



South Sudan's Compliance with the Convention on the Rights of the Child

Alternative Report on the Rights of Children Who are Sentenced to Death or Executed

Submitted by The Advocates for Human Rights

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The World Coalition Against the Death Penalty

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition Against the Death Penalty.

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. This report highlights issues regarding the rights of children who are sentenced to death or executed in South Sudan. The report also considers issues appurtenant to the death penalty and children's rights, most notably, violations of children's human rights resulting from sentencing their parents to death.

Background on the Death Penalty in South Sudan

2. Since its independence in 2011, South Sudan voted against UN General Assembly resolution 71/187 in 2016, which called for a moratorium on the use of the death penalty, and rejected recommendations to abolish the death penalty during its Universal Periodic Review in 2016.¹ In addition to increasing its use of the death penalty among all populations since 2011, there is credible evidence that South Sudan has been conducting child executions since at least 2017.²
3. In 2017, South Sudan executed two children, and in 2018, the country executed at least one other individual who was a child at the time of the crime.³ In 2021, South Sudanese security forces extrajudicially executed two children from Warrap state.⁴ These executions violate Article 37(a) of the Convention on the Rights of the Child (CRC), and peremptory norms of customary international law.⁵
4. South Sudan stated that it “only uses the death penalty in rare situations after exhaustion of all steps laid down by the Constitution and not on persons under 18.”⁶ Despite domestic laws that protect a child's right to life, South Sudan has not acted in accordance with its Penal Code or the CRC. In particular, South Sudan's actions undermine its commitment to prioritize the best interests of the child in legal, judicial, and administrative procedures.

¹ Amnesty International, *South Sudan: 'I told the Judge I was 15': The Use of the Death Penalty in South Sudan*, AFR 65/9496/2018 (London, UK: Amnesty International Publications, 2018), 13. Also available online at <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6594962018ENGLISH.pdf>; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: South Sudan* (Dec. 28, 2016), U.N. Doc. A/HRC/34/13. ¶ 128.39 Continue efforts to improve conditions of detention and abolish the death penalty, with a view to commuting all death sentences (Holy See); ¶ 129.7 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro) (Rwanda); ¶ 129.8 Declare an official moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Uruguay). Also available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/442/30/PDF/G1644230.pdf?OpenElement>.

² Amnesty International, *South Sudan: 'I told the Judge I was 15': The Use of the Death Penalty in South Sudan*, AFR 65/9496/2018 (London, UK: Amnesty International Publications, 2018), 9. Also available online at <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6594962018ENGLISH.pdf>.

³ *Id.*, 4, 9.

⁴ Human Rights Watch, *South Sudan: Summary Executions in the North* (Jul. 29, 2021), <https://www.hrw.org/news/2021/07/29/south-sudan-summary-executions-north>.

⁵ United Nations Convention on the Rights of the Child, 1989, Art. 3. Also available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>; Amnesty International, *South Sudan: 'I told the Judge I was 15': The Use of the Death Penalty in South Sudan*, AFR 65/9496/2018 (London, UK: Amnesty International Publications, 2018), 9. Also available online at <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6594962018ENGLISH.pdf>.

⁶ *Id.*, 13.

5. There are also reports that parents of young children remain on death row in South Sudan.⁷ Potential executions of breastfeeding mothers violate both South Sudan's Transitional Constitution and Article 9 of the CRC.⁸
6. Through its continued use of the death penalty on children and parents, South Sudan fails to protect children's right to life, survival, and development.⁹ South Sudan's use of customary laws permitting the execution of children prioritizes retribution over the best interests of children.

