

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	615
Land:	Den Demokratiske Republik Congo
Kilde:	Amnesty International
Titel:	Death Sentences and Executions 2019
Udgivet:	21. april 2020
Optaget på baggrundsmaterialet:	11. maj 2020

SUB-SAHARAN AFRICA

REGIONAL TRENDS

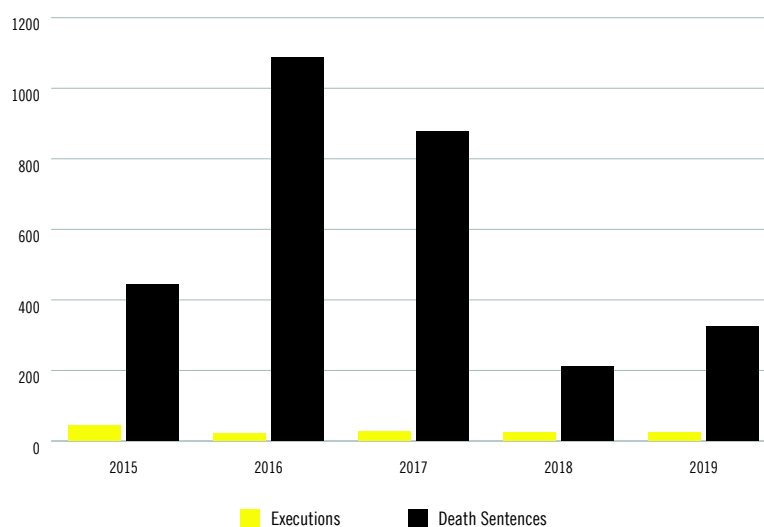
- The same four countries – Botswana, Somalia, South Sudan and Sudan – that carried out executions in 2018 did so in 2019.
- Recorded executions increased by one, compared to 2018, despite a decrease in recorded executions in three out of these four countries; only South Sudan recorded an increase.
- Recorded death sentences went up by 53% due to increases in 10 countries.
- Positive signs towards abolition of the death penalty were recorded in five countries.

COUNTRY	2019 RECORDED EXECUTIONS	2019 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2019
Botswana	1	4	7
Burkina Faso	0	0	+
Cameroon	0	0	+
Central African Republic	0	0	
Chad	0	0	4+
Comoros	0	0	
Democratic Republic of the Congo	0	8	48+
Equatorial Guinea	0	0	
Eritrea	0	0	
Eswatini (former Swaziland)	0	0	1
Ethiopia	0	0	
Gambia	0	1	1
Ghana	0	8	168
Guinea	0	0	15+ ¹²⁵
Kenya	0	29+	1,000+
Lesotho	0	0	+
Liberia	0	0	
Malawi	0	8	23
Mali	0	4+	+
Mauritania	0	8	123

¹²⁵ Although Guinea abolished the death penalty for all crimes in 2017, some prisoners remained under the sentence of death at the end of 2019. In November 2019, Amnesty International visited prisons in Guinea and documented 15 people under the sentence of death, 12 in Kindia and three in Conakry. The death sentences of these prisoners had not been commuted and more prisoners in this category could be in other prisons in the country.

COUNTRY	2019 RECORDED EXECUTIONS	2019 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2019
Niger	0	8	0
Nigeria	0	54+	2,700+
Sierra Leone	0	21	63
Somalia	12+	24+	+
South Sudan	11+	4+	338+
Sudan	1	31+	115+
Tanzania	0	4+	500+
Uganda	0	2	133
Zambia	0	101	393
Zimbabwe	0	6	89

