



ACERWC

African Committee of Experts on
the Rights & Welfare of the Child



H.E. Salva Kirr Mayardit
President of the Republic of South Sudan

**SUBJECT: LETTER OF URGENT APPEAL TO THE GOVERNMENT
OF THE REPUBLIC OF THE SOUTH SUDAN ON MATTERS
CONCERNING THE USE OF DEATH PENALTY AGAINST CHILDREN**

I have the honour to address Your Excellency on behalf of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC/the Committee), the body responsible for monitoring the promotion and protection of the rights and welfare of the child.

First of all, I would like to recognize with appreciation the continued effort and commitment that the Government of the Republic of the South Sudan is exerting to ensure the protection and promotion of human rights in general and children's rights in particular. Such commitment of Republic of South Sudan is affirmed by its ratification of the Convention on the Rights of the Child (the CRC). The Committee further notes with appreciation that South Sudan has included children's rights under article 17 of its Constitution and has adopted the Child Act.

While appreciating the concrete positive measures that your Government has taken, the Committee is deeply concerned by the recent media and other reports which indicate that South Sudan has transgressed its own laws and international human rights law standards by passing death sentences on children and executing persons who were below the age of 18 at the time of the commission of a crime. Reporting on the matter, various organisations and media outlets indicate the significant escalation of executions in South Sudan as well as the fact that there are children and lactating women who are in a death row currently. Multiple sources allege that between May and October 2018, your Government has executed at least one person who was a child at the time of the crime. The execution was said to be carried out in Wau Central Prison.

It has further been alleged that two other children on death row were transferred to Juba Central Prison, where executions allegedly take place, between September and November 2018.

The Committee has further learnt about the case of a child on death row, who turned 17 in December 2018, in Juba Central Prison. He was sentenced to death by hanging on 14 November 2017 in Nimule after being convicted of murder. He was 15 years of age at the time of the incident and conviction. He was transferred from Torit State Prison to Juba Central Prison in September 2018 where he still waits for his appeal to be heard.

If indeed the above allegations happen to be true, the ACERWC is of the view that a practice of this nature goes against South Sudan's obligations under International and Regional Instruments, customary international law, peremptory norm of international law (*jus cogens*) and the South Sudan's 2011 Transitional Constitution. As State Party to the UNCRC, South Sudan is bound by Article 37 of the UNCRC which states that: 'Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age.' The Committee has also notes that the South Sudanese 2011 transitional constitution under article 21(1) and (2) prohibits death sentence against a child and execution of lactating women. The Committee further stresses that the use of death penalty on children is prohibited under international customary law and the prohibition has attained the status of *jus cogens* through international laws, general practice, and jurisprudence. Hence, the Government of South Sudan is also bound by the prohibition provided in article 5(3) of the African Charter on the Rights and Welfare of the Child (the African Children's Charter) which states that 'death sentence shall not be pronounced for crimes committed by children'.

In this regard, the Committee highlights that there is no acceptable justification to pronounce death penalty on children or execute children.

In view of the above-mentioned information, I appeal to the South Sudanese authorities to abolish the practice of sentencing children to death, and to commute all death sentences issued against children in line with international, regional and South Sudanese laws.

The ACERWC thus respectfully urges the Government of the Republic of the South Sudan to:

- i. Ensures that death sentence shall not be pronounced for crimes committed by children; and commute all death sentences against children to terms of imprisonment;
- ii. Review the cases of all persons who were or claim to be below 18 at the time of the crime with a view to commuting their death sentences or granting a retrial, without recourse to the death penalty, where there has been a violation of international fair trial standards;
- iii. Urgently reverse the death penalty pronounced on children and lactating women and ensure that children currently in death row are released from such condition;
- iv. Ratify the African Charter on the Rights and Welfare of the Child;
- v. Inform the Committee, on 30 April 2019, of the steps the Government has taken or intends to take towards realizing the Republic of South Sudan's duty to end the use of death penalty against children.

Your Excellency,

Please note that the Committee remains available to engage as well as support the Government's efforts to end the use of death penalty against children.

Please accept, Your Excellency, the assurances of my highest consideration.

Yours sincerely,

Hon. Goitseone Nanikie Nkwe
Chairperson
African Committee of Experts on the Rights
and Welfare of the Child (ACERWC)

Cc:

- **Ministry of Foreign Affairs and International Cooperation**
 - **Ministry of Gender, Child and Social Welfare**
 - **Ministry of Justice**
- Juba, South Sudan**