



South Sudan's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women: The Death Penalty

Submitted by The Advocates for Human Rights

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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.

The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence.

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 (World Coalition), 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.

South Sudan fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (List of Issues paragraph 44)

1. In its 2020 List of Issues, the Committee requested that the Government provide more information on women who had been sentenced to death or executed since the ratifying of the Convention, specifically their “offence, sentence, age, location and number and age of dependent children.”¹
2. In its replies to the list of issues, the South Sudanese Government responded that 10 women from Juba, Wau, and Torit have been sentenced to death since the ratification of the Convention. South Sudan added that it has not executed any of these women.²
3. South Sudan authorizes the death penalty for intentional murder, bearing false witness resulting in an innocent person’s execution, terrorism-related offenses, aggravated drug trafficking, treason, and attempted murder by a person under sentence of life imprisonment.³
4. Article 21(3) of the Transitional Constitution as well as the Code of Criminal Procedure prohibit execution of a pregnant woman or a woman with a child under the age of two.⁴
5. There is limited information about death penalty practices in South Sudan, and state practices lack transparency.
6. In South Sudan, customary courts may handle even serious criminal cases.⁵ According to a source from the South Sudan Law Society, the death penalty is not applied under customary law.⁶ The country has approximately 60 different customary systems in place, however, and in some parts of the country these customary courts are the only feasibly accessible justice system.⁷ According to the most recent report by the UN Commission on Human Rights in South Sudan, “[t]he statutory court system in South Sudan continued to suffer from a trust deficit among citizens.”⁸ Customary courts in at least two jurisdictions, however, “lack[] procedural safeguards and exhibit[] deeply entrenched cultural biases towards women and girls, . . . imped[ing] meaningful access to justice.”⁹

¹ Committee on the Elimination of Discrimination Against Women, *Replies of South Sudan to the list of issues and questions in relation to its initial report of South Sudan*, (August 27, 2021), U.N. Doc. CEDAW/C/SSD/RQ/1, ¶ 44.

² Committee on the Elimination of Discrimination Against Women, *Replies of South Sudan to the list of issues and questions in relation to its initial report of South Sudan*, (August 27, 2021), U.N. Doc. CEDAW/C/SSD/RQ/1, ¶ 47.

³ Death Penalty Worldwide Database, “South Sudan,” accessed Sept. 15, 2021, <https://deathpenaltyworldwide.org/database/#/results/country?id=69>.

⁴ Death Penalty Worldwide Database, “South Sudan,” accessed Sept. 15, 2021, <https://deathpenaltyworldwide.org/database/#/results/country?id=69>; Amnesty International, “*I told the judge I was 15*”: *The use of the death penalty in South Sudan* (2018), 9, <https://www.amnesty.org/download/Documents/AFR6594962018ENGLISH.PDF>.

⁵ Death Penalty Worldwide Database, “South Sudan,” accessed Sept. 15, 2021, <https://deathpenaltyworldwide.org/database/#/results/country?id=69>.

⁶ Death Penalty Worldwide Database, “South Sudan,” accessed Sept. 15, 2021, <https://deathpenaltyworldwide.org/database/#/results/country?id=69>.

⁷ Death Penalty Worldwide Database, “South Sudan,” accessed Sept. 15, 2021, <https://deathpenaltyworldwide.org/database/#/results/country?id=69>.

⁸ UN Human Rights Council, *Report of the Commission on Human Rights in South Sudan* (Jan. 31, 2020), UN Doc. A/HRC/43/56, ¶ 28.

⁹ UN Human Rights Council, *Report of the Commission on Human Rights in South Sudan* (Jan. 31, 2020), UN Doc. A/HRC/43/56, ¶ 28, 16.

