



THE WIDE APPLICATION OF THE
**DEATH
PENALTY**
IN SUDAN


About the African Centre for Justice and Peace Studies

The African Centre for Justice and Peace Studies (ACJPS) is a non-profit governmental organisation working to monitor and promote respect for human rights and legal reform in Sudan.

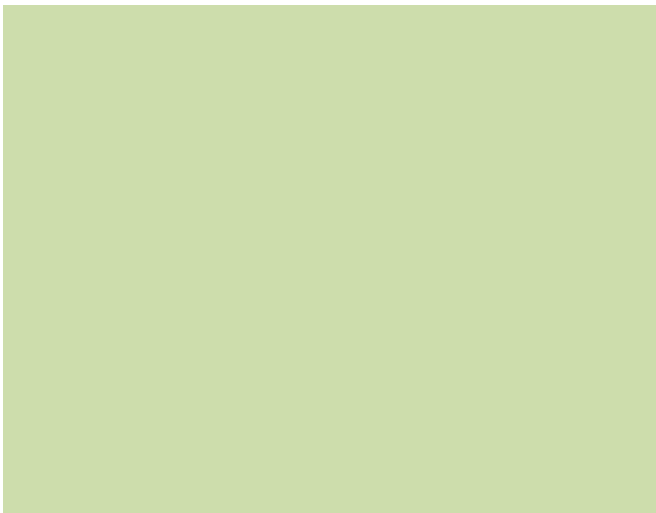
ACJPS has a vision of a Sudan where all people can live and prosper free from fear and want in a state committed to justice, equality and peace. We are dedicated to creating a Sudan committed to all human rights, the rule of law and peace, in which the rights and freedoms of the individual are honoured and where all persons and groups are granted their rights to non-discrimination, equality and justice.

XX

This report is based on research conducted by ACJPS' Lawyer's Network in Sudan who monitored death penalty convictions, sentences and implementation from 2011 to 2015. The report was drafted by, Amir Suleiman, the Legal Programme Director and Cynthia Ibale, the Legal Programme Assistant. Katherine Perks, Catherine Komuhangi and Emily Cody of ACJPS and Lizet Vlamings reviewed and edited the report.



THE WIDE APPLICATION OF THE
DEATH
PENALTY
IN SUDAN



Contents

1. Introduction	3
2. Legal Framework.....	4
3. Current Use of the Death Penalty in Sudan	10
4. Political Opposition and the death penalty	16
5. Juveniles facing the death penalty.....	20
6. Gender and the Death Penalty	24
7. Religion and the death penalty:.....	26
8. Conditions of prisoners on death row.....	28
9. Conclusion and Recommendations.....	32



1. Introduction

Contrary to Sudan's commitments to international human rights standards and its own domestic law, the Government of Sudan continues to implement the death penalty widely. Amnesty International reported that in 2015, Sudan handed down eighteen death sentences and carried out three executions.¹ In 2014, Sudan was reported to be the highest ranking state implementing executions in Africa, executing at least 23 people. In the same year, Sudan was ranked sixth among the top executing countries in the world.²

Even though Sudan has not published official statistics on death sentences and executions and ACJPS has limited access to such information, ACJPS documented 142 death sentences and 2 executions from 2011-2015.

This report therefore, presents updated analysis and research conducted by ACJPS, and builds upon research conducted in 2010 on the use of the death penalty in Sudan in, "*Widening the Scope: The Expanding Use of Capital Punishment in Law and Practice in Sudan*".³ The report starts off with a comprehensive overview of Sudan's international and regional human rights commitments, as well as existing domestic legislation governing capital crimes. It then builds on the research and analysis published by ACJPS in 2010 and examines trends in the application of the death penalty to three distinct groups: political opposition parties, juveniles and women; and includes an examination of existing conditions on death row. It concludes by providing recommendations on potential areas for reform and steps to be taken towards the eventual abolition of the death penalty to the Government of Sudan.

¹ Amnesty International Global Report, 'Death Sentences and Executions in 2015', available at, <https://www.amnesty.org/en/documents/act50/3487/2016/en/>.

² Amnesty International, 'Death Sentences and Executions in 2014', available at, <https://www.amnesty.org/en/documents/act50/0001/2015/en/>.

³The report is available at: http://www.acjps.org/wp-content/uploads/2012/04/WideningtheScope_ExpandingUseofCapitalPunishment.pdf

2. Legal Framework

International and Regional Legal Framework

Universal Declaration of Human Rights:

Article 3 of the Universal Declaration of Human Rights (UDHR) upholds the rights to life, liberty and security of person, which are essential to the enjoyment of all other rights. The Declaration does not explicitly mention the use of capital punishment.

International Covenant on Civil and Political Rights:

Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which Sudan is a state party, provides for the right to life. The protection of the right to life, however, is limited to a prohibition of the arbitrary deprivation of life. The ICCPR states;

“In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.”⁴

The ICCPR provides that anyone sentenced to death shall have the right to seek for pardon and or commutation of sentence. The sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.⁵

As a state party to the ICCPR, Sudan has an obligation to comply with the restrictions set out in Article 6 for the application of the death penalty. When reporting to the UN Human Rights Committee in 2014, the Government of Sudan stated that the death penalty was restricted to the most serious crimes, including those that threaten security or the rights of individuals in society, such as premeditated murder, drug trafficking and high treason. It was further stated that the Interim National Constitution of Sudan, 2005 restricts the application of the death penalty to *qisas* (retribution) or *hudud* offences or as punishment for extremely serious offences. ACJPS has documented several cases in which individuals have been sentenced to death for crimes which do not constitute *hudud* or *qisas* (retribution) offences or the international standard of the ‘most serious crimes’.

In 1989, the UN General Assembly adopted the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty. The adoption of the protocol and the fact that 81 countries have become state parties to it, presents strong evidence of a growing international consensus in favor of abolition. Sudan has not yet become state party to this protocol and is therefore not bound by its provisions.

⁴Article 6 (2) of the ICCPR

⁵Article 6 (4) – (5) of the ICCPR

Convention on the Rights of the Child:

The Convention on the Rights of the Child (CRC), to which Sudan is a state party, prohibits the imposition of the death penalty on persons below eighteen years of age. Article 37 (a) explicitly places an obligation on State Parties to ensure that neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.⁶

UN General Assembly resolutions on a moratorium on the death penalty:

Since 2007, the UN General Assembly has adopted several resolutions calling for a worldwide moratorium on executions.⁷ In these resolutions, the General Assembly has expressed deep concern about the continued use of the death penalty and has called upon states that retain it to respect international safeguards guaranteeing protection of the rights of those facing the death penalty; progressively restrict the death penalty and reduce offences which attract it; and establish a moratorium on executions with an intention to abolish the death penalty completely.

Though not legally binding, there has been an increase of votes in favour of the resolution on a moratorium on the use of the death penalty. On 18 December 2014, the resolution⁸ was adopted with a record number of 117 votes in support of the resolution, 38 against and 34 abstentions.⁹ This was 7 more votes in favour of a moratorium than was recorded in 2012. Unfortunately Sudan has persisted to vote against the moratorium on the use of the death penalty.¹⁰

African Charter on Human and Peoples' Rights:

Article 4 of the African Charter on Human and Peoples' Rights (African Charter) guarantees the inviolable right to life and further provides a prohibition against the arbitrary deprivation of this right. Like the UDHR, the African Charter is silent on the application of the death penalty.

The African Commission has adopted two resolutions urging states that retain the death penalty to envisage a moratorium on executions and limit the imposition of the death penalty to the most serious of crimes, as well as calling upon states who have not yet ratified the Second Optional Protocol to the ICCPR to do so.¹¹ In 2012, the African Commission recommended that Sudan observe the moratorium on the death penalty and take measures towards its total abolition.¹²

⁶ Sudan's compliance with the UN CRC is discussed in Section 5: Juveniles facing the death penalty.

⁷ The UN General Assembly resolutions on the moratorium on the use of the death penalty are as follows:

A/Res/62/147 was adopted by the General Assembly on 18 December 2007, available at, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/62/149&Lang=E;

A/Res/63/168 was adopted by the General Assembly on 18 December 2008, available at, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/63/168&Lang=E;

A/RES/65/206 was adopted by the General Assembly on 21 December 2010, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/206;

A/RES/67/176 was adopted by the General Assembly on 20 December 2012, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/176;

⁸ UN Resolution A/RES/69/186 was adopted by the General Assembly on 18 December 2014, available at, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/69/186.

⁹ Op. cit., Amnesty International, Death Sentences and Executions in 2014, Annex IV: Voting Results of the UN General Assembly Resolution 69/186, adopted on 18 December 2014.

¹⁰ Ibid.

¹¹ ACHPR /Res.42(XXVI)99: Resolution Urging the State to Envisage a Moratorium on Death Penalty (1999), available at: <https://www1.umn.edu/humanrts/africa/resolutions/rec47.html> and African Commission on Human and Peoples' Rights, Resolution Calling on State Parties to Observe a Moratorium on the Death Penalty, ACHPR/Res.136(XXXIII)08, November 2008, available at: <http://www.achpr.org/sessions/44th/resolutions/136/>

¹² African Commission on Human and Peoples' Rights, Concluding Observations and Recommendations on the 4th and 5th Periodic Report of the Republic of Sudan, available at; http://www.achpr.org/files/sessions/12th-eo/conc-obs/4thand5th-2008-2012/concluding_observation_.pdf

National Legal Framework

Interim National Constitution of Sudan, 2005:

Article 27 (3) of the Interim National Constitution (INC) of Sudan, 2005, guarantees that “all rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of Sudan shall be an integral part” of the Bill of Rights.

Article 28 of the INC of Sudan guarantees that every human being has the right to life and that no one shall be arbitrarily deprived of this right. The INC also provides for the lawful sanction of death under article 36.

