



South 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 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 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 South Sudan's compliance with its human rights obligations with respect to its use of the death penalty. Although South Sudan accepted recommendations from the international community during its 2011 UPR to end the use of the death penalty,¹ and despite consistent recommendations from various member nations to place a moratorium on the use of the death penalty or otherwise abolish it,² South Sudan reportedly continues to sentence persons to death and to carry out executions. South Sudan is counted among the twenty countries that are responsible for all known executions worldwide.³ South Sudan is among four Sub-Saharan countries that carried out executions in 2018 and 2019.⁴ South Sudan's Bill of Rights, a part of the 2011 Transitional Constitution, remains in effect today and still prohibits the execution of persons under the age of eighteen or over the age of seventy years and women who are pregnant or lactating for up to two years.⁵ Relatedly, pursuant to the Penal Code of 2008, courts are prohibited from passing a death sentence on any person "in the opinion of the Court" is younger than sixteen-years-old, or older than seventy.⁶ The Bill of Rights provides that the death penalty should only be imposed for "extremely serious offenses in accordance with the law."⁷ Although South Sudan abstained from the December 12, 2020 resolution adopted by the U.N. General Assembly, calling for a moratorium on the use of the death penalty,⁸ the South Sudanese government has made conflicting statements about the status of the country's use of the death penalty. Moreover, although South Sudan's Constitution contains various rights and protections for its citizens such as affording defendant the right to have legal aid assigned to them by the government "in any serious offense" in the event they cannot afford a lawyer⁹, most individuals sentenced to death were not represented by counsel and there have been reports of individuals sentenced to death despite being under the age of eighteen at the time of the commission of their crime.¹⁰ Additionally, the lack of formal judicial infrastructure throughout South Sudan has led to many criminal cases being brought before customary courts that are supposed to be subordinate and answerable to the formal, statutory courts. It might be presumed that the death penalty is administered more frequently in the customary courts, which "apply an ad hoc mixture of customary principles and compensation, and statutory (or even international) legal codes and penalties."¹¹ Further, there is a general concern regarding the lack of information from the government of South Sudan that is available to properly evaluate the issues regarding the country's use of the death penalty.
2. Much of the data used to inform this report is based on secondary sources. There is no official information, and the sources are only able to estimate important statistics such as the number of individuals sentenced to death or executed in recent years. Also, there is no authoritative information to properly assess the extent to which constitutional rights are being respected in capital cases.

II. BACKGROUND AND FRAMEWORK

A. 2016 Universal Periodic Review of South Sudan

3. During its second-cycle Universal Periodic Review in 2016, South Sudan received 12 recommendations related to the death penalty. South Sudan accepted four of these

recommendations and rejected the other eight. South Sudan also accepted several recommendations regarding detention conditions and torture.

1. *Ratify the Second Optional Protocol to the ICCPR*

Status of Implementation: Partially Accepted, Not Implemented

4. South Sudan received six recommendations to ratify the International Covenant on Civil and Political Rights and its Optional Protocols (ICCPR-OP2). South Sudan accepted the recommendations of Croatia and Portugal to ratify it, adding that South Sudan required technical assistance to do so, but rejected similar recommendations from Montenegro, Rwanda, and Uruguay to ratify ICCPR-OP2 “aiming at the abolition of the death penalty” and Australia’s recommendation to establish a formal moratorium on the death penalty with a view to ratifying ICCPR-OP2.¹² South Sudan has not ratified ICCPR-OP2.

2. *Establish a formal moratorium on the death penalty*

Status of Implementation: Not Accepted, Not Implemented

5. South Sudan rejected a recommendation from Georgia to place a moratorium on the use of the death penalty and a recommendation from Australia to establish the moratorium with a view to ratifying the ICCPR-OP2.¹³ South Sudan also rejected Uruguay’s recommendation that South Sudan declare a moratorium.¹⁴ South Sudan did not implement these recommendations.

3. *End use of the death penalty*

Status of Implementation: Partially Accepted, Not Implemented

6. South Sudan rejected Ukraine’s recommendation to consider abolishing the death penalty.¹⁵ It also rejected Iceland’s recommendation to bring persons suspected of criminal responsibility to justice without making recourse to the death penalty. South Sudan accepted the Holy See’s recommendation to “[c]ontinue efforts to improve conditions of detention and abolish the death penalty, with a view to commuting all death sentences,” but stated that it would need technical assistance to do so. South Sudan did not implement these recommendations.

