

# Corporal punishment of children in Sudan

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Child population 18,954,000 (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, day care, some schools and penal institutions. Prohibition as a sentence for crime requires confirmation.

There appears to be no confirmation in criminal law of a “right” to administer “reasonable punishment” or similar, though it is possibly included in civil law and in state laws. But Sudan did not declare independence from the UK until 1956, so the English common law defence of “reasonable chastisement” is applicable. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. All legal provisions justifying the use of corporal punishment in childrearing should be repealed, and all corporal punishment and other cruel or degrading forms of punishment should be prohibited in the home and all other settings where adults have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 (formal foster care, institutions, orphanages, children’s homes, places of safety, emergency care, etc).

*Day care* – Corporal punishment should be prohibited in all formal early childhood care (nurseries, crèches, family centres, etc) and all formal day care for older children (after-school childcare, childminding, day centres, etc).

*Schools* – Corporal punishment should be prohibited in all public and private schools throughout Sudan.

*Penal institutions* – Corporal punishment should be prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law.

*Sentence for crime* – Confirmation is required that all judicial corporal punishment of child offenders, including under Shari’a law, is unlawful.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. Sudan did not declare independence from the UK until 1956, so the English common law defence of “reasonable chastisement” is applicable. Provisions against violence, inhuman and degrading treatment and abuse in the Child Act 2010, the Interim National Constitution of the Republic of the Sudan 2005 and other laws are not interpreted as prohibiting all corporal punishment in childrearing. In 2012, Rules under the Child Act were being drafted: we have no further information. We have yet to see the full text in English of the Disability Act 2009 and of the 2017 Persons with Disabilities Act but there are no indications that they prohibit corporal punishment. The Government has reported that a National Policy to Combat Violence Against Women and Children 2016-2031 and a National Plan to Combat Violence Against Women 2017-2022 had been drafted, but we have been unable to study the texts.<sup>1</sup>

At state level, all states have adopted constitutions which provide for child protection. Specific child legislation has been adopted in the states of the Red Sea, Kassala, South Kordufan, West Darfur and South Darfur; in 2010 child bills were under discussion in the states of Blue Nile, North Darfur and Gezira.

### **Alternative care settings**

There is no explicit prohibition of corporal punishment: it is lawful as for parents (see under “Home”).

### **Day care**

Corporal punishment is lawful as in the home (see under “Home”).

### **Schools**

At federal level, the Child Act prohibits “cruel penalties” in school (art. 29(1)) but does not explicitly prohibit all corporal punishment. Article 29(2) of the Child Act calls for the Ministry of Instruction and General Education to specify the sanctions for contravening article 29(1), but as of February 2017 this requirement had not yet been fulfilled. There is reportedly a Ministry of Education decree prohibiting corporal punishment in schools but we have not been able to confirm this information.

Corporal punishment is explicitly prohibited in basic schools (for ages 6-13) in Khartoum State under Decree No. 10 (2010) – we are trying to ascertain whether the Decree is a legislative or regulatory text.

### **Penal institutions**

Corporal punishment is lawful as a disciplinary measure in penal institutions. The Criminal Procedure Act 1991 states that an arrested person “shall be treated in such a way, as may preserve the dignity of the human being” and shall not be hurt physically or mentally (art. 83), but there is no explicit prohibition of corporal punishment in this or the Child Act 2010. In 2010, legislation on juvenile justice was being developed.

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<sup>1</sup> 6 December 2017, CRPD/C/SDN/Q/1/Add.1, Reply to list of issues, para. 12

## Sentence for crime

The effect of the Child Act 2010 on the legality of corporal punishment as a sentence for crime is unclear. In sentencing a child the court must “give due regard” to the principle that “the sentence of whipping is not inflicted on the child” (art. 77), but it is not clear that giving “due regard” amounts to prohibition of judicial whipping in all cases, including as *hudud*. The Act does not prohibit other forms of corporal punishment, such as amputation and wounding as retribution, which may be imposed for *hudud* offences under the Criminal Code 1991 (e.g. see arts. 28, 29, 30, 31, 32 and 168). The Child Act 2010 states that it prevails over any other law where there is inconsistency (art. 3), which was confirmed by the Supreme Court in relation to the provision prohibiting sentencing children to the death penalty.<sup>2</sup> However it is not clear that this prevalence principle applies to *hudud* offences. In 2014, Human Rights Watch reported that girls and women continue to be subjected to judicial flogging and other humiliating punishments.<sup>3</sup> In 2015, girls aged 17 were reportedly among those facing whipping of 40 strokes for the crime of “indecent dress” under article 152 of the Criminal Code 1991.<sup>4</sup>

