

Inhuman sentencing of children in Sudan

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Introduction

The legality of capital punishment of child offenders (defined as under 18 at the time of the offence) is unclear in Northern and Southern Sudan. Corporal punishment is unlawful as a sentence in Southern Sudan except possibly under customary law; it appears to be lawful under Islamic law in Northern Sudan. Life imprisonment of persons under 18 is unlawful but this appears to relate to age at the time of sentencing rather than at the time of the offence.

The legal system in Sudan is based on British common law, Islamic law and customary law. The supreme law throughout the country is the Interim National Constitution of the Republic of Sudan. Southern Sudan has its own legal system but the laws, including the Interim Constitution of Southern Sudan, must comply with the federal Constitution.¹

The main laws governing juvenile justice are the Interim National Constitution of the Republic of the Sudan 2005, the Criminal Code 1991 and the Child Act 2010. These laws apply throughout the country. Southern Sudan is also governed by the Interim Constitution of Southern Sudan 2005, the Child Act 2008 and the Penal Code Act 2008. Southern Sudan also relies extensively on customary law. Each state has its own constitution (13 in Northern Sudan, four in Southern Sudan).

The Child Act 2010 defines a child as under 18 and sets the minimum age of criminal responsibility at 12.² This contrasts with the Criminal Act 1991 which defines an adult as “a person whose puberty has been established by definite natural features and who has completed 15 years of age” and sets the minimum age of responsibility at seven.³ The Child Act states that it prevails over any other law where there is inconsistency,⁴ but it is not clear that this applies to *hudud* offences.

In Southern Sudan, the Child Act 2008 defines a child as under 18 and sets the minimum age of criminal responsibility at 12, as does the Penal Code Act 2008.⁵

Legality of inhuman sentencing

Death penalty

Southern Sudan. The Interim Constitution of Southern Sudan states in article 25(2): “No death penalty shall be imposed on a person under the age of eighteen....” Article 21 of the Child Act 2008 states that “no child shall be sentenced to capital punishment”. The Penal Code Act 2008 states in article 9: “The Court shall not pass (b) the death penalty on any person who in the opinion of the Court is under eighteen years of age.” The prohibition appears to apply to age at the time of sentencing rather than at the time of the offence. It is in conflict with article 36(2) of the federal

¹ Interim National Constitution of the Republic of the Sudan 2005, article 3

² Articles 4 and 5(2)(l)

³ Articles 3 and 9

⁴ Article 3

⁵ Child Act 2008, articles 5 and 138; Penal Code Act 2008, article 30

Constitution, which states: “The death penalty shall not be imposed on a person under the age of eighteen ... except in cases of retribution or *hudud*.”

Children in Southern Sudan are sentenced to capital punishment under customary law.⁶

Northern Sudan. Article 27(2) of the Criminal Act: “With the exception of *hudud* and retribution (*qisas*) offences, death sentences shall not be passed against any person who has not attained the age of eighteen....” Article 36(2) of the Constitution also applies (see above). Death may be by hanging, stoning, crucifixion, or in the same manner as the victim of the crime died.⁷ Under the Criminal Act, *hudud* offences punishable with death include apostasy, murder, adultery and armed robbery.⁸ With regard to capital punishment for non-*hudud* offences, it appears that the restrictions in the Constitution and the Criminal Act apply to age at the time of sentencing rather than at the time of the offence.

The effect of the Child Act 2010 on the legality of capital punishment for child offenders is unclear. The Act makes no reference to *hudud* offences. It states that all children must be sentenced by a child court,⁹ does not provide for the death penalty as a sentence of the court,¹⁰ and states that in sentencing the child the court must “give due regard” to the principle that the “death sentence is not inflicted on the child”.¹¹ It is not clear that giving “due regard” amounts to prohibition of the death penalty, whether in relation to *hudud* or other crimes.¹² It also appears that the restriction of the death penalty applies to age at the time of sentencing rather than at the time of the offence.

