7th World Congress Against the Death Penalty

Strategies towards abolition: challenges and opportunities in Sub-Saharan Africa - Sudan

28 February 2019
Egmont Palace - Brussels, Belgium

Mr. Mossaad M. Ali
African Centre for Justice and Peace Studies (ACJPS)
Introduction

- The government of Sudan continues to implement the death penalty widely in spite of its regional and international obligations.
- Sudan is reported to be the highest ranking state implementing excusions in Africa. In 2014 was ranked sixth among the top executing countries in the world.
- Death penalty implemented by hanging, stotoing or cruxfiction
The Crimes that carry death penalty under Sudanese Criminal Act 1991

- Crimes against the state: undermining of the Constitutional Order (article 50), instigation of war (article 51) and espionage (article 53).
- Apostasy (article 126 (1) & (2))
- Crimes against body and soul: murder (article 130) and instigation of a minor or insane person to commit suicide (article 134).
- Crimes of honour, public morality and reputation: adultery where the offender is married, (article 146 (1));
- Sodomy where the offender is convicted for the third time, (article 148 2 (c));
- Rape that constitutes adultery or sodomy, (article 149 (3));
- Running a place for prostitution, (article 155 (3)).
Other legislations that prescribe death penalty in Sudan

- *Firearms and Ammunitions Act, 1986.*
- *Drugs and Narcotics Act, 1994.*
- *The National Security Act, 2010.*
- *Armed Forces Act, 2007.*
- *Combating Human Trafficking Act 2013.*
Situation of death penalty-recent statistics

- **Executions:**
  - Sudan continues to implement the death penalty by different ways.
  - ACJPS research took place between 2017-2018 show the execution of 26 people in one region (5 in North Darfur and 21 in West Darfur).
  - During its state reporting to the Committee on Civil and Political Rights, the Government of Sudan states that in 2017, 9 executions were executed.

- **Persons on death row:**
  - In June 2018, ACJPS documented 49 people (48 male and 1 female) in detention in Aldalang Prison in South Kordofan. All inmates had been charged with murder under the Criminal Act. 8 male inmates had their sentences approved by the High Court and were to be transferred to Al Obeid in North Kordofan for execution. 11 of the inmates including the only female inmate had their cases pending before the Aldalang Criminal court since 2017.
  - ACJPS also documented 6 people on death row in West Darfur in June 2018. All had been convicted of murder.
  - In Khartoum, ACJPS documented the case of one female on death row who had been convicted of murder in 2016.
Situation of 22 South Sudanese sentenced to death

- On 6 April 2016 the Special Terrorism Court in Khartoum, sentenced twenty-two South Sudanese nationals who were formerly members of the Darfuri rebel Justice and Equality Movement – Bakhiet Abdulkariem Dabajo wing (JEM – Dabajo) to death after convicting them of a number of offences, including crimes against the state that carry the death penalty.

- The group was convicted after they admitted to engaging in armed combat with the Sudanese Armed Forces (SAF) on various dates between 2004 and 2013.

- Three other South Sudanese nationals were sentenced to life imprisonment after they admitted to serving as cooks and mechanics for the JEM – Dabajo wing.

- ACJPS believes that the prosecution in the JEM-Dabajo case was politically motivated in light of a renewed deterioration in the relationship between Sudan and South Sudan and the continuous accusations between the two states regarding support to each other’s rebel groups. Moreover the death sentences came immediately after Sudan’s President Omar al-Bashir ordered the closure of Sudan’s border with South Sudan at the end of March 2016, just three months after it had been ordered opened.
Reasons behind the release of the 22 S. Sudanese.

- The defendants were protected by an amnesty for all members of the JEM-Dabajo wing issued by Presidential Decree on 6 April 2013, immediately after the government of Sudan and JEM signed the Doha Document for Peace in Darfur.

- The convictions before Sudan’s Special Terrorism Courts, has raised serious concerns about the right to a fair trial because

- The admissibility of evidence obtained under torture before Sudan’s Special Terrorism Courts violates the right to fair trial, and the defendants have been subjected to severe torture and accordingly they confessed against themselves and the court has not investigated the circumstances under which confessions were made.

