

INHUMAN SENTENCING OF CHILDREN IN SOUTH SUDAN

Summary

Corporal punishment, life imprisonment and the death penalty are prohibited for children under South Sudanese law, but the relevant provisions do not make it clear that this prohibition should apply to all people who were under the age of 18 at the time of the alleged offence. As such, there is a lack of clarity in the prohibition on inhuman sentencing of children.

A report was initially drafted for CRIN in November 2010 prior to South Sudan's independence that addressed sentencing in the Northern and Southern States of Sudan. This report was published in November 2015 to detail inhuman sentencing of children in only South Sudan. For more information about CRIN's inhuman sentencing campaign, visit www.crin.org/home/campaigns/inhuman-sentencing or contact us at info@crin.org.

Introduction

South Sudan substantially amended its criminal law in the years leading up to its independence, enacting a new Child Law, Penal Code, Code of Criminal Procedure and Judiciary Act in 2008. Together, this legislation sets out national law for children in conflict with the law.

Children under the age of 12 cannot be tried for or convicted of any offence.¹ Children aged 12 to 14 at the time of an alleged offence are presumed criminally liable unless it is proved beyond reasonable doubt that they “lack the capacity to form the intention necessary to commit the offence” or “where negligence is the an element of the offence concerned, [they] lack the capacity to behave in the way that a reasonable adult would have behaved in the circumstances.”²

A child is defined as a person under the age of 18 in the Transitional Constitution³ and the Child Act.⁴

Legality of inhuman sentencing

Death penalty

The Transitional Constitution of South Sudan prohibits the imposition of the death penalty on a person under the age of 18⁵ and the Penal Code prohibits courts from imposing “the death penalty on any person who is in the opinion of the Court is under eighteen years of age”.⁶ The Child Law also provides that “no child shall be subjected to capital punishment”.⁷ However; it is not clear from these provisions



¹ Penal Code 2008, Section 30

² Penal Code 2008, Section 31.

³ Transitional Constitution, Article 17(4).

⁴ Child Act, Section 5.

⁵ Transitional Constitution, Article 21(2). Available at: https://www.constituteproject.org/constitution/South_Sudan_2013?lang=en.

⁶ Penal Code 2008, Section 9(b). Available at: http://www.africanchildforum.org/clar/Legislation%20Per%20Country/South%20Sudan/ssudan_penal_2009_en.pdf.

⁷ Child Act 2008, Section 21(a). Available at: http://www.africanchildforum.org/clar/Legislation%20Per%20Country/South%20Sudan/ssudan_children_2008_en.pdf.

that the death penalty would be prohibited as a sentence for all offences committed while under the age of 18 as opposed to only prohibited the sentence for people who are children at the time of sentencing.

The Penal Code specifies that the relevant age for criminal responsibility is the time of the offence is committed, so the exclusion of this language from the provisions on the death penalty could be interpreted to imply that the relevant age is that at the time of sentencing.⁸

The death penalty is a lawful sentence for treason; insurgency, banditry, sabotage or terrorism resulting in the death of a person; giving false evidence leading the a person being sentenced to death; murder; attempted murder committed by a person already under sentence of life imprisonment for murder; and unlawful dealing in dangerous drugs.⁹

Life imprisonment

The Child Act provides that “no child shall be sentenced to capital punishment or life imprisonment”.¹⁰ A child is defined as any person under the age of 18,¹¹ but the Act does not clarify whether the relevant age is at the time of the offence or the time of sentencing.

Life imprisonment is a lawful sentence for insurgency, banditry, sabotage or terrorism; murder; culpable homicide; abetting the suicide of a child or “insane person”; and brigandage with murder.¹² Life imprisonment is defined as “equivalent to a term of 20 years”¹³ and must be confirmed by the Supreme Court.¹⁴

Corporal punishment

In setting out the rights of the child, the Constitution of South Sudan recognises the right of children “to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions”.¹⁵ The Child Act also states that “no child shall be subjected to corporal punishment by chiefs, police, teachers, prison guards or any other person in any place or institution, including schools, prisons and reformatories”. The relevant provisions do not clarify whether the relevant age

is at the time of the offence or the time of sentencing but, as corporal punishment is not a lawful offence under the Penal Code, this distinction does not affect the legality of corporal punishment as sentence for offences committed by children.

