



## Sub-Saharan Africa: The New Vanguard of Death Penalty Abolition

By Sandra Babcock<sup>1</sup>

If asked to name the continent that has stood out for its leadership of anti-death penalty advocacy, most people would rightly identify Europe. Pan-European institutions like the Council of Europe and the European Commission, as well as individual European nations like Switzerland, Norway and the United Kingdom have supported abolitionist organizations and encouraged retentionist states to move toward abolition. But if asked to name the region that has made the most progress toward abolition of the death penalty over the last two decades, few would identify Sub-Saharan Africa. Yet Sub-Saharan African countries have been abolishing the death penalty at a greater rate than any other region over the last ten years. In April 2020, Chad became the latest state to abolish the death penalty, following close behind Burkina Faso (2018), Guinea (2017), and Benin (2016). At the same time, African courts have issued a series of ground-breaking decisions limiting its application in the countries in which it is still applied.<sup>2</sup> And African lawyers have been winning cases in both regional courts<sup>3</sup> and national tribunals that have saved the lives of hundreds of men and women facing capital punishment.

Stereotypes abound when it comes to Africa.<sup>4</sup> Most of them are negative. In the Global North, Africans are portrayed as victims of famine and illness. Governments are portrayed as corrupt and power-hungry. Africans are almost never regarded as leaders in the field of human rights or public health. Yet when it comes to capital punishment, that may change.

First, some figures. The African continent has fifty-four countries. Forty-six of these are considered “Sub-Saharan.”<sup>5</sup> Of those forty-six countries, only two carried out executions in 2019: Botswana and South Sudan.<sup>6</sup> Together, they executed only twelve men—in a continent whose population is well over a billion people. As in most regions of the world, the number of executions is minuscule, underscoring the exceptional nature of capital punishment even among those countries that retain it as a matter of law.

---

<sup>1</sup> Clinical Professor of Law, Cornell Law School, and Faculty Director, Cornell Center on the Death Penalty Worldwide.

<sup>2</sup> See, e.g., *Kigula & Others v. Attorney General*, Constitutional Appeal No. 03 of 2006 [2009] UGSC 6 (21 Jan. 2009) (Uganda); *Kafantayeni and Others v. Attorney General*, 46 I.L.M. 566 (2007)(Malawi).

<sup>3</sup> See, e.g., *Ally Rajabu and Others v. Tanzania*, App. No. 007/2015, African Court on Human and Peoples’ Rights (2019) (finding the mandatory death penalty violates the African Charter on Human and Peoples’ Rights).

<sup>4</sup> Binyavanga Wainaina, *How to Write About Africa*, GRANTA, (Jan. 19, 2006), <https://granta.com/how-to-write-about-africa/>.

<sup>5</sup> The Sub-Saharan region excludes Algeria, Djibouti, Egypt, Libya, Morocco, Somalia, Sudan and Tunisia. United Nations Development Program, *About Sub-Saharan Africa*, <https://www.africa.undp.org/content/rba/en/home/regioninfo.html> (last visited June 12, 2020).

<sup>6</sup> Amnesty International, *Death Sentences and Executions 2019* at 9 (2020), <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.



Only four Sub-Saharan African countries retain the death penalty in law and practice.<sup>7</sup> Twenty-one Sub-Saharan African countries have abolished the death penalty,<sup>8</sup> and twenty-one more are considered de facto abolitionist,<sup>9</sup> as they have not carried out executions in over ten years. Kenya, for example, with a death row population routinely estimated in the thousands, has not carried out an execution since 1987; Niger, with a death row population of roughly a dozen men, has not executed since 1976. The lack of executions in most Sub-Saharan African countries has led to a certain complacency among abolitionists about the thousands of men and women who currently languish in the condemned sections of prisons throughout the continent. Yet the prison conditions in many African countries are themselves life-threatening, resulting in de facto death sentences for many who are given lengthy terms of incarceration.

African courts are not blind to the realities of life in prison. Much of the jurisprudence that has emerged around capital punishment—and even life imprisonment—has lamented the de-humanizing effect of prison conditions. In 2016, the Zimbabwe Constitutional Court found that life imprisonment without the possibility of parole violated the rights to be free from torture and inhumane treatment under the Zimbabwe Constitution.<sup>10</sup> In Malawi, the High Court determined that harsh prison conditions should be taken into account in determining an appropriate sentence for a person convicted of murder.<sup>11</sup> These decisions have done little, however, to change the conditions that prevail in prisons throughout the region.

African leaders typically commute hundreds of death sentences every year. In April 2020, Tanzanian President John Magufuli commuted 256 death sentences, roughly half of the country's death row population. Since 2018, Zambian President Edgar Lungu has commuted the death sentences of seventy-one persons. In May 2019, Gambian President Adama Barrow commuted twenty-two death sentences, following his announcement of a moratorium in 2018. In 2018 and 2020, Zimbabwean President Mnangagwa commuted the death sentences of prisoners who have remained on death row for more than ten years. In October 2016, Kenyan President Uhuru Kenyatta commuted the death sentences of 2,747 prisoners to life imprisonment. These are only the latest examples of commutations around the continent.

