



**SOUTH SUDAN  
26th Session of the Working Group on the UPR  
Human Rights Council**

**Joint Stakeholder Report to the United Nations  
Universal Periodic Review  
7 November 2016**

**The Death Penalty in South Sudan**

**Submitted in March 2016 by:**

**The Advocates for Human Rights,  
an NGO holding ECOSOC Special Consultative Status since 1996**

**in collaboration with**

**The World Coalition Against the Death Penalty**

**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. The Advocates has special consultative status with ECOSOC. 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 opposing the death penalty worldwide and has a long history of conducting advocacy to end capital punishment.

**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 13 May 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. The last Universal Periodic Review (UPR) of Sudan occurred in May of 2011, the year that South Sudan joined the United Nations as an independent country. During that UPR, UN Member States considered and made recommendations concerning conditions in both Sudan and South Sudan.
2. Conflicts between warring factions continue to occur in South Sudan, and continue to result in substantial violations of international human rights standards. This stakeholder report, however, focuses on the Government of South Sudan's continued use of the death penalty, in spite of its acceptance of a 2011 UPR recommendation that South Sudan should establish a moratorium on executions with a view to the abolition of the death penalty.
3. The joint stakeholders have collaborated on this report with a civil society organization in South Sudan that has monitored the government's compliance with its human rights obligations pertaining to the death penalty since the 2011 UPR. Media reports and independent research conducted by the joint stakeholders corroborates this information. Due to the Government of South Sudan's lack of full transparency regarding its administration of the death penalty, as well as ongoing conflict that hinders independent monitoring efforts, information in this stakeholder report likely understates the number of executions conducted during the relevant time period.
4. During the 2011 UPR, two countries made specific recommendations to South Sudan with regard to the abolition of the death penalty. Italy and France both recommended that South Sudan should establish a moratorium on executions with a view to the definitive abolition of the death penalty. South Sudan accepted the Italian recommendation (A-85.4), but did not accept the similarly worded recommendation from France.<sup>1</sup>
5. The Government of South Sudan has not implemented the accepted recommendation for a death penalty moratorium, even though it subsequently voted in the United Nations in favor of a death penalty moratorium on two occasions. The death penalty remains in force in South Sudan.<sup>2</sup> The Government of South Sudan continues to carry out executions by hanging, including conducting two executions as recently as January of 2016.<sup>3</sup> Further, most individuals charged with capital crimes lack access to counsel and experience systemic and widespread violations of human rights in the administration of justice, including unhealthy and overcrowded conditions of detention.

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<sup>1</sup>The explanation given is that South Sudan addressed only the recommendations put forward to South Sudan exclusively. All the responses to recommendations put forward to both Sudan and South Sudan as a unity remained pending and were therefore deemed noted by South Sudan. Therefore, the French recommendation has been deemed noted. UPR, Responses to Recommendations, A/HRC/18/16, 10 March 2012.

<sup>2</sup> UN Human Rights Council, Report of the UN High Commissioner for Human Rights: Technical assistance and capacity-building for South Sudan in the field of human rights, A/HRC/21/34 para. 23, 29 August 2012. ([http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-34\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-34_en.pdf) )

<sup>3</sup> Communication from South Sudan civil society organization to The Advocates, on file with The Advocates (23 February 2016).

6. The joint stakeholders respectfully suggest the following recommendations be made to the Government during the upcoming UPR of South Sudan:
  - a. Immediately institute and maintain a moratorium on all executions;
  - b. Commute the sentence of each person on death row to life imprisonment;
  - c. Amend the Transitional Constitution of South Sudan to prohibit the death penalty;
  - d. Make all necessary changes to the South Sudan Penal Code Act and any other applicable laws so as to effectuate the prohibition of the death penalty;
  - e. Provide access to qualified counsel in all capital cases;
  - f. Ensure that traditional chiefs do not decide death penalty cases by enforcing the limited jurisdiction of traditional courts under the Local Government Act;
  - g. Take measures to ensure that death row conditions respect international standards and principles on the treatment of prisoners.
  - h. Increase public information and transparency about policies and practices related to the use of the death penalty, including: releasing figures on the number of executions carried out and death sentences imposed; providing notification when executions are set to occur; and making publicly available all judicial decisions regarding death sentences and decisions by the President to confirm or commute death sentences.