South Sudan fails to uphold its obligations under the Convention on the Rights of the Child

I. Best interests of the child in legal, judicial and administrative procedures (List of Issues paragraph 4(b))

7. In its 2021 List of Issues, the Committee on the Rights of the Child ("the Committee") requested information from South Sudan on the steps it had taken to "determine and apply the best interests of the child in legal, judicial, and administrative procedures, in particular in the administration of customary law, and raise awareness of the best interests of the child among communities and families."¹⁰
8. In its 2020 State Party Report ("Report"), South Sudan affirmed its commitment to protecting and promoting the best interests of the child in legal, judicial and administrative procedures. The State noted that Articles 17(2) and 17(3) of its Transitional Constitution require that "[in] all actions concerning children undertaken by public or private welfare institutions, courts of law, administrative authorities or legislative bodies, the paramount consideration shall be the best interests of the child."¹¹ Article 4(4) of South Sudan's Child Act also requires the best interests of the child to inform the application of the law when children face legal issues.¹² Finally, Article 4(4) of the Child Act asserts that "customary law will not apply wherever its application would be contrary to the best interests of the children."¹³
9. Despite these commitments, South Sudan admitted that many children are still being held in adult prisons at the state level.¹⁴ UNICEF notes that "detained children are also more

⁷ *Id.*, 8.

⁸ The Transitional Constitution of the Republic of South Sudan, 2011, Art. 21(3). Also available at <https://www.refworld.org/pd/5d3034b97.pdf>; Convention on the Rights of the Child, 1989, Art. 9 (stating that children must not be separated from their parents against their will, except when "competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child"). Also available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

⁹ United Nations Convention on the Rights of the Child, 1989, Art. 6. Also available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

¹⁰ United Nations Committee on the Rights of the Child, *List of issues in relation to the initial report of South Sudan* (March 9, 2021). U.N. Doc. CRC/C/SSD/Q/1, ¶ 4(b).

¹¹ Committee on the Rights of the Child, *Initial report submitted by South Sudan under article 44 of the Convention, due in 2017*, (13 November 2020), U.N. Doc. CRC/C/SSD/1, ¶ 12.

¹² *Id.*, ¶ 62.

¹³ *Ibid.*

¹⁴ *Id.*, ¶ 225.

vulnerable to neglect, abuse and gender-based violence,” and detaining children with adults violates international law and can put children in increased danger of abuse or violence.¹⁵

10. Although Article 9 of the CRC states that children have the right not to be separated from their parents, between May and October of 2018, one lactating mother was transferred from a prison in the Equatoria region of southern South Sudan to Juba central prison.¹⁶ The mother was part of a group of 135 individuals awaiting execution who the State transferred to the central prisons in which executions occur.¹⁷ Use of the death penalty on a pregnant or breastfeeding mother two years after giving birth also violates South Sudan’s Transitional Constitution, as well as its commitment to uphold the “best interests of the child” pursuant to Article 3 of the CRC.¹⁸
11. During late January 2021, community representatives from Warrap state signed a declaration recommending that the death penalty be used on individuals convicted of crimes.¹⁹ Between April and June 2021, South Sudan executed two children as part of its anti-crime campaign in Warrap.²⁰ The State initially arbitrarily detained and tortured the two children, one of whom was 14 years old at the time of his imprisonment, before ultimately extrajudicially executing them.²¹ Local chiefs played a critical role in detaining the children and advocating for their execution, and the Governor of Warrap, Aleu Ayieny Aleu, ordered the execution of the children by firing squad.²²
12. Neither Aleu nor local government or law enforcement initiated a formal criminal judicial process prior to executing the two children.²³ The two children, along with two adults, were suspected of killing one person and injuring another in a drive by shooting on April 3, 2021.²⁴ On April 6, local authorities in the Majok region detained the four individuals suspected of the murder.²⁵ The individuals were detained in a thatched grass house and subjected to torture and

¹⁵ UNICEF, UNICEF welcomes release of 85 children from detention in South Sudan (May 7, 2020), <https://www.unicef.org/press-releases/unicef-welcomes-release-85-children-detention-south-sudan>.

¹⁶ Amnesty International, *South Sudan: ‘I told the Judge I was 15’: The Use of the Death Penalty in South Sudan*, AFR 65/9496/2018 (London, UK: Amnesty International Publications, 2018), 4. Also available online at <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6594962018ENGLISH.pdf>; United Nations Convention on the Rights of the Child, 1989, Art. 9. Also available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>; South Sudan: Execution spree targets even children and threatens nursing mothers (Dec. 13, 2018), <https://www.amnesty.org/en/latest/press-release/2018/12/south-sudan-execution-spre-targets-even-children-and-threatens-nursing-mothers/>

¹⁷ Amnesty International, *South Sudan: ‘I told the Judge I was 15’: The Use of the Death Penalty in South Sudan*, AFR 65/9496/2018 (London, UK: Amnesty International Publications, 2018), 4. Also available online at <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6594962018ENGLISH.pdf>.

