

## **Inhuman sentencing of child offenders in Yemen**

Briefing from Child Rights International Network (CRIN) for the Human Rights Committee, March 2012 ([www.crin.org](http://www.crin.org), [info@crin.org](mailto:info@crin.org))

### **Yemen (fifth report - CCPR/C/YEM/5)**

In Yemen, it is unlawful to sentence child offenders to capital punishment, though it happens in practice. It is also unlawful to sentence persons under 18 to life imprisonment. However, persons under 18 may lawfully be sentenced to corporal punishment, including flogging and amputation.

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.

In the List of Issues for Yemen (CCPR/C/YEM/Q/5) the Committee requests information on concrete measures to ensure that the death penalty is not imposed for offences committed by persons under 18 (Q. 9). It further urges the state to abolish flogging, stoning and amputation and provide details on steps to eliminate all forms of corporal punishment (Q. 15). The government's written reply is not available at the time of preparing this submission.

#### *Death penalty*

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 minor shall be punished by imprisonment for a minimum of three years up to a maximum of 10 years...” The Code states that “if the age of the defendant is not easily determined, the judge may estimate it with the assistance of an expert council”. In practice, juveniles continue to be sentenced to death.

Offences eligible for the death penalty include those relating to murder and other acts resulting in the death of a person, national security related offences, adultery and sodomy, abduction and brigandage, and drugs related offences (arts. 234, 235, 249, 246; 125-128; 263; Law No. 24 1998, article 1; Unlawful Narcotics and Psychotropic Substances Trafficking and Use Act 1993, arts. 33-35 respectively).

When a person is sentenced to death, the President must ratify the sentence and issue a Decree before it can be carried out (Criminal Procedure Code 479-480).

Executions may be carried out by beheading, firing squad, crucifixion or stoning to death (arts. 485-487).

### *Corporal punishment*

The Criminal Code (art. 38) prescribes corporal punishment (amputation, retribution-in-kind and flogging) as a lawful sentence. This does not apply to children aged between seven and 15 years who are subject only to the measures contained in the Juvenile Welfare Act, however, children aged 15 to 18 are given reduced sentences under the Criminal Code (art. 31). The Children's Rights Act does not prohibit doctrinal punishments: a child aged 10 or under who has committed a criminal offence is not subject to punishment set out in the Criminal Code, but a child "in full possession of his mental faculties" may receive up to a third of the maximum penalty prescribed for the offence (art. 125).

The Criminal Code (art.11) and the Code of Criminal Procedure (arts. 477-493) allow for sentences of retribution (*qisas*) and doctrinal punishment (*hadd*). *Qisas* punishments are specified for offences against the person leading to death or injury, and involve inflicting the same injury on the person convicted of inflicting injury upon. *Hadd* punishments are mandatory 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.

### *Life imprisonment*

Life imprisonment is unlawful as a sentence for child offenders. Children aged 7 to 14 may receive only the sentences provided for in the Law of Juveniles, which do not include life imprisonment, according to the Criminal Code. Children aged 15 to 17 "shall be sentenced to a maximum of half the punishment set forth legally" and between three and 10 years imprisonment if the offence usually attracts the death penalty (art. 31). The Code refers to age "at the time of committing the crime", but it also states that in all cases imprisonment shall be "in special facilities, subject to appropriate treatment of the indicated juveniles", raising uncertainty as to the law on imprisonment for adults convicted of crimes which they committed as children.

### **Inhuman sentencing in practice**

The government has stated that no child has ever been executed. However, according to UNICEF, 14 children were executed between 2006 and 2010, 11 children were on death row as at January 2011, and a further 84 children were at risk of being sentenced to death.

Government and NGO reports state that on 18 January Yemeni authorities executed Fuad Ahmed Ali Abdullah Alsayed in Taiz central prison for allegedly committing murder in June 2004, when his family claim he was still a minor. In addition, court orders have been issued for the execution of a further 20 minors. Find further details of individual cases here:

<http://www.crin.org/violence/search/closeup.asp?infoID=25132>

In 2005, the **Committee on the Rights of the Child** urged the government of Yemen to "abolish by law the possibility of sentencing a child to any form of physical punishment". It further expressed concern at the very low minimum age of criminal responsibility and other shortcomings in the juvenile justice system. It recommended that the State party "develop an effective system of alternative sentencing for persons below 18 who are in conflict with the law, such as community service and restorative justice, with the view inter alia, to ensuring the deprivation of liberty is a measure of last resort" (Concluding Observations on third report, paras. 41, 42, 43, 75, 76 and 77).

In 2010, the **Committee against Torture** expressed concern about “reported cases of imposition of the death penalty on children of between 15 and 18 years of age”. It recommended the State party consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty and that the State party review its policy with regard to the imposition of the death penalty, and in particular take the measures necessary to ensure that the death penalty is not imposed on children. It further requested that the State party provide information on the precise number of people executed in the full reporting period, for which offences and whether any children have been sentenced to death and executed.

In its examination under the **Universal Periodic Review** process in 2009, Yemen did not accept recommendations to abolish corporal punishment or the death penalty or ratify the Second Optional Protocol to the ICCPR. The government stated that child executions “do not exist and have no place in legislation or the judicial system”, although it supported recommendations to remove juveniles from death row. It also supported recommendations to raise the legal age of criminal responsibility, develop alternative sentences for juvenile offenders, and ensure that prison for offenders under 18 is used only as a last resort.

**In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment on child offenders, and previous recommendations made to the State party, we hope the Human Rights Committee will urge the government of Yemen to:**

**-Explicitly prohibit sentences of corporal punishment for persons under 18 at the time of the offence, including doctrinal and retribution-in-kind punishments.**

**-Review all legislation relating to juvenile justice to ensure the explicit prohibition of life imprisonment and ensure full compliance with international standards.**

**-Take concrete measures to ensure that capital punishment is not imposed in practice as a sentence for persons under 18 at the time of the offence.**

**-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 data about the children in detention, including gender, age, length of time spent in pre-trial detention in each case.**

*To read CRIN's detailed report on Inhuman Sentencing of Children in Yemen, visit:  
<http://www.crin.org/violence/search/closeup.asp?infoID=23453>*