### **Factual and Legal Background**

7. Prior to 2011, South Sudan was part of the nation of Sudan. The 2005 Comprehensive Peace Agreement ended a long and violent internal conflict and provided for a referendum on the establishment of South Sudan as a separate nation. The referendum occurred in January of 2011; the overwhelming majority of South Sudanese voted for independence. South Sudan formally achieved its status as a separate and independent nation on July 9, 2011.
8. On that date, a transitional constitution for South Sudan took effect, and it remains in effect to this day. It provides for the death penalty, but limits its application to cases of “extremely serious offenses in accordance with the law”<sup>4</sup> and it forbids executions of persons under the age of 18<sup>5</sup> or 70 years of age or over, as well as women who are pregnant or lactating for up to two years. Sections 206 and 207 of the South Sudan Penal Code of 2008 provide that persons convicted of intentional murder shall be sentenced to death or life imprisonment, and section 275 of the Penal Code provides that persons sentenced to death shall be executed by hanging.<sup>6</sup>
9. The last UPR for Sudan was conducted in May of 2011, at which time it was known that South Sudan would shortly become a separate country, but the formal separation had not yet occurred. The process resulted in some recommendations being directed specifically to the government of South Sudan. Italy made the following recommendation, which the

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<sup>4</sup> “The death penalty is only imposed where there is a conviction of treason, murder or aggravated robbery involving the use of a firearm if in the opinion of the court the person is not under eighteen or is over seventy years old”. UN Human Rights Council, Universal Periodical Review: Sudan, A/HRC/WG.6/11/SDN/1, para. 124, May 10, 2011.

<sup>5</sup> *Id.*

<sup>6</sup> South Sudan Code of Criminal Procedure, Act No. 5 of 2008.

Government of South Sudan subsequently accepted: *To establish a moratorium on executions with a view to abolishing the death penalty.*

10. On September 28, 2012, the Government of South Sudan through its permanent representative to the UN Human Rights Council (HRC) Riek Puok Riek told the Council that South Sudan “agrees with...the logic of abolishing the death penalty. But we believe that this is a process that could be approached gradually.”<sup>7</sup> South Sudan also voted in favor of UN General Assembly resolutions supporting a moratorium on the use of the death penalty in 2012 and 2014.<sup>8</sup>
11. Nonetheless, the courts in South Sudan continue to sentence persons to death and the Government of South Sudan continues to carry out executions. While the actual number of executions is not known, numerous human rights groups have reported executions being carried out since the last UPR in 2011. Human Rights Watch documented the hanging of two men in Juba prison on August 2012, reporting that, at that time, more than 200 prisoners were estimated to be on death row awaiting execution.<sup>9</sup> A death penalty database maintained by Cornell Law School documents at least four executions in 2013 and five in 2012.<sup>10</sup> A civil society organization in South Sudan reports executions taking place in 2014, 2015, and 2016.<sup>11</sup> A member of that organization reports that, in January 2016, two prisoners were taken to Juba from the Eastern Equatorial State and executed.<sup>12</sup>
12. In a speech to the Constitutional Review Commission of South Sudan on May 3, 2013, South Sudan’s Chief Justice, Chan Reec Madut, stated that the country’s judges will continue sentencing prisoners to death.<sup>13</sup> The Sudan Tribune quoted him as stating: “The transitional constitution does not have a provision that prohibits [the] death penalty. This means that our judges will continue to rely on current laws until [such time] when constitutional amendments [are] made through an act of parliament.”<sup>14</sup> The newspaper also quoted the Warrap State’s acting president of the High Court, Nhok Monyrac, as saying “Yes, we are aware that our country was one of the member states of the United Nations which endorsed [the] removal of [the] death penalty, but there is a need to amend

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<sup>7</sup> Hands off Cain, South Sudan – Retentionist, Nov. 14, 2012. Also found at:

<http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=25&nome=south%20sudan>

<sup>8</sup> UN General Assembly, Resolution 67/176, Moratorium on the use of the death penalty, adopted 20 December 2012, A/RES/67/176, 20 March 2013. [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/67/176](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/176)

<sup>9</sup> Integrated Regional Information Networks, South Sudan: Calls to end the death penalty, improve prison conditions, 5 Nov. 2012. Available at <http://www.refworld.org/docid/5098e5402.html>

<sup>10</sup> Cornell Law School 2016, Death Penalty Worldwide, South Sudan, April 26, 2013. Also found at: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=South+Sudan>

<sup>11</sup> Communication from South Sudan civil society organization to The Advocates, on file at The Advocates (23 February 2016); see also Cornell Law School 2016, Death Penalty Worldwide, South Sudan, April 26, 2013. Also found at: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=South+Sudan>; Report on file at Advocates for Human Rights, 2/23/16.

<sup>12</sup> Communication from South Sudan civil society organization to The Advocates, on file at The Advocates (23 February 2016).

<sup>13</sup> Sudan Tribune, South Sudan says death penalty remains until constitution amended, May 4, 2013. Available at: <http://www.sudantribune.com/spip.php?article46452>

<sup>14</sup> *Id.*

the constitution to reinforce what was signed at the United Nations, otherwise it will be a spoiled vote.”<sup>15</sup>

