



SUDAN
Stakeholder Report for the United Nations Universal Periodic Review

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status
and
The World Coalition Against the Death Penalty

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Founded in 1983, **The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. 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 publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. 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 160 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.

I. EXECUTIVE SUMMARY

1. This report addresses Sudan's compliance with its human rights obligations regarding the death penalty and related issues, including the ratification of international human rights treaties and the prohibition against cruel, inhuman, and degrading punishments. Sudan maintains both the mandatory and discretionary use of the death penalty for specific enumerated crimes, such as intentional killing, certain drug trafficking offenses, and acts contrary to Islamic law. Although Sudan has restricted the use of the death penalty in certain instances in recent years, such as for offenses related to same-sex conduct and apostasy, the country has nonetheless continued to apply the death penalty since the last Universal Periodic Review.
2. This report recommends that Sudan ratify the Convention Against Torture and the Second Optional Protocol to the International Covenant on Civil and Political Rights. Moreover, this report recommends that Sudan impose an immediate moratorium on the use of the death penalty and begin the process of repealing and amending all provisions of its criminal code and related laws that require, or allow, a sentencing court to impose the death penalty. This report also recommends improving conditions in prisons and other detention facilities to meet minimum human rights standards.

II. BACKGROUND AND FRAMEWORK

A. 2016 Universal Periodic Review of Sudan

3. During its Universal Periodic Review in 2016, the Republic of the Sudan received 160 recommendations.¹ Twenty-one of these recommendations concerned the death penalty and related issues. Sudan noted all of these recommendations.

1. *Ratify relevant human rights treaties*

Status of Implementation: Partially Accepted, Not Implemented

4. Sudan received seven recommendations to ratify various human rights treaties relevant to the death penalty and detention conditions.² This included recommendations to ratify Second Optional Protocol to the International Covenant on Civil and Political Rights and the Convention Against Torture.³ Sudan accepted recommendations to ratify the Convention against Torture but noted recommendations to ratify OP2-ICCPR. Sudan noted these recommendations and has not implemented them. Sudan accepted recommendations from Ghana and Burkina Faso to "consider" ratifying the Convention against Torture and its Optional Protocol but has not implemented these recommendations.
2. *Impose a moratorium on the death penalty or abolish the death penalty*

Status of Implementation: Not Accepted, Not Implemented

5. Sudan received 13 recommendations to adopt an official moratorium aiming at the formal abolition of the death penalty or to abolish the death penalty outright.⁴ Sudan also received one recommendation to investigate and prosecute individuals suspected of being responsible for crimes under international law in Darfur but "without resorting to the death penalty."⁵ Sudan noted each of these recommendations.⁶ Sudan has not implemented these recommendations.

3. *Decriminalize apostasy and same-sex sexual conduct*

Status of Implementation: Partially Accepted, Partially Implemented

6. Sudan accepted recommendations to “[m]ake progress towards the abolition of the crime of apostasy and the elimination of other laws and practices contrary to freedom of religion and/or belief” and to “[r]evise the 1991 Penal Code and abolish the penalization of apostasy.” Sudan noted Ireland’s recommendation to abolish the crime of apostasy. Sudan noted recommendations to eliminate discriminatory provisions affecting LGBTI persons. In 2020, Sudan eliminated the death penalty for the third offense of same-sex conduct and for apostasy.

4. *Repeal all legislation that allows cruel, inhuman, or degrading treatment or punishment*

Status of Implementation: Partially Accepted, Not Implemented

7. Sudan received several recommendations to address torture and other cruel, inhuman, or degrading treatment or punishment.⁷ Sudan accepted Timor-Leste’s recommendation to “[a]dopt criminal legislation that defines and criminalizes torture,” and a similar recommendation from the Maldives. Sudan also accepted Japan’s recommendation to “[c]onsider the possibility of re-examining areas of its legislation that have led to restrict political freedom and freedom of expression, arbitrary arrests, detention, executions and torture, as part of wider effort to strengthen the rule of law.”⁸ Sudan accepted a recommendation from Switzerland to “[t]ake immediate measures to conduct independent inquiries into all human rights violations, including allegations of . . . torture and other cruel, inhuman or degrading punishment or treatment . . . as well a to bring perpetrators to justice,” as well as a similar recommendations from Portugal, Slovakia, and Togo. Sudan has not implemented these recommendations.

