

Pathways to Abolition of the Death Penalty

June 2016

**DEATH PENALTY WORLDWIDE
INTERNATIONAL HUMAN RIGHTS CLINIC**



Cornell Law School

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DEATH PENALTY WORLDWIDE AT CORNELL LAW SCHOOL

Founded in 2011, Death Penalty Worldwide (DPW) is a research and advocacy center based at Cornell University Law School that aims to bridge critical gaps in research and advocacy around the death penalty. We believe that sharing information about death penalty practices is key to an informed debate on capital punishment. To that end, DPW's online database provides comprehensive, transparent data regarding death penalty laws and practices in the 87 countries and territories that retain capital punishment. DPW also publishes reports and guides to best practices on issues of practical relevance to defense lawyers, governments, courts and organizations grappling with questions relating to the application of the death penalty. In collaboration with its international partners, DPW also engages in targeted advocacy focusing on the implementation of international fair trial standards and the rights of those who face the death penalty, including juveniles, women, and individuals with intellectual disabilities and mental illnesses.

ACKNOWLEDGMENTS

The authors are immensely grateful to the many individuals and organizations who shared their time, knowledge and insights with us. Without their contributions, this publication would not have been possible.

This project builds upon the work of the International Commission against the Death Penalty, which in April 2013 published a report on "How States Abolish the Death Penalty," examining the abolition processes of 13 jurisdictions. We gratefully acknowledge our debt to the ICDP's pioneering research in the field.

We are particularly indebted to the following individuals who agreed to grant us interviews: Paul Angaman, Marc Bossuyt, Mona Cadena, Raju Prasad Chapagai, Boriss Cilevics, Rolland Wylfried C'Kouayoukou, Isaac Fayomi, Tanguy Fouemina, Verónica C. Fraiz Ascanio, Andrew Hammel, Shaleur Itoua, Omer Kalameu, Nazhat Shameem Khan, Liévin Ngondji, Christian Loubassou, Juvence Ramasy, Maïa

Trujillo, Marie-Thérèse Volahaingo, Mark Warren, Richard Wetzell, Ruth Wijdenbosch, Abdillahi Zakaria, Aimée Zebeyoux, Ineta Ziemele, and Pascal Zohoun. We are profoundly grateful to those who agreed to speak to us despite risks to their personal safety and whose names do not appear in this publication.

The authors were fortunate to benefit from the unceasing support and thoughtful input of Nicole Wyrsh, Swiss Ambassador and Special Envoy for Human Rights, and her colleague Alexandre Steullet. We would like to express here our warmest thanks to them. Abolitionist activists and the staff of Swiss embassies around the world provided invaluable assistance in connecting the authors to country experts on death penalty issues. Thanks are due to Philippe Brandt, Ilma Čepāne, Raphaël Cheneuil-Hazan, Guillaume Collin, Marino Cuenat, Markus Dutly, Heide Fehrenbach, Peter Hafner, Nicolas Huet, Thomas Litscher, Dominique Petter, Larissa Spescha, and Ricardo Vergara. Many thanks to Rudolf Knoblauch, Renate Hunziker Scapin, and Patricia Weber Singh, whose support was instrumental in securing the distribution of the report. Special thanks to the staff of *Ensemble Contre la Peine de Mort* for organizing the 6th World Congress Against the Death Penalty, at which this publication was launched. We also gratefully acknowledge the research support provided by Adrienne Stonecypher.

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This publication was made possible by the generous support of the Swiss Federal Department for Foreign Affairs. The authors' views do not necessarily reflect the views of either the Swiss government or the individuals interviewed over the course of the project.

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FOREWORD

How do States actually go about abolishing the death penalty? Answers vary and are far from being uniform. Abolition can be a major undertaking that requires navigating a labyrinth of litigation, judicial reforms and parliamentary procedures. Or it can be quick and straightforward, especially where there is a strong political will or a favorable momentum marked by positive change and progress. Switzerland is pleased to have lent its support to leading academic experts having researched how different States have overcome common obstacles on their path towards abolition.

Switzerland's main objective is the abolition of the death penalty worldwide by 2025 and the achievement of a universal and comprehensive moratorium on executions. A justice that kills is inherently wrong, and maintaining a sanction that can lead to fatal consequences, be it due to discriminatory biases or judicial errors, is morally questionable. It's moreover well established that countries without the death penalty do not experience a surge in violence or crime. By contrast, several of the countries that retain and use the death penalty appear to be amongst those plagued by instability, strife and unrest. In the face of terrorism and violent extremism, death penalty abolition is furthermore a powerful symbol of resistance to gruesome killings and extrajudicial executions showcased on social media by fanatics claiming to hold the key to a harmonious and prosperous society. Today, more than ever, there is an increased urge for countries to distance themselves from such nonsensical destructive behavior.

One repetitive feature of the country examples presented in this publication is that open and facts-based debates on the death penalty are neither politically unsafe nor morally unsolvable. Favoring reason over emotions is a major part of the move to abolition; political courage and leadership are other important ingredients. Depending on the context and path chosen, a country's internal debate may vary from being fairly consensual to strongly divided, with the ultimate decision sometimes left to one or two visionaries only or to the public at large. In the case of Switzerland, abolition naturally emerged from the modernization and unification of a criminal justice system seeking to move

from retribution and revenge towards reform and rehabilitation; the death penalty had lost its superficial appeal, as better alternatives to effectively fight crimes and other ills appeared. The emphasis continues to be laid upon effective means of fostering a peaceful society, not on ineffective sanctions upheld by illusions or outdated popular beliefs.

Invariably, it is the prerogative of each country to select and walk its abolition path at its own pace. When it comes to a topic for which there generally is a lack of wide public interest, choosing the best way forward can be challenging. There are numerous cases of *de facto* abolitionist countries that remain stuck in a long *status quo*, with no execution, but still the option of it. This publication looks at a variety of country examples from every continent, representing different legal traditions, cultural traits, socio-economic status and political systems. It shows that abolishing the death penalty is not a matter of political ideology, economic development or cultural traditions, but rather stems from the facts-based recognition that the death penalty has no proven use.

At present, more than half of the world's countries have legally abolished capital punishment. For those countries that still retain it, passively or actively, this publication will hopefully offer inspiration, encouragement and concrete ideas on how to start or accomplish their journey towards abolition. Switzerland is glad to present and share with all interested this new publication on the occasion of the Sixth World Congress against the Death Penalty in Oslo.

DIDIER BURKHALTER

Federal Councillor of Switzerland and head of the Federal Department of Foreign Affairs (FDFA)

INTRODUCTION

By the end of 2015, 104 countries had legally abolished the death penalty for all crimes—more than half of the world’s roughly two hundred states and territories, no matter how broadly defined. Sixty-one of these countries abolished in the 1990s and 2000s, giving birth to what we now consider a global movement toward the universal abolition of capital punishment. In 2015 alone, four countries promulgated laws that fully abolished the death penalty (Suriname, Fiji, Madagascar, Republic of Congo), and a fifth (Mongolia) repealed the death penalty to fulfill an international treaty commitment to abolish. Even in countries that retain the death penalty, the use of capital punishment is rare: forty-nine death penalty states have not carried out any executions in at least ten years. The use of capital punishment is increasingly confined to a small number of states that carry out large numbers of executions. Of the twenty-five countries where Amnesty International recorded executions in 2015, 89% of all executions outside of China were carried out in three countries: Iran, Pakistan and Saudi Arabia. While great strides have been made towards universal abolition of capital punishment, it should not be forgotten that thousands of people are executed each year, many after proceedings that do not meet fair trial standards. At the end of 2015, according to Amnesty’s figures, there were over twenty thousand people under sentence of death in the world.

In a world of sharply contrasting attitudes toward the death penalty, this publication presents a comparative study of the circumstances and strategies that led to abolition in fourteen jurisdictions across a range of geographical regions, cultural traditions, and legal systems. We considered abolition cases from every continent: five in Africa (Benin, Burundi, Republic of Congo, Côte d’Ivoire, Madagascar), two each from North and South America (Canada, the US state of Maryland, Venezuela, Suriname), two in Europe (Germany, Latvia), two from the Asia-Pacific region (Nepal, Fiji) and one in the Middle East (Djibouti). While we focused primarily on countries that abolished within the last five years, we also covered a range of historical periods: Venezuela was the first country in the world to prohibit capital punishment for all offenses in 1863, and Nepal one of the earliest to abolish for ordinary offenses in 1946. Our study also highlights the

many different ways in which abolition has been achieved. In the countries reviewed, abolition resulted from legislative amendment, constitutional reform, executive decree, and ratification of international treaties. In some cases abolition was brought about only months after the country’s last execution; in others, decades later.

While these fourteen case studies represent only a fraction of countries that have legally abolished the death penalty, their diversity allows us to gain insight into the common features of abolition debates. Opposition to capital punishment is not regionally or culturally specific. While every state’s relationship with the death penalty reflects its own particular history and circumstances, examples of countries that have repealed or continue to retain capital punishment can be found in all of the world’s continents, legal systems, traditions and religions. National debates on the merits and flaws of capital punishment often revolve around similar issues: the question of deterrence, the risk of executing the innocent, and the need to conform to international human rights standards. Abolition becomes possible when the terms of the discussion are transformed by new developments—whether a high-profile case of innocence, a shift in government policy, or a transition to new leadership—and political leaders use those opportunities to move abolition forward.

We have found that long periods of legislated or *de facto* moratoria on executions may allow the criminal justice system to find alternatives to the death penalty, assuage fears of rising crime rates, and reduce public opposition to abolition. Incremental legislative restrictions on the scope of application of capital punishment can play a similar role. Widely publicized cases of wrongful conviction redefine the public’s perception of the risks of capital punishment and offer opportunities to reframe death penalty debates. Empirical studies refocus the discussion on the penological merits of capital punishment rather than ideological divides. Abolition campaigns contribute to better informing decision-makers, stakeholders and the general public. Finally, the global trend toward abolition, manifested in the steadily rising number of abolitionist countries, contributes to a growing consensus that abolition is both consistent with fundamental human rights and sound penal policy.

Abolition processes are complex, involving myriad political, historical and social aspects, and while we have

tried to account for different perspectives and research varying viewpoints, we have inevitably emphasized some narratives over others. Moreover, information on the abolition process is often difficult to obtain. In many countries, a certain amount of secrecy surrounds both past death penalty practices and the political circumstances leading to abolition. Our research methodology prioritized interviews with key abolition actors and witnesses wherever possible, including parliamentarians, government officials, judges, lawyers, human rights activists, members of key inter-governmental organizations, diplomats and academics. We completed our research by looking at national legislation, studies and interpretive commentaries; scholarly books and articles; UN documents; reports by international and national non-governmental organizations; and media articles.

The following chapters document the processes by which 14 jurisdictions abolished the death penalty in law. Our conclusions attempt to identify patterns and draw conclusions in the hope that they will provide ideas, insights and inspiration to countries that either already are on their path to abolition or yet have to embark on it.

COUNTRY PROFILES

Benin

DATE AND METHOD OF ABOLITION: By parliamentary vote approving the ratification of a global abolition treaty. Benin acceded to the treaty in July 2012.

DATE OF LAST EXECUTION: September 1987.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (acceded Mar. 12, 1992), OPT2 (acceded Jul. 5, 2012), CAT (acceded Mar. 12, 1992).

Central to Benin's abolition process was the Second Optional Protocol to the ICCPR, an international treaty that aims at the universal abolition of capital punishment. Prompted by a global context in which capital punishment was increasingly rejected on human rights grounds, Benin's leadership decided to support abolition after two decades without executions. The National Assembly's abolition debate unfolded around the ratification of the Protocol, a single act that brought about abolition while

avoiding the lengthy process and political pitfalls of domestic legislative amendments.

Benin carried out its last executions in September 1987 when two prisoners were executed for murder. The death penalty had been applied regularly before then, with around two executions a year. After 1987, like many *de facto* abolitionist states, Benin's courts continued to hand down death sentences that were never carried out. Many of these sentences were handed down after trials conducted *in absentia*—that is, without the defendant participating—in violation of fair trial standards. For the following twenty-five years, until abolition, many death-sentenced inmates were effectively condemned to indefinite terms of imprisonment under particularly harsh detention conditions.

Although the death penalty effectively fell into disuse, there was for many years no movement to change the status quo. Abolition was an unpopular proposition, in large part due to anxiety about high levels of crime and an ineffectual justice system, not only in the country but also in the sub-region. A common concern was that abolition would turn Benin into a haven for offenders from neighboring countries that continued to apply the death penalty, notably Nigeria. A new democratic constitution promulgated in 1990 ushered in an era of political pluralism that could have afforded an opportunity for progress towards abolition, but the death penalty did not emerge as a material issue. In October 1999, moreover, the Constitutional Court rejected a challenge to the constitutionality of capital punishment, holding that the constitution did not prohibit capital punishment per se but rather the arbitrary and illegal deprivation of life. A capital sentence rendered in conformity with the law was thus ruled to be constitutionally valid.

The turn towards abolition occurred in the mid-2000s as a result of a change in national leadership and the mobilization of Beninese rights groups around abolition. The election of Yayi Boni to the presidency in 2006 marked the end of the long reign of Mathieu Kérékou, who during his 29 years as president, observed a discretionary moratorium on executions but did not favor legal abolition. President Yayi did not initially endorse abolition in light of popular support for the death penalty, but his views changed over time, in part thanks to campaigning by human rights organizations and allied parliamentarians.

Around the time of President Yayi's election, Beninese rights groups took up the abolitionist cause with greater urgency. Led by the efforts of the organization *Action des chrétiens pour l'abolition de la torture* (ACAT Benin) [Action by Christians for the Abolition of Torture], an informal coalition that also included Amnesty International, *Prisonniers sans frontières* [Prisoners Without Borders], and *Dimension sociale Bénin* [Social Dimension Benin] engaged in various methods of campaigning against the death penalty, including the organization of marches and petitions and the submission of reports to UN human rights bodies. Following a workshop organized regionally by the Association for the Prevention of Torture on accession to the Second Optional Protocol, ACAT decided on a strategy that would focus on ratifying the international treaty rather than reforming national legislation. A significant element of this plan involved individual meetings with parliamentarians to promote a law authorizing the ratification of the treaty.

The first signs that Benin was moving towards abolition appeared on the international stage. In 2004, Benin had reported to the UN Human Rights Committee that it needed to retain capital punishment as a deterrent given its high crime rates. By 2007 it not only voted in favor of the UN General Assembly Resolution on a global moratorium on capital punishment but also co-sponsored it, as it would all the subsequent resolutions from 2008 to 2014.

In the summer of 2011 the government introduced a law that authorized ratification of the Second Optional Protocol – the country's first abolition bill. By this point, no executions had been carried out in over twenty years and no death sentence had been handed down since 2010. Moreover, the government was sensitive to the global human rights-driven movement to restrict the death penalty and was aware of the impact of retention on its international standing. On August 18, 2011, the National Assembly voted to authorize ratification of the Second Optional Protocol. Parliamentarians who supported the death penalty expressed concern over increasing violence in the country and the insufficiency of life imprisonment as an alternative deterrent, but such arguments were overcome by evidence that the death penalty had, in effect, already disappeared from the criminal justice system. President Yayi quickly promulgated the law in October 2011, but the actual ratification of the treaty at the United Nations would not take place until July 5, 2012. The

Second Optional Protocol came into force three months later in October 2012.

The legislative reforms necessary to bring the country's laws into compliance with the treaty had, however, not yet been completed as of the time of writing in April 2016. This matters little from a theoretical standpoint, since under Benin's legal system ratified treaties are directly applicable in the domestic legal system and override inconsistent national laws. After ratification of the Second Optional Protocol, no national law can permissibly (and in some cases constitutionally) contain any provision referring to the death penalty, a conclusion that was confirmed by Benin's Constitutional Court in August 2012. Nevertheless, both the Criminal Code and the Code of Criminal Procedure still contain capital punishment provisions. (The new Code of Criminal Procedure adopted in March 2012, after the National Assembly voted to ratify the Second Optional Protocol, contains two references to the death penalty. By all accounts, this is the result of human error rather than a parliamentary turnaround on the issue of abolition.) Repealing these provisions is simply a matter of time, however, and experts don't anticipate any political resistance.

Although legal abolition has been achieved, 13 prisoners remain under sentence of death in Benin (a 14th recently died in prison). All of them are imprisoned at the Akpro Misséré prison under the unusually harsh conditions devised for what remains a death row. These inmates are only allowed to go outside once a month and spend the rest of their time in small, dark cells, where they are provided with food of an even lower quality than that afforded to the rest of the prison population. ACAT Benin, which has monitored their treatment, believes it likely that their sentences will ultimately be commuted to life imprisonment, but no official action has so far been taken to remedy their situation.

All in all, Benin's abolition process was a quiet political affair involving only the country's political elite. There was no society-wide abolition debate, and Beninese media devoted little coverage to the topic. Rights groups' campaigning focused on political decision-makers rather than public education. Though no rigorous national poll was conducted, an informal "survey" of opinions collected on the streets of the capital found that many citizens opposed abolition and many others had not heard of it.

Government efforts to educate the general public on abolition have focused on preventing incidents of mob justice, a problem that predates abolition.

Since 2012, President Yayi has taken up the mantle of a regional leader on abolition, speaking widely on the need for African states to eliminate the death penalty. His government has twice hosted a continental conference on capital abolition organized under the aegis of the African Commission for Human and Peoples' Rights. The last meeting in July 2014 concluded with a call for an African treaty dedicated to abolition, along the same model as the abolition protocols of the European Convention on Human Rights.

KEY FACTORS LEADING TO ABOLITION

- A 24-year moratorium on executions made capital punishment increasingly irrelevant to the justice system, even though death sentences continued to be handed down by the courts.
- A newly-elected president was swayed by the arguments of the abolitionist movement and an international context in which a majority of states reject the death penalty on human rights grounds.
- Abolition was achieved through ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights. The necessary reforms to domestic death penalty laws have yet to be adopted by the National Assembly.

Burundi

DATE AND METHOD OF ABOLITION: November 22, 2008, by parliamentary adoption of a new Penal Code.

DATE OF LAST EXECUTION: July 1997.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (acceded May 9, 1990), OPT (No), CAT (acceded Feb. 18, 1993).

Prior to abolition, the death penalty in Burundi was primarily used as a tool by the government to suppress political opponents. Its abolition in 2009 after a near unanimous parliamentary vote on the country's new Criminal Code took place in the optimistic climate following the end of a decade of civil strife and in the wake of abolitionist campaigning by human rights groups.

International encouragement to abolish was also determinative, and the government was strongly motivated by the projected establishment of United Nations-backed transitional justice mechanisms that would not countenance capital punishment.

Under the pre-abolition Penal Code, the death penalty could be imposed for a range of common law and military offenses including murder, torture, armed robbery, treason and espionage. In the first 20 years after Burundi became an independent state in 1962, the political landscape was marked every few years by executions of failed coup leaders or anti-government rebels. Beginning in 1981, death sentences were no longer carried out, marking the beginning of a *de facto* moratorium on executions that would last until 1997. The reasons behind the suspension of executions are multifaceted and likely changed over time. It is clear in any event that the moratorium did not stem from an abolitionist agenda, but rather from the inauguration of a new constitutional era in 1981 and a program of national reconciliation. After ten years without executions, Burundi was classified by the United Nations as a *de facto* abolitionist state, but this label did not reflect a considered national capital punishment policy and would soon prove misplaced.

During the decade of Burundi's most recent civil war, from 1993 to 2005, in the context of intense political and social turmoil, Burundian criminal courts used the death penalty extensively, particularly in cases with strong political symbolism. Although almost no executions were carried out, death sentences were handed down in a climate of partisan and ethnic violence in which armed groups, including state forces, frequently committed extrajudicial killings. Between 1996 and 2004, at least 648 individuals were condemned to death according to one human rights group. Of these hundreds, six were hanged in July 1997 in what would be the country's last executions.¹ The purpose of these executions, which were denounced by local and international organizations, was to carry a strong political

¹ While some accounts record the executions of October 2000 as Burundi's last judicial executions, we believe these are more properly understood as extrajudicial killings. The two defendants were sentenced to death by a military council after expedited proceedings in which they were not able to present a defense, and they were executed the next day in violation of their right to appeal.

message on the eve of multipartite talks seeking a negotiated end to the conflict.

In 2001, the government announced an official moratorium on executions, but for a while death sentences continued to be handed down by criminal courts at an unrelenting pace. The number of new death sentences passed each year began to decline significantly in 2003 and remained in the single digits until abolition in 2009. Still, by the end of 2004, there were reportedly over 500 prisoners under sentence of death, a comparatively high number for a country with a population of around 10 million. Throughout this period, many prisoners were sentenced to death following unfair trials, without the benefit of effective legal representation and with no appellate review.

The path to abolition began in 2005 with a peace treaty, a new constitution instituting multiparty representation, and the appointment of Pierre Nkurunziza, a former Hutu rebel leader, to the country's presidency. Nkurunziza, who had himself been sentenced to death *in absentia* for war crimes in 1998, was personally opposed to capital punishment. Moreover, the post-conflict era was characterized by a new political climate which favored democratization and the promotion of human rights. The Burundian human rights groups that had emerged from the 1993 political crisis, regional NGO coalitions and the international community supported the expansion of this movement and began the process of networking and capacity-building that would make the abolition campaign possible.

Between 2006 and 2007, President Nkurunziza commuted all of the death sentences in the country, 549 altogether according to one report. The blanket amnesty benefited mostly political sympathizers of the post-conflict government and granted them immediate and unconditional release on the basis of a temporary immunity granted to "political prisoners." Depending on their offense, death row prisoners were either released immediately on "provisional bail" or had their sentences commuted to prison terms.

Around the same time, Burundi entered into discussions with the United Nations to set up transitional justice mechanisms similar to those established in neighboring Rwanda after the genocide. This would prove a decisive factor to achieving abolition. In May 2007, the Burundian government agreed to create a war crimes tribunal and a

truth and reconciliation commission in collaboration with the UN. The abolition of capital punishment was one of the UN's core precepts and this agreement heightened the international encouragement to abolish capital punishment as part of a human rights-driven process of state reconstruction.

From 2007 onwards, spurred on in part by the international context and in part by a conviction that lasting peace would not be achieved without human rights reforms, the government began an intensive public awareness-raising campaign on the issue of capital punishment, joining the ongoing efforts of national human rights groups such as the *Action des chrétiens pour l'abolition de la torture* (ACAT Burundi) [Action by Christians for the Abolition of Torture], the *Ligue burundaise des droits de l'homme* [Burundian League for Human Rights], and the *Association pour la protection des droits humains et des personnes détenues* [Association for the Protection of Human and Detainee Rights]. These organizations had already begun to develop partnerships with key opinion-leaders on abolition issues, such as bar associations, judges, lawyers, parliamentarians and religious leaders in order to engage them in pressing the government to abolish. They were also effective at developing collaborative networks at the national, regional and international levels. Exploiting internationally coordinated events such as the yearly World Day Against the Death Penalty, the abolition campaign used every media opportunity to ensure that death penalty debates had recurring visibility in the media. In 2003, for instance, a popular radio station devoted a week to open debates on the death penalty, inviting all sectors of society to participate.

The abolition campaign, in addition to raising universally applicable arguments against the death penalty, also advanced ideas that spoke directly to Burundi's post-conflict context. The government's message focused on the many deaths caused by the country's successive civil wars and the need for the justice system to avoid perpetuating the cycle of vengeance and killing. Human rights organizations raised other, more contentious issues. Because one ethnic group had long dominated the judiciary and handed down politically and ethnically motivated death sentences, the death penalty was a tainted institution. Abolitionists urged a clean break from the excessive practices of capital punishment, under which many

innocent people had been unfairly sentenced to death. Finally, the abolitionist campaign invited comparisons with Rwanda, a close geographical and cultural neighbor, where the death penalty had been abolished in the wake of the genocide. Abolition in Rwanda illustrated the benefits of ending the death penalty after a period of extraordinary violence in order to embark on a new era of peace.

In the absence of public opinion polling, it is difficult to assess the impact of this campaign on Burundian society. Human rights groups, however, believe that both before and after 2009, popular and political support for capital punishment remained robust, reflecting a perception that abolition is appropriate only for countries with stable governments, strong human rights records and low crime rates – not for war-torn societies undergoing a painful transition towards peace. Nevertheless, the years of abolition campaigning bore fruit among the country's political leadership.

It is in this context of overt death penalty politicization and post-conflict state reconstruction that, on November 22, 2008, the National Assembly voted overwhelmingly in favor of a new Penal Code that contained no reference to capital punishment. Under the new Code, the most severe penalty is generally life imprisonment without eligibility for parole for 10 years. The president signed the new Code into law on April 22, 2009. The high level of support achieved for the abolitionist Code – 90% of parliamentarians endorsed it – reflects the influence of human rights-based arguments as well as the need to meet international standards to establish UN-supported transitional justice mechanisms. These concerns may have overridden widely-shared beliefs, likely not limited to opposition MPs, that the death penalty was necessary to check the soaring criminality that had engulfed the post-conflict era.

One flaw of the abolition law was its failure to set out a process to deal with the prisoners who were sentenced to death before its promulgation. It was understood that their sentences would be commuted, but in the absence of clear directives, some cases have fallen through the cracks. As late as 2012, ACAT Burundi reported that at least 6 individuals in the Mpimba Prison were still under sentence of death.

Although there have been no formal legislative attempts to reinstate the death penalty, Burundi has not signed or acceded to the Second Optional Protocol to the ICCPR (“OPT2”), and prospects for ratification in the near future appear dim. In January 2013, at its second Universal Periodic Review before the UN Human Rights Council, Burundi accepted recommendations to ratify the treaty, which would make abolition legally irreversible, ensuring that the death penalty cannot be reintroduced by a future parliamentary vote. Any such plans have been suspended by the ongoing political crisis, which began in April 2015 when President Nkurunziza announced that he would run for a third, constitutionally-prohibited presidential mandate. Since then, popular protests have led to violent government repression of political opponents and human rights defenders. Several human rights organizations have reported that political rivalry continues to claim lives through extrajudicial killings by police and intelligence services and are concerned that the government is considering a return of capital punishment. In a recent declaration, the president announced the creation of a commission that would be tasked with determining the appropriate punishment for anti-government protesters, characterized as terrorists – a worrying development in the political discourse. In this climate, politically-motivated executions, whether or not they are extrajudicial, will continue to be an acute concern.

KEY FACTORS LEADING TO ABOLITION

- The death penalty was abolished as part of a broader state reconstruction project, in the context of a desire to break with the violence of a decade of civil strife and in light of the projected establishment of a UN-backed war crimes tribunal opposed to capital punishment.
- A campaign to raise awareness of abolition issues among the general public was launched by the government and supported by human rights organizations. The campaign emphasized arguments that were specific to Burundi's historical, geographical and cultural context, such as the need to break with a cycle of violence and killing in the aftermath of civil conflict and the historical misuse of executions to eliminate political opponents
- Burundian human rights groups coordinated abolitionist actions targeting political, legal and religious leaders, and the citizenry at large, with the support of international organizations.

Canada

DATE AND METHOD OF ABOLITION: July 14, 1976 for common law offenses (by parliamentary vote); December 10, 1998 for military offenses (by parliamentary vote).

DATE OF LAST EXECUTION: 1962.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (acceded May 19, 1976), OPT2 (acceded Nov. 25, 2005), CAT (acceded Jun. 24, 1987).

The abolition of capital punishment in Canada was an incremental legislative process: it began with a decade of gradual restriction by successive governments, was followed by a lengthy legislated moratorium that allowed society to experiment with the reality of abolition, and culminated in a close vote in which individual parliamentarians were the key abolition decision-makers.

Prior to abolition, Canada regularly carried out executions in all of its provinces. Between 1869 (when Canadian criminal laws were consolidated across the country, two years after the confederation was formed) and 1962 (when the last execution took place), 1,481 death sentences were issued and 710 individuals were executed, including 13 women. In the 1930s, Canada executed more individuals per capita than the United States.

The turning point came after the Second World War, and especially in the key period from the mid-1950s to the mid-1970s, when there was a fundamental change in practices and attitudes towards capital punishment. The liberal ethos of the 1960s, a widely publicized wrongful capital conviction case and the influence of British law reform all contributed to the reassessment of the death penalty in Canada. The number of executions dropped drastically due to numerous commutations from the mid-1950's onwards. During the same period, the government supported the development of critical empirical data and policy analysis on the penological merits of capital punishment. Meanwhile, private members' bills kept the issue of capital punishment before Parliament and at the forefront of public debate almost every year from the mid-1950's until abolition.

From the 1950s onwards, the types of offenses and offenders punishable by death were progressively restricted by legislative reform. Since 1869, there had been three

capital offenses: murder, treason, and rape, and death was mandatory in cases of murder. In 1948, a government-sponsored amendment excluded post-partum mothers from the death penalty for infanticide. Rape was struck from capital punishment laws in 1954. Although a 1956 parliamentary commission advised retaining capital punishment for all forms of murder, in 1961 Parliament overwhelmingly adopted a criminal law amendment dividing murder into capital and non-capital categories and abolishing the death penalty for juveniles. Capital homicide was restricted to planned murder, murder committed in the course of certain violent crimes, and murder of an on-duty police officer or prison guard. Reflecting an increasing awareness of the exceptional nature of capital punishment, the amendment also introduced mandatory appeals to capital proceedings. These law reforms closely mirrored the debates and legislative changes that were taking place at the same time in the United Kingdom.

In this context of evolving opinions on criminal justice policy, on December 10, 1962, Canada carried out its last two executions, one of which was botched. Arthur Lucas and Robert Turpin were hanged for murders of police officers amid crowd protests. (The last military execution under Canadian authority had been carried out in 1945, when Harold Pringle was executed by firing squad in Italy.) Following the 1962 executions, the *de facto* policy of successive governments was to commute all death sentences.

