

# HOW STATES ABOLISH THE DEATH PENALTY

## 29 CASE-STUDIES

SECOND EDITION  
MAY 2018





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# GLOSSARY

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>AU</b>	African Union
<b>CSO</b>	Civil Society Organization
<b>ECHR</b>	European Court of Human Rights
<b>ECOWAS</b>	Economic Community of West African States
<b>EU</b>	European Union
<b>HRC</b>	Human Rights Committee
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICCPR-20P or Second Optional Protocol</b>	Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty
<b>ICDP</b>	International Commission against the Death Penalty
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>NGO</b>	Non-Governmental Organization
<b>UN</b>	United Nations
<b>UNHRC</b>	UN Human Rights Council
<b>UNGA</b>	United Nations General Assembly
<b>UNGA Resolution oe A/RES/ 62/149</b>	UNGA Resolution adopted by the General Assembly on 18 December 2007, calling for a moratorium on executions.
<b>UPR</b>	Universal Periodic Review

## CONCEPT & DEFINITION

**Abolitionist for all crimes:** The countries whose laws do not provide for the death penalty for any crime. (Amnesty International)

**Abolitionist for ordinary crimes:** The countries whose laws provide for the death penalty only for exceptional crimes, such as crimes under military law or during war. (Amnesty International)

**Abolitionist de facto:** Countries which retain the death penalty in law but have not carried out executions during the past 10 years and more.

**Retentionist:** Countries that retain the death penalty in law for ordinary crimes at all times, including in times of peace.

**Official Moratorium on Executions:** A public commitment made by the highest political authorities, which officially suspends the implementation of death sentences.



## FOREWORD BY FOREIGN MINISTER ALFONSO DASTIS

Spain firmly opposes the death penalty and considers it an expression of a failure of the State and an inhuman attack to life. Human dignity and the respect for human life are cornerstones of Spanish society. A member of the Council of Europe, where abolition is a key requisite, Spain was present at the foundation in 2010 of the International Commission against the Death Penalty (ICDP), and proudly hosts its headquarters in Madrid. We also work hand in hand with 18 other countries in the Support Group of the ICDP as we consider our fight against the death penalty to be a global one.

This publication is equally global. It explains how the transition of 27 States from death penalty to abolition took place in very different political and historical contexts. And how despite these contrasts, the measures adopted by them to advance towards abolition and the resistances met were very similar in all cases. This confirms that the choice to abolish the death penalty is not determined by specific circumstances. It is just a matter of willingness: whenever there is willingness, the means to achieve abolition are at hand.

Furthermore, we have the support of facts in our struggle. It is a fact that those countries which still use the death penalty are not safer than those which do not, rather the contrary. And Spain being a pioneer in the protection of victims, we know that they and their relatives are relieved not by vengeance, but by our continuous support and assistance. We must then pursue a better life for the victims, not the death for the convicted.

Fortunately, data are clear: they all express a clear trend towards abolition, which has been embraced by more than two thirds of countries in the World. It is not by chance that this publication doubles the number of countries of the previous edition in 2013. This confirms once again that universality of human rights is not a theoretical principle but a reality.

These good results encourage us to move forward, but not without caution. Attempts to restore the death penalty are isolated and unsuccessful, but there might be new tries. And those countries which still make use of capital punishment are very adamant to it. Success and threats must be our motivation because, as it is always the case with human rights, we cannot

take abolition for granted. There is always a way to achieve it and a responsibility to maintain it; the word “impossible” does not apply to the abolitionist cause.

Hence the relevance of this publication for scholars, public opinion and multilateral fora. I am convinced it will become a key referent for Spain as we foster the cause of abolition during our membership of the Council of Human Rights from 2018 to 2021.



**Alfonso Dastis**

Minister of Foreign Affairs and Cooperation of Spain



## MESSAGE BY ICDP PRESIDENT NAVI PILLAY

I strongly believe in abolition of the death penalty. It is the reason why I joined the International Commission against the Death Penalty (ICDP or the Commission) where I find myself amongst an impressive group of persons who also believe in this cause and have shown great commitment in abolishing the death penalty in their home country or internationally. It has been a pleasure and an honour to be elected as ICDP President in October 2017.

ICDP is composed of 21 high-profile Commissioners and includes former presidents, prime ministers, government ministers, senior UN officials, a former USA state governor, former judges and a former president of the International Court of Justice, and a leading academic.

We, the Commissioners, represent all regions of the world, demonstrating that abolition of the death penalty is a global concern and not the cause of a particular region, political system, religion, culture or tradition. We do not represent our countries and we act with total independence. Each of my fellow Commissioners is a well-known personality with long experience of public service and in the field of the Human Rights. We all share a deep passion participating in –and supporting– the struggle against the death penalty. Our experience and knowledge enables us to address politically sensitive issues and engage with senior officials from countries where the death penalty is still retained.

The Commission is supported by a geographically diverse group of 19 countries and 3 Observer states who are all committed to the abolition of the death penalty. ICDP's Support Group is composed of following full Member States: Algeria, Argentina, Belgium, Dominican Republic, France, Germany, Italy, Kazakhstan, Mexico, Mongolia, Norway, the Philippines, Portugal, South Africa, Spain, Switzerland, Togo, Turkey and the United Kingdom, and the 3 Observer States: Australia, Canada and New Zealand.

ICDP believes that political leadership is very important in ensuring abolition of the death penalty and this has been underlined by the personal involvement of my fellow Commissioners. For instance, ICDP's latest member, the former President of Mongolia, Tsakhiagiin Elbegdorj who joined us earlier this year has shown great political leadership and will in leading Mongolia

to abolishing the death penalty during his Presidency. He joins the Commissioners including Robert Badinter, Gloria Macapagal-Arroyo, Bill Richardson, Ibrahim Najjar and Marzuki Darusman, who have played very important roles as leaders to lead their countries towards abolition of capital punishment.

At the global stage, I have, in my capacity as UN High Commissioner for Human Rights, along with Commissioner Prof Simonovic, in his capacity as UN Assistant Secretary-General for Human Rights, mainstreamed the discourse of death penalty abolition at the UN. Our Commissioner Marc Baron Bossuyt, is the author of the Second Optional Protocol to the International Covenant on Civil and Political Rights, the only global treaty aiming at the abolition of the death penalty, adopted on 15 December 1989 by the UN General Assembly, and which, as of today, has 85 States Parties and 2 signatories States, and which has and continues to contribute significantly to the worldwide abolition of the death penalty.

I have fought against the use of the death penalty as a South African lawyer, as a judge and President at the International Criminal Tribunal for Rwanda, as a judge at the International Criminal Court, and in my role as UN High Commissioner for Human Rights. In my experience, I have come across and had to make judgments on many horrific crimes against humanity. But even in those cases, we found that the death penalty is not the answer. Violence cannot be resolved by more violence. The respect and protection of the fundamental right to life is more important than any form of revenge. The move away from the death penalty requires political will and political leadership.

It is a great pleasure to be part of the report on “How States Abolish the Death Penalty: 29 case-studies”, which is an enlarged version of ICDP’s 2013 publication “How States Abolish the Death Penalty”. The first edition originated from a panel discussion in New York organized by the UN in July 2012 when questions were raised about how states abolish the death penalty, following which, in February 2013, ICDP organized a meeting of experts in Geneva to discuss steps states can take towards abolition of the death penalty.

This document reviews the experiences of 26 countries and three USA states as they moved towards abolition. Drawing on these lessons and experiences, the document provides guidance to states on how to abolish the death penalty. I believe this work is essential to promote the abolition of the capital punishment in all regions of the world.

The first edition was translated into several languages, including Spanish, French, Russian, and Belarusian, and has been acknowledged as a helpful guide for policy makers in several countries that are currently taking steps towards abolition of the death penalty.

In their last meeting in October 2017, ICDP Commissioners decided to update this publication noting that there have been developments in several of the countries mentioned in the publication and to reflect the current situation of capital punishment by incorporating the experiences of more states.

I fully agree with my predecessor, ICDP founding President Federico Mayor, who mentioned at

the launch of the first edition, and which still has relevance for this edition, that “ICDP’s goal is universal abolition of the death penalty. To achieve this goal there are a number of steps which countries can take. This paper is intended to facilitate and contribute to the ultimate goal –a death penalty-free world”.

A handwritten signature in blue ink, appearing to read "Navi Pillay". The signature is fluid and cursive, with a horizontal line underneath the name.

**Judge Navi Pillay**

President, International Commission against the Death Penalty

# INTRODUCTION

This publication briefly describes the experiences of 26 countries and 3 USA States on their routes towards abolition of the death penalty. As the 29 case-studies show, there are many different ways in which states choose to abolish the death penalty.

Progress towards abolition at the end of the Second World War was at first slow but sharply increased from early 1990s onwards. When the UN was founded in 1945, only eight states had abolished the death penalty for all crimes. Twenty years later, in 1965, twenty-five countries had abolished the death penalty, eleven of them for all crimes and fourteen for ordinary crimes in peacetime. In 1998, around 60 countries had abolished the death penalty for all crimes and the majority of states had considered that the capital punishment was not a solution to end crimes. Twenty years later, in May 2018, Burkina Faso became the 107th country to abolish the death penalty for all crimes.

An increasing number of countries have recognized that state killing undermines human dignity and respect for human rights, such as the discriminatory use of the death penalty, the use of forced confession that increases the possibility of executing an innocent person and the lack of deterrence effect of capital punishment. This move towards abolition of the death penalty is being witnessed in all regions of the world regardless of political system, religion, culture or tradition. According to the UN, some 160 states have either abolished the death penalty or do not practice it. As of December 2017, 23 states continue to carry out executions. The challenge is now to encourage those states which retain the death penalty to abolish the death penalty for all crimes and in all circumstances.

There are challenges. The world's most populated countries -China, India, United States and Indonesia- are not among those abolitionist countries. Almost half of the world's population is not guaranteed the right to life, as prescribed in Article 3 of the Universal Declaration of Human Rights. Moreover, there have been attempts to reverse abolition of the death penalty in some States that have ended capital punishment.

This publication highlights the different ways adopted by States in achieving abolition of the

death penalty. Abolition in some of the states is often associated with marking a break with a repressive past, as happened at the end of apartheid in South Africa, the end of Duvalier regime in Haiti, the end of the Nazi regime in Germany, the aftermath of the genocide of Rwanda, and a ceasefire and peace agreement after massive human rights violations in Cambodia.

Argentina, Mexico and Turkey have achieved abolition at the end of periods of martial law or by removing codes of military justice from their statute books.

