

Corporal punishment of children in Saudi Arabia: Briefing for the Universal Periodic Review, 31st session, November 2018

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



Global Initiative to
**End All Corporal Punishment
of Children**

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 Saudi Arabia, corporal punishment of children is still lawful in all settings, 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 Saudi Arabia. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Saudi Arabia draft and enact legislation as a matter of priority to clearly prohibit all corporal punishment of children in all settings, including in the home, as a sentence for a crime and under traditional and religious law, and repeal all legal defences and authorisations for its use.

1 Review of Saudi Arabia in the 2nd cycle UPR (2013) and progress since

- 1.1 Saudi Arabia was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 17). The issue of corporal punishment of children was raised in the summary of stakeholders' information.¹ The Government rejected several recommendations to prohibit judicial corporal punishment for children, stating that corporal punishment "does not fall within the definition of torture and other degrading treatment within the meaning of article 1 of the Convention against Torture".²
- 1.2 Since the review, there has been no change in the legality of corporal punishment of children. Corporal punishment of children was not addressed in the Child Protection Act 2015; and the Government has recently falsely declared that corporal punishment was already prohibited in homes, schools and penal institutions.³
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Saudi Arabia. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Saudi Arabia draft and enact legislation as a matter of priority**

¹ 24 July 2013, A/HRC/WG.6/17/SAU/3, Summary of stakeholders' views, paras. 10, 25, 26, 27, 30 and 31

² 28 February 2014, A/HRC/25/3/Add.1, Report of the working group: Addendum, paras. 14, 15 and 16

³ 9 November 2017, CEDAW/C/SAU/Q/3-4/Add.1, Reply to list of issues, para. 52

to clearly prohibit all corporal punishment of children in all settings, including in the home, as a sentence for a crime and under traditional and religious law, and repeal all legal defences and authorisations for its use.

2 Legality of corporal punishment in Saudi Arabia

Summary of current law and reforms needed to achieve prohibition

Corporal punishment of children in Saudi Arabia is lawful in all settings, including in the home and as a sentence for a crime. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including in the home, as a sentence for a crime and under traditional and religious law, and repeal all defences and authorisations for its use.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. Provisions against violence and abuse in the Basic Law 1992 are not interpreted as prohibiting corporal punishment in childrearing. The Law on Protection from Abuse 2013 addresses domestic violence, defining domestic abuse as “all forms of exploitation, or bodily, psychological, or sexual abuse, or threat of it, committed by one person against another, including if [that person] has authority, power, or responsibility, or [if there is] a family, support, sponsorship, guardianship, or living dependency relationship between the two [individuals]”. It does not prohibit corporal punishment of children. Regulations implementing the Law are being drafted. It was reported that a Royal Order on Domestic Violence was issued in 2017:⁴ we have no further information.
- 2.2 In 2015, the Government reported to the Committee Against Torture that a Child Protection Bill was under consideration which “is primarily intended to reaffirm the provisions of Islamic sharia and the international conventions to which the Kingdom is a party with respect to the protection of children from all forms of abuse and neglect, provision of the requisite care for such children, awareness- raising of the rights of the child and their definition, and the imposition of penalties for anyone violating those rights”.⁵ The Child Protection Act was promulgated in late 2015 and provides for additional protection from abuse and neglect for the child, “to which he may be exposed in his environment (home, school, neighbourhood, public places, care home, educational centre, alternative family, government, private institution or the like), whether at the hands of a person who has guardianship of, authority over or responsibility for the child or who has some other form of relationship with him” (art. 2).⁶ It states that “maltreatment”, “using abusive language to humiliate or degrade a child” and “any act that may threaten the child's safety or physical or psychological wellbeing” shall be defined as child abuse (art. 3). Although this provides children with some protection from violence and abuse, it does not explicitly prohibit all forms of corporal punishment.
- 2.3 **Alternative care settings (lawful):** During the Universal Periodic Review of Saudi Arabia in 2009, the Government stated that corporal punishment is prohibited in child care institutions,⁷ but we

⁴ 2 March 2018, CEDAW/C/SR.1582, Summary records of 1582nd meeting

⁵ 12 February 2015, CAT/C/SAU/2, Second state party report, para. 11

⁶ 12 February 2016, CAT/C/SAU/Q/2/Add.2, Reply to the list of issues on second report, para. 87

⁷ 9 June 2009, A/HRC/11/23/Add.1, Report of the working group: Addendum, paras. 38 and 39

have been unable to identify prohibition in law. Corporal punishment appears to be lawful in institutions and other alternative care settings.

2.4 **Day care (lawful)**: During the Universal Periodic Review of Saudi Arabia in 2009, the Government stated that corporal punishment is prohibited in nursery schools,⁸ but we have been unable to identify prohibition in law. Corporal punishment appears to be lawful in early childhood care and in day care for older children.

2.5 **Schools (lawful)**: During the Universal Periodic Review of Saudi Arabia in 2009, the Government stated that corporal punishment is prohibited in government and private schools,⁹ but we have been unable to identify prohibition in law. Schools are instructed not to use corporal punishment in circulars regularly issued by the Ministry of Education,¹⁰ applicable to all stages of general education and prescribing penalties designed to deter teachers from beating or ill-treating children, but there is no explicit prohibition in legislation.

