ANGOLA

Tanner Clarke

Constitutional Provisions

Angola has had three constitutions, of which the most recent was ratified in 2010. According to article 119(o), the president of Angola holds the authority to pardon offences and commute sentences, while the National Assembly holds the power of granting amnesties and 'general pardons', as outlined in article 161(g). The constitution places very few restrictions on the president's ability to pardon before conviction, the crimes for which he can pardon an individual, whom he can pardon or any other aspect of his pardon power. The president does not need to meet with any sort of clemency committee or obtain a recommendation from anybody in order to grant a pardon. While the executive is not subject to any constitutionally explicated restrictions, the National Assembly is, with regard to amnesties. As clarified in article 161(a) and (b), amnesty or parole is not to be granted to those who have been convicted of 'genocide and crimes against humanity'. Those convicted of such crimes 'shall be imprescriptible and ineligible for amnesty or provisional release'. However, these provisions do not apply to pardons or commutations by the president.

Legislation

In July 2016, the Angolan parliament passed the Amnesty Bill, which provided an extension of a celebratory 2015 presidential pardon in honour of 40 years of the nation's independence to prisoners convicted of common crimes who had been sentenced to less than 12 years and had served at least half of their sentences. The amnesty also extended leniency to other categories of prisoners, including some who had not yet served half of their sentences and some convicted of certain military crimes that did not involve intentional violence or death. The amnesty excluded 'crimes involving the use of firearms, drug dealing punishable with penalties of more than 12 years in prison, human and organ trafficking, sexual crimes and crimes related to illegal immigration' and was subject to a conditional clause stating that 'beneficiaries must refrain from committing crimes punishable by more than 1 year in prison for a period of 3 years after receiving amnesty' (Falcão and Filho 2016).

Those convicted of crimes not encompassed by the amnesty were granted a one-quarter reduction of sentence, assuming that they had not already benefitted from the 2015 presidential pardon. For property crimes, the amnesty included a clause which required the convicted person to compensate the victim for damages within one year of being granted the amnesty. This amnesty applied to an estimated 8000 people and excluded civil liability. Furthermore, a legislative action allowed 'the Angolan government [to] proceed with [an] amnesty on tax debts [or *dívidas fiscais* in Portuguese], interest, fines and procedural costs of taxes, customs and social security debts until 31 December 2017, while full payment provides a 10% discount'. This legislative act was included under article 17 of the 2019 State Budget (*Jornal de Angola*, 3 November 2018; *Plataforma*, 2 November 2018).

Case Law

Angolan case law regarding pardons appears to be non-existent. An earlier failed Angolan amnesty, included as part of the Lusaka Protocol in 1994 in an attempt to restore peace during the Angolan Civil War, is mentioned in a case regarding abuse of amnesty in the Special Court for Sierra Leone, *Prosecutor v Morris Kallon* (13 March 2004), as an example of amnesty failure.

Recent Cases

In 2018, the former president's son was charged with fraud after attempting to steal approximately $500 million from the nation's sovereign wealth fund. In anticipation of a possible pardon due to the country's extensive history of corruption, the vice prosecutor general and head of the National Directorate for Criminal Investigations was quoted as saying, 'A pardon will not work' (Mules 2018).

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DENMARK

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Constitutional Provisions

The Constitution of the Kingdom of Denmark, originally drafted in 1849 and revised in 1953, includes one section pertaining to pardons. Chapter III 'The government', section 24, specifies that the monarch has the prerogative of mercy and of granting amnesty. The monarch can pardon ministers for sentences from the High Court of the Realm (Impeachment Court), but only with the consent of the Folketing (Danish Parliament). There are no details in the constitution mentioning a secondary, advisory, party or mentioning pardoning before conviction. However, other sources indicate that pardons can only occur after a conviction (Folketinget 2009, 2014; Garde n.d.).

After the revised constitution was introduced in 1953, the Danish Parliament published an annotated version with detailed explanations of each section (Folketinget 2014). *My Constitutional Act* explains that, originally, the monarch had the right to pardon people, but today this right is exercised by the minister of justice (Folketinget 2014). Special personal situations such as illness, age or family circumstances can cause a pardon application to be looked on more favourably (Folketinget 2014). The minister of justice also has the right to grant amnesties to groups of people; these usually coincide with significant political events or national holidays, such as Christian X's ascension to the throne on 14 May 1912 or the reunion of the southern Jutland with the rest of Denmark on 19 June 1920 (Rentzmann 2020). The most recent amnesty took place in 1945 at the end of the German occupation during the Second World War. The practice has since become obsolete (Garde n.d.).

Legislation

Laws

In chapter 10 of the Danish Criminal Code of 2005, entitled 'Determining the Penalty', subsection 84, paragraph 3 mentions pardons briefly. If a person was pardoned for a crime ten or more years ago, then that former crime is no longer relevant when dealing with the recidivist consequences of a crime later committed. This paragraph contains the only mention of pardons or amnesty in all of the criminal code.

Another law, the Act on the Enforcement of Punishment 2019, briefly details the process for pardons in Denmark. Chapter 5, 'Postponement and pardon', section 11, explains that the minister of justice is in charge of making any rules on the administrative processing of pardons, including implementing any deadlines. Section 12 adds that if a convict applies for a pardon in a 'timely manner', his or her sentence will be postponed until a decision is made. Exceptions can be made to this courtesy if the chief of police notifies the Probation and Prison Service of concerns about public safety, should the convict be granted a postponement of the execution of a sentence. Additionally, if a person has already been denied a pardon application, the sentence should only be postponed during the examination of the new application if it contains 'new essential information' (ss 5, 12).

Regulations

The Ministry of Justice and the Directorate of Prison and Probation passed a circular on 30 April 2015, no. 9265, that explains the process of applying for a pardon more thoroughly. The pardon application is submitted to the facility where the individual is to serve his or her sentence. If a

decision has not yet been made regarding where a person's sentence is to be served, he or she can submit the pardon application to the local Prison and Probation Service. If granted a postponement of sentence execution, the Prison and Probation Service handles any supervision put in place during processing. The service is also in charge of any supervision that results from a grant of conditional pardon.

Once it receives an application, the Prison and Probation Service gains consent from the applicant to gather relevant criminal records and information from past detention or supervision services. Next, the service gathers any relevant medical records and conducts an interview with the applicant. This is all sent to the chief of police in the district where the crime occurred, as well as the court where the case was tried, for recommendation on the granting of the pardon. From there, the Directorate of Prison and Probation may decide on the pardon application if the sentence is of 40 days or fewer. If the sentence is longer, the application goes on to the minister of justice and the Directorate of Criminal Justice for a decision. In cases where the application is 'overwhelmingly justified' on the basis of an applicant's health, the application can be expedited and sent directly to the minister of justice.