7. Since independence in 2011, South Sudan has executed at least 41 people, all or nearly all of whom had been convicted of murder.¹⁰ In December 2018, however, a spokesperson for the President of South Sudan asserted that the country had not executed anyone since 2011 and the country had been observing a moratorium on executions since 2013.¹¹ Independent sources dispute these claims.¹²
8. As of January 2019, there were approximately 387 people on death row in South Sudan.¹³
9. In April 2018, the Director-General of the National Prison Service of South Sudan ordered all persons on death row to be transferred to Wau Central Prison and Juba Central Prison, where all executions take place. Among the people transferred under this order were two women, including a lactating mother, who had been staying in the Equatoria region in southern South Sudan.¹⁴ After the transfer, the UN Commission on Human Rights in South Sudan expressed concern that the country was planning to step up executions.¹⁵
10. The Cornell Center on the Death Penalty Worldwide has reported that nearly every country in the world is in compliance with international standards to separate men and women in detention.¹⁶ Prison overcrowding in South Sudan, however, has meant that women are sometimes detained with men.¹⁷
11. Despite the information provided by the South Sudanese Government in their Replies to the List of Issues, there remains a lack of information and transparency regarding death penalty practices as pertains to women.
12. **Suggested recommendations**¹⁸ relating to women and the death penalty:
 - Abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards.

¹⁰ Death Penalty Worldwide Database, “South Sudan,” accessed Sept. 15, 2021, <https://deathpenaltyworldwide.org/database/#/results/country?id=69>.

¹¹ Denis Dumo, *Amnesty says executions rising in S. Sudan, government denies it*, Reuters, Dec. 7, 2018, <https://www.reuters.com/article/ozatp-uk-south-sudan-amnesty-idAFKBN1O619U-OZATP>.

¹² See, e.g., Amnesty International, *South Sudan: Execution spree targets even children and threatens nursing mothers*, Dec. 13, 2018, <https://www.amnesty.org/en/latest/news/2018/12/south-sudan-execution-sprees-targets-even-children-and-threatens-nursing-mothers/>; *Human Rights Council discusses the situation of human rights in South Sudan*, ReliefWeb, Mar. 12, 2019, <https://reliefweb.int/report/south-sudan/human-rights-council-discusses-situation-human-rights-south-sudan>.

¹³ *Human Rights Council discusses the situation of human rights in South Sudan*, ReliefWeb, Mar. 12, 2019, <https://reliefweb.int/report/south-sudan/human-rights-council-discusses-situation-human-rights-south-sudan>.

¹⁴ “South Sudan: Execution spree targets even children and threatens nursing mothers,” Amnesty International, Dec. 13, 2018, <https://www.amnesty.org/en/latest/news/2018/12/south-sudan-execution-sprees-targets-even-children-and-threatens-nursing-mothers/>.

¹⁵ *Commission on Human Rights Urges South Sudan to make peace and justice a reality*, ReliefWeb, Sept. 17, 2018, <https://reliefweb.int/report/south-sudan/commission-human-rights-urges-south-sudan-make-peace-and-justice-reality>.

¹⁶ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 21, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

¹⁷ Death Penalty Worldwide Database, “South Sudan,” accessed Sept. 15, 2021, <https://deathpenaltyworldwide.org/database/#/results/country?id=69>.

¹⁸ Some of these recommendations are borrowed or adapted from *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 35, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

- Commute the sentences of every woman sentenced to death for an offense that does not involve an intentional killing committed by the woman.
- Take steps to provide fair trial and due process safeguards in capital cases involving women defendants, including by providing them with access to effective legal representation and safeguards prohibiting admissibility of evidence obtained through torture or ill-treatment.
- Adopt provisions to ensure the independence and impartiality of the judiciary.
- Provide safeguards to ensure that no woman is executed while she is pregnant or caring for a young child.
- Adopt provisions to ensure customary courts are not authorized to sentence persons to death under any circumstances.
- Provide safeguards to ensure that women and girls have full and equal access to justice within customary court systems.
- Ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's safety and security pre-trial, during admission to any detention facility, and while incarcerated.
- Design prison infrastructure that accommodates women's specific needs, including their privacy.
- Provide and publish transparent information on the number of women sentenced to death and on death row, disaggregated by age, age of dependent children (if any), nationality, ethnic group, crimes of conviction, date of conviction, and date of execution (if applicable), to facilitate analysis of the demographics of women on death row.