Corporal punishment

Southern Sudan. Corporal punishment is unlawful as a sentence for crime in Southern Sudan. Article 21 of the Interim Constitution of Southern Sudan protects the child’s right “to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions”. This protection is also given in the Child Act 2008.¹³ There is no provision for judicial whipping in the Penal Code Act 2008. However, children are sentenced to flogging under customary law.¹⁴

Northern Sudan. The effect of the Child Act 2010 on the legality of corporal punishment 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”,¹⁵ 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 Act.¹⁶

Life imprisonment

⁶ 24 February 2010, CRC/C/SDN/3-4, *Third/fourth state party report to the Committee on the Rights of the Child*, paras. 323 and 324

⁷ Criminal Act, article 27(1)

⁸ Articles 3, 27(1), 126, 130, 146 and 168

⁹ Articles 62 and 67

¹⁰ Article 69

¹¹ Article 77

¹² See <http://www.hrw.org/en/news/2010/10/09/iran-saudi-arabia-sudan-end-juvenile-death-penalty>, accessed 11 November 2010

¹³ Articles 21 and 181

¹⁴ 24 February 2010, CRC/C/SDN/3-4, *Third/fourth state party report to the Committee on the Rights of the Child*, paras. 323 and 324

¹⁵ Article 77

¹⁶ For example, see articles 28, 29, 30, 31, 32 and 168

Southern Sudan. Article 21 of the Child Act 2008 states that “no child shall be sentenced to ... life imprisonment”. This appears to relate to age at the time of sentencing.

Northern Sudan. The Criminal Act 1991 states that persons under 18 may not be sentenced to imprisonment except for the offence of armed robbery.¹⁷ The Act provides for punishing armed robbery with life imprisonment when it involves rape and only in Southern states.¹⁸

There is no prohibition of life imprisonment in the Child Act 2010.

Inhuman sentencing in practice

According to Amnesty International, two child offenders were executed in 2005.¹⁹ In September 2008, Human Rights Watch reported at least six other persons sentenced to death between 2003 and 2008 for alleged offences committed when under 18.²⁰ In 2009, Sudan executed Abdulrahman Zakaria Mohammed who was 17 at the time of his trial in 2007.²¹ In October 2010, four children were sentenced to death.²²

We have no official statistics relating to corporal punishment or life imprisonment for child offenders.

Progress towards prohibition and elimination

Law reform needed

All legal provisions authorising the courts to sentence child offenders to capital punishment and corporal punishment should be repealed. Explicit prohibition should be enacted in legislation applicable throughout Sudan of capital punishment and corporal punishment as a sentence for child offenders, defined as persons under 18 at the time of the offence, including for *qisas* and *hudud* offences. Life imprisonment for persons under 18 at the time of the offence should be explicitly prohibited.

Law reforms under way

Legislation relating to juvenile justice is under development as well as legal mechanisms to implement the Child Act 2010.²³

National campaigns

¹⁷ Article 33(3)

¹⁸ Article 168

¹⁹ Amnesty International, *Executions of juveniles since 1990*, www.amnesty.org/en/death-penalty/executions-of-child-offenders-since-1990, accessed 4 May 2010

²⁰ Human Rights Watch (2008), *The Last Holdouts: Ending the Juvenile Death Penalty in Iran, Saudi Arabia, Sudan, Pakistan, and Yemen*, New York : Human Rights Watch

²¹ Human Rights Watch, 8 October 2010, *Iran, Saudi Arabia, Sudan: End juvenile death penalty*, <http://www.hrw.org/en/news/2010/10/09/iran-saudi-arabia-sudan-end-juvenile-death-penalty>, accessed 11 November 2010

²² IPS News, 9 November 2010, <http://www.ipsnews.net/news.asp?idnews=53495>, accessed 11 November 2010 ; Amnesty USA, 2 November 2010, <http://www.amnestyusa.org/actioncenter/actions/uaa22610.pdf>, accessed 11 November 2010

²³ 31 August 2010, CRC/C/SDN/Q/3-4/Add., *Written replies by the Government of the Sudan to the list of issues (CRC/C/SDN/Q/3-4) related to the consideration of the third and fourth periodic reports of the Sudan (CRC/C/SDN/3-4)*, para. 49

We are not aware of national campaigns focused exclusively on ending inhuman sentencing of child offenders but a number of organisations are promoting law reform more broadly in light of the Comprehensive Peace Agreement.

