

Inhuman sentencing of children in Zimbabwe

Briefing for the 26th session of the Human Rights Council Universal Periodic Review in November 2016, submitted by the Child Rights International Network (www.crin.org), March 2016.

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1. The death penalty is explicitly prohibited for any offence committed by a person under the age of 18. However, life imprisonment remains a lawful sentence for offences committed by children and males under the age of 18 may be sentenced to corporal punishment.

The legality of inhuman sentencing of children

Life imprisonment

2. Imprisonment for life is lawful as a sentence under the Criminal Procedure and Evidence Act, and there is no exemption for child offenders. The Act does not specify the sentence to be imposed on child offenders for offences normally punished by death but states that the High Court may impose “(a) a sentence of imprisonment for life or (b) any sentence other than the death sentence or imprisonment for life, if the court considers such a sentence appropriate in all the circumstances of the case”.¹

3. The Criminal Law (Codification and Reform) Act states that a person convicted of murder who was under 18 at the time of the offence “shall be liable to imprisonment for life or any shorter period”.² A number of other crimes under the Act are punishable by imprisonment for life, including attempted murder, treason, insurgency, banditry, rape, kidnapping, robbery and hijacking.³

4. The children’s court, however, has no power to order life imprisonment in cases under the Children’s Act.⁴

Corporal punishment

5. Corporal punishment is a lawful sentence for males under the age of 18. The Criminal Procedure and Evidence Act lists the punishments which a court may impose on a convicted person, including “where the convicted person is a male person under the age of eighteen years, corporal punishment.”⁵ “[M]oderate corporal punishment, not exceeding six strokes” may be ordered in lieu of or addition to other punishments⁶ and must be “inflicted in private”⁷ in a manner, in a place and by a person prescribed by the court. The boy must be certified by a medical practitioner⁸ as fit to receive the punishment, and the boy’s parent or guardian has a right to be present when the punishment is inflicted.⁹

¹ Criminal Procedure and Evidence Act, Section 337; see also Section 344

² Criminal Law (Codification and Reform) Act., Section 47

³ Criminal Law (Codification and Reform) Act, Sections 20, 23, 47, 65, 93, 126 and 147

⁴ Children’s Act, Section 20 specifies the powers of the children’s court.

⁵ Criminal Procedure and Evidence Act, Section 336.

⁶ Criminal Procedure and Evidence Act, Section 353.

⁷ Criminal Procedure and Evidence Act, Section 353(2).

⁸ Criminal Procedure and Evidence Act, Section 353(4).

⁹ Criminal Procedure and Evidence Act, Section 353(3).

6. The Prisons Act requires that “a moderate correction of whipping referred to in section 353 of the Criminal Procedure and Evidence Act” be carried out in the presence of the “officer in charge” and of the medical officer who certified the boy as fit to undergo the punishment.¹⁰ The medical or prison officer may halt the punishment “if, in his opinion, the punishment is likely to cause more serious injury than is contemplated in the sentence”.¹¹ The punishment cannot be inflicted in instalments.¹²

7. The Children’s Act provides for the children’s court to make orders in respect of children and young people in need of care and of those who have been convicted of an offence. Corporal punishment is not listed within the orders that the court is permitted to impose.¹³ However, a child or young person aged 12 or older who fails to comply with a court order to attend a treatment centre “shall be guilty of an offence and liable to a sentence of moderate corporal punishment, not exceeding six strokes, in accordance with section 353 of the Criminal Procedure and Evidence Act”.¹⁴

8. In January 2014, the High Court of Zimbabwe ruled that corporal punishment as a judicial sentence for males under the age of 18 was unconstitutional and therefore prohibited.¹⁵ However, findings that a law is unconstitutional must be approved by Zimbabwe’s Constitutional Court before being implemented¹⁶ and in October 2015, the Constitutional Court indefinitely deferred ruling on the case.¹⁷ As a result, corporal punishment as a judicial sentence remains lawful.

Death penalty

9. The death penalty is explicitly prohibited for anyone who was under the age of 18 at the time of the relevant offence. The Criminal Procedure and Evidence Act states: “The High Court shall not pass sentence of death upon an offender who ... (c) at the time of the offence, was under the age of eighteen years.”¹⁸ The Criminal Law (Codification and Reform) Act 2004 similarly states that a person convicted of murder “shall be sentenced to death unless (a) the convicted person is under the age of eighteen years at the time of the commission of the crime”,¹⁹ but does not reiterate the prohibition with regard to other capital crimes.²⁰

¹⁰ Prisons Act, Sections 101 and 103. Available at:

<http://www.icla.up.ac.za/images/un/use-of-force/africa/Zimbabwe/Prisons%20Act.pdf>.

¹¹ Prisons Act, Section 104.

¹² Prisons Act, Section 105.

¹³ Children’s Act, Section 20.

¹⁴ Children’s Act, Section 20(3a), inserted by Act 22 of 2001, in force from 20 May 2002.

¹⁵ *The State v. C (a juvenile)* [2014] HH 718-14. CRIN has produced a summary of the judgment, available at www.crin.org/node/41936.

¹⁶ Constitution of Zimbabwe, Section 167(3).

¹⁷ The Herald, “Corporal punishment permissible: Concourt” 15 October 2015. Available at:

<http://www.herald.co.zw/corporal-punishment-permissible-concourt/>.

¹⁸ Criminal Procedure and Evidence Act, Section 338. Available at:

http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Zimbabwe/zimbabwe_criproevi_1927_en.pdf.

¹⁹ Criminal Law (Codification and Reform) Act 2004, Section 47.

²⁰ See Criminal Law (Codification and Reform) Act 2004, Sections 20 and 23

Inhuman sentencing in practice

10. CRIN has been unable to obtain statistical information on the sentencing of child offenders to life imprisonment or corporal punishment. The case of *The State v. C (a juvenile)* [2014] indicates that sentencing to corporal punishment continues, but gives no indication of the prevalence of such punishment.²¹

The review of Zimbabwe by the Human Rights Council

11. In light of the clear international human rights consensus against the imposition of life imprisonment and corporal punishment on children and recommendations made to Zimbabwe by the Committee on the Rights of the Child,²² the Human Rights Committee²³ and during the first cycle of the Universal Periodic Review,²⁴ we urge States to recommend that Zimbabwe:

- Explicitly prohibit life imprisonment and all forms of corporal punishment for any 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;

For more detailed information on the sentencing of children to life imprisonment and corporal punishment in Zimbabwe, see CRIN's country report available at: www.crin.org/node/30437.

²¹ *The State v. C (a juvenile)* [2014] HH 718-14. CRIN has produced a summary of the judgment, available at www.crin.org/node/41936.

²² *Concluding observations on the second periodic report of Zimbabwe*, CRC/C/ZWE/CO/2, 29 January 2016, paras. 42, 43, 76 and 77.

²³ *Concluding observations on the initial report of Zimbabwe*, CCPR/79/Add.89, 6 April 1998, paras. 20 and 21.

²⁴ *Report of the Working Group on the Universal Periodic Review: Zimbabwe*, A/HRC/19/14, 19 December 2011, paras. 94.22, 95.5; *Report of the Human Rights Council on its 19th session*, A/HRC/19/2, 16 August 2012, paras. 706 to 710.