

## Inhuman sentencing of children in Nigeria

### Briefing for the 17<sup>th</sup> session of the Human Rights Council Universal Periodic Review in October 2013, submitted by the Child Rights International Network ([www.crin.org](http://www.crin.org)), March 2013

#### Inhuman sentencing of child offenders in Nigeria

The legal system in Nigeria is a mix of Islamic law, English common law and customary/native law.

In 2003, the National Assembly passed the federal Child Act 2003, but this is in force only in the Federal Capital Territory of Abuja and in states which have explicitly enacted it, a process in which it may also be modified. Child legislation in states which have not yet adopted the 2003 Act is based on the Children and Young Persons Law, enacted originally in 1943 and extended to the Northern Region in 1958.

In the Sharia northern states, the Sharia laws apply only to Muslims who are tried in Sharia courts (lower courts, upper courts, and Sharia courts of appeal). Non-Muslims are generally tried in Magistrates and High Courts under the common law system, though they may also voluntarily be tried under Sharia law. In Kaduna and in the south, non-Muslims may also be tried in customary courts.<sup>i</sup>

The laws differ in relation to the definition of a child, the minimum age of criminal responsibility, and the eligibility of child offenders for capital punishment, corporal punishment and life imprisonment. The federal Children's Rights Act 2003 defines a child as under 18 and explicitly prohibits capital punishment and corporal punishment, but only where these provisions are confirmed in the state legislation derived from the Act can it be said that juvenile offenders may not be sentenced to capital or corporal punishment.<sup>ii</sup> We have been unable to examine state laws derived from the Act, but are aware that at least two have lowered the age definition of a child.

The minimum age of criminal responsibility varies. The federal Children's Rights Act 2003 does not specify a minimum age of criminal responsibility, but it defines a child as under 18 and states that a child in conflict with the law must be dealt with under the Act.<sup>iii</sup> The Children and Young Persons Law defines a child as under 14 and a young person as aged 14-16.<sup>iv</sup> It sets the minimum age of criminal responsibility at seven but states that children below that age who have allegedly committed a crime must be brought before the Juvenile Court. It provides for special measures for persons under 16 in conflict with the law,<sup>v</sup> but persons older than 16 are tried as adults.

In the southern states, the Criminal Code Act 1916 sets the minimum age of criminal responsibility at 7.<sup>vi</sup> The Criminal Procedure Act 1945 defines an infant as under 7, a child as under 14, a young person as aged 14-16, a juvenile offender as under 17 and an adult as aged 17 and over.<sup>vii</sup> In the northern states, the Penal Code 1960 specifies that 7 is the minimum age of criminal responsibility<sup>viii</sup> and categorises juvenile offenders as those under 17. According to the Sharia laws, children are eligible for *hadd* (for which the prescribed punishment is mandatory) and *qisas* (punished by retaliation) punishments from the age of puberty.<sup>ix</sup>

#### Legality of inhuman sentencing

##### *Death penalty*

##### (1) States with legislation derived from the Children's Rights Act 2003

Article 221(1)(c) of the Children's Rights Act 2003 states: "No child shall be ordered to be subjected to the death penalty or have the death penalty recorded against him." In states which have adopted the Act without modifying this provision or the definition of the child, it would be unlawful to sentence a person under 18 to capital punishment, though we have yet to confirm that this restriction applies to the age at the time of the offence rather than age at the time of sentencing.

At least two states, in adopting the Children's Rights Act 2003, have modified the definition of the child. In Akwa-Ibom in the **south**, a child is defined as age 16 and under,<sup>x</sup> and from the age of 17 children are

presumably sentenced as adults, including to capital punishment, under the Criminal Code 1916 and the Criminal Procedure Act 1945 (see below). In Jigawa, in the **north**, a child is defined with reference to puberty<sup>xi</sup> which suggests that a Muslim child from the age of puberty may be sentenced to death under the Sharia Penal Code 2000 and the Sharia Criminal Procedure Code Law 2001, and a non-Muslim child from the age of 17 may be sentenced to death under the Penal Code 1960 and the Criminal Procedure Code 1960 (see below).