4. *Administration of justice and fair trial*

Status of Implementation: Not Accepted, Not Implemented

7. As mentioned above, South Sudan rejected Iceland’s recommendation to “[b]ring all those suspected of criminal responsibility to justice in accessible ordinary civilian courts, using fair trials and without making recourse to the death penalty.”¹⁶ South Sudan did not implement this recommendation.

5. *Detention conditions and torture*

Status of Implementation: Partially Accepted, Partially Implemented

8. South Sudan accepted three recommendations specifically relating to detention conditions saying they “enjoy its support but needs technical assistance and resources to fully implement them.”¹⁷: “[t]ypify the crimes of international law, enacting and enforcing legislation defining and criminalizing torture, enforced disappearance, genocide and

crimes against humanity” (Uruguay), “[a]pprove immediately the bill to reform the Penal Code to include the definition of the crimes of genocide, torture and enforced disappearance” (Spain), and “[c]ontinue efforts to improve conditions of detention and abolish the death penalty, with a view to commuting all death sentences” (Holy See).¹⁸ South Sudan rejected Canada’s recommendation to protect civilians from “extrajudicial killings, enforced disappearances, torture and indiscriminate violence.”¹⁹ South Sudan has partially implemented these recommendations.

B. Domestic Legal Framework

9. South Sudan’s Bill of Rights within the 2011 Transitional Constitution provides that the death penalty should be imposed only for “extremely serious offenses according to the law” and prohibits the execution of persons under the age of eighteen or over the age of seventy years and women who are pregnant or lactating for up to two years. The Penal Code of 2008 also states that courts are prohibited from passing a death sentence on any person “in the opinion of the Court” is younger than age 16 or older than age 70.
10. The Penal Code of 2008 provides the use of the death penalty for murder; bearing false witness resulting in an innocent person’s execution or for fabricating such evidence or using as true evidence known to be false; terrorism (or banditry, insurgency or sabotage) resulting in death; aggravated drug trafficking; and treason.²⁰ Hanging is the method of execution provided in the Code of Criminal Procedure.²¹
11. South Sudan’s Bill of Rights guarantees defendants the right to a “fair trial.” Included in this right to a fair trial are conventional notions of due process: the presumption of innocence, the right of an accused to be promptly informed of the charges against them, a public hearing by a competent court of law, a prohibition against the application of laws *ex post facto*, and the right to a trial without undue delay.²² As discussed more below, it is unclear how and to what extent the government ensures that statutory and customary courts provide these fair trial protections.

III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Right or area 2.1. Acceptance of international norms

12. South Sudan has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to abolish the death penalty. In the context of recommendations relating to both ICCPR-OP2 and the Rome Statute, the government of South Sudan states that it does not accept the word ratify “without limiting” as the government does not see the ratification of Rome Statute of the International Criminal Court as its priority, especially that the crimes triable by ICC are offences even punishable by death under South Sudan penal laws. The government added that recommendations calling for abolition of the death penalty “are in conflict with national laws and policies,” explaining that the country “does not impose the death penalty except under rare situations after exhaustion of all steps laid down by the Constitution and not on the persons under 18, over 70 years. Therefore, the abolition of death penalty is not a priority.”
13. South Sudan ratified the Convention against Torture and its Optional Protocol in 2015.

Right or area 12.3. Extrajudicial, summary or arbitrary executions

14. Magai Matiop Ngong was arbitrarily executed after not having access to legal representation during trial for a crime he allegedly committed while under age 18.²³ Magai Matiop Ngong was convicted of murder in 2017. Magai was fifteen years old at the time of the crime, which he claims was an accident.²⁴ Following a trial in which Magai was not represented by counsel, he was sentenced to death by hanging.²⁵