Article 36 of the INC of Sudan provides for the restriction of the death penalty to *qisas* (retribution) or *hudud* offences or “extremely serious offences in accordance with the law.” Although framed as a restrictive provision and taking note of the international law requirement that death penalty decisions be subject to due process, the provision allows for the categories of *qisas* (retribution) and *hudud* offences which include very broad range of crimes.¹³

The rule that the death penalty can only be imposed in accordance with the law does not provide an adequate safeguard, as some Sudanese laws do not meet Sudan’s international law obligations. For example, Article 126 of the 1991 Criminal Act prescribes the death penalty for the crime of apostasy, which is a *hudud* offence in Sudan. The UN Human Rights Committee has called on Sudan to repeal this article, as it conflicts with Sudan’s obligations under the ICCPR to protect freedom of religion.¹⁴

Categories exempt from the death penalty:

Article 36 (2) of the INC further provides that “[t]he penalty shall not be imposed on a person under the age of eighteen or a person who has attained the age of seventy, except in cases of *qisas* (retribution) or *hudud*.” This article seems to render the application of the death penalty for juveniles ineffective by the exemption of *qisas* (retribution) and *hudud* offences.¹⁵

The prohibition on the execution of pregnant women seems consistent with international commitments and the INC explicitly provides that, “[n]o death penalty shall be executed upon pregnant or lactating women.”¹⁶ However, a woman can still be executed after two years of lactation.

Legislation that prescribes the death penalty:

The table below provides an overview of the legislation that attracts the death penalty.

¹³African Center for Justice and Peace Studies, ‘Widening the Scope: The Expanding Use of Capital Punishment in Law and Practice in Sudan’. *Hudud* are crimes determined by Qur’an or Sunna that carry fixed punishments. They include: *had al-zina* adultery or fornication; *had al-qadf* accusation of adultery or fornication; *had al-sariqa* theft; *had al-haraba* robbery or rebellion; *had al-shurb* drinking of alcohol and *had al-ridda* apostasy (renunciation of Islam). The crimes of *qisas* (retribution) cover homicide and personal injuries. In respect of these crimes, the plaintiff has the right to choose between retribution and *dia* (fixed amount of compensation). See also: Abdelsalam Hassan Abdelsalam and Amin M. Madani, *Criminal Law Reform and Human Rights in African and Muslim Countries with particular reference to Sudan, Criminal Law Reform and Transitional Justice: Human Rights Perspective for Sudan* edited by Lutz Oette, 2011, Ashgate, pg. 45

¹⁴United Nations Human Rights Committee, CCPR/C/SDN/CO/4, Concluding observations on the fourth periodic report of the Sudan, 19 August 2014, para 20

¹⁵ See Section 5 on Juveniles and the death penalty.

¹⁶Article 36 (3) of the Interim National Constitution of Sudan, 2005

Table 1: Legislation that prescribes the death penalty in Sudan

Legislation	Offence and Article	Punishment
The 1991 Criminal Act	Crimes against the state: undermining of the Constitutional Order (article 50), instigation of war (article 51) and espionage (article 53).	Death, life imprisonment or imprisonment for a lesser term.
	Apostasy (article 126 (1) & (2))	Death.
	Crimes against body and soul: murder (article 130) and instigation of a minor or insane person to commit suicide (article 134).	Death but where retribution is remitted, imprisonment for not more than 10 years.
	Crimes of honour, public morality and reputation: adultery where the offender is married, (article 146 (1);	Death.
	sodomy where the offender is convicted for the third time, (article 148 2 (c));	Death or life imprisonment.
	rape that constitutes adultery or sodomy, (article 149 (3));	Death.
	incest article 150 (2); and	Death or cases other than those punishable by death, imprisonment not exceeding 5 years.
	running a place for prostitution, article 155 (3).	Death or life imprisonment if the offender is convicted for the third time.
	Crimes against property: armed robbery (article 168 (1) (a);	Death or death and crucifixion if the act amounts to murder or rape.
	Corruption, (article 177).	Imprisonment not exceeding 14 years with a fine or death.
	Crimes against humanity, genocide or war crimes, (article 186 of 2009 Amendment to	Death.

Legislation	Offence and Article	Punishment
	1991 Criminal Act). False testimony and fabricating evidence, (article 104).	Death were the evidence results in an innocent person's execution for a capital offence.
Firearms and Ammunitions Act, 1986.	Trade in firearms or running a private store without a license and owning, using or carrying firearms without a license, (article 44 (3)).	Death
Drugs and Narcotics Act, 1994.	Trade in drugs and narcotics, (article 15). Provision of drugs and narcotics, (article 16). Commitment of the offences in articles 15-16 in association with an international gang, or as part of an international crime, (article 17).	Death Death Death
The National Security Act, 2010.	Crimes related to collaboration with an enemy, (article 55). Conspiracy and Mutiny, (article 56). Endangering the internal or external security of the country, (article 57).	Death or life imprisonment. Death or life imprisonment. Death or life imprisonment.
The Anti-Terrorism Act, 2001.	Incitement to commit an act in furtherance of the purposes of a terrorist state, (article 5) and committing an act of terrorism, (article 6).	Death.
Armed Forces Act, 2007.	Non-compliance with orders and instructions, (article 142); abandonment of military posts, (article 143 (1)); forcing subordinates to surrender, (article 145); surrender or unconditional truce, (article 146); assistance of the enemy, (article 147);	Death.

Legislation	Offence and Article	Punishment
	joining the enemy, (article 148 (1)); rebellion against constitutional order, (article 162 (1)); dealing with another country with intention to harm the interests of the state, (article 163); disclosure of military information and secrets, (article 164); violations related to firearms and ammunition, (article 182); offences related to military equipment, gear and uniforms, (article 183 (1)).	
Combating Human Trafficking Act 2013.	Human trafficking where the victim dies.	Death.
The Child Act, 2010.	Kidnapping of, traffic in and transfer any organ or organs of any child; rape of Children, (article 86 (e) and (f)).	Death or imprisonment of a term not exceeding twenty years with a fine.

3. Current Use of the Death Penalty in Sudan

Death Sentences and Executions since 2011:

Official statistics concerning death penalty sentencing and the implementation of the death penalty in Sudan are not readily available. It is not clear that any central record is maintained by the Government of Sudan. The most recent official statistics available in the public domain relate to the year 2011, and were reported by the Government of Sudan in its fourth periodic report to the UN Human Rights Committee submitted in September 2012.¹⁷ The Sudanese authorities reported that in 2011 the death sentence had been pronounced in 142 cases. Of these 142 cases, 11 executions were reportedly carried out; 10 cases were suspended by the Constitutional Court; 98 cases were undergoing appeal, 5 cases had enforcement waived by aggrieved parties; 15 cases were commuted to life imprisonment and 3 cases had their convictions overturned.¹⁸

Over three years, from 2012 to 2014, Amnesty International documented the sentencing to death of at least 251 individuals.¹⁹

ACJPS Statistics on Death Sentences handed down from 2012-2015 in Sudan:

ACJPS, through its Lawyer's Network, documented the use of the death penalty by monitoring courts and prisons from 2012-2015. ACJPS was however, only able to collect data on the number of sentences handed down from courts and prisons its monitors were able to visit. The statistics therefore, do not reflect a true representation on the number of death sentences handed down from 2012-2015. ACJPS monitors reported that 142 death sentences were handed down by Sudanese courts as shown in the tables below.

Table 2: Death sentences handed down from 2012-2015

No.	Court	No. of offenders sentenced to death	Crime	Year
1.	El-Genaina Criminal Court	4	Murder (article 130 of the 1991 Criminal Act)	2012
		1 ¹	Murder (article 130 of the 1991 Criminal Act)	2014
		12 ²	Murder (article 130 of the 1991 Criminal Act)	2015

¹⁷ UN Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Fourth periodic reports of States parties, Sudan, UN Doc. CCPR/C/SDN/4, 16 October 2012.

¹⁸ United Nations Human Rights Committee, Consideration of State parties under article 40 of the Covenant, Fourth Periodic Reports of States parties, Sudan, 16 October 2012, para 82.

¹⁹ Amnesty International, Death Penalty: Overview, available at; <https://www.amnesty.org/en/what-we-do/death-penalty/>.

No.	Court	No. of offenders sentenced to death	Crime	Year
2.	Kotsi Public Criminal Court	11	Murder (article 130 of the 1991 Criminal Act)	2013
		6	Murder (article 130 of the 1991 Criminal Act)	2015
3.	Rabak Criminal Court	10	Murder (article 130 of the 1991 Criminal Act)	2013
		3	Murder (article 130 of the 1991 Criminal Act)	2015
		1	Rape of children (article 45 (b) of the 2010 Child Act)	2015
4.	Tandalit Criminal Court	1	Murder (article 130 of the 1991 Criminal Act)	2013
5.	El Roseiris	15	Murder (article 130 of the 1991 Criminal Act)	2013
		4	Murder (article 130 of the 1991 Criminal Act)	2014
		10	Murder (article 130 of the 1991 Criminal Act)	2015
6.	Ed Damazin Military Court	6	Murder (article 130 of the 1991 Criminal Act)	2014
		1	Murder (article 130 of the 1991 Criminal Act)	2015
7.	Aldmazin Public Criminal Court	6	Murder (article 130 of the 1991 Criminal Act)	2014
8.	Nyala Central Criminal Court	3	Murder (article 130 of the 1991 Criminal Act)	2015
		2	Rape of children (article 45 (b) of the 2010 Child Act)	2015

No.	Court	No. of offenders sentenced to death	Crime	Year
9.	Nyala North Criminal Court	3	Murder (article 130 of the 1991 Criminal Act)	2015
10.	Nyala South Darfur High Court	2	Murder (article 130 of the 1991 Criminal Act)	2015
11.	Port Sudan Public Criminal Court	1	Murder (article 130 of the 1991 Criminal Act)	2015
12.	Special Court on the Events in Darfur in Ed Daein, East Darfur	1	Murder (article 130 of the 1991 Criminal Act)	2013
		3	Assisting (article 26), Murder (article 130), Kidnapping (article 162), Armed Robbery (article 167) and Robbery (article 175) of the 1991 Criminal Act and Possession of a weapon without a license (article 26) of the Weapons and Ammunitions Act 1986	2013
		18	Armed Robbery (article 167) of the 1991 Criminal Act	2015
13.	Special Court in Singa, Sennar State	17	Charged of various capital crimes under the 1991 Criminal Act, the 2001 Anti-Terrorism Act and the Firearms and Ammunitions Act 1986	2014
		1	Murder (article 130 of the 1991 Criminal Act)	2014

Data collected on prisoners on death row in Madani Prison:

By 3 December 2014, Madani Prison was hosting a total of 110 death row inmates. These inmates originally came from different cities across Sudan, which include: 43 from Al-Gezira, 18 from Blue Nile, 17 from Gedaref, 15 from White Nile, 11 from Khartoum, five (5) from Darfur and one (1) from Kordofan. 100 of these inmates were convicted of murder under article 130 of the 1991 Criminal Act. Four (4) inmates were convicted of rape of children under article 45 (b) of the 2010 Child Act. Three (3) inmates were convicted of murder under article 130 of the 1991 Criminal Act. Two inmates were convicted of the following offences that attract the death penalty: undermining the constitutional system (articles 50) and waging war against the state (article 51), of the 1991 Criminal Act and article 6 of the Anti-Terrorism Act. One inmate was convicted of: robbery (article 175), assisting (article 26), and murder (article 130) of the 1991 Criminal Act. Of these 110, two (2) inmates have been on death row since 2010, ten (10) since 2011, 29 since 2012, 34 since 2013 and 35 since 2014. 34 of the inmates have their appeals pending before the Constitutional Court, 28 have appeals pending before the High court and 48 have appeals pending before the appeal court.