Clemency Procedures

The process detailed above pertains mostly to convicts who are applying for a pardon before the execution of their sentence. These types of pardons are 'exceptionally rare' and are usually granted on the basis of health and humanitarian concerns (Folketinget 2009), including in situations where the individual's physical or mental health would be severely compromised if he or she served the entire sentence. These cases call for consultation with general medical practitioners, psychiatrists and/or forensic examiners. Humanitarian concerns can include the convict or a spouse having an advanced incurable disorder, the convict having a responsibility to care for a spouse or child with a chronic condition, or the convict being older than 70 (Folketinget 2009). In these cases, an assumed prerequisite of the pardon is that the individual will not commit any additional crimes (Folketinget 2009). An opinion on the risk of recidivism can be gained from the prosecutor involved in the convict's case (Folketinget 2009). Once the pardon is granted, the convict is put on a conditional period of sentence remission, which is eventually terminated after two years (Folketinget 2009). This type of pardon is referred to as a 'free-basis' application because the convict is not yet incarcerated.

The second category of pardon application is for those who are already incarcerated. In most, if not all of these cases, the applicant is serving a life sentence (Folketinget 2009). There is no parole available for these convicts in Denmark, so the pardon process has become a substitute for that institution (Garde n.d.). In these cases, a prisoner submits his or her application to the prison in which he or she is housed; it is then sent to the local Prison and Probation Service for recommendation (Folketinget 2009). From there, the recommendation is considered by the Directorate of Prison and Probation, and the rules governing the processing of parole cases are applied (Folketinget 2009).

In 2001, the penal code was revised to offer the opportunity for anyone serving a life sentence to apply for pardon after 12 years (Rentzmann 2020). If this first application is denied, he or she receives an automatic reconsideration one year later (Schartmueller 2019). If the pardon is denied again, going into the 14th year of imprisonment, the application goes to the district court in the prison's jurisdiction (Schartmueller 2019). If denied once more, he or she is allowed to appeal the decision to the Danish Court of Appeals (Schartmueller 2019). Any release resulting from this

process is conditional and includes mandatory supervision of the convict for three to five years (Schartmueller 2019).

Case Law

Information on Danish court cases and decisions is not easy to locate; one search through *Retsinformation.dk* produced two Ministry of Justice case decisions, but they did not provide any information on the original case facts or the court in which they were tried. The first decision (KEN No. 11015) was made on 18 May 1979 and ruled that animal care is not a justifiable basis for a pardon. The Ministry of Justice in this case agreed that the police would arrange for care of the applicant's animals while he served his sentence (Ministry of Justice 1979a). The second related decision (KEN No. 11041) was made on 17 October 1979 and ruled that care of a child under the age of 16 was an acceptable justification for a pardon relating to a sentence shorter than 60 days. The ministry concluded that cases like these should be decided based on the child's best interests (Ministry of Justice 1979b).

Treaties and International Organisations

The treaty concluded between Denmark and the International Criminal Court (ICC) in 2012 states that any person serving a sentence from the ICC in Denmark may be eligible for pardon under Danish law with the approval of the ICC. If Denmark were to pardon a convict without the ICC's approval, the convict would simply serve the rest of his or her sentence in another state.

As far as extradition law is concerned, a person who has been pardoned in Denmark cannot be extradited to another state for the same crime for which he or she received a pardon (Vestergaard 2006). The 1967 Act on Extradition of Offenders states this rule as it applied to Finland, Iceland, Norway and Sweden (Vestergaard 2006). In 2003, this was expanded to all other countries by Act 433, which signified Denmark's consent to adopt the Framework Decision on the European Arrest Warrant (Vestergaard 2006).

Academic Scholarship

One recent academic study by Schartmueller (2019) looked into the use of pardons for the release of those serving life sentences in Denmark, Finland and Sweden. Only one percent of prisoners in Denmark are 'lifers' and all have been convicted of murder, which carries a minimum (determinate) sentence of 12 to 16 years. Schartmueller (2019) interviewed justice officials from each country on the decision to grant pardons in these cases. One Danish official stated the need to review applications very carefully, paying attention to risk of relapse, nature of criminal behaviour, institutional conduct and potential transition success. Institutional conduct, in particular, seemed to carry the most weight. The Ministry of Justice carefully considered factors such as any violent behaviour, addiction or substance use that occurred during incarceration. Maintaining relationships with family and friends, or successfully participating in periods of leave for work and education, were also taken into consideration (Schartmueller 2019).

Media

One news article stated that the Directorate of Criminal Justice was absolved after a lawsuit from a man who claimed that the Prison and Probation Service did not file his pardon application (Ritzau 2012). The 43-year-old man was sentenced to 70 months in prison in 2010 for tax fraud. He apparently suffered from heart disease and had previously been denied a pardon on four occasions. The article also mentions that 45 people were pardoned in 2011 and 22 people were pardoned in 2010 (Ritzau 2012).

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ICELAND

Madeline Portnoy

Constitutional Provisions

Taking effect on 17 June 1944, the Constitution of the Republic of Iceland contains seven sections and 80 articles and has been amended seven times. Article 29 stipulates the clemency authority of the president, stating that the president of Iceland grants both pardons and amnesty; commutations of sentences are not mentioned. The president also has the power of being able to order the discontinuation of a prosecution for an offence, provided that 'there are strong reasons therefor'. These powers, however, do not apply in the case of a ministerial impeachment; if a minister is being prosecuted or punished by the Court of Impeachment, the president may only use this authority with the permission of the Icelandic parliament, the Althingi. There are seemingly no other legal documents, or items of legislation or case law, that supplement or clarify this constitutional language.

The Death Penalty and Clemency

With the constitutional amendments made in 1995, attempts to reintroduce and legislate the use of the death penalty were made unconstitutional. Article 69, in its entirety, stipulates that punishment for a crime must reflect the law at the time it is committed: 'No one may be subjected to punishment unless found guilty of conduct that constituted a criminal offence according to the law at the time when it was committed, or is totally analogous to such conduct. The sanctions may not be more severe than the law permitted at the time of commission. Death penalty may never be stipulated by law.'

The use of the death penalty was previously outlawed in 1928 (Amnesty International 1999), but Iceland's last execution took place nearly a century before, in 1830 (Ćirić 2020). In March 1828, two people were murdered on a farm in the Vatnsnes peninsula. The three prime suspects were two of the farm's maids, Agnes Magnúsdóttir and Sigríður Guðmundsdóttir, and a young man, Friðrik Sigurdsson. All three were sentenced to death, but Guðmundsdóttir's sentence was later commuted to life imprisonment (Vatomsky 2018). Two years after the crime, Magnúsdóttir and Sigurdsson were beheaded in front of a crowd of 150 farmers, and their heads were displayed on sticks by a local road (Vatomsky 2018). In 2017, the Icelandic Legal Society retried the case in a mock trial involving a former judge from the European Court of Human Rights; it concluded that Agnes would, under modern law, only have been sentenced to 14 years in prison. The motivation for the murder would most likely have been taken into account by a modern court (Vatomsky 2018).