Right or area 12.4. Death penalty

15. Although the actual number of people executed is not known, reporting from Amnesty International suggests that this number has increased over recent years. Amnesty reports that South Sudan executed at least four people in 2017, at least seven people in 2018, and at least eleven people in 2019.²⁶ Amnesty further reports that the at least eleven people executed in 2019 represents the highest number recorded in South Sudan since the country obtained independence in 2011.²⁷
16. Amnesty also reports that South Sudan executed two individuals in 2017 despite the fact that they were juveniles at the time of commission of their crimes.²⁸
17. South Sudan's Bill of Rights affords defendants the right to have counsel assigned to them by the government "in any serious offense."²⁹ The Magai case shows that this protection is not always applied, even in capital cases.
18. Although South Sudan abstained from a December 12, 2020 resolution adopted by the U.N. General Assembly, calling for a moratorium on the use of the death penalty,³⁰ the South Sudanese government had made conflicting statements about the status of the country's use of the death penalty.
19. During the 2017 interactive dialogue, the government represented that because South Sudan imposes the death penalty only in "rare situations after exhaustion of all steps laid down by the Constitution and not on persons under 18, over 70 years of age, . . . abolition of the death penalty is not a priority."³¹ Representatives also explicitly noted that the death penalty was permitted by South Sudan's penal law and was still part of the country's punishment policy.³²
20. Despite these representations, within the last three years the government has allegedly denied reports by Amnesty regarding the country's use of the death penalty. One article explains that government spokesperson Ateny Wek Ateny stated that South Sudan has not executed any person since 2011 and that the country has instituted a moratorium on the death penalty since 2013.³³ The same article, however, reported that he stated, "If you kill a person, you will be executed," prompting some human rights defenders to question the government's transparency and credibility.³⁴
21. Although there may be questions about the nation's transparency, South Sudan has recently demonstrated that it may at least be sensitive to international pressures against its use of the death penalty.
22. In July 2020, the South Sudan Court of Appeals decided to quash the death sentence imposed on Magai Matiop Ngong because he was a child at the time of his crime, after he spent approximately three years on death row.³⁵

23. This decision followed a campaign by Amnesty in which Amnesty obtained over 765,000 signatures in a petition urging South Sudan's President Salva to commute Magai's death sentence.³⁶ This step is some indication that the South Sudanese government may be responsive to pressures from the international community and non-governmental organizations.

Right or area 15.1. Administration of justice & fair trial

24. The lack of formal judicial infrastructure throughout South Sudan has led to many criminal cases being brought before customary courts. The customary courts in South Sudan are supposed to be subordinate and answerable to the formal, statutory courts.

25. Section 112 (2) of the Local Government Act, 2009, provides that "in exercise of the delegated and/or deconcentrated powers, the Traditional Authorities shall observe, respect and adhere to the Bill of Rights as enshrined in the Comprehensive Peace Agreement, the National Constitution." However, due to the local governance of the customary courts, it is difficult for the formal courts to monitor and supervise them.³⁷

26. Customary courts in South Sudan only have jurisdiction to hear criminal cases only if they: (1) have been referred to the customary court by a statutory court; and (2) have a "customary interface."³⁸ It is widely understood that the "customary interface" requirement is easily met because many cases touch upon issues involving familial disputes or sexual transgression.³⁹ Ultimately, in many cases, local chiefs adjudicate over matters that are outside of their jurisdiction, such as homicide.⁴⁰

27. Records suggest that an overwhelming number of cases that reach the courts—55% to 90%—are decided by the customary courts staffed by local chiefs, who are not schooled in South Sudanese law.⁴¹ Traditional courts in South Sudan adjudicate according to customary law and hear the majority of criminal and civil cases.⁴²

28. Further, the Constitution provides that the Supreme Court has jurisdiction to "review death sentences imposed by courts in respect of offences committed under the law."⁴³ However, it is unclear the extent to which defendants sentenced to death in a customary court are provided with counsel and are aware of this right of appeal.

29. It might be presumed that the death penalty is administered more frequently in the customary courts, which "apply an ad hoc mixture of customary principles and compensation, and statutory (or even international) legal codes and penalties."⁴⁴ The compensatory aspect of customary law in some cases may, however, be a mitigating factor in providing an alternative to the death penalty. Section 206 of the Penal Code Act, 2008 defines the offense of murder and provides that "upon conviction [the defendant] be sentenced to death or imprisonment for life, and may also be liable to a fine; provided that, if the nearest relatives of the deceased opt for customary blood compensation, the Court may await in lieu of death sentence with imprisonment for a term not exceeding ten years."⁴⁵ For example, although it pre-dates the 2008 Penal Code Act, in a 2001 reported case, *Buong Akec Choi v. New Sudan*, the Court of Appeal reversed a death penalty sentence imposed by a lower statutory court and held that the death penalty was precluded by customary law permitting the payment of compensation.⁴⁶

30. South Sudan's Bill of Rights provides that persons under the age of 18 or over the age of 70 may not be executed. In the absence of official birth records, the court (statutory or customary) may determine the defendant's age based upon unspecified criteria.
31. An international consensus has arisen with regard to excluding individuals with intellectual disabilities from the death penalty.⁴⁷ South Sudan's Constitution also provides protections for persons with disabilities and special needs.⁴⁸ It is unclear whether, or how, the South Sudanese customary or statutory courts determine an individual's mental capacity or developmental disabilities when determining the appropriateness of the death penalty.