B. Domestic Legal Framework

8. In 2019, longtime President Omar al-Bashir was deposed after widespread protests. The current transitional government is the eleven-member Sovereignty Council of Sudan. The governing document for the Sovereignty Council is the 2019 Draft Constitutional Declaration (Draft Constitution), which contains provisions related to the death penalty that are similar to Sudan’s 2005 constitution.⁹ The transition period for the Sovereignty Council is scheduled to end in November 2022.

9. Sudan’s Draft Constitution maintains the death penalty for retribution, *hudud* offenses, and “for crimes of extreme gravity, in accordance with the law.”¹⁰ *Hudud* is punishment identified in the Koran for offenses considered to be against God.¹¹ The Draft Constitution prohibits the death penalty for anyone “who has not reached 18 years of age at the time that the crime was committed” and limits the death penalty for individuals 70 years old or older to cases of retribution and *hudud* offenses.¹² Finally, the Constitution bars the death penalty for pregnant and nursing mothers until two years after they have finished breastfeeding.¹³

10. Sudanese criminal laws identify specific crimes eligible for the death penalty. For example, persons convicted of intentional killing are subject to a mandatory retributive death sentence, though the convicted person can obtain a lighter sentence by paying a *diya* (financial compensation) to the victim’s family.¹⁴ Aside from crimes resulting in

death, “rape constitut[ing] the offence of adultery, or sodomy” is subject to the mandatory death penalty.¹⁵ Trafficking or producing drugs by a recidivist, an official entrusted with combatting drug trafficking, or as part of an international criminal organization carries the mandatory death penalty as well.¹⁶ There is a discretionary death penalty for providing drugs to students or in schools or assisting trafficking generally.¹⁷ The death penalty is also discretionary for committing “any act with the intention of undermining the constitutional system of the country,” for committing “the offence of waging war against the State,” or for “whoever spies against the country” under specified circumstances.¹⁸

11. The method of execution in Sudan is codified as hanging, stoning, or, in the case of armed robbery, crucifixion.¹⁹ For cases of murder, Sudan’s penal code requires the execution to be through hanging, but “if the court sees fit, it shall be in the same manner in which the offender has caused death.”²⁰ According to the African Centre for Justice and Peace Studies, “hanging is the only known method of execution in Sudan.”²¹
12. In response to an independent expert’s report during the 2016 Universal Periodic Review, Sudan commented that the death penalty is “provided for certain legislative provisions for serious crimes” but “is rarely executed” because “[p]rivate pardon, general amnesty and decisions by the [courts] overriding conviction or substituting the sentence substantially reduce to the minimum the cases in which the death penalty is carried out.”²²
13. In recent years, legal changes have curbed some uses of the death penalty. Law No. 12 of 2020 ended the death penalty for the third offense of same-sex sexual conduct (previously permitted after a third conviction).²³ The new law also ended the death penalty for the crime of apostasy, which was to be carried out via stoning and was subject to the mandatory death penalty.²⁴ Law No. 12 also prohibited implementation of the death penalty for individuals younger than 18 years of age, when previously individuals younger than 18 could be sentenced to death for crimes of homicide.²⁵

III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Right or area 2.1. Acceptance of international norms

14. While Sudan is a party to the International Covenant on Civil and Political Rights, Sudan has not ratified its Second Optional Protocol. Sudan also has not ratified the Convention Against Torture or its Optional Protocol,²⁶ despite accepting recommendations to ratify the former.

Right or area 12.4. Death penalty

15. As discussed in paragraphs 9–13 above, Sudan maintains both mandatory and discretionary uses of the death penalty for specified crimes. Sudan continues to sentence people to death and carry out executions. In February 2021, news media reported that a South Sudanese woman had been hanged for a 2018 murder.²⁷ In 2019, a court sentenced 29 intelligence officers to death for the torture and killing of a teacher, Ahma al-Khair, who participated in anti-al-Bashir protests.²⁸ That year, Sudan reportedly carried out one execution and Sudanese courts issued 31 death sentences.²⁹ In 2018, Sudan reported two executions and eight death sentences.³⁰

16. The Government of Sudan does not regularly publish official statistics on sentencing and the imposition of the death penalty. In 2019, Sudan was one of just five countries in the 55-member African Union that executed people.³¹ The 31 death sentences that came down in 2019 “were a significant increase” from the eight death sentences recorded in 2018.³²
17. The Government of Sudan does not comprehensively protect children under the age of eighteen years. The death penalty can be imposed for crimes committed when the convicted person was a child if the sentence is imposed when the convicted person is eighteen years or older.³³
18. In 2020, Sudan took steps to scale back the imposition of the death penalty by passing reforms to its criminal code. Specifically, as discussed in paragraph 13, it ended the death penalty for the crime of apostasy and for the third conviction for homosexual intercourse.
19. In 2018, in a case that drew international attention, a Sudanese court sentenced a young woman to death after, in self-defense, she killed her husband during an attempted rape. The court later quashed her death sentence and replaced it with a five-year-long prison term.³⁴
20. Despite these steps and individual reversals of the death penalty’s application, Sudan maintains the mandatory death penalty for crimes of intentional murder, rape under specific circumstances, and drug-related offenses, as discussed in paragraph 10 above. Further, the death penalty is discretionary for a range of crimes against the state, other drug-related offenses, and the third conviction for running a place for prostitution.³⁵

