

Corporal punishment of children in Yemen

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Child population 12,629,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, some day care and as a sentence for crime.

The Children's Rights Act 2002 recognises "the legal and legislative rights of parents to discipline their children" (art. 146c). The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is lawful or acceptable. Article 146c of the Children's Rights Act should be repealed and legislation amended to prohibit all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

Alternative care settings – Corporal punishment should be prohibited in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc). It has possibly already been achieved in preschool settings.

Sentence for crime – Legal provisions for judicial corporal punishment, including doctrinal punishments, should be repealed.

Current legality of corporal punishment

Home

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.

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.¹ 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.

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.

Alternative care settings

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.

Day care

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

Schools

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

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

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.² 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.”

Penal institutions

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”.

Sentence for crime

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).

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”.³

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

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

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

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).

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).

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).

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."

Universal Periodic Review of Yemen's human rights record

Yemen was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 5). The following recommendations were made:⁴

"Stop the sentencing of children to any form of physical punishment (United Kingdom);

"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 (Israel);

"Abolish corporal punishments such as flogging and, in a few cases, amputation of limbs, as they are in violation of article 7 of ICCPR. (Nigeria)"

The Government accepted the first of these recommendations but rejected the other two.

The second cycle review of Yemen took place in 2014 (session 18). No specific recommendations on corporal punishment were made but the following recommendations were made and were accepted by the Government:⁵

"Continue efforts to adopt and implement legislative and administrative measures for the promotion and protection of the rights of the child (Chile);

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

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

“Spare no effort to expedite the guarantee of the rights of the child at the constitutional level (Guatemala);

“Establish an institutional framework which protects the rights of the child and guarantees implementation of these rights (Senegal);

“Continue the efforts in the field of the promotion and protection of the rights of vulnerable groups of the population, particularly children, women and persons with disabilities (Djibouti);

“Protect and promote the human rights of the entire population, particularly the most vulnerable groups such as women, children and minorities, and include these rights in the upcoming constitutional review process (Colombia)”

Third cycle examination took place in 2019 (session 32). No recommendation was issued specifically on corporal punishment of children but the Government supported the following recommendations:⁶

“Continue all possible efforts in adopting legislation and implementing operational frameworks focusing on protecting women and children from violence, including female genital mutilation. In order to avoid the tragedy of Yemen witnessing a lost generation– the government should take all possible steps fostering access of all children to education (Poland);

“Further efforts in enhancing the protection of vulnerable sectors including women, children, migrants, refugees, asylum seekers and internally displaced persons from violence and exploitation (Philippines)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

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

“The Committee, while welcoming the State party’s efforts to implement the Committee’s concluding observations of 2005 on the State party’s third periodic report (CRC/C/15/Add.267), notes with regret that some of the recommendations contained therein have not been fully addressed.

“The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the third periodic report under the Convention that have not been implemented or sufficiently implemented, particularly those related to the definition of the child, corporal punishment, harmful practices, education and administration of juvenile justice.

“The Committee notes that the Ministry of Education issued Decree No. 426 (2012) prohibiting corporal punishment in schools. However, it is concerned at the challenges to the effective implementation of this decree, such as the lack of adequate monitoring mechanisms, the teachers’ preconceptions regarding corporal punishment as a disciplinary measure and the lack of accountability mechanisms. It remains concerned that corporal punishment continues to be widely used within the family, in alternative care settings and as a sentence for a crime.

“The Committee urges the State party to:

⁶ 17 April 2019, A/HRC/41/9, Report of the Working Group, paras. 123(44) and 123(76)

- a) explicitly prohibit in its legislation all forms of corporal punishment including by adopting the draft amendments package on the rights of the child;
- b) introduce sustained public education, awareness-raising and social mobilization programmes, involving children, families, communities, traditional and religious leaders, on the harmful effects, both physical and psychological, of corporal punishment, with a view to changing the general attitude towards this practice;
- c) ensure that legal proceedings are systematically initiated against those responsible for ill-treating children;
- d) promote positive, non-violent and participatory forms of child-rearing and discipline; and
- e) establish a child-friendly complaints mechanism.”

Committee on the Rights of the Child

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

“The Committee is deeply concerned that corporal punishment is still used as a disciplinary measure in schools despite its official prohibition and is widely practised within the family and in other settings. The Committee is further concerned that corporal punishment, including flogging, is still lawful as a sentence for crime.

“The Committee recommends that the State party, as a matter of urgency:

- a) review existing legislation and explicitly prohibit all forms of corporal punishment;
- b) abolish by law the possibility of sentencing a child to any form of physical punishment; and
- c) undertake well-targeted public-awareness campaigns on the negative impact of corporal punishment on children, and provide teachers and parents with training on non-violent forms of discipline as an alternative to corporal punishment.

“The Committee also reiterates its previous concluding recommendations (CRC/C/15/Add. 102, paras, 21 and 34) and joins its voice to those made by the Human Rights Committee (CCPR/C/75/YEM, para. 16), and the Committee Against Torture (CAT/C/CR/31/4, para. 7).”

Committee on the Rights of the Child

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

“Although the Committee is aware that ill-treatment of children is prohibited by law, it remains concerned that the use of corporal punishment by parents is widely regarded to be acceptable. The Committee recommends that the State party reinforce measures to raise awareness on the negative effects of corporal punishment and ensure that discipline in schools, families and all institutions is administered in a manner consistent with the child’s dignity, in the light of articles 3, 12, 19 and 28 of the Convention. The Committee further suggests that the State party ensure that alternative disciplinary measures are developed within the family and in schools and other institutions.