Right or area 30.4. Juvenile justice

32. As referenced above, South Sudan's Bill of Rights lays out that persons under the age of 18 or over the age of 70 may not be executed. There are unspecified criteria to determine someone's age if there are no records available. The government has been inconsistent in the application of these protections and has often executed juvenile offenders, despite the constitutional protection.

Right or area 31. Persons with disabilities

33. As referenced above, South Sudan's Constitution provides protections for persons with disabilities and special needs, but it is unclear whether the customary or statutory courts in South Sudan take into account an individual's disabilities or mental capacity when determining the use of the death penalty.

IV. RECOMMENDATIONS

34. This stakeholder report suggests the following recommendations for the Government of South Sudan:

Acceptance of international norms:

- Ratify the Second Optional Protocol to the ICCPR.

Death Penalty:

- Publish relevant data regarding the country's use of the death penalty including the number of individuals sentenced to death and/or executed during the reporting period; the ages of individuals sentenced to death and/or executed; whether individuals sentenced to death and/or executed had access to counsel or the right to review on appeal; and the role, if any, that customary courts played in administering and carrying out the death penalty in a particular case.

Administration of justice & fair trial:

- Ensure that all people, especially with regard to administering and carrying out death sentences, are afforded the rights and protections guaranteed to them under the Constitution, such as the right to counsel and the prohibition against execution of persons under the age of eighteen.
- Establish an official position of the courts, both statutory and customary, when interpreting whether the Constitution's prohibition against executing persons under the age of eighteen also extends to sentencing such persons to death.

- Issue guidelines to determine whether a defendant is under 18 or over 70 as required by the Penal Code when there are no officially recognized birth records.
- Enact procedural safeguards to determine whether an imminent execution is barred by statute, e.g., whether the person scheduled for execution has a developmental or intellectual disability.
- Publish an explanation for the discrepancies in the statement from government spokesperson Ateny Wek Ateny regarding the government’s use of the death penalty, as reported by Amnesty International on 7 December 2018.
- Ensure that all individuals who are sentenced to death are afforded the right to have their sentences reviewed on appeal, including death sentences administered by both statutory and customary courts.

¹ The Advocates for Human Rights, *The Death Penalty in South Sudan*, para. 4, March 2016, https://www.theadvocatesforhumanrights.org/uploads/south_sudan_hrc_march_2016.pdf.

² UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review South Sudan*, A/HRC/34/13, paras.59, 60, 74, 128.39, 129.7, 129.8, 129.9, 129.14, 129.15, 129.16, Dec. 28, 2016.

³ See Amnesty International, *Death Penalty 2019: Saudi Arabia executed record number of people last year amid decline in global executions*, April 21, 2020, <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-2019-saudi-arabia-executed-record-number-of-people-last-year-amid-decline-in-global-executions/>.

⁴ See Amnesty International, *South Sudan: Quashing of teenager’s death sentence must lead to abolition of the death penalty*, July 29, 2020, <https://www.amnesty.org/en/latest/news/2020/07/south-sudan-quashing-of-teenagers-death-sentence-must-lead-to-abolition-of-the-death-penalty/>.

⁵ See *id.* at Part 2, Art. 21, sec. 2 and 3.

⁶ South Sudan Penal Code Act, 2008, Sec. 9(b) – (c).

⁷ South Sudan 2011 Transitional Constitution, Part 2, Art. 21, sec. 1.

⁸ UN General Assembly, *Resolution 75/183, Moratorium on the use of the death penalty*, adopted 16 December 2020, A/RES/75/183, 28 Dec. 2020, *Moratorium on the use of the death penalty* : (un.org).

⁹ See South Sudan 2011 Transitional Constitution, Part 2, Art. 19, sec. 7; Part 2, Art. 21, sec. 2.