Right or area 12.5. Prohibition of torture and cruel, inhuman, or degrading treatment

21. As discussed in paragraph 11, the prescribed methods of executions in Sudan are hanging, stoning, and crucifixion, but hanging appears to be the only method of execution currently in use.
22. The Government of Sudan continues to impose the death penalty based on confessions extracted through the use of torture.
23. Torture and cruel, inhuman, or degrading treatment or punishment also takes place against people housed in prisons. As detailed below, detention conditions fall short of minimum human rights standards.

Right or area 12.6. Conditions of detention

24. Sudan has four federal prisons plus numerous other prison and detention facilities where individuals have been executed.³⁶
25. Conditions in Sudanese prisons and detention facilities for people sentenced to death are poor and contrary to the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). These facilities lack adequate health care and food supplies.³⁷ Medical care in these facilities has been described as “primitive.” According to some reports, “security forces held detainees incommunicado; beat them; deprived them of food, water, and toilets; and forced them to sleep on cold floors.”³⁸
26. Reports have relayed observations that people on death row have “permanent fixture of handcuffs connected to shackles on their legs.”³⁹ As a result, inmates’ skin chafes; even more, they are unable to stand upright due to the length of the shackle chains, which “creates an atmosphere not only of discomfort but also of humiliation.” The chains

remain on at all times—in their cells, with visits with family and counsel, and even during medical visits.

27. One person in detention told the African Centre for Justice and Peace Studies: “We wore shackles while in the cell and those caused wounds on our legs and hands. We went everywhere in shackles. Even when I was sick, I was taken to the hospital with my shackles on.” A pregnant woman who was imprisoned in Omdurman Women’s Prison, Meriam Yahha Ibrahim, gave birth while shackled; she was unable to open her legs and had to be lifted off the table, she later reported.⁴⁰
28. In Khartoum’s Kober Prison, there are reportedly seven cells for people under sentence of death, each measuring two meters by two meters and without windows, ventilation, and airflow.⁴¹ It is in these cells that people must spend at least 16 hours of each day.

IV. RECOMMENDATIONS

29. This stakeholder report suggests the following recommendations for the Government of Sudan:
 - Ratify the Second Optional Protocol of the International Covenant on Civil and Political Rights, the Convention against Torture, and the Optional Protocol to the Convention against Torture.
 - Impose an immediate moratorium on executions with a view to the ultimate abolition of the death penalty.
 - In the meantime, and with the goal of eventual abolition, continue amending the criminal code to restrict the use of the death penalty as an available punishment at most to crimes in which the person eligible to be sentenced to death committed an intentional killing.
 - Eliminate the mandatory death penalty and require all courts to exercise judicial discretion in considering all mitigating circumstances to determine whether the death penalty should be imposed, with the burden of justification placed on imposing the death penalty.
 - Direct all judges and other sentencing authorities to ensure that no person is sentenced to death for a crime committed while under the age of 18 years and commute the death sentences of any person currently on death row who was sentenced to death for such a crime.
 - Adopt legislation prohibiting courts from considering evidence obtained through the use of torture or other cruel, inhuman, or degrading treatment.
 - Abolish the death penalty and replace it with a sentence that is fair, proportionate, and in compliance with international human rights standards.
 - Eliminate crucifixion and stoning as possible methods of execution.
 - Establish mechanisms to ensure that all detention facilities comply with the Nelson Mandela Rules.
 - Combat detention facilities’ overcrowding, lack of air flow, lack of proper medical care, and lack of hygiene by establishing minimum standards that, if not met, could give rise to civil or criminal liability.

- Prohibit the permanent use of shackles and similar restraints for people under sentence of death.
- Publish timely and transparent information regarding death sentences and upcoming executions.
- Publish comprehensive data on death sentences, the current death row population, executions, disaggregated by nationality, race/ethnicity, crime of conviction, status of the case, and gender, to reveal whether the death penalty has a disproportionate effect on minority groups, such as individuals from Darfur.
- Commission an independent academic study on the deterrent effect of the death penalty, which should compare the effects of the death penalty versus a sentence of life imprisonment and draw from international best practices for conducting such studies.