Executions:

According to the 1991 Criminal Act, the lawful modes of execution are: "hanging, lapidation;²⁰ or in the same manner in which the offender caused death, and it may be by way of *hudud*, *qisas* (retribution) or *Ta'azir*,²¹ and it may be accompanied by crucifixion".²² According to ACJPS research, in practice, hanging is the only known method of execution in Sudan.

Information on some executions carried out in 2012-2015:

In a report submitted by the Government of Sudan to the UN Human Rights Committee mentioned above, Sudan confirmed that according to the 2011 statistics, eleven executions were carried out.²³

In 2012, the Sudanese justice system was reported to have carried out the highest number of executions in Africa.²⁴ It was reported that at least nineteen individuals were executed during the year.²⁵

ACJPS could not directly access information on executions that have taken place in Sudan but was able to collect information from other sources. At least eight people are thought to have been executed in 2013. In February 2013, three people in Darfur

²⁰ Lapidation is also referred to as stoning.

²¹ Article 27 of the 1991 Criminal Act. *Ta'azir* are ad-hoc punishments passed by the judge for acts other than those defined as *qisas* or *hudud*.

²² Article 27 of the 1991 Criminal Act

²³ op. cit., United Nations Human Rights Committee, Consideration of State parties under article 40 of the Covenant, Fourth periodic reports of States parties, Sudan, para 82.

²⁴ Sudan Tribune, April 10, 2013, <http://www.sudantribune.com/spip.php?article46155>

²⁵ Amnesty International, 'Death Sentences and Executions in 2012', Amnesty International Publications, available at; <http://www.amnestyusa.org/sites/default/files/worldpreport2012.pdf>

were reportedly executed after being convicted of armed robbery.²⁶ According to a newspaper report, one man was executed in April 2013 and four others in May 2013, following their convictions for the killing of a farmer in Hamra Al-Sheikh locality. The men were reportedly hanged by authorities in El-Obeid Prison, Northern Kordofan State. The hangings were reported to have taken place “amidst tight security and was witnessed by relatives of the deceased farmer, who declined to waive their rights to witness *quisas* (retribution) for their kin.”²⁷

On 16 March 2013 the El Geneina Public Criminal Court sentenced to death Sadam Hamid Idriss Aba after being found guilty of murder under article 130 of the 1991 Criminal Court. On 19 November 2013 Yagoub Hassan Alah Trio Saeed, a member of the Police Central Reserve Forces, was convicted of murder under article 130 of the 1991 Criminal Act and sentenced to death by the El Geneina Public Criminal Court. Mr. Sadam and Mr. Saeed were executed on 20 April 2014.

In 2014, Amnesty International reported that Sudan had carried out 23+ executions, the highest in Africa.²⁸ On 22 November 2011, Idriss Bahar Ali and Ahmed Adam Hassan were sentenced to death by the Terrorism Court No.1 Khartoum by Judge Mudthir Tajelsir. They were convicted for the murder of five Chinese oil workers and a policeman. Ahmed Mohamed Adam and Idriss Bahar Ali were among a group of 35 JEM fighters who attacked workers in al-Muglad oilfields killing 5 Chinese oil workers and killing a policeman. Adam and Bahar were executed on 14 September 2014.

Means of execution that violate the prohibition of torture or cruel, inhuman and degrading punishment:

In 2007 the United Nations High Commissioner for Human Rights submitted an *amicus curiae* application to the Iraqi Supreme Criminal Tribunal based on the real risk that hanging as a mode of execution would itself amount to inhuman or degrading treatment or punishment. “Acknowledging that the prohibition of cruel, inhuman and degrading treatment was a core provision of international human rights law, the High Commissioner found that the executions (by hanging), were so flawed as to amount, in their implementation, to cruel, inhuman and degrading punishment.”²⁹

The Human Rights Council has found that the means by which the death penalty is imposed may violate the right to freedom from torture, cruel, inhuman or degrading punishment under certain circumstances.³⁰

The European Court of Human Rights in, *Al-Saadoon and Mufdhi v. The United Kingdom*, held that hanging was an ineffectual and extremely painful method of killing such as to amount to inhuman and degrading treatment.³¹ The Court further stated that whatever the method of execution, the extinction of life involves some physical pain, as well as intense psychological suffering deriving from the foreknowledge of death.³²

²⁶Amnesty International, ‘Death Sentences and Executions 2013’, Amnesty International Publications, available at; http://issuu.com/amnestypublishing/docs/death_sentences_and_executions_2013

²⁷Hands Off Cain, Sudan: Four hanged in El-Obeid prison for farmer’s murder, 29 May, 2013, available at: http://www.handsoffcain.info/archivio_news/201305.php?iddocumento=17305891&mover=0.

²⁸ Amnesty International, Death Sentences and Executions in 2014, Amnesty International Publications, available at, file:///C:/Users/USER%20PC/Downloads/ACT5000012015ENGLISH%20(1).PDF

²⁹Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, August 9, 20102, A/67/279, available at; http://antitorture.org/wp-content/uploads/2013/03/A67279_Death_Penalty.pdf

³⁰The question of the death penalty: Commission on Human Rights Resolution 2003/67, para. 4(i), available at: <http://www.refworld.org/docid/43f3134a12.html> ; Resolution 2004/67, para. 4(i), available at: <http://www.refworld.org/docid/43f31382c.html> ; and Resolution 2005/59, para. 7(i), available at: <http://www.refworld.org/docid/45377c730.html> (States that stoning is a cruel and inhuman means of execution)

³¹ Application no. 61498/08, Judgment of 30 June 2009, para. 99.

³² Id para. 115.

The High Court of the United Republic of Tanzania found, in *R v. Mbushuu alias Dominic Mnyaroje and Kalai Sangula*, that the death penalty was unconstitutional on the grounds that execution by hanging violated the right to dignity of a person and constituted inherently cruel, inhuman and degrading treatment.³³ Similarly in the Ugandan Supreme Court case, *Attorney General v Susan Kigula and 417 Others*,³⁴ the dissenting judgment of Justice Egonda Ntende cited evidence of the cruel, inhuman and degrading nature of hanging. Justice Egonda concluded that various practices associated with hanging in Uganda, including subjecting those who do not die instantly to bludgeoning or the plucking off of heads, constituted, without a doubt, cruel, inhuman and degrading treatment.³⁵

³³*Republic of Tanzania v Mbushuu alias Dominic Mnyaroje and Kalai Sangula*, the High Court of the United Republic of Tanzania, (1994) TLR 168

³⁴Constitutional Appeal No. 3 of 2006, 2009

³⁵Op. cit., Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, para 36.

4. Political Opposition and the death penalty

One of the most concerning trends in Sudan is the use and threat of use of the death penalty as a tool against political opponents to the ruling National Congress Party. ACJPS has documented how Sudanese authorities have repeatedly used charges of crimes against the state under the 1991 Criminal Act - as well as crimes under the 2001 Anti-Terrorism Act that carry the death penalty as a tool of intimidation against real or perceived opposition party members or activists.

On 14 March 2012, Jalila Khamis Koko, a teacher and activist was arrested by the National Intelligence Security Service (NISS) from her home in Khartoum. Prior to her arrest, Ms. Koko was volunteering to provide support to Internally Displaced Persons from South Kordofan state. In June 2011, Ms. Koko appeared in a YouTube video in which she denounced the conditions in conflict-affected areas of South Kordofan and called for a ceasefire. She was a member of the Sudan Peoples' Liberation Movement- North (SPLM-N), an opposition party which was banned in September 2011. Whilst detained by the NISS, she was subjected to torture including death threats.³⁶ On 23 July 2012, Ms. Koko was charged with six criminal counts, five of which fall under the category of crimes against the state under the 1991 Criminal Act: undermining the constitutional order,³⁷ espionage against the country,³⁸ calling for opposition to public authority by use of violence or criminal force,³⁹ provoking hatred against or among sects,⁴⁰ criminal or terrorist organisations,⁴¹ and publication of false news.⁴² Two of these counts attract capital punishment as a maximum sentence.⁴³ Ms. Koko was released on 20 January 2013. She was acquitted of all charges except charges related to "spreading false news" a provision often used by the government to silence (political) dissent. This offence is punishable by up to six months imprisonment. As she had already spent nine months in pre-trial detention she was released immediately.⁴⁴

On 17 May 2014, the NISS arrested Sadiq al-Mahdi, leader of the opposition National Umma Party, after he publicly accused the government militia, known as the Rapid Support Forces (RSF), of committing human rights abuses against civilians in Darfur, including rape and looting. He was detained in Kober Prison, Khartoum where he reportedly faced capital charges of undermining the Constitutional Order and waging war against⁴⁵ the state under the 1991 Criminal Act,⁴⁶ until his release a month later without charge.⁴⁷

³⁶African Center for Justice and Peace Studies and Redress, 'Sudan's human rights crisis: high time to take article 2 of the Convention seriously, Submission to the Un Human Rights Committee ahead of its Examination of Sudan's Fourth Periodic Report under the International Covenant on Civil and Political Rights', June 2014, para. 76, available at: <http://www.acjps.org/wp-content/uploads/2014/06/Sudans-Human-Rights-Crisis-Submission-to-UN-Human-Rights-Committee.pdf>.