This last use of the death penalty has been a part of a review of the history of Iceland's executions, with 248 individuals executed by the state (Helgason 2019) from 1582 (the earliest recorded case (Ćirić 2020)) through to 1830. Archaeologist Steinunn Kristjánsdóttir has been studying these cases, and others discovered through her work, finding that most concerned poor women, executed for infanticide or having children out of wedlock. One execution carried out by the state has been part of a recent fight for a posthumous pardon. In the 18th century, Halldóra Jónsdóttir was convicted of incest and infanticide (Ćirić 2019). She was sentenced to death, but her father admitted to raping her and later killing the child. However, Halldóra refused to denounce her father and was executed by drowning in the Bessastaðaá river (Ćirić 2019). A posthumous pardon was

requested in an effort to correct this perceived injustice and the numerous perceived injustices against women relating to crimes punished prior to 1830 (Ćirić 2019).

Recent News

A recent cause of controversy for the Icelandic government has been the use of restorations of honour, after this measure was granted to a convicted paedophile in 2017 (Lýðsson 2017). This grant was particularly controversial because the father of the prime minister at the time, Prime Minister Bjarni Benediktsson, signed testimony pushing for the restoration (Lýðsson 2017). The minister of foreign affairs issued a statement to the international media regarding restored honour, which is referred to as *uppreist æru* in Icelandic law, and forms a type of executive leniency (Ministry of Foreign Affairs 2017). *Uppreist æru* allows convicted criminals certain rights after at least five years have elapsed following the completion of their sentences, such as 'apply[ing] for jobs in certain professions' (Ministry of Foreign Affairs 2017). In order for these rights to be restored, the convict must apply for the restoration and submit three letters of recommendation, which are then reviewed by the minister of justice and signed by the president (Lýðsson 2017). This has been the context for the most recent discussions of executive clemency in Iceland.

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IRELAND

Madeline Portnoy

Constitutional Provisions

Replacing the Constitution of the Irish Free State (1922), the *Bunreacht na hÉireann* or Constitution of Ireland took effect on 29 December 1937. It contains over 40 articles, many of which are similar to those of other Western countries like the United States. As it reads, the president is the head of state, but cannot act without consulting the Council of State (referred to as 'the Government' in the text of the constitution and legal documents). This consultation applies to all of the president's actions, including the use of his clemency authority. Article 13(6) outlines the pardon power specifically, stating that the president can pardon an individual or commute or remit a sentence. However, the latter two powers are not restricted to the president alone:

> The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction are hereby vested in the President, but such power of commutation or remission may also be conferred by law on other authorities.

Within this language there are no exclusions based on crime or offender, but the pardon power can only be exercised post-conviction and sentencing.

Legislation

The Criminal Procedure Act of 1993, the most substantial piece of legislation related to pardon procedure, specifically distinguishes pardons related to miscarriages of justice (s 7). Convicts can file a petition for a pardon with the minister of justice after they have filed and lost their appeals, or if they allege that a 'new or newly-discovered fact shows that a miscarriage of justice has occurred in relation to the conviction' (s 7). If the minister believes a pardon should be granted, he or she must either recommend this to the government and ask the government to advise the president accordingly, or advise the government to appoint a committee to investigate the miscarriage of justice (s 8).

Clemency Practice

Presidential pardons are used very infrequently, with only one well-documented instance of an individual receiving a pardon while still alive. The convictions resulting from the famous Sallins Train robbery case—the 1976 incident of a mail train robbery, where five members of the Irish Republican Socialist Party were convicted—drew significant criticism (RTÉ 2017). Those arrested were allegedly mistreated during questioning while in police custody. Two of the convicted won their appeals on the basis of a fabricated statement, but one man's appellate case, that of Nicky Kelly, was dismissed (RTÉ 2017). Kelly was released from prison on 'humanitarian grounds'. However, after the broadcast of a dramatic documentary series about the case, and numerous attempts to clear his name, in 1992 he was granted a presidential pardon for a miscarriage of justice and received compensation (RTÉ 2017).

More recently, the presidential pardon has been used posthumously in two prominent cases. In 1882, Myles Joyce, the given English name of Maolra Seoighe, was convicted of the murder of five people in what became known as the 'Maamtrasna trials' (Kelleher 2018). Hailing from a rural Irish town, he did not understand the proceedings at the English court where he was tried, and he was not afforded an interpreter until the end of his trial (Kelleher 2018). Joyce was one of ten men tried for these murders and one of three to be executed for the crimes (The Department of

Justice and Equality 2018). Prior to the executions of the other two men, they both admitted that Joyce had had nothing to do with the murders, but this was not considered substantive enough to change his sentence, and Joyce was executed in December 1882. Given these facts, in 2018 the government advised the president to use his pardon power to recognise what was now widely regarded as a miscarriage of justice (The Department of Justice and Equality 2018). Myles Joyce was subsequently granted a posthumous pardon (The Office of the President 2018).

In 1941, farmer Harry Gleeson was convicted of the murder of Mary McCarthy, a conviction that would be debated for decades. A review of the case found several prosecutorial errors, an unpresented alibi and inconsistencies in the medical evidence (The Department of Justice and Equality 2015)—reasons that many saw as sufficient to exonerate Gleeson. With the Innocence Project Ireland and the Justice for Harry Gleeson Group making pardon petitions to the minister of justice and equality, and following a review by Shane Murphy, Senior Counsel, the government successfully advised the president to use his pardon power to posthumously pardon Harry Gleeson (The Department of Justice and Equality 2015).

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ISRAEL

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Constitutional Provisions

Israel has no written constitution. Rather, it has a set of Basic Laws that serve as a sort of constitutional framework along with case law. The first Basic Law, which created the Israeli unicameral legislature or Knesset, was enacted on 12 February 1958. The Israeli pardon power was created under Basic Law: The President of the State, which was passed on 16 June 1964. While the president of Israel holds no political status and is more of a symbol of national unity, he still has the 'power to pardon offenders and to lighten penalties by the reduction or commutation thereof', as enumerated under Basic Law, article 11(b). Nothing in the Basic Law states that the president must meet with any sort of clemency committee or board to issue a pardon and no further guidelines beyond those powers given to the president are set out regarding clemency. The president's ability to pardon an individual before a conviction is unrestricted (in fact, this principle has been upheld by the Supreme Court of Israel), nor are there any other explicated restrictions. The pardon power set forth in the Basic Laws is therefore very general and sweeping.

Legislation

The legislative branch and the 'constitution' of Israel are one and the same. The Knesset is the body which passes both Basic Laws and ordinary legislation. It is also charged with the continuous (and so far, failed) task of creating a codified constitution for the State of Israel. The Knesset's own website laments the lack of a concrete written constitution because of the structure it would create, as well as its potential to neutralise political tensions between different branches of government (The State of Israel 2014). Executive clemency is an example of a power which has the potential to create separation of powers disputes.

Case Law

Barzilai v Government of Israel (HCJ 428/86, 6 August 1986) affirmed the Israeli president's right to pardon an individual or group before conviction. The president had pardoned the head of the General Security Service and three of his assistants after the alleged unlawful execution of two Palestinian bus hijackers, before they were even charged with a crime. The Israeli Supreme Court held that the presidential pardon power should receive a 'spacious interpretation' and that there is a legal right for the Israeli president to pardon offenders prior to any legal proceedings commencing. In 2012, the Israeli Supreme Court went on to uphold a legislative amnesty which erased the arrest records of protestors during the 2005 protests surrounding Israel's disengagement from Gaza (Kalman 2012).