Abolition of the death penalty requires political leadership. This leadership against the death penalty may come from political leaders, the National Assembly, judges, religious figures and individuals within civil society. Political leadership has been very important in overcoming national opposition. This has been the case in countries such as France, Mongolia, the Philippines, Senegal, Togo, Uzbekistan and the USA where leaderships of the governors in the states of Connecticut, Maryland and New Mexico were important for the abolition of the death penalty. Personal experience of leaders also plays its part, for example political leaders in South Africa had themselves faced the possibility of execution. Political leaders, including Presidents, have regularly used their prerogative to grant clemency and/or impose a moratorium on executions in France, Kazakhstan, Mexico, Mongolia and the Philippines. Such action paved the way for legislative or constitutional repeal of the capital punishment. Other political leaders, including members of parliament, have shown leadership in acting for abolition even though public opinion supported retention of the death penalty.

A constitutional prohibition of the death penalty provides a powerful safeguard to secure abolition. Countries such as Cambodia, Haiti, Kyrgyzstan, Republic of Congo and Turkey abolished the death penalty by amending the Constitution, mostly through provisions on the right to life, and then subsequently amended their penal code and other laws. Other countries for example Fiji, France, Mexico and Suriname, first undertook legal reform before embodying abolition in their constitutions.

More recently, countries have adopted the route of making an international commitment to abolish the death penalty as an initial step. Mongolia and Benin undertook their journeys towards abolition by initially becoming States Parties to the Second Optional Protocol to the ICCPR before abolishing the death penalty in national law.

In South Africa, the Constitutional Court played a capital role in abolition when its judges decided that the death penalty violated human rights as a form of cruel, inhuman or degrading punishment. The Constitutional Court is also playing a major role in ensuring that the death penalty will not be used in Guatemala with its judgements in 2016 and 2017 and thereby making the country abolitionist for ordinary crimes.

In the USA, individual states have and are taking steps to repeal capital punishment although at federal level the death penalty remains in force. To date, 19 states have abolished the death penalty in the USA. In Australia, the abolitionist processes was started by individual states. A subsequent federal act helped in consolidating the abolitionist trend previously established by the states.

Some countries, such as Argentina, Fiji, Guinea, Portugal and South Africa, first became abolitionist for ordinary crimes –the situation of Kazakhstan and Guatemala (as mentioned in the previous paragraph) as of today- before amending their Military Code of Justice to become abolitionist for all crimes.

Professional organizations, notably bar associations, medical associations and law enforcement organizations, have worked in a number of countries to abolish the death penalty, as have national human rights institutions. The role played by religious organizations in opposing capital punishment was significant, for example in the Americas, the Philippines and South Africa.

International pressure has also played an important role. There is a mounting pressure for abolition resulting from resolutions adopted by the UN General Assembly and the UN Human Rights Council (UNHRC). The UNHRC routinely raises questions about the death penalty in its peer review of states respect for human rights under the system of Universal Periodic Review (UPR). Authoritative statements calling for worldwide abolition, for instance from the Council of Europe, the European Union, the UN and individual Member States, are important and persuasive. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions regularly raises specific concerns about violations of international standards and calling for safeguards on the death penalty and restriction on its imposition.

The development of international human rights instruments, and the subsequent jurisprudence on the role of human rights, has also furthered the abolition of capital punishment. The ICCPR contains a number of provisions including articles on the right to life, deprivation of liberty and fair trial guarantees which all impact on the use of the death penalty. The jurisprudence of the Human Rights Committee (HRC), which monitors implementation of the ICCPR, is important in ensuring that the provisions are understood and respected and it makes important recommendations after reviewing States observation of the ICCPR. The Second Optional Protocol to the ICCPR aiming at abolition of the death penalty is also a key development in furthering abolition.

Regional human rights standards have also had marked influence on abolition. In the Organization of American States (OAS), 25 states have ratified the American Convention on Human Rights, which prohibits reinstatement of the death penalty in countries that have abolished it. In Europe, Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for the abolition of the death penalty in peacetime, and has been ratified by 46 states whereas, Protocol 13 to the same Convention, requiring abolition in all circumstances without reservations or derogations, has been ratified by 44 states. All 47 members of the Council of Europe have abolished capital punishment or instituted moratorium on executions. The European Union and the Council of Europe have made abolition a condition for its memberships. The African Commission of Human and People’s Rights has adopted three resolutions, in 1999, 2008 and 2017 calling on States Party to the African Charter on Human and People’s Rights to observe a moratorium on the death penalty.

Retentionist States often rely on different arguments to maintain the death penalty in their laws. Such arguments, including the idea that the public favors the death penalty and the deterrent effect of the capital punishment, have made it very difficult to abolish capital punishment.

Detailed and impartial studies about the lack of deterrent effect of the death penalty and its arbitrary and discriminatory use contributed to the abolition of the death penalty in Mongolia, the Philippines, South Africa and the US state of New Mexico.

It is therefore important that retentionist states ensure that information and statistics regarding the death penalty are publically available. Nevertheless, even with such information public opinion can fluctuate dramatically, particularly in response to serious crimes and the media coverage of such crimes. While public views on the death penalty are relevant, ultimately it is the political leadership that leads the State in its decision to abolish the death penalty. Experience shows that capital punishment has been abolished even when public opinion favors such punishment. This was the case, for example, in Canada, France, Germany, United Kingdom and among the 19 states in the USA which repealed the death penalty. Once abolished, historical experience has shown that the majority of the public has not opposed this decision and has shown willingness to accept death penalty abolition.

ICDP works for global abolition of the death penalty. The 29 case studies, including 26 countries and 3 states of the USA, represent all regions of the world. As in the previous edition, this narrative is concluded by a brief description of lessons learned from experiences of these case studies. Finally, there is a section on the ICDP and its Commissioners.

# REVIEW OF SELECTED COUNTRIES

## ARGENTINA

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**Argentina has a long abolitionist tradition. The last legal execution took place in 1916 and was followed by periods of complete abolition, from 1921, and reinstatement of the death penalty under military governments in the 1970s. Argentina abolished the death penalty by law for ordinary crimes in 1984 and for all crimes in 2008. In 1994, the death penalty was prohibited in the constitution for political crimes.**



Argentina had already abolished the death penalty for ordinary criminal offences in 1921 but laws passed in 1950 and 1951 provided the death penalty for politically related offences: espionage and sabotage as well as acts punishable under the provisions of the Code of Military Justice which was intended to try the leaders of rebellions. These laws were repealed under the first government of President Juan Perón. However, the *de facto* governments (1966–1973) reintroduced the death penalty for political crimes in 1970 and under criminal law in 1971. These legal changes met with strong opposition from jurists and others, leading to the aboli-

tion of the death penalty in 1972 under General Lanusse, except in the Military Penal Code.

After the military coup of 24 March 1976 that deposed Isabel Martínez de Perón, the death penalty was reintroduced for violent crimes and attacks on public services, in so-called “crimes with the purpose of subversion”. This penalty could be imposed on any person who was over 16 years of age. During the last military dictatorship, which ruled from 1976 to 1983, no judicial death sentences were imposed, but the military junta resorted to large-scale extrajudicial executions, torture and enforced disappearances, among other violations of human rights.

In December 1983, the Constitutional President, Raúl Alfonsín, restored the rule of law in Argentina. The Government was committed to breaking with the repressive policies of the military junta, taking steps to establish the liability of widespread human rights violations committed during the dictatorship. The Alfonsín Government adopted a comprehensive legislative reform that included the removal of the decree laws, which established the death penalty. In August 1984, the National Congress passed Law 23077 which eliminated the death penalty in the Penal Code for ordinary

criminal offences. In March 1984, Argentina ratified the American Convention on Human Rights, which requires that once a country has abolished the death penalty “it shall not be re-established”.

The death penalty could still be imposed by special legislation. The 1951 Military Justice Code remained in force, and the military courts could apply the death penalty during armed conflict or in peacetime for crimes of treason, espionage, rebellion and mutiny (offences under the Military Penal Code). Article 759 of the Code of Military Justice established the death penalty for desertion in time of war, and Articles 131 and 132 established that both civilians and military could be summarily executed by applying the emergency regulations. Legislation adopted in 1984 reduced the scope of the Code of Military Justice, imposing mandatory intervention by a federal appeals court to review all decisions of military courts.

In 1994, the National Constitution was amended. One of the most important changes was the incorporation of international human rights treaties in the Constitution. Among the amendments was a specific provision, in Article 18, that the “Death penalty for political causes [...] [is] forever abolished”. Finally, in August 2008, the Code of Military Justice was abolished by law, military courts of justice ceased to exist and the death penalty was abolished for all crimes.

At the United Nations General Assembly (UNGA) in 2007, Argentina voted in favour of resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty (A/RES/62/149), and voted for all subsequent death penalty resolutions adopted in 2008, 2010, 2012, 2014 and 2016. To underline its international commitment to total abolition, Argentina ratified the Second Optional Protocol to the International Cove-

nant on Civil and Political Rights (ICCPR-2OP) aiming at abolition of the death penalty in May 2008 and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty in June 2008. Argentina was a co-leader of the group of countries that worked together to increase support for the UNGA resolution in 2016. Argentina, together with the EU and Mongolia, created the Alliance for Torture-free Trade which aims to end trade in goods used for capital punishment and torture. The Alliance was launched on 18 September 2017 and 58 countries adopted a political declaration during the event.

Argentina is a founding Member-State of the Support Group of the ICDP.

## AUSTRALIA

**The last execution in Australia took place in February 1967, when Ronald Ryan was hanged in Melbourne for shooting a prison officer during an escape. The last person to be sentenced to death was Brenda Hodge in Western Australia in 1984 for murder but her sentence was shortly after commuted to life imprisonment. The federal Death Penalty Abolition Act 1973 helped consolidate the abolitionist trend established by the states of Queensland in 1922 and Tasmania in 1968. New South Wales was the last state to abolish the death penalty for all crimes in 1985.**



The death penalty was introduced as formal law in Australia at the time of the British colonization (1788) even though the punishment already existed in customary law of some Aboriginal groups. During the British colonial era, state execution

was applied for a variety of offences including sheep stealing, forgery, burglary and murder. Reportedly, more than 1,500 people were hanged between 1820 and 1900. Since Australia's independence in 1901, and until the last execution in 1967, Australian states carried out executions on 114 occasions, most of them in the first 20 years of federation.