In reporting to the Human Rights Committee in 2014, the Government defended the legality of judicial corporal punishment, including flogging and amputation, stating that these punishments “stem from the national belief and creed” and are “imposed in accordance with the law for legitimate public and private interests and safeguarded by all the means of due process of law”.<sup>5</sup> In 2017, the Government confirmed that amputation was provided for in the Criminal Code for the *hudud* offences of “theft and brigandage” but that it had “never been applied since the Code was issued in 1991”, which contradicts civil society reports (see above). It was also reported that the draft Criminal Code “includes a comprehensive revision of the penalty of flogging”.<sup>6</sup>

## Universal Periodic Review of Sudan’s human rights record

Sudan was examined in the first cycle of the Universal Periodic Review in 2011 (session 11), before South Sudan achieved independence. The following recommendations were made:<sup>7</sup>

“Abolish the death penalty, corporal punishment and other cruel, inhuman or degrading treatment from its national legislation (Ecuador);

“Take appropriate measures to reform its penal code, particularly aiming at eliminating corporal punishment (Brazil)”

The Government’s response was submitted after the achievement of independence in South Sudan (where corporal punishment was already prohibited in all settings): it rejected the recommendations.<sup>8</sup>

Sudan was examined in the second cycle of the Universal Periodic Review in 2016 (session 25). The following recommendations were made:<sup>9</sup>

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<sup>2</sup> Information provided by the Child Rights Institute, February 2017

<sup>3</sup> Human Rights Watch (2014), *World Report 2014*, NY: HRW

<sup>4</sup> Reported in *The Guardian*, 14 July 2015, <http://www.theguardian.com/world/2015/jul/14/sudan-christian-women-40-lashes-trousers>, accessed 23 July 2015

<sup>5</sup> 12 May 2014, CCPR/C/SDN/Q/4/Add.1, Reply to list of issues, para. 16

<sup>6</sup> 11 October 2017, CCPR/C/SDN/5, Fifth report, para. 55

<sup>7</sup> 11 July 2011, A/HRC/18/16, Report of the working group, paras. 83(102) and 83(110)

<sup>8</sup> 16 September 2011, A/HRC/18/16/Add.1, Report of the working group: Addendum, paras. 23 and 24

<sup>9</sup> 11 July 2016, A/HRC/33/8, Report of the working group, paras. 140(20), 141(7), 141(18), 141(25)

“As a way to strengthen article 69 of the 2010 Child Act, remove from national legislation all forms of corporal punishment and abolish corporal punishment in the penal system (Uruguay);

“Ratify the Convention against Torture, and prohibit corporal punishment, present in legislation, in the penal system (Spain);

“Urgently review its criminal justice system, in particular to criminalise torture and prohibit the use in courts of evidence obtained in violation of the International Covenant on Civil and Political Rights; abolish corporal punishment in the penal system; ... (Ireland);

“Establish a moratorium on capital executions with a view to abolishing the death penalty and to repeal all legislation that allows for the application of corporal punishment (Italy)”

The Government “noted” the recommendations.<sup>10</sup>

Examination in the third cycle is scheduled for 2021.

## **Recommendations by human rights treaty bodies**

### ***Committee on the Rights of the Child***

(22 October 2010, CRC/C/SDN/CO/3-4, Concluding observations on third/fourth report, paras. 39 and 40, recommendations made before South Sudan achieved independence)

“The Committee notes that the Child Act (2010) prohibits corporal punishment in schools. It also notes the adoption of the national plan to combat violence entitled “A Sudan Worthy of Children”. The Committee, however, is seriously concerned that corporal punishment, particularly caning and flogging, is widely practised in schools, in homes, in courts and in prisons.