Inhuman sentencing in practice

In 2011, Amnesty International and Human Rights Watch reported that juveniles remained on death row.¹⁶ The circumstances under which these people were sentenced are not clear, whether they were sentenced under the current Penal Code, previous legislation, or whether the relevant issue was of age determination.

CRIN has not been able to locate any statistical information on the sentencing of child offenders to life imprisonment.

Progress towards prohibition and elimination

Law reform needed

The State should reform its laws on juvenile justice to clarify that all protections of children from sentences of death, life imprisonment and corporal punishment apply for all offences committed when a person was under the age of 18.

Law reform under way

CRIN is not aware of any law reform underway that would affect the legality of inhuman sentencing of children.

National campaigns

CRIN is not aware of any national campaigns against the inhuman sentencing of children in South Sudan.

As part of CRIN’s work on the inhuman sentencing campaign, we have submitted reports and alternative reports to the international human rights mechanisms as they have reviewed States involved in the campaign, with the aim of ensuring that the practices are recognised as illegal under international law and of exerting pressure on States to reform their laws. South Sudan is yet to report to any of the UN’s human rights treaty bodies or to be reviewed under the Universal Periodic Review process.

⁸ See Penal Code 2008, Section 31 compared to Section 9(b).

⁹ Penal Code 2008, Sections 64, 67, 131, 206, 208, 383 respectively.

¹⁰ Child Act 2008, Section 21(a).

¹¹ Child Act 2008, Section 5.

¹² Penal Code 2008, Sections 67, 206, 210, 214, 309 respectively.

¹³ Penal Code 2008, Section 10.

¹⁴ Code of Criminal Procedure 2008, Section 258. Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/South%20Sudan/ssudan_cripro_2008_en.pdf.

¹⁵ Transitional Constitution, Article 17(1)(f).

¹⁶ Human Rights Watch and Amnesty International, South Sudan: A human rights agenda, 20 June 2011. Available at: <http://www.amnesty.org/en/documents/AFR65/001/2011/en/>.

National and international law conflicting with inhuman sentencing

The Constitution

The Transitional Constitution explicitly address the issue of capital punishment and corporal punishment for children:

Article 17:

“(1) Every Child has the right:
(f) to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions;”

Article 21(2):

“No death penalty shall be imposed on a person under the age of 18 or a person who has attained the age of 70.”

International human rights treaties

Since South Sudan declared its independence in 2011, the State has acceded to a small number of the core international human rights treaties:

- Convention on the Rights of the Child (in 2015)
- Convention on the Elimination of All Forms of Discrimination against Women (in 2015)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 2015)

International complaints mechanisms

South Sudan accepted the complaints procedure under the Convention on the Elimination of All Forms of Discrimination Against Women in April 2015.

Status of international treaties

International human rights treaties ratified by South Sudan form “an integral part” of the Bill of Rights within the Constitution.¹⁷ The Bill of Rights is “upheld, protected and applied by the Supreme Court and other competent courts” and “no derogation from the rights and freedoms enshrined in [the] Bill shall be made.”¹⁸

Recommendations from human rights treaty monitoring bodies

South Sudan is yet to be reviewed by any of the UN treaty bodies. The State is due to submit its initial reports the Committee Against Torture and the Committee on the Elimination of Discrimination Against Women in 2016 and to the Committee on the Rights of the Child in 2017. No date has been set for the State’s review by any of these committees. The State has not been reviewed as part of the Universal Periodic Review and is yet to be scheduled for review during the next cycle of the process.

¹⁷ Transitional Constitution, Article 9(3).

¹⁸ Transitional Constitution, Article 10.

About CRIN (www.crin.org)

Our goal: A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

Our organisation: CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

Our work is based on five core values:

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

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