

**BRIEFING ON YEMEN FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, PRE-SESSIONAL WORKING GROUP, 7-11 March 2016**

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**This briefing describes the legality of corporal punishment of children in Yemen. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the previous recommendations to Yemen by the Committee on Economic, Social and Cultural Rights and those made by the Committee on the Rights of the Child, other treaty bodies and during the UPR, we hope the Committee on Economic, Social and Cultural Rights will:**

* **in its List of Issues for Yemen, raise the issue of corporal punishment of children, in particular asking what steps are being taken to ensure that the law clearly prohibits all forms of corporal punishment in all settings, including the home?**
* **in its concluding observations on Yemen’s third report, recommend that legislation is enacted to clearly prohibit all corporal punishment, including in the home, and to repeal the “right to discipline” children**.

**1 The legality and practice of corporal punishment of children in Yemen**

1.1 ***Summary:*** In Yemen, corporal punishment is unlawful in schools and penal institutions but it is lawful in the home, alternative care settings, day care and as a sentence for crime. There are current law reforms which provide an immediate opportunity to prohibit corporal punishment.

1.2 ***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. A 2010 UNICEF analysis of data from 2005-2006 found that 95% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey, with more than four children in ten being severely physically punished (hit or slapped on the face, head or ears or hit over and over with an implement).[[1]](#footnote-1)

1.3 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.[[2]](#footnote-2) 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 – but it did not include prohibition of corporal punishment by parents or carers.

1.4 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.

1.5 ***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.

1.6 ***Day care (?partially prohibited):***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 legislation (see below).

1.7 ***Schools (unlawful):***Corporal punishment is explicitly prohibited in 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.[[3]](#footnote-3) The draft Child Rights Law that was under discussion in February 2015 would confirm prohibition of corporal punishment in schools.

1.8 ***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 (art. 14) prohibits the mistreatment of juveniles and the use of physical coercion when enforcing court rulings, though does not explicitly prohibit corporal punishment.

1.9 ***Sentence for crime (lawful):*** Judicial corporal punishment is lawful 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).

1.10 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).

1.11 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).

1.12 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).

1.13 The draft Child Rights Law that was under discussion in February 2015 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.”

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***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”.[[4]](#footnote-4)

2.2 ***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,[[5]](#footnote-5) on the third report in 2005[[6]](#footnote-6) and on the fourth report in 2014.[[7]](#footnote-7)

2.3 ***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.[[8]](#footnote-8) In 2012, the Committee also recommended that corporal punishment of children be ended in all settings, including in the family and in schools.[[9]](#footnote-9)

2.4 ***CAT:*** In 2004 and again in 2010, the Committee Against Torture recommended that corporal punishment as a criminal sanction be abolished.[[10]](#footnote-10)

2.5 ***UPR:*** In the Universal Periodic Review of Yemen in 2009, the Government accepted a recommendation to stop sentencing children to physical punishment.[[11]](#footnote-11)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF [↑](#footnote-ref-1)
2. 8 November 2013, A/HRC/WG.6/18/YEM/1, National report to the UPR, para. 101 [↑](#footnote-ref-2)
3. 23 October 2012, CRC/C/YEM/4, Fourth state party report, para. 367 [↑](#footnote-ref-3)
4. 1 June 2011, E/C.12/YEM/CO/2, Concluding observations on second report, para. 22 [↑](#footnote-ref-4)
5. 10 May 1999, CRC/C/15/Add.102, Concluding observations on second report, paras. 21 and 34 [↑](#footnote-ref-5)
6. 21 September 2005, CRC/C/15/Add.267, Concluding observations on third report, paras. 41, 42 and 43 [↑](#footnote-ref-6)
7. 31 January 2014, CRC/C/YEM/CO/4 Advance Unedited Version, Concluding observations on fourth state party report, paras. 7, 8, 43 and 44 [↑](#footnote-ref-7)
8. 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 [↑](#footnote-ref-8)
9. 23 April 2012, CCPR/C/YEM/CO/5, Concluding observations on fifth report, para. 20 [↑](#footnote-ref-9)
10. 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 [↑](#footnote-ref-10)
11. 5 June 2009, A/HRC/12/13, Report of the working group, paras. 91(54), 94(9) and 94(10) [↑](#footnote-ref-11)