

Ref: TG AFR 65/2013.005
AI Index: AFR 65/005/2013

His Excellency Salva Kiir Mayardit
President of the Republic of South Sudan
Office of the President
Juba, South Sudan

8 July 2013

Your Excellency,

As South Sudan prepares to celebrate its second year of independence on 9 July 2013, we would like to take this opportunity to call on you in your powers as the President of the Republic of South Sudan to refrain from confirming any death sentences, and to instead commute all existing death sentences in South Sudan on this occasion.

Furthermore, we commend your government for South Sudan's vote in favour of the fourth UN General Assembly resolution on a moratorium on the use of the death penalty on 20 December 2012. We now urge you to take the next steps in establishing an official moratorium on executions in South Sudan with a view to abolishing the death penalty, in line with the resolution and the global trend.

The use of the death penalty in South Sudan

We are greatly concerned about recent death sentences passed in South Sudan. These include 11 men sentenced to death by hanging in Wau, Western Bahr el Ghazal State, in June 2013. They were convicted for the alleged murder of six farmers in Farajallah in December 2012.

Furthermore the governors of Lakes, Warrap and Unity states at a tri-state conference also in June 2013 resolved as immediate action points that cattle rustling activities should incur "the death penalty for criminals," as well as to apply the "death penalty for refusal to pay blood compensation."¹ If implemented, this would contradict international standards which provide that in states which have not yet abolished the death penalty, sentence of death may be imposed only for the most serious crimes, these being understood as limited to intentional killing, but it may not be mandatory in such cases.²

There are currently believed to be around 200 people on death row in South Sudan, the majority of which are men accused of murder. In 2012, at least five people were executed. Two men were hanged in Juba prison on 28 August 2012; they were reportedly convicted without having had access to proper legal assistance, in violation with international fair trial standards, which require adequate legal assistance at all stages of the proceedings. Article 19(6) of the Transitional Constitution of the Republic of South Sudan further states that "Any accused person has the right... to have legal aid assigned to him or her by the government where he or she cannot afford a lawyer to defend him or her

¹ Tri-State Conference on Cross Border Security Issues, Rumbek Communiqué 19 June 2013, available at: http://www.sudantribune.com/IMG/pdf/tri-state_conference_resolutions.pdf (accessed 4 July 2013).

² Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN document A/67/275, 9 August 2012, para. 67.

in any serious offence.” However due to resource constraints in South Sudan, the vast majority of individuals on death row do not have access to legal counsel, leaving many unable to adequately prepare their defence or to appeal convictions.

Opportunities for reform

South Sudan’s retention of the death penalty runs counter to the global trend to end the use of capital punishment. In December 2012, once again a growing majority of 111 Member States of the United Nations, for the first time including South Sudan, voted for the fourth UN General Assembly resolution on a moratorium on the use of the death penalty, after 2007, 2008 and 2010. As of 1 July 2013, 97 countries have abolished the death penalty for all crimes, and a total of 140 are abolitionist in law or practice, constituting more than 70% of all states in the world.

The global trend is mirrored in Africa where 37 of the 54 member states of the African Union are abolitionist in law or practice. Since 2000, Burundi, Cote d'Ivoire, Gabon, Senegal, Rwanda and Togo have abolished the death penalty for all crimes. In 2012, the government of Ghana accepted the recommendation of a Constitution Review Commission to abolish the death penalty in the new Constitution, and Benin became one of presently 76 states worldwide to have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

In 2008 the African Commission on Human and Peoples’ Rights (African Commission) adopted its second resolution on the death penalty, calling on States Parties to the African Charter on Human and Peoples’ Rights to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty.³ In April 2012, the Working Group on the Death Penalty of the African Commission reaffirmed the necessity of the abolition of capital punishment and recommended, among other things, the imposition of a moratorium on executions.⁴

We have also noted that high-ranking members of the judiciary in South Sudan have publicly stated that the death penalty could not be avoided until the Constitution is changed. We would like to respectfully disagree. While we do call on the Constitutional Review Commission in South Sudan to recommend the full abolition of the death penalty in the new Constitution, the retention of this ultimate punishment in the present Transitional Constitution does not mean that this option has to be exercised. South Sudan’s Penal Code allows prison sentences as an alternative to the death penalty. Furthermore, under South Sudanese law, the Supreme Court is required to review and confirm all death sentences, which has already helped in reducing the number of death sentences passed in the country. It also does not mean that the National Legislature must keep the death penalty in statutory law. It is not unusual for national parliaments to first repeal the death penalty in statutory law, before relevant constitutional provisions are amended.

On the eve of South Sudan’s independence, we appeal to you as the President of the Republic of South Sudan to commute all existing death sentences, following the example of other African Heads of State on national days of celebration. In January 2012, Tunisian Interim President Moncef Marzouki commuted 122 death sentences to life imprisonment, which according to the government applied to all prisoners then on death row. President Ernest Bai Koroma of Sierra Leone, on the occasion of Independence Day in April 2012, issued pardons to the last remaining prisoners under sentence of death.

³ Resolution 136(XXXVIII).08, adopted at the 44th Ordinary session in Abuja, Nigeria, on 24 November 2008, online at http://old.achpr.org/english/resolutions/resolution136_en.htm, last visited on 13 September 2012.

⁴ African Commission on Human and Peoples’ Rights, “Study on the question of the death penalty in Africa”, 10 April 2012, adopted by the African Commission at its 50th Ordinary Session in 2011, http://www.achpr.org/files/news/2012/04/d46/study_question_deathpenalty_africa_2012_eng.pdf (accessed 3 July 2013).

The undersigned organizations oppose the death penalty in all circumstances, and we are calling on South Sudan to take specific steps to move towards full abolition.

Copies of this letter have been sent to Honourable John Luk Jok, Minister of Justice; and Dr Francis Mading Deng, Permanent Representative of the Republic of South Sudan to the United Nations.

Yours sincerely,

Agency for Independent Media (AIM)
Amnesty International
Community Empowerment for Progress Organization (CEPO)
Comboni Missionaries
Comboni Missionary Sisters
Human Rights Watch
South Sudan Human Rights Society for Advocacy (SSHURSA)
South Sudan Law Society (SSLS)