Clemency Procedures

No clearly established guidelines exist for how to seek a pardon in Israel, although one option would be to petition the Office of the President. Such petitions can concern 'diverse personal matters and their relations with public institutions', under which a pardon would fall (Ministry of Foreign Affairs 2021). The Israeli Ministry of Justice website mentions a Pardons Department but provides no further details (Ministry of Justice 2021). Anybody wishing to apply for a pardon with the assistance of the Ministry of Justice would be advised to contact the ministry directly and enquire how the Pardons Department might assist in the application process.

Prominent Cases

In the wake of the recent indictment of long-time Israeli Prime Minister Benjamin Netanyahu on bribery and fraud charges, the President of Israel, Reuven Rivlin, has said he will consider pardoning Netanyahu if he resigns as prime minister and confesses to the crimes of which he has been accused (Bob 2019). Also, in March 2018, Rivlin and Justice Minister Ayelet Shaked announced the return of a tradition of granting pardons and commutations of sentences on important national holidays. This was practised both for the 70th anniversary of Israel's Independence Day and for the Hebrew month of Elul (Cashman 2018a, 2018b). Those who had expressed remorse and had either previous military service or volunteer experience in the national service were given priority consideration for pardons.

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NORTH MACEDONIA

Jeffrey Warner

Constitutional Provisions

The Republic of North Macedonia established its constitution in 1991 and revised it in 2019. Article 84 discusses executive powers, stating that the president has the power to grant 'pardons in accordance with the law'. Additionally, article 68 states that the Assembly of the Republic of North Macedonia (the legislature) has the power to proclaim amnesties. The constitution does not go into further detail and does not include any discussion of limitations on the pardon power.

Legislation and Procedure

The Criminal Code of the Republic of North Macedonia (2017) goes into more detail regarding pardons. Article 39(4) states that, in cases of recidivism, even if an individual has previously been pardoned, his or her prior crimes will be taken into consideration when the court renders a sentence. Article 102(2) states that 'The legal consequences from the sentence, which consist of prohibition to acquire certain rights, shall last at the most ten years from the day the punishment was served, pardoned, or time barred'.

Article 104(3)-(4) and article 105 state that criminal records will be expunged after a certain period of time following the pardon. Article 106(3) states that criminal records will be remanded to applicable parties during the process of granting pardons or amnesties. Chapter 11 of the criminal code is devoted entirely to pardons and amnesties. Article 113 states that individuals who are recipients of amnesties will be acquitted from prosecution or be subject to partial enforcement of their punishment. Article 114(1) states the same for pardons. Article 114(2) states that pardons may lead to 'prohibition to perform a profession, an activity or a duty, prohibition to operate a motor vehicle for offenders whose profession is a driver and expulsion of a foreigner from the country'.

Macedonia maintains a pardoning commission which submits opinions to the president. This commission considers every pardon petition it receives and those passed on by the minister of justice. It decides by a majority vote of present members before releasing the majority opinion to the president, who makes the final decision (*Republic of North Macedonia: President*, n.d.).

Caselaw

In 2016, the Constitutional Court of the Republic of North Macedonia took on a case involving a new pardon law which sought to limit the crimes for which the president could issue pardons. The majority opinion of the court was that the law 'violat[ed] the fundamental value of the constitutional order—the division of state powers in[to] legislative, executive and judicial' (U.no. 19/2016, 2016). Additionally, the court argued that the new law violated the right of equality of all Macedonian citizens (U.no. 19/2016, 2016).

According to the dissenting opinion in the preceding case, the law sought to prevent the president from pardoning (Separate Opinion on the Decision U.no.19/2016, 2016):

> crimes against elections and voting, crimes against sexual freedom and sexual morality committed against children and minors, criminal offences against public health, crimes related to the illegal production and sale of narcotic drugs, psychotropic substances and precursors and crimes against humanity and international law.

The dissenting judges also stated that they believed the law was proper as it did not violate the constitution's wording of the pardon provision, describing it as 'in accordance with the law' (Separate Opinion on the Decision U.no.19/2016, 2016). Lastly, the dissent also put forward the argument that repealing the law would expand executive authority at the cost of reducing legislative authority (Separate Opinion on the Decision U.no.19/2016, 2016.).

Recent Media

According to Simjanoska (2017), injured parties maintain the right to request that additional punishments be imposed on recipients of pardons and amnesties. Additionally, pardons can be requested by the prisoner or a relative by writing to the pardoning commission or the Ministry of Justice (Simjanoska 2017).

In 2016, President Gjorge Ivanov revoked all pardons he had granted to individuals involved in a wiretapping scandal. The former prime minister, Nikola Gruveski, and opposition leader, Zoran Zaev, were among those pardoned. Both sides blamed each other for the illegal wiretaps. Zaev had raised the allegations in 2015, when he unveiled recordings of politicians, judges, journalists and around 20000 others. Gruveski asserted that Zaev was only trying to blackmail him. President Ivanov claimed he had pardoned all officials involved in order to help Macedonia heal and move on from the political crisis. His pardons prevented the investigation into the allegations from continuing. Following domestic protests and international pressure, Ivanov revoked the pardons (*Deutsche Welle*, 6 June 2016).

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NORWAY

Ali Purvis

Constitutional Provisions

The Constitution of the Kingdom of Norway, originally drafted on 17 May 1814 and most recently amended on 18 May 2018, has two paragraphs on the power of pardon. Under chapter B, entitled 'The Executive Power, the King, the Royal Family, and Religion', section 20 details the monarch's power of pardon. The first paragraph of section 20 states that the monarch has the right to pardon criminals, after sentencing, in the Council of State. It also states that the defendant has a right to accept or deny the pardon. The constitution provides no further details regarding the monarch's obligation to consult with other actors or exclusions from the pardon power.

The second paragraph of section 20 states that the only pardon allowed in cases brought before the Court of Impeachment is 'deliverance' from the death penalty. Since the death penalty has been outlawed, this section essentially means that the monarch is not able to issue a pardon in any cases of impeachment.

Legislation

Laws

According to the Criminal Procedure Act of May 1981, chapter 32, section 458, only the monarch can grant a pardon, even if the application has already been approved by both the prosecuting authority and the Ministry of Justice. The execution of a sentence may be deferred if the defendant is awaiting the monarch's decision.

Another law relating to pardon power is Norway's Penal Code of 2005, specifically chapter 15, section 94. This states that if a defendant's sentence is postponed due to a pardon application, the limitation period on prosecution will not apply. However, the constitution seemingly only allows for pardons after sentencing, so it would not make sense for a period of limitation to apply to a person awaiting a pardon application decision (since they would have already been prosecuted).