## **(2) States which have not adopted the Children's Rights Act 2003**

Article 12 of the Children and Young Person's Law states: "Sentence of death shall not be pronounced or recorded against an offender who had not attained the age of seventeen years at the time the offence was committed..."<sup>xii</sup>

States in the **south** which have yet to enact the Children's Rights Act may sentence child offenders from the age of 17 to capital punishment.

In the **north**, 13 states have yet to enact the Children's Rights Act 2003. In the 11 Sharia states, Muslims may be sentenced to death from puberty, although some states allow for sentencing instead to detention in a reformatory home or to 20 strokes of the cane.<sup>xiii</sup>

Non-Muslims in the northern states which have not enacted the Children's Rights Act may be sentenced to death from the age of 17 at the time of the offence under the Penal Code 1960 and the Criminal Procedure Code 1960.

### ***Corporal punishment***

#### **(1) States with legislation derived from the Children's Rights Act 2003**

Article 221(1)(b) of the Children's Rights Act 2003 states that "no child shall be ordered to be subjected to corporal punishment". In states which have adopted the Act without modifying this provision or the definition of the child, it would be unlawful to sentence a person under 18 to corporal punishment.

As noted above, at least two states have modified the definition of the child in the Children's Rights Act.<sup>xiv</sup> In the **southern** Akwa-Ibom, where a child is defined as age 16 and under, those aged 17 are presumably sentenced as adults, including to corporal punishment under the Criminal Code 1916 and the Criminal Procedure Act 1945 (see below). In **northern** Jigawa, the definition of a child with reference to puberty suggests that a Muslim child from the age of puberty may be sentenced to corporal punishment under the Sharia Penal Code 2000 and the Sharia Criminal Procedure Code Law 2001, and a non-Muslim child from the age of 17 may be sentenced to death under the Penal Code 1960 and the Criminal Procedure Code 1960 (see below).

#### **(2) States which have not adopted the Children's Rights Act 2003**

Article 9 of the Children and Young Persons Law states: "Where a juvenile charged with any offence is tried by a court, and the court is satisfied of his guilt, the court may ... (f) order the offender to be whipped".

Article 11(2) states: "No young person shall be ordered to be imprisoned if in the opinion of the court he can suitably be dealt with in any other way whether by probation, fine, corporal punishment, committal to a place of detention or to an approved institution or otherwise."<sup>xv</sup>

In the **southern states** which have not yet enacted the Children's Rights Act, children may be sentenced to corporal punishment under the Children and Young Persons Law (as above).

In the **north**, the 11 Sharia states which have not enacted the Children's Rights Act 2003 provide for corporal punishment of Muslim children in the Sharia criminal laws. Under the Sharia penal codes, sentences of *hadd* or *qisas* may be imposed on children from the age of puberty and these include corporal punishment (caning, retribution and amputation).

Non-Muslims in the northern states which have not adopted Sharia criminal laws may be sentenced to corporal punishment (caning) under the Penal Code 1960 and the Criminal Procedure Code 1960. The latter states that a sentence of caning up to 12 strokes may be passed by any court on a male offender in lieu of or in addition to any other punishment except capital punishment.<sup>xvi</sup>

### ***Life imprisonment***

## **(1) States with legislation derived from the Children's Rights Act 2003**

Article 215(1) of the Children's Rights Act states that the liberty of a child offender should only be restricted "after careful consideration of the case, including the use of alternative methods of dealing with the child" with the restriction "limited to the possible minimum", and the child should not be deprived of liberty "unless he is found guilty of (i) a serious offence involving violence against another person, or (ii) persistence in committing other serious offences, and there is no other appropriate response that will protect the public safety". Article 221(1)(a) states that no child shall be ordered to be imprisoned. However, there is no prohibition of life imprisonment and under article 222 of the Act a child offender who "is found to have attempted to commit treason, murder, robbery or manslaughter, or wounded another person with intent to do grievous harm" may be ordered by the Court "to be detained for such period as may be specified in the order" and "in such place and on such conditions as the Court may direct".

