39), 115(48) and 115(49)

## 2 Legality of corporal punishment in Yemen

### ***Summary of current law and reforms needed to achieve prohibition***

Corporal punishment in Yemen is prohibited in schools, including preschools, and in penal institutions. It is still lawful in the home, in alternative care, in some day care settings and as a sentence for a crime. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including in the home and as a sentence for a crime, and all legal defences for its use, including in the Children's Rights Act 2002, should be repealed.

- 2.1 **Home (*lawful*):** Corporal punishment is lawful in the home. Article 146 of the Children's Rights Act 2002 confirms "the legal and legislative rights of parents to discipline their children". Provisions against violence and abuse in the Children's Rights Act, the Criminal Code 1994 and the Protection Against Domestic Violence Act 2008 are not interpreted as prohibiting corporal punishment in childrearing.
- 2.2 In 2010, amendments to the Criminal Code and the Children's Rights Act were under discussion which had been drafted with a view to addressing corporal punishment but at that time proposed provisions included confirmation of the "right to discipline children". In reporting to the Universal Periodic Review of Yemen in 2014, the Government stated that, in cooperation with UNICEF, it is reviewing current legislation on children with a view to proposing draft new legislation in line with the Convention on the Rights of the Child; it indicated that a Children's Bill is under discussion.<sup>4</sup> As at February 2015, the draft Child Rights Law had been submitted by the Ministry of Legal Affairs to the Cabinet and was awaiting approval; it did not include prohibition of corporal punishment by parents.
- 2.3 A new Constitution is under discussion. As at February 2015 the draft states that everyone has the right "to physical, mental and psychological well-being" and prohibits "physical, mental, psychological torture" (art. 77) and that children have the right to "protection from negligence, economic, social and sexual abuse, the risks of human trafficking and smuggling, and detrimental cultural practices, and all that undermines dignity and prejudices their health, physical and psychological wellbeing" (art. 122); article 125 states: "It is prohibited to exercise any form of violence or force against children..." It does not explicitly prohibit all corporal punishment.
- 2.4 **Alternative care settings (*lawful*):** Corporal punishment is lawful in alternative care settings. Article 146 of the Children's Rights Act 2002, confirming "the legal and legislative rights of parents to discipline their children", presumably applies to all persons with parental authority. As at February 2015, the draft Child Rights Law under discussion does not include prohibition of corporal punishment in alternative care settings.
- 2.5 **Day care (*partially lawful*):** Corporal punishment is lawful in early childhood care and in day care for older children. Article 146 of the Children's Rights Act 2002, confirming "the legal and legislative rights of parents to discipline their children" presumably applies to all persons with parental authority. Corporal punishment is possibly unlawful in preschools under education

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<sup>4</sup> 8 November 2013, A/HRC/WG.6/18/YEM/1, National report to the UPR, para. 101

legislation (see below). As at February 2015, the draft Child Rights Law under discussion did not include prohibition of corporal punishment in day care.

2.6 **Schools (unlawful):** Corporal punishment is explicitly prohibited in schools by article 68 of the regulations governing school punishment 2001. The Ministry of Education developed a manual on alternatives to corporal punishment for inclusion in the 2008 teacher training package. In reporting to the Committee on the Rights of the Child in 2010, the Government referred to Ministerial Decision No. 10 of 2002 which prohibits corporal and psychological punishment in schools.<sup>5</sup> The draft Child Rights Law under discussion in February 2015 would confirm prohibition of corporal punishment in schools, stating in article 117: “The Ministry of Education shall put in place all the measures that guarantee improving school administration system and strengthen student and parents involvement in all decisions related to students. The Ministry of Education shall also harmonise between the school administration and student dignity and it shall take any decisions or carry out any programs to eliminate all forms of violence, including physical or humiliating punishments, in schools regardless of their sources.”

2.7 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions. The Constitution states in article 47(b): “Physical punishment and inhumane treatment during arrest, detention or imprisonment are prohibited.” Under article 4 of the Organisation of Prisons Act 1991 the prison director must ensure that prison staff members treat detainees humanely and with respect for their dignity. The Juvenile Welfare Act (art. 14) prohibits the mistreatment of juveniles and the use of physical coercion when enforcing court rulings, though does not explicitly prohibit corporal punishment. The draft Constitution states in article 127 that “children, during arrest or restriction of freedom, shall be treated in a manner that protects them and maintains their dignity”.

2.8 **Sentence for crime (lawful):** Corporal punishment is lawful as a sentence for crime under article 38 of the Criminal Code 1994, which provides for amputation, retribution-in-kind and flogging; according to article 31, children between the ages of 15 and 18 may be given reduced sentences; children between 7 and 15 years may receive the measures provided for in the Juvenile Welfare Act 1992, which do not include corporal punishment though it is not explicitly prohibited. The Children’s Rights Act 2002 does not prohibit doctrinal punishment (see below): a child aged 10 or under is not liable to the punishments prescribed in the Criminal Code, but a child “in full possession of his mental faculties” is liable to up to a third of the maximum penalty prescribed for the offence (art. 125).

