



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

**BRIEFING ON YEMEN FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
PRESESSIONAL WORKING GROUP – June 2013**

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This briefing describes the legality of corporal punishment of children in Yemen. 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”, previous treaty body recommendations on the issue, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children and the Government’s mixed responses to recommendations made during the UPR in 2009, we hope the Committee will:

- **in its List of Issues for Yemen, raise the issue of corporal punishment of children, in particular asking what measures have been taken towards explicitly prohibiting corporal punishment in the home and other settings?**
- **in its concluding observations on Yemen’s fourth report, recommend that legislation is enacted to explicitly prohibit corporal punishment in all settings, including the home and as a sentence of the courts, as a matter of urgency, and that prohibition is enforced through appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

1 Yemen’s report to the Committee on the Rights of the Child

1.1 At the time of preparing this briefing, the fourth state party report to the Committee on the Rights of the Child is available only in Arabic.

2 The legality of corporal punishment of children in Yemen

2.1 *Summary:* In Yemen, corporal punishment of children is unlawful in schools and penal institutions but it is lawful in the home, alternative care settings and as a sentence for crime.

- 2.2 *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, 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 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”: we have no further information. In 2011, the Constitution was under review.
- 2.3 *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.
- 2.4 *Penal system – sentence for crime (lawful)*: Article 38 of the Criminal Code 1994 provides for amputation, retribution-in-kind and flogging; according to article 31, children between 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 (article 125).
- 2.5 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). Under certain circumstances, doctrinal punishments do not apply (e.g. see Criminal Code articles 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”.¹
- 2.6 The Criminal Procedure Code describes in detail how corporal punishment should be inflicted: amputation “shall be carried out by a sharp tool on the right hand at the wrist and on the foot at the ankle” (article 489); injuries inflicted in fulfilment of retribution-in-kind sentences 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” (article 491). 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 (article 492).

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

- 2.7 *Penal system – disciplinary measure in penal institutions (unlawful)*: 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 (article 14) prohibits the mistreatment of juveniles and the use of physical coercion when enforcing court rulings, though does not explicitly prohibit corporal punishment.
- 2.8 *Alternative care settings (lawful)*: Article 146(c) of the Children’s Rights Act 2002 applies (see under “Home”).

3 Recommendations by human rights treaty bodies and during the UPR

- 3.1 *CRC*: The Committee on the Rights of the Child first raised concerns about corporal punishment in Yemen in 1999 and made recommendations to address its use in families, schools and all institutions including detention centres.² In 2005, the again expressed concern and recommended explicit prohibition of all forms of corporal punishment, including as a sentence for crime.³
- 3.2 *HRC*: The Human Rights Committee has recommended abolition of corporal punishment four times – in 1995⁴, 2002⁵, 2005⁶ and 2012.⁷
- 3.3 *CAT*: The Committee Against Torture recommended an end to sentences of flogging and amputation in 2004⁸ and in 2010.⁹
- 3.4 *CESCR*: In 2011, the Committee on Economic, Social and Cultural Rights recommended that corporal punishment of children in Yemen be prohibited in all settings, including the home.¹⁰
- 3.5 *UPR*: Yemen was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 5). The Government accepted a recommendation to “stop the sentencing of children to any form of physical punishment” but rejected recommendations to “abolish torture and other cruel, inhuman and degrading treatment in all forms, in particular stoning, flogging and the amputation of limbs, and the execution of minors, as recommended by the Human Rights Committee and the relevant special mandate holders, respectively” and to “abolish corporal punishments such as flogging and, in a few cases, amputation of limbs, as they are in violation of article 7 of ICCPR”.¹¹

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

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

⁴ 3 October 1995, CCPR/C/79/Add.51; A/50/40, paras. 242-265, Concluding observations on second report, paras. 256 and 262

⁵ 26 July 2002, CCPR/CO/75/YEM, Concluding observations on third report, para. 16

⁶ 9 August 2005, CCPR/CO/84/YEM, Concluding observations on fourth report, para. 16

⁷ ([April 2012], CCPR/C/YEM/CO/5 Advance Unedited Version, Concluding observations on fifth report, para. 20

⁸ 5 February 2004, CAT/C/CR/31/4, Concluding observations on initial report, paras. 6 and 7

⁹ 25 May 2010, CAT/C/YEM/CO/2/Rev.1, Concluding observations on second report, para. 18

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

¹¹ 5 June 2009, A/HRC/12/13, Report of the working group, paras. 91(54), 94(9) and 94(10)