³⁷Article 50 of the 1991 Criminal Act

³⁸ Article 53 of the 1991 Criminal Act

³⁹Article 63 of the 1991 Criminal Act

⁴⁰Article 64 of the 1991 Criminal Act

⁴¹Article 65 of the 1991 Criminal Act

⁴²Article 66 of the 1991 Criminal Act

⁴³Protection Line, Activist and Teacher Jalila Khamis Koko faces death penalty, 26 September, 2012, available at: <http://protectionline.org/2012/09/26/activist-and-teacher-jalila-khamis-koko-faces-death-penalty/>.

The two offences that attract capital punishment are: undermining the Constitutional Order and espionage against the country.

⁴⁴Op. cit., Amnesty International, Death Sentences and Executions 2013.

⁴⁵Article 51 of the 1991 Criminal Act

⁴⁶ACJPS, Political Opposition party members and activists detained by Sudan's security despite Presidential pledge to cease detentions and open up dialogue, 21 May 2014, available at: <http://www.acjps.org/political-opposition-party-members-and-activists-detained-by-sudans-security-despite-presidential-pledge-to-cess-detentions-and-open-up-dialogue/>.

⁴⁷FIDH, Sudan: End Arbitrary Detention of Activists - Investigate Allegations of Torture, Abuse, 25 June, 2014, available at: <http://www.fidh.org/en/africa/sudan/15648-sudan-end-arbitrary-detention-of-activists-investigate-allegations-of>.

Barely a month after al-Madhi's arrest, another opposition leader was arrested for his public criticism of the RSF. On 8 June 2014, Mr. Ibrahim al-Sheikh, head of the opposition Sudanese Congress Party (SCP) was arrested from his home in North Kordofan by joint forces of the NISS and police after he made statements condemning RSF abuses in conflict zones at a seminar in al-Nuhud, Western Kordofan. Al-Sheikh was charged with six offences, including incitement and acting against the constitutional regime.⁴⁸ He was detained for around three months in Khartoum and later West Kordofan state, before his release on 15 September 2014.⁴⁹

In 2014 and 2015, two South Sudanese pastors were detained by NISS for making public remarks that criticized the treatment of Christians in Sudan and addressing the controversial sale of land that belonged to the Khartoum Bahri Evangelical Church.⁵⁰ The two pastors are, Yad Michael, who was detained on, 14 December 2014, and, Peter Yen, who was detained on, 11 January 2015. Among the charges⁵¹ brought against the pastors by the Prosecutor for crimes against the state were, undermining the constitutional system,⁵² and waging war against the state⁵³ which carry the death penalty. However, Yat Micheal was found guilty of disturbance of public peace⁵⁴ and Peter Yen was found guilty of managing a criminal or terrorist organisation.⁵⁵ The pastors were released because Judge Ahmed Ghaboush of the North Khartoum Central Court ruled that their 8-month detention was sufficient punishment for their offenses.

Justice and Equality Movement (JEM) Trials:

In 2008 the NISS arrested hundreds of individuals in the weeks following an attack on Khartoum by members of the Justice and Equality Movement on 10 May 2008. Whilst Human Rights Watch was able to confirm the names of more than two hundred detainees, former detainees claimed as many as three thousand individuals had been arrested.⁵⁶ Among those arrested were people suspected or known to have links with the Popular Congress party and the Darfur rebel groups. The Human Rights Watch research indicated that the majority of detainees appeared to be from Darfur region, indicative of a discriminatory intent behind the arrests.⁵⁷

The Government set up five special courts as courts of first instance, under the Anti-terrorism Act of 2001 to try those arrested. On 18 June 2008, the trial of thirty six individuals began simultaneously in the special courts in Omdurman, Khartoum North and Khartoum. These trials fell short of the fair trial standards according to some of the

⁴⁸ ACJPS, Sudan: End Arbitrary Detention of Activists, 25 June 2014, available at: <http://www.acjps.org/sudan-end-arbitrary-detention-of-activists/>.

⁴⁹ Radio Tamazuj, SCP leader Ibrahim al Sheikh released in Sudan, 15 September 2014, available at: <https://radiotamazuj.org/en/article/scp-leader-ibrahim-al-sheikh-released-sudan>.

⁵⁰ The sale was made by the Community Council of the Church, a body appointed by the Government of Sudan's Ministry of Endowments and Guidance which reportedly does not have a mandate to sell church land.

ACJPS, 'Two South Sudanese Pastors face death penalty for voicing opposition to corrupt scandal at Khartoum Bahri Church', 2 June 2015, available at: <http://www.acjps.org/two-south-sudanese-pastors-face-death-penalty-for-voicing-opposition-to-corruption-scandal-at-khartoum-bahri-church/>

⁵¹ The other charges brought against the Pastors under the 1991 Criminal Act were: joint acts in execution of criminal conspiracy (article 21), espionage against the country (article 53), disclosure and obtaining information and official documents (article 55), promoting hatred amongst or against sects (article 64), disturbance of the public peace (article 69) and insulting religious creeds (article 125).

⁵² Article 50 of the 1991 Criminal Act

⁵³ Article 51 of the 1991 Criminal Act

⁵⁴ Article 69 of the 1991 Criminal Act

Mission Network News, 'Sudanese pastors released, escaping the death penalty', Alex Anhalt, 6 August 2015, available at: <https://www.mnnonline.org/news/sudanese-pastors-released-escaping-the-death-penalty/>

⁵⁵ Article 65 of the 1991 Criminal Act

⁵⁶ Human Rights Watch, Crackdown in Khartoum: Mass arrests, Torture, Disappearances since the May 10 Attack, 17 June 2008, available at: <http://www.hrw.org/en/reports/2008/06/16/crackdown-khartoum-0>.

⁵⁷ Ibid.

defendants' lawyers.⁵⁸ Some lawyers of the thirty six individuals stated that, "they had limited or no access to their clients and described the court proceeding as arbitrary, forcing some defense lawyers to withdraw. Under Sudanese law, a defendant can be convicted on the basis of a confession made while in incommunicado detention or during coerced interrogations."⁵⁹

Defendants alleged to be members of the JEM were charged as a group under articles of the 1991 Criminal Act and the 2001 Anti-Terrorism Act. The charges included armed robbery and violating the "Terrorist Crimes" and "Terrorist Organisation" which attract the death penalty if convicted.⁶⁰

On 19 January 2010, Judge Mudather Elrasheed of the Khartoum North Criminal Court sentenced two members of the JEM to death by hanging for their role in the May 2008 attack on Omdurman and Khartoum. This brought the total number of JEM affiliated individuals sentenced to death to 106.⁶¹ The two men, Abdullah Ali Adam and Elmardi Bakhiet, were sentenced under Articles 21, 24, and 51 of the Anti-Terrorism Act, and Articles 6 and 24 of the Arms and Ammunition Act.⁶²

According to media reports, fifty seven detainees from JEM were released following negotiations between the Government of Sudan and JEM. Fifty of those released had been sentenced to death. The Minister of Justice at the time, Mr. Abdul Basit Sabdarat said that President Omar Al-Bashir had ordered the release of these prisoners and added that these represented about half of the number of detainees from JEM in custody.⁶³

On 9 March 2015, President Omar Hassan Al-Bashir pardoned five JEM members who were on death row. President Al-Bashir exercised his power under article 208 (1) of the 1991 Criminal Procedure Act after recommendation from the Minister of Justice.⁶⁴ The five freed JEM members include: Mohamed Jebriil Mohamed Abdel Mawla, Al-Sadig Adam Abdalla, Mohamed Hassan Osman, Hamid Hassan Hamid and Serag Eldin Musa Ahmed.

The release of the political detainees by the above Presidential decree was welcomed by JEM members, who further pointed out that seventy six of their members are still on death row.⁶⁵

Sudan Peoples' Liberation Movement/North (SPLM/N) trials:

In November 2011 a court martial in Singa, Blue Nile state, sentenced nineteen SPLM-N members to death. Amongst the group was a poet, Mr. Abdel Moneim Rahama. The rest of the group's identity is unknown.⁶⁶ They were arrested from their homes and places of work following the outbreak of the Blue Nile conflict in early September 2011.⁶⁷ The trial was conducted under a complete media blackout, with journalists

⁵⁸Human Rights Watch, Sudan: End Unfair Trials, 26 June 2008, available at: <http://www.hrw.org/news/2008/06/24/sudan-end-unfair-trials>.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹Of the 106 sentenced to death, 7 have been executed.

⁶² African Center for Justice and Peace Studies, Sudan Human Rights Monitor December 2009- May 2010, available at: http://www.africancentreforjustice.org/wp-content/uploads/2012/04/Human_Rights_Monitor-Issue5-FINAL.pdf.

⁶³BBC, The Sudanese Government to release 57 members of Justice and Equality Movement in Darfur, 24 February 2010, available at: http://www.bbc.co.uk/arabic/middleeast/2010/02/100224_sudan_jem_release_tc2.shtml (Arabic).

⁶⁴Presidential Decree 147/2015.

⁶⁵Sudanile, Justice and Equality condemn the manner of releasing political prisoners from the Omdurman attack, 18 March 2015.

⁶⁶Sudan Human Rights Monitor (October-November 2011), available at: http://www.africancentreforjustice.org/wp-content/uploads/2012/04/Human_Rights_Monitor-Issue14-FINAL.pdf.

⁶⁷ACJPS, EHAHRDP, FIDH: Human Rights Violations in the Republic of Sudan: A Shadow Report to Sudan's Fourth and Fifth Periodic Report to the African Commission on Human and Peoples' Rights, April 2012, p.13, available at: <http://www.defenddefenders.org/wp-content/uploads/2012/05/Human-Rights-Situation-in-Sudan-A-Shadow-Report-April-2012.pdf>.

barred from monitoring the court proceedings. The convicted group was transferred to Kober Prison where they await execution.⁶⁸ Abdel Moniem was later released and has since left Sudan.