Magufuli, Barrow and Mnangagwa are openly opposed to capital punishment, and have made clear that they do not intend to sign death warrants. Other African leaders seem ambivalent, at best, when it comes to the death penalty. In some countries, this ambivalence reflects a deeper discomfort with the death penalty within the population as a whole. Few opinion studies have been carried out to assess attitudes toward the death penalty in most African states. In 2015, the Centre for Criminology and Criminal Justice, based in Accra, published the results of a survey demonstrating that most Ghanaians surveyed strongly

---

<sup>7</sup> Botswana, Equatorial Guinea, Nigeria and South Sudan. Although Gambia has carried out executions in the last ten years, it recently signed the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of capital punishment.

<sup>8</sup> Angola, Benin, Burundi, Burkina Faso, Cap Verde, Côte d'Ivoire, Gabon, Guinea, Guinea-Bissau, Madagascar, Mauritius, Mozambique, Namibia, Republic of the Congo, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Togo, South Africa.

<sup>9</sup> Cameroon, Central African Republic, Comoros, Democratic Republic of the Congo, Eritrea, Ethiopia, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritania, Mali, Eswatini (formerly Swaziland), Niger, Sierra Leone, Tanzania, Uganda, Zambia and Zimbabwe.

<sup>10</sup> *Makoni v. Commissioner*, CCZ 8/16 (Const. Application No CCZ 48/15) [2016] ZWCC 8 (13 July 2016).

<sup>11</sup> *Republic v. Chiliko Senti*, Sentence Rehearing Cause No. 25 of 2015 (unreported) (Malawi) (2015) (ordering release of former death row prisoner, after noting that harsh prison conditions constitute “a punishment on their own”).



opposed capital punishment.<sup>12</sup> A 2018 study, however, revealed that a solid majority of survey respondents in Zimbabwe continued to support the death penalty.<sup>13</sup>

In Malawi in 2016, the Cornell Center on the Death Penalty Worldwide designed a survey to gauge the level of support for the death penalty among traditional leaders.<sup>14</sup> This qualitative survey, carried out in collaboration with the Malawian Paralegal Advisory Services Institute and Reprieve, targeted leaders in villages where individuals had been sentenced to death for murder. The results were striking: more than 90% of respondents opposed the death penalty. Many explained that the purpose of punishment was rehabilitation, but “there was no reform in death.” Others expressed concern about wrongful convictions and due process violations. Respondents also emphasized that the death penalty damaged their communities by exacerbating their grief and trauma; they mourned the loss of the deceased victim as well as the community member who was sentenced to death. This sort of qualitative survey illustrates what criminologists have demonstrated around the world: namely, that support for the death penalty falls away when individuals are forced to grapple with its application in practice.<sup>15</sup>

African human rights lawyers around the continent have been fighting to abolish the death penalty for years. They labor under conditions that would be unthinkable for their colleagues in the Global North. Nestor Toko, a capital defense lawyer in Cameroon, is one of them. Mr. Toko has been passionate about the death penalty since he was a law student, when he followed the case of Timothy McVeigh in the United States. He was also inspired by the character of Atticus Finch in *To Kill A Mockingbird*. When he became a member of the defense bar, few of his colleagues were interested in death penalty abolition. He tried to convince his peers that the death penalty was flawed, but it was hard work persuading them to join him in the abolitionist struggle. After several years, he garnered enough support to found the Réseau des avocats camerounais contre la peine de mort, or the Cameroonian Network of Lawyers Against the Death Penalty.

Since then, Mr. Toko has taken on the representation of some of the most controversial and difficult death penalty cases in the country. Over the last year alone, he has defended eight women sentenced to death by military courts in Maroua. Maroua lies in Northern Cameroon, where more than two hundred people have been sentenced to death pursuant to a 2014 anti-terrorism law passed in response to attacks by Boko Haram. Most of them were sentenced by military tribunals in the absence of any meaningful legal representation. There are only seven lawyers in Maroua, and none have received training in capital case representation. Lawyers appointed to defend indigent capital clients receive approximately \$US 9 per

---

<sup>12</sup> Centre for Criminology and Criminal Justice, *Public Opinion on the Death Penalty in Ghana* (2015) <http://nebula.wsimg.com/6653665afb945630ea4f6c0beffe65bd?AccessKeyId=50A9833FCBD2E20E7634&disposition=0&alloworigin=1>.

<sup>13</sup> Dr. Mai Sato, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?* (2018), <https://www.deathpenaltyproject.org/knowledge/12-years-without-an-execution-is-zimbabwe-ready-for-abolition/>.