Regulations

The first regulation relating to pardon power is the Regulation on Delegations of Authority to the Ministry of Justice Pursuant to section 20 of the Constitution—Applications for Pardon, passed by the Ministry of Justice in 1981 and identified as FOR-1981-06-05-8703. This regulation states that the monarch's power to refuse a pardon is delegated to the Ministry of Justice. It also states that the ministry's reasoning for refusal does not need to be made public. This much is also stated in the Public Administration Act of 2006.

The second relevant regulation is the Regulation on the Arrangement of the Prosecuting Authority, passed in 1986 and identified as FOR-1985-06-28-1679. The process for pardon applications is detailed in the fifth part, chapter 31, section 1. If a person wishes to apply for pardon, he or she must prepare an application with the police district that dealt with the criminal case. If the individual is incarcerated at the time of application, he or she must prepare it with the Prison and Probation Service at the relevant prison. The police department or prison has the responsibility to ensure that the applicant has signed the application. Additionally, the police department or prison may interview the applicant about the basis for the application. Applicants should be encouraged to provide any relevant documentation that can speak to their health, finances, working or family

conditions. The applicant may also be subjected to a physical examination by a police or prison physician. Once completed, the application is sent from the police or prison to the prosecuting authority, which gives its recommendation and passes it on to the Ministry of Justice. From there, the application can either be denied or passed on to the monarch for approval. If denied by the Ministry of Justice, the applicant has three weeks to appeal the decision to the monarch.

Case Law

Elden v Attorney General (2019), heard by the Civil Court of Appeals, verdict LB 2004-75062-2, held that a man with two sentences from different Nordic countries could not receive a partial pardon from Norway in order to serve his sentences concurrently. The facts were that a Norwegian man had been given a ten-year sentence by Sweden in 2006 and a 14-year sentence by Norway in 2004 for separate but related drug crimes. If serving the time in Sweden, the sentences would be commuted to just 14 years. However, the Elden had to serve his sentence in Norway, which combined the sentences to 24 years. He decided to apply for a partial pardon from Norway in order to serve only 14 years, but was ultimately denied.

Recent News and Academic Scholarship

The websites *Norway News in English* (2017) and *New York Sun* (2017) describe the royal pardon of artist Odd Nerdrum on 22 September 2017 by King Harald V. Nerdrum was facing up to a year in prison for tax evasion regarding the untaxed sales of his artwork. He initially applied for a pardon in spring 2016, but was rejected by the Ministry of Justice. He then appealed the decision to the monarch. The ministry never released its reasoning for the rejection, and the king never released his reasoning for approval. Nerdrum, aged 73 at the time, had applied on the basis of chronic mental health concerns, including Tourette's syndrome and anxiety.

The website *Punished by Law* provides some statistics on the frequency of pardons in Norway (Johannesen 2006). In 2004, 51 applications for pardons were granted. These applied to conditional sentences of probation (38), sentences where incarceration had already begun (seven) and fines (six). In 2004, the Ministry of Justice also rejected 274 applications: 106 relating to fines and 168 for probation or incarceration.

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SPAIN

Ailynne Hartsell

Constitutional Provisions

Spain's latest constitution was created on 31 October 1978 and was ratified on 6 December 1978. Spain is a parliamentary constitutional monarchy; this means the role of the monarchy is primarily symbolic. One important role the monarch must fulfil is to grant pardons. Section 62(i) of the current constitution allocates pardoning powers to the monarch, but there are restrictions; the monarch does not have full authority to do as he or she pleases. For example, he or she may not authorise general pardons.

Section 102(ii) states that neither the president nor any senior members of the government may receive a pardon if they have committed treason. Pardons can be granted for main offenders and their accomplices, as long as the main offender also receives a pardon.

An offender may apply for a pardon even though the monarch rarely grants them. The pardon process starts when an individual files an application. Offenders can apply on their own, or else a family member may do it on their behalf. Most pardons are granted when a sentence is almost complete, for minor crimes or when an offender shows remorse.

Legislation

Article 4(iv) of Spain's criminal code incorporates language to prevent the infringement of an individual's due-process rights. This provision states that a delay may occur when a defendant files a request for a royal pardon. However, the delay will not affect a prisoner's right to access a process 'without undue delay'. A request for royal pardon will also delay execution of a sentence, in a case where 'if the sentence were to be executed, the royal pardon would be ineffective even if granted.'

Clemency Procedures

Spanish law (18 June 1870, updated by Law 1/1988) outlines the procedures an individual must follow if he or she would like to apply for a pardon. An offender must write a letter of petition to the minister of justice stating whether he or she is applying for a full or partial pardon. A full pardon consists of completely removing the offence from the individual's record, while a partial pardon consists of reducing the sentence. An offender may complete these steps alone and does not need to contact an attorney. Once the letter has been received, the minister of justice will hold a meeting to present the issue to the Cabinet of Ministers. The letter, court reports and the prosecutor's notes are all reviewed at this time. This is done so that everyone at the meeting has an opportunity to understand the case, review prior decisions and rehear the offender's position. If the members believe the request is merited, the minister of justice will send a recommendation for pardon to the monarch. Final decisions are published in a public journal known as the *Boletín Oficial del Estado*.

Recent News and Academic Scholarship

On 26 November 1975, a mass pardon was granted to political prisoners and common criminals, benefitting thousands. The pardon marked a significant day in Spain's history: the accession of King Juan Carlos to the throne. The decree applied to most crimes, but not to crimes of terrorism—not even to death penalty cases, for those awaiting retribution at this date (Special 1975). Spain went on to abolish the death penalty for ordinary offences in 1978 and for all offences in 1995.

There is very little news available about present-day pardons; no statistics or public records of pardons grants have been regularly released since the beginning of Spain's democratic era in 1978 (Arias and Kouroutakis 2020).

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PORTUGAL

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Constitutional Provisions

According to the Constitution of Portugal, as amended in 1976, the Assembly of the Republic has the ability to grant both pardons and amnesties. By contrast, the constitution describes pardons as the responsibility of the president. However, he or she must consult with the government before granting a pardon or commuting a sentence. Article 161 states that the Assembly of the Republic may still grant 'generic' pardons and amnesties. 'Generic' is not defined, so it is difficult to know how this differs from a presidential pardon. According to Abreu-Ferreira (2016), the pardon power in Portugal evolved from the royal pardon to the form now set out in the constitution. The royal pardon was typically used in tandem with a 'victim's pardon'—which appears to be a pardon granted to a criminal directly by the victim of the crime.

Legislation

In section II of the Portuguese Penal Code, pardons are referenced in regard to recidivism. The section states that 'generic' pardons do not hinder the verification of recidivism. This hints that records are not expunged after a pardon is received. If a criminal is pardoned for a crime and then commits the crime again, he or she is recorded in recidivism rates. Pardons are also mentioned in article 127 of the penal code, which lists all the means by which criminal responsibility may be extinguished. In Portugal, criminal responsibility is extinguished by death, amnesty, general pardons and *indultos*. Article 128 elaborates on the effects of article 127. Amnesties can stop the criminal procedure from occurring or, if the procedure has already occurred, prevent the imposition of a penalty and other effects of criminal liability. Pardons, in contrast, only negate the penalty, either in whole or in part. An *indulto* can also extinguish a penalty, again either in whole or in part. It can also substitute another sentence in the law, and so it appears to be similar in nature to a commutation of sentence.