¹ *Report of the Working Group on the Universal Periodic Review: Sudan*, United Nations Human Rights Council, Thirty-third session, (July 11, 2016), U.N. Doc. A/HRC/33/8 ¶ 7.

² *Report of the Working Group on the Universal Periodic Review: Sudan*, United Nations Human Rights Council, Thirty-third session, (July 11, 2016), U.N. Doc. A/HRC/33/8. ¶¶ 140.2 Ratify international human rights treaties, including the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Poland) , ¶ 140.14 Ratify the international treaties to which the state is not yet party, particularly the Convention against Torture and the Second Optional Protocol to the International Covenant on Civil and Political Rights (Madagascar), ¶ 141.2 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro) (Albania); ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (Uruguay), ¶ 141.3 Adopt an official moratorium aiming at the formal abolition of the death penalty in the country and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (Portugal), ¶ 141.4 Initiate the process of ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights with the view of definitely abolishing the death penalty (Luxembourg), ¶ 141.6 Ratify the Convention against Torture and abolish the death penalty (Costa Rica).

³ *Report of the Working Group on the Universal Periodic Review: Sudan*, United Nations Human Rights Council, Thirty-third session, (July 11, 2016), U.N. Doc. A/HRC/33/8 ¶¶ 140.2, 140.14.

⁴ *Report of the Working Group on the Universal Periodic Review: Sudan*, United Nations Human Rights Council, Thirty-third session, (July 11, 2016), U.N. Doc. A/HRC/33/8 ¶¶ 141.3; 141.23; 141.24; 141.25; 141.26; 141.27; 141.28; 141.29; 141.30; 141.31.

⁵ *Report of the Working Group on the Universal Periodic Review: Sudan*, United Nations Human Rights Council, Thirty-third session, (July 11, 2016), U.N. Doc. A/HRC/33/8 ¶ 141.33 Ensure that those suspected of being responsible for crimes under international law in Darfur — particularly those within government security and armed forces — are investigated and prosecuted before independent and impartial courts, without resort to the death penalty (Liechtenstein).

⁶ *Report of the Working Group on the Universal Periodic Review: Sudan*, United Nations Human Rights Council, Thirty-third session, (July 11, 2016), U.N. Doc. A/HRC/33/8 ¶ 141.

⁷ *Report of the Working Group on the Universal Periodic Review: Sudan*, United Nations Human Rights Council, Thirty-third session, (July 11, 2016), U.N. Doc. A/HRC/33/8 ¶¶ 140.20; 140.45; 141.7; 141.18; 141.25.

⁸ *Report of the Working Group on the Universal Periodic Review: Sudan*, United Nations Human Rights Council, Thirty-third session, (July 11, 2016), U.N. Doc. A/HRC/33/8 ¶¶ 140.20; 140.45; 141.7; 141.18; 141.25.

⁹ *Compare* 2005 Constitution, art. 36 [Republic of the Sudan] *with* Draft Constitutional Charter for the 2019 Transitional Period, art. 53 [Republic of the Sudan].

¹⁰ Draft Constitutional Charter for the 2019 Transitional Period, art. 53(1) [Republic of the Sudan].

<http://www.oxfordislamicstudies.com/article/opr/t125/e757>.

¹² Draft Constitutional Charter for the 2019 Transitional Period, art. 53(2) [Republic of the Sudan].

¹³ Draft Constitutional Charter for the 2019 Transitional Period, art. 53(3) [Republic of the Sudan].

¹⁴ Criminal Act of the Sudan 1991, arts. 28, 130.

¹⁵ Criminal Act of the Sudan 1991, art. 149(3).

¹⁶ Sudan Narcotics Drugs and Psychotropic Substances Act of 1994, arts. 15, 17.

¹⁷ Sudan Narcotics Drugs and Psychotropic Substances Act of 1994, art. 16, 17.

¹⁸ Criminal Act of the Sudan 1991, art 50, 51, 53.

¹⁹ Criminal Act of the Sudan 1991, arts. 27(1), (3).

²⁰ Criminal Act of the Sudan 1991, art. 28(3).

²¹ African Centre for Justice and Peace Studies, *The Wide Application of the Death Penalty in Sudan*, at 13 (New York: African Centre for Justice and Peace Studies, 2016). Also available online at <http://www.acjps.org/wp-content/uploads/2016/08/The-Wide-Application-of-the-Death-Penalty.pdf>.