The Sudan-based African Centre for Justice and Peace Studies (www.acjps.org/) promotes law reform and monitors human rights in the country. It has called on the Ministry of Justice to review the cases of the children sentenced to death in October 2010.²⁴

The Khartoum Center for Human Rights and Environmental Development²⁵ and REDRESS (www.redress.org/smartweb/africa/sudan) have been engaged in a Project for Criminal Law Reform-Sudan (PCLRS) which aims to bring national law into conformity with the National Interim Constitution and international human rights standards.²⁶

National and international law conflicting with inhuman sentencing

The Constitution

A number of provisions in the Interim National Constitution of the Republic of the Sudan potentially conflict with inhuman sentencing of children:

Article 14(1):

“The State shall adopt policies and provide facilities for child and youth welfare and ensure that they develop morally and physically, and protect them from moral and physical abuse and abandonment.”

Article 27(3) and 27(4):

“All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.

“Legislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate any of these rights.”

Article 28

“Every human being has the inherent right to life, dignity and the integrity of his/her person, which shall be protected by law; no one shall arbitrarily be deprived of his/her life.”

Article 32(5)

“The State shall protect the rights of the child as provided in the international and regional conventions ratified by the Sudan.”

Article 33:

“No person shall be subjected to torture or to cruel, inhuman or degrading treatment.”

International human rights treaties

²⁴ Africa Centre for Justice and Peace Studies, 27 October 2010, *Special Courts in Darfur Sentence Nine Individuals, including Four Children, to Death*, <http://www.acjps.org/Publications/Press%20releases/2010/27-10-10SpecialCourtsinDarfur.html>, accessed 11 November 2010

²⁵ In 2009 this organisation was reportedly closed down by the authorities; we have no further information. See www.omct.org/index.php?id=OBS&lang=eng&articleSet=&articleId=8410, accessed 11 November 2010

²⁶ REDRESS & Khartoum Center for Human Rights and Environmental Development (2008), Project for Criminal Law Reform-Sudan (PCLRS), www.redress.org/downloads/country-reports/PROJECT%20FOR%20CRIMINAL%20LAW%20REFORM%20Jan%2008.pdf, accessed 11 November 2010. See also the briefing submitted by REDRESS and the Sudanese Human Rights Monitor for the UPR of Sudan in May 2011, at www.redress.org/downloads/publications/UPR_Sudan_Nov_2010.pdf, accessed 11 November 2010

Sudan has ratified or acceded to the following international treaties:

- Convention on the Rights of the Child (in 1990)
- Convention on the Rights of Persons with Disabilities (in 2009)
- International Covenant on Civil and Political Rights (in 1986)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1977)
- International Covenant on Economic, Social and Cultural Rights (in 1986)
- African Charter on Human and Peoples' Rights (in 1986)
- African Charter on the Rights and Welfare of the Child (in 2008)

Sudan has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol on the ICCPR aiming at the abolition of the death penalty or the Convention on the Elimination of All Forms of Discrimination Against Women.

Sudan is a party to the following complaints/communications mechanisms:

- Convention on the Rights of Persons with Disabilities
- African Charter on Human and Peoples' Rights
- African Charter on the Rights and Welfare of the Child

Status of treaties

Article 27(3) of the Interim National Constitution of the Republic of the Sudan states:

“All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.”

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child

(1 October 2010, CRC/C/SDN/3-4 Advance unedited version, Concluding observations on third/fourth report, paras. 35, 36, 39, 40, 89 and 90)

“The Committee is seriously concerned that, despite the adoption of the Child Act (2010), which prohibits the passing of the death sentence on children, under article 36 of the Sudan Interim Constitution, the death penalty may be imposed on persons below the age of 18 years in cases of retribution or *hudud*. The Committee is also concerned at recent reports that the death penalty continues to be carried out on children. The Committee reminds the State party that the application of the death penalty to children is a grave violation of articles 6 and 37 (a) of the Convention.