Clemency Procedures

The applicant first petitions the president, who then consults with the government, before granting a final decision. After exhausting all other legal means, it is possible to write to the president to ask for a pardon; decisions are made around Christmas time (Fair Trials 2017). Pardons are rare in Portugal (Fair Trials 2017).

Case Law

A case came before Portugal's Constitutional Court that questioned the constitutionality of an amnesty that protected 'politically motivated offences' committed between July 1976 and June 1991. This amnesty was proposed to serve two purposes: rectifying historical wrongs and promoting peace, as well as solving an issue that appeared too complex for the Portuguese judiciary. The amnesty was alleged to violate the constitution's equality provisions. Opponents stated that granting amnesty in this case would be tantamount to allowing one organisation to get away with crimes that others would not, thus violating the constitutional principle of equality. The crimes committed by the organisation were not usually eligible for amnesty. The court, however, found that amnesty was a viable solution and it did not violate the constitution.

Portugal's position has also been cited by the European Court of Human Rights, which stated in *Lexa v Slovakia* (23 September 2008) that the words 'amnesty' and 'pardon' are used interchangeably in Portugal, despite a slight distinction in the law.

Historical and Recent Cases

Portugal abolished the death penalty for ordinary crimes in 1867. The country became abolitionist in 1976 after the adoption of the constitution, article 24 of which states: 'Human life is inviolable. In no case shall the death penalty be applied.' The country's last execution for an ordinary offence is recorded as taking place in 1849 (Hands Off Cain 2020). Portugal reinstated the death penalty for military crimes when it joined the allies in the First World War, and a Portuguese soldier was executed in France on this basis in 1917 (Provedor de Justica 2017; *Expatica* 2019). In 2017, the Portuguese government granted this soldier a symbolic 'moral rehabilitation', which is not the same as a pardon (Provedor de Justica 2017).

Due to the Covid-19 pandemic, Portugal chose to release 2000 prisoners via a partial mass pardon. This pardon lightened the sentences of a number of prisoners. The move was recommended by both the United Nations and the Catholic Church in Portugal and extended to criminals convicted of lesser crimes who were sentenced to two years or fewer. The pardon remained inapplicable to 'anyone who has committed crimes such as homicide, rape, domestic violence or child abuse, nor crimes committed by politicians, militaries or magistrates during the course of their duties' (*Xinhua*, 10 April 2020). The pardon offers temporary release only, so the prisoners will eventually have to return to complete their sentences. However, many can anticipate parole in the future instead of returning to prison (*Xinhua*, 10 April 2020).

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TANZANIA

Ali Purvis

Constitutional Provisions

Tanganyika (the mainland) and Zanzibar (an island) merged together to form Tanzania in 1964. At this time, they adopted one single interim constitution that was in effect until 1977 (Constitution Net 2016).

The Constitution of the Republic of Tanzania 1977

A new permanent constitution, the Constitution of the Republic of Tanzania, was adopted in 1977 and is still in place today (Constitution Net 2016). This constitution sets out both the Tanzanian mainland and federal structures. Parliament passes laws that apply only to the mainland as well as laws that apply to the entire republic (which includes the mainland and Zanzibar). The president referred to in this constitution is the national president of the Republic of Tanzania (Constitution Net 2016).

Chapter two 'The Executive of the United Republic', part one 'The President', section 45 ('Prerogative of Mercy') details the pardon power of the national president. Specifically, the president has the power to grant conditional or unconditional pardons to any convicted person, without any limitations as to the type of offence. The powers to grant a postponement of the execution of any punishment and to substitute a less severe punishment are also reserved for the president. The president may also remit the whole or part of any punishment, fine or property forfeiture imposed on a person.

Parliament may enact laws regarding the procedure that a president must follow in his exercise of these powers. The section also specifies that this provision applies to people convicted and punished in Zanzibar under any laws enacted by parliament that apply to Zanzibar. Additionally, any person convicted and punished on the mainland is subject to this provision.

The Constitution of Zanzibar 1979

In 1979, Zanzibar adopted its own constitution, the Constitution of Zanzibar, that lays out the specific structure of the island's semi-autonomous government (Constitution Net 2016). The House of Representatives has the ability to pass laws that apply only to Zanzibar, as long as they do not conflict with the republic-wide/national laws established by parliament. Zanzibar also elects its own president, or sultan, to oversee internal matters.

Chapter four 'The Executive', part four 'Government Authority', section 59 ('Prerogative of Mercy') details the pardon power of the president of Zanzibar. This section is very similar to the relevant section of the Constitution of the Republic of Tanzania, in that the president may grant conditional or unconditional pardons, temporary or permanent suspension of sentences and reductions of sentences to any person convicted of any offence.

Unlike the Tanzanian Republic, however, Zanzibar has an additional relevant section entitled 'Advisory Committee on the prerogative of mercy' (section 60), which sets out the requirement for a presidential advisory committee on the prerogative of mercy. The committee must consist of the attorney general as chairman, with three to five additional members who are appointed by the president. One member must be a minister and one must be a doctor in Zanzibar. The section states

that the committee may regulate its own procedures, but it does not give details on the process of advising the president or whether or not the advice is binding.

Case Law

In one High Court case, *Mkename v Republic* [2020] TZHC 85 (12 February 2020), the applicant wrote a letter to the director of public prosecutions asking for a pardon and a refund of the amount of money claimed. The applicant had been convicted of an economic crime. This suggests that convicts can apply for a pardon by writing a letter to the director of public prosecutions; however, no details were given about the outcome of the request or the process itself.

Legislation and Procedure, Death Penalty Position

Tanzania is a de facto abolitionist country and has not executed a prisoner since 1994 (Death Penalty Worldwide 2019). Nevertheless, there are several special clemency procedures that apply in death penalty cases. Current estimates suggest that there are about 400 death row prisoners in Tanzania and Zanzibar (Death Penalty Worldwide 2019).

In the Criminal Procedure Act 1985, part IX entitled 'Convictions, Judgement, Sentences, and their Execution in the Subordinate Courts and High Court', section C(b) 'Sentence of Death' describes the pardon power of the president as it relates to death penalty cases. If a death sentence has been affirmed by the Court of Appeals, the presiding judge will send his or her notes, observations and recommendations to the president. From there, the president decides if he or she will issue a death warrant, a commutation of the sentence to life imprisonment or a pardon. If a pardon is issued, the president must specify the conditions, if any. There is no mention in this act of pardons as they apply to non-death penalty cases.

The Tanzanian Penal Code, which is chapter 16 of the Laws, describes each type of crime and provides mandatory guidelines for punishments. Part 1 of the Penal Code entitled 'General Provisions' states that nothing in the code affects the president's powers under the prerogative of mercy. Similarly, Zanzibar's Code of Criminal Law describes each crime and punishment, and part 1 ('General Provisions') specifies that the president of Zanzibar's pardon powers are not affected by the code.