EXECUTIONS AND DEATH SENTENCES RECORDED IN SUB-SAHARAN AFRICA 2015-2019

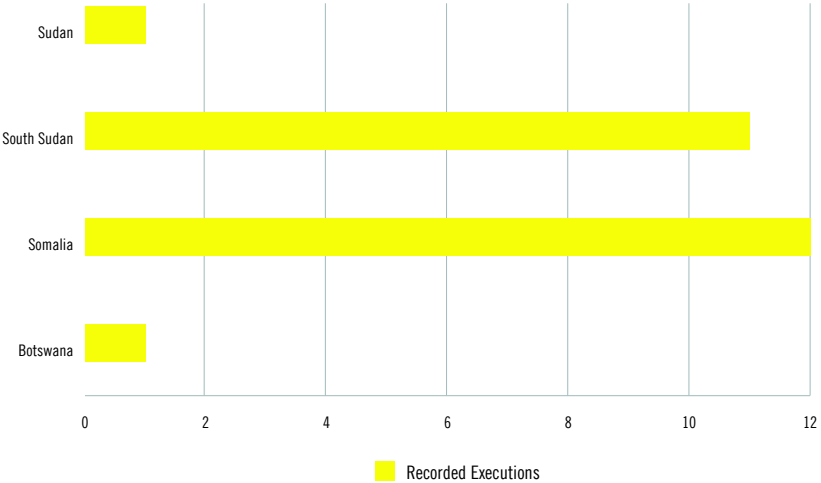


Amnesty International recorded a slight increase in the number of executions in the sub-Saharan Africa region in 2019; 25 executions were confirmed compared to 2018 when 24 were recorded. Botswana, Somalia, South Sudan and Sudan carried out executions in 2019, just as they did in 2018. Recorded executions went down by one in Botswana, Somalia and Sudan. However, in South Sudan recorded executions increased by 57%, from 7+ recorded in 2018 to 11+ in 2019.

The number of confirmed death sentences in the region went up by 53%, from 212 in 2018 to 325 in 2019. This was due to increases in Kenya (12+ to 29+); Malawi (0 to 8); Mauritania (3 to 8); Niger (0 to 8); Nigeria (46+ to 54+); Sierra Leone (4 to 21); Somalia (15+ to 24+); Sudan (8 to 31+); Zambia (21+ to 101); and Zimbabwe (5+ to 6). Death sentences were confirmed in 18 countries in 2019, an increase of one compared to 2018.

Positive actions or pronouncements which may lead to the abolition of the death penalty were recorded in Central African Republic, Equatorial Guinea, Gambia, Kenya and Zimbabwe.

RECORDED EXECUTIONS IN SUB-SAHARAN AFRICA 2019



NOTABLE COUNTRY DEVELOPMENTS

The government of **Botswana** informed Amnesty International that one execution was carried out, four death sentences were imposed, and seven people were under the sentence of death at the end of the year. The government added that no commutations or pardons were granted, no one under the sentence of death was exonerated and no foreign national was under the sentence of death in the country. The Prison Service announced the execution of Mooketsi Kgosibodiba through a statement on 2 December, stating that he was executed at the Gaborone Central Prison in the “morning”. He was convicted for the murder of his employer in 2012 and was sentenced to death by the Francistown High Court in December 2017; his appeal was dismissed by the Court of Appeal in July 2018. Kagiso Molefe, who was facing the death penalty after being convicted of murder, was not sentenced to death. On 11 April, the High Court in Lobatse, during a ruling on extenuation, ruled that it was “satisfied that there are extenuating circumstances which abate the moral blameworthiness of the accused entitling the court to impose a sentence other than death.” The Court sentenced him to 20 years’ imprisonment.

In March, the Speaker of the National Assembly of the **Central African Republic**, Honourable Laurent Ngon-Baba, was reported to have issued a decision to establish a joint committee to examine a bill on the abolition of the death penalty.¹²⁶

On 15 April, the President of **Equatorial Guinea**, President Teodoro Obiang Nguema, announced in Praia, Cabo Verde, that he would soon submit to the country’s Parliament a bill to abolish the death penalty, as required by the Community of Portuguese Language Countries. Amnesty International was unable to confirm at the end of the year that the bill had been sent to Parliament.