¹⁸ Amnesty International, *South Sudan: ‘I told the Judge I was 15’: The Use of the Death Penalty in South Sudan*, AFR 65/9496/2018 (London, UK: Amnesty International Publications, 2018), 4, 7 Also available online at <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6594962018ENGLISH.pdf>; United Nations Convention on the Rights of the Child, 1989, Art. 3. Also available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

¹⁹ Human Rights Watch, *South Sudan: Summary Executions in the North* (Jul. 29, 2021), <https://www.hrw.org/news/2021/07/29/south-sudan-summary-executions-north>.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

other corporal punishment.²⁶ The local authorities did not investigate further into the murder allegations.²⁷ The individuals were blindfolded and forced to lie face-down before being executed, and reports also show that two chiefs from the community in which the murder took place were present at the execution.²⁸

13. Although South Sudan explained in its State Party Report that criminal cases fall within the jurisdiction of statutory – rather than customary – law, extrajudicial executions authorized by local authorities demonstrate the prevalence and power of customary law norms in South Sudan.²⁹ By continuing to disregard human-rights-focused statutory laws in favor of customary procedures, South Sudan does not meet its obligations to prioritize the best interests of the child in legal and judicial procedures.
14. South Sudan’s sentencing of parents to death, as well as the extrajudicial killing, torture, and detention of multiple children demonstrate the State’s lack of compliance with Article 3 of the CRC.³⁰ These actions also violate children’s rights to development, health, and life.³¹

II. Prohibition of the death penalty and explanation for children sentenced to death until 2019 (List of Issues paragraph 4(c))

15. In its 2021 List of Issues, the Committee inquired what measures South Sudan had taken to “implement legislation on the prohibition of the death penalty and explain why some children were reportedly being sentenced to death.”³² The State continues to issue death sentences to and execute children without explanation. The Committee noted that the State appears reluctant to reduce the use of or prohibit the use of death penalty on the general population.
16. In its 2020 State Party Report, South Sudan expressed its commitment to protecting the child’s right to life.³³ Article 21(2) of South Sudan’s Transitional Constitution codifies every child’s right not to be subjected to the death penalty. Ancillary to that right is the right of young children to remain free from imprisonment, which the State Party Report references but does not expand upon.³⁴ Article 182 of South Sudan’s Child Act codifies the right of any child under 16 not to be imprisoned, but it is unclear from the State Party Report whether or not South Sudan has prioritized this issue or collected data to confirm that children under 16 remain free from imprisonment.³⁵

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Committee on the Rights of the Child, *Initial report submitted by South Sudan under article 44 of the Convention, due in 2017*, (13 November 2020), U.N. Doc. CRC/C/SSD/1, ¶ 17.

³⁰ Convention on the Rights of the Child, 1989, Art. 3. Also available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

³¹ *Id.*, Art. 6.

³² United Nations Committee on the Rights of the Child, *List of issues in relation to the initial report of South Sudan* (March 9, 2021). U.N. Doc. CRC/C/SSD/Q/1, ¶ 4(c).

³³ Committee on the Rights of the Child, *Initial report submitted by South Sudan under article 44 of the Convention, due in 2017*, (13 November 2020), U.N. Doc. CRC/C/SSD/1, ¶ 64.

³⁴ *Id.*, ¶ 48.

³⁵ *Id.*, ¶ 65.