Under Tanzanian law, a presidential pardon is a privilege, not a right, for prisoners on death row (International Federation for Human Rights 2005). Prisoners are not able to apply for pardons; only the president can initiate the process. Additionally, prisoners cannot appeal a president's decision to not pardon a death penalty case (International Federation for Human Rights 2005). One government official has argued that this pardon process for death row prisoners makes the decision very arbitrary, because the president is not bound by the recommendations of the judge or the advisory committee (International Federation for Human Rights 2005).

Presumably, for Zanzibar cases, the process would also include recommendations from the presidential advisory committee on the prerogative of mercy. In 2011, the minister of good governance in the President's Office of the United Republic of Tanzania reported to the UN Human Rights Council that an advisory committee on the prerogative of mercy advises the president in death sentence cases, with input from both the victim's and offender's families (Africa Criminal Justice Reform n.d.). He also stated that the advisory committee considers the convict's own submission.

Recent News Stories

News stories reveal mass pardons and controversial pardons as part of Tanzania's recent history.

One article described how Tanzanian President Magufuli pardoned 5533 prisoners in celebration of the 58th anniversary of the independence of Tanganyika (The Citizen 2019). He stated that prisons on the mainland were congested and many of those pardoned had been convicted of minor offences and had suffered from poor assistance by court advocates or a failure to pay court fees (The Citizen 2019). Those pardoned had sentences ranging from one day to one year. Some prisoners with longer sentences were also pardoned if they had less than a year of their sentence left to serve (The Citizen 2019).

President Magufuli also pardoned 3540 prisoners on the 55th anniversary of the Union of Tanganyika and Zanzibar (*Xinhua* 2019). He included prisoners with chronic diseases such as HIV/AIDS, tuberculosis and cancer as well as those above the age of 70 or with mental or physical disabilities. Female prisoners who were pregnant or had young babies were also included. Magufuli excluded any prisoner convicted of serious crimes including murder, suicide, infanticide, drug trafficking, money laundering, rape and crimes against children (*Xinhua* 2019).

Similarly, Zanzibar's President Shein pardoned 19 prisoners in celebration of the 56th anniversary of the revolution (*Daily News Tanzania* 2020). He did not include any inmates convicted of murder, armed robbery, economic crimes, drug trafficking or sex crimes (*Daily News Tanzania* 2020).

Another article describes the case of a Tanzanian journalist, Erick Kabendera, who had been arrested two months earlier and charged with organised crime, failing to pay taxes and money laundering (Fick 2019). Kabendera's court hearing was postponed six times, and human rights organisations believed that his case was politically motivated amid the increasing media censorship in Tanzania. His lawyer called upon the president, on behalf of Kabendera and his family, to grant a pardon (Fick 2019).

One last article described the international controversy surrounding President Magufuli's decision to pardon two child rapists (Lazareva 2017). Singer Nguza Viking and his son Johnson Nguza were both convicted in 2003 for the rapes of ten young girls aged six to eight. They were sentenced to life in prison, but were released after just 13 years due to this pardon (Lazareva 2017). Magufuli claimed that the men had corrected their behaviour, but others believe that the decision reflects Tanzania's poor treatment of rape survivors (Lazareva 2017).

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SOUTH SUDAN

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Constitutional Provisions

The Constitution of South Sudan 2011 establishes a strong executive presidency. The powers bestowed upon the president are numerous and his powers regarding clemency are absolute. Article 101(h) of the 2011 Constitution establishes that the president holds the power to 'confirm death sentences, grant pardons, and remit convictions or penalties according to this Constitution and the law'. There are no restrictions on the president's ability to exercise this power, nor must he or she meet with any sort of advisory committee before doing so. The term 'remit' in this context is used interchangeably with 'commute'. The president can both commute punishments and remit fines.

Explicitly issuing a pardon is not the only way in which the president can exercise clemency. Because the president can confirm or reject the findings of military courts, he or she can indirectly grant mass amnesty for war crimes by simply neutralising the judicial process. In the wake of a civil war which ravaged the country, in this way President Salva Kiir issued 'impunity' to many who had allegedly committed terrible war crimes (Amnesty International 2019).

Legislation

The Penal Code Act 2008 acts as the codified set of criminal laws for South Sudan. The code establishes that anybody convicted of murder will be sentenced to death or imprisonment for life. Among the other crimes punishable by death are treason, terrorism, fabricating false evidence which leads to the death of an innocent individual, and attempted murder. The only place where pardons are mentioned in the Penal Code Act is section 73(4)(b). This section establishes that any person who is granted a pardon or amnesty is not to be considered an insurgent, bandit, saboteur, or terrorist. In other words, the granting of a pardon for any of these crimes exempts that person from the death penalty. As established by the Judiciary Act 2008, the president appoints members of the Supreme Court, approves the budget of the judiciary and acts as the overall head of state to which the judiciary is 'answerable'. In South Sudan, '[o]ver 90% of day-to-day criminal and civil cases are executed under customary law', and while statutory law has been used for decades in Sudan and for as long as South Sudan has been a nation, 'for the past twenty years of conflict they have been for the most part subordinate to martial law and customary law' (Jok et al 2004: 7, 53). While this gives the president power in terms of military law, as he is the commander in chief of the armed forces, it limits the scope of his pardon power in everyday criminal cases, as the chiefs and leaders of different tribes are in charge of customary law within their respective jurisdictions (Jok et al 2004; UNDP 2010).

Case Law

There is a lack of jurisprudential transparency in South Sudan due to excessive oversight of the judiciary by the executive branch. This has led to a failure to publish case law. One prominent case, in 2016, occurred where the High Court of South Sudan convicted political prisoner James Dak of treason. Dak was later pardoned by President Kiir (Amnesty International 2018).

Recent News Stories by Year

Onyiego (6 October 2010) and Copnall (23 July 2011): President Salva Kiir pardoned members of the Sudan People's Liberation Army/Movement (SPLA/M) who defected. However, there were some among the group, including SPLA/M member Gatluak Gai, who refused the presidential pardon and continued to fight against the government. Gai was found dead a short time afterwards, supporting the claim that these 'merciful' pardons are non-optional political smokescreens meant to appease the international community. In essence, the refusal of a presidential pardon in South Sudan can be a death sentence.

Al Jazeera (9 August 2018): President Kiir granted a mass pardon to rebel leader Riek Machar and all of those involved in the nation's five-year-long civil war, including those who had committed mass atrocities on civilians. This move gives support to the claims from journalists and members of the judiciary alike that there is a culture of impunity in South Sudan, allowing war criminals to escape punishment. The principle of complementarity governs whether a case is eligible to go before the International Criminal Court (Evans 2007). Evans posits that the misuse of amnesties and pardons, of which the executive's exercise of the pardon power in South Sudan is a prime example, degrades the principle of complementarity, delegitimises the clemency process and allows those who have committed the worst atrocities to avoid justice (Evans 2007).