Special courts were established under a decree issued by the Chief Justice in 2012 to try those arrested. The courts were established in White Nile, Blue Nile, South Kordofan and Sennar states.⁶⁹ Many of those arrested were charged with capital crimes under the 1991 Criminal Act, the 2001 Anti-Terrorism Act and the Firearms and Ammunitions Act 1986.⁷⁰

In June 2014, ACJPS was following seven cases before the Terrorism Court in Singa town, Sennar State, involving one hundred nineteen men who were detained by the NISS at the outbreak of conflict in Blue Nile in September 2011. The men were held in NISS custody in prisons in Sennar and Blue Nile state on account of their affiliation, or presumed affiliation to the SPLM-N for around seventeen months without charges or judicial review. They were denied access to lawyers or their families for over ten months until the first lawyer visits were permitted in June-August 2012 following an application to the Minister of Justice. Ninety reported to lawyers they had been tortured in NISS custody in Sennar, El Roseires, and Singa prisons. Twenty eight of the detainees were released by the Office of the Prosecutor prior to any court hearings without charge in February 2013 owing to a lack of *prima facie* evidence. The remaining detainees were charged in February 2013 with waging war against the state (article 51), abetment of mutiny (under article 58) and murder (article 130) of the 1991 Criminal Act; article 26 of Weapons and Ammunition Law, and articles 5 and 6 of the Anti-Terrorism Act. Articles 130 of the 1991 Criminal Act, article 26 of the Weapons and Ammunition Law and articles 5 and 6 of the Anti-Terrorism Act are punishable by death or life imprisonment. Court hearings were held at the Terrorism Tribunal in Singa in May, August and September 2013. During these sessions, thirty eight were released and fifty three were convicted to prison sentences, of which forty six were sentenced to life imprisonment. Their lawyers submitted appeals.⁷¹

In March 2014, the special court in Singa headed by Abdel Moneim Younis sentenced the seventeen in absentia to execution by hanging, including the SPLM-N leader Malik Agar.⁷² In August 2014, the Appeal Court in Singa, Sennar state upheld the death sentences in absentia for Malik Agar, SPLM-N Secretary General Yasir Arman and fifteen others.⁷³ In January 2015 the National Supreme Court in Khartoum upheld the death sentences issued in absentia for seventeen SPLM-N members including Malik Agar and Yasir Arman. SPLM-N leader Manala Hussein's death sentence which was overturned on appeal to life imprisonment was changed back to death penalty by the Supreme Court. He is the only one of those sentenced to death that was arrested and is being detained in Kober prison, Khartoum North. The Supreme Court also upheld the life imprisonment sentences for forty six SPLM-N members.⁷⁴

⁶⁸ Op. cit., Sudan Human Rights Monitor (October-November 2011).

⁶⁹ Sudan News Agency, 'Chief Justice issues decree establishing special courts for combating terrorism', 17 April 2012, available at <http://www.sunanews.net/english-latest-news/23151-chief-justice-issues-decree-establishing-special-courts-for-combating-terrorism-.pdf>

⁷⁰ African Center for Justice and Peace Studies, Sudan Human Rights Monitor, May-July 2013, contains a list of those arrested along with their case numbers. This list is not exhaustive.

⁷¹ Op. cit., ACJPS and Redress, Sudan's human rights crisis, para. 50.

⁷² Radio Tamazuj, Sudan court sentences to death SPLM-N leaders, 13 March 2014, available at; <https://radiotamazuj.org/en/article/sudan-court-sentences-death-splm-n-leaders>.

⁷³ Radio Tamazuj, Sudan appeals court upholds death penalties for SPLM-N leaders, 6 August 2014, available at; <https://radiotamazuj.org/en/article/sudan-appeals-court-upholds-death-penalty-splm-n-leaders>.

⁷⁴ Radio Dabanga, Sudan's supreme court upholds death penalty for SPLM-N leaders, 14 January 2015, available at: <https://www.dabangasudan.org/en/all-news/article/sudan-s-supreme-court-upholds-death-penalty-for-splm-n-leaders>.

5. Juveniles facing the death penalty⁷⁵

The Interim National Constitution, 2005, the 1991 Criminal Act and the Child Act, 2010 are the main laws governing juvenile justice in Sudan. The execution of an individual who was under the age of 18 at the time of the alleged crime is prohibited both under international law and Sudan's Interim National Constitution of 2005.⁷⁶ The UN Convention on the Rights of the Child (CRC) to which Sudan is a state party classifies the death penalty as a form of cruel, inhumane or degrading treatment or punishment when it is applied against minors and prohibits the use of the death penalty in respect of minors.⁷⁷ This prohibition is incorporated into Sudan's Bill of Rights by virtue of article 27 (3) of the Interim National Constitution.

Under the Child Act, 2010, a child is defined as a person under the age of eighteen and sets criminal responsibility at a minimum of twelve.⁷⁸ Contrary to this, the 1991 Criminal Act, defines an adult as "a person whose puberty has been established by definite natural features and who has completed 15 years of age. Whoever attains 18 years of age shall be deemed an adult even if the features of puberty do not appear."⁷⁹ Under the 1991 Act, criminal responsibility is set at a minimum age of seven.⁸⁰ The Child Act states that the Act shall prevail over any other provision in any other law upon inconsistency,⁸¹ but it is not clear whether this applies to *hudud* offences.⁸²

Article 36 (2) of the Interim National Constitution, 2005 provides, "[t]he death penalty shall not be imposed on a person under the age of eighteen ... except in cases of retribution or *hudud*." Article 27 (2) of the 1991 Criminal Act, states that: "[w]ith the exception of *Hudud* and retribution (*qisas*) offences, death sentence shall not be passed against any person, who has not attained the age of eighteen ..."

The Child Act, 2010 grants criminal jurisdiction of all cases concerning children solely to the Child Court⁸³ and prohibits sentencing a child to death.⁸⁴ While passing sentence, the Child Court has to give due regard to the principle that the death sentence is not inflicted on the child. However the Child Act is silent on the legality of capital punishment for *hudud* crimes. It is uncertain whether giving "due regard" amounts to a prohibition of the death penalty for *hudud* and other crimes. It also appears that the prohibition applies to age at the time of sentencing rather than at the time of commission of the offence.⁸⁵

The UN Committee on the Rights of the Child has expressed serious concern that, despite the adoption of the Child Act, 2010, which prohibits the passing of the death sentence on children, the death penalty may be imposed on persons below the age of 18 years in cases of *qisas* (retribution), or *hudud* under article 36 of Sudan Interim

⁷⁵ Please note that the examples of courts sentencing juveniles to death pre-date the timeline but are included due to their importance on the matter and were not included in the previous report, 'Widening the Scope: Expanding the Use of Capital Punishment in Law and Practice in Sudan'.

⁷⁶ Amnesty International, 'Death Sentences and Executions 2012', Amnesty International Publications, available at: <http://www.amnestyusa.org/sites/default/files/worlddpreport2012.pdf>.

⁷⁷ Article 37 of the UN Convention on the Rights of the Child.

⁷⁸ Sections 4 and 5 (2) (l) of the Child Act, 2010

⁷⁹ Section 3 of the 1991 Criminal Act

⁸⁰ Section 9 of the 1991 Criminal Act

⁸¹ Section 3 of the Child Act, 2010.

⁸² Child Rights Information Network, Inhuman Sentencing of children in Sudan, November 2010, www.crin.org.

⁸³ Section 67 (1) of the Child Act, 2010.

⁸⁴ Section 77 (e) of the Child Act, 2010.

⁸⁵ Op. cit., Inhuman Sentencing of Children in Sudan.

National Constitution. The Committee was also concerned at recent reports that the death penalty continues to be carried out on children. The Committee reminded Sudan that the application of the death penalty to children is a grave violation of articles 6 and 37 (a) of the CRC. Sudan was urged to “ensure that the death penalty is not carried out on children, including in cases of *qisas* (retribution), or *hudud*, and to replace any death sentences already passed on persons under 18 with an appropriate alternative sanction.”⁸⁶



Figure 1: The picture above is a reformatory for juvenile offenders in Port Sudan.

In its fourth periodic report to the UN Human Rights Committee, the Government of Sudan asserted that the death penalty is not applied against anyone under the age of 18 or over 70 years except for *hudud* or *qisas* offences.⁸⁷ The government stated that this was affirmed in constitutional case no. MD/ QD/4/1999 of 23 March 2000 (Mu`iz Hamdan Sa`d v. the Government of Sudan). In this case the Constitutional Court interpreted article 23 (2) of the 1998 Constitution, a provision identical to article 36 (2) of the Interim National Constitution, prescribing different treatment for persons under eighteen years of age, who may not be executed, even in the case of *qisas* (retribution) or *hudud* offences. The Constitutional Court found that the article excluded persons under eighteen from the death penalty in general while the same paragraph excluded persons over seventy from the death penalty except for *qisas* (retribution) and *hudud* offences. The Court argued that “the comma after the phrase ‘under 18 years of age’ creates a distinction.” “The court also saw fit to apply this precedent to the constitutional case of Najm al-Din Qasam al-Sayyid in 2008, the rule being that

⁸⁶UN Committee on Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, CRC/C/SDN/CO/3-4, 22 October 2010, paras.35-36 available at; <http://www.ohchr.org/en/countries/africaregion/pages/sdindex.aspx>.

⁸⁷Op. cit., Fourth periodic report of State Parties, Sudan, CCPR/C/SDN/4, para.82-83.

the interpretation of a constitutional provision must generally be upheld in subsequent cases as long as the provision has not been amended."⁸⁸

On 17 August 2008, the Anti-Terrorism court in Khartoum sentenced to death Al Sadig Mohamed Jaber Al Dar Adam, despite accepting a birth certificate proving the defendant was seventeen-years at the time of the offence. Al Sadig was found guilty of armed robbery (*hiraba*),⁸⁹ a *hudud* offence and the court concluded that he could be sentenced to death despite his age. Article 27 (2) of the 1991 Criminal Act provides that the death sentence can be applied for *hudud* and *qisas* offences regardless of one's age.

In December 2008, the Supreme Court in Khartoum confirmed the decision of the Nyala General Court and death sentence against Adulrahaman Zakaria Mohammed, aged seventeen-years at the time of his first trial.⁹⁰ Adulrahaman was executed on 14 May 2009 in El Fasher. The Supreme Court found that under the Constitution and the 1991 Criminal Act, the prohibition of the death penalty for children did not extend to *hudud* offences. Adulrahaman was found guilty of murder and robbery and sentenced to death by the Nyala General Court in South Darfur on 3 May 2007.

Contrary to the Government's assertion that the death penalty is not imposed on children even in cases of *hudud* offences, a 2009 Supreme Court decision found that children are not excluded in cases of *hudud* offences. The Child Act, 2010 does not explicitly rule out the application of death sentences for *hudud* offences thereby creating uncertainty.