¹⁰ See Amnesty International, *Magai Matiop Ngong, South Sudan: Sentenced to Death at 15*, December 2019, <https://www.amnesty.org/download/Documents/AFR6507472019ENGLISH.PDF>; see also Amnesty International, *South Sudan: One of just two executing states in sub-Saharan Africa in 2017*, April 16, 2018, <https://www.amnesty.org/en/latest/news/2018/04/south-sudan-one-of-just-two-executing-states-in-sub-saharan-africa-in-2017/>.

¹¹ Vincent Museke, *The Role of Customary Court in the Delivery of Justice in South Sudan*, University of South Africa School of Graduate Studies, September 2015, at 11.

¹² Human Rights Council, *Report of the working Group of the Universal Periodic Review: South Sudan*, (28 December 2016), U.N. Doc. A/HRC/34/13. ¶¶ 128.9, 128.11, 128.12, and 129.7

¹³ Human Rights Council, *Report of the working Group of the Universal Periodic Review: South Sudan*, (28 December 2016), U.N. Doc. A/HRC/34/13. ¶¶ 129.9 and 129.14

¹⁴ Human Rights Council, *Report of the working Group of the Universal Periodic Review: South Sudan*, (28 December 2016), U.N. Doc. A/HRC/34/13. ¶¶ 129.8

¹⁵ Human Rights Council, *Report of the working Group of the Universal Periodic Review: South Sudan*, (28 December 2016), U.N. Doc. A/HRC/34/13. ¶¶ 129.15

¹⁶ Human Rights Council, *Report of the working Group of the Universal Periodic Review: South Sudan*, (28 December 2016), U.N. Doc. A/HRC/34/13. ¶¶ 129.16

¹⁷ Human Rights Council, *Report of the Working Group of the Universal Periodic Review: South Sudan, Addendum*, (8 March 2017), U.N. Doc. A/HRC/34/13/Add.1.

¹⁸ Human Rights Council, *Report of the working Group of the Universal Periodic Review: South Sudan*, (28 December 2016), U.N. Doc. A/HRC/34/13. ¶¶ 128.45

¹⁹ Human Rights Council, *Report of the working Group of the Universal Periodic Review: South Sudan*, (28 December 2016), U.N. Doc. A/HRC/34/13. ¶¶ 128.28, 128.29, and 128.39

²⁰ South Sudan Penal Code Act, 2008, Sec. 9(b) – (c).