Amnesty International (2 November 2018): President Kiir pardoned two death row inmates, one of whom was political prisoner James Dak. Dak had been the spokesperson for the Sudan People's Liberation Army when he was deported from Kenya back to South Sudan in 2016 and charged with treason. The pardons were issued around the five-year anniversary of the end of civil war in South Sudan. Dak's original case appeared to have been littered with constitutional violations, including a lack of sufficient evidence to warrant a conviction. This led to the treason charges being dropped, however Dark's other capital charges still remained. Kiir's pardon acted as an executive remedy, albeit one masking South Sudan's underlying and ongoing judicial problems.

Machol (11 July 2019): President Kiir pardoned 15 prisoners in celebration of the eighth anniversary of South Sudan's independence. The pardons were criticised by some as being too selective in the wake of significant prison overcrowding. Kiir did not pardon the prominent economist Dr Peter Biar, who had been openly critical of the manner in which Kiir had handled previous peace negotiations.

Cirino (26 December 2019): President Kiir ordered a mass prisoner release after inspecting South Sudanese prisons and being advised that overcrowding was an issue. In direct conflict with the principles of due process, some of the prisoners concerned had been incarcerated for years without even having been convicted of a crime. Furthermore, South Sudan does not have a parole system in place to provide supervised early release. On top of this, the prison system is extremely underfunded. On 2 January 2020, President Kiir announced that Dr Peter Biar would be among those to receive this pardon. This appears to have been a political stunt in response to criticisms from the international community regarding Kiir's lack of respect for due process and freedom of speech.

Xinhua (29 January 2020): President Kiir granted amnesty to rebel groups who were alleged to have attempted to overthrow his government. According to a spokesperson from Kiir's Ministry of Information, the clemency came as part of an attempt to rekindle peace talks with the South Sudan Opposition Movements Alliance (SSOMA), a group of ex-military and government officials who had refused to be part of a September 2018 peace deal.

Probation

While South Sudan has no parole system in place for those who are incarcerated, there is a probation system which was established with assistance from the United Nations Office on Drugs and Crime. Before 2014, there was no system for an individual convicted of a crime to avoid incarceration. However, after assistance from the United Nations, 'the probation function has expanded due to which more attention has been given to imprisoned juveniles, which—in some cases—facilitated their release from prison' (UNODC 2014: vi). According to the United Nations' final report on the project, which ran from June 2010 to January 2014 and cost over $4.3 million, it succeeded in expanding the probation function to benefit 'minor offenders, children in conflict with the law and vulnerable offenders' (UNODC 2014: 15). However, there have been significant issues with prison funding and overcrowding in South Sudan since then, indicating that the current probation system is insufficient to alleviate ongoing issues and that the longitudinal benefits of the project have been less than ideal. Mass clemency grants are one means of alleviating these problems in the short term.

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SWEDEN

Jeffrey Warner

Constitutional Provisions

Sweden established its constitution in 1974 and revised it in 2012, with additional amendments post-2012. Part 4 of the Swedish Constitution addresses the topic of clemency; the constitution does not mention amnesty or pardon in any other section. Articles 8 and 9 elaborate on the clemency power. According to these articles, the clemency power resides with the government. The constitution does not mention a mercy or advisory committee, but it does state that the government can decide, pre-conviction, to stop a prosecution or investigation into any criminal act.

Legislation and Clemency Procedure

The Swedish Criminal Code does not contain references to clemency, pardons or amnesties. According to Schartmueller (2015), Sweden's clemency process was previously handled by the monarch, in combination with the executive. The Ministry of Justice would inform the monarch of the pertinent details and he or she would consider the case. The monarch was required to consult with the Supreme Administrative Court of Sweden. In 1974, the clemency power was removed from the monarch and given to the government, a collective body, and is often exercised through the minister of justice (Schartmueller 2015).

The Swedish clemency system was often used to shorten life sentences and reduce prison populations until 2006, when the Swedish parliament enacted a new system: a judicial process in which a court has the power to decide if an offender should be released from life imprisonment (Schartmueller 2019). Offenders usually submit their applications to the court after serving ten years' imprisonment. The prison administration then prepares a report detailing the conduct of the offender. In court, the offender has a right to public counsel and must argue his or her case against a prosecutor. The final decision rests with the judge (Schartmueller 2015).

Additionally, offenders sentenced to life imprisonment in Sweden are eligible to receive commutation through a judicial process created during Sweden's review of clemency for life sentences. After serving ten years, the offender can send an application to the District Court for review. Other parties can also send the application on his or her behalf. After reviewing the application, the court can either deny the request or approve it. An approval converts the indefinite life sentence to one with a definitive end. The total time served must be 18 years at a minimum. After receiving a conditional release, the offender then enters the parole system (Schartmueller 2019).

The Swedish government published an information guide in 2013 about clemency and how to apply for it. According to this fact sheet, a grant of clemency does not mean that the government has reviewed the prisoner's guilt. Any person can apply for clemency for a convicted individual. The application must be submitted to the Ministry of Justice and should contain identifying information, information about the conviction, the relief requested and any information which may support the granting of clemency. The application is sent to the minister of justice who then presents the case to the government for the final decision (Ministry of Justice 2013).

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ZIMBABWE

Tyler Williams

Constitutional Provisions

The Republic of Zimbabwe drafted an independence constitution (also called the Lancaster Constitution) in 1980. A proposed replacement constitution was drafted in 2000 but was defeated in a referendum. In 2008, a power-sharing deal between three political parties negotiated a new constitution, which was approved by voters on 16 March 2013. However, certain transitional clauses do not take effect for ten years.

Section 112 of the 2013 constitution allows the president the right to issue a pardon, after consulting the Cabinet, for any person convicted of an offence against any law. The president can grant either a temporary or indefinite respite from execution of a sentence, substitute a lesser punishment or suspend all or part of the sentence or any forfeiture imposed for any offence. If a resident of Zimbabwe has been convicted in another country for violating its laws, the president can declare that the conviction is not valid for the purposes of Zimbabwe's constitution or any other law in force. Any grant of pardon from execution or a lesser sentence must be published in the Zimbabwe Government Gazette (Saki and Chiware 2017).

Death Penalty Position

Zimbabwe is a de facto abolitionist state. For years it allowed the death penalty, until 10 March 2018, when President Emmerson Mnangagwa signed Clemency Order No. 1 of 2018. The order declared: 'Commutation of the death sentence to life imprisonment is hereby granted to all prisoners who have been on death row for ten years and above' (Amnesty International 2018). The president removed anybody who had spent ten or more years on death row and replaced their sentences with life in jail. In 2018, Zimbabwe changed its position from abstention to opposition in the biannual UN General Assembly Death Penalty Moratorium Resolution, reversing its 2016 vote.

Recent News and Academic Scholarship

Zimbabwe's President, Emmerson Mnangagwa, released up to 3000 prisoners, mostly female inmates, on 7 March 2018. The last time prisoners were released en masse was under the former president, Robert Mugabe, when the prison service was struggling to feed inmates due to lack of government funding. The Zimbabwe Prisons and Correctional Services stated that President Mnangagwa's pardon would decongest Zimbabwe's prisons, which house about 20000 inmates but have a capacity of only 17000 (*Reuters*, 22 March 2018).

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