In 1973, the federal *Death Penalty Abolition Act 1973* eliminated capital punishment for offences under the laws of the Commonwealth and of the Territories. At that time, two Australian states had already abolished the death penalty, Queensland being the first in 1922, joined by Tasmania in 1968. Victoria followed in 1975, South Australia in 1976 and Western Australia in 1984. The last jurisdiction to abolish the death penalty for all crimes was New South Wales in 1985 even though capital punishment for murder had previously been abolished in 1955.

On 2 October 1990, Australia confirmed its opposition to the death penalty by acceding to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. Moreover, in December 2007, Australia voted in favour of the first UNGA Resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty, and voted in favor of all subsequent resolutions on worldwide moratoria in 2008, 2010, 2012, 2014 and 2016.

On 11 March 2010, the Commonwealth Parliament passed the *Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010*. This Act amended the Death Penalty Abolition Act 1973 and extended the current Commonwealth prohibition on the death penalty to all States and Territories, foreclosing the possibility of any individual State jurisdiction reintroducing the death penalty.

Australia cannot extradite an individual to a country where the offence concerned is punishable by the death penalty. However, an exception may apply if an undertaking is provided by the requesting country that the death penalty will not be imposed, or if imposed, not carried out.

Recent executions of Australians overseas for drug-related crimes have raised a great deal of concern in Australia.

Australia is an Observer State of ICDP's Support Group.

## BENIN

**The Republic of Benin (Benin) was the 16th African State to abolish the death penalty when it made an international commitment by acceding to the Second Optional Protocol to the ICCPR on 5 July 2012. At a domestic level, Benin is still in the process of removing the death penalty from its national legislation. The last known execution took place in 1987.**



The death penalty was included in the "Code Penal Bouvenet" (Code Bouvenet), the Criminal Code which had been introduced in the French West African colonies and dates back to 1877. Although Benin's Code of Criminal Procedure entered into full force and effect in 1967, its Criminal Code was not consistent with the country's international human rights commitments. The death penalty was provided for in several articles of the Code Bouvenet, for example, for aggravated murder (articles 302, 304), robbery not resulting in death (article 381), arson not resulting in death (articles 95, 434, 435),

corruption (article 182) and repeat offences (article 56). In 2001, the Benin Government decided to implement an up-to-date law, but to this day it has not been enacted.

The Constitution, that came into effect on 11 December 1990 and led to the establishment of its present presidential democratic republic, contains provisions that provide for the protection of human rights, especially in its articles 15, 40, 114, 117, and 147, and is a crucial foundation of Benin's democratic renewal (*Renouveau Démocratique*).

In order to initiate and advance the abolition of the death penalty, an advisory body, the National Human Rights Advisory Board, was established in 2004 with the consent of the then President Mathieu Kérékou along with the support of civil society organizations and the Human Rights Unit of the Ministry of Justice, Human Rights and Legislation. The National Human Rights Advisory Board investigated issues surrounding the death penalty and debated the abolition of the death penalty in the country at its session in February 2004.

Although Benin has not carried out the death penalty since 1987, it has been criticized for handing death sentences for crimes including armed robbery without loss of life. On 1 December 2004, the UN Human Rights Committee (HRC), that monitors States' implementation of the ICCPR, concluded in its eighty-second session (CCPR/CO/82/BEN) that the country should limit the death penalty to the most serious crimes and consider abolishing the death penalty by signing the Second Optional Protocol to the ICCPR. The HRC also recommended that the death sentences should be commuted to imprisonment. However, death sentences continued to be imposed. In February 2006, a death sentence was even passed in absentia.

Benin's approach toward abolition of capital punishment witnessed a transformation which became evident when on 18 December 2007, the country voted in favour of the UNGA resolution on a worldwide moratorium on the use of the death penalty, which aims at the abolition of the death penalty. During the first cycle of its review Universal Periodic Review (UPR) in 2008, Benin stated that it would strengthen its efforts of continuing the abolition process (A/HRC/8/39, A/HRC/WG.6/2/BEN/1). The Government appointed a multidisciplinary committee (decrees N°2008-52 18 February 2008, N°2008-597 22 October 2008), *the Commission Technique ad'hoc de Relecture de la Constitution*, also named the Ahanhanzo-Glèlè Commission after its chairman Professor Maurice Glèlè Ahanhanzo, to start a review process of the 11 December 1990 Constitution in 2008. The final report of the 11 members of the technical ad-hoc Commission on 31 December 2008 (which was released on 28 February 2009) recommended the abolition of the death penalty.

In November 2009, with consent and support of President Thomas Boni Yayi, the country's Government sent a bill, concerning the constitutional abolition of the death penalty, to the National Assembly for discussion and adoption. Despite these developments, at least five persons were sentenced to death in 2009 and at least one person was sentenced reportedly to death in 2010.

The Second Conference for North and West Africa on the Question of the Death Penalty in Africa was held in Cotonou, the capital of Benin, from 12 to 15 April 2010. The conference was organized by the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa (WGDP) which is part of the African Commission on Human and Peoples' Rights (ACHPR). One of the conference's three speakers during the ope-

ning ceremony was Victor Prudent Topanou, then Benin's Minister of Justice, Legal Affairs and Human Rights. The conference succeeded in drafting the Cotonou Framework, which provides detailed strategies for abolishing the death penalty in Africa.

In 2010, constitutional reforms were still ongoing in Benin and the country's legislation prepared for ratifying the Second Optional Protocol to the ICCPR.

On 18 August 2011, the National Assembly voted with an overwhelming majority (54 votes in favour, five against and six abstentions) to accede to the Second Optional Protocol to the ICCPR. The National Assembly's President, Mathurin Coffi Nago, said that "Benin wants to promote human dignity and progressive development of human rights". With the final accession to the Second Optional Protocol on 5 July 2012 and its entering into full force and effect on 5 October 2012, Benin became the 75th country worldwide and the 16th African country to become a State Party to the ICCPR-20P thereby making an international commitment to abolish capital punishment.

In March 2012, a new Criminal Code was adopted in Benin. It still contained provisions relating to the death penalty in two articles (article 685 and article 793). Subsequently, on 4 August 2012, the Constitutional Court of Benin stated that those provisions were unconstitutional (DCC 12-153). The National Assembly amended a new draft Code on 17 December 2012, from which the articles of the Criminal Code deemed unconstitutional with references to the death penalty were removed. The Constitutional Court of Benin declared the new Code of Criminal Procedure Act No. 2012-15 constitutional on 14 March 2013. Reports suggest that as of end of 2017, the National Assembly had yet to adopt laws removing the death penalty from national legislation.

The African Continental Conference on the Death Penalty, organized by the ACHPR, the Government of Benin and Hands off Cain was hosted in Cotonou between 2 and 4 July 2014. The conference succeeded in adopting the Declaration of Cotonou (2014), which promotes the abolition of the death penalty on the African continent.

In May 2016, the Minister of Justice gave "assurances to Amnesty International that the death row prisoners will not be executed and that Benin is committed to its obligations under the ICCPR-20P not to carry out executions". However, he also stated that their commitment could only "be done by a judge or through legislation of the National Assembly" (*Living in Limbo: Benin's last death row prisoners*, AI Index: ACT50/4980/2017). According to the same organization, "the Constitutional Court of Benin effectively abolished the death penalty for all crimes in a 2016 judgment". However, at the end of 2017 "the National Assembly was yet to adopt laws removing the death penalty from national legislation".

Benin elected Patrice Talon as the country's new President in March 2016, succeeding Thomas Boni Yayi in office. The new President has yet to show his commitment towards the abolition of the death penalty and the removal of the death penalty in the country's national legislation, as well as the commutation of death sentences into imprisonment. It was noteworthy that when the country was assessed under the UPR in November 2017, Benin supported the recommendations to complete the abolitionist process, to adopt a new Criminal Code to finally exclude the death penalty from its legislation and to commute the sentences of the last individuals sentenced to death.

At the UNGA, Benin voted in favor of resolution calling for a moratorium on executions worldwide with a view to abolishing the death

penalty. It did the same in 2008 and as well as in 2012, 2014 and 2016 after it had registered as absent in 2010. Benin has co-sponsored the draft UNGA in 2007, 2008, 2010, 2012 and 2014.

According to Amnesty International, on 21 February 2018, the Government commuted the sentences of all the 14 men who were facing the death penalty to life imprisonment. They had been under sentence of death for over 18 years.

## CAMBODIA

**Cambodia has the longest period of abolition of capital punishment of any country in Asia. Along with the Philippines, it is one of two Member-States of the Association of Southeast Asian Nations (ASEAN) to have abolished the death penalty for all crimes. The date of the last execution is not known. The death penalty was prohibited for all crimes in 1989 by an amendment to the 1981 constitution. Abolition of the death penalty was subsequently effectively incorporated in transitional legislation passed in 1992 under UN supervision and was then secured in the new 1993 constitution, rooted in an agreement to settle the long-standing Kampuchean conflict that was reached under international auspices in Paris in 1991.**



Between 1975 and 1979, over one million, though some estimates suggest nearly two million Cambodians were arrested, tortured, executed or starved to death under a policy of forced relocation to the countryside carried out by the Government of Democratic Kampuchea, led

by Pol Pot. He headed the Communist Party of Kampuchea, known as the “Khmer Rouge”.

A 1979 decree, passed after the Pol Pot Government was overthrown, provided death as punishment for genocide and its scope was extended under the 1980 Decree Law No. 2 for offences including treason against the revolution and theft of public property, murder and rape. However, the death penalty did not apply to anyone convicted of genocide or treason who vowed political loyalty to the new Government of the People’s Republic of Kampuchea (PRK). At least five men were sentenced to death under the decree for genocide and treason under the PRK Government. Three of them, including Khmer Rouge leader Pol Pot, were tried *in absentia*.

In Cambodia, the death penalty was abolished by constitutional amendment in April 1989. Article 35 of this amendment abolished the death penalty for all crimes and was intended to signify new policies at the end of the Pol Pot regime and subsequent fighting between forces of the PRK Government, led by Hun Sen, and armed opposition forces in the Coalition Government of Democratic Kampuchea (CGDK). This coalition was later renamed the National Government of Cambodia (NCG). The opposition coalition included the “Khmer Rouge” (then called the Party of Democratic Kampuchea) and Prince Norodom Sihanouk’s National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC).

International pressure and assistance also played a substantive part in the abolition of the death penalty. International NGOs had pushed for strong human rights provisions in the Paris Agreement and in the new Constitution, for a commitment towards abolition of the death penalty. Amnesty International, for example, had written to PRK leaders in July and September 1988 to express concern about the use of

the death penalty and to urge that enforceable guarantees for respecting international human rights standards be an important part of any political settlement that would also include an end to the death penalty. Amnesty International also pressed these proposals from the early stages of negotiations on the three opposition parties participating in the talks, one of whose leaders, Prince Norodom Sihanouk, responded in September and October 1988 expressing support for ending the death penalty in Cambodia.

