

Potential Paths Towards Ending Capital Punishment in South Sudan

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By Elizabeth Ashamu and David Deng

When the Republic of South Sudan declared independence in July 2011, it joined the ranks of a small handful of African countries that continue to carry out judicial executions. On August 21, two men were hanged to death in Juba Central Prison. A total of at least eight people have been executed in South Sudan in the 13 months since independence, and close to 200 prisoners are on death row. In light of the global trend towards abolition of the death penalty, the government of South Sudan should reconsider its use of capital punishment.

There are several potential paths for reform.

South Sudanese law requires the Supreme Court to review and confirm all death sentences. There is evidence that this process is already helping to limit the number of executions, at least in cases involving egregious miscarriages of justice. In a recent decision overturning the death penalty convictions of four people, Deputy Chief Justice Reuben Madol wrote: "This is a sad case in the annals of South Sudan's Judiciary...It is inconceivable that a fair-minded judge can sentence four people to death in a two-page judgment that was supported by unreliable and hearsay evidence."

Supreme Court review is providing an important check on the cavalier use of the death penalty by lower court judges, but the nation's highest judicial body can take an even more decisive stance. The vast majority of people being sentenced to death in South Sudan cannot afford to hire a lawyer, and there is no functioning system of legal aid. Without counsel, defendants are unable to challenge evidence and to call and prepare witnesses in their defense. Since the right to counsel is a fundamental element of a fair trial, the Supreme Court should refuse to confirm death sentences of people who have not had legal representation.

The Supreme Court could even go as far as to find that the death penalty constitutes cruel and inhuman punishment and violates the right to life. South Africa's Constitutional Court came to this determination in the first years of the post-apartheid era; when it held that the death penalty was unconstitutional and that the state should no longer sanction death.

As no death sentence can be executed without presidential approval, the president can still stop an execution even if the Supreme Court confirms a death sentence. President Salva Kiir is said to be extremely uncomfortable signing death warrants. He could singlehandedly put in place a moratorium on the death penalty by simply refusing to sign any more hanging orders.

If the government proves reluctant to initiate reform, civil society may have to take the lead. Indeed, voices against the death penalty are already emerging in South Sudan. Many South Sudanese are Christian and oppose the death penalty on religious grounds. Others contend that the death penalty, introduced under British colonial rule, is incompatible with the customs and traditions of the people of South Sudan. Under the customary laws of most communities, people found guilty of murder must pay compensation to the family of the deceased, a remedy designed to restore relationships rather than to exact retribution by taking away the wrongdoer's life.

The process of developing a permanent constitution for South Sudan may provide an opportunity for those opposed to the death penalty to voice their position. In January, the president established a constitutional review commission with the mandate to develop a permanent constitution with due regard to the views of the public. The death penalty has already surfaced as a contentious issue in this process, as it did during the drafting of the 2005 interim constitution and the 2011 transitional constitution. If opponents of capital punishment can manage to secure a constitutional prohibition of the death penalty, this would be the most absolute and decisive step possible for reform.

In October, United Nations member states will cast their votes on whether or not to endorse a moratorium on the death penalty. Whatever position South Sudan takes, the global trend towards abolition will eventually persuade the government of South Sudan, along with the other nations that continue to administer judicial executions, to stop killing its own citizens. The only question that remains is how many more people will be hanged before this occurs.

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