

Inhuman sentencing of children in Sudan

Briefing for the 25th session of the Human Rights Council Universal Periodic Review in April 2016, submitted by the Child Rights International Network (www.crin.org), September 2015.

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1. There is a lack of clarity in Sudanese law, such that life imprisonment, corporal punishment and the death penalty may remain lawful penalties for offences committed while under the age of 18.

2. Generally, no child under the age of seven can be held criminally responsible. Children aged seven to 15 can be held criminally responsible if they have reached puberty.¹ However, the Narcotic Drugs and Psychotropic Substances Act 1994 can be applied without a lower age limit.² A child is defined as “every person under the age of 18” for the purposes of the Child Act 2010.³

The legality of inhuman sentencing of children

Death penalty

3. The impact of the Child Act 2010 is unclear with regards to the legality of the death penalty as a sentence for offences committed while a child. The Act requires all children to be sentenced by a child court⁴ and does not provide for the death penalty as a sentence of the child court.⁵ However, the Child Act also requires the court to have “due regard” to the principle that the “death sentences is not inflicted on the child”.⁶ It is not clear what “due regard” means in this context and the wording appears to fall short of a categorical prohibition on the death penalty for offences committed while a child. If the Child Act falls short of a prohibition on the death penalty for child offenders, then the death penalty would remain a possibility as a penalty for offences committed while under the age of 18.

The Criminal Act provides that “[w]ith the exception of *hodud* and retribution (*qisas*) offences, death sentences shall not be passed against any person who has not attained the age of eighteen...”.⁷ The Sudanese Constitution provides that “the death penalty shall not be

¹ The Criminal Act 1991, Sections 3 and 9.

² The Narcotic Drugs and Psychotropic Substances Act 1994, Articles 15 and 20.

³ Child Act 2010, Section 4. Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Sudan/sudan_children_2010_en.pdf

⁴ The Child Act 2010, Sections 62 and 67.

⁵ The Child Act 2010, Section 69.

⁶ The Child Act, Section 77.

⁷ The Criminal Act, Section 37(2).

imposed on a person under the age of 18 ... except in cases of retribution or *hodud*.⁸ Death may be by hanging, stoning, crucifixion or in the same manner in which the victim of the crime died.⁹ Under the Criminal Act, *hodud* offences punishable with death include apostasy, murder, adultery and armed robbery.¹⁰

Life imprisonment

There is a general prohibition on imprisonment for persons under the age of 18 in Sudanese law, though there is an exception with regards to armed robbery (*hiraba*).¹¹ The penalty for armed robbery is life imprisonment, but only in the southern States. However, it is not clear whether the relevant age is at the time of sentencing or the time of the offence. There is no prohibition of life imprisonment under the Child Act 2010.

Corporal punishment

The Child Act 2010 sets out principles to which the court must have “due regard” during sentencing. Among these principles is that “the sentence of whipping is not to be inflicted on the child”.¹² This language falls short of an unequivocal prohibition on whipping as a sentence for an offence committed while under the age of 18. The Act does not prohibit other forms of corporal punishment, such as amputation and wounding as retribution, which can be imposed for *hodud* offences under the Criminal Code 1991.

The Child Act 2010 states that it prevails over any other law where there is an inconsistency.¹³ It is also not clear that the Child Act would prevail over contrary practices for *hodud* offences.

Inhuman sentencing in practice

Death penalty

In December 2011, the Special Court upheld a death sentence for two children convicted of carjacking. On 31 May 2012, Human Rights Watch reported that a young woman believed to be under 18 had been sentenced to death by stoning for adultery.

Corporal punishment

⁸ Constitution of Sudan, Article 36.

⁹ The Criminal Act, Section 27(1).

¹⁰ The Criminal Act, Sections, 3, 27(1), 126, 130, 146 and 168.

¹¹ Criminal Act 1991, Section 33(3). Available at: <https://www.icrc.org/applic/ihl/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/b9eeba1ca8f54121c1256dc9005573f2?openDocument>

¹² Child Act 2010, Section 77.

¹³ Child Act 2010, Section 3.

CRIN has been unable to locate statistical information on the use of corporal punishment in Sudan. However, in 2015, girls aged 17 were reportedly among those facing whipping of 40 strokes for the offence of “indecent dress” under Section 152 of the Criminal Code 1991.¹⁴

Life imprisonment

CRIN has been unable to locate any statistical information on the imposition of life imprisonment for offences committed while under the age of 18.

The review of Sudan by the Human Rights Council

In light of the clear international human rights consensus against the imposition of the death penalty, life imprisonment and corporal punishment of children and the recent report of the UN Special Rapporteur on torture recognising that life imprisonment and lengthy sentences of children are grossly disproportionate and amount to a form of cruel and inhuman punishment, we urge States to recommend that Sudan:

- Explicitly prohibit life imprisonment and all forms of corporal punishment for any offence committed while under the age of 18;
- Clarify national law on the death penalty to ensure that no person can be sentenced to death for an offence committed while under the age of 18;
- Immediately review the sentence of any person sentenced to life imprisonment for an offence committed while under the age of 18 to ensure that no one serves a life sentence for an offence committed while a child;
- Raise the minimum age of criminal responsibility;

¹⁴ The Guardian, “Outrage as nine Sudanese women face 40 lashes for wearing trousers”, 14 July 2015. Available at: <http://www.theguardian.com/world/2015/jul/14/sudan-christian-women-40-lashes-trousers>.