- The rules of procedure before the Special Terrorism Courts restrict the right of defence lawyers to meet accused persons and thus the lawyers had been denied access to their clients during the investigation stage of the procedures. They have met them for the first time during the trial stage.

- According to the 2001 Terrorism Act, the Special Terrorism Courts afford a very limited right to appeal.
The ACHPR plays a critical role in defining the violations by the government of Sudan for the African Union as an institution.

For this reason, ACJPS works to ensure that NGOs are represented at the Commission sessions and that ACJPS’s expertise in death penalty abolition in Sudan are fed into statements made at the Commission session by members of NGOs and during the Side events.

Strategic litigation by submitting legal cases and communications before the ACHPR in order to challenge the laws that prescribe death penalty in Sudan.
Challenges for advocacy before ACHPR

- The modest institutional and financial capacity of the ACHPR
- Delay in the procedures before ACHPR
- Absence of mechanisms for the implementation of the ACHPR’s decisions or orders
Opportunities for advocacy before UN Human Rights Council and UN Human rights Committee

- **United Nations Human Rights Council (UNHRC):** Is an important forum in which to ensure that the human rights situation is highlighted.

- Research, write, and submit a stakeholder report the death penalty in Sudan before the Universal Periodic Review (UPR).

- Before the review, NGOs could lobby UN member countries to educate their representatives on issues and concerns around death penalty to be raised during the review.

- Hold a press conference or write a press release during the review.

- Host a side event during the review.

- Lobby the government to accept recommendations after the review.

- Complaints before the UN Human Rights Committee.
Opportunities to use the UNHRC special procedures to address the death penalty

- The results of the on-going monitoring on death penalty could be brought to the attention of the Council at each UNHRC session.
- First, advocates can prepare and present written information when the Special Procedure is studying a particular issue or conducting a country visit.
- Second: assist with hosting the mandate-holder and providing support for arranging meetings with relevant stakeholders during a country visit.
- Third: meet in person with the Special Procedure to provide first-hand information about human rights issues including the death penalty.
- Fourth: request an examination of a particular human rights issue or request a country visit to investigate an issue of concern.
- Fifth: submit a communication—either an “urgent appeal” or a non-urgent allegation letter—to the Special Procedure about an alleged human rights violation including the death penalty.
Challenges for advocacy before UN human rights mechanisms

• Restrictions of the freedom of movement and prevention of the activists from travelling to attend UNHRC or ACHPR sessions

• Lack of credibility, because during the previous UPRs Sudan accepted recommendations to become party to the Convention against Torture but has not done so to date

• The government is lobbying aggressively to reverse the Council's determination to put Sudan under the Council's special procedures (Sudan has been under special procedures since 1993 and then turned to item 10 since 2013).
Opportunities for advocacy at domestic Level

- Publication of evidence based advocacy materials on death penalty
- Digital campaigns thorough different social media platforms to gradually advocate for the abolition of death penalty
- Awareness raising for the general public on the rights to life as a human rights
- Open dialogue with religious leaders
Challenges for advocacy at domestic Level

- The Islamic Sharia as the main source of legislation in Sudan and religious dimension of the death penalty
- Closure and expulsion of human rights NGOs
- Restrictions on media freedoms including the speech on abolition of death penalty.
- Arbitrary arrest and detention of human rights activists and defenders
- Serious charges against the activists including crimes against state that carry death penalty
Recommendations for gradual abolition of the death penalty

- Limit the offences that carry death penalty to the most serious crimes standard.
- Strengthen fair trial standard for offences that carry death penalty
- Reform the criminal laws in order to comply with regional and international obligations
- To abolish death penalty for offenders below 18 years
- The government of Sudan should publicise the number of inmates are on death row and those who have been executed
Strategies to overcome the challenges for NGOs to advocate for abolition of death penalty

- Work closely with regional and international policy makers to put pressure on Sudan to:
  - Guarantee the rights to freedom of expression and association and investigate all allegations of intimidation and arbitrary detention of activists.
  - Amend without delay the laws that restrict media freedoms
  - Ensure NGOs are able to operate freely and their members are able to fully exercise the right to freedom of expression including issues elate to death penalty.