“The Committee urges the State party to ensure that the death penalty is not carried out on children, including in cases of retribution or *hudud*, and to replace any death sentences already passed on persons under 18 with an appropriate alternative sanction.

“The Committee ... 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....

“The Committee welcomes the recent establishment, through the Child Act (2010), of a juvenile justice system in the State party. The Committee is concerned, however, that due largely to an inadequate allocation of resources, the juvenile justice system is not yet fully functional and does have separate courts and detention facilities for children. The Committee is also concerned, *inter alia*, that:

a) the age of criminal responsibility is still determined according to apparent physical maturity (puberty and *facies*), rather than actual age;

b) children are frequently brought before adult courts and detained with adults in prisons outside Khartoum and while in police custody; ...

e) juvenile justice is dispensed according to customary law in Southern Sudan, which is not in conformity with international standards in the field of juvenile justice....

“The Committee recommends that the State party bring the system of juvenile justice fully in line with the Convention, in particular articles 37, 39 and 40, and with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules) and the Vienna Guidelines for Action on Children in the Criminal Justice System, and the Committee’s general comment No. 10 (2007) on children’s rights in juvenile justice. In this regard, the Committee recommends that the State party in particular:

a) apply the provisions of the Child Act concerning the age of criminal responsibility consistently throughout its territory;

d) accord all children in conflict with the law the full range of rights and judicial guarantees set out in articles 37 and 40 of the Convention, including the provision of prompt legal and other assistance at all stages of the investigative and judicial processes....”

Committee on the Rights of the Child

(9 October 2002, CRC/C/15/Add.190, Concluding observations on second report, paras. 69 and 70)

“Noting the reference to a juvenile court project in the State party’s response to the list of issues, the Committee is concerned that the holistic approach to addressing the problem of juvenile crime advocated in the Convention, including with respect to prevention, procedures and sanctions, has not been sufficiently taken into consideration by the State party. The Committee is concerned that the age of criminal responsibility is too low as a child may be punishable by detention in a reformatory from the age of 7.

“The Committee recommends that the State party:

a) raise the minimum age of criminal responsibility;

b) establish a system of juvenile justice that fully integrates into its legislation and practice the provisions of the Convention, in particular articles 37, 39 and 40, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System;

c) ensure that all children under 18 years of age benefit from the protection of juvenile justice standards;

- d) guarantee that sentences of capital punishment are not given for acts committed when the perpetrator was a child under 18 and that sentences of life imprisonment without possibility of release are likewise not handed down;
- 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, 15, 17 and 26)

“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 is of the opinion that the system of administration of juvenile justice in the Sudan is not fully compatible with articles 37, 39 and 40 of the Convention and other relevant United Nations standards.

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

“The Committee recommends that the system of administration of juvenile justice be reviewed in order to ensure its compatibility with articles 37, 39 and 40 of the Convention and other relevant United Nations standards.”

Committee on the Rights of the Child

(18 February 1993, CRC/C/15/Add.6, Preliminary observations on initial report, para.7)

“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)

“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

(29 August 2007, CCPR/C/SDN/CO/3, Concluding observations on third report, paras. 10 and 20)

“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.

“The Committee notes with concern that although the Interim National Constitution prohibits the imposition of the death penalty on those under the age of 18, exceptionally in Northern Sudan the death penalty can in fact be imposed on minors. While it takes note of the State party’s reply that offenders under the age of 18 are subjected to protection and re-education measures, it emphasises that the Constitutional Court has been seized, by a person claiming to be a minor, with a case challenging a death sentence against the individual concerned. It repeats that the Covenant does not allow the death penalty to be imposed for crimes committed by individuals aged under 18, and permits no derogation from that article (arts. 2, 4 and 6 of the Covenant) In keeping with article 6 of the Covenant, the State party should guarantee that the death penalty will not be applied to persons aged under 18 years.”

Human Rights Committee

(19 November 1997, CCPR/C/79/Add.85, Concluding observations on second report, para. 9)

“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.”

Universal Periodic Review

Sudan is due to be examined under the Universal Periodic Review process in May 2011.