During the presentation of its report to the UN Human Rights Committee, the Delegates from the Government of Sudan were questioned on the application the death penalty, and the sentencing of minors to the death penalty. One of the responses from the Government Delegates was, if a minor has been executed, it was due to errors in dates of birth. The Government went on to acknowledge, "[s]uch errors unfortunately are frequent in Sudan."⁹¹

In situations where the age of the offender is in dispute, international standards state that the burden of proof lies with the prosecution to establish that the defendant was eighteen-years and above at the time of the alleged crime.⁹² The UN Committee on the Rights of the Child has asserted that, "if there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his or her age and in case of conflict or inconclusive evidence, the child shall have the right to the rule of benefit of doubt."⁹³

A comprehensive approach to carrying out an age assessment has been preferred. The Committee on the Rights of the Child has stated that such an assessment should include both physical appearance of the individual and psychological maturity. The assessment must be conducted in a scientific, safe, child and gender sensitive and fair

⁸⁸op. cit., Fourth periodic report of State Parties, Sudan, CCPR/C/SDN/4, para.75

⁸⁹This is provided for under article 167 of the 1991 Criminal Act

⁹⁰Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Carina Knaul de Albuquerque e Silva, Addendum, Communications to and from Governments, A/HRC/14/26/Add.1, 18 June 2010, paras.1054-1058.

⁹¹UN News & Media, Human Rights Committee considers report of Sudan, 9 July 2014, available at: [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/FB2AC02DC2BA4500C1257D1000490DFE?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/FB2AC02DC2BA4500C1257D1000490DFE?OpenDocument).

⁹²United Nations Human Rights Council Resolution on the Rights of the Child, Adopted on 19 April 2012. Par. 55;

"Also urges States to presume children alleged as, accused of or recognized as having infringed the criminal law to be under the age of majority when their age is in doubt until such as assumption is rebutted by the prosecution, and to treat the accused as a juvenile if the burden is not met."

⁹³ United Nations Committee on the Rights of the Child, General Comment 10 (2007), Children's rights in Juvenile Justice, CRC/C/GC/10, 25 April 2007, par. 49 available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

manner, mindful of the need not to violate the physical integrity of the child and afford due respect to human dignity.⁹⁴

In the past, age assessment methods employed by Sudanese authorities have come under scrutiny. In a report written by the Special Rapporteur on the Independence of Judges and Lawyers, issues of cases of defendants who allegedly were children at the time of the attack on Omdurman were raised. The Special Rapporteur drew the Government's attention to four cases.

In one case of Mahmood Adam Zariba the defence counsel informed the court that the accused was sixteen-years old at the time of the JEM attack. The Terrorism Court refused to grant a medical examination to determine his age. On 31 July 2008, Mahmood was sentenced to death by Anti-Terrorism Court 4 in Omdurman after being found guilty on a range of offences under the 1991 Criminal Act, the 1986 Arms, Ammunitions and Explosives Act and the 2001 Counter Terrorism Act.⁹⁵

A police court committee found two defendants, Mohamed Hashim Ali Abdu and Ishag Yaseen Ali Adam (whose mother gave his age as sixteen), to be over the age of eighteen. The members of the committee testified that the determination of Mohamed Hashim Ali Abdu's age was based on the colour and number of his teeth. The committee further admitted to applying this methodology in Ishag Yaseen Ali Adam's case. Also employed was an assessment of the deepness of voice and an examination of armpits for underarm hair. On 31 May 2008, the Anti-Terrorism Court 3 in Bahri (Khartoum North) sentenced Mohamed and Yaseen to death in relation to the attacks on Omdurman. It was reported that the court did not take into account doubt cast on the methodology of the medical committee during cross examination.⁹⁶

On 29 May 2009, the Anti-Terrorism Court 3 in Bahri (Khartoum North) sentenced to death four defendants who were reportedly seventeen-years-old at the time of the attack on Omdurman. In this case the police medical committee found that all four were over the age of eighteen but allegedly gave no details of the medical examinations conducted to allow them to reach this conclusion.⁹⁷

The above cases bring into question the procedural method, independence and fairness of the age assessment as well as whether the age assessment will be done in a timely manner.

⁹⁴United Nations Committee on the Rights of the Child, General Comment 6 (2005), Treatment of unaccompanied and separate minors outside their country of origin, June 2005, par. 31. See also Smith .T. and Brownlees .L., Age Assessment Practices: a literature review and annotated bibliography, Discussion paper, 2011, United Nations Children's Fund, available at; http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf.

⁹⁵Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Carina Knaul de Albuquerque e Silva, A/HRC/14/26/Add.1, June 18, 2010, para.1048.

⁹⁶Ibid, para.1049.

⁹⁷Ibid, para.1050.

6. Gender and the Death Penalty

Sudanese law contains a number of provisions that discriminate on the basis of gender. In addition to laws that discriminate directly on grounds of sex, observance of practice has revealed discrimination on grounds of sex in the application of laws that on the face of it appear gender neutral.

The 1991 Criminal Act contains a number of provisions that appear to be gender neutral but have been applied disproportionately against women and girls. For example ACJPS has noted a concerning pattern in the application of the public order laws against women and girls particularly from marginalized ethnic groups in Sudan.⁹⁸ Similarly, and of relevance to the death penalty, human rights groups have noted the disproportionate application of article 145 of the 1991 Criminal Act, concerning the offence of adultery.⁹⁹ Under this provision, the offence of adultery is committed where a man or woman has sexual intercourse without any lawful bond between them. The penalty for married individuals found guilty of adultery is death by stoning. While the offence appears neutral, it is commonly seen in practice that women are at greater risk of prosecution than men. The Strategic Initiative for Women in the Horn of Africa (SIHA) has noted the asymmetrical application of the law on adultery and that whilst “the commission of adultery assumes the role of two persons...the punishments have been applied solely to the women in question.”¹⁰⁰

On 13 May 2012, the Criminal Court of Ombada, Khartoum state convicted Intisar Sharif Abdalla of adultery and sentenced her to death by stoning under article 146 (1)(a)¹⁰¹ of the 1991 Criminal Act. Intisar was denied all minimum guarantees required in such a criminal case: she did not benefit from any legal representation or the assistance of an interpreter despite her limited knowledge of Arabic.¹⁰² Her conviction was based solely on a coerced confession she gave after reportedly being beaten by her brother.¹⁰³ The male co-accused was found not guilty of adultery based on a “lack of evidence” because he denied the charges and the forced confession made by Intisar.¹⁰⁴

According to SIHA, this case “demonstrated the strength of the court’s prejudice against the woman compared to the leniency given towards the man with the court finding him not guilty based on this denial”.¹⁰⁵

On 20 June 2012 the Omdurman Appeal Court ordered that the case should be returned to Ombada court for a re-trial. On 2 July Intisar retracted her testimony and denied the charges before the court. The following day Ombada Court dropped all charges against her citing a lack of evidence and she was released.¹⁰⁶

⁹⁸ ACJPS, Sudanese authorities must uphold right to fair trials after surge in arrests of women for sale of alcohol in national capital, 27 June 2014, available at: <http://www.acjps.org/sudanese-authorities-must-uphold-right-to-fair-trials-after-surge-in-arrests-of-women-for-sale-of-alcohol-in-national-capital/>.

⁹⁹ Strategic Initiative for women in Horn of Africa, Women in Horn of Africa are still bending their heads, a report to the 52nd Session of the African Commission on Human and Peoples’ Rights, available at: <http://www.sihanet.org/content/report-52-session-african-commission-human-and-peoples-rights>.

¹⁰⁰ Ibid.

¹⁰¹ Whoever commits the offence of adultery shall be punished with execution by lapidation, where the offender is married (mushan).

¹⁰² African Center for Justice and Peace Studies, Sudan: Intisar Sharif Abdalla must not be executed, 5 June 2012, available at: <http://www.acjps.org/sudan-intisar-sharif-abdalla-must-not-be-executed/>.

¹⁰³ Amnesty International, Sudan: Further Information: Sudan mother walks free: Intisar Sharif Abdallah, available at: <http://www.amnesty.org/en/library/asset/AFR54/029/2012/en/e9fb7501-e769-403a-9f11-d6ad5f2197b2/afr540292012en.html>.

¹⁰⁴ Op. cit., Strategic Initiative for women in Horn of Africa, Women in the Horn of Africa are still bending their heads.

¹⁰⁵ Ibid.

¹⁰⁶ African Center for Justice and Peace Studies, Sudan Human Rights Monitor, June-July 2012, available at; <http://www.africancenterforjustice.org/wp-content/uploads/2012/12/SHRM-June-July.pdf>.

In the same year barely a month apart from Intisar's case, the Al-Nasir Criminal Court in Khartoum sentenced Layla Ibrahim Issa Jamool, aged 23, to death by stoning for allegedly committing adultery. Ms. Jamool, who had reportedly been living apart from her husband for one and a half years, was sentenced to death under Article 146 (1) (a) of the 1991 Criminal Act.¹⁰⁷ Ms. Jamool did not have access to any legal representation prior to her sentencing. She was sentenced after only three court sessions, and was detained in shackles alongside her six-month old baby. She was released on appeal on 16 September 2012 due to insufficient evidence. She was instead found guilty for "indecent acts" under article 151 of the 1991 Criminal Act.¹⁰⁸

In January 2014, an eighteen-year-old Ethiopian girl, who was three months pregnant, was raped by seven men in Sudan.¹⁰⁹ While house hunting, she was lured into an empty building where she was raped. The perpetrators recorded the incident and shared it on social media. This prompted the authorities to arrest both the victim and the perpetrators. The Ethiopian girl was charged with adultery which attracts the death penalty. The Court however, convicted her of indecent acts and sentenced her to one-month in prison, which was suspended, and a fine of 5000 Sudanese Pounds.¹¹⁰

On 11 May 2014, the Al-Haj Yousef Criminal Court in Khartoum Bahri convicted Ms. Meriam Yahya Ibrahim of adultery after a complaint was lodged by her family claiming that she was a Muslim and had married a Christian man. She was sentenced to 100 lashes for adultery after the court declared her church marriage invalid on account of her Muslim faith and upbringing.¹¹¹ A complaint of adultery was also lodged against her husband, Mr. Ibrahim but charges against him were dropped on account of his undisputed Christian faith and after confirmation by the court that he had married Ms. Ibrahim in a Church. The law pertaining to marrying outside of the Muslim faith in Sudan includes an additional discriminatory provision: under the Personal Status Law for Muslims of 1991, a Muslim woman is prohibited from marrying a non-Muslim whereas the prohibition does not apply to men of Muslim faith.

