

UNITED ARAB EMIRATES

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 15th 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 the United Arab Emirates, despite recommendations to prohibit it by the Committee on the Rights of the Child as well as during the UPR in 2008, the latter rejected by the Government.

We hope the Working Group will note with concern the legality of corporal punishment in UAE. We hope states will raise the issue during the review in 2013 and recommend to UAE that legislation is enacted to explicitly prohibit corporal punishment of children in all settings including the home and as a sentence of the courts as a matter of urgency.

1 The initial review of the United Arab Emirates by the Working Group on the Universal Periodic Review (2008)

1.1 UAE was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). The issue of corporal punishment of children was included in the compilation of UN information¹ and the summary of stakeholders' information;² the following recommendation was recorded in relation to corporal punishment of adults:

“Sweden noted that corporal punishment of adults is practiced in the country, and recommended that (b) it consider legislative changes to repeal corporal punishment and bring legislation into line with international human rights obligations....”³

1.2 The Government rejected the recommendation.⁴ However, the Government did accept the following recommendations:

“To vigorously pursue efforts to promulgate a national law guaranteeing better protection for children, and that the general principle of the best interest for the child, as contained in article 3 of the Convention, is fully reflected in that law (Djibouti);

“To enact national legislation to protect the rights of children (Yemen)”⁵

1.3 Under international human rights law, as confirmed by the Committee on the Rights of the Child and other treaty monitoring bodies, prohibition of corporal punishment in law is a key obligation – “an immediate and unqualified obligation of States parties”.⁶ However, it is an obligation which governments frequently ignore or evade.

1.4 In reporting to the Human Rights Council with regard to the above accepted recommendations, the United Arab Emirates Government stated that “the Ministry of Social Affairs, in consultation with the concerned departments and civil society organisations, was studying a draft law to guarantee better protection for children, including through the creation of juvenile justice courts”.⁷ To our knowledge, the draft law at that time (2009) did not include prohibition of corporal punishment. However, media reports in 2012 (e.g. in *The National*, 21 May 2012) suggest that draft child protection legislation is still being considered, thus providing an immediate opportunity to enact the necessary prohibition of corporal punishment. But in the absence of law reform, it remains the case that children can be lawfully hit and hurt in the name of discipline in the home and care settings, and may be sentenced to flogging and other corporal punishment by the courts (see below).

2 Legality of corporal punishment in the United Arab Emirates

2.1 Corporal punishment is lawful in the **home**. Legal provisions against violence and abuse – for example in the Penal Code (1987) and the Constitution (1971) – are not interpreted as prohibiting corporal punishment of children.

2.2 Corporal punishment is prohibited in **schools** under article 9 of Ministerial Decision No. 454 (1998). It is considered unlawful in private schools under the Regulation of Behavioural

¹ 29 September 2008, A/HRC/WG.6/3/ARE/2, Compilation of UN information, paras. 14 and 42

² 16 September 2008, A/HRC/WG.6/3/ARE/3, Summary of stakeholders' information, para. 14

³ 12 January 2009, A/HRC/10/75, Report of the Working Group, para. 62

⁴ 12 January 2009, A/HRC/10/75, Report of the Working Group, para. 93

⁵ 12 January 2009, A/HRC/10/75, Report of the Working Group, paras. 91(11) and 91(12)

⁶ Committee on the Rights of the Child (2006), General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)”, para. 22

⁷ 9 November 2009, A/HRC/10/29, Report of the Human Rights Council on its tenth session, para. 425

Direction for Private School Students, which states that schools should not resort to non-pedagogic methods for modifying student behaviour, but there is no explicit prohibition. In 2010, the Ministry of Education was reportedly developing a new code of conduct for public schools and private schools were being urged to do likewise, and calls were being made for it to explicitly forbid the use of corporal punishment (*DaijiWorld*, 3 February 2010).

2.3 In the **penal system**, corporal punishment is lawful as a sentence for crime. The Constitution prohibits torture and degrading treatment (article 26) and there is no provision for corporal punishment as a sentence of the courts in the Penal Code, the Juvenile Delinquents and Vagrants Act (1976) or other criminal law. However, child offenders may be subject to corporal punishment under *Shari'a* law. Punishments include flogging, amputation, and – as retaliation – injury similar to that for which the offender has been convicted of inflicting on another.

2.4 Article 1 of the Penal Code states: “In crimes of doctrinal punishment (*Hadud*), retaliation (*Qisas*), and blood money (*Diyah*), the provisions of Islamic *Shari'a* shall be applied. The crimes and disciplinary punishments (*Ta'azir*) shall be determined according to the provisions of this Code and other criminal statutes.” While the Penal Code itself does not provide for corporal punishment, *Shari'a* law states that *ta'zir* punishments should be based on the *hadd* punishments which would be relevant for similar cases, and in practice persons charged under the Code have therefore been sentenced to corporal punishment.⁸ The Federal Supreme Court has confirmed that for certain *ta'zir* offences, judges have discretion to specify *hadd* punishments, including flogging.⁹ According to Amnesty International, in 2007, a court in al-‘Ain sentenced a teenage girl to 60 lashes for having “illicit sex” with a man when she was 14; the sentence was upheld in June 2007.¹⁰

2.5 It appears that corporal punishment is unlawful as a disciplinary measure in penal institutions. Penal institutions are regulated by Ministerial Decree No. 471 (1995) on the Promulgation of the Executive Regulations for Federal Act No. 43 (1992) Regulating Penitentiaries (1995), article 86(1) of which prohibits “cruelty, beating, torture or any other manifestation of material aggression against a prisoner”. However, we have been unable to examine the text of articles 90-103 which provide specifically for young people or the text of Ministerial Ordinance No. 32/3 (1983) concerning the statutes of juvenile reform centres.

2.6 There is no explicit prohibition of corporal punishment in **alternative care settings**.

3 Recommendations by human rights treaty monitoring bodies

3.1 In 2002, the **Committee on the Rights of the Child** expressed concern at the possibility that children could be sentenced to flogging and recommended abolition of this practice; the Committee also recommended prohibition of all corporal punishment in the family, schools and institutions, together with relevant public education campaigns and the promotion of positive, non-violent forms of discipline.

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⁸ Al-Muhairi, B.S.B.A. (1997), “The Incompatibility of the Penal Code with Shari’a”, *Arab Law Quarterly*, 12 (3), 307-329

⁹ The Ahmad Malik case – Unpublished Shari’a Criminal Cassation Case No. 44 Year 14, on 30 January 1993

¹⁰ *Amnesty International Report 2007: The State of the World’s Human Rights*, London: Amnesty International Publications