“While noting that the State party has in place domestic legislation relating to juvenile justice, the Committee remains concerned at the general situation of the administration of juvenile justice and in particular its compatibility with the Convention, as well as with other relevant United Nations standards. The Committee is especially concerned about the lack of detention centres for female juvenile offenders; the use of detention other than as a measure of last resort; the poor living

conditions in detention centres; the use of physical punishment, including flogging, and torture in detention centres; the lack of rehabilitation measures and educational facilities for juvenile offenders; and the placement of 'potential delinquents' in detention centres instead of care institutions for their rehabilitation. Furthermore, the Committee considers that the age of criminal responsibility, set at 7 years, is too low. The Committee reiterates its recommendations (see CRC/C/15/Add.47, para.21) that the State party take all measures to review its legislation in order to reflect fully the provisions of the Convention, in particular articles 37, 40 and 39, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Training programmes on relevant international standards should be organized for all professionals working in the system of juvenile justice. The Committee recommends that the State party consider seeking technical assistance from, inter alia, the Office of the United Nations High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF through the Coordination Panel on Juvenile Justice."

Human Rights Committee

(23 April 2012, CCPR/C/YEM/CO/5, Concluding observations on fifth report, para. 20)

"The Committee is concerned about the legality of corporal punishment as a form of criminal sanction, which includes flogging, amputation and stoning. The Committee is also concerned about reports of corporal punishments against children outside judicial spheres such as within the family and in schools (arts. 6, 7 and 24).

The State party should take practical steps to put an end to corporal punishment in all settings. It should encourage nonviolent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects."

Human Rights Committee

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

"The Committee reiterates its deep concern that corporal punishments such as flogging, and in a few cases even amputation of limbs, are still prescribed by law and practised in the State party, in violation of article 7 of the Covenant.

The State Party should immediately put an end to such practices and modify its legislation accordingly, in order to ensure its full compatibility with the Covenant."

Human Rights Committee

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

"The Committee is extremely concerned to find that amputation and flagellation, and in general corporal punishment are still prescribed by law and practised, contrary to article 7 of the Covenant.

The State party should take appropriate measures to put an end to such practices and to ensure respect for the provisions of the Covenant."

Human Rights Committee

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

“... The Committee is also deeply concerned about the maintenance of corporal punishments like amputation of limbs and whipping, which is in violation of article 7 of the Covenant.

“... The Committee recommends that the Government take the initiative for the total abolishment of corporal punishment.”

Committee Against Torture

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

“The Committee remains concerned that certain criminal sanctions (or *hadd* penalties) such as floggings, beatings and even amputation of limbs are still prescribed by law and practised in the State party, in violation of the Convention. The Committee is also concerned at reports that courts across the country impose sentences of flogging almost daily for alleged alcohol and sexual offences, and that such floggings are carried out immediately, in public, without appeal. It is also concerned at the wide discretionary powers of judges to impose these sanctions and that they may be imposed in a discriminatory way against different groups, including women (arts. 1, 2 and 16).

The State party should put an end immediately to such practices and modify its legislation accordingly, especially with regard to the discriminatory effects of such criminal sanctions on different groups, including women, in order to ensure its full compatibility with the Convention.”

Committee Against Torture

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

“The Committee expresses its concern about the following:

b) the nature of some criminal sanctions, in particular flogging and amputation of limbs, which may be in breach of the Convention....

“The Committee recommends that the State party:

b) take all appropriate measures to ensure that criminal sanctions are in full conformity with the Convention....”

Committee on Economic, Social and Cultural Rights

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

“The Committee notes with concern that corporal punishment of children may be applied as a penalty in criminal proceedings, and that it is lawful and widely used in the home and alternative care settings as a disciplinary method (art. 10).

The Committee recommends that the State party 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.”

Prevalence/attitudinal research in the last ten years

Research involving caregivers and teachers of 1,196 randomly sampled 7-10 year olds found harsh corporal punishment is very common in Yemen: more than half of rural caregivers and about a quarter of urban caregivers reported using harsh corporal punishment (hitting children with implements, tying them up, pinching them, or biting them). The research found harsh corporal punishment to be significantly associated with poor school performance and both behavioural and emotional difficulties.

(Alyahria, A. & Goodman, R. (2008), "Harsh corporal punishment of Yemeni children: Occurrence, type and associations", *Child Abuse & Neglect*, 32(8), 766–773)

A study carried out in 2010, which involved 1,066 12-17 year olds from 8 schools, found that 55.7% had been slapped on the face, beaten on the head or shoulder, punched, kicked, pinched, had their hair pulled, had their ears twisted, had their hands crushed, had an object thrown at them, been forced to stand in a painful position or to stand in the sun and/or had food taken away from them by a teacher or other staff at school. Teachers were the most common perpetrators. The most common physical punishments were forcing children to stand in a painful position (experienced by 40%), twisting their ears (34.4%) and forcing them to stand in the sun (33.9%).

(Ba-Saddik, A. S. & Hattab, A. S. (2013), "Physical abuse in basic-education schools in Aden governorate, Yemen: a cross-sectional study", *Eastern Mediterranean Health Journal*, 19 (4), 333-339)

A 2007 study found that children in schools usually experience verbal violence when they do not do their homework, misbehave in class or do not follow school regulations, with words like "stupid", "donkey", "troublemaker", etc used to insult them.

(Al-Khather, N. (2007), *Violence against children from a cultural perspective*, cited in Manara Network for Child Rights (2011), *Violence Against Children in Schools: A Regional Analysis of Lebanon, Morocco and Yemen*, Beirut: Save the Children Sweden)