A prohibition against executing nursing mothers is provided for in both Sudanese law and international law. As set out in the legal framework, Article 36(3) of the 2005 Interim Constitution of Sudan provides that the death sentence shall not be executed upon pregnant and lactating women save after two years of lactation. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women of 2003, to which Sudan is a signatory, also prohibits the carrying out of death sentences on nursing women. The former UN Commission on Human Rights in its 2005 Resolution on the question of the death penalty condemned cases in which women are subjected to the death penalty on the basis of gender-discriminatory legislation, policies or practices. The Commission went on to urge states that retain the death penalty to exclude mothers with dependent infants from capital punishment.¹¹²

¹⁰⁷Op. cit., African Centre for Justice and Peace Studies, Sudan Human Rights Monitor, June-July 2012.

¹⁰⁸Op. cit. Strategic Initiative for women in Horn of Africa.

¹⁰⁹BBC, 'Sudan court convicts Ethiopian woman over 'gang rape'', 21 February 2014, available at: <http://www.bbc.com/news/world-africa-26286264> SIHA Press statement, 'Ethiopian woman gang raped by seven Sudanese men convicted of 'indecent acts'', 20th February 2014, available at: <http://www.sihonet.org/news/sudan-ethiopian-woman-gang-raped-seven-sudanese-men-convicted-%E2%80%9Cindecent-acts%E2%80%9D>

¹¹⁰This was approximately 961 United States Dollars (USD) at the time.

¹¹¹African Center for Justice and Peace Studies, Update: Death Penalty confirmed in Khartoum apostasy case after woman confirms her Christian faith; new apostasy case comes to light in Al Gadarif, 15 May 2014, available at: <http://www.acjps.org/update-death-penalty-confirmed-in-khartoum-apostasy-case-after-woman-confirms-her-christian-faith-new-apostasy-case-comes-to-light-in-al-gadarif/>.

¹¹²UN Commission on Human Rights, *Human Rights Resolution 2005/59: The Question of the Death Penalty*, 20 April 2005, E/CN.4/RES/2005/59, available at: <http://www.refworld.org/docid/45377c730.html>.

7. Religion and the death penalty

Article 18 of the ICCPR provides that everyone shall have the right to freedom of thought, conscience and religion. This includes the freedom to have or to adopt a religion or belief of one's own choosing without coercion. Article 8 of the African Charter on Human and Peoples' Rights similarly provides that "freedom of conscience, the profession and free practice of religion shall be guaranteed".

The Interim National Constitution of 2005 guarantees religious freedom in Sudan. Article 1 recognizes Sudan as a "...multi-cultural, multilingual, multi-racial, multi-ethnic, and multi-religious country where such diversities co-exist." Article 6 provides for religious rights while article 31 affords all persons equality before the law without any discrimination including on grounds of religion.

Despite these legal guarantees, the 1991 Criminal Act still retains the crime of apostasy under article 126 which carries the maximum punishment of death for individuals accused of changing their Islamic faith who refuse to revert back to Islam. In February 2015, the Government of Sudan made amendments to various provisions in the 1991 Criminal Act including article 126. The definition of apostasy under article 126 was widened to include anyone who questions the credibility of the Qur'an, the Sahaba¹¹³ or the Prophet's wives.

As earlier stated, on 11 May 2014, Ms. Meriam Yahya Ibrahim, was found guilty of the crimes of adultery and apostasy under the 1991 Criminal Act by the Al-Haj Yousef Criminal Court. Ms. Ibrahim was born to an Ethiopian Orthodox mother and a Sudanese Muslim Father. According to tradition and custom of Islam in Sudan, a child takes on his or her father's religion. Given that her father was absent for her entire upbringing she was raised by her mother, a Christian. Ms. Ibrahim's conviction was solely based on court testimonies given by a number of her family members who alleged that she converted from Islam to Christianity.¹¹⁴ The punishment for those found guilty of apostasy is death if they refuse to revert back to Islam.

Having handed down its decision, the court granted Ms. Ibrahim a period of three days to renounce her Christian faith and return to Islam or else face the death penalty. The Court also invited two organisations, including Munazzamat al-Da'wa al-Islamiia, a non-governmental organisation affiliated to the Islamic brotherhood movement, to counsel Ms. Ibrahim on her faith. At the expiry of the three day period, the court convened to hear Ms. Ibrahim's decision. On 15 May 2014, Ms. Ibrahim's penalty of death was confirmed by the Al-Haj Yousef Court after she refused to denounce her Christian faith.

Given that Ms. Ibrahim was in her ninth month of pregnancy, the capital punishment could not be carried out immediately. The Interim National Constitution provides that the death penalty shall not be executed upon pregnant or breastfeeding women until after two years of lactation.¹¹⁵

¹¹³The Sahaba are Prophet Mohamed's companions.

¹¹⁴African Centre for Justice and Peace Studies, Sudanese authorities must release pregnant Christian woman and review conviction of apostasy and adultery, 12 May 2014, available at: <http://www.acjps.org/sudanese-authorities-must-release-pregnant-christian-woman-and-review-conviction-for-apostasy-and-adultery/>.

¹¹⁵ Article 36 (3) of the Interim National Constitution, 2005.

According to media reports, the Court of Appeal in Khartoum North overturned Ms. Ibrahim's death sentence and ordered her release.¹¹⁶ Ms. Ibrahim was later released and currently resides in the United States.¹¹⁷

In another case the same year, on 8 May 2014, charges against a woman accused of apostasy were dropped by the Al Gadarif Criminal Court after she recanted her Christian faith to avoid the death penalty. In this case the criminal complaint had been lodged by a police officer. The woman had gone to apply for a national identity card at the National Identity Office in Al Gadarif. On application, she was asked to declare her own faith and that of her father. The criminal complaint was filed when she declared that she was a Christian, married with eight children to a Christian man, and that her father was a Muslim.¹¹⁸

On 3 November 2015, twenty seven people, including three children, were arrested at a public forum outside a small Qur'anist mosque in the western neighbourhood of Mayo, South Khartoum.¹¹⁹ The twenty seven people, all from the Hausa ethnic group, were accused of following a form of Islam that strictly follows the text of the Qu'ran and rejects the religious authority of the Hadith.¹²⁰ Trial for the group began on 29 November 2015. The three children were released on bail on 1 December 2015. On 14 December 2015, the rest of the members in the group were granted bail and the court suspended the court proceedings until February 2016.¹²¹

¹¹⁶Sudan Tribune, Khartoum appeal court cancels death sentence against Meriam Ibrahim, 23 June, 2014, available at; <http://www.sudantribune.com/spip.php?article51443>

¹¹⁷BBC, Sudan 'apostasy' woman Meriam Ibrahim arrives in US, 1 August, 2014, available at; <http://www.bbc.com/news/world-us-canada-28596412>

¹¹⁸op. cit., ACJPS, Update: Death penalty confirmed in Khartoum apostasy case after woman confirms her Christian faith; new apostasy case comes to light in Al Gadarif.

¹¹⁹African Centre for Justice and Peace Studies, Group of 27 stand trial for apostasy after attending Qur'anist gathering in Khartoum, 2 December 2015, available at; <http://www.acjps.org/3695/>

¹²⁰Hadith refers to narratives of what the Prophet Muhammad is reported to have said and done.

¹²¹The Guardian, Sudan threatens 25 Muslims with death on charges of apostasy, 16 December 2015, available at; <http://www.theguardian.com/world/2015/dec/16/sudan-charges-25-death-penalty-apostasy-sharia-law>

8. Conditions of prisoners on death row

The UN Economic and Social Council has urged Member states that are still imposing the death penalty to effectively apply the Standard Minimum Rules for the Treatment of Prisoners in order to keep the suffering of those on death row to a minimum and avoid the exacerbation of such suffering.¹²²

Conditions in detention facilities in Sudan are very poor. The detention facilities lack adequate health care and food supplies due to inadequate resources which result in the perpetuation of a poor overall infrastructure of the system. The treatment of prisoners often runs counter to internationally acceptable standards, with those on death row being routinely shackled or subjected to solitary confinement in small cells.¹²³ Under the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules),¹²⁴ solitary confinement and the use of instruments for restraint are restricted.¹²⁵

Death row inmates in Sudan have permanent fixture of handcuffs connected to shackles on their legs for the duration of their stay on death row. Testimonies taken by ACJPS researchers have shed light on how the shackles cause skin chaffing and severe wounds and pain to prisoners. The pain and discomfort is further increased due to the fact that the shackle chains are very short, preventing detainees from being able to stand upright. Detainees have testified to ACJPS that the shackles force them to crouch down when they walk. These restrictive and painful conditions are a permanent burden, as the prisoners are kept chained not only inside the cells, but also when they are working and during visits with families and lawyers. This creates an atmosphere not only of discomfort but also of humiliation.