2.9 The Criminal Code and the Code of Criminal Procedure 1994 allow for sentences of retribution (*qisas*) and doctrinal punishment (*hadd*) (Criminal Code, art. 11; Criminal Procedure Code, arts. 477 to 493). *Qisas* punishments are ordered for offences against the person leading to injury or death (Criminal Code, art. 13), and they involve the infliction on the defendant of the same injury for which he or she was convicted of inflicting on the victim. Many of the provisions in criminal law which protect the dignity of the offender or prohibit inhuman treatment include the clause that they “shall be without prejudice to the right of victims to claim retribution.” *Hadd* punishments are mandatory punishments for the offences of transgression, apostasy, banditry, theft, adultery, slander and drinking alcohol (Criminal Code, art. 12). Under certain circumstances, doctrinal punishments do not apply (e.g. see Criminal Code arts. 266 on adultery and 299 on theft), and the Government has stated that these grounds for non-applicability “are such as to make the use of those punishments nearly impossible”.<sup>6</sup>

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<sup>5</sup> 23 October 2012, CRC/C/YEM/4, Fourth state party report, para. 367

<sup>6</sup> 23 February 2004, CCPR/C/YEM/2004/4, Fourth state party report to the Human Rights Committee, para. 167

- 2.10 When a person is sentenced to “retaliation resulting in loss of life or limb”, the Department of Public Prosecutions must inform the Supreme Court, which may set aside the sentence (Criminal Procedure Code, art. 434); the President must ratify the sentence and issue a Decree before it can be carried out (arts. 479 and 480). It should not take place on an official or religious holiday (Criminal Code, art. 484).
- 2.11 The Criminal Procedure Code states that doctrinal and retribution-in-kind sentences should take place in a hospital or other designated place, in the presence of a member of the General Prosecution, the Investigations Clerk, a police officer and a doctor, as well as the victim’s relatives and legal representative (art. 483). Doctrinal amputation “shall be carried out by a sharp tool on the right hand at the wrist and on the foot at the ankle” (art. 489). Injuries inflicted in fulfilment of retribution-in-kind sentences must be similar to the original injury (for which the defendant has been convicted) and “both the injured organ of the plaintiff and the vindicating organ of the sentenced defendant [must be] equal in health and soundness;” compliance with these conditions must be certified by a medical doctor (art. 490). The sentence must be carried out “by the severance of the organ described in the verdict, by means of the appropriate sharp tool, at the joint or boundary where such organ terminates,” unless the doctor considers this would put the defendant’s life at risk; emergency medical treatment must be provided following the punishment (art. 491).
- 2.12 Flogging should be inflicted with “a single soft strap, without any knots at its end”, in the presence of witnesses. Men may sit or stand, women must sit. The lashing proceeds from the foot to the neck, avoiding the head, and is more severe in cases of adultery. The flogging must be supervised by a medical doctor, who must ensure that it will not lead to death (Criminal Procedure Code, art. 492).
- 2.13 As at February 2015, the draft Child Rights Law under discussion would prohibit the sentencing of children to corporal punishment, stating in article 191(A): “A child shall not be subject to death penalty, a life-time imprisonment or financial or physical punishments.”

### 3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has recommended to Yemen on three occasions that all corporal punishment of children be prohibited – in its concluding observations on the second state party report in 1999,<sup>7</sup> on the third report in 2005<sup>8</sup> and on the fourth report in 2014.<sup>9</sup>
- 3.2 **CAT:** In 2004 and again in 2010, the Committee Against Torture recommended that corporal punishment as a criminal sanction be abolished.<sup>10</sup>
- 3.3 **HRC:** The Human Rights Committee has repeatedly recommended to Yemen that corporal punishment in the penal system be abolished – in 1995, 2002, 2005 and 2012.<sup>11</sup> In 2012, the

<sup>7</sup> 10 May 1999, CRC/C/15/Add.102, Concluding observations on second report, paras. 21 and 34

<sup>8</sup> 21 September 2005, CRC/C/15/Add.267, Concluding observations on third report, paras. 41, 42 and 43

<sup>9</sup> 31 January 2014, CRC/C/YEM/CO/4 Advance Unedited Version, Concluding observations on fourth state party report, paras. 7, 8, 43 and 44

<sup>10</sup> 5 February 2004, CAT/C/CR/31/4, Concluding observations on initial report, paras. 6 and 7; 25 May 2010, CAT/C/YEM/CO/2/Rev.1, Concluding observations on second report, para. 18

<sup>11</sup> 3 October 1995, CCPR/C/79/Add.51; A/50/40, paras. 242-265, Concluding observations on second report, paras. 256 and 262; 26 July 2002, CCPR/CO/75/YEM, Concluding observations on third report, para. 16; 9 August 2005, CCPR/CO/84/YEM, Concluding observations on fourth report, para. 16; 23 April 2012, CCPR/C/YEM/CO/5, Concluding observations on fifth report, para. 20

Committee also recommended that corporal punishment of children be ended in all settings, including in the family and in schools.<sup>12</sup>

3.4 **CESCR**: In 2010, in its concluding observations on Yemen's second report, the Committee on Economic, Social and Cultural Rights recommended that Yemen "urgently adopt legislation explicitly prohibiting corporal punishment of children in all settings, including as a penalty in criminal proceedings, as well as at home and in alternative care settings".<sup>13</sup>

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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.*

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<sup>12</sup> 23 April 2012, CCPR/C/YEM/CO/5, Concluding observations on fifth report, para. 20

<sup>13</sup> 1 June 2011, E/C.12/YEM/CO/2, Concluding observations on second report, para. 22