As noted above, in the **southern** state of Akwa-Ibom a child is defined in the Children's Rights Act as age 16 and under,<sup>xvii</sup> indicating that children aged 17 are sentenced as adults, including to life imprisonment under the Criminal Code 1916 and the Criminal Procedure Act 1945 (see below). In **northern** Jigawa, the definition of a child in the Act is with reference to puberty,<sup>xviii</sup> so that a Muslim child from the age of puberty may be sentenced to life imprisonment under the Sharia Penal Code 2000 and the Sharia Criminal Procedure Code Law 2001, and a non-Muslim from the age of 17 may be sentenced to life imprisonment under the Penal Code 1960 and the Criminal Procedure Code 1960 (see below).

## **(2) States which have not adopted the Children's Rights Act 2003**

In prohibiting the death sentence for offenders under 17, article 12 of the Child and Young Persons Act states that "in lieu thereof the court shall order the offender to be detained during the President's pleasure."<sup>xix</sup>

In the **southern states** which have not enacted the Children's Rights Act, child offenders may be sentenced to detention "during the President's pleasure" under the Child and Young Persons Act (as above).

Persons aged 17 and over are tried as adults and may be sentenced to life imprisonment for a number of crimes, including those relating to treason, rioting, perjury, escaping from custody, counterfeit, robbery, theft, shooting, rape, attempted murder, arson, railways and damage to property.<sup>xx</sup>

In the **north**, the Sharia states which have not enacted the Children's Rights Act 2003 provide for life imprisonment of Muslim children from the age of puberty.

Non-Muslim persons in the northern states which have not adopted Sharia criminal laws may be sentenced to life imprisonment under the Penal Code 1960 and the Criminal Procedure Code 1960. The Penal Code 1960 prohibits imprisonment for persons under 15.<sup>xxi</sup>

## **Inhuman sentencing in practice**

*Death penalty.* The Government has not published official information regarding the death penalty since 2002.<sup>xxii</sup> During the Universal Periodic Review in 2009, the Government stated that although the death penalty is lawful it is rarely applied and Nigeria operates a self imposed moratorium.<sup>xxiii</sup> When examined by the UN Committee on the Rights of the Child in 2010, the Government repeatedly stated that minors may not be sentenced to death.<sup>xxiv</sup> However, people continue to be sentenced to death, and a number of sources have reported that the death penalty is carried out secretly despite claims of a moratorium.<sup>xxv</sup> In 2007, the Government confirmed to Amnesty International that hangings had taken place in 2006 (ages unspecified).<sup>xxvi</sup> The National Study Group on the Death Penalty in 2004 and the Presidential Commission on Reform of the Administration of Justice in 2007 recommended a moratorium on the death penalty but this has not been acted upon by the federal Government.<sup>xxvii</sup>

In 2010, there were 40 prisoners on death row for crimes committed as children, some as young as 13.<sup>xxviii</sup> Long periods of pre-trial detention and the lengthy appeals process mean that child offenders can spend many years in prison before knowing the outcome of their case.

*Corporal punishment.* In 2004, the Government informed the UN Committee on the Rights of the Child that several persons under 18 had been sentenced to punishments of amputation and floggings under the Sharia Penal Codes in the north, but that between 2001 and 2004 none had been carried out as they had been quashed on appeal.<sup>xxix</sup>

A report by Human Rights Watch states that several boys under 18 were sentenced to amputation in Sokoto in 2003, and lawyers and NGO visitors to Sokoto prison in 2002-3 estimated that the majority of the 10 prisoners sentenced to amputation were under 18.<sup>xxx</sup> At least one boy under 18 has been sentenced to amputation in Katsina State.<sup>xxxii</sup>

The most common form of corporal punishment carried out under the Sharia laws is flogging, which is inflicted frequently and in public.<sup>xxxii</sup>

*Life imprisonment.* We have been unable to obtain information on the sentencing of child offenders to life imprisonment in practice. As already described, there is evidence of child offenders serving indeterminate sentences in lieu of capital punishment and serving very long prison sentences while appealing sentences of death (see above). Appealing sentences of amputation can also result in long periods of imprisonment.<sup>xxxiii</sup>