The government of **Eswatini** informed Amnesty International that no death sentence was imposed, and that no execution was carried out. The last execution was carried out in 1983, and since that year a total of 45 people have been sentenced to death, 44 of whom have had their death sentences commuted to life imprisonment during that period. The last person remained under the sentence of death at the end of the year.

In May, the Attorney-General and Minister of Justice of **Gambia** announced that President Adama Barrow had commuted the death sentences of 22 prisoners to life imprisonment. These prisoners represented the number of people under the sentence of death at the end of 2018. The only death sentence recorded in the country was imposed in July by the High Court against Pap Ibrahim Khalilulaye Thiam, a Senegalese national, for murder.¹²⁷ In November, Gambia’s Constitutional Review Commission (CRC) published a draft constitution for the country.¹²⁸ The Chairman of the CRC, Justice Cherno Suluyman Jallow, emphasized that while reviewing the current constitution, the CRC considered international treaties that Gambia is a party to and its international legal obligations. One notable development in the draft constitution is the removal of the provision in the current constitution which allows for the death penalty as an exception to the right to life. Section 37(1) of the draft constitution provides: “A person shall not be deprived of life intentionally.” As a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Gambia has a legal obligation to take all necessary measures to abolish the death penalty within its jurisdiction.¹²⁹

126 Parliamentarians for Global Action, *Central African Republic and the death penalty* (News story, March 2019), www.pgaction.org/ilhr/adp/caf.html

127 “Senegalese sentenced to death for strangling woman”, *The Standard*, 25 July 2019, <https://standard.gm/senegalese-sentenced-to-death-for-strangling-woman/>

128 “Gambia publishes first draft constitution”, *The Voice*, 16 November 2019, www.voicegambia.com/2019/11/16/gambia-publishes-first-draft-constitution/

129 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Art.1(2)

The **Ghana** Prisons Service informed Amnesty International that no executions were carried out and the courts sentenced eight people to death in 2019. At the end of the year, 168 people were under sentence of death, including six foreign nationals from Benin (1), Burkina Faso (2) and Nigeria (3). Twelve people had their death sentence commuted to life imprisonment and one person was pardoned. The last execution recorded in Ghana was in 1993.

In **Kenya**, the Task Force on review of the mandatory death sentence under section 204 of the Penal Code, which was set up on the orders of the Supreme Court in the case of *Francis Karioko Muruatetu and Wilson Thirimbi Mwangi v. Republic*, published its report in October.¹³⁰ The Task Force was given the responsibility of preparing “a detailed professional review with regard to the death penalty in the context of the Judgment and Order of the court, set up a legal framework to deal with resentencing of capital offenders, formulate parameters of what ought to constitute life imprisonment, review the legislative framework on death penalty in Kenya with a view to formulate amendments, and propose law to give effect to the Judgment.”¹³¹

The Task Force noted in its report that following the judgment in *Muruatetu*, and before its work was completed, many people who were under the sentence of death for murder before the mandatory death sentence was abolished had made applications to the courts for re-sentence hearing. Some of the applications had been assigned for hearing in the future; some had become final and the petitioners had been either released from prison, re-sentenced to a definite term in prison or had the original death sentence confirmed. At least 1,148 petitions for re-sentencing had been received by the court, at least 107 had been dismissed for a lack of jurisdiction, and at least 67 had been decided.

The Task Force made the following key findings:¹³²

1. The death penalty is not an effective deterrent (it does not stop people from committing capital offences);
2. There is growing consensus that extended time on death row, if not the death penalty itself, constitutes inhuman punishment in violation of international law, regional law and most modern constitutions including those similar to Kenya’s;
3. The world – but more specifically African countries – is moving toward abolition at a minimum with respect to all but the most serious crimes;
4. The justice system is not perfect, and this leads to a disproportionate number of poor or vulnerable persons, many who are in fact innocent, being sentenced to death; and
5. Kenyans, when presented with the reality of injustice and hardship faced by people in the correctional system, and the truth about the humanity and fallibility of many who are incarcerated, are willing to accept that offenders can reform their lives and become productive members of society.

