

## Inhuman sentencing of children in Yemen

Briefing for the 18th session of the Human Rights Council Universal Periodic Review in January 2014, submitted by the Child Rights International Network (CRIN), ([www.crin.org](http://www.crin.org)), June 2013.

### Inhuman sentencing of child offenders in Yemen

1. In Yemen, it is illegal to sentence a child offender to death under domestic law, but such sentencing takes place in practice. Children can be lawfully sentenced to corporal punishment, including flogging and amputation. Life imprisonment is not a lawful penalty for any offence committed by a child.
2. The main laws governing juvenile justice are the Criminal Code 1994, the Criminal Procedure Code 1994, the Juvenile Welfare Act 1992 and the Children's Act 2002. The minimum age of criminal responsibility is 7.<sup>1</sup>
3. In 2009, the government accepted recommendations made during the Universal Periodic Review process to review the use of the death penalty on minors, to ensure that the penalty is not used on minors and to take immediate steps to remove juvenile prisoners from death row. The government rejected a recommendation made to abolish corporal punishments such as flogging and amputation.

### Legality of inhuman sentencing

#### *The death penalty*

4. The death penalty is not authorised for persons under 18. Article 31 of the Criminal Code states, “[I]f the perpetrator has reached the age of fifteen years old but not eighteen years old, the latter shall be sentenced to a maximum of half the punishment set forth legally. If the latter sentence was the death penalty, he/she ... shall be punished by imprisonment for a minimum of three years up to a maximum of ten years...”. The Code states that “if the age of

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1 Criminal Code, article 31; see also Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility*, Farnham: Ashgate Publishing

the defendant is not easily determined, the judge may estimate it with the assistance of an expert's council".<sup>2</sup> In practice, juveniles continue to be sentenced to death.

5. A large number of offences are punishable by death, including those relating to murder and other acts resulting in the death of a person,<sup>3</sup> offences affecting national security,<sup>4</sup> abduction and brigandage,<sup>5</sup> adultery, sodomy<sup>6</sup> and drug-related offences.<sup>7</sup>

6. When a person is sentenced to death, the President must ratify the sentence and issue a Decree before it can be carried out.<sup>8</sup> Execution may be by beheading, firing squad, crucifixion or stoning to death.<sup>9</sup>

### ***Corporal punishment***

7. Corporal punishment (amputation, retribution-in-kind and flogging) is a lawful sentence under Yemeni law.<sup>10</sup> Children aged between 7 and 15 years may only be sentenced under the Juvenile Welfare Act, which does not permit corporal punishment,<sup>11</sup> but children aged 15 to 18 are sentenced under the Criminal Code and so can be subjected to physical punishment.<sup>12</sup>

8. The Criminal Code and the Code of Criminal Procedure allow sentences of retribution (*qisas*) and doctrinal punishment (*hadd*).<sup>13</sup> *Qisas* punishments are ordered for offences against the person leading to injury or death,<sup>14</sup> and involve the infliction on the defendant of the same injury for which he or she was convicted of inflicting on the victim. Many provisions in criminal law which protect the dignity of the offender or prohibit inhuman treatment are expressly limited by a clause that provides that they "shall be without prejudice to the right of victims to claim retribution". *Hadd* punishments are mandatory for the offences of transgression,

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2 Criminal Code, article 31

3 Criminal Code, articles 234, 235, 249, 246

4 Criminal Code articles 125, 126, 127 and 128

5 Law No. 24 1998, article 1

6 Criminal Code, article 263

7 Unlawful Narcotics and Psychotropic Substances Trafficking and Use Act 1993, articles 33, 34 and 35

8 Criminal Procedure Code, articles 479 and 480

9 Criminal Procedure Code, articles 485, 486 and 487

10 Criminal Code, article 38

11 Criminal Code, article 31

12 Criminal Code, article 31

13 Criminal Code, article 11; Code of Criminal Procedure, articles 477 to 493

14 Criminal Code, article 13

apostasy, banditry, theft, adultery, slander and drinking alcohol.<sup>15</sup> Under certain circumstances, doctrinal punishments do not apply,<sup>16</sup> and the Government has stated that these grounds for non-applicability “are such as to make the use of those punishments nearly impossible.”<sup>17</sup>

9. 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.<sup>18</sup> The President must ratify the sentence and issue a Decree before it can be carried out.<sup>19</sup>