### **Recommendations from human rights treaty monitoring bodies**

***Committee on the Rights of the Child*** (11 June 2010, CRC/C/NGA/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 5, 6, 7, 8, 32, 33, 40, 41, 90 and 91)

The Committee urged the State to follow-up on previous recommendations with regards to “the harmonization of minimum ages and definitions, the death penalty, juvenile justice, corporal punishment” and expressed concern that the Child Rights Act had not been domesticated in northern Nigerian states. Noting that the death penalty had been prohibited by the Children's Rights Act, the Committee expressed serious concern that an estimated forty prisoners were reportedly on death row for offences committed while under the age of 18 and urged the State to “review the files of all prisoners on death row for crimes committed before the age of 18, as recommended by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions”.

The Committee also urged the State party to “[prohibit] corporal punishment in all settings, including in the home and under Sharia law” as raised in previous recommendations. The Committee also expressed concern over information indicating that there was not a minimum age of criminal responsibility and that children were detained with adults in police custody and pre-trial detention.

***Human Rights Committee*** (24 July 1996, CCPR/C/79/Add.65, Concluding observations on initial report, paras. 16 and 31)

“The Committee recommends that the State party consider the abolition of the death penalty.”

### **The review of Nigeria by the members of the Human Rights Council**

Nigeria was examined under the Universal Periodic Review process in 2009. Recommendations were made to end cruel, inhuman and degrading punishment and abolish the death penalty.<sup>xxxiv</sup>

In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment of child offenders, and the specific recommendations to Nigeria made by the Committee on the Rights of the Child and the Human Rights Committee, we hope that the members of the Human Rights Council will urge the government of Nigeria to:

- Explicitly prohibit sentences of death, corporal punishment and life imprisonment in Nigeria, under all systems of justice and without exception to ensure full compliance with international standards.

All legal provisions for the sentencing of child offenders (under 18 at the time of the offence) to corporal punishment, capital punishment and life imprisonment should be repealed, including under Sharia law. The Children's Rights Act 2003 should be adopted in all states, without modification of the definition of a child or of the protections from capital and corporal punishment. Explicit prohibition of life imprisonment and indeterminate sentencing should be enacted.

- Raise the minimum age of criminal responsibility.

- Provide disaggregated data about sentences handed down to children - including those who have been sentenced to death - by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pre-trial detention in each case.

To read CRIN's detailed report on Inhuman Sentencing of Children in Nigeria, visit:

<sup>i</sup> See Human Rights Watch (2004), *“Political Shari’a”? Human Rights and Islamic Law in Northern Nigeria*, New York: Human Rights Watch

<sup>ii</sup> The Act prevails over other laws (article 274)

<sup>iii</sup> Articles 204 and 277

<sup>iv</sup> Article 2 (21 August 1995, CRC/C/8/Add.26, *Initial state party report to the Committee on the Rights of the Child*, para. 36)

<sup>v</sup> Articles 26, 27 and 28 (21 August 1995, CRC/C/8/Add.26, *Initial state party report to the Committee on the Rights of the Child*, para. 36)

<sup>vi</sup> Article 30

<sup>vii</sup> Article 2

<sup>viii</sup> Article 50

<sup>ix</sup> For example, see Harmonised Sharia Penal Code in Ostien (2007), *op cit.*, article 72

<sup>x</sup> 11 June 2010, CRC/C/NGA/CO/3-4 Advance Unedited Version, *Concluding observations of the Committee on the Rights of the Child on the state party’s third/fourth state party report*, para. 26

<sup>xi</sup> *ibid.*

<sup>xii</sup> OMCT & CLEEN (2004), *Rights of the Child in Nigeria: Report on the implementation of the Convention on the Rights of the Child by Nigeria*, Geneva: World Organisation Against Torture/Lagos: CLEEN Foundation, Justice Sector Reform