“Taking into account its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to take all the necessary measures to end the practice of corporal punishment, and in particular, to:

- a) explicitly prohibit corporal punishment by law in all settings, ensure effective implementation of the law and prosecute offenders;
- b) ensure that school discipline is administered in a manner which is consistent with the child’s dignity as set out in article 28(2) of the Convention; and
- c) introduce public education, awareness-raising and social mobilization campaigns on the harmful effects of corporal punishment with a view to changing societal attitudes towards this practice, and promote positive, non-violent, participatory forms of child-rearing and education.”

### ***Committee on the Rights of the Child***

(9 October 2002, CRC/C/15/Add.190, Concluding observations on second report, paras. 35, 36 and 70, recommendations made before South Sudan achieved independence)

“The Committee is concerned that corporal punishment is widely practiced in the State party, including within the family, schools and other institutions; that children have been the victims of

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<sup>10</sup> 11 July 2016, A/HRC/33/8, Report of the working group, para. 141; 9 September 2016, A/HRC/33/8/Add.1, Report of the working group: Addendum, para. 140(20)

violence by, among others, the police; and that acts of torture, rape and other cruel, inhuman or degrading treatment have been committed against children in the context of the armed conflict.

“The Committee recommends that the State party:

a) prohibit under law the practice of corporal punishment in the family, in schools and in all other contexts and make use of legislative and administrative measures, as well as public education initiatives, to end the use of corporal punishment, including the provision of information on alternative non-violent methods of discipline;

b) prevent all forms of violence against children and make sure that perpetrators of violence against children, including the police, are prosecuted....

“The Committee recommends that the State party:

e) end the imposition of corporal punishment, including flogging, amputation and other forms of cruel, inhuman or degrading treatment or punishment, on persons who may have committed crimes while under 18....”

### ***Committee on the Rights of the Child***

(18 October 1993, CRC/C/15/Add.10, Concluding observations on initial report, paras. 4 and 17, recommendations made before South Sudan achieved independence)

“The Committee notes the willingness shown by the Government of the Sudan to take into account the recommendations made by the Committee with a view to reviewing existing legislation in order to bring it into conformity with the Convention. In this regard, the Committee welcomes the State party’s decision to establish a committee to review national laws pertaining to children and that its preliminary observation in the area of the abolition of the punishment of flogging has been taken into account by the reviewing committee.

“The Committee expresses the hope that the review of child-related laws will result in the total abolition of flogging.”

### ***Committee on the Rights of the Child***

(18 February 1993, CRC/C/15/Add.6, Preliminary observations on initial report, para.7, recommendations made before South Sudan achieved independence)

“The Committee notes the non-compatibility of certain areas of national legislation with the provisions and principles of the Convention, including the punishment of flogging.”

### ***Committee on Economic, Social and Cultural Rights***

(1 September 2000, E/C.12/1/Add.48, Concluding observations on initial report, paras. 24 and 34, recommendations made before South Sudan achieved independence)

“The Committee is also gravely concerned about the occurrence of flagellation or lashing of women for wearing allegedly indecent dress or for being out in the street after dusk, on the basis of the Public Order Act of 1996, which has seriously limited the freedom of movement and of expression of women.

“The Committee strongly recommends that the State party reconsider existing legislation, particularly the 1996 Public Order Act, in order to eliminate discrimination against women, thereby ensuring their full enjoyment of human rights in general and economic, social and cultural rights in particular.”

### ***Human Rights Committee***

(31 October 2018, CCPR/C/SDN/CO/5 Advance unedited version, Concluding observations on fifth report, paras. 35 and 36)

“The Committee regrets that, despite several recommendations that it has issued (CCPR/C/SDN/CO/3 and CCPR/C/SDN/CO/4), the State party’s legislation still provides for the punishment of flogging (article 35 of the Criminal Act), which also applies to minors (art. 47(b) of the Criminal Act), as well as for the punishment of amputation (article 171(1) of the Criminal Act), which constitute, by their very nature, gross breaches of article 7 of the Covenant (arts. 6, 7, and 16).

“The State party should repeal provisions of its legislation providing for punishments, such as flogging and amputation, which constitute violations of article 7 of the Covenant.”