2.6 **Penal institutions (lawful)**: Corporal punishment is lawful as a disciplinary measure in penal institutions. The Detention and Imprisonment Regulations 1977 prohibit torture or other cruel, inhuman or degrading treatment or punishment but allow for flogging. The Imprisonment and Detention Law 1978 provides for flogging as a punishment for violations of internal regulations. The Ministry of Labour and Social Affairs Decree 1354 of 1395 (1975) on internal regulations for social observation homes (art. 7) and the Ministry of Labour and Social Affairs Decree 2083 of 1396 (1976) on implementing regulations for girls' and young women's welfare homes (art. 9) prescribe in detail how corporal punishment should be carried out. The Government rejected the recommendation to end corporal punishment of prisoners made during the Universal Periodic Review in 2009.¹¹

2.7 **Sentence for crime (lawful)**: Corporal punishment (amputation and flogging) is lawful as a sentence for crime, including for child offenders. The main laws governing juvenile justice are the Juvenile Justice Act 1975, the Juvenile Justice Regulations 1969, the Law of Criminal Procedure 2001, and the Basic Law of Governance 1992. All laws are based on Shari'a: there is no written Penal Code and judges have considerable discretion in defining and punishing crime within the bounds of Shari'a. There are three types of offences – *qisas* (punished by retaliation), *hadd* (for which the prescribed penalty is mandatory), and *ta'zir* (for which the punishment is discretionary). The minimum age for criminal responsibility has reportedly been raised from 7 to 12, but reports are inconsistent and the rise does not apply to girls or in *qisas* cases. The law does not require all child offenders to be tried in the juvenile justice system or require judges to base their decisions on children's age at the time of the offence: judicial opinion on when a child can be tried as an adult varies and tends to be based on a child's physical development.

2.8 Flogging is mandatory for a number of offences (*hadd*) and can be ordered at the discretion of judges (*ta'zir*). Sentences range from dozens to thousands of lashes, and are usually carried out in instalments, at intervals ranging from two weeks to one month. The Juvenile Justice Regulations 1969 encourage juvenile courts to settle cases without placing children in supervised facilities and to limit penalties to admonishment, guidance, counselling or a reprimand, but under the Juvenile Justice Act 1975 young persons under 18 may be sentenced to corporal punishment, including flogging, stoning and amputation.

⁸ Ibid

⁹ Ibid

¹⁰ Including Ministerial Circular No. 1821 of 3 April 1996 (information unconfirmed)

¹¹ 4 March 2009, A/HRC/11/23, Report of the working group, para. 87(24)

2.9 Under the Law of Criminal Procedure 2001, amputation is carried out pursuant to a Royal Order issued by the King or his representative, and must be witnessed by representatives of the Administrative Governor, the Court, the Bureau of the Promotion of Virtue and Prevention of Vice, and the police (art. 220). Flogging should also be witnessed by these officials but there is no requirement for a Royal Order (art. 220). In June 2014, Justice Minister Mohammed Al Eissa reportedly defended physical punishments including lashing and amputation, stating that they are based on religious texts and cannot be changed.¹² In 2015, the Government reported to the Committee Against Torture that a juvenile justice bill and a new draft Code of Criminal Procedure were under discussion but gave no details.¹³ It is unclear whether this juvenile justice bill is the same as the alternative penalties bill mentioned in the 2015 state party report to the Committee on the Rights of the Child.¹⁴

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has on three occasions expressed concern at corporal punishment of children in Saudi Arabia and recommended that it be prohibited in all settings, including the home and as a sentence for crime – in its concluding observations on the state party’s initial report in 2001,¹⁵ on the second report in 2006,¹⁶ and on the third/fourth report in 2016.¹⁷
- 3.2 **CAT:** In 2002, the Committee Against Torture expressed concern at corporal punishment as a judicial sentence, noted that its imposition was a breach of the Convention, and recommended that Saudi Arabia re-examine it.¹⁸ Again in 2016, the Committee recommended that Saudi Arabia put an end to the practices of judicial corporal punishment and that it abolish all forms of corporal punishment in legislation.¹⁹
- 3.3 **CEDAW:** The Committee on the Elimination of Discrimination Against Women has expressed concern over the “persistent use by male guardians of physical violence to discipline women and children” and the use of judicial corporal punishment.²⁰

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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.

¹² Reported in arabianBusiness.com, 11 June 2014 (www.arabianbusiness.com/saudi-minister-says-beheading-lashings-cannot-be-changed--553582.html#.U5q-FBbWLZ6, accessed 13 June 2014)

¹³ 12 February 2015, CAT/C/SAU/2, Second state party report, paras. 114 and 115

¹⁴ 8 April 2015, CRC/C/SAU/3-4, Third/fourth report, para. 321

¹⁵ 22 February 2001, CRC/C/15/Add.148, Concluding observations on initial report, paras. 33, 34, 35 and 36

¹⁶ 17 March 2006, CRC/C/SAU/CO/2, Concluding observations on second report, paras. 42, 43, 44, 45, 73, 74 and 75

¹⁷ 25 October 2016, CRC/C/SAU/CO/3-4, Concluding observations on third/fourth report, para. 28

¹⁸ 12 June 2002, CAT/C/CR/28/5, Concluding observations on initial report, paras. 3, 4 and 8

¹⁹ 8 June 2016, CAT/C/SAU/CO/2, Concluding observations on second report, paras. 10 and 11

²⁰ 9 March 2018, CEDAW/C/SAU/CO/3-4 Advance unedited version, Concluding observations on third/fourth report, paras. 31, 32, 33 and 34