17. Between May and October of 2018, the South Sudanese Government executed at least one individual who was under the age of 18 at the time of the crime.³⁶ The details of the child's crime are unreported, but unlike the recent extrajudicial executions of the two children in Warrap state (paragraph 11 above), this execution was conducted following the child's official detention in Wau Central Prison.³⁷ In 2017, one child sentenced to death by hanging – the official method of execution in South Sudan – was 15 years old at the time of the commission of a murder which he claimed was an accident.³⁸ The child did not have legal representation during his trial and the judge was allegedly aware of the child's age at the time of the crime.³⁹ As of the beginning of 2019, the State has executed three individuals who were under the age of 18 at the time they reportedly committed the crimes for which they were sentenced to death.⁴⁰
18. South Sudan has offered no explanation as to why children have been officially sentenced to death and executed between 2011 and 2019. South Sudan's use of the death penalty on children contravenes both domestic and international law. Article 37(a) of the CRC prohibits "capital punishment" for individuals under 18.⁴¹ Article 21(2) of South Sudan's Transitional Constitution prohibits the use of the death penalty on individuals under 18.⁴² South Sudan's Child Act stipulates that "no child shall be sentenced to capital punishment or life imprisonment."⁴³
19. It should be noted the Supreme Court and President must confirm a death sentence before a person can be executed in South Sudan.⁴⁴
20. **Suggested recommendations for South Sudan:**
 - End death sentences as a form of criminal punishment for all individuals who were under the age of 18 during the commission of a crime no matter the circumstances or nature of the reported crime. Commute all death sentences of individuals who were under the age of 18 at the time of the crime for which they were convicted.
 - Conduct a thorough, impartial, and independent investigation into all uses of the death penalty on children since 2011.

³⁶ Amnesty International, *South Sudan: 'I told the Judge I was 15': The Use of the Death Penalty in South Sudan*, AFR 65/9496/2018 (London, UK: Amnesty International Publications, 2018), 7. Also available online at <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6594962018ENGLISH.pdf>.

³⁷ *Ibid.*

³⁸ The Guardian, South Sudan urged to end death penalty as evidence shows children among dead (Dec. 7, 2018), <https://www.theguardian.com/global-development/2018/dec/07/south-sudan-urged-to-end-death-penalty-as-evidence-shows-children-among-dead-amnesty-international>.

³⁹ Amnesty International, *South Sudan: 'I told the Judge I was 15': The Use of the Death Penalty in South Sudan*, AFR 65/9496/2018 (London, UK: Amnesty International Publications, 2018), 7. Also available online at <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR6594962018ENGLISH.pdf>.

⁴⁰ The Guardian, South Sudan urged to end death penalty as evidence shows children among dead (Dec. 7, 2018), <https://www.theguardian.com/global-development/2018/dec/07/south-sudan-urged-to-end-death-penalty-as-evidence-shows-children-among-dead-amnesty-international>.

⁴¹ Convention on the Rights of the Child, 1989, Art. 37. Also available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

⁴² The Transitional Constitution of the Republic of South Sudan, 2011, Art. 21(2).

⁴³ The Child Act, 2008, Art. 21(a).

⁴⁴ South Sudan Code of Criminal Procedure, Art. 276 (2008).

- End impunity for government officials and community leaders authorizing or engaging in extrajudicial executions of children.
- Collect comprehensive data on the effects of parental death sentences on the psychological, developmental, emotional, and physical health and development of children. Use this data to inform legislation and policy.
- Improve access to formal justice systems to ensure that criminal cases involving children protect children's due process rights. Children should be guaranteed the right to fair trial; access to counsel; and safe, healthy pre-trial detention conditions.
- Improve detention conditions across the country and ensure they are in compliance with the Nelson Mandela Rules. Develop and enforce strict protocols prohibiting children from being detained alongside adults.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
- Develop and implement educational campaigns and initiatives across the country – particularly in rural areas – to promote a better understanding of human rights norms and the adverse impacts of the death penalty on South Sudanese individuals, families, and children.
- Conduct and publish annual studies on the use of the death penalty and criminal justice processes in South Sudan, with disaggregated data on the ages of individuals sentenced to death and executed, in order to foster an environment of greater transparency and accountability.
- Ensure that children are free from torture and cruel, inhuman, or degrading punishment in order to fully prioritize the best interests of the child. Modify customary legal norms and practices which allow for the torture, corporal punishment, or other forms of cruel or degrading treatment of children.