<sup>xiii</sup> Zamfara State Sharia Penal Code, article 95; Yobe State Sharia Penal Code, article 95 (Human Rights Watch (2004), *op cit.*, p. 62; See 5 January 2009, CRC/C/NGA/3-4, *Third and fourth state party reports to the Committee on the Rights of the Child*, page 21)

<sup>xiv</sup> 11 June 2010, CRC/C/NGA/CO/3-4 Advance Unedited Version, *Concluding observations of the Committee on the Rights of the Child on the state party’s third/fourth report*, para. 26

<sup>xv</sup> OMCT & CLEEN (2004), *op cit.*

<sup>xvi</sup> See Harmonised Sharia Criminal Procedure Code in Ostien (2007), *op cit.*, article 100 and footnote

<sup>xvii</sup> 11 June 2010, CRC/C/NGA/CO/3-4 Advance Unedited Version, *Concluding observations of the Committee on the Rights of the Child on the state party’s third/fourth report*, para. 26

<sup>xviii</sup> *ibid.*

<sup>xix</sup> OMCT & CLEEN (2004), *op cit.*

<sup>xx</sup> Criminal Code Act, articles 41, 42, 44, 48, 53, 76, 118, 125, 134, 147, 149, 153, 161, 162, 194, 219, 320, 321, 322, 326, 328, 330, 331, 332, 333, 334, 358, 390, 403, 408, 411, 427, 443, 447, 449, 451

<sup>xxi</sup> See Harmonised Sharia Penal Code in Ostien (2007), *op cit.*, article 94 and footnote

<sup>xxii</sup> Amnesty International (2008), *Amnesty International Report 2008: The State of the World’s Human Rights*, London: Amnesty International Publications; Amnesty International & Legal Defence and Assistance Project (2008), *Nigeria: “Waiting for the hangman”*, London: Amnesty International Publications/Lagos: LEDAP

<sup>xxiii</sup> 5 January 2009, A/HRC/WG.6/4/NGA/1, *National Report submitted in accordance with paragraph 15(A) of the annex to Human Rights Council Resolution 5/1: Nigeria*, para. 75; 5 October 2009, A/HRC/11/26, *Report of the Working Group on the Universal Periodic Review: Nigeria*, para. 13

<sup>xxiv</sup> Defence for Children International, June 2010, 54<sup>th</sup> session of the UN Committee on the Rights of the Child: *Information Notes on Juvenile Justice related issues – Argentina, Belgium, Nigeria*

<sup>xxv</sup> Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/8/3/Add.3, para. 7, quoted in 18 December 2009, E/2010/10, *Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty: Report of the Secretary-General*. See also Amnesty International & Legal Defence and Assistance Project (2008), *op cit.*

<sup>xxvi</sup> Amnesty International (2008), *op cit.*

<sup>xxvii</sup> Amnesty International (2009), *Amnesty International Report 2009: The State of the World’s Human Rights*, London: Amnesty International Publications; Amnesty International (2010a), *op cit.*

<sup>xxviii</sup> 11 June 2010, CRC/C/NGA/CO/3-4 Advance Unedited Version, *Concluding observations of the Committee on the Rights of the Child on the state party’s third/fourth report*, para. 32. See also Amnesty International (2009), *op cit.*; Amnesty International (2010b), *Death sentences and executions 2009*, London: Amnesty International Publications; Amnesty International & Legal Defence and Assistance Project (2008), *op cit.*

<sup>xxix</sup> 26 November 2004, CRC/C/RESP/72, *Written replies by the Government of Nigeria concerning the list of issues (CRC/C/Q/NGA/2) received by the Committee on the Rights of the Child relating to the consideration of the second periodic report of Nigeria (CRC/C/70/Add.24)*

<sup>xxx</sup> Human Rights Watch (2004), *op cit.*

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<sup>xxx</sup>*ibid.*

<sup>xxx</sup>*ibid.*

<sup>xxx</sup> Human Rights Watch (2004), *op cit.*

<sup>xxx</sup> 5 October 2009, A/HRC/11/26, *Report of the Working Group on the Universal Periodic Review: Nigeria*, paras. 103(1), 103(13), 103(14) and 103(15)