### ***Human Rights Committee***

([July 2014], CCPR/C/SDN/CO/4, Concluding observations on fourth report, para. 16)

“The Committee regrets that, despite its previous recommendation (CCPR/C/SDN/CO/3, paragraph 10), the State party’s legislation still provides for several forms of corporal punishment, such as flogging and amputation, that violate article 7 of the Covenant (art. 7).

The State party should abolish corporal punishment in the penal system and also act vigorously to prevent any use of such punishments until they are repealed.”

### ***Human Rights Committee***

(29 August 2007, CCPR/C/SDN/CO/3, Concluding observations on third report, para. 10, recommendations made before South Sudan achieved independence)

“The Committee notes with concern the scale of values applied to punishment in the State party’s legislation. It considers that corporal punishment including flogging and amputation is inhuman and degrading. The Committee also notes with concern the continued practice of, and legislation concerning, *diya* (blood money) which may be paid in exchange for less severe punishment (arts. 2, 7, 10 and 14 of the Covenant).

The State party should abolish all forms of punishment that are in breach of articles 7 and 10 of the Covenant. It should also review the practice of the payment of *diya* (blood money) for murder and similar crimes. The State party should also ensure that sentences are proportional to the crimes and offences committed.”

### ***Human Rights Committee***

(19 November 1997, CCPR/C/79/Add.85, Concluding observations on second report, para. 9, recommendations made before South Sudan achieved independence)

“Flogging, amputation and stoning, which are recognized as penalties for criminal offences, are not compatible with the Covenant. In that regard, the Committee notes that:

By ratifying the Covenant, the State party has undertaken to comply with all its articles; penalties which are inconsistent with articles 7 and 10 must be abolished.”

### ***Committee on the Rights of Persons with Disabilities***

(2 March 2018, CRPD/C/SDN/CO/1 Advance unedited version, Concluding observations on initial report, paras. 15 and 16)

“The Committee is concerned about:

(a) The lack of measures taken to criminalize violence against children with disabilities, including corporal punishment and sexual violence, in all settings and under all circumstances;

(b) The absence of the rights of children with disabilities in national policies, plans and programs for children; ...

“The Committee recommends that the State party:

(a) Criminalize violence against children with disabilities, including corporal punishment and sexual violence, under all circumstances and in all settings, including by amending the Children’s Act of 2010 and the Criminal Code, and adopt and implement measures for sanctioning perpetrators;

(b) Mainstream the rights of children with disabilities in national policies, plans and programs for children...”

### ***African Committee of Experts on the Rights and Welfare of the Child***

([December 2014], Concluding observations on initial report, para. 23)

“The Committee appreciates the legislative and administrative measures taken towards the protection of children from abuse and torture, including the Constitution, the Child Act, and the National Action Plan 2008-2012 for combating violence against children. The Committee, however, remains concerned about the increasing number of reports of sex abuse, physical aggression and negligence. The State Party Report also indicates that physical punishments are often used to discipline children. The Committee, therefore, recommends that the State Party bans corporal punishment in all settings; undertake measures to effectively punish the authors of violence against children; introduce non-violent disciplining mechanisms in schools and sensitize the society about positive parenting.”

### **Prevalence/attitudinal research in the last ten years**

Research conducted in 2014 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme found 64% of 1-14 year-old children experienced some form of violent “discipline” (psychological aggression and/or physical punishment) in the month prior to the survey. The survey found 53% of children experienced psychological aggression, 48% physical punishment and 14% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). The use of physical punishment did not vary much with the sex of the child, but violent discipline was more common in the richest households (72%) than the poorest (54%). Only 22% of children experienced only non-violent forms of discipline.

(Central Bureau of Statistics (CBS) & UNICEF Sudan (2016), *Multiple Indicator Cluster Survey 2014 of Sudan, Final Report*, Khartoum, Sudan: UNICEF & Central Bureau of Statistics (CBS))

According to a 2014 Human Rights Watch report, girls and women continue to be subjected to judicial flogging and other humiliating punishments.

(Human Rights Watch (2014), *World Report 2014*, NY: Human Rights Watch)