

**BRIEFING ON SUDAN FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 122nd session (March - April 2018)**

*From the Global Initiative to End All Corporal Punishment of Children, December 2017*

**This briefing describes the legality of corporal punishment of children in Sudan. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, the recommendations made to Sudan by the Human Rights Committee in 1997, 2007 and 2014, and by the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the African Committee of Experts on the Rights and Welfare of the Child, and during Sudan’s UPR in 2011 and 2016, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues for Sudan, in particular asking what progress has been made to prohibit corporal punishment of children in all settings, including the home and as a sentence for a crime, and**
* **in its concluding observations on Sudan’s fifth periodic report, recommend that legislation explicitly prohibiting corporal punishment of children in all settings, including in the home and as a sentence for a crime, is drafted and enacted as a matter of priority.**

**1 The report of Sudan to the Human Rights Committee**

* 1. Sudan’s fifth periodic report to the Human Rights Committee (CCPR/C/SDN/5) reports that corporal punishment, and in particular amputation, does exist in domestic legislation but states that “that punishment has never been applied”.[[1]](#footnote-1) This contradicts reports that judicial corporal punishment is still in use, including against children,[[2]](#footnote-2) as well as Sudan’s obligation to prohibit all corporal punishment in legislation.

**1.2 In light of the state’s obligation to explicitly prohibit corporal punishment in all settings, we hope the Committee will raise the issue of corporal punishment of children in its review of Sudan and recommend that prohibition of corporal punishment in all settings, including in the home and as a sentence for a crime, is enacted as a matter of priority.**

**2 The legality of corporal punishment of children in Sudan**

2.1 ***Summary:*** In Sudan, corporal punishment is lawful in the home, in alternative care and day care settings, in most schools, and in penal institutions. It is prohibited in schools in Khartoum State. Prohibition as a sentence for a crime requires confirmation – it is possibly lawful under religious law.

2.2 ***Home (lawful):***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 but there are no indications that it prohibits corporal punishment.

2.3 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.

2.4 ***Alternative care settings (lawful):***There is no explicit prohibition of corporal punishment: it is lawful as for parents.

2.5 ***Day care settings (lawful):***Corporal punishment is lawful as in the home.

2.6 ***Schools (lawful):***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. Corporal punishment is explicitly prohibited in schools in Khartoum State under Decree No. 10 (2010).

2.7 ***Penal institutions (lawful):***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.

2.8 ***Sentence for crime (possibly unlawful):*** 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.[[3]](#footnote-3) 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.[[4]](#footnote-4) 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.[[5]](#footnote-5)

2.9 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”.[[6]](#footnote-6)

**3 Recommendations by human rights treaty bodies**

3.1 ***HRC:*** The Human Rights Committee has three times recommended abolition of corporal punishment in Sudan – in 1997, 2007 and 2014.[[7]](#footnote-7)

3.2 ***CRC:*** The Committee on the Rights of the Child has raised concerns about corporal punishment of children in Sudan and recommended it be prohibited four times – twice in 1993, again in 2002 and most recently in 2010.[[8]](#footnote-8)

3.3 ***CESCR:*** In 2000, the Committee on Economic, Social and Cultural Rights recommended law reform to prohibit flagellation of women.[[9]](#footnote-9)

3.4 ***ACERWC***: In 2014, the African Committee of Experts on the Rights and Welfare of the Child recommended to Sudan that corporal punishment of children be prohibited in all settings.[[10]](#footnote-10)

3.5 ***UPR***: Sudan was examined in the first cycle of the Universal Periodic Review in 2011 and rejected recommendations on the prohibition and elimination of corporal punishment.[[11]](#footnote-11) In the second cycle in 2016, the Government “noted” similar recommendations on the prohibition of corporal punishment.[[12]](#footnote-12)

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1. 11 October 2017, CCPR/C/SDN/5, Fifth report, para. 55 [↑](#footnote-ref-1)
2. Human Rights Watch (2014), *World Report 2014*, NY: HRW [↑](#footnote-ref-2)
3. Information provided by the Child Rights Institute, February 2017 [↑](#footnote-ref-3)
4. Human Rights Watch (2014), *World Report 2014*, NY: HRW [↑](#footnote-ref-4)
5. 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 [↑](#footnote-ref-5)
6. 12 May 2014, CCPR/C/SDN/Q/4/Add.1, Reply to list of issues, para. 16 [↑](#footnote-ref-6)
7. 19 November 1997, CCPR/C/79/Add.85, Concluding observations on second report, para. 9; 29 August 2007, CCPR/C/SDN/CO/3, Concluding observations on third report, para. 10; [July 2014], CCPR/C/SDN/CO/4, Concluding observations on fourth report, para. 16 [↑](#footnote-ref-7)
8. 18 February 1993, CRC/C/15/Add.6, Preliminary observations on initial report, para.7; 18 October 1993, CRC/C/15/Add.10, Concluding observations on initial report, paras. 4 and 17; 9 October 2002, CRC/C/15/Add.190, Concluding observations on second report, paras. 35, 36 and 70; 22 October 2010, CRC/C/SDN/CO/3-4, Concluding observations on third/fourth report, paras. 39 and 40 [↑](#footnote-ref-8)
9. 1 September 2000, E/C.12/1/Add.48, Concluding observations on initial report, paras. 24 and 34 [↑](#footnote-ref-9)
10. [December 2014], Concluding observations on initial report, para. 23 [↑](#footnote-ref-10)
11. 16 September 2011, A/HRC/18/16/Add.1, Report of the working group: Addendum, paras. 23 and 24 [↑](#footnote-ref-11)
12. 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) [↑](#footnote-ref-12)