The Task Force recommended that: Parliament abolish the death penalty entirely; life imprisonment be substituted where the Penal Code previously provided for the death penalty, with the option of life imprisonment without parole for the most serious of crimes; if not abolished, the death penalty should only be reserved for the rarest of rare cases involving intentional and aggravated acts of killing; the current Sentencing Policy Guidelines be enacted as regulations in order to have the force of law, in addition to formulation of Re-sentencing Regulations to guide the sentencing and re-sentencing processes; and a new system of parole for offenders serving a life sentence, including a clear definition and degrees of offences for purposes of determining eligibility for parole, is established.

130 The Supreme Court of Kenya in this case abolished the mandatory death penalty for murder in December 2017

131 Report of the Task Force on Review of the Mandatory Death Sentence under Section 204 of the Penal Code, Vol. 1, p. 3

132 Report of the Task Force on Review of the Mandatory Death Sentence under Section 204 of the Penal Code, Vol. 1, p. 108

The government of **Malawi** informed Amnesty International that no executions were carried out and that five death sentences were imposed. However, the media reported the imposition of eight death sentences; all were imposed for the murder of people with albinism. According to the government, 23 people were under the sentence of death at the end of the year; one was a foreign national (from Mozambique).

Willard Mikaele was convicted of the murder of a person with albinism on 19 March and sentenced to death on 3 May; he was arrested in Mozambique on 12 January 2017. The court imposed the death sentence citing the prevalence of attacks against people with albinism in the country and the court's obligation to protect them.¹³³ In August, a court in the western town of Mchinji convicted and sentenced three people – Douglas Mwale, Fontino Folosani and Sophie Jere – to death for killing a person with albinism.¹³⁴ In December the High Court in Lilongwe convicted and sentenced four people – Gerald Phiri, Medson Madzialenga, Jesmon Baluwa and Steven Ching'ombe – to death for killing a 21-year-old woman with albinism in Dowa in 2016.¹³⁵

The authorities in **Mauritania** informed Amnesty International that no executions were carried out, eight death sentences were imposed, one commutation was granted, and 123 people – including 15 foreign nationals – were under the sentence of death at the end of the year.

In **Niger**, the eight death sentences imposed during the year were commuted by presidential decree, on independence day, in December.

No execution was recorded in **Nigeria** but at least 54 death sentences were imposed. At least 67 people had their death sentence commuted to life imprisonment and at least 13 people were pardoned. Amnesty International estimates that at least 2,700 people were under the sentence of death at the end of the year. In May, following an amendment of relevant sections of the Penal Code, the death penalty was introduced for kidnapping and cattle rustling in Katsina State.¹³⁶ In June, Taraba State introduced the death penalty for kidnapping.¹³⁷ In Lagos State, the then Governor, Akinwunmi Ambode, commuted 20 death sentences to life imprisonment in April,¹³⁸ while the incumbent, Babajide Sanwo-Olu, commuted three death sentences to life imprisonment in December.¹³⁹

According to the data provided by the Correctional Service of **Sierra Leone**, no execution was carried out; 21 death sentences were imposed by the courts for murder and conspiracy to murder; and 63 people were under the sentence of death at the end of the year. On 14 November, a High Court in Freetown convicted and sentenced 18-year-old Osman Kamara to death by hanging after the jury found him guilty of the murder of a 22-year-old man during a fight at a nightclub.¹⁴⁰

133 *Republic v. Willard Mikaele*, Homicide Case no. 238 of 2018

134 Malawi: 3 sentenced to death over killing of person with albinism", Aljazeera, 15 August 2019, www.aljazeera.com/news/2019/08/malawi-3-sentenced-death-killing-person-albinism-190815084058460.html

135 "Four sentenced to death killing albinos", The Nation, 2 December 2019, <https://mw-nation.com/four-sentenced-to-death-killing-albinos/>