10. 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.<sup>20</sup> Doctrinal amputation “shall be carried out by a sharp tool on the right hand at the wrist and on the foot at the ankle.”<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

11. Flogging should be inflicted with “a single soft strap, without any knots at its end”, 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.<sup>24</sup>

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15 Criminal Code, article 12

16 See Criminal Code, article 266 (concerning adultery) and article 299 (concerning theft)

17 CCPR/C/YEM/2004/4, 23 February 2004, Fourth periodic report to the Human Rights Committee, para. 167

18 Criminal Procedure Code, article 434

19 Criminal Procedure Code, articles 479 and 490

20 Criminal Procedure Code, Article 483

21 Criminal Procedure Code Article 489

22 Criminal Code, Article 290

23 Criminal Procedure Code, Article 491

24 Criminal Procedure Code, article 492

## *Life imprisonment*

12. Imprisonment for life appears to be unlawful as a sentence for child offenders. Children aged 7 to 14 years may be subjected to penalties under the Law of Juveniles, which does not include life imprisonment, and a child aged 15 to 17 “shall be sentenced to a maximum of half the punishment set forth legally and between three and ten years imprisonment if the offence typically attracts the death penalty.”<sup>25</sup> These provisions specifically state that the relevant age is that “at the time of committing the crime”.

## **Inhuman sentencing in practice**

### *The death penalty*

13. The Government has stated that the punishment of stoning has never taken place<sup>26</sup> and no child under 18 has ever been executed.<sup>27</sup> However; according to UNICEF, 14 children were executed between 2006 and 2010, 11 children were on death row as of January 2011, and a further 84 children were at risk of being sentenced to death.<sup>28</sup>

14. In December 2012, a girl was killed for an offence she allegedly committed while 15 years old, and the UN Committee on the Rights of the Child subsequently reported that 21 juvenile offenders were under sentences of death as of December 2012 for offences allegedly committed while they were under the age of 18. The Committee stated that an additional 186 individuals faced charges for which they could be sentenced to death in relation to offences allegedly committed while under the age of 18. Three of these individuals had their sentences confirmed by the Supreme Court and were considered to be “at great risk of being executed”.<sup>29</sup> One of the three people identified by the Committee was subsequently executed for murder, despite concerns that he may have been under 18 at the time of his alleged offence.<sup>30</sup> A Human Rights Watch report published in March 2013 found 22 individuals on death row in Yemen despite evidence that they were under the age of 18 at the time of their

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25 Criminal Code, Article 31

26 A/HRC/12/13. 5 June 2009, *Report of the Working Group on the Universal Periodic Review*; Yemen, para. 51; see also CCPR/YEM/2004/4, 23 February 2004, Fourth periodic report to the Human Rights Committee, para. 174

27 A/HRC/12/13, 5 June 2009, *Report of the Working Group on the Universal Periodic Review*, Yemen, para. 53

28 Correspondence with UNICEF–Yemen, January 2011

29 OHCHR, “UN Committee expresses its deep dismay concerning continuing child executions in Yemen” 12 December 2012

30 Human Rights Watch, “Yemen: Halt execution of alleged juvenile offender” 8 March 2013 (updated 9 March 2013)

alleged crimes.<sup>31</sup> These figures have been confirmed through information received by CRIN from UNICEF.

### *Corporal punishment and life imprisonment*

15. We have been unable to obtain statistical information on the sentencing of children to corporal punishment or life imprisonment

### **The review of Yemen by the members of the Human Rights Council**

16. In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment of child offenders and the specific recommendations made to Yemen by the Committee on the Rights of the Child, Human Rights Committee, Committee on Economic, Social and Cultural Rights and the Committee against Torture, we hope that the members of the Human Rights Council will urge the government of Yemen to:

- Explicitly prohibit and enforce prohibitions on sentences of death, corporal punishment and life imprisonment for children in Yemen, under all systems of justice and without exception to ensure full compliance with international standards.
- Raise the minimum age of criminal responsibility.
- Provide disaggregated data about sentences handed down to children – including those who have been sentenced to death – by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pre-trial detention in each case.

17. To read CRIN's detailed report on Inhuman Sentencing of Children in Yemen, visit:

<http://www.crin.org/violence/search/closeup.asp?infoID=23453>

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31 Human Rights Watch, *Look at Us with a Merciful Eye: Juvenile Offenders Awaiting Execution in Yemen* 4 March 2013.