<sup>14</sup> The Paralegal Advisory Services Institute Malawi and the Cornell Center on the Death Penalty Worldwide, *Malawian Traditional Leaders' Perspectives on Capital Punishment* (2017), <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Malawian-Traditional-Leaders-Perceptives-on-Capital-Punishment.pdf>

<sup>15</sup> See Cornell Center on the Death Penalty Worldwide, *Public Opinion on the Death Penalty*, <https://www.deathpenaltyworldwide.org/publication/public-opinion-on-the-death-penalty/public-opinion-on-the-death-penalty-html/> (last visited June 12, 2020).



hearing, which is hardly enough to cover their transportation costs. As a result, military courts routinely appoint law students to handle capital trials, notwithstanding their lack of qualifications. As the Cornell Center on the Death Penalty Worldwide observed, “A capital defender [in Cameroon] does not need to have criminal defense experience, does not need to have qualified as a lawyer, and indeed does not need to have received any legal training at all.”<sup>16</sup>

To visit his clients, Mr. Toko must travel 24 hours by car over rutted roads. He usually sleeps in his car along the way. Once in Maroua, he faces the hostility of prosecutors who see him as obstructionist. He must fight to obtain court files, which typically are not released without the payment of bribes. Often, he arrives in Maroua to be told that a hearing date has been postponed, at which point he must turn around and drive 24 hours back home. Security forces have warned him not to continue his work promoting abolition of the death penalty, lest he be harmed. Yet despite these conditions, in the last year alone he has won new trials for four of his women clients who were sentenced to death for espionage, conspiracy to commit insurrection, and membership in an armed gang. He demonstrated that three were juveniles at the time of their arrest, and as a result they are no longer eligible for the death penalty. Two more women were released as a result of his efforts.

Liévin Ngondji Ongombe Taluhata is another lawyer who has spent his legal career fighting the death penalty. In the Democratic Republic of Congo, he says he is known as “Mr. Death Penalty Abolition,” because he never ceases to engage lawyers, judges, and politicians in debates over the futility and cruelty of capital punishment. Shortly after becoming a lawyer, he was appointed to represent a young woman who had killed her mother. Although appalled at the crime, he quickly realized that she was far from a monster. He began to talk to his colleagues about the death penalty, but found that they were resistant to his ideas. In 1995, he founded the Association culture pour la paix et la justice (Culture Association for Peace and Justice) to provide a platform to share information and advocate against the death penalty. And little by little, he built a network of lawyers dedicated to providing effective legal representation to those accused of capital crimes.

Mr. Ngondji was one of the key advocates who successfully pushed for reform of the DRC penal code to exclude juveniles from capital punishment. He also pressed the government to vote in favor of the UN General Assembly’s resolutions calling for a global moratorium on the death penalty. But his advocacy comes with great personal risk: he has received repeated death threats. Nevertheless, he continues to defend persons accused of capital crimes, because in his experience, the legal system treats them as “less than animals.”

Lawyers Toko and Ngondji stand out for their courage and leadership, but they are not the only examples of African lawyers fighting for abolition. In 2017, the Cornell Center on the Death Penalty Worldwide founded the Makwanyane Institute to bring together lawyers from around the continent who were waging similar struggles. Named after the South African Constitutional Court’s seminal decision striking down the death penalty,<sup>17</sup> the Makwanyane Institute trains African capital defenders in the skills needed to defend persons facing the death penalty. Working in small groups, lawyers exchange knowledge and practice their skills with continuous feedback. They teach each other strategies for self-care and learn

---

<sup>16</sup> Cornell Center on the Death Penalty Worldwide, *A Global Study of Wrongful Death Row Convictions* 14 (2018), <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Justice-Denied-A-Global-Study-of-Wrongful-Death-Row-Convictions.pdf>.

<sup>17</sup> *State v. Makwanyane*, [1995] ZACC 3 (Constitutional Court of South Africa).



about trauma and mental health. By providing a forum for African capital defenders to learn from each other in an intensive but nurturing environment, the Makwanyane Institute has helped build and sustain a regional network of “Makwanyane Defenders.”

Organizations led by women lawyers have taken a leading role in the abolitionist struggle in Nigeria. Makwanyane Defender Angela Uwaundu leads *Avocats Sans Frontières – Nigeria*. She has already organized two training institutes for capital defenders, where she and her fellow Makwanyane Defenders served as trainers. Funke Adeoye, who founded the organization *Hope Behind Bars* in Abuja, has trained 55 Nigerian law clinic students in best practices in capital defense. Pamela Okoroigwe, who is a Senior Legal/Program Manager at the *Legal Defense and Assistance Project*, attended the Makwanyane Institute in 2017, and returned as a trainer in 2019. In addition to Nigeria, female capital defenders from Sierra Leone, Malawi, Tanzania, Zambia, Zimbabwe, Kenya, Uganda, Tanzania, Mauritania and Tunisia have emerged as leaders in national and regional efforts to abolish the death penalty.

In short, African lawyers are the new vanguard of global death penalty abolition. Together with African activists, they are making steady progress toward their goal of eliminating capital punishment throughout Sub-Saharan Africa.