

# Corporal punishment of children in Sudan: Briefing for the Universal Periodic Review, 39<sup>th</sup> session, 2021

*From the Global Partnership to End Violence Against Children, March 2021*



This submission provides an update on the legality of corporal punishment of children in Sudan since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be fully achieved in the home and alternative care settings. Corporal punishment is unlawful in day care, schools, in penal institutions and as a sentence for children convicted of an offence.

**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 still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies and during the 2<sup>nd</sup> cycle UPR of Sudan in 2016.**

**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 2021 and make a specific recommendation that Sudan enact legislation to explicitly prohibit corporal punishment of children in all settings and repeal the common law defence allowing its use.**

## 1. Review of Sudan in the 2<sup>nd</sup> cycle UPR (2016) and progress since

- 1.1 Sudan was examined in the second cycle of the Universal Periodic Review in 2016. Recommendations to prohibit corporal punishment in all settings were made.<sup>1</sup> The Government “noted” the recommendations.<sup>2</sup>

<sup>1</sup> 11 July 2016, A/HRC/33/8, Report of the working group, paras. 140(20), 141(7), 141(18), 141(25)

<sup>2</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)

- 1.2 Since the review, Sudan undertook law reforms to prohibit corporal punishment and in schools, in penal institutions and as a sentence for crime. The Miscellaneous Amendments Law 2020 prohibits caning and whipping in the juvenal justice system. In November 2020, pursuant to article 29(2) of the Child Act, the Ministry of Education signed a “Regulation on behaviour control in educational institutions” (unofficial translation) which prohibits physical and psychological punishment in all educational institution.
- 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 2021 and make a specific recommendation that Sudan enact a legislation to clearly prohibit all corporal punishment of children, however light, in the home and alternative care settings, as a matter of urgency.**

## 2. Legality of Corporal Punishment in Sudan

### **Summary of current law and opportunities for achieving prohibition**

Prohibition is still to be achieved in the home and alternative care settings. 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.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. Provisions against violence, inhuman and degrading treatment and abuse in the Child Act 2010, the 2019 Draft Constitutional Declaration of the Republic of the Sudan 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
- 2.2 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.

- 2.3 **Alternative Care Settings (lawful):** There is no explicit prohibition of corporal punishment: it is lawful as for parents (see under “Home”).
- 2.4 **Day Care (unlawful):** Corporal punishment is unlawful in day care. Pursuant to article 29(2) of the Child Act 2010, the Regulation on behaviour control in educational institutions 2020 prohibits corporal punishment in all preschool institutions as well as “interim” institutions. (see under “Schools”).
- 2.5 **Schools (unlawful):** Corporal punishment is unlawful in schools. At federal level, the Child Act prohibits “cruel penalties” in school (art. 29(1)). 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). In November 2020, pursuant to article 29(2) of the Child Act, the Ministry of Education signed a “Regulation on behaviour control in educational institutions” (unofficial translation). The Regulation prohibits physical and psychological punishment in all educational institutions (chapter 4). Paragraph 3 defines educational institutions as preschool, basic, secondary schools, Quranic schools as well as interim institutions such as industrial education centres, agricultural schools, adult education and disabled education (unofficial translation). The Regulation includes a list of positive discipline methods (chapter 5) and provides for sanctions (chapter 6).
- 2.6 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions. The Miscellaneous Amendments Law 2020 repeals “whipping by way of discipline” and replaces it with probation and community service. The Miscellaneous Amendments Law 2020 also amends articles 25,68,69,80,81, 125, 148(2), 151,155,156 and 174 of the Criminal Code 1991 to repeal flogging as disciplinary measure.
- 2.7 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. The Miscellaneous Amendments Law 2020 repeals whipping by way of discipline and as a sentence for crime. Whipping is replaced with probation and community service (article 47 (b)). Articles 25,68,69,80,81, 125, 148(2), 151,155,156 and 174 of the Criminal Code 1991 are amended to repeal flogging as a sentence for crime. Article 77 of the Child Act 2010 also states that in sentencing a child the court must “give due regard” to the principle that “the sentence of whipping is not inflicted on the child”. 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. Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has repeatedly expressed concern at corporal punishment of children in Sudan, and recommended it be explicitly prohibited in

some or all settings – in its preliminary observations on the state party’s initial report in 1993,<sup>3</sup> in its concluding observations on the state party’s initial report in 1993<sup>4</sup> and on the state party’s second report in 2002<sup>5</sup> and on the state party’s third to fourth report in 2010.<sup>6</sup>

3.2 **HRC:** The Human Rights Committee recommended that corporal punishment is explicitly prohibited in the penal system or all settings– in its concluding observations on the state party’s second report in 1997,<sup>7</sup> on the state party’s third report in 2007,<sup>8</sup> fourth report in 2014<sup>9</sup> and fifth report in 2018.<sup>10</sup>

3.3 **CRDP:** The Committee on the Rights of Persons with Disabilities recommended that corporal punishment of disabled children is explicitly prohibited in all settings– in its concluding observations on the state party’s initial report in 2018.<sup>11</sup>

3.4 **ACERWC:** The African Committee of Experts in the Rights and Welfare of the Child recommended that corporal punishment is explicitly prohibited in all settings– in its concluding observations on the state party’s initial report in 2014.<sup>12</sup>

*Briefing prepared by End Corporal Punishment on behalf of the Global Partnership to End Violence Against Children*

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<sup>3</sup> 18 February 1993, CRC/C/15/Add.6, Preliminary observations on initial report, para.7, recommendations made before South Sudan achieved independence

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

<sup>5</sup> 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

<sup>6</sup> 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

<sup>7</sup> 19 November 1997, CCPR/C/79/Add.85, Concluding observations on second report, para. 9, recommendations made before South Sudan achieved independence

<sup>8</sup> 29 August 2007, CCPR/C/SDN/CO/3, Concluding observations on third report, para. 10, recommendations made before South Sudan achieved independence

<sup>9</sup> [July 2014], CCPR/C/SDN/CO/4, Concluding observations on fourth report, para. 16

<sup>10</sup> 31 October 2018, CCPR/C/SDN/CO/5 Advance unedited version, Concluding observations on fifth report, paras. 35 and 36

<sup>11</sup> 2 March 2018, CRPD/C/SDN/CO/1 Advance unedited version, Concluding observations on initial report, paras. 15 and 16

<sup>12</sup> [December 2014], Concluding observations on initial report, para. 23

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