136 "Masari approves death penalty for kidnappers, rustlers in Katsina", *The Guardian*, 25 May 2019, <https://guardian.ng/news/masari-approves-death-penalty-for-kidnappers-rustlers-in-katsina/>

137 "Taraba okays death penalty for kidnappers", *Punch*, 5 July 2019, <https://punchng.com/taraba-okays-death-penalty-for-kidnappers/>

138 Lagos State, "Lagos pardons 14 inmates, commutes 20 death sentences to life imprisonment" (News story, 28 April 2019), <https://lagosstate.gov.ng/blog/2019/04/28/lagos-pardons-14-inmates-commutes-20-death-sentences-to-life-imprisonment/>

139 "Christmas: Governor commutes death sentences of three, pardons six others", Premium Times, 26 December 2019, www.premiumtimesng.com/regional/ssouth-west/369904-christmas-governor-commutes-death-sentences-of-three-pardons-six-others.html

140 "18-year-old sentenced to death by hanging", *Awoko*, 19 November 2019, <https://awokonewspaper.com/18-year-old-sentenced-to-death-by-hanging/>

In **South Sudan**, at least 11 people were executed (four more than were known to have been executed in the country in 2018). This was the highest recorded number in South Sudan in any year since the country's independence in 2011. Seven men were executed in February, three of whom were from the same family. The authorities did not inform the family of the three related men before they were executed. Of the seven people, six were executed in Juba Central Prison, while one was executed in Wau Central Prison. In September, four people were executed; two men were executed in Juba Central Prison on 27 September and two were executed in Wau Central Prison on 30 September. One of the two executed on 30 September had been sentenced to death by the High Court in Tonj on 29 November 2018 for murder. The other was a child at the time of the crime. He was about 17 when he was convicted and sentenced to death by the High Court in Lakes State on 10 September 2015.

At least four death sentences were imposed in 2019. On 8 March, death sentences were imposed on three soldiers by the Military Court for killing two civilians in their homes in 2018.¹⁴¹

At the end of the year, Magai Matiop Ngong, now 18 years old, who was just 15 when he was sentenced to death, remained on death row and at risk of execution. The use of the death penalty against people who were children at the time of the crime is strictly prohibited under international human rights law and South Sudan's 2011 Transitional Constitution. Article 21(2) of the Constitution states that "No death penalty shall be imposed on a person under the age of eighteen". Article 37(a) of the Convention on the Rights of the Child, to which South Sudan is a party, stipulates that "neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age".

South Sudan's Penal Code provides for the use of the death penalty for murder; bearing false witness resulting in an innocent person's execution or for fabricating such evidence or using as true evidence known to be false; insurgency, banditry, sabotage or terrorism resulting in the death of a person; aggravated drug trafficking; and treason. Hanging is the method of execution provided for in the Code of Criminal Procedure. Before a person sentenced to death can be executed, the Supreme Court and the President must confirm the death sentence.

In **Sudan**, the at least 31 death sentences recorded were a significant increase on the eight death sentences recorded in 2018. Sudan's Transitional Military Council (TMC) issued 25 pardons as "part of the implementation of the measures aiming to create confidence-building measures aiming to achieve peace in Sudan as provided in the agreements reached by the TMC and the Forces for Freedom."¹⁴²

No executions were carried out in **Tanzania**, but at least four death sentences were imposed by the courts. In June a Bukoba High Court sentenced three Muslim men to death for decapitating four Christians in November 2015 during an outbreak of violence.¹⁴³

In July, a High Court in Dar es Salaam declared that the mandatory death penalty in Tanzania is constitutional and that it could not depart from an existing decision of the Court of Appeal that the death penalty was constitutional. In contrast, on 28 November, the African Court on Human and Peoples' Rights delivered judgment in the case of *Ally Rajabu and Others v. United Republic of Tanzania*.¹⁴⁴ The Court held that Section 197 of the Tanzania Penal Code which provides for mandatory