²² *Report of the Independent Expert on the situation of human rights in the Sudan: comments by the State*, (Sept. 14, 2016), U.N. Doc. A/HRC/33/65/Add. 1 ¶ 27(c).

²³ Ben Barkawi & Rachel Savage, 'Great first step' as Sudan lifts death penalty and flogging for gay sex, Reuters (July 16, 2020), <https://www.reuters.com/article/us-sudan-lgbt-rights-trfn/great-first-step-as-sudan-lifts-death-penalty-and-flogging-for-gay-sex-idUSKCN24H30J>.

²⁴ Author unknown, Changes in criminal law as Sudan annuls apostasy death sentence, Al-Jazeera (July 12, 2020), <https://www.aljazeera.com/news/2020/7/12/changes-in-criminal-law-as-sudan-annuls-apostasy-death-sentence>.

²⁵ Library of Congress, Global Legal Monitor, Sudan: New Law Amending Penal Code Takes Effect (July 23, 2020), <https://www.loc.gov/law/foreign-news/article/sudan-new-law-amending-penal-code-takes-effect/>.

²⁶ U.N. Office of the High Commissioner for Human Rights, "UN Treaty Body Database: Sudan," accessed Feb. 10, 2020, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=165&Lang=EN.

²⁷ Alhadi Hawari, *Khartoum authorities hang S Sudanese woman*, Eye Radio, 10 Feb. 2021,

<https://eyeradio.org/khartoum-authorities-hang-s-sudanese-woman/#:~:text=A%2039%2Dyear%2Dold%20South>.

²⁸ Author unknown, Sudan sentences 29 to death for teacher's killing in custody, BBC News (Dec. 20, 2019), <https://www.bbc.com/news/world-africa-50945224>.

²⁹ Amnesty International, *Death Sentences and Executions: 2019*, at 11 (London: Amnesty International, 2019). Also available online at <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

³⁰ Amnesty International, *Death Sentences and Executions: 2018*, at 9, 11 (London: Amnesty International, 2018). Also available online at <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

³¹ Amnesty International, *Death Sentences and Executions: 2019*, at 10 (London: Amnesty International, 2019). Also available online at <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

³² Amnesty International, *Death Sentences and Executions: 2019*, at 50 (London: Amnesty International, 2019). Also available online at <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

³³ Report of the Special Rapporteur on the human rights situation in Sudan, Sima Samar to the Commission on Human Rights, E/CN.4/2006/111, 11 January 2006 at ¶ 55.

³⁴ Amnesty International, *Sudan: Quashing of Noura Hussein death sentence must now lead to legal reform* (June 26, 2018), <https://www.amnesty.org/en/latest/news/2018/06/sudan-quashing-of-noura-hussein-death-sentence-must-now-lead-to-legal-reform/>.

³⁵ Criminal Act of the Sudan 1991, art. 155(3).

³⁶ Cornell Center on the Death Penalty Worldwide, "Death Penalty Worldwide Database," accessed February 16, 2021, <https://dpw.pointjupiter.co/country-search-post.cfm?country=Sudan>.

³⁷ African Centre for Justice and Peace Studies, *The Wide Application of the Death Penalty in Sudan*, at 28 (New York: African Centre for Justice and Peace Studies, 2016). Also available online at <http://www.acjps.org/wp-content/uploads/2016/08/The-Wide-Application-of-the-Death-Penalty.pdf>.

³⁸ U.S. Dept. of State, 2009 Human Rights Report: Sudan, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <https://2009-2017.state.gov/j/drl/rls/hrrpt/2009/af/135978.htm>.

³⁹ African Centre for Justice and Peace Studies, *The Wide Application of the Death Penalty in Sudan*, at 28 (New York: African Centre for Justice and Peace Studies, 2016). Also available online at <http://www.acjps.org/wp-content/uploads/2016/08/The-Wide-Application-of-the-Death-Penalty.pdf>.

⁴⁰ African Centre for Justice and Peace Studies, *The Wide Application of the Death Penalty in Sudan*, at 29 (New York: African Centre for Justice and Peace Studies, 2016). Also available online at <http://www.acjps.org/wp-content/uploads/2016/08/The-Wide-Application-of-the-Death-Penalty.pdf>.

⁴¹ African Centre for Justice and Peace Studies, *The Wide Application of the Death Penalty in Sudan*, at 29 (New York: African Centre for Justice and Peace Studies, 2016). Also available online at <http://www.acjps.org/wp-content/uploads/2016/08/The-Wide-Application-of-the-Death-Penalty.pdf>.