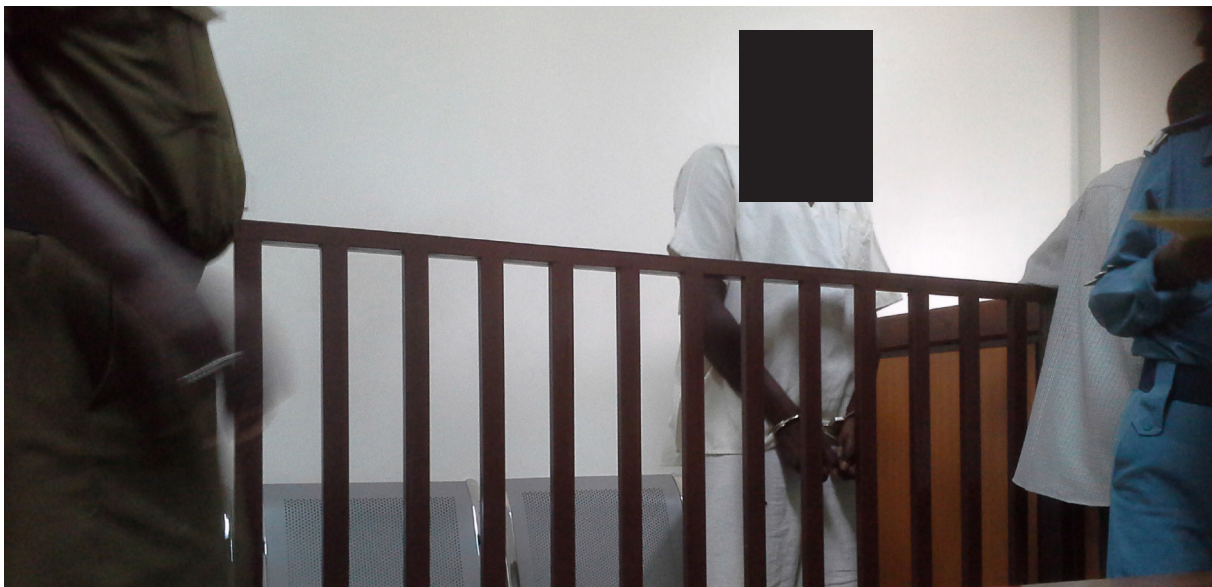


Figure 2: The picture above shows an inmate in handcuffs while attending a court session.

¹²²UN Economic and Social Council, 1996/15: Safeguards guaranteeing the protection of rights of those facing the death penalty, July 23, 1996.

¹²³Op. cit., ACJPS and Redress, Sudan's human rights crisis, para. 121.

¹²⁴On 17th December 2015, Resolution A/RES/70/175, calling for the revision of the Standard Minimum Rules for the Treatment of Prisoners was adopted by the UN General Assembly. In addition to the revision of the text, the rules are now referred to as the Nelson Mandela Rules. The Nelson Mandela Rules are available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/175

¹²⁵Rule 43-45 on solitary confinement and rule 47 for instruments of restraint under the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).

A former death row inmate, A.H.A., told ACJPS that, "while I awaited the court's decision on my case, I was treated like a normal prisoner. After my conviction, I was handed a prison uniform and put in a separate cell which measured 3x4 meters with a door and small window. The cell was overcrowded because we were six inmates in there. We wore shackles while in the cell and these 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."¹²⁶

Ms. Meriam Yahya Ibrahim who was nine months pregnant at the time of her incarceration was shackled whilst in Omdurman Women's Prison. It was later reported that Ms. Ibrahim stated that she gave birth under atrocious conditions and was denied any medical attention besides a mid-wife who was selected by prison authorities.¹²⁷ Ms. Ibrahim stated that she gave birth to her daughter, Maya Ibrahim, while shackled with chains. She testified that because she was shackled, she could not open her legs and she had to be lifted off the table.¹²⁸ As a result of the circumstances of her daughter, Maya Ibrahim's birth, Ms. Ibrahim feared that her daughter could suffer lasting damage, and was uncertain whether she would need support to walk in the future.¹²⁹

In regards to accommodation of prisoners, the UN Standard Minimum Rules (Mandela Rules) provide that places where prisoners live or work shall have large windows to enable natural light to come through and shall be constructed to allow entrance of fresh air whether or not there is artificial ventilation.¹³⁰



Figure 3: The picture above shows Armata Prison's dilapidated infrastructure.

¹²⁶ ACJPS Sources.

¹²⁷ Strategic Initiative for women in Horn of Africa, Meriam gives birth in Omdurman Women's Prison in Khartoum: Incarcerated family of three denied medical care by prison authorities despite Sudanese international and constitutional obligations, 27 May 2014, available at: <http://www.sihanet.org/news/meriam-ibrahim-gives-birth-omdurman-womens-prison-khartoum-incarcerated-family-three-denied>.

¹²⁸ Washington Post, 'Meriam Ibrahim says baby may be disabled because "I gave birth chained"', 2 July 2014, available at <http://www.washingtonpost.com/news/morning-mix/wp/2014/07/02/meriam-ibrahim-says-baby-may-be-disabledbecause-i-gave-birth-chained/>.

¹²⁹ First Complainant's interview with CNN, 'Sudanese Christian woman: 'There's a new problem every day', 1 July 2014, ('First Complainant's interview with CNN'), available at: <http://edition.cnn.com/2014/07/01/world/africa/sudan-apostasycase/>.

¹³⁰ Rule 14 of the UN Standard Minimum Rules on the Treatment of Prisoners.

In Kober Prison, Khartoum, there are 7 cells for death row prisoners measuring 2x2 meters with no windows, resulting in a lack of ventilation and airflow.¹³¹ There are high openings between the cells that are covered by bars. However they are too small to allow for adequate airflow resulting in a condition of stagnant air. Under these conditions, prisoners are held in their cells every day from 4pm until 8am the next day.

When the date of execution is approaching, the prison authorities inform an inmate three to four days in advance. During this period, the inmate is afforded the opportunity to communicate with whomever he or she wishes at his or her own cost. The prison director usually comes into the cell and takes the inmate to a separate room to communicate with his family members.

A.H.A, a former death row inmate, describing his experience at Madani Prison told ACJPS that once an inmate is taken from the cell to be executed, the whole cell falls silent. Each inmate retreats to his own thoughts and no one wants to speak to another. He further explained that once he learned that he could be executed that was all he could think of. Fortunately, the High Court set aside the decision of the first and second court and he was then transferred to Kosti Prison.

The concept of the 'death row phenomenon' which considers a number of factors on death row that might give rise – separately from the implementation of the penalty itself- to human rights violations, has gained increasing international recognition by regional and domestic tribunals. The death row phenomenon has been referred to as “a combination of circumstances that produces severe mental trauma and physical suffering among prisoners serving death sentences, including uncertainty and anxiety created by the threat of death and other circumstances surrounding execution, prolonged solitary confinement, poor prison conditions and lack of educational or recreational activities”.¹³² In its landmark decision in the case of *Soerring v The United Kingdom of 1989*, the European Court of Human Rights found that a combination of factors, including delay in the execution of the death penalty following sentencing (regardless of whether delays were caused by appeals submitted by the detainee), conditions on death row, and the detainee's age and mental state, could expose the individual in question to treatment that contravened the prohibition of torture or inhuman or degrading treatment or punishment under the European Convention on Human Rights.¹³³

A similar concept that has gained recognition by domestic courts on the African continent would be the “death row syndrome”. Though these two concepts have been used interchangeably it has been stated that they describe different conditions. The death row syndrome has been described as “the resulting psychological harms of that experience or the set of psychological effects for inmates that can result from extended periods of time spent on death row, in harsh conditions, coupled with the unique stresses of living under sentence of death”.¹³⁴

In 2010, six members affiliated with the Justice and Equality Movement (JEM) were

¹³¹ Information on file with ACJPS further to prison visits in 2013.

¹³²United Nations Office of the High Commissioner on Human Rights, Death penalty increasingly viewed as torture, UN Special Rapporteur finds, October 23, 2012, available at; <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12685&LangID=E>.

¹³³European Court of Human Rights, *Soerring v. the United Kingdom*, judgment of 7 July 1989, The court held, “having regard to the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant's extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3 [prohibition of torture or inhuman or degrading treatment or punishment under the European Convention on Human Rights]”.

¹³⁴Amy Smith, 'Not waving but drowning: the anatomy of death row syndrome and volunteering for execution', 21 May 2008, available at; <http://www.bu.edu/law/central/jd/organizations/journals/pilj/vol17no2/documents/17-2SmithArticle.pdf>.

sentenced to death. The case has exhausted all appeal stages and is currently before the Constitutional court awaiting a ruling. The members were arrested in 2008 and have been incarcerated since. Since their conviction, they have spent about four years on death row. Bearing in mind that all prisoners on death row are shackled during their entire incarceration, one can only imagine the mental anguish that these six prisoners are going through as they await the constitutional court ruling.

Different jurisprudence has been developed as to what would constitute a prolonged stay for purposes of the death row syndrome. The Supreme Court of Uganda held that any period beyond three years would constitute inordinate delay.¹³⁵ The Supreme Court in Zimbabwe ruled that five years delay on the death row in demeaning physical conditions went beyond what was constitutionally permissible.¹³⁶

135 *Susan Kigula & 416 others v Attorney General* (Constitutional Petition No. 6 of 2003).

136 *Catholic Commission for Justice and Peace in Zimbabwe v Attorney General and others* (1993) 2 LRC 279.

9. Conclusion and Recommendations

The death penalty is still recognized as a lawful sanction under international law. However, state parties to the ICCPR are under an obligation to restrict its application to the most serious of crimes. Sudan is no exception to this. As has already been highlighted above, many crimes that attract the death penalty in Sudan's law fall short of crimes going beyond intentional crimes with lethal or extreme grave consequences to justify the application of the death sentence.

The discriminatory application of the laws in Sudan has adverse effects on the protection of the right to life especially where the death penalty is applicable. This is in contravention with the Interim National Constitution as well as Sudan's international obligations.

Sudan is, therefore, under obligation to review its criminal laws and ensure they are in line with its international and regional commitments.

Taking all this into consideration, ACJPS urges the Government of Sudan to:

1. Limit the offences that attract the death penalty to the 'most serious' crimes standard.
2. Set a time period for the amount of time to be spent by prisoners whose death sentences have been confirmed by the highest appellate court. After this time has elapsed, the authorities should commute the sentence to life imprisonment.
3. Strengthen fair trial standards for offences that carry the death penalty.
4. Reform the existing criminal laws in order to comply with its international and regional obligations, and ensure that all laws are in line with the Constitution, the supreme law of the land.
5. To abolish the death penalty for offenders below 18 years including those who have committed *qisas* (retribution) or *hudud* offences and replace the death penalty with an appropriate sanction.
6. The President of Sudan should exercise his power of pardon and remission under article 58 (1) (l) of the Interim National Constitution and article 208 and 209 of the 1991 Criminal Procedure Act and grant pardons to death row inmates.
7. The Government of Sudan should publicise the number of inmates who are on death row and those that have been executed on a biannual basis. It should also allow civil society organisations to inspect and monitor detention centers that hold death row inmates.

African Centre for Justice and Peace Studies

1483 New York, No. 20463

New York, NY 10021

USA

OR

P.O. Box 36617, Kampala-Uganda

Email: info@acjps.org