13. South Sudan’s continued use of the death penalty is especially troubling given the well-documented weaknesses in its legal system, leading to violations of due process and other rights in the administration of justice.
14. Persons sentenced to death in South Sudan are often illiterate; many have no legal counsel at any stage of the proceeding.<sup>16</sup> Most South Sudanese have no access to legal aid.<sup>17</sup> A civil society organization in South Sudan reports that the Directorate of Legal Aid in the Ministry of Justice has offered legal aid in only approximately eight cases since the Comprehensive Peace Agreement was signed in 2005.<sup>18</sup>
15. Further, the same civil society organization reports that there are tremendous problems with lack of capacity and inadequate resources in the justice system, often resulting in the loss of case files and lengthy delays in court proceedings.<sup>19</sup> Due to the lack of human resources, death penalty cases are sometimes heard by traditional chiefs, unsupervised by the judiciary, even though South Sudan’s Local Government Act purports to limit the jurisdiction of these traditional courts to “petty crimes.”<sup>20</sup>
16. Further, prisoners in South Sudan, including those on death row, are detained under inhumane and unhealthy conditions throughout the prison system. As the U.S Department of State reported in 2013, prison conditions generally in South Sudan are overcrowded, harsh, and life-threatening; children and infants often live in the prisons with their imprisoned adult relatives; and health care and sanitation are inadequate, with a shortage or absence of basic medical supplies and equipment.<sup>21</sup> People with mental illness are often imprisoned for want of appropriate health care, and in the prisons these individuals receive no treatment for their mental illness and are housed with the general prison population.<sup>22</sup> There have been modest improvements in prison conditions in some locations, but the prisons in South Sudan remain unsanitary, overcrowded, and lacking in food and medical care.<sup>23</sup> Many prisoners live in heavy shackles, sometimes for years.<sup>24</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> Human Rights Watch, *Prison Is Not for Me: Arbitrary Detention in South Sudan*, June 21, 2012. Available at: <https://www.hrw.org/report/2012/06/21/prison-not-me/arbitrary-detention-south-sudan>

<sup>17</sup> Human Rights Watch, *Joint Letter to Minister of Foreign Affairs, South Sudan*, TG AFR 65/2012.019, Nov. 4, 2012. Available at: <http://www.hrw.org/news/2012/11/04/joint-letter-minister-foreign-affairs-south-sudan>

<sup>18</sup> Communication from South Sudan civil society organization to The Advocates, on file at The Advocates (23 February 2016).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, *Country Reports on Human Rights Practices for 2013, South Sudan*, 2013. Also found at: <http://www.state.gov/documents/organization/220374.pdf>

<sup>22</sup> Integrated Regional Information Networks (IRIN), *South Sudan: Calls to end the death penalty, improve prison conditions*, 5 November 2012, available at: <http://www.refworld.org/docid/5098e4d22.html> [accessed 15 March 2016].

<sup>23</sup> Freedom House, *Freedom in the World 2014: South Sudan*, 2014. Available at: <https://freedomhouse.org/report/freedom-world/2014/south-sudan>

17. These conditions affect the prisoners on death row. In 2012, there were more than 200 prisoners on death row in South Sudan,<sup>25</sup> with more than 100 crammed into a row of cramped and dirty cells in Juba Central Prison.<sup>26</sup>

### **Recommendations**

18. Accordingly, the joint stakeholders of this UPR stakeholder report urge that delegates to the Human Rights Council make the following recommendations to the Government of South Sudan as part of that country's second-cycle UPR:
- a. Immediately institute and maintain a moratorium on all executions;
  - b. Commute the sentence of each person on death row to life imprisonment;
  - c. Amend the Transitional Constitution of South Sudan to prohibit the death penalty;
  - d. Make all necessary changes to the South Sudan Penal Code Act and any other applicable laws so as to effectuate the prohibition of the death penalty;
  - e. Provide access to qualified counsel in all capital cases;
  - f. Ensure that traditional chiefs do not decide death penalty cases by enforcing the limited jurisdiction of traditional courts under the Local Government Act;
  - g. Take measures to ensure that death row conditions respect international standards and principles on the treatment of prisoners.
  - h. Increase public information and transparency about policies and practices related to the use of the death penalty, including: releasing figures on the number of executions carried out and death sentences imposed; providing notification when executions are set to occur; and making publicly available all judicial decisions regarding death sentences and decisions by the President to confirm or commute death sentences.

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<sup>24</sup> Human Rights Watch, Prison Is Not for Me: Arbitrary Detention in South Sudan, June 21, 2012. Available at: <https://www.hrw.org/report/2012/06/21/prison-not-me/arbitrary-detention-south-sudan>; Integrated Regional Information Networks (IRIN), South Sudan: Calls to end the death penalty, improve prison conditions, 5 November 2012, available at: <http://www.refworld.org/docid/5098e4d22.html> [accessed 15 March 2016].

<sup>25</sup> AP, Doki, Charlton, South Sudan urged to stop the death penalty, April 10, 2013. Available at: <http://news.yahoo.com/south-sudan-urged-stop-death-penalty-133144937.html> [accessed 15 March 2016 ]

<sup>26</sup> Integrated Regional Information Networks (IRIN), South Sudan: Calls to end the death penalty, improve prison conditions, 5 November 2012, available at: <http://www.refworld.org/docid/5098e4d22.html> [accessed 15 March 2016].