141 "South Sudan military court sentences soldiers to death for killing civilians", The EastAfrican, 8 March 2019, www.theeastafrican.co.ke/news/ea/Death-sentences-for-South-Sudan-soldiers-for-killing-civilians/4552908-5016018-q2jhy7/index.html

142 "TMC overturns death sentences against Sudan's rebels", Sudan Tribune, 9 August 2019, www.sudantribune.com/spip.php?article67910; "Sudan drops 8 Darfur rebel death sentences to 'build confidence'", France24, 19 September 2019, www.france24.com/en/20190919-sudan-drops-8-darfur-rebel-death-sentences-to-build-confidence

143 "Tanzanian court sentences 3 Muslims to death for murder", SowetanLIVE, 20 June 2019, www.sowetanlive.co.za/news/africa/2019-06-20-tanzanian-court-sentences-3-muslims-to-death-for-murder/

144 The African Court on Human and Peoples' Rights is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned.

death sentence violates the right to fair trial and right to life which are protected in Article 7(1) and Article 4 of the African Charter on Human and Peoples' Rights.¹⁴⁵ The Court emphasized that the mandatory death sentence for murder in Section 197 of the Tanzania Penal Code constitutes an arbitrary deprivation of the right to life and that Tanzania had violated Article 4 of the African Charter.¹⁴⁶

On 4 November, President Yoweri Museveni of **Uganda** signed into law the Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Act 2019. The Act amended the Penal Code Act and the Anti-Terrorism Act, 2002 to: remove the mandatory death penalty prescribed by these laws;¹⁴⁷ restrict the death penalty to the most serious crimes under those laws; remove the restriction on mitigation in the case of convictions that carry a death penalty; and define life imprisonment or imprisonment for life. The Act provides that "the court may only pass a sentence of death in exceptional circumstances where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate."¹⁴⁸ Also, the Act provides that a death sentence that is not carried out within three years shall be deemed to have been commuted to imprisonment for life.¹⁴⁹ In addition, it defines imprisonment for life as "imprisonment for fifty years".¹⁵⁰

The government of **Zambia** informed Amnesty International that no executions were carried out; 101 people – 88 men and 13 women – were sentenced to death;¹⁵¹ 393 people – 370 men and 23 women – were under the sentence of death at the end of the year, five of whom were foreign nationals (two Chinese, one Malawian, one Namibian, one Tanzanian); 21 commutations were granted; and eight people were exonerated by the courts.

The government of **Zimbabwe** informed Amnesty International that no executions were carried out; six death sentences were imposed for murder, murder and robbery, murder and attempted murder; and 89 people were under the sentence of death at the end of the year. In February, the media reported that the government commuted 34 death sentences to life imprisonment; the Ministry of Justice, Legal and Parliamentary Affairs had recommended to the government to abolish the death penalty; and the government was in the process of implementing strategies and policies aimed at abolishing the death penalty.¹⁵²

145 *Ally Rajabu and Others v. United Republic of Tanzania*, Application No. 007/2015

146 Shortly before this judgment was delivered, Tanzania withdrew the right of individuals and NGOs to directly file cases against it at the Arusha-based African Court on Human and Peoples' Rights. The Tanzanian Minister of Foreign Affairs and East African Cooperation, Prof Palamagamba Kabudi, signed the notice of withdrawal of the declaration made under Article 34(6) of the African Court Protocol on 14 November 2019. This notification was sent to the African Union on 21 November.

147 The mandatory death penalty had already been abolished by the Constitutional Court in 2005 in *Susan Kigula & 416 Ors v. Attorney General*

148 Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Act 2019, Section 5

149 Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Act 2019, Section 7(2)

150 Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Act 2019, Section 7(3)

151 This constitutes a significant increase compared to 2018 when Amnesty International confirmed 21 death sentences

152 "Govt removes 34 from death row to life imprisonment as death sentence phases out", ZimEye, 1 February 2019, www.zimeye.net/2019/02/01/govt-removes-34-from-death-row-to-life-imprisonment-as-death-sentence-phases-out/