

Corporal punishment of children in Saudi Arabia: Briefing for the Universal Periodic Review, 17th session, 2013

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

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

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. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Saudi Arabia despite the Government's acceptance of recommendations to prohibit it made during the UPR in 2009 and repeated recommendations by the Committee on the Rights of the Child and the Committee Against Torture.

We hope the Working Group will note with concern the legality of corporal punishment in Saudi Arabia. We hope states will raise the issue during the review in 2013 and recommend to Saudi Arabia that all laws authorising corporal punishment are repealed and that legislation is enacted to explicitly prohibit corporal punishment of children in all settings including in the home and as a sentence for crime as a matter of priority.

1 Review of Saudi Arabia in the first cycle UPR (2009)

1.1 Saudi Arabia was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 4). The issue of corporal punishment of children was raised in an advance question by the Netherlands, in the compilation of UN information¹ and in the summary of stakeholders' information.² The following recommendations were made:³

“... Review its practice of imposing capital and corporal punishment and prohibit any form of corporal punishment (Germany, Austria); consider to end the use of corporal punishment for person under 18 and to establish a moratorium on executions of persons having committed crimes before the age of 18 (Austria)”

1.2 The Government accepted this recommendation, stating: “The Kingdom accepts this recommendation in accordance with its commitments undertaken under the Convention on the Rights of the Child. Corporal punishment is prohibited in all governmental and private schools as well as in nursery schools and child care institutions. Under the regulations any form of violence against children, including violence by parents, even for disciplinary purposes, constitutes a criminal offence.”⁴

1.3 The Government rejected a recommendation to end corporal punishment of prisoners,⁵ stating that this “does not constitute a current practice, particularly as the Kingdom is a party to the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment as well as the Convention on the Rights of the Child”.⁶

1.4 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. But too often it is an obligation ignored or evaded by governments. Law reform to prohibit corporal punishment requires the repeal of all legal provisions authorising its use and the enactment of explicit prohibition of all corporal punishment applicable to all settings, including the home. Notwithstanding the Government's assertion that violent discipline is a criminal offence, these necessary reforms have not been achieved in Saudi Arabia.

1.5 There has been no change in the legality of corporal punishment of children in Saudi Arabia since the initial UPR. Today, as in 2009, corporal punishment is lawful in the home, schools, alternative care settings and the penal system.

2 Legality of corporal punishment in Saudi Arabia

2.1 **Home (lawful):** We have been unable to ascertain whether legislation confirms a “right” of parents and others to use corporal punishment in childrearing, but provisions against violence and abuse in the Basic Law 1992 are not interpreted as prohibiting corporal punishment in childrearing.

2.2 **Schools (lawful):** Schools are instructed not to use corporal punishment in circulars regularly issued by the Ministry of Education, applicable to all stages of general education

¹ 20 November 2008, A/HRC/WG.6/4/SAU/2, Compilation of UN information, paras. 25, 27 and 40

² 14 November 2008, A/HRC/WG.6/4/SAU/3, Summary of stakeholders' views, paras. 1, 13 and 25

³ 4 March 2009, A/HRC/11/23, Report of the Working Group, para. 87(23)

⁴ 9 June 2009, A/HRC/11/23/Add.1, Report of the Working Group: Addendum, paras. 38 and 39

⁵ 4 March 2009, A/HRC/11/23, Report of the Working Group, para. 87(24)

⁶ 9 June 2009, A/HRC/11/23/Add.1, Report of the working group: Addendum, para. 40

and prescribing penalties designed to deter teachers from beating or ill-treating children, but there is no explicit prohibition in legislation.

- 2.3 **Penal system (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 *Sharia*: there is no written Penal Code and judges have considerable discretion in defining and punishing crime within the bounds of *Sharia*. 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.
- 2.4 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.
- 2.5 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 (article 220). Flogging should also be witnessed by these officials but there is no requirement for a Royal Order (article 220).
- 2.6 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 (article 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 (article 9) prescribe in detail how corporal punishment should be carried out.
- 2.9 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment.

3 Recommendations by human rights treaty monitoring bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has twice 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 2001⁷ and on the second report in 2006.⁸

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

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.⁹

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

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