International efforts had intensified to bring the protracted Kampuchean conflict to an end. A ceasefire was eventually agreed in 1991 and the Paris Peace Agreement was concluded in October 1991, signed by the Government of the State of Cambodia, led by Hun Sen, three opposition parties – the Khmer Rouge, FUNCINPEC and the Khmer People’s National Liberation Front (KPNLF) – as well as by all five Permanent Members of the UN Security Council and 13 other Governments.

The agreement committed Cambodia, in Article 15 (2), “To ensure respect for and observance of human rights and fundamental freedoms in Cambodia” and “to adhere to relevant international human rights instruments”. Annex 5 to the Agreement sets out the Principles for a New Constitution for Cambodia to incorporate special measures to assure protection of human rights, a constitutional declaration of fundamental rights including the right to life, and the need for consistency of constitutional provisions in line with the UN Universal Declaration of Human Rights. Under the accord, the UN Transitional Authority in Cambodia (UNTAC) was established to supervise the ceasefire as well as law enforcement and judicial processes as part of the process to prepare Cambodia for a new Constitution fostering “an environment in which respect for human rights shall be ensured”.

UNTAC was deployed in 1992 and offices were established in March 1992. UNTAC assisted in drafting legal texts on civil and criminal law. In September that year the Supreme National Council, the legitimate transitional body, adopted the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period. This transitional law, prepared with UNTAC’s assistance, states in Article 67 that “the death penalty is abolished in Cambodia”.

On 24 September 1993, Cambodia adopted a new Constitution based on the human rights provisions articulated in the Paris Peace Agreement. Article 32, prepared under the UN mandate of legal assistance to Cambodia, states “Every Khmer citizen shall have the right to life, personal freedom and security”. It then specifically provides that “There shall be no capital punishment”. The Constitution was criticized, however, for excluding anyone who was not a “Khmer citizen” from the constitutional human rights provisions. The transitional Code of Criminal Law and Procedure continued to apply for some time until a new Penal Code entered into force in December 2010, which also does not provide for the death penalty.

At the UNGA in 2007, Cambodia voted in favour of resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty, and voted for all subsequent death penalty resolutions adopted in 2008, 2010, 2012, 2014 and 2016. Cambodia is not yet a party to the Second Optional Protocol to the ICCPR aiming at abolition of the death penalty. Cambodia was assessed during the UPR in 2014 and noted, but did not accept, the recommendations to sign and ratify the two Optional Protocols to the ICCPR including the Second Optional Protocol aiming at the abolition of the death penalty.

## CONGO, Republic of the

**The Republic of the Congo (Congo, Congo-Brazzaville) abolished the death penalty on 6 November 2015 when a new Constitution was promulgated. The last executions were carried out in 1982. The number of death sentences declined gradually but continued to be handed down until abolition mostly on charges of murder. The political leadership of President Nguesso played an important role in bringing abolition to Congo.**



Congo observed a *de facto* moratorium on the use of the death penalty since its last executions in 1982.

The personal leadership of President Sassou Nguesso, who has been the President of the Republic of the Congo since 1997 and was previously President from 1979 to 1992, was key to achieve the abolition of the capital punishment in the country. In 1991, amendments to its laws reportedly abolished the death penalty for political crimes.

The country's attitude towards the death penalty changed in the 2000's. On 15 August 2007, during the celebrations of Congo's Independence Day, the remaining 17 persons under sentence of death had their sentences commuted by Presidential Decree to life imprisonment with hard labour.

That same year, at the UNGA in 2007, Congo voted in favour of the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty, and voted for all subsequent death penalty resolutions adopted in 2008, 2010, 2012, 2014 and 2016. Congo also co-sponsored the UNGA resolutions calling for a moratorium between 2008 and 2016.

Congo was assessed under the UPR in 2009 and in 2013. In both occasions, the country supported the recommendations to abolish the death penalty showing that the government was in favour of abolition even though steps were taken yet. Within this context, civil society organizations lobbied Congolese authorities to move towards the abolition, with the Observatoire Congolais des Droits de l'Homme (Congolese Observatory for Human Rights) and the Action des Chrétiens pour l'Abolition de la Torture (Action by Christians against Torture) playing a leading role. Reports suggest that activists working on this issue found the idea of abolition was widespread when they met Government officials in October 2015 on the occasion of a conference on the death penalty which was to be hosted by President Nguesso. The conference did not take place reportedly on grounds that a constitutional reform was taking place. The main aim of the Constitutional reform was to allow the President Sassou Nguesso to run for re-election in 2016.

The reformed new Constitution was approved by referendum on 25 October 2015. The Constitution was promulgated on 6 November 2015 which included a provision abolishing the death penalty.

## FIJI

**The death penalty was abolished in the Republic of Fiji (Fiji) for ordinary crimes in 1979 and for treason in 2002. In February 2015, a legislative amendment abolished the capital punishment for military offences, making Fiji abolitionist for all crimes. The last execution was carried out in 1964, six years prior to the country's independence in 1970. After 1964, all the death sentences were commuted to terms of imprisonment.**



Fiji did not carry out executions after gaining independence in 1970. As in the case of many other countries, Fiji's abolitionist process was achieved after progressive restrictions on the use of the death penalty. After the last execution in 1964, the offences carrying out the death penalty were gradually restricted, and by 1972 only aggravated murder was punished with the death penalty.

In 1973, courts were granted greater discretion with the removal of mandatory death penalty for murder. In contrast, the scope of the death penalty was reportedly expanded the same year.

A milestone for the movement towards abolition came in 1979, when Fiji abolished the death penalty for ordinary crimes. However, the death penalty remained applicable to certain military crimes including genocide and other military crimes.

The death penalty came to focus when George Speight, the leader of the May 2000 coup d'état, was sentenced to death for treason<sup>1</sup>. However, his death sentence was commuted to life imprisonment by the Government. There were fears of political unrest if George Speight's execution had been carried out. In any case, the law at the time did not provide for any execution procedure.

As a consequence, the Fijian Parliament voted unanimously to abolish the capital punishment for all ordinary offences, including treason, but continued to retain it for crimes committed under military law during war time. The Crimes Decree removed the last references to the death penalty in the Penal Code, abolis-

hing the death penalty for charges including treason, instigating a foreign invasion with military force and genocide, but the capital punishment for the same charges remained in the Military Code for another 13 years.

The death penalty provisions in the Military Code were introduced by the United Kingdom's 1955 Army Act, which had long since been repealed in the United Kingdom but still remained in Fiji, even though it had never been applied. The death penalty returned to the limelight when Fiji was reviewed under the UPR cycles of 2010 and 2014.

On 10 February 2015, the Parliament passed a bill, introduced by Attorney General Aiyaz Sayed-Khaiyum, amending the Military Forces Act to remove the death penalty provisions. The law was passed with 29 votes in favour, 1 vote against, 9 abstentions and 11 absent. Fiji became abolitionist for all crimes and death penalty provisions in the military code were replaced with life imprisonment.

Fiji voted in favour of the UNGA Resolution calling for a universal moratorium on the use of the death penalty in 2014 and 2016. The country had previously abstained.

## FRANCE

**France abolished the death penalty by law for all crimes in 1981 thus joining the 13 other European countries which had already achieved abolition. Abolition followed a long public debate, presidential pardons, a cross-party study group, legal action in the courts and decisive action by**

<sup>1</sup> In May 2000, George Speight had stormed into the Parliament and kidnaped the President and 35 other Parliamentarians for 56 days.

**President Mitterrand who publicly advocated abolition notwithstanding a majority of the French public favouring the death penalty. In 2007, abolition of the death penalty was incorporated in the Constitution. The last execution took place in 1977.**



France's first Penal Code of 1791, adopted during the French Revolution, provided for decapitation and since then the death penalty was always carried out by guillotine. An 1848 decree, confirmed in 1853, abolished the death penalty for political crimes. During the nineteenth century, the death penalty was debated among academics, legal scholars and political and literary figures, among them Victor Hugo, who described the last day of a condemned man to illustrate his opposition to capital punishment.

The last public execution took place in Versailles in 1939. It revived the public debate about the death penalty after pictures of the execution, employing a faulty guillotine, were widely distributed in the press. The Government promptly banned all publicity surrounding executions, except for summary official announcements. From then on, secrecy surrounded the executions that were subsequently carried out.

Executions by guillotine for death sentences pronounced by special courts were carried out regularly during the time of German occupation of France and the period immediately after the war saw a high execution rate. However, there were fewer executions after the 1950s. For example, between 1959 and 1979, 51 people were condemned to death for ordinary crimes, of whom 14 were executed, as well as two members of the paramilitary OAS (Organisation Armée Secrète). A strong abolitionist tradition emerged in French literature and film. The writer Albert Camus wrote a book in 1957 reflecting on the guillotine and,

with Arthur Koestler, he wrote reflections on the death penalty, with a plea for abolition. French films during this period highlighted the inhumanity of the death penalty.

After a consultation with judicial and administrative officials, French Presidents exercised their powers to grant clemency more frequently and judges also showed more reluctance to hand down death sentences. However, a number of crimes against children in the 1970s galvanized public opinion in favour of the death penalty, with up to 65% of the population supporting retention. Executions in 1972 attracted international criticism, as they were being carried out at a time that most European countries were abolishing the death penalty. However, the relatively low rate of executions in the 1960s and the opinions expressed and actions taken by French Presidents on the death penalty, ambivalent as they were, enlarged scope for public debate on capital punishment.

In April 1974, the Presidential candidate Valéry Giscard d'Estaing expressed his 'profound aversion' to the death penalty, but added that he would not counter the profound sentiments of the French people on the matter. Once elected, however, he permitted three executions. His failure to grant clemency leading to a July 1976 execution attracted negative criticism in the press and revived the public debate about capital punishment. President Giscard d'Estaing said he wanted a thorough analysis of executions. Various professional organizations debated the death penalty and in 1976 the *Syndicat de la Magistrature* (Trade Union of Magistrates) voted for abolition with a wide margin. The National Assembly established a cross-party study group and the Commission for Revision of the Penal Code expressed its opposition to the death penalty. The Protestant and Catholic churches also strongly voiced their abolitionist views.