After years of failed and withdrawn abolition bills, the first serious parliamentary discussion of a motion to replace the death penalty with life imprisonment took place in 1966 and was ultimately defeated. The following year, however, drawing upon the momentum of these debates, the government of Prime Minister Pearson successfully passed a law introducing a 5-year moratorium on capital punishment for all common law offenses except the murder of a police officer or prison guard. (Capital punishment for treason and piracy-related murder were also not affected, but were so rare as to appear irrelevant to the abolition debate). The initial moratorium was extended by another five years in 1973 but, as it turned out, the second full five-year term would not be needed.

Between the institution of the legislative moratorium and the abolition vote in 1976, two significant events

strengthened the abolition campaign. The first was the publication in 1972 of one of the first international longitudinal studies of capital punishment and deterrence, which had been commissioned by the Canadian Solicitor General in the late 1960s from criminologist Ezzat Fattah. At a time when experts were equally divided over the deterrence question, the study—which concluded that there was no evidence that the death penalty had any deterrent effect—had a powerful impact. The Fattah report also concluded that nothing “support[s] or even suggest[s] that the suspension of capital punishment ... caused an increase in the homicide rate.” The second was the widespread reporting on the case of Steven Truscott, who in 1959, at the age of 14, had been sentenced to death for the rape and murder of a schoolmate. Within a few years, the prosecution’s case crumbled and his death sentence was commuted. A book documenting his wrongful conviction came out in 1966 and was followed by a barrage of press and television coverage. The case had a lasting influence on the terms of the death penalty debate in Canadian society.

All of these factors—the surge of liberalism of the 1960’s, the nearly wrongful execution of a 14-year-old boy, and the new sociological data—together made it possible for the government of the day, which felt very strongly about the issue, to move forward on abolition. In support of his government’s bill, Pierre Trudeau, the first Canadian prime minister to vocally support abolition, gave an impassioned speech before Parliament in July 1976. On pragmatic grounds, Trudeau emphasized the death penalty’s lack of deterrent effect. From an ethical perspective, Trudeau argued that society should not “[adopt] vengeance as an acceptable motive for its collective behaviour.” After a lengthy debate, the law squeaked through by a 130-124 vote, replacing the death penalty with life imprisonment without eligibility for parole for 25 years for first-degree murder. The abolition bill was passed by a “free vote,” meaning that representatives were not required to vote along party lines – a very rare occurrence in the Canadian political system, and one that prompted MPs, in the absence of party guidelines, to rely heavily on the government studies of the 1960’s and 70’s.

The Canadian murder rate, contrary to the predictions of death penalty supporters, did not skyrocket after abolition. On the contrary, while the homicide rate more than doubled between 1961 and 1975 (when it peaked at 3.02

per 100,000), it declined slightly in the years after abolition (from 2.84 in 1976, to 2.76 in 1978 and 2.41 in 1980). It has followed a general downwards trend since, with fluctuations, reaching a 25-year low in 1995 (2.00), a 30-year low in 1999 (1.77), and an almost 50-year low in 2014 (1.45). Although the causes for the decline of criminality cannot be directly attributed to the abolition of capital punishment, it is notable that the most widely expressed fear of abolition opponents was not realized.

In the years following abolition, there were a number of attempts to revive the death penalty. Most were private member bills proposed in response to violent crime. Only one led to more extended parliamentary debates in June 1987. A loose coalition of civil liberties, human rights and religious groups, strongly supported by briefing material produced by Canadian government agencies, conducted a thorough campaign in defense of abolition, distributing pamphlets and meeting with individual MPs. To their surprise, the 1987 debate demonstrated that there was no longer a concerted movement supporting the death penalty in Canada. The Canadian Association of Chiefs of Police, for instance, which had supported retention in the 1960s and 1970s, had reversed its position. In the words of one abolitionist, “our enemies never materialized... [The parliamentary debate consisted in] one [MP] after another standing up and saying that they had seen the light. The crime stats simply didn’t support reinstatement, and it was very easy to say so.”² The reinstatement bill was more soundly defeated than the death penalty in the 1976 debate, by 148 to 127. Abolition had gained ground.

The military death penalty nevertheless survived another 22 years. Under the National Defence Act, executions were to be carried out by firing squad for offenses such as treason and mutiny. No Canadian soldier was charged with a capital offense in the last 50 years of the military death penalty, and it was finally abolished in 1998 after a lengthy study concluded there was no reason to retain it. The final abolition of capital punishment was part of a comprehensive legislative reform in the field of military justice, an issue that triggered little public, media or interest group reaction. MPs voted along party lines, with no separate vote for the death penalty provision. After the reinstatement debate of 1987, politicians had realized that

² Interview with Mark Warren, then affiliated with Amnesty International Canada, Dec. 10, 2015.

there was no appetite in Canada to retain the death penalty in any form.

Popular support for the death penalty has decreased since abolition, in ways that are not always apparent from public opinion polls. While the percentage of poll respondents who favor capital punishment has followed a slow trajectory of decline, the intensity of that support has waned more significantly. In February 1987, when the bill to reinstate capital punishment was announced, 73% of poll respondents favored restoring the death penalty, but only 5% ranked this among the most pressing issues in the country. Four months later, when Parliament voted on the issue, popular support had fallen to an all-time low of 61%, following widespread discussion of death penalty issues in the media. In 1995, a poll found that 69% of Canadians supported the death penalty—recalling the percentage that had voiced support for capital punishment throughout the 1970s—but not one of the 1,500 respondents named its return as one of their major concerns. Public opinion on capital punishment is also marked by a generational divide. Demographic polling in the last decade, from about 1998 to 2010, suggests that to younger Canadians, the death penalty is as unnecessary as it is unfathomable.

On February 15, 2001, the Supreme Court of Canada unanimously overturned an earlier decision and ruled in the *Burns* case that extraditing an individual to a jurisdiction where she risked a capital sentence without assurances against the death penalty would violate the Canadian Charter of Rights and Freedoms. (The “Bill of Rights” portion of the Canadian Constitution came into force in 1982, after abolition.) By finding that a surrender to face the death penalty violates the “fundamental justice” safeguards of section 7 of the Charter of Rights, this judicial decision likely makes a return of the death penalty constitutionally impossible in Canada.

KEY FACTORS LEADING TO ABOLITION

- Abolition came about incrementally. The country began by limiting the crimes and individuals eligible for the death penalty, then adopted a legislative moratorium.
- The process of abolition in the United Kingdom had a substantial impact on political leaders.
- Studies emphasizing the lack of deterrent effect made clear that there were few penological benefits to retaining the death penalty.

- A highly publicized wrongful conviction helped influence the media and public opinion.
- In the years following abolition, public opinion supported the death penalty, but it was not a priority issue for most people.

Republic of Congo

DATE AND METHOD OF ABOLITION: By promulgation of a new constitution abolishing the death penalty on November 6, 2015.

DATE OF LAST EXECUTION: October 1982.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR and OPT1 (acceded on Oct. 5, 1983), CRC (acceded on Oct. 14, 1993), ACHPR (acceded on Dec. 9, 1982), ACHPR Women Protocol (signed in Feb. 2004), ACHPR Charter Child (acceded on Oct. 2006).

The abolition of the death penalty in the Republic of Congo, long promoted by an abolitionist movement within the country after executions ceased in 1982, was accomplished by a constitutional reform that took most observers by surprise.

The Republic of Congo’s reliance on capital punishment decreased gradually over the course of several decades. Congo’s last executions were carried out in October 1982 when two prisoners were executed for murder. While death sentences continued to be handed down until abolition, most of them for murder, their number decreased significantly in the early 2000s and even further after 2010. This decline resulted from changing criminal justice practices rather than legal reform. Only one legislative amendment, in 1991, repealed the death penalty for a specific type of offense (political crimes), and there were no further legislative restrictions. Moreover, although the 2002 constitution enshrined the right to life, providing that “[t]he state has the absolute obligation to respect and protect” life, this provision would prove to have no effect on the application of capital punishment.

The long arc toward abolition in the Republic of Congo cannot be understood without reference to the career of President Sassou Nguesso, who has been in power for 32 years (from 1979 to 1992 and again since 1997) and maintains a tight grip on Congolese politics. Although President Sassou adopted an unofficial moratorium on

executions in 1982, three years after he came to power, he did not favor legal abolition until recent years.

From the mid-2000s onwards, there was a marked change in Congo's attitude towards capital punishment. On August 15, 2007, as part of the country's independence day celebrations, President Sassou commuted the sentences of all 17 of the country's death row inmates to life imprisonment with hard labor, the Criminal Code's second harshest penalty. Moreover, the late 2000s saw a multiplication of international fora in which states were called upon to discuss the death penalty in relation to human rights, and Congo expressed an openness to eliminating the death penalty in this context. In December 2007, Congo voted in favor of the UN General Assembly's first resolution to impose a global moratorium on the application of capital punishment. Congo later not only voted for but also co-sponsored each of the subsequent moratorium resolutions between 2008 and 2014. At its two Universal Periodic Reviews (UPR) before the UN Human Rights Council in 2009 and 2013, Congo supported recommendations that it abolish the death penalty.

With these signs that the government was on a course towards abolition, Congolese human rights organizations intensified their work promoting abolition. In its pro-abolition declarations to the international community, the government described plans to conduct a public awareness campaign to stimulate a wide-ranging debate on the issue, but these never materialized. Abolitionist organizations, led by the efforts of *Action des chrétiens pour l'abolition de la torture* (ACAT Congo) [Action by Christians for the Abolition of Torture] and the *Observatoire congolais des droits de l'homme* [Congolese Observatory for Human Rights] stepped into the breach. In addition to mobilizing the press and appearing on radio and television programs, rights groups lobbied key government players and parliamentarians and found many disposed to meet with them and entertain abolitionist arguments. The long moratorium on executions had already convinced many that the country did not need the death penalty, and abolition made sense in the context of a larger ongoing project to reform Congo's aged criminal codes. The global trend towards abolition, brought to the fore by the UN's various human rights processes, created the momentum for the necessary political will to emerge.

Meanwhile, the country's use of capital punishment continued to dwindle. After 2010, the number of death sentences issued by Congolese courts decreased even further, with a total of just 7 capital sentences issued over a period of 5 years. With the death penalty having almost disappeared from the criminal justice system, the government needed only a favorable opportunity to legalize abolition.

In early 2015, President Sassou agreed to host a continental conference on the abolition of the death penalty that would gather parliamentarians from francophone African states. The conference was organized by the organization *Ensemble Contre la Peine de Mort* [Together Against the Death Penalty] and supported by the French government. In preparation for the conference, which was to take place in October 2015, diplomats and abolitionist activists met with officials, parliamentarians, and government lawyers to discuss the possibility of abolition, and found widespread support for the idea. With the government remobilized around the issue, the conference organizers came to believe that the government intended to use the event to declare a major step towards abolition, if not abolition itself. The impending constitutional reform, however, would take the abolition process in a different direction. While these high level meetings on abolition were taking place, the government was drafting a new constitution whose primary purpose was to reform the age and term limits that would prevent President Sassou from running for re-election in 2016. These provisions were bound to be controversial and indeed caused so much unrest that, amongst other events, the abolition conference was cancelled. The draft constitution nevertheless contained a number of human rights provisions, including the abolition of capital punishment, which emerged during preparatory discussions for the regional conference.

In late September 2015, the government published the draft constitution and announced that it would be put to a referendum on October 25, 2015. During the short referendum campaign, attention was focused on the reform of the presidential mandate, while the abolition of capital punishment receded into the background. In the midst of massive political upheaval, some of it violent, there was virtually no debate about the abolition provision in the new constitution. After the constitutional referendum approved the new constitution—a result that was contested by the

opposition but confirmed by the Constitutional Court—it quickly came into force on November 6, 2015.

As of the time of writing in April 2016, Congolese laws have not yet been amended to meet the requirements of constitutional abolition, but courts have reportedly ceased handing down death sentences. A few prisoners remain on death row, however, where they are imprisoned under inhumane conditions. A parliamentary committee is currently drafting a Criminal Code amendment that is projected to be introduced in 2016.

KEY FACTORS LEADING TO ABOLITION

- A 33-year unofficial moratorium on executions prepared the country for abolition by making the death penalty unnecessary to the functioning of the criminal justice system.
- Congo's international human rights commitments and the global trend towards abolition on human rights grounds contributed to the government's decision to transition from an informal moratorium to legal abolition.
- The groundwork for abolition was laid with the assistance of human rights NGOs engaged against the death penalty, whose strategy included both a media campaign to educate the general public and individual lobbying meetings with political decision-makers, including government officials and parliamentarians.
- Abolition was achieved as part of a controversial constitutional referendum and reform. While the form taken by abolition may have been dictated by the political circumstances, the conditions for abolition were met as a result of a longer-term movement.

Côte d'Ivoire

DATE AND METHOD OF ABOLITION: In a new constitution accepted by referendum on July 23, 2000.

DATE OF LAST EXECUTION: 1960.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (acceded Mar. 26, 1992.), CAT (acceded Dec. 18, 1995), CRC (acceded Feb. 4, 1991).

By the time it abolished the death penalty in 2000, Côte d'Ivoire had not carried out an execution for forty years.

Côte d'Ivoire's last execution was carried out in 1960, the year it gained independence. Prior to abolition, a range of crimes including murder, treason and military offenses such as desertion and capitulation were punishable by death. In practice, however, capital punishment was only applied to cases of intentional or ritualistic killing. In October 1975, on the country's 15th independence day, President Félix Houphouët-Boigny commuted all death sentences to 20-year prison terms. Between 1975 and 1997, around 10 death sentences were imposed: 7 for murder and 3 for cannibalism. The country's only legislative restriction of capital punishment came into force in 1981, when the new Penal Code abolished the death penalty for political offenses.

From the 1990s onwards, the single party state began to grant legal status to human rights groups which, influenced in part by the global abolition movement, fostered the development of an abolitionist movement among the country's intellectual elite. Although the death penalty was never a prominent matter of public debate, abolition was a recurring concern for human rights organizations such as *Action des chrétiens pour l'abolition de la torture* (ACAT Côte d'Ivoire) [Action by Christians for the Abolition of Torture], Amnesty International, and the *Ligue ivoirienne des droits de l'homme* [Ivorian League for Human Rights).

The death of Côte d'Ivoire's only president in 1993 inaugurated a period of political instability that would lead to a brief revival of capital punishment in public life. Amid growing unrest in the lead-up to the country's first elections, the National Assembly voted in June 1995 to expand the death penalty to robbery committed with violence and to allow public executions. In 1999, during a very tense period shortly before the country's first coup d'état, six people were sentenced to death for armed robbery under this legislation. The resurgence of capital punishment was intended to symbolically mark the government's ability to maintain order and security, but no executions followed and these were to be the last death sentences handed down in Côte d'Ivoire. Moreover, in November 1998, Côte d'Ivoire had signed the Rome Statute of the International Criminal Court, which rejected the death penalty for crimes against humanity and genocide. For the country's human rights movement, this marked a notable moment in the country's progression towards abolition despite the apparently pro-death penalty discourse of the late 1990s.

The abolition of capital punishment in 2000 was the consequence of profound political transformations in Côte d'Ivoire. Following General Robert Guéi's coup in 1999, multiparty presidential elections in 2000 brought Laurent Gbagbo to power. Guéi at first refused to accept the election results, but massive street protests forced him to step down and Gbagbo became president later that year. In the run-up to the constitutional referendum that was to take place in July 2000, a sense of political renewal fostered national aspirations to protect individual rights and liberties. Many of the representatives taking part in the drafting of the new constitution were lawyers and human rights activists, and almost all of the parties in the constituent assembly supported abolition, particularly the left-wing *Front Populaire Ivoirien* [Ivorian Popular Front] and *Parti ivoirien des travailleurs* [Ivorian Workers' Party].

It therefore came as no surprise that the Constitution adopted by referendum on July 23, 2000 entrenched the right to life and the abolition of capital punishment in its second article. Following abolition, the country's 13 death row inmates had their sentences commuted to life imprisonment.³ Public opinion did not play a major role in the movement toward abolition. In fact, capital punishment was barely discussed during the referendum campaign, with public debate focusing on the conditions imposed on presidential candidates and whether they would allow the incumbent president to run again. Still, the lack of debate around capital punishment reflected the political class's solid support of abolition on human rights grounds. After abolition there were never any attempts to reinstate capital punishment, even amid the civil strife that would shortly plunge the country into a decade of political unrest.

It was not until March 2015, after a gradual return to peace, that a new Penal Code amended the country's criminal laws to eliminate all reference to capital punishment. The death penalty was replaced with the existing penalty of life imprisonment, which entails a minimum term of 20 years without the possibility of parole. The Constitution had long invalidated all death penalty provisions in national law, but human rights organizations such as ACAT had been concerned by the

continued existence of capital punishment in the Penal Code. The long delay between constitutional abolition and legislative amendment, however, ultimately reflected the turbulence of the previous decade and the lengthiness of the Penal Code reform process more than any lingering objection to abolition. It appears that the timing of the reform was primarily prompted by the need to bring Côte d'Ivoire's laws into compliance with the Rome Statute, which the country had ratified in 2013.

Côte d'Ivoire has not signed the Second Optional Protocol to the ICCPR, which binds its parties to the irreversible abolition of capital punishment, but there appears to be no principled resistance to acceding to the treaty. Local rights organizations that have campaigned on this issue believe that the ratification of the Protocol is only a question of timing and political prioritization.

KEY FACTORS LEADING TO ABOLITION

- Four decades of a *de facto* moratorium on capital punishment, involving no executions and very few death sentences, contributed to a broad section of the political elite supporting abolition and a lack of resistance among the general public.
- From the 1990s onwards, the global trend towards abolition and the increasing number of discussions around the death penalty in international fora contributed to making capital punishment one of the core issues for the country's growing human rights movement.
- A period of national political transformation and the drafting of a new constitution founded on fundamental rights provided an opportunity to anchor abolition as a constitutional value.

³ Troublingly, their current whereabouts are unknown, their files having reportedly been lost by the prison administration.

Djibouti

DATE AND METHOD OF ABOLITION: By reform of the Penal Code in 1995.

DATE OF LAST EXECUTION: Unknown, but prior to independence in 1977.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (acceded Nov. 5, 2002), OPT2 (acceded Nov. 5, 2002), CAT (acceded Nov. 5, 2002), CRC (acceded Dec. 6, 1990).

Abolition in Djibouti was achieved by legislative reforms followed by a constitutional amendment proscribing capital punishment as a violation of the right to life.

Even before Djibouti gained independence in 1977, the death penalty was infrequently imposed. Traditional reparation mechanisms allowing families to pay “blood money” following murder or homicide in order to restore peaceful relations were widely practiced. State courts, even after independence, often took account of such private settlements by decreasing criminal penalties, which contributed to limiting the relevance of capital punishment. After independence, Djibouti’s capital punishment laws closely mirrored the French laws that the country had inherited from its former colonial government. Aggravated murder and crimes of treason, sabotage and espionage were punishable by death, but the method of execution was shooting, rather than the guillotine. Nevertheless, the government carried out no executions, and its courts reportedly handed down only one death sentence. Djibouti’s one death-sentenced prisoner was not convicted of a common law offense but was involved in a case of complex international espionage. Hamouda Hassan Adouani, a Tunisian national and, according to some accounts, suspected Libyan agent, was convicted in March 1991 after confessing to a 1987 bomb attack that killed 15 people in a café frequented by French expatriates. In 1993, the president commuted his death sentence to 20 years’ imprisonment.

When the Penal Code and Code of Penal Procedure were reformed in the mid-1990s, the government proposed repealing the death penalty and replacing it with life imprisonment. The abolition proposal met with no resistance and indeed no debate. One of the goals of the criminal reform—which was encouraged by both intergovernmental organizations such as the UN and the

African Union—was to bring Djibouti’s laws in compliance with international human rights norms, and abolition was a logical step in this direction, particularly given that the death penalty had never been applied. When the new Penal Code and Code of Penal Procedure came into force on January 1, 1995, the death penalty was abolished in law.

In the following years, Djibouti further cemented its commitment to abolition by acceding to international instruments and reforming its constitution. On November 5, 2002, Djibouti acceded to the International Covenant on Civil and Political Rights and, on the same day, to its Second Optional Protocol, which mandates the abolition of capital punishment and prevents its reinstatement. This made abolition in Djibouti irreversible under international law. In 2010, Djibouti enacted a broad constitutional reform that included changes to the number of allowable presidential mandates and other amendments designed to bring the constitution into compliance with ratified human rights treaties. Article 10(3) of the 2010 constitution entrenches the prohibition of capital punishment as part of the right to life: “The human person is sacred. The State must respect and protect it. . . . All individuals have the right to life, to freedom, to security and to physical integrity. No one may be sentenced to death.”

Although abolition is firmly anchored in Djibouti’s legal system, the country has never voted in favor of the UN General Assembly’s resolutions to impose a global moratorium on the use of capital punishment, choosing instead to abstain at all five votes taken since 2007.⁴ These votes encapsulate the tension between Djibouti’s regional alliances as a member of the Arab League and its commitments to the broader international community.

KEY FACTORS LEADING TO ABOLITION

- A *de facto* moratorium of almost 20 years – no executions were ever carried out after Djibouti gained independence – contributed to the lack of debate around the repeal of death penalty provisions when the Penal Code was reformed in 1995.

⁴ Djibouti’s delegation was absent from the 2008 vote, but its representative stated that, had he been present, he would have formally abstained from voting on the resolution.

- Traditional reparation mechanisms allowed victims' families to obtain compensation for violent crime, limiting the relevance of the death penalty.
- Djibouti's accession to three international human rights treaties – the ICCPR and its Second Protocol, and the Convention Against Torture – accelerated a legal reform that anchored abolition as a constitutional standard.

Fiji

DATE AND METHOD OF ABOLITION: Abolition by legislative amendment for ordinary crimes (murder) in 1979 and for treason in 2002. For full abolition, by legislative amendment in February 2015 (for military offenses).

DATE OF LAST EXECUTION: September 1964, prior to independence in 1970.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: CAT (acceded Mar. 14, 2016), CRC (acceded Aug. 13, 1993).

Fiji, which inherited capital punishment as a product of colonization and never carried out any executions after it became an independent state in 1970, achieved abolition through successive restrictions of the death penalty. As the number of death-eligible offenses and death sentences dwindled away, the political will to apply capital punishment disappeared.

Fiji began to reduce its reliance on capital punishment prior to gaining its independence. The last execution in the territory was carried out in September 1964 on a man convicted of multiple murders. After this date, all death sentences were commuted to terms of imprisonment. Over the following 15 years, the number of death-eligible offenses was gradually restricted, and by 1972 capital punishment only remained for aggravated murder, such as the killing of a police officer or a repeat murder conviction. The death penalty was restored for a broader range of offenses in 1973, but that same year courts were granted the discretion to issue sentences of life imprisonment rather than death, thus doing away permanently with the mandatory death penalty for murder. Between 1974 and 1979, no new death sentences were handed down in Fiji. The culmination of this movement toward abolition for common crimes came in 1979, when Fiji repealed the

death penalty for murder. Treason, genocide and certain military crimes remained death-eligible offenses.

The death penalty remained in the law but was not used during the following two decades until a high-profile treason case drew the country's attention to capital punishment. In May 2000, George Speight led a group that stormed parliament and detained Prime Minister Chaudhry and 35 parliamentarians from his party for 56 days. In February 2002, Speight pleaded guilty to treason and was sentenced to death, the only possible penalty for the offense, and thus became the only person to receive a capital sentence since the death penalty was repealed for murder. The proceedings were broadcast on national television and closely watched by the Fijian population. The government commuted his death sentence to life imprisonment within a matter of hours, at the request of both prosecutors and defense lawyers. Given that Fiji had no history of using capital punishment—indeed, the law did not set out any procedures for executions—carrying out the death sentence would have been an exceptional event likely to exacerbate ethnic tensions and lead to further political instability. Official statements to the press suggest that the government had in fact tried to abolish the death penalty for treason before Speight's trial so that he would not face a death sentence.

Speight's case revealed that neither the government nor lawmakers supported capital punishment, and the time had come to act on it. The day after Speight's sentencing, the Fijian parliament voted unanimously to abolish the death penalty for all ordinary offenses, retaining it only for "crimes committed under military law in wartime." The law, which was promulgated by President Iloilo on March 11, 2002, abolished the death penalty for treason, instigating foreign invasion with military force, and genocide. Capital punishment remained only in the Royal Fiji Military Forces Act. Attorney General Qoriniasi Bale told the press that the partial abolition bill was "not intended to satisfy George Speight and his supporters but to allow us to deal with Speight's case and to deal with the death penalty." Bale declared that the government was "very firmly of the view that the death penalty should go" and noted the influence of "Amnesty International and other human rights groups" in linking abolition to human rights concerns.

Within only a few months, in June 2002, the government declared that it intended to remove the death penalty from the Military Forces Act, but full abolition would not be legally achieved for another 13 years. After the repeal of capital punishment for treason and with no further capital sentences passed, the military death penalty seems to have slipped into oblivion. Furthermore, the military death penalty did not stem from Fijian law per se but from the United Kingdom's 1955 Army Act, whose penalty provisions, which included capital punishment, had been incorporated into the Military Forces Act. The Army Act had long since been repealed in the United Kingdom, and its provisions had never been applied in Fiji.

The military death penalty came back to Fiji's attention when the UN Human Rights Council reviewed its human rights record during its two first Universal Periodic Reviews (UPR) in 2010 and 2014. These processes made it clear that Fiji's remaining death penalty legislation, although it had fallen into disuse, remained a salient issue in the eyes of the international community. In 2010—even in the midst of a constitutional crisis that led to the President suspending all constitutional office-holders, including judges—Fiji accepted recommendations that it abolish the death penalty in its military laws. During preparations for Fiji's second UPR, the country's first Permanent Representative to the UN in Geneva, former High Court judge Nazhat Shameem Khan, took up the issue and brought it to Fiji's new government, which had been elected in September 2014 under a new constitution. At Fiji's UPR hearing in October 2014, Attorney-General Aiyaz Sayed-Khaiyum promised to repeal capital punishment from military laws. In December that year, for the first time, Fiji voted in favor of the UN General Assembly's resolution on a global moratorium on capital punishment. The necessary legal reforms were quickly accomplished. On February 10, 2015, Fiji abolished the military death penalty by legislative amendment to the Military Forces Act, replacing it with life imprisonment. Despite initial resistance from certain opposition legislators, who demanded that it be retained in order to deter the military from further coups, the law was voted by 29 to 1 with 9 abstentions.

KEY FACTORS LEADING TO ABOLITION

- The death penalty was inherited as a product of colonization and never used by Fiji after it became an independent state in 1970, leading to the realization that the death penalty was an unnecessary component of effective penal policy. The country's only death-sentenced individual, a coup leader who pleaded guilty to treason in 2002, had his sentence commuted in a matter of hours, demonstrating Fiji's unwillingness to use capital punishment even in exceptional cases.
- The government elected under a new constitution in September 2014 supported abolition as part of the country's transition towards democracy and an improved human rights record.
- Fiji's Minister for Foreign Affairs, Ratu Inoke Kubuabola, summarized the key motivations behind the government's decision to abolish as: (1) an understanding that the death penalty has little deterrent effect on the commission of serious offenses; (2) a conviction that sentencing should balance punishment with rehabilitation; (3) the influence of the global trend towards abolition; and (4) the irrelevance of capital punishment to Fiji's justice system.

Germany

DATE AND METHOD OF ABOLITION: West Germany: 1949, by inclusion of abolition in the new constitution. East Germany: 1987, by executive decision of the Politburo.

DATE OF LAST EXECUTION: The last executions on West German territory were carried out by the Allies between 1946 and 1949 as a result of war crimes trials. The last execution in East Germany was carried out in 1981.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (signed Oct. 9, 1968, acceded Dec. 17, 1973), OPT2 (signed Feb. 13, 1990, acceded Aug. 18, 1992), CAT (signed Oct. 13, 1986, acceded Oct. 1, 1990), ECHR Protocol No. 6 (signed Apr. 28, 1983, acceded Jul. 5, 1989), ECHR Protocol No. 13 (signed May 3, 2002, acceded Oct. 11, 2004).

The abolition of capital punishment in both West and East Germany was profoundly marked by the extreme levels of state violence unleashed under the Nazi regime. Before and during the Second World War, the National Socialist government made extensive use of judicial death

sentences, executing at least 30,000 by guillotine, after what were often summary trials. One study remarked that an average of 10 death sentences were issued by German courts for every day of World War II. Political opponents were often targeted. In comparison with the number of deaths in concentration camps, however, even these huge numbers fail to capture the scale of the crimes committed by the Nazi state. As one historian phrased it, “formal capital punishment was effectively swallowed up in the larger machinery of human destruction.”⁵ The Nazi program of mass executions fundamentally changed German society’s ability to tolerate state-sanctioned executions.

West Germany

Between 1948 and 1949, representatives of Germany’s main post-war political parties in the Allied zone gathered to draft the founding document of what would become the Federal Republic of Germany, the *Grundgesetz* or Basic Law. Article 102 of the new constitution would abolish capital punishment in four simple words (“Capital punishment is abolished”).

Much has been made in some historical accounts of the fact that the initial proposal to abolish capital punishment came from a far-right-wing delegate to the constitutional convention, a member of the *Deutsche Partei* [German Party]. His motion was primarily driven by a widespread concern among German nationalists that the Allied-controlled portions of Germany had executed and continued to execute Nazi officers convicted of war crimes, sometimes after proceedings that were secretive and expedited. But the support of the left-wing Social Democrats was key to the measure’s success: they had supported an abolition platform throughout the Weimar Republic and quickly rallied behind the proposal. The other major force in German politics, the pro-death penalty Christian Democratic Union, at first resisted the motion, and particularly the elevation of abolition to a constitutional norm. Surely a legislature elected under the new constitutional order, it argued, would be best placed to address the question in a reflective and democratic manner. In the end, however, the Social Democrats’ argument that abolition would mark a decisive break with the Nazi past

⁵ Richard J. Evans, *Rituals of Retribution : Capital Punishment in Germany 1600-1987*, p. 875, Oxford University Press : Oxford, 1996.

persuaded a sizeable majority of mainstream conservatives to support the abolition motion. The measure was ultimately passed by a solid majority of delegates on May 8, 1949, and the Basic Law was promulgated on May 23, 1949 after ratification by every state except Bavaria.⁶ On January 20, 1951, a Criminal Code amendment replaced prior death sentences with life imprisonment.

Abolition came as a surprise to much of West German society, and there were several attempts to reverse abolition throughout the 1950s, buoyed by consistently high levels of popular support for capital punishment. Amending the constitution, however, required the support of two-thirds of parliament, a supermajority that reinstatement bills were never able to attract. Members of the successive post-war Christian Democrat governments were divided over abolition—Chancellor Adenauer himself supported the death penalty—but elected never to sponsor death penalty legislation so as to not weaken the Basic Law in its critical first years. The government evaded demands from conservative constituents to work toward a revival of the death penalty by delegating the issue to an expert committee of jurists that had been tasked with reforming the Criminal Code.

In 1959, the criminal law reform committee voted overwhelmingly in favor of maintaining abolition. Their decision carried weight for the German leadership given the parliamentary practice of relying heavily on subject matter experts in the legislative drafting process. The committee had examined the issue of abolition independently of the constitutional norm, after an open debate which had emphasized that no evidence pointed to capital punishment having any penological merit. There were many reasons, on the other hand, to reject the “brutalizing effect” on society of regular exposure to state-

⁶ As a result of the FRG’s federal structure, the death penalty survived here and there in some state laws, but the principle of federal override made these provisions inapplicable from the day the Basic Law came into force. In West Berlin, the death penalty was not abolished in law until 1990, but the provision was not applied. The last person to be executed in West Berlin was Berthold Wehmeyer, who was executed on 12 May 1949 for robbery and murder. Article 21.1 of the 1946 state constitution of the German state of Hessen still allows capital punishment for serious crimes, but this provision has always been inoperative under the rules granting primacy to the federal constitution.

sanctioned killings, especially in light of Germany's recent past. The draft Criminal Code presented to parliament in 1960 therefore retained abolition, as did every criminal reform bill of the following decade.

By the time new criminal justice laws were finally enacted in the late 1960s, popular support for capital punishment had dimmed. As the new generation brought up after the war came of age amid the liberal ethos of the period, West German society began a process of reckoning with its Nazi history that associated capital punishment with the intolerable state violence of the National Socialist regime.

The modern jurisprudence of the Constitutional Court reframed abolition as a significant constitutional moment, as if the drafters of the constitution had always intended for it to take on the meaning it would only acquire in later decades. The prohibition on capital punishment is today one of Germany's core constitutional values and an emblem of its renouncement of state violence.

East Germany

Prior to abolition, the death penalty in East Germany was characterized by the use of executions for political offenses. Capital punishment was used extensively, especially from the early to mid-1950s, and one study reports that from 1949 to April 1958 at least 195 death sentences were passed, many of them for political offenses. Murder, treason, espionage, and a number of serious "counter-revolutionary" offenses, such as sabotage, breach of loyalty, and diversion, were punishable by death. The German Democratic Republic's prosecutions of Nazi war criminals were particularly vigorous and highly publicized, in part to allow it to distinguish itself from the perceived apathy and historical denial of its Western counterpart. In 1956, the use of capital punishment began to decline as a result of destalinization, but it was not until 1964, as the East German regime entered a more stable political period with the completion of collectivization, that capital punishment truly began to fall into disuse.

After 1964, the number of death sentences decreased considerably to around one a year, most of them for sex-related murders. Fewer executions were carried out for political offenses, though a handful of individuals convicted of war crimes were executed after well-publicized trials. The new Criminal Code promulgated in 1968, however, retained the death penalty under the

justification that "in so far as the death penalty serves the security and the reliable protection of our sovereign socialist state, . . . it possesses a humanitarian character." The narrative of capital punishment serving the higher goals of the ultimate anti-fascist state allowed the German Democratic Republic to circumvent the Nazi legacy on capital punishment.

From the mid-1970s onwards, the retention of capital punishment began to hinder East Germany's self-presentation on the international stage and especially vis-à-vis the Federal German Republic. West Germany had adopted abolition as a core tenet of its constitutional democracy and had even taken a leadership role against the death penalty at the international level—a position of moral superiority that clashed with East Germany's portrayal of its corrupt counterpart. In response, executions were essentially suspended in the GDR after 1975. The sentences of murderers were systematically commuted and the few executions that were carried out for espionage among the Stasi ranks were kept secret. After 1981, the death penalty was limited to military offenses. The execution of Werner Teske in 1981 was the last to be carried out in the German Democratic Republic. That year, East Germany learned that the Federal Republic of Germany had plans to approach the United Nations to sponsor a declaration that capital punishment was illegal under international law.

In 1987, the Politburo set up a working party to examine the question of capital punishment and accepted its recommendation for abolition on July 14. The authorities announced the decision with fanfare on July 17, declaring that capital punishment had been a "historic requirement to prosecute to the last consequence war crimes. . . and the most serious crimes against the sovereignty of the GDR." The state presented abolition as a sign of its own progress: having successfully suppressed National Socialism and created a socialist state with very low crime rates, there was no further use for the death penalty. GDR authorities also noted in internal documents that the population took some pride in being the first socialist state to abolish the death penalty. It was widely perceived by the population as one of several measures designed to create a positive climate for talks that aimed to normalize the East-West German relations that were seen as vital to the GDR's continued stability.

KEY FACTORS LEADING TO ABOLITION

West Germany

- The constitutional document that abolished the death penalty was drafted in a moment of profound national transformation. A majority of the country's political leadership was intent on marking a break with the mass killings perpetrated by the National Socialist regime, including its extreme use of judicial death sentences.
- Overturning abolition, a constitutional norm, required a 2/3 majority vote that proved impossible to achieve for death penalty supporters.
- In the absence of capital punishment, popular support for the death penalty eventually waned, particularly when the first generation raised in the post-war era came of age.

East Germany

- The state wished to improve its human rights record on the international stage, especially in relation to West Germany.
- The death penalty had been infrequently applied for many years.
- The continued existence of capital punishment created challenges for state ideology.

Latvia

DATE AND METHOD OF ABOLITION: For ordinary crimes, by parliamentary ratification of one of Europe's regional abolition treaties, Protocol No. 6, on May 7, 1999. For full abolition, by parliamentary ratification of Protocol No. 13 in January 2012.

DATE OF LAST EXECUTION: January 26, 1996.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (acceded Apr. 14, 1992), OPT2 (acceded Apr. 19, 2013), CAT (acceded Apr. 14, 1992), ECHR Protocol No. 6 (signed Jun. 26, 1998, acceded May 7, 1999), ECHR Protocol No. 13 (signed May 3, 2002, acceded Jan. 26, 2012).

Latvia's death penalty abolition process was shaped by regional rather than national dynamics. In its first years as an independent state after decades of Soviet rule, Latvia's foremost priority was to safeguard its sovereignty by cementing its membership in the political alliances of Western Europe. With abolition

a prerequisite for entry into the Council of Europe, Latvia's ratification of European human rights treaties prohibiting capital punishment was spurred by political pragmatism but would also prove consistent with the country's embrace of international rights discourse as a means for building a modern national identity.

The death penalty was not the subject of much debate in Latvian society in the immediate aftermath of the country's emergence as a sovereign state in September 1991. The momentous events surrounding independence, the advent of political pluralism, and the transformation of governing economic principles overshadowed any issues of judicial reform. The death penalty had long been a familiar feature of criminal justice. Executions had been carried out regularly under Soviet rule for a wide range of political and economic offenses as well as violent crimes; possessing foreign currency, for example, was a capital offense. Executions for political and economic offenses gradually receded with destalinization. In 1987, "The Last Judgment," a much-discussed documentary by Herz Frank, featured interviews of a young man on death row for murder in the days leading up to his execution. The film questioned how far society was to blame in the circumstances of his crime, but its core reflection was philosophical rather than reform-oriented. Between the beginning of 1989 and the end of 1992, 18 people were sentenced to death.

As a newly sovereign state in the early 1990s, Latvia continued the practice of applying capital punishment exclusively to cases of aggravated murder—even though it was authorized for several other offenses, including banditry, aggravated rape, disruption of prisons, repeat counterfeiting and hijacking. In 1992 and again in 1995, Latvia eliminated three capital offenses. The 13 executions Latvia carried out between 1990 and 1996 all resulted from aggravated murder convictions.

With memories of the Russian invasion and decades of occupation still vivid in the minds of Latvia's leadership, building strong relationships with the European and international community was of paramount concern during these years, and this would prove determinative for the timeline of abolition. Western Europe had been a death penalty-free region for over a decade and the Council of Europe identified abolition as a core shared value, establishing it as a condition of entry for prospective

member states. When Latvia signed the European Convention on Human Rights (“ECHR”) and joined the Council of Europe in February 1995, it promised to implement a moratorium on executions and ratify the ECHR’s death penalty abolition protocol, Protocol No. 6, within a year. The abolition debate in Latvia was thus, as in other post-Soviet states, triggered by an external timeline and tied to questions of national security, a phenomenon that some commentators have termed a “securitization of human rights.”

There is little doubt that political support for abolition rested at this time on a pragmatic approach to Latvia’s integration into the European community rather than a principled aversion to capital punishment. It would be an oversimplification, however, to frame abolition purely as an external imposition that collided with the country’s trajectory. In these early defining years, the course of Latvia’s relationship with foreign powers was borne on mixed currents of dependence and optimism. The country’s receptivity to international law and universal human rights marked a break with its Soviet past and signaled an aspiration to a modern, rights-based national identity. In April 1992, Latvia had acceded to the ICCPR, ICESCR and the Convention against Torture. Perhaps even more significantly, in July 1993 the *Saeima*, the Latvian Parliament, had restored the 1922 Constitution under which binding international norms (including ratified treaties) trump domestic legislation (in stark opposition to the Soviet Union’s approach to international law). While it would be inaccurate to state that Latvian society as a whole embraced the international human rights project, these early decisions contributed to the country’s emerging national identity. In the words of one of Latvia’s foremost human rights jurists, “we wanted to be part of the democratic world, and we used international norms to fill the vacuums in our legal system.”⁷

At the time, however, the external expectation of immediate abolition was ahead of most of Latvian society’s understanding of human rights standards after many decades of Soviet rule. Without the benefit of a society-wide debate and in a context of profound political transformation with other pressing issues to resolve, abolition was slow to take hold and the one-year time limit

would prove too short for legislative reform. Moreover, the required moratorium was not immediately implemented. By the end of 1995, at least 4 individuals were still under sentence of death, and on January 26, 1996, Latvia executed two prisoners for aggravated murders in what would be the country’s last executions. The Council of Europe’s Parliamentary Assembly responded quickly, demanding in Resolution 1097 of June 1996 “that...Latvia honor [its] commitments regarding the introduction of a moratorium on executions and the abolition of the death penalty immediately,” and warning of “consequences” in the event of further violations. The following September, unable to secure legislative change with the necessary speed, President Guntis Ulmanis declared an executive moratorium on executions in a speech before the Council’s Parliamentary Assembly, pledging to grant clemency to any death row inmate who appealed to him. Latvian courts continued briefly to hand down death sentences under the existing law, and two prisoners whose prosecutions were already under way were condemned to death in November and December 1996.

The government pursued both a national and an international abolition strategy, and events unfolded quickly in the summer of 1998. In May 1998, the government presented the *Saeima* with a Criminal Code amendment eliminating capital punishment under all circumstances with no exceptions. This proposal went beyond the requirements of Protocol No. 6, which allowed the death penalty in times of war. During parliamentary debates, death penalty supporters were countered by politicians who emphasized the significance of Latvia’s Council of Europe membership rather than the merits of abolition. In the end, lawmakers decided to meet their commitments to the Council of Europe, but no more: the *Saeima* rejected the full abolition bill. Shortly afterwards, on June 26, 1998, the government signed Protocol No. 6, which was ratified by the *Saeima* on April 15, 1999 by 65 to 15 votes. It entered into force a few weeks later on May 7. Ratification was quickly followed by an amendment to the Criminal Code that replaced the death penalty with life imprisonment but allowed for the death penalty in times of war.

After the repeal of capital punishment in peacetime, the death penalty debate was spent and no further controversy surrounded the final step of abolition. When a new ECHR Protocol, Protocol No. 13, expanded the scope of abolition

⁷ Interview of Justice Ineta Ziemele, Constitutional Court of the Republic of Latvia, Mar. 18, 2016.

and mandated that parties abolish the death penalty under all circumstances, Latvia became a signatory on May 3, 2002, the very first day the treaty opened for signature. It took almost a decade for Latvia to ratify Protocol No. 13, but by all accounts the delay was not due to any sustained political objection but rather to internal factors such as Latvia's intricate ratification process, the relationship between the Foreign Ministry and successive governments, and electoral timing. Latvia achieved full abolition in January 2012 when the *Saeima* ratified Protocol No. 13 by a landslide (65 votes against 4) and after virtually no parliamentary debate.

Before ratification occurred, politicians seeking to capitalize on the population's ambivalence toward abolition occasionally raised the question of reviving the death penalty, especially in the wake of particularly heinous crimes. In September 2008, for instance, a brutal child murder led Latvia's Minister of Justice, its Minister of the Interior, and the head of its parliamentary Human Rights Committee, Janis Smits, to call for an EU-wide debate on reinstating capital punishment. Such movements were short-lived, however, and were condemned throughout the European Union as populist tactics with no political or legal viability.

There was little debate at the time of abolition in the public at large, and Latvia's initially high levels of popular support for capital punishment had little effect on the abolition process. The death penalty was simply not perceived as a key issue by the general public, and discussions on the substantive merits of abolition were restricted to the political elite and legal professionals, with many judges and scholars defending the need to retain capital punishment. There were no rights groups in a position to contribute to educating the public on abolition; indeed, there were only two fledgling human rights organizations in the country at the time: the Human Rights Center, founded in 1994, and the University of Latvia Faculty of Law's Institute of Human Rights, created in 1995 to train Latvia's first human rights lawyers. Latvia's governing elite was therefore the key actor in the abolition process. Despite the public's lack of mobilization around abolition, popular support for capital punishment has decreased substantially in the almost two decades since the ratification of Protocol No. 6. A survey carried out in January 2016 found that almost half of respondents, 47.3%, were against a reinstatement of the death penalty

versus 36.6% in favor. The available reporting did not divide the results by age group, but it is likely that support for abolition is higher among the generation that grew up without capital punishment, as is the case in other abolitionist states.

KEY FACTORS LEADING TO ABOLITION

- Abolition was a precondition for entry into the Council of Europe, and building strong relationships with European political organizations was a security issue for Latvia's leadership in the second half of the 1990s.
- Despite widespread popular support for the death penalty, the abolition debate was a low-level priority for most people in a period of momentous change, and the Latvian political elite pressed ahead with abolition.
- The country's receptivity to international law arose in part from the desire to break with the Soviet past and construct a modern national identity founded on human rights standards with universal aspirations.

Madagascar

DATE AND METHOD OF ABOLITION: January 9, 2015 (by legislative amendment to the Penal Code).

DATE OF LAST EXECUTION: 1958.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (acceded Jun. 21, 1971), OPT2 (signed Sep. 24, 2012, not ratified), CAT (acceded Dec. 13, 2005), ACHPR (acceded Mar. 9, 1992).

Although Madagascar never carried out a single execution after gaining independence from France, it retained the death penalty in its laws for 54 years. The last execution on the territory took place in 1958 under the French colonial administration from which Madagascar inherited much of its Penal Code, including its death penalty provisions. Nevertheless, courts regularly handed down death sentences. Madagascar's successful abolition vote in 2014 was made possible by the convergence of several efforts: a political leadership set on promoting a human rights culture after a period of political crisis; an abolition campaign spearheaded by national human rights organizations and international institutions; and the employment of a little-used legislative mechanism that mobilized uncommon political alliances.

Madagascar's retention of the death penalty despite half a century of non-application must be understood in the context of the frailty of state infrastructure in the southern third of the country. Known as the *zones rouges* or red zones, these sparsely inhabited rural areas where the government exerts little control have been a key weakness of every successive government since independence. In this region, banditry by large groups of cattle rustlers thrives. The bandit groups, known as *dahalo*, primarily steal zebu (the prized native humpback cattle), and thefts are often accompanied by acts of extreme violence. This explains why, prior to abolition, murder committed during cattle theft was the only offense that was punished by a mandatory death sentence. For decades, capital punishment was widely perceived as a necessary deterrent to meet this security challenge, and political representatives from the south were vocal in demanding its retention.

Although supporters of the death penalty cited its supposed deterrent value, they did not clamor for executions to be carried out; rather, they believed capital punishment should be symbolically available as the embodiment of the state's power. It was well understood and, it seems, little disputed, that capital sentences would not be implemented. From at least the 2000s onwards, the government reported to international human rights bodies that all death sentences were automatically commuted to sentences of life imprisonment with hard labor (the second-harshest penalty in the Penal Code). One prominent human rights organization, ACAT Madagascar, cast doubt on how quickly or systematically death sentences were commuted in practice. Still, as the Director of the Penitentiary Administration declared in March 2008, "the death penalty [was] more or less transformed into a sentence of hard labor for life."

This did not prevent courts from continuing to hand down sentences of death rather than life imprisonment. Assessing the justice system's precise use of death sentences prior to abolition is fraught with difficulty in the absence of official data, but the available information suggests either that more capital sentences were issued than was widely reported, or that the commutation process moved very slowly. According to the estimates of Amnesty International, there were 17 new death sentences between 2007 and 2014, 12 of which were issued in 2007 in conjunction with a violent land dispute between local farmers and a property developer. The last confirmed death

sentence was recorded in 2011. The death row population, however, increased more substantially than these numbers suggest, according to Ministry of Justice figures reported by the media: from 44 death-sentenced prisoners in March 2008, to 54 or 55 in May 2009, and 58 at the end of September 2011. Crimes punishable by death prior to abolition included murder as well as several offenses not resulting in death, including armed robbery, arson, kidnapping, and torture. Treason and espionage and a range of military offenses, such as desertion, sabotage or mutiny in times of war, could also be punished by death.

Abolition had been discussed in Madagascar for many years, but while part of the political class may have supported it, the rural South's attachment to capital punishment prevented any real progress. Abolition bills were introduced by a senator in 2005 and by the Ministry of Justice in 2006 but never received plenary readings at the National Assembly. Madagascar's long ambivalence towards abolition was captured in its delegation's statements to the UN Human Rights Council at its first Universal Periodic Review in February 2010. Rejecting recommendations to institute a legal moratorium on executions and end the death penalty in law, Madagascar declared that "the conditions for the immediate abolition of capital punishment do not yet exist. A significant proportion of the population and a majority of Members of Parliament believe that the deterrent effect of maintaining the death penalty is still a useful means of combating insecurity."

During the political crisis that began in 2009, the transitional government of President Rajoelina signaled a greater willingness to consider abolition on the international stage. These acts may have been prompted in part by the desire to repair relations with the international community, which had condemned Rajoelina's March 2009 coup d'état and suspended aid and economic partnerships, plunging the country into a recession. After years of political crisis, there also emerged a sense that the promotion of human rights should play a significant role in the country's future. Just a few weeks after the new constitution came into force on December 11, 2010, Madagascar co-sponsored for the first time the UN General Assembly's Resolution on a global moratorium on the use of the death penalty. Two years later, on September 24, 2012, President Rajoelina signed the Second Optional Protocol to the ICCPR, committing Madagascar under

international law to refrain from carrying out executions and to abolish capital punishment within a reasonable period. A few months later, in December 2012, Madagascar again co-sponsored and voted in favor of the UN General Assembly's moratorium resolution.

Seizing this opportune political moment, national human rights organizations and international institutions coordinated an abolition campaign as part of their more general work raising awareness of human rights issues. The organization *Action des chrétiens pour l'abolition de la torture* (ACAT Madagascar) [Action by Christians for the Abolition of Torture] received significant support from the European Union and emerged as a leader on abolition. Also closely involved in the abolition process was the UN Office of the High Commissioner for Human Rights, which made abolition a priority issue in its three weekly "coordination mechanisms" with the Ministry of Justice, the office of the prime minister and the office of the president of National Assembly (the rough equivalent of the speaker of the house). Working together with the government, this coalition prepared a draft abolition law.

In 2014, it became clear to human rights groups on the ground that the government was reluctant to move forward on legal abolition. In addition to the long-standing security challenges in the south of the country, rural criminality had since the beginning of the economic crisis moved toward urban centers, making it challenging to persuade the government of the timeliness of abolition. In response, the abolition coalition stepped up its advocacy and training workshops specifically aimed at lawmakers. While historically all Malagasy laws had been passed at the initiative of the government of the day, abolitionists' hope was to support parliamentarians in introducing a private member's bill to end capital punishment.

These efforts culminated in a day-long event organized on World Day Against the Death Penalty, October 10, 2014, ten days before the following parliamentary session was to begin. The so-called "indoor session," which was supported by a range of international and national actors (including the European Union, the African Union, the UN, the Swiss and French governments, and rights groups in Madagascar led by ACAT), was attended by the Ministry of Justice, religious leaders, human rights activists, and over 40 parliamentarians, including the vice-president of the National Assembly. The main argument

raised that day emphasized the death penalty's non-application since 1958. Participants also evoked the concept of *fihavanana*, signifying human dignity, solidarity, peace and harmony, a concept that is central to Malagasy culture, to support an agreement that justice should not be used to kill but to protect human life. The meeting reached a consensus that the right to life, as enshrined in article 3 of the Universal Declaration on Human Rights, is an imperative *jus cogens* norm as well as a religious principle. By the end of the day, political and religious leaders had signed the Antananarivo Declaration, a document that created an action plan for legal abolition. The Declaration was, in the view of many observers, the turning point of the abolition process and was critical to preparing what would be Parliament's unanimous stand in favor of abolition.

Two months later, on December 12, 2014, every lawmaker in the National Assembly voted in favor of the Penal Code amendment bill introduced by the President of the National Assembly, Jean Max Rakotomamonjy, to abolish the death penalty. The anticipated resistance from southern lawmakers had been fierce in the parliamentary committee, but at the end of the day they were outnumbered. By the time of the plenary vote, they elected to support the speaker, for whom the Assembly's unanimous endorsement of abolition was a major political success. A desire to assert the unity of the legislature may have contributed to this outcome after recent tensions with President Rajaonarimampianina. The government expressed its own support for abolition by electing not to submit comments or objections on the abolition bill within the 30 days set out in the constitution. While the legislature's initiative likely achieved abolition more quickly, many signs indicated that Madagascar was already solidly on the path to abolishing the death penalty.

After abolition was secured – the law was promulgated by the president on January 9, 2015 – the abolition coalition moved on to the second and third steps of the abolition plan outlined in the Antananarivo Declaration. An outreach campaign is currently underway that aims to sensitize the general public on the significance of abolition. Because the abolition debates were carried out within the country's political and intellectual elites, public opinion was not heard in the run-up to abolition, and media coverage supported elite views. The goal of the outreach campaign is

to enable the population to re-appropriate the abolition process, particularly in rural areas that are cut off from public debates. Simultaneous efforts aim at securing ratification of the Second Optional Protocol of the ICCPR in order to make abolition irreversible under international law. Abolitionists on the ground expect that the National Assembly will approve ratification without controversy during the next parliamentary session, which begins in May 2016. At the same time, the OHCHR is providing technical support to the government to reform the death penalty's replacement punishment, life imprisonment with hard labor, which is currently the maximum penalty contemplated by the Penal Code and is incompatible with human rights standards. The abolition of capital punishment may therefore lead to further human rights reforms in the field of criminal justice.

KEY FACTORS LEADING TO ABOLITION

- After a period of political crisis that began in 2009, developing a human rights culture emerged as an important concern within Madagascar's political leadership.
- Parliamentarians played a key role in achieving abolition. The President of the National Assembly introduced the abolition bill—the country's first use of the private members' bill mechanism set out in the constitution—and it was unanimously adopted.
- Seizing an opportune political moment, judicial experts and human rights organizations, supported by UN institutions, coordinated an abolition campaign that sought to counterbalance opposition to abolition and concerns about violent banditry in the country's south. The campaign targeted parliamentarians as the decision-makers most likely to achieve change and culminated in the Antananarivo Declaration, signed by political and religious leaders committed to supporting a plan for abolition.

Maryland

DATE AND METHOD OF ABOLITION: By legislative amendment on May 2, 2013.

DATE OF LAST EXECUTION: 2005.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (ratified by the United States in 1992), CAT (ratified by the United States in 1994). The United States' treaty commitments are binding on the states under Article VI of the U.S. constitution. Nevertheless, they have been deemed non-self-executing, and are generally unenforceable by individuals.

Maryland abolished capital punishment after more than a decade in which no death sentences were imposed, and after a state commission found a number of flaws in the application of the death penalty.

Capital punishment had been an entrenched feature of Maryland's criminal justice system for centuries prior to abolition. Between 1923 and 1962, Maryland executed 79 men for the crimes of rape and murder. In 1962, a legislative committee concluded that the death penalty should be abolished, noting racial disparities in its application. Nonetheless, Maryland retained the death penalty, twice revising its capital punishment laws to comply with decisions of the U.S. Supreme Court in the late 1970s. In 1994, Maryland carried out its first execution under a new death penalty statute adopted in the wake of those decisions, its first in over thirty years.

Although Maryland continued to impose death sentences in the late 20th century, support for capital punishment was waning. Maryland's legislature began to narrow eligibility for the death penalty, first excluding juveniles (1987), then individuals with intellectual disabilities (1989). In 1993, Kirk Bloodsworth was exonerated after having been condemned to death for the rape and murder of a nine-year-old girl. His case drew national media attention, and he became a prominent advocate for abolition after his release from prison.

A number of non-governmental organizations, led by Equal Justice USA and Maryland Citizens Against State Executions (MD-CASE), organized a campaign in support of a moratorium in 2000-2001. Several moratorium bills were introduced from 1997-2001, but none succeeded. In 2002, Governor Parris Glendening declared a

moratorium, but it did not last: his successor lifted the moratorium six months later. Maryland carried out two more executions in 2004 and 2005; these were to be its last.

In March 2007, a repeal bill was introduced with strong support from Governor Martin O'Malley; ultimately it failed to pass. In 2008, the legislature created the Maryland Commission on Capital Punishment "for the purpose of studying all aspects of capital punishment as currently and historically administered in the State." At this point, MD-CASE was heavily engaged in lobbying efforts in support of abolition, and it played a key role in the establishment and composition of the Commission. Ultimately, the Commission included a diverse array of politicians, religious leaders, public defenders, murdered victim family members, police, correctional officers, prosecutors and exoneree Kirk Bloodsworth. The Commission found that the fairness of the death penalty was undermined by racial and geographic disparities in its application. It found no persuasive evidence that the death penalty deterred violent offenders, and concluded that the "risk of execution of an innocent person is a real possibility." It also found that the "significant amount of time offenders remain on Death Row and their lengthy appeals process perpetuates the injury, grief and heartbreak to the families of victims," and concluded that victims would be better served by an increase in services and financial resources than by continued use of capital punishment. The Commission recommended that the death penalty be abolished.

Meanwhile, grassroots mobilization in support of abolition intensified. African American leaders at the state and national level made abolition a priority, noting their concern over racial disparities in the application of the death penalty. MD-CASE formed a coalition of 25 organizations supporting abolition, and they met frequently with legislators and the staff of Governor Martin O'Malley. Abolitionist activists recruited unlikely allies, including family members of murder victims and former correctional officers—who testified about the trauma they endured as a result of overseeing executions. Religious leaders, and in particular the Maryland Catholic Conference, were also strong supporters of abolition.

In 2009, in lieu of repealing the death penalty, the legislature adopted legislation providing that capital

punishment could only be sought in cases with biological or DNA evidence of guilt, a videotaped confession, or a videotape linking the defendant to a homicide. The death penalty could not be imposed in any case involving solely eyewitness testimony. The bill was a political compromise: although it did not repeal the death penalty outright, supporters argued that it would reduce the likelihood of wrongful convictions. In fact, no one was ever sentenced to death under the new law.

The abolitionist movement continued to grow, and public opinion polls showed that support for abolition was increasing. In 2011, 49% of those polled preferred life imprisonment, while only 40% preferred the death penalty. Prominent newspapers published editorials in favor of abolition.

In early 2013, Governor O'Malley sponsored another repeal bill and testified before committees in both Houses. This time, after a key Senator dropped his objections to the bill, it was allowed to proceed to a vote on the Senate floor. The Senate voted in favor of repeal on March 6, followed by the House on March 15. Governor O'Malley signed the legislation on May 2, commenting that the death penalty was a "policy that is proven not to work."

The legislation did not affect the five men who were on death row at the time of repeal, but Governor O'Malley commuted all remaining death sentences to life imprisonment on January 20, 2015.

Opinion polls showed that support for abolition increased after the repeal bill was signed. In the words of one leader of the abolitionist campaign, "there was no public backlash to abolition."

KEY FACTORS LEADING TO ABOLITION

- Maryland restricted the application of the death penalty in a succession of bills prior to abolition, excluding juveniles and defendants with intellectual disabilities from execution and requiring that capital convictions be based on biological or video evidence.
- The well-publicized case of a man wrongly condemned to death aroused public concern over the risk of executing the innocent.

- The legislature created a Commission including of a broad cross-section of stakeholders to examine the application of the death penalty. The Commission found that capital punishment perpetuated the suffering of victims' families. It concluded that the death penalty was irreparably flawed and recommended abolition.
- Governor Martin O'Malley made abolition a priority, introducing legislation to repeal the death penalty and testifying in support of the bill.
- Non-governmental organizations, led by Maryland-Citizens Against State Executions, took a leading role in the abolition campaign, bringing in unlikely allies such as the family members of murder victims and correctional officers. African American leaders, concerned by racial disparities in the application of capital punishment, were key supporters of the abolition campaign.

Nepal

DATE AND METHOD OF ABOLITION: For common law crimes, by legal reform in 1946 (though capital punishment was partially reinstated for murder in 1985). For full abolition, by constitutional amendment coming into force on November 9, 1991.

DATE OF LAST EXECUTION: February 9, 1979.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (acceded Mar 14, 1991), OPT2 (acceded Mar. 4, 1998), CAT (acceded May 14, 1998), CRC (acceded Sep. 14, 1990).

Nepal rarely applied the death penalty in the latter part of the twentieth century, with only three executions after 1931. Full abolition came about during an era of democratic reform in the wake of thirty years of monarchical rule.

Before Nepal abolished capital punishment, it instituted an experimental suspension of the death penalty designed to allow policymakers to observe the effects of abolition. In 1931 Prime Minister Bhim Shamsher, a religious man believed to have been motivated by Hindu precepts and the reformist principles that had just led to the abolition of slavery, convened a meeting of jurists and religious leaders to discuss the possibility of abolishing capital punishment. The gathering favored abolition, citing both religious reasons and the promotion of rehabilitation, but

recommended a five-year experiment in order to ascertain the impact of abolition on crime rates. In July 1931, Bhim Shamsher instructed judicial officials to replace death sentences with life imprisonment and to send the Prime Minister a yearly report on the number of defendants who had benefitted from the scheme. Although capital punishment remained for political and military offenses, Bhim Shamsher commuted several political death sentences over the following weeks in keeping with the spirit of the suspension.

After two further five-year extensions, the suspension of capital punishment turned into legal abolition for common law crimes in 1946 when the death penalty was removed from the *Muluki Ain*, the country's general legal code. Noting that the number of serious crimes had not increased over the previous fifteen years, Prime Minister Padma Shamsher convened a meeting of high ranking civil and military officials and a majority endorsed abolition. The death penalty for common law crimes was replaced with life imprisonment and confiscation of property. Nepal retained capital punishment for treason under the Treason (Crime and Punishment) Act and under the 1959 Army Act. Assaulting the king or royal family, taking up arms to overthrow the government, or conspiring with a foreign state to undermine the independence of Nepal were all capital treasonous offenses.

The death penalty fell into disuse in the 1950s, during Nepal's first period of parliamentary democracy after the overthrow of the ruling Rana dynasty (no death sentences were passed for a decade), but this was to be short-lived. In 1960 the king dissolved parliament and outlawed political parties, inaugurating three decades of monarchical rule known as the *panchayat* system. Numerous human rights violations, partly targeting members of the pro-democracy Nepali Congress party, were committed. Three Congress members were sentenced to death during this period, and all were executed after being found guilty of treason. In 1962, Durganand Jha was executed for attempting to kill the king; and in February 1979, in what were to be Nepal's last executions, two prisoners were executed for a 1974 attempt on the king's life and for leading an armed insurrection in 1975. All three death sentences were issued at the end of trials that were conducted before special tribunals and behind closed doors. That these executions were carried out against political opponents was not lost on Nepal's growing opposition movement. The 1979

executions became a catalyst for student protests, the first in a series of popular movements that would eventually force the government to introduce major reforms. In 1985, during a period of growing pressure on the *panchayat* regime, death penalty laws were significantly expanded as part of a broader set of policies aimed at suppressing the democracy movement; certain forms of murder and treason became punishable by death. A legal amendment re-introduced capital punishment in the *Muluki Ain* for aggravated murders committed as part of hijackings or kidnappings, or committed with toxic substances, prolonged torture, or the “reckless” use of weapons. Furthermore, the 1985 Special Services Act, which created a national intelligence agency, made the misuse of secret information a capital offense for special service employees. No one was ever sentenced to death under these provisions.

Following a series of bombings in June 1985, Nepal also expanded capital punishment to terrorism offenses. The Destructive Crimes (Special Control and Punishment) Act came into force in August of the same year. Despite constitutional provisions prohibiting the retroactive application of laws, four people were sentenced to death under its provisions for the June attacks after trials conducted *in absentia*. These convictions were upheld by the Supreme Court in 1988.

In 1990, following months of protests and an increasingly bloody crackdown, Nepal’s pro-democracy movement toppled the ruling regime, which was replaced with a multiparty constitutional monarchy. On July 29, 1990, as one of his first acts, Prime Minister Krishna Prasad Bhattara announced that Nepal would abolish the death penalty, stating that capital punishment was inconsistent with Nepal’s new multiparty political system. With the new government intent on promoting human rights to break with the previous regime and to accelerate its integration into the international community, abolition was incorporated into drafts of the new constitution.

The constitution promulgated on November 9, 1990 cemented the country’s momentous political transformations. Article 12 abolished the death penalty without any exceptions under the rubric of the “right to freedom.” The constitution contained a sunset clause, under which existing laws that contravened the constitution were to become invalid within a year if they were not amended to meet constitutional requirements. Several laws

containing death penalty provisions were not amended in the one-year period, and in September 1997, the Supreme Court ruled that these provisions had become inoperative. This ruling confirmed, retroactively, that capital punishment had been fully abolished in November 1991. Only one formality remained to be completed, and in early May 1999, two legislative amendments formally repealed the remaining (if inoperative) death penalty provisions in Nepal’s laws. The death penalty for treason was replaced by a maximum term of 25 years’ imprisonment and confiscation of assets. In March 1998, Nepal committed itself to irreversible abolition under international law by acceding to the Second Optional Protocol of the ICCPR, which mandates abolition of the death penalty. Nepal’s commitment to constitutional abolition did not waver during a decade of civil strife from 1996 to 2006. Both the 2007 interim constitution and the September 2015 constitution—the first in Nepal’s history to have been drafted by a constituent assembly—enshrine the abolition of capital punishment as a constitutional norm. Under article 16(2) of Nepal’s current constitution, the prohibition on capital punishment falls under the “right to live with dignity.” The abolition of the death penalty is thus inseparable from the right to life, a right that, as Nepal stated to the Human Rights Council in 2011, is “essentially the foundation of human rights jurisprudence in Nepal.”

KEY FACTORS LEADING TO ABOLITION

- A 15-year period of monitored experimental abolition (involving a moratorium on executions for common law offenses) during which crime rates remained stable, reassured the public and paved the way for abolition for ordinary crimes in 1946.
- The very limited use of the death penalty beginning in the 1930s (with only three executions in the 1960s-70s) and forty-five years of partial abolition (with no death sentences for common crimes even after the death penalty was briefly reinstated for murder in 1985) facilitated the decision by new political leaders to fully abolish in 1990.
- Transition to a multi-party constitutional monarchy provided a propitious context for abolition, seen as part of a broad program of human rights reform aimed at breaking with the past.

Suriname

DATE AND METHOD OF ABOLITION: March 3, 2015, by parliamentary amendment to the Criminal Code.

DATE OF LAST EXECUTION: 1927.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (acceded Dec. 28, 1976), OPT2 (No), CAT (No), ACHR (acceded Nov. 12, 1987), ACHR Death Penalty Protocol (No).

Suriname is a remarkable example of a country that retained the death penalty long after it fell into disuse. The last execution on its territory dates back to 1927. Since then, not one death sentence has been pronounced by a court and not a single execution has been carried out. The 87 years it took Suriname to abolish capital punishment do not, however, reveal a deep national attachment to the death penalty as much as the lack of any real motivation to change the status quo. This changed in the early 21st century, when a group of parliamentarians, supported by the global human rights movement, took up the abolition struggle.

The absence of judicial executions does not mean that Surinamese society has been free from violence. In March 1982, failed coup leader Wilfred Hawker was executed on national television. While some reports reference this execution as the last judicial execution to be carried out in Suriname, it is more properly understood as an extrajudicial killing, since his summary execution was not preceded by any judicial proceedings. The extrajudicial killings of December 1982, when thirteen prominent critics of Dési Bouterse's military dictatorship were arrested and shot, also weigh heavily upon Suriname's collective memory. This history of political violence imbued Surinamese society with a deep distrust of state killing, even after democratic rule was reestablished in 1991. The recent abolition campaign highlighted society's shared sense that, if a military government were ever to return, the death penalty could be used to eliminate political opponents.

Although the death penalty was never applied, abolition was more than symbolic, since the dormant law could, under inopportune political circumstances, be revived. There had been several efforts over the years to revise Suriname's Criminal Code and abolish the death penalty.

An attempt in 1977 was led by Minister of Justice Eddy Hoost, who fell victim to the December '82 massacre before he could see the endeavor through. His abolition bill was adopted by the council of ministers, but the president's advisory board rejected it. At the time of abolition, premeditated murder, murder committed in the course of another offense, and treason were punishable by death in Suriname. Juveniles and pregnant women were excluded from capital punishment, as were mentally ill and intellectually disabled individuals under certain circumstances.

In 2005, the center-left government led by the New Front for Democracy and Development organized a public campaign against capital punishment and began an in-depth revision of the Criminal Code that was to include abolition. The political will to abolish, however, had not yet completely crystallized. During this period, Suriname voted against the UN General Assembly's first resolution for a global moratorium on the death penalty and signed the *Note Verbale* denouncing the resolution as an intrusion into sovereign affairs. On subsequent resolutions in 2008 and 2010, Suriname moved to an abstention vote and refrained from signing the *Note Verbale*, which may have reflected an emerging political readiness to commit to abolition on the international stage. Nevertheless, the government's criminal law reform was not ready in time to be presented to parliament before the 2010 elections brought Bouterse's National Democratic Party (NDP) back to power.

The abolition campaign that would turn out to be Suriname's last was launched on World Day Against the Death Penalty on October 10, 2013. Abolitionists faced an unusual dilemma: how to galvanize political will to abolish a penalty which, as one abolitionist MP later said, "a large part of the population didn't even know that we still had . . . because it was not an issue as such." Bringing together political and civil society leaders, and benefitting from game-changing support from international institutions, governments and NGOs, the abolitionist campaign expanded the education and awareness-raising model launched years earlier. A group of abolitionist MPs led by Ruth Wijdenbosch organized advocacy and information meetings targeting the country's political and legal elite, including parliamentarians, Ministry of Justice officials, prosecutors, and bar associations. Civil society groups set up internationally backed events to bring

abolition to the attention of the general public. Anti-death penalty MPs simultaneously organized abolitionist activities in their respective constituencies.

International support for the movement to end capital punishment materialized swiftly, driven in part by the hope that abolition in Suriname would be an engine for further progress in the Caribbean, a region where the death penalty remains widespread. Although it is located on the South American continent, where the death penalty has almost disappeared, Suriname is also a member of several Caribbean political groupings. International organizations such as the International Commission Against the Death Penalty and NGOs such as Parliamentarians for Global Action became involved and contributed their expertise on abolition processes elsewhere. In June 2014, the World Coalition Against the Death Penalty, an international collective of grassroots abolitionist organizations, organized a regional abolition conference in Puerto Rico that showcased Suriname's abolitionist efforts and offered a chance to brainstorm strategies with regional partners. The European Union and the governments of the United Kingdom, France, the Netherlands and Switzerland took an interest in the campaign's success and provided material and technical support. The diplomatic encouragement which began to build in concert with the country's own abolitionist politicians was also determinative of the campaign's ultimate success.

In this climate, it quickly appeared that abolition was not a seriously divisive partisan issue in Suriname. The country's two major political parties, the New Front and the National Democratic Party, not only supported abolition but were willing to work together to advance the issue. The NDP-led government supported abolition efforts in partnership with the parliamentary abolitionist group even though it was led by a prominent opposition MP. Ms. Wijdenbosch's avowed objective was to ensure not just a majority vote in favor of abolition, but a unanimous one that would send a powerful message to citizens, governments and civil society across the region.

In December 2014, the abolitionist movement saw the first concrete sign of its impact when for the first time Suriname voted in favor of the UN General Assembly's resolution for a global moratorium on capital punishment. Things moved quickly after that. In February 2015, supported by the European Union, the Suriname Netherlands Legal

Foundation (*Stichting Juridische Samenwerking Suriname Nederland*) organized a series of abolition seminars given by Marc Bossuyt, a former judge of the Constitutional Court of Belgium and an experienced human rights jurist. By this point, the abolitionist campaign had secured the personal backing of prominent office-holders, including the Minister for Justice and the country's top prosecutor. Shortly afterwards, the government sponsored an abolition bill.

On March 3, 2015, Suriname's National Assembly unanimously passed an amendment to the Criminal Code that repealed all references to the death penalty and replaced it with a maximum prison sentence of 30 to 50 years. None of the few lawmakers who spoke against the law during the parliamentary debates were intent on restoring executions. One MP argued for the status quo, reasoning that since the death penalty was never used, it could safely be retained as a symbolic option in the Criminal Code. Another MP, the chair of the bar association, argued against abolition on religious grounds but ultimately voted in favor. A few MPs proposed that parliament organize additional hearings before making a final decision, but also eventually bowed to the majority's support for immediate action. The tenor of these discussions makes clear that there was no meaningful support for the death penalty in Suriname's parliament.

Popular support for the death penalty is impossible to ascertain in the absence of public opinion polls, but in any event the abolition movement's approach focused on persuading the country's political and legal elites rather than the public at large. Government leaders believed that a majority of the population likely supported retention, but that, in the words of Ms. Wijdenbosch, "abolition is achieved when political leaders have a conviction that it must be done despite public opinion." Parliamentarians played a key leadership role in Suriname's abolition movement, consciously moving ahead of their constituents' views but also deploying efforts to raise awareness among the population.

Unfolding as it did against the backdrop of broader criminal law reform, Suriname's abolition movement benefitted from years of preparation and expert discussions in the legal sphere. This same movement may drive future reforms to the criminal justice system, including a review of the hierarchy of penalties that was introduced to replace

capital punishment. The abolition amendment introduced “irreversible” terms of imprisonment into Suriname’s criminal law, giving courts the discretion to set minimum terms without eligibility for parole. What is more, no parole is available for prisoners convicted of murder, drug trafficking offenses or offenses against the government. This effectively sets the country’s maximum penalty at 50 years’ imprisonment without the possibility of parole. Many of the politicians among Suriname’s leading abolitionists felt that substantially increasing the duration of the country’s life sentence was necessary to achieve the abolition vote, especially three months before a general election.

Abolitionists in Suriname now hope the government will sign and ratify the Second Optional Protocol to the ICCPR, which would anchor abolition irreversibly under international law. Ms. Wijdenbosch is considering the feasibility of bringing the issue before parliament in 2016 and believes that the final step of abolition will be completed sooner rather than later.

It is too early to examine the impact of abolition on Suriname’s crime rates, but early signs indicate that murder rates have remained steady or even declined. In recent years, an average of 27 or 28 murders per year have been committed in Suriname. As of early December 2015, there had been 23 murders committed in 2015.

KEY FACTORS LEADING TO ABOLITION

- The death penalty was not used for decades – not only had there been no executions, there had also been no new death sentences in over 80 years.
- After this long period of disuse, there was no political support for restoring capital punishment or reviving executions.
- Abolition was secured in part by the creation of an alternative penalty that is significantly harsher than the previous maximum term of imprisonment, and that could violate emerging international human rights norms.
- An active group of abolitionist parliamentarians, working with civil society leaders and international partners, played a key role in abolition, both exerting pressure on the government and raising awareness on abolition issues among the general public.

- The abolition movement was strengthened by an influx of material and technical support from international bodies and foreign governments.

Venezuela

DATE AND METHOD OF ABOLITION: By presidential decree in August 18, 1863; confirmed the following year by the 1864 Constitution, which enshrined the right to life and the abolition of capital punishment.

DATE OF LAST EXECUTION: 1863.

INTERNATIONAL HUMAN RIGHTS COMMITMENTS: ICCPR (signed Jun. 24, 1969, acceded May 10, 1978), OPT2 (signed Jun. 7, 1990, acceded Feb. 22, 1993), ACHR (signed Nov. 22, 1969, acceded Jun. 23, 1977), Death Penalty Protocol of ACHR (acceded April 6, 1994), CRC (acceded Sep. 13, 1990).

Venezuela abolished capital punishment in the wake of a bloody civil war, in an era that ushered in a range of democratic reforms.

Venezuela inherited the death penalty from its Spanish colonial rulers, and capital punishment remained for several decades after independence. Venezuela’s early constitutions, influenced by Enlightenment thinking on crime and punishment, contained general principles prohibiting excessive and disproportionate penalties. The abolition of capital punishment was a topic of public debate, but the death penalty was nonetheless preserved.

The persistence of capital punishment had much to do with the political instability of the period, during which judicial executions became difficult to distinguish from the many extrajudicial executions carried out during the wars of independence and a succession of civil wars and coups. In 1813, independence leader Simon Bolivar decreed that any Spanish citizen not actively engaged in supporting the cause of independence would be summarily executed by firing squad. During each temporary return to peace in the following decades, the judicial death penalty would be used extensively, including against political opponents. Gran Colombia, of which present-day Venezuela formed a part, was established as an independent republic in 1821, and during its first few years of consolidation, criminal laws were significantly harsher overall than in the colonial period. In the 1820s, the death penalty was authorized for

corruption, theft and robbery, as well as the broad crime of “disturbing public order, peace and tranquility.” A new constitution promulgated in 1830 contained a general statement on the desirability of limiting the use of capital punishment, but in June 1831 the country expanded the death penalty for “traitors and conspirators” against the state. In this context, political leaders were particularly vulnerable to execution.

The first shift toward abolition occurred in the mid-1830s. In 1835, President José Antonio Páez granted immunity to the authors of an attempted coup to preserve the peace—even though many in his party clamored for the death penalty. One year later, the case of Vicente Ochoa rekindled the debate around the death penalty, which had never ceased to be controversial among the country’s intellectual elites. Ochoa, a pregnant woman, had been sentenced to death in Caracas for robbing and murdering a female slave in 1836. Her capital sentence sparked a public outcry from a broad range of social groups, with women in particular raising their voices to plead for clemency. Pamphlets calling for a commutation of her sentence raised both philosophical and moral arguments and contested the legality of her sentence in light of the constitution. Ultimately, Ochoa’s death sentence was commuted to a term of exile for 6 years on the Island of Margarita.

The Ochoa case became a fulcrum for the death penalty debate, contributing to the change in attitudes that led to a decline in the use of capital punishment for murder, particularly after 1849. In April of that year, a law abolished the death penalty for conspiring against the state. The 1858 constitution abolished the death penalty for political crimes in general and provided for the commutation of certain kinds of death sentences to exile. Within Venezuela’s historical context, the abolition of capital punishment for political offenses significantly reduced the number of death sentences.

These gains were temporarily swept away by the Federal War (*Guerra Federal*), which broke out in 1859 and is widely considered Venezuela’s bloodiest civil war. On August 18, 1863, only months after the war’s end, provisional president Juan Crisóstomo Falcón issued a decree that guaranteed in its first article the right to life and, as a consequence, abolished the death penalty for all crimes and under all circumstances, making Venezuela the first country in the world to be fully abolitionist. The

Decreto de Garantías [Decree of Guarantías] also recognized for the first time fundamental democratic rights such as freedom of speech, thought and association, equality before the law, and the definitive abolition of slavery.

The new constitution promulgated in 1864 guaranteed “the inviolability of life” and provided that “the death penalty will remain abolished, whatever law may establish it,” explicitly overriding any contrary legislative provision. Every subsequent constitution would reaffirm the constitutional status of abolition. Under Venezuela’s current constitution, promulgated in 1999, article 58 provides that “[t]he right to life is inviolable. Neither the law can provide for the death penalty, nor any authority put it into effect.”

As the world’s first fully abolitionist state, Venezuela has consistently supported international initiatives to achieve global abolition over the past two decades. In 1993 and 1994, Venezuela acceded to two international treaties—the Second Optional Protocol to the ICCPR and the Death Penalty Protocol to the American Convention on Human Rights—whose states parties irreversibly commit to abolition.

Even after 153 years of abolition, the question of capital punishment occasionally rears its head, a testament to the enduring political symbolism of the penalty. A proposal to reintroduce capital punishment came before Venezuelan legislators in 1994 and was rejected. As recently as October 2015, the Party for Social Progress called for the reinstatement of capital punishment for murder, sexual assaults and drug trafficking. Such demands are predicated on populist political tactics and would breach Venezuela’s international human rights commitments and its historic engagement with abolition.

KEY FACTORS LEADING TO ABOLITION

- A devastating civil war lay the groundwork for radical state reform founded on fundamental individual rights. The first of these rights, the right to life, was seen as incompatible with capital punishment.
- Abolition of capital punishment was seen as a necessary reform to cement the country’s commitment to peace and democratic reforms.

- The abolition of capital punishment for political offenses was the first step towards restricting the use of the death penalty.
- A fierce public debate on a death sentence handed down to a pregnant woman remobilized proponents of abolition.

CONCLUSIONS

Supporting the death penalty is not just a policy preference but also a political stand. As a result, debating the penological merits of the death penalty is only one aspect of the abolition process. Abolition tends to be achieved as part of a broader movement of political transformation and not merely as one aspect of criminal justice reform.

Consequently, abolition is often associated with periods of momentous political change, especially as part of a broad program of human rights reform aimed at breaking with a repressive or violent past. The first democratic constitutions in Nepal and Côte d'Ivoire provided for abolition as one of the foundational acts of a new legal order based on human rights. In West Germany, the death penalty was abolished immediately after the Second World War to distance the post-war constitution from the Nazi regime's machinery of death. In Venezuela and Burundi, at two distant points in time, abolition of the death penalty was linked to the right to life following brutal civil wars and decades of politically motivated executions, both judicial and extra-judicial. In these countries, the historical use of executions to eliminate political opponents exposed the death penalty as a tool of political repression, and undermined its legitimacy as a criminal justice measure. Similar patterns are found in South Africa after apartheid and in Rwanda and Cambodia in the aftermath of genocide and massive human rights violations. Further demonstrating the political nature of the penalty, capital punishment tends to be revived when regimes are under threat and feel compelled to make a show of force, such as Nepal's *panchayat* regime clamping down on the pro-democracy movement or Côte d'Ivoire's government facing internal coups in the late 1990s. Abolition does not always take a linear path.

This does not mean, however, that the death penalty can only be abolished in times of major national

transformation; abolition can also follow more incremental steps. Our study revealed a number of factors that have contributed to the repeal of capital punishment. First and foremost, abolition is rarely possible without political leadership. The critical role of government leaders is already well known. In Burundi, the president's own experience on death row disposed him to favor abolition. In the U.S. state of Maryland, the governor was a key proponent of abolition. Several of our case studies also highlight the leadership role played by parliamentarians in achieving abolition. In Suriname, one lawmaker mobilized and led a group of MPs to a unanimous abolition vote. In Madagascar, a legislator (the president of the National Assembly) rather than the government took the initiative of introducing an abolition bill—the country's first private member's bill—that successfully led to abolition. In other states such as Benin and Canada, rights groups' campaigns targeted parliamentarians for one-on-one information and awareness-raising sessions in preparation for abolition votes.

In many countries, the path to abolition begins by a restriction on the application of capital punishment. Abolition is often preceded by a gradual decrease in the use of the death penalty, if not a complete abandonment of executions. Even if it is not acknowledged by the state, a moratorium on executions decreases the salience and significance of the death penalty and gradually weakens its image as a necessary component of the criminal justice system. This study considered examples of very lengthy moratoriums on executions: from 20 years in Djibouti and 25 in Benin to 54 years in Madagascar and 87 in Suriname. Moratorium periods also allow states to gather information on the impact of abolition, especially with respect to crime rates. In Canada and Nepal, experimental suspensions of capital punishment were implemented specifically to assess the effect of abolition on the incidence of serious crime. In both cases, the evidence showed that violent crime did not increase, and legal abolition soon followed. Long moratoria can be problematic, however, if they result in a disengagement with the issue. In Suriname, after 87 years without an execution or indeed a death sentence, it proved challenging to mobilize interest around the topic of abolition.

States on a path to abolition also often decrease their use of capital punishment by legislatively restricting its scope. Fiji and Canada incrementally reduced the types of

ordinary crimes punishable by death until only murder was left. Legal reform can also exclude certain categories of offenders – such as juveniles – from capital punishment. As part of its reform process, Fiji reviewed its laws to abandon mandatory capital punishment and instead granted courts the discretion to impose lighter sentences. In Maryland, the legislature limited eligibility for capital punishment to cases involving certain types of evidence (biological and video evidence) deemed less likely to result in judicial error.

In many countries, members of the judiciary and the legal profession lay the groundwork for abolition by developing a national legal culture that emphasizes the overriding value of fundamental rights. Judicial decisions by national courts may prepare for legal reform by chipping away at allowable death penalty practices. The right to legal representation, the availability of appeals and clemency, and inhumane methods of execution may thus be redefined in relation to the right to life, the prohibition on torture, and fair trial guarantees. Stakeholders in the criminal justice system, from judges and prosecutors to defense lawyers and prison wardens, all contribute to the promotion of a human rights culture. In Fiji, the judiciary educated the public on general sentencing principles in a series of televised trials that helped detach popular support from capital punishment. In Germany, the rejection of capital punishment by an expert group of jurists tasked with criminal justice reform played a critical role in maintaining abolition through several attempts to reinstate the death penalty. More rarely, judicial decisions find capital punishment incompatible with fundamental rights guarantees enshrined in a country's constitution and abolish it outright, as was the case in South Africa.

Cases of individuals wrongfully sentenced to death offer powerful arguments in death penalty debates and the risk of executing an innocent person is often acknowledged by political leaders as a strong rationale for abolishing. Those who relay these histories to the public – journalists, filmmakers and artists, and academics – play an important role in exposing the risks inherent to capital punishment and in weakening its popular appeal. In Canada, a wrongful death sentence imposed on a 14-year-old boy was widely covered by the press and led to a shift in the terms of the death penalty debate. In Maryland, death row exonerée Kirk Bloodsworth contributed to the advent of abolition by

becoming a public speaker and campaigner on death penalty issues.

Increasing stakeholders' knowledge of the application and effects of capital punishment, particularly through commissioning and publishing evidence-based analyses, was crucial in several states. In Canada, the government commissioned a longitudinal study on deterrence that found no evidence that the death penalty had any deterrent effect. Eleven years after abolition, when a reinstatement law was before parliament, government statistics showing a decrease in crime rates after the death penalty was repealed helped ensure that the bill was soundly defeated. In several US states, studies on the discriminatory application of capital punishment to marginalized racial or ethnic groups played a key role in abolition.

The impact of the global movement towards abolition has been substantial. Over the past twenty or thirty years, international and regional treaties that bind states parties to abolishing capital punishment have offered a new, distinct path to abolition. Benin and Mongolia acceded to the Second Optional Protocol to the ICCPR – thus committing irreversibly to abolition under international law – before repealing domestic death penalty provisions (Benin has yet to amend its death penalty laws). Abolition in Latvia was shaped by the two death penalty protocols to the European Convention on Human Rights and the membership requirements of the Council of Europe. Current discussions on an African death penalty protocol may influence countries in the region to follow this path as well. Jurisprudence and reports issued by regional and international human rights bodies call on countries to limit the death penalty's application or abolish it outright. Furthermore, international country review procedures such as the Universal Periodic Review, in which a state's decision to retain the death penalty is routinely questioned, has placed abolition at the forefront of human rights agendas. The commitment of international criminal courts to shun capital punishment also helped shape the abolitionist design of several national peace processes. The establishment of post-conflict international tribunals contributed to abolition decisions in Burundi and Rwanda, and ratification of the International Criminal Court's Rome Statute helped keep Côte d'Ivoire on an abolitionist track during a period of political instability.

In most countries, a variety of organizations and individuals, at times supported by academia and the media, helped inform the general public and decision-makers on issues relating to abolition, such as the common misconception that the death penalty deters crime. Human rights defenders were actively involved in abolition in almost all the countries in this study that abolished after 1990.

Perhaps surprisingly, popular support for capital punishment did not derail abolitionist movements in these countries. Death penalty states frequently explain their disinclination to abolish by citing the public's attachment to the death penalty. Experience shows us, however, that while the public is rarely in favor of abolition before it occurs, its support for the death penalty dwindles after abolition. In many states, political decision-makers were compelled to be trailblazers in the abolition process, taking a stance that was not necessarily shared by the majority of the population. In the countries we reviewed, no public unrest followed an abolition announcement and no political careers were damaged by abolitionist activity. In Canada, for instance, almost 70% of survey respondents favored the death penalty at the time of abolition – but no parliamentarian lost her seat because of a pro-abolition vote. Furthermore, ascertaining the intensity of popular support for capital punishment is more difficult than the frequent political references to it suggest. Opinion polls are not a feature of political life in many states, and even where they are available, recent studies have shown that results will diverge depending on the phrasing of questions, the availability of an alternative penalty, and the presentation of specific facts. In Canada and West Germany, support for the death penalty decreased drastically among younger citizens one generation after abolition.

This study focused on deciphering similarities between national abolition processes in order to gain insight into successful abolition strategies. Although we have drawn some broad conclusions on the circumstances that favor abolition, we must also emphasize that pathways to abolition are also unpredictable, often non-linear, and always rooted in local political, social and cultural history. There is no universal model, and every country comes to abolition on its own path and on its own timeline.

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- Marie-Thérèse Volahaingo, President of the Judicial Committee of the National Assembly of Madagascar.
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With the financial support of the
Swiss Federal Department of Foreign Affairs (FDFA)