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- ²¹ Amnesty International, *I Told the Judge I was 15: The Use of the Death Penalty in South Sudan*, by Author(s) names (London: Amnesty International Ltd, December, 2018). Also available online at <https://www.amnesty.org/download/Documents/AFR6594962018ENGLISH.PDF>.
- ²² *See id.* at Part 2, Art. 19, sec. 1-7.
- ²³ *See* Amnesty International, *Magai Matiop Ngong, South Sudan: Sentenced to Death at 15*, December 2019, <https://www.amnesty.org/download/Documents/AFR6507472019ENGLISH.PDF>.
- ²⁴ *See* Amnesty International, *Magai Matiop Ngong, South Sudan: Sentenced to Death at 15*, December 2019, <https://www.amnesty.org/download/Documents/AFR6507472019ENGLISH.PDF>.
- ²⁵ *See id.*
- ²⁶ *See* Amnesty International, *Death Penalty 2019: Saud Arabia executed record number of people last year amid decline in global executions*, April 21, 2020, <https://www.amnesty.org/en/latest/news/2020/07/south-sudan-quashing-of-teenagers-death-sentence-must-lead-to-abolition-of-the-death-penalty/>; Amnesty International, *Sub-Saharan Africa continues to move against the death penalty despite regressive steps by a minority of countries*, April 11, 2019, <https://www.amnesty.org/en/latest/news/2019/04/sub-saharan-africa-continues-to-move-against-the-death-penalty-despite-regressive-steps-by-a-minority-of-countries/>; Amnesty International, *South Sudan: One of just two executing states in sub-Saharan Africa in 2017*, April 16, 2018, <https://www.amnesty.org/en/latest/news/2018/04/south-sudan-one-of-just-two-executing-states-in-sub-saharan-africa-in-2017/>.
- ²⁷ *See* Amnesty International, *Death Penalty 2019: Saud Arabia executed record number of people last year amid decline in global executions*, April 21, 2020, <https://www.amnesty.org/en/latest/news/2020/07/south-sudan-quashing-of-teenagers-death-sentence-must-lead-to-abolition-of-the-death-penalty/>.
- ²⁸ *See* Amnesty International, *South Sudan: One of just two executing states in sub-Saharan Africa in 2017*, April 16, 2018, <https://www.amnesty.org/en/latest/news/2018/04/south-sudan-one-of-just-two-executing-states-in-sub-saharan-africa-in-2017/>.
- ²⁹ *See* South Sudan 2011 Transitional Constitution, Part 2, Art. 19, sec. 7.
- ³⁰ UN General Assembly, Resolution 75/183, Moratorium on the use of the death penalty, adopted 16 December 2020, A/RES/75/183, 28 Dec. 2020, Moratorium on the use of the death penalty : (un.org).
- ³¹ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review South Sudan – Addendum*, A/HRC/34/13/Add.1, para. 4(d), Mar. 8, 2017.
- ³² *See id.*
- ³³ *See* Amnesty International, *South Sudan: Execution spree targets even children and threatens nursing mothers*, December 7, 2018, <https://www.amnesty.org/en/latest/news/2018/12/south-sudan-execution-sprees-targets-even-children-and-threatens-nursing-mothers/>.
- ³⁴ *Id.*
- ³⁵ *See* Amnesty International, *South Sudan: Quashing of teenager’s death sentence must lead to abolition of the death penalty*, July 29, 2020, <https://www.amnesty.org/en/latest/news/2020/07/south-sudan-quashing-of-teenagers-death-sentence-must-lead-to-abolition-of-the-death-penalty/>.
- ³⁶ *See id.*
- ³⁷ *See* Gabriel Mading Apach & Garang Geng, An Overview of the Legal System of South Sudan, Hauser Global Law School Program (September 2018), https://www.nyulawglobal.org/globalex/South_Sudan1.html; *see also* Vincent Museke, *The Role of Customary Court in the Delivery of Justice in South Sudan*, University of South Africa School of Graduate Studies, September 2015.
- ³⁸ *See* Paul Mertenskoetter & Dong Samuel Luak, An Overview of the Legal System in the Republic of South Sudan, Hauser Global Law School Program (December 2021), https://www.nyulawglobal.org/globalex/South_Sudan.html#_edn1.
- ³⁹ *See id.*
- ⁴⁰ *See id.*
- ⁴¹ Godfrey Musila, *The Rule of Law and the Role of Customary Courts in Stabilizing South Sudan*, Africa of South Sudan and State Constitutions Center for Strategic Studies, (May 29, 2018), <https://africacenter.org/spotlight/the-rule-of-law-and-the-role-of-customary-courts-in-stabilizing-south-sudan/>.
- ⁴² South Sudan: An Independent Judiciary in an Independent State?, International Commission of Jurists, 2013, available at SOUTH-SUDAN-CIJL-REPORT-elec-versionFsmallpdf.com_.pdf (icj.org)
- ⁴³ South Sudan 2011 Transitional Constitution, Part 7, Art. 126, sec. 2(h).
- ⁴⁴ Vincent Museke, *The Role of Customary Court in the Delivery of Justice in South Sudan*, University of South Africa School of Graduate Studies, September 2015, at 11.
- ⁴⁵ South Sudan Penal Code Act, 2008, Sec. 206.

⁴⁶ Vincent Museke, *The Role of Customary Court in the Delivery of Justice in South Sudan*, University of South Africa School of Graduate Studies, September 2015, at 52-54 (explaining decisions by criminal appeal courts to reverse death sentences and alternatively substitute prison sentences and monetary compensation due to relatives of the deceased).

⁴⁷ Allison Freedman, “Mental Retardation and the Death Penalty: The Need for an International Standard Defining Mental Retardation,” *Northwestern Journal of International Human Rights* (2014) (*relying on* U.N. Office of the High Commissioner for Human Rights, *The Question of the Death Penalty*, ¶ 4(g), U.N. Doc. E/CN.4/RES/2003/67 (Apr. 24, 2003), http://ap.ohchr.org/documents/alldocs.aspx?doc_id=5021 [hereinafter *Question of the Death Penalty*] (urging countries “not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person”); U.N. ESCOR, *Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty: Report of the Secretary General*, ¶ 89, U.N. Doc. E/2005/3 (Mar. 9, 2005), http://www.nswccl.org.au/docs/pdf/UNDoc_E_2005). An amicus curiae brief submitted by the European Union in the 2002 U.S. Supreme Court case of *Atkins v. Virginia* stated that “within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved.”

⁴⁸ See South Sudan’s Constitution, Part 2, Art. 30.