

Corporal punishment of children in Sudan: Briefing for the Universal Periodic Review, 25th session, 2016

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Global Initiative to
**End All Corporal Punishment
of Children**

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Sudan, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the African Committee of Experts on the Rights and Welfare of the Child, and recommendations made during the 1st cycle UPR of Sudan (rejected by the Government).

We hope the Working Group will note with concern the legality of corporal punishment of children in Sudan. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Sudan clearly prohibit all corporal punishment of children in all settings including the home.

1 Review of Sudan in the 1st cycle UPR (2011) and progress since

- 1.1 Sudan was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 11). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² The Government rejected recommendations to prohibit all corporal punishment of children.³
- 1.2 Sudan ratified the Convention on the Rights of the Child in 1990. Prohibiting and eliminating all corporal punishment of children in all settings including the home – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Sudan. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Sudan clearly prohibit all corporal punishment of children in all settings including the home.**

¹ 24 February 2011, A/HRC/WG.6/11/SDN/2, Compilation of UN information, paras. 22 and 27

² 25 February 2011, A/HRC/WG.6/11/SDN/3, Summary of stakeholders' information, para. 34

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

2 Legality of corporal punishment in Sudan

Summary of current law and reforms needed in order to achieve prohibition

Corporal punishment of children in Sudan is unlawful in schools in Khartoum State and possibly as a sentence for crime, but it is lawful in other settings – in the home, alternative care settings, day care, penal institutions and in schools outside of Khartoum State. Achieving prohibition requires the enactment of legislation clearly prohibiting corporal punishment in these settings.

- 2.1 **Home (lawful)**: 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.
- 2.2 **Alternative care settings (lawful)**: There is no explicit prohibition of corporal punishment: it is lawful as for parents.
- 2.3 **Day care (lawful)**: Corporal punishment is lawful as in the home.
- 2.4 **Schools (partially prohibited)**: At federal level, the Child Act prohibits “cruel penalties” in school (art. 29) but it does not explicitly prohibit all corporal punishment. Corporal punishment is explicitly prohibited in schools in Khartoum State under Decree No. 10 (2010).
- 2.5 **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 Act or in the Child Act 2010.
- 2.6 **Sentence for crime (?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), but it is not clear that this 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 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
- 2.7 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

⁴ Human Rights Watch (2014), *World Report 2014*, NY: HRW

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

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

3 Recommendations by human rights treaty bodies

- 3.1 **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 2010.⁷
- 3.2 **HRC:** The Human Rights Committee has three times recommended abolition of corporal punishment in Sudan – in 1997, 2007 and 2014.⁸
- 3.3 **CESCR:** In 2000, the Committee on Economic, Social and Cultural Rights recommended law reform to prohibit flagellation of women.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

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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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.

⁷ 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

⁸ 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

⁹ 1 September 2000, E/C.12/1/Add.48, Concluding observations on initial report, paras. 24 and 34

¹⁰ [December 2014], Concluding observations on initial report, para. 23