The death penalty was also challenged in the courts. Robert Badinter, a lawyer and socialist politician, persuaded judges six times from 1976 to 1980 to spare the life of a murderer by opposing the death penalty as cruel and inhuman punishment and which risked innocent persons being sentenced to death. President Mitterrand, who had declared his opposition to the death penalty just a few weeks before the 1981 elections, appointed him to be Minister of Justice in his new socialist Government.

One of the first acts of the new Government was to commute three death sentences passed in May 1981 and for Minister of Justice Badinter to introduce an abolitionist bill in the National Assembly in September under the quick vote procedure. It also attracted the support of centre-right parties. On 9 October 1981 the death penalty was abolished for all civil and military offences under Article 1 of Law No. 81-809, after votes in favour among the Members of National Assembly (363 to 117), and the Senate (160 to 26). This happened at a time when 60–65% of the French people favoured capital punishment.

As a final step to securing the strongest guarantee against the death penalty, abolition was enshrined in the constitution at the initiative of President Chirac by constitutional amendment passed in the National Assembly in 2007. Article 66-1 of the Constitution provides that “no one shall be sentenced to the death penalty”.

France’s position against the death penalty was underlined by its ratification of Protocol 6 of the European Convention on Human Rights in February 1986, providing for abolition of the death penalty in peacetime. In October 2007, France also acceded to Protocol 13 of the Convention, abolishing the death penalty in all circumstances.

At the UNGA in 2007, France voted in favour

of the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty and voted for all subsequent death penalty resolutions adopted in 2008, 2010, 2012, 2014 and 2016. In October 2007, France became a party to the Second Optional Protocol to the ICCPR aiming at abolition of the death penalty.

France is a founding Member of ICDP’s Support Group.

## GERMANY

**The end of World War II left Germany divided as two different countries (the Federal Republic of Germany (West Germany or FRG) and the German Democratic Republic (East Germany or GDR)), and as a result the capital punishment followed different paths in each territory. West Germany abolished the death penalty in 1949 and East Germany in 1987, before its unification in 1990. The unified Germany continues to be death penalty abolitionist.**



In the 19th century, before the creation of the German Empire in 1871 under Chancellor Otto von Bismarck, there was a previous attempt to form a unified German nation state following the 1848 March Revolution. In this attempt, a Frankfurt Constitution was drafted in 1849 and adopted by the Frankfurt National Assembly on 27 March 1849. However, the following month, in April 1849, consequent to the decision by Frederick William IV, the National Assembly dissolved.

Before its dissolution, the Frankfurt National Assembly adopted the Imperial Act concerning the Basic Rights of the German People on

21 December 1848 which provided for legally binding human and civil rights. Among the rights protected by this Act were the equality of everyone before the law, the abolition of all class privileges, guaranteed personal and political liberties, (i.e. freedom of the press, freedom of expression, freedom of association, freedom to practice a trade or profession and freedom of movement), and the abolition of the death penalty. This Imperial Act influenced Germany's successive Constitutions.

During the German Empire (1871-1918), the death penalty was mainly carried out for those charged with high treason, with murder, with murder or attempted murder of the sovereign. Executions were carried out by guillotine.

State violence perpetrated by the Nazi regime marked the future of the death penalty. The Nazis made an extensive use of the death penalty long before the start of the Second World War. The number of crimes applicable with the capital punishment increased. Several tens of thousands, reportedly in excess of 30.000 persons, were executed by guillotine, often after summary trials. In 1936, the guillotine was made the official means for ordinary crimes. From 1942, executions were carried out by hanging. Executions were carried out by firing squad for those charged with military crimes.

The barbarity of the extermination camps and the genocides left an indelible mark in German society and changed their ability to tolerate state violence and executions conducted by the state.

### **West Germany or Federal Republic of Germany**

The last execution, by hanging, under sentence of death in West Germany was carried out in 1946.

In May 1949, the Basic Law (Constitution) of the Federal Republic of Germany or "Grundgesetz" was adopted which abolished the death penalty for all crimes. Article 102 of the new Basic Law proclaimed that "Capital punishment is abolished". Interestingly, a far-right-wing party delegate of the constitutional convention (*Deutsche Partei*) introduced the motion to abolish the death penalty with the reported intention of protecting Nazi officers convicted for war crimes from being executed. The motion was then supported by the Social Democrats who had historically been in favour of abolition and had called for an end to capital punishment during the Weimar Republic, insisting on the importance to break this cruel and inhuman practice which was carried out by the Nazi Regime. This last argument eventually convinced the Christian Democratic Union to support the death penalty.

The Basic Law was adopted on 23 May 1949 and ratified by every State of the Federal Republic of Germany except Bavaria. Being a Federal State, each state had their laws and few of these laws continued to provide for the capital punishment but, from the day the Basic Law came into force, and because of the principle of constitutional supremacy, the capital punishment was completely abolished making inoperative any other national provisions. Later, on 20 January 1951, an amendment to the Criminal Code replaced all death sentences with life imprisonment.

There were strong domestic pressures to retain the death penalty for murder and several attempts to reintroduce it in the following years but an amendment to the Constitution required the support of two-thirds of the Parliament, a barrier that was never surmounted to favour the retentionist bills. The successive Christian Democrat Governments were divided on the issue of the death penalty. Even Chancellor Adenauer personally supported the ca-

capital punishment, though he decided not to support a reintroduction of the death penalty given the fear that such a move would weaken the Basic Law which could have endangered the stability of Germany.

In 1959, the Committee in charge of the reform of the Criminal Code voted in favor of maintaining the abolition by an overwhelmingly majority, and the draft Criminal Code they presented to the Parliament in 1960 maintained the abolition.

### **East Germany or Democratic Republic of Germany**

The death penalty in East Germany was extensively carried out especially on those who were charged with political crimes. Among the offences that carried the capital punishment were treason, espionage, murder and sabotage. East Germany was a fervent prosecutor of Nazi war criminals.

After 1956, the use of the death penalty declined, due in part to the deStalinization process started in the USSR by Nikita Khrushchev. Nonetheless, after 1964, death sentences were mostly imposed on those found guilty of committing sexual offences ending in murder.

The Criminal Code, promulgated in 1968, continued to provide for the application of the capital punishment. However, executions were rarely carried out after 1975 and death sentences were systematically commuted. The last execution was carried out in 1981, and that same year the application of the death penalty was reduced to military crimes. East Germany was considered abolitionist for ordinary crimes.

A working party was established in 1987 by the Politburo to consider and work on the abolition of the capital punishment in East Germany. The

working party recommended on 14 July 1987 to abolish the death penalty and three days later, on 17 July, the decision to abolish capital punishment was made public by the authorities. The abolition was presented as a symbol of the progress made by the state, and as not needed anymore to fight violent crimes and the Nazi legacy. The Democratic Republic of Germany became the first country in Eastern Europe to abolish the death penalty. The abolition also contributed to normalize the relations with West Germany and helped to prepare the scenario for the German reunification.

### **Death Penalty after German Reunification**

The reunification of East and West Germany took place in 1990. Both FRG and DRG had abolished the death penalty: West Germany in 1949 and East Germany in 1987.

Even though the capital punishment had been abolished in the Constitution at the Federal level, some territories continued to mention the death penalty in their laws without applying it. For instance, the capital punishment was not eliminated in law in West Berlin until 1990, and it was not until 17 March 2016 that the *Länder* of Hesse removed the death penalty from its Constitution.

Following judgements of the European Court of Human Rights (i.e. *Soering v United Kingdom and Germany*, 1989), and along with fellow European Union Members States, Germany refuses to extradite prisoners to countries where they could face the death penalty.

At the UNGA in 2007, Germany voted in favour of the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty and voted for all subsequent death penalty resolutions adopted in 2008, 2010, 2012, 2014 and 2016. In August 1992, Germany became a party to the Second

Optional Protocol to the ICCPR aiming at abolition of the death penalty. The German Democratic Republic had previously ratified the Protocol in August 1990.

Germany is a member of ICDP's Support Group.

## GUATEMALA

**Guatemala became abolitionist for ordinary crimes in 2017 following a judgement by the Constitutional Court of Guatemala. No executions have been carried out since 2000 though there have been several attempts to reinstate the death penalty.**



Guatemala's 1973 Penal Code established the death penalty for patricide, aggravated murder, and assassination of the President or Vice President. The death penalty is mandatory for rape which results in death in cases where the victim is under 10 years of age. It is also applicable for cases of kidnapping where the victim is below 12 years of age or above 60 years of age, which results in the death or when the victim suffers serious physical injury or permanent psychological trauma.

The 1985 Constitution, the current Guatemala Constitution, abolished the death penalty for women, people over 60 years of age, those guilty of political crimes or related ordinary crimes, those people extradited under the condition that the death penalty will not be applied or in case where a conviction is based on circumstantial evidence. Additionally, the Constitution established that the death sentence can only be carried out after all appeals are exhausted and gives the power to the Congress to abolish the death penalty. The Supreme

Court has reportedly been given the power to give pardons to those who were convicted after the Presidency stopped handing pardons.

Guatemala has experienced high rate of crimes and there have been incidences of suspected lynching of criminals in rural areas.

Before the Constitution came into force, Guatemala had ratified the American Convention on Human Rights in 1978, which establishes that no one can be arbitrarily deprived of his life. The Guatemalan Congress approved different Decrees in 1994, 1995 and 1996 that extended the scope of the capital punishment to crimes of kidnapping not resulting in the death of the victim, forced disappearance and extrajudicial executions. The extension of the scope of the death penalty took place despite a 1983 ruling from the Inter-American Court which confirmed that the extension of the death penalty would violate the American Convention.

Guatemala did not carry out executions between 1984 and 1995. Executions resumed in September 1996 when two prisoners were executed by firing squad. Both inmates had exhausted all appeals and the Supreme Court of Guatemala had dismissed the petition made by the Inter-American Commission on Human Rights for precautionary measures and suspension of the executions.

The next execution, the first one by lethal injection, was carried out in February 1998, again despite the petition for suspension by the Inter-American Commission on Human Rights. Guatemala had previously changed the method of execution by law in 1996, following strong international criticism regarding the executions carried out in 1996. The three executions that were carried out in 1996 and 1998 were broadcast on television. The Government announced, given the strong protests

from the international community, that executions would no longer be aired. However, two executions were carried out in July 2000, and were again broadcast on television. One of the executions was botched as the person received three lethal injections and had an agonizing death after 18 minutes. These were the last executions to be carried out.

In 2000, a law establishing procedures for the consideration of clemency petitions by the President was repealed. This created a legal void that could have rendered any execution unlawful under the American Convention on Human Rights. In July 2002, Pope John Paul II visited Guatemala and asked for the abolition of the death penalty. Following the visit, President Alfonso Portillo expressed his intention to establish a *de facto* moratorium on the use of the death penalty and proposed to the National Assembly a draft law to abolish the death penalty, which was dismissed in August 2002.

In 2003, the Supreme Court sent a death penalty abolition proposal to the Congress, but this proposal was ignored. On 3 May 2005, this death penalty abolition proposal was presented again to the Congress, but the proposals did not go forward to a vote.

President Oscar Berger (from 2004 to 2007) and President Alvaro Colom (from 2008 to 2011) repeatedly declared and demonstrated their position against the death penalty. In 2005, during the funeral of Pope John Paul II, President Berger committed to abolish the death penalty, insisting on its non-deterrence effect.

In 2008, and again in 2010, President Colom vetoed laws voted by the Guatemalan Congress that would have allowed the use of the death penalty in the country giving the President the power to pardon or commute death sentences. Decree 06-2008 established a procedure

for those condemned to death to request pardon from the President, but did not mention or define the criteria to grant pardons, which was in breach of a 2005 ruling of the Inter-American Court of Human Rights. President Colom declared that the President should not decide on the life of others and that the death penalty did not have a deterrence effect. The 2010 Decree established a procedure for the granting of the Presidential pardon that was in line with the ruling of the Inter-American Court.

On 23 January 2012, the criminal division of the Supreme Court of Justice reviewed the cases of all prisoners under sentence of death in the country and 53 Guatemalan prisoners' death sentences were commuted to 50 years of prison, leaving one person under sentence of death. According to the President of the criminal division, the convicted prisoners did not have an adequate defence and their right to a due process had been violated.

Two months later, in March 2012, the UN Human Rights Committee noted with satisfaction those commutations as well as the implementation of a *de facto* moratorium on the death penalty in Guatemala since 2000, but expressed concerns at bills introduced to resume executions.

In October 2012, during the second cycle of the UPR, Guatemala declared that no one was under sentence of death and that the death sentences for kidnapping, murder and rape had been commuted to life imprisonment through special applications for judicial review, which was submitted by the Public Criminal Defence Institute. Guatemala accepted the recommendations to consider abolition by law and to ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.

On 22 March 2016, the Constitutional Court

of Guatemala declared unconstitutional the provisions in Article 132 of the Penal Code, providing for the mandatory death penalty for certain circumstances of aggravated murder.

Moreover, following this judgment, the Constitutional Court declared again, on 24 October 2017, that articles allowing for the death penalty in the Penal Code and in the Anti-Narcotics Law were unconstitutional. The Court based their judgement on the grounds that the articles violated the principle of legality and the prohibition, according to article 4.2 of the American Convention on Human Rights, to expand the scope of the death penalty. Both laws included the “dangerousness” of the perpetrator as an element to determine whether the death penalty should be imposed or not, which, according to the Court, violated the principle of legality.

The judgement by the Constitutional Court makes Guatemala abolitionist for ordinary crimes, as the Military Code still provides for capital punishment.

However, draft proposals to resume executions have been regularly introduced in the Congress. In 2016, two draft laws were introduced in the Congress: one aiming at facilitating the resumption of executions, and the other one (Draft law 5100 introduced in July) to abolish the death penalty. The latter draft law received joint approval by the three parliamentary committees on Human Rights, Justice Reform and on Legislative and Constitutional Matters. Draft law 5100 is pending before the Congress.

In 2008, during the UNGA Resolution calling for a universal moratorium on the use of the death penalty, Guatemala abstained, but voted in favour of the Resolutions in 2007, 2010, 2012, 2014 and 2016.

## GUINEA

**On 4 July 2016, the National Assembly of Guinea approved a revised Criminal Code abolishing the death penalty for ordinary crimes which was officially promulgated on 26 October 2016 by President Alpha Condé. In June 2017, the National Assembly approved a new Military Code of Justice which reportedly came into force in December 2017.**



Guinea declared its independence from France on 2 October 1958 having Ahmed Sékou Touré as dictatorial

President until his death in 1984. During this period, several persons were sentenced to death and many executions were carried out, including many under political charges. After the 1984 coup d'état, Guinea carried out execution in 2001, when several inmates facing the death penalty were executed by firing squad. Since 2002, Guinea began observing a moratorium on executions, but continued to sentence persons to death.

Reports suggest that three persons were sentenced to death in 2008, 16 in 2011 and 2 in 2012. Unexpectedly, in July 2011, President Alpha Condé declared that the death penalty did not exist anymore in Guinea.

Guinea adopted its national Constitution in 2010, which included article 6 that established that every human being “has [the] right to life and to physical and moral integrity”. That same year, Guinea was reviewed during the first cycle of the UPR. The country rejected recommendations to establish an official moratorium on executions and to consider eventual abolition of the death penalty. Similarly, during Guinea's second cycle of the UPR in January 2015, the country rejected once again the recommenda-

tions to ratify the Second Optional Protocol to the ICCPR and to abolish the death penalty.

On 4 July 2016, the National Assembly voted in favour of a revision of the Criminal Code which abolished the death penalty for ordinary crimes. The new Criminal Code was officially promulgated on 26 October 2016 by President Alpha Condé, entering into force from that date. It replaced the death penalty with life imprisonment that cannot exceed 30 years. The then-Secretary of State in charge of Justice and current Minister of Justice Cheick Sako, had fought for this new Code as it is in line with international treaties previously ratified by Guinea, including the Rome Statute of the International Criminal Court. However, there were still legal provisions that provided for death penalty. The Military Code of Justice provided for the death penalty for crimes that included treason, desertion in presence of the enemy, capitulation, destruction of ships or planes and revolt at times of war or state of emergency.

On 31 May 2017, a new Military Criminal Code was adopted by unanimity of the National Assembly that abolished the death penalty for military crimes and which, reportedly, came into force in December 2017.

As of today, Guinea has not signed the Second Optional Protocol to the ICCPR aiming the abolition of the death penalty. There were reportedly twelve prisoners under sentence of death at the end of 2017.

In December 2016, Guinea voted in favour of the UNGA Resolution asking for a global moratorium on the use of the Death Penalty for the first time. The country had previously abstained in its voting for previous UNGA Resolutions.

## HAITI

**Haiti abolished the death penalty for all crimes by constitutional amendment in 1987. The last known judicial execution was carried out in 1972.**



The death penalty was retained in the country's 1853 Penal Code after French colonial rule ended in 1804.

The provisions of the Penal Code of 1953 included the application of the death penalty for criminal and political offences. During the Presidency of Dr François Duvalier between 1957 and 1971, numerous death sentences were imposed following summary trials, and executions were frequently carried out in public. Death sentences were also handed down by courts martial under the special anti-Communist law of 1969.

A 1985 Governmental decree abolished the death penalty for political offences except high treason. Following the collapse, in February 1986, of the Jean-Claude Duvalier Government, which had been responsible for widespread human rights abuses, former Government officials were sentenced to death for human rights violations. However, all pending death sentences were commuted under the new Constitution of 1987, which provided for abolition of the death penalty. It had been approved in a national referendum on 29 March 1987 under President Henri Namphy. Article 20 of the Constitution provides that the death penalty is abolished for all crimes. Following a military coup the following year, the 1987 Constitution was temporarily abolished, but the then-President, Leslie Manigat, issued a decree on 12 July 1988 reaffirming abolition of the death penalty.

At the UNGA in 2007, Haiti voted in favour of resolution calling for a moratorium on execu-

tions worldwide with a view to abolishing the death penalty, and voted for all subsequent death penalty resolutions adopted in 2008, 2010, 2012, 2014 and 2016.

Haiti is not a party to the Second Optional Protocol to the ICCPR aiming at abolition of the death penalty or the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Haiti did not support the recommendations made during its last UPR in November 2016 to ratify the Second Optional Protocol to the ICCPR.

## KAZAKHSTAN

**The last executions in Kazakhstan took place on 12 May 2003. In December 2003, President Nursultan Nazarbayev introduced an indefinite moratorium on executions by presidential decree, which stills remains in place. Shortly after, on 1 January 2004, life imprisonment was introduced as an alternative to capital punishment. The Constitution of the Republic of Kazakhstan still retains the death penalty as an exceptional punishment for two categories of crimes: acts of terrorism entailing loss of life and serious felonies committed during war time.**



During the Soviet period, the Kazakh Soviet Socialist Republic approved different Criminal Codes in 1922, 1926 and 1959. The last Criminal Code provided the death penalty for 25 different crimes, including crimes against the state, homicide and other offences (mostly applicable in wartime). However, Article 22 of the 1959 Criminal Code defined the death penalty as an extraordinary punishment and envisioned its abolition in future.

This Criminal Code remained in force even after Kazakhstan declared its independence in December 1991. However, between 1994 and 1997, there was a significance reduction in the number of offences applicable for the capital punishment, an evolution in accordance with the international trends and the judicial reform approved by President Nursultan Nazarbayev in 1994.

In August 1995, Kazakhstan approved its national Constitution and the new Criminal Code entered into force in January 1998, reducing the number of offences carrying out the death penalty in peacetime from 18 to 3 (premeditated murder, aggravated murder, and genocide) to which treason offences in time of war and eight other military crimes were added. The Criminal Code then envisaged the death penalty for 18 crimes. In 1999, the Supreme Court issued a resolution considering the death penalty not mandatory and this was made effective in 2004 when life imprisonment was introduced as an alternative.

Before the moratorium on executions entered into force in 2004, twenty two executions were reportedly carried out in 2002 and at least 3 other persons had also been executed at the beginning of 2003. In December 2003, the President introduced an indefinite moratorium on executions to be in place until “the full abolition of the death penalty is resolved”.

Amendments to its Constitution and Criminal Code were reportedly introduced. In 2002, President Nazarbayev signed two amendments to the Criminal Code, prohibiting the death penalty for minors, women and men over 65 years of age.

In 2007, Kazakhstan amended its Constitution, restricting the application of the capital punishment to the most serious crimes: the death penalty was abolished for all crimes except te-

terrorist acts that cause loss of human life and exceptionally grave crimes committed during wartime. According to the UN and Amnesty International, Kazakhstan has become abolitionist for ordinary crimes. However, the OSCE and Penal Reform International have continued to consider Kazakhstan as abolitionist de facto.

However, a regressive step was taken on 11 June 2014 when the Criminal Code was reformed and where, two articles that provided for the death penalty were abrogated, while three new articles providing for the capital punishment were introduced. As a result, the number of crimes punishable with the death penalty has increased from 18 to 19. This reform entered into force on 1 January 2018.

In the international arena, Kazakhstan has supported the UNGA Resolutions calling for a moratorium on the use of the death penalty in December 2012, 2014 and 2016. Moreover, Kazakhstan is a founding Member of the ICDP's Support Group, something that reinforces its international commitment to eventually abolish the death penalty.

At the end of 2017, one man remained under sentence of death in Kazakhstan after a court convicted and sentenced him to death in 2016 for terrorism-related offences.

## KYRGYZSTAN

**Kyrgyzstan abolished the death penalty for all crimes by a 2006 amendment to the Constitution followed by an amendment to the Criminal Code in 2007. Abolition followed a series of moratoria on executions that had been in place since 1998, declared and renewed by presidential decree, as well as a 2002 policy decree and 2004**

**amendment to the Criminal Code reducing the number of offences carrying the death penalty. The last execution was carried out in 1998.**



Following independence from the Soviet Union in 1991, the Constitution provided in Article 18 for the death penalty in exceptional cases. In its initial report to the UN Human Rights Committee in July 2000, the Kyrgyzstan delegation reported that there was a growing trend in Kyrgyz society in favour of abolishing the death penalty. A 1997 bill led to abolition of capital punishment for some crimes including economic crimes but retained it for crimes resulting in loss of life. It was supported by the President, Askar Akayev, who issued a decree establishing a two-year moratorium in 1998. The moratorium was extended four times, until President Kurmanbek Bakiyev declared an indefinite moratorium in 2005 pending abolition. During the period of the moratorium on executions, death sentences continued to be handed down by the courts which reportedly continued even after the abolitionist amendment to the constitution. The number of death sentences carried out before the moratorium was considered a state secret and relatives were not informed of executions that were subsequently carried out.

There was pressure from the international community and civil society organisations on Kyrgyzstan to abolish the death penalty. The EU had consistently urged Kyrgyzstan to abolish the death penalty and there were similar calls at the OSCE Human Dimension Implementation Meetings. In December 2002, a coalition of Kyrgyz and international human rights organizations, including the Kyrgyz Bureau on Human Rights and Rule of Law and the Kyrgyz Committee for Human Rights, welcomed the moratorium on executions and urged President Akayev to abolish the death penalty.

A decree was issued in 2002 stating that one of Kyrgyzstan's objectives was the gradual reduction of the application of the death penalty and its eventual abolition. The next step was an introduction of amendments to the Criminal Code in 2004 which reduced the number of capital offences from six to three. However, in 2005 and 2006, the Parliament rejected draft laws and amendments to the Constitution prepared by the Ministry of Justice and the Constitutional Council as well as a bill for accession to the Second Optional Protocol aiming at the abolition of the death penalty. President Bakiyev, who assumed office in August 2005, had announced before taking up his position that he wished to exclude the death penalty from the Constitution.

The following year, in November 2006, President Bakiyev signed a new Constitution stating "every person in the Kyrgyz Republic has an inalienable right to life. No one can be deprived of life." On 27 June 2007, President Bakiyev signed a law amending the Criminal Code and abolishing the death penalty, replacing it with imprisonment for life. Following abolition, the Supreme Court reviewed the cases of 133 prisoners under sentence of death and automatically commuted their sentences to life imprisonment. The new Constitution, prohibiting the death penalty, was later approved by public referendum in June 2010. Recently, there have been challenges to reinstate the death penalty for crimes of sexual assault against minors. However, senior officials, including the Ombudsman, have stood firm in favour of abolition and suggested alternative punishments for these crimes. As of today, Kyrgyzstan remains abolitionist for all crimes.

At the UNGA in 2007, Kyrgyzstan voted in favour of resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty and voted for all subsequent death penalty resolutions adopted in

2008, 2010, 2012, 2014 and 2016. Kyrgyzstan did not co-sponsor the resolution on the moratorium in 2016 as it did in earlier resolutions. In December 2010, Kyrgyzstan acceded to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.

## MADAGASCAR

**Republic of Madagascar (Madagascar)'s last execution was carried out in 1958, just before its independence. The abolition of the death penalty was voted by the National Assembly on 10 December 2014 and was made possible by a combination of different factors: the signature in September 2012 by President Rajoelina to the Second Optional Protocol to the ICCPR, the pressure and campaign led by human rights organizations and international institutions who collaborated with Government Ministries, the political climate, the proactive participation by the National Assembly and a strong political leadership.**



One of the reasons explaining Madagascar's retention of the death penalty for more than 55 years since its independence, even if never implemented, was the fragility of the state's infrastructure, mostly in the south of the country. In the southern rural regions, the Government had historically lacked control which had been a source of political instability since the independence. The death penalty was seen as a symbolic embodiment of the State's power.

The crimes reportedly punishable by death, prior to abolition of the death penalty, were murder and other offences not resulting in death, such as armed robbery, arson, kidnapping, and tortu-

re. In addition, the death penalty was also provided for a number of special and military offences such as treason, espionage, desertion, and sabotage or mutiny in times of war.

Meanwhile, courts reportedly continued to hand down death sentences even though those sentenced to death were systematically commuted to sentences of life imprisonment with hard labour, the second-harshes punishment in the Penal Code.

In 2005, a bill was introduced in the Senate and another initiative was led by the Ministry of Justice in 2006. However, both initiatives never reached the plenary of the National Assembly. In 2007, Madagascar voted in favour of UNGA Resolution calling for universal moratorium.

Following the 2009 coup d'état and dissolution of the Parliament under transitional President Andry Rajoelina, Madagascar plunged into a major political crisis. The possibility of abolishing the death penalty disappeared, even though the Minister of Justice and other authorities had repeatedly stated that the Government was broadly in favour of abolition. Major impediments included the high crime rates in rural areas and the political instability.

Reports suggest that President Rajoelina appeared to show more willingness to consider abolition at the international stage as an attempt reportedly to improve the image of his Government and to head off the threat of suspension of international aid and economic partnerships.

In 2010, during Madagascar's first UPR, the delegation gave ambivalent statements to the recommendations to establish an official moratorium on executions and to abolish the death penalty. Madagascar's delegation stated that *"the conditions for the immediate abolition of capital punishment do not yet exist. A signifi-*

*cant 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"* (A/HRC/14/13/Add.1). The delegation explained that the Government wanted to conduct awareness-raising campaigns on abolition, before presenting a new bill.

Madagascar's new Constitution came into force on 11 December 2010 and shortly thereafter, the country co-sponsored for the first time the UNGA Resolution calling for a global moratorium on the use of the death penalty. Madagascar has always voted in favour of the Resolution since the first Resolution in 2007, and until 2016, and started to co-sponsor the Resolution in 2010. However, death sentences continued to be imposed in Madagascar, and according to official figures, there were 58 inmates under sentence of death at the end of September 2011.

On 24 September 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. The ICCPR-2OP was ratified in 2017.

Several human rights organizations and institutions played crucial roles in the abolitionist process, for instance the UN Office of the High Commissioner for Human Rights, who worked closely with the Minister of Justice and the President of the National Assembly of Madagascar, in drafting the death penalty abolition law.

After the 2013 elections, Hery Rajaonarimampianina succeeded Rajoelina becoming the first post-coup, democratically elected President in January 2014.

In 2014, a day-long event was organized on 10 October on the occasion of the World Day Aga-

inst the Death Penalty. The event was attended by human rights activists, the Ministry of Justice, over 40 National Assembly members, religious leaders and representatives from the Swiss and French Governments, the European Union and the African Union. The concept of “*fihavanana*” -meaning peace, solidarity, harmony and human dignity, a central concept of the culture of Madagascar- was evoked arguing that justice should protect human life, not end it. The meeting culminated with the Antananarivo Declaration, a road map aiming to legally abolish the death penalty. The Antananarivo Declaration was, in the view of many observers, a milestone and it helped to prepare the National Assembly to vote in favor of the abolition.

Ten days after this event, the bill to end the capital punishment was discussed in the National Assembly. At the same time, Madagascar was being assessed at the second cycle of the UPR where the country accepted the recommendations to abolish the death penalty and to ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, which it had previously signed in 2012.

Finally, on 10 December 2014, Madagascar’s National Assembly adopted the bill abolishing the death penalty, replacing it with life imprisonment with hard labour. The Penal Code amendment, introduced by member of the National Assembly Jean Max Rakotomamojy, was voted unanimously by all the members of the National Assembly.

The Government did not present any comments or objections to the abolition bill and Madagascar promulgated the law abolishing the death penalty in January 2015. Nonetheless, campaigners for abolition of the death penalty continued to push for Madagascar’s ratification of the Second Optional Protocol to the ICCPR. Madagascar ratified the ICCPR-2OP on 21 September 2017.

## MEXICO

**Mexico abolished the death penalty in 2005 for all crimes in law. Later, the same year, the country abolished capital punishment by a Constitutional Amendment. The last execution for ordinary crimes was carried out in Puebla State in 1937. The last execution was that of a soldier, under the Military Code of Justice, which was carried out in 1961.**



Moves to abolish capital punishment in Mexico are grounded in strong abolitionist trends in South and Central America in the nineteenth century.

The 1857 Constitution specifically prohibited the death penalty for political crimes at a time when there was widespread condemnation of the death penalty in the media. This signaled a break with the past when the death penalty had been used to eliminate political opponents. However, Mexico’s Constitution retained the death penalty for ordinary crimes for a long time. Article 22 of the 1917 Political Constitution of the United Mexican States prohibited the death penalty for political offences in Article 22, but retained the punishment for murder and other criminal as well as some military offences.

The death penalty included in the 1871 Penal Code was removed from the 1930 Federal Penal Code and subsequent Penal Codes. Most Mexican states had abolished capital punishment by the end of the nineteenth century.

The Code of Military Justice did, however, retain the death penalty for specific offences, and people were occasionally sentenced to death under its provisions. In practice, Presidents routinely used their constitutional powers to ensure commutation of a death sentence to long-term imprisonment. This happened as late

as November 2003 after a military court had sentenced a man to death for murder.

In April 1988, a Presidential candidate announced he might consider holding a referendum on reintroducing the death penalty, but the idea met with widespread resistance from the public, Catholic bishops, political leaders, senators and prominent lawyers and the referendum was never held.

Mexican and international human rights organizations continued to urge the Mexican Government to totally repeal the death penalty in law. The year 2005 was decisive for abolition. On 21 April 2005, the only remaining provision in Mexican criminal law permitting the death penalty was abolished. The Mexican Chamber of Deputies unanimously voted to reform the Military Penal Code and replaced the death penalty with prison terms of 30 to 60 years for serious offences.

To reinforce abolition at constitutional level, the Mexican House of Representatives approved a constitutional reform bill in June 2005 by 412 votes in favour and two abstentions which explicitly prohibited the death penalty for all crimes. President Vicente Fox signed the bill amending Articles 14 and 22 of the Constitution of the United Mexican States and it came into force on 9 December 2005. The following day, President Fox described the publication of the constitutional changes in the official gazette as “historic”, adding: “Mexico shares the opinion that capital punishment is a violation of human rights”.

There were some attempts to reinstate the death penalty in the face of mounting violence and kidnappings. In December 2008, the Governor of northern Coahuila State sponsored a bill in the Mexican Congress to reinstate the death penalty for kidnappers resorting to murder. One political party advocated the

death penalty in all homicide cases. However, moves to reintroduce the death penalty were strongly opposed by human rights activists, the Roman Catholic Church and some politicians and did not succeed.

Since 2000, the Government has tried to provide legal assistance to hundreds of Mexicans under sentence of death in the USA. The International Court of Justice upheld Mexico’s appeal requesting the USA in 2004 to review the cases of 51 Mexican nationals under sentence of death as the USA failed to meet its obligations under the 1963 Vienna Convention on Consular Relations by not facilitating their access to Mexico’s consular officials. Mexico does not extradite criminal suspects to the USA without an undertaking that they will not face a death sentence or life imprisonment without the possibility of parole.

In 1981, Mexico became a party to the Inter-American Convention on Human Rights, which bars countries that have abolished the death penalty from reinstating it. In September 2007, Mexico acceded to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

At the UNGA in 2007, Mexico voted in favour of the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty, and voted in favor of all subsequent resolutions on worldwide moratoria in 2008, 2010, 2012, 2014 and 2016.

To show its international commitment, Mexico is a Member State of ICDP’s Support Group.

## MONGOLIA

**Then President Tsakhiagiin Elbegdorj systematically commuted death sentences and announced a moratorium on executions in January 2010, underlining the need to follow the worldwide trend towards abolition. Mongolia undertook an international commitment to abolish the death penalty by its March 2012 accession to the Second Optional Protocol to the ICCPR, and abolished capital punishment in law in July 2017. The last execution was carried out in 2008.**



The death penalty was included in the country's first Criminal Code of 1926. The death penalty was applicable for 8 offences under the 1961 Penal Code allowing 171 people to be sentenced to death between 1980 and 1990, of whom 118 were executed. The collapse of the Soviet Union marked the start of democratic reform in 1990, when a multi-party system was established. A new constitution was promulgated in 1992, which, in Article 16(1), provided for the death penalty for serious crimes. A new Criminal Code was enacted in 2002 retaining the death penalty for 59 listed crimes, although it excluded women, men over 60 years of age and all those below 18 years of age. There was a reported rise in the number of death sentences handed down after the promulgation of the new constitution. Executions were a regular occurrence until 2008 when the last execution took place. Secrecy surrounded executions - families did not receive prior notification or information about where those executed were buried.

President Elbegdorj was elected in June 2009 and began systematically commuting death sentences. A crucial step towards abolition was taken on 14 January 2010 when the President announced an executive moratorium

on all executions and commuted death sentences of all those on death row who had appealed to him for clemency to 30-year prison terms. Reflecting on the worldwide trend towards abolition, President Elbegdorj told the BBC: "The majority of the world's countries have chosen to abolish the death penalty. We should follow this path."

Legislative action was required to consolidate steps towards abolition. In a landmark speech to the State Great Khural (Parliament) in January 2010, the President listed eight reasons for rejecting the death penalty in law, including the irreparable nature of public error, historical use of the death penalty as a means to effect political purges, the international community's calls for universal abolition of the death penalty and the demonstrable failure of the death penalty to have a deterrent effect. He said: "There are instances where the death penalty was imposed on an innocent individual instead of the actual offender. Without fully abolishing it, we cannot completely end miscarriages of justice for this form of penalty." As a sign of its new policy, Mongolia voted for the first time, on 21 December 2010, at the UNGA in favour of the resolution calling for a moratorium on executions having previously voted against such resolutions.

The death penalty was widely discussed in Mongolia among judges, lawyers, parliamentarians and NGOs, including an association of victims. Mongolia's National Human Rights Commission carried out studies on the use of the death penalty on its own and with Amnesty International Mongolia. The National Human Rights Commission consistently advocated abolition and cited conclusions of the UN Special Rapporteur on torture following his 2005 visit to Mongolia as well as of the UN human rights treaty bodies which called for abolition of the death penalty. In January 2011, then ICDP President Federico Mayor wrote to the Members of the Parliamentary Committee

on Security and Foreign Affairs to support Mongolia's ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolition of the death penalty.

Gungaa Bayasgalan, State Secretary in the Ministry of Justice and Home Affairs told the (UN) Human Rights Committee on 21 March 2011, "We want to introduce a culture of supporting the abolishment of the death penalty" adding that this would require the President to play an essential role as such issues took time. On 12 October 2012, the Legal Policy Adviser to the President condemned the death penalty and called on other countries to reject it.

Overcoming considerable opposition from legislators, on 5 January 2012, the Mongolian Parliament voted for a bill that aimed to end the death penalty by approving a decision to accede to the Second Optional Protocol to the ICCPR. Mongolia acceded to the Second Optional Protocol without reservations on 13 March 2012.

In a speech, which President Tsakhiagiin Elbegdorj delivered to the European Parliament on 16 June 2015, he stressed that "[t]he foundation of justice is a respect for human dignity, central to which is the sanctity of human life. Under no circumstances is capital punishment acceptable (...) Capital punishment is ineffective and barbaric."

The country was assessed under the UPR in early May 2015 (A/HRC/WG.6/22/L.4) and Mongolia accepted the recommendations to complete the legal abolition of the death penalty in September 2015.

Less than three months later, on 3 December 2015, the Mongolian Parliament voted and adopted a new Criminal Code which abolished the death penalty for all crimes. The new Criminal Code entered into force on 1 July 2017

and eliminated all reference to capital punishment. Mongolia became the 105th country to abolish the death penalty, concluding the process started in 2010.

At the UNGA in 2007, Mongolia voted against the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty (A/RES/62/149). It did the same in 2008 but voted in favour of UN resolutions calling for a worldwide moratorium in 2010, 2012, 2014 and 2016. Mongolia was a co-sponsor of the Resolution on a Moratorium on the Use of the Death Penalty at the UN General Assembly on 20 December 2012, on 18 December 2014 and on 19 December 2016.

Mongolia was a co-founder of the group of Member-States that worked together to increase support for the 2016 UNGA Resolution.

The country joined Argentina and the EU in establishing an Alliance for Torture-free Trade, which aims to end trade in goods used for capital punishment and torture. The Alliance was launched on 18 September 2017 and 58 countries adopted a political declaration during the event.

Mongolia is a founding Member-State of the Support Group of the ICDP.

## NEW ZEALAND

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**New Zealand abolished the death penalty for murder in 1961. The country became abolitionist for all crimes with the enactment of the Abolition of the Death Penalty Act of 1989. This enactment abolished capital punishment which was still applicable for treason and some military offences.**



Capital punishment first appeared in a codified form when New Zealand became a British territory in 1840, and was first carried out in 1842. A total of 85 executions were carried out between then and 1957. All executions were by hanging and were held in public until 1862.

All but one of the 85 people executed were men. The only woman was Minnie Dean, found guilty of murdering a child in 1895. All but one of those executed were convicted of murder; the exception was Hamiora Pere, who was executed for treason in 1869. The last execution to be carried out was that of Walter James Bolton, who was found guilty of poisoning his wife. He was executed on 18 February 1957.

The Labour Party opposed the death penalty and commuted all death sentences to life imprisonment after it was elected to office in 1935. In 1941, the mandatory penalty for murder was changed from death to life imprisonment with hard labour. The death penalty continued to apply for treason and piracy.

The National Party restored the death penalty for murder after it was elected to power in 1949. Between 1951 and 1957, 18 men were sentenced to death, of whom eight executions were carried out. The executions of Harry Whiteland (1953) and Edward Te Whiu (1955) were controversial as they raised questions about post-war trauma, intellectual and developmental disability as factors for leniency.

After the Labour Party was re-elected in 1957, it commuted the sentences of persons convicted of murder to life imprisonment but took no steps to abolish the death penalty. A National Committee for Abolition of the Death Penalty was established in November 1956, with branches in Auckland, Wellington, Christchurch and Dunedin.

The National Party regained power in the 1960 elections. The Minister of Justice, Hon. Ralph Hanan, was an opponent of the death penalty, while Hon Jack Marshall, then Deputy Prime Minister, was a strong supporter for retention. In 1961, the Parliament held a free vote on an amendment to the Crimes Bill abolishing the death penalty for murder. Ten Members of Parliament belonging to the National Party crossed the floor to vote with the Labour Party and the abolition amendment was voted by 41 to 30 votes. Capital punishment was retained for treason until the Abolition of the Death Penalty Act in 1989.

At the international level, New Zealand was one of nine countries in 2007 to co-author a worldwide initiative to ban all executions. This led to the country being a founding member of the cross-regional taskforce for the biennial Third Committee resolution on 'A moratorium on the use of the death penalty', which continues to be adopted biennially by the UN General Assembly. New Zealand has worked with like-minded countries to maintain progress made towards a global moratorium, including by defending such issues as ending the use of the death penalty for children in line with the Convention on the Rights of the Child. The country is also a strong supporter of UN Human Rights Council resolutions relating to the death penalty.

Moreover, New Zealand has been party to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty since 22 February 1990. New Zealand is an Observer State of ICDP's Support Group.

## PHILIPPINES, the

**The Philippines was the first country in Asia to abolish the death penalty for all**

**crimes in June 2006, following actions taken by President Gloria Macapagal-Arroyo and the Philippines Congress. The 1987 Constitution abolished the death penalty but capital punishment was reinstated in December 1993. The last execution was carried out in 2000.**



After the overthrow of the Government of President Ferdinand Marcos in 1986, the new President Corazon Aquino formally restored democracy.

A new constitution was promulgated in 1987, which abolished the death penalty on the grounds that it infringed human rights. This move made the Philippines the first country in Asia to abolish the death penalty for all crimes. Following this, President Corazon Aquino announced the mass commutation of death penalties in 1987. All death sentences were reduced to *reclusion perpetua* or life imprisonment.

However, Article III section 9 of the new constitution allowed the death penalty to be reinstated by Congress “for compelling reasons involving heinous crimes”.

Public concern about spiraling crime rates and mounting pressure for restