

YEMEN

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 18th session, 2014

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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 Yemen, corporal punishment of children is lawful, despite the repeated recommendations to prohibit it by the Committee on the Rights of the Child and other treaty monitoring bodies.

We hope the Working Group will note with concern the legality of corporal punishment in Yemen. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Yemen to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

1 The initial review of Yemen by the Human Rights Council (2009)

1.1 Yemen was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 5). The issue of corporal punishment was included in the compilation of UN information¹ and in the summary of stakeholders' information.² The following recommendation was made and was accepted by the Government:³

“Stop the sentencing of children to any form of physical punishment (United Kingdom)”

1.2 Prohibiting and eliminating corporal punishment of children is a key obligation under the Convention on the Rights of the Child and other international human rights instruments – not only in relation to criminal sentencing but in all aspects of raising, caring for and educating children.

1.3 Yemen has come under considerable pressure from treaty monitoring bodies to reform its laws to prohibit corporal punishment. The Committee on the Rights of the Child first raised the issue with Yemen in 1999, and in 2005 again expressed concern and recommended prohibition of all forms of corporal punishment, including in the family and

¹ 9 March 2009, A/HRC/WG.6/5/YEM/2, Compilation of UN information, paras. 21 and 50

² 19 February 2009, A/HRC/WG.6/5/YEM/3, Summary of stakeholders' information, para. 19

³ 5 June 2009, A/HRC/12/13, Report of the working group, para. 91(54)

as a sentence for crime.⁴ The Human Rights Committee has repeatedly recommended abolition of corporal punishment in the penal system and in 2012 recommended abolition in all settings.⁵ In 2011, the Committee on Economic, Social and Cultural Rights recommended explicit prohibition of corporal punishment of children in all settings, including the home, alternative care settings and as a criminal sentence.⁶ The Committee has also made recommendations on penal corporal punishment, though not specifically in relation to children.⁷

- 1.4 But the legality of corporal punishment of children in Yemen has not changed since the first cycle review of Yemen in 2009. Corporal punishment of children remains lawful in the home, in alternative care settings and in the penal system.
- 1.5 The obligation to reform the law to prohibit corporal punishment, including in the home, is one frequently ignored or evaded by governments. The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. **It is for these reasons that we respectfully urge members of the Working Group to specifically recommend prohibition of corporal punishment in the review of Yemen.**

2 Legality of corporal punishment in Yemen

- 2.1 **Home (lawful):** 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 2002, the Criminal Code 1994 and the Protection Against Domestic Violence Act 2008 are not interpreted as prohibiting corporal punishment in childrearing. In 2010, amendments to the Criminal Code and the Children’s Rights Act were under discussion: while they had been drafted with a view to addressing corporal punishment, at the time the proposals included confirmation of the “right to discipline children”. To our knowledge there has been no further progress towards enacting prohibiting legislation.
- 2.2 **Schools (unlawful):** Corporal punishment is explicitly prohibited in article 68 of the regulations governing school punishment 2001. 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.⁸
- 2.3 **Penal system – sentence for crime (lawful):** According to article 31 of the Criminal Code 1994 (which provides for corporal punishment), children between the ages of 15 and 18 may be given reduced sentences. Children between 7 and 15 may receive the measures

⁴ 10 May 1999, CRC/C/15/Add.102, Concluding observations on second report, paras. 21 and 34; 21 September 2005, CRC/C/15/Add.267, Concluding observations on third report, paras. 41, 42 and 43

⁵ 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; [April 2012], CCPR/C/YEM/CO/5 Advance Unedited Version, Concluding observations on fifth report, para. 20

⁶ 1 June 2011, E/C.12/YEM/CO/2, Concluding observations on second report, para. 22

⁷ 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

⁸ 23 October 2012, CRC/C/YEM/4, Fourth state party report, para. 367

provided for in the Juvenile Welfare Act 1992, which do not include corporal punishment. The Children's Rights Act 2002 does not prohibit doctrinal punishment (see below): a child of 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 (article 125).

- 2.4 The Criminal Code and the Code of Criminal Procedure 1994 allow for sentences of retribution (*qisas*) and doctrinal punishment (*hadd*) (Criminal Code, article 11; Criminal Procedure Code, articles 477 to 493). *Qisas* punishments are ordered for offences against the person leading to injury or death (Criminal Code, article 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, article 12).
- 2.5 The Criminal Procedure Code sets out in detail the conditions under which doctrinal and retribution-in-kind sentences, including amputation and flogging, should be imposed (articles 483, 489, 490, 491 and 492).
- 2.6 **Penal system – disciplinary measure in penal institutions (unlawful):** Corporal punishment is prohibited in article 47(b) of the Constitution: "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 (article 14) prohibits the mistreatment of juveniles and the use of physical coercion when enforcing court rulings, though does not explicitly prohibit corporal punishment.
- 2.7 **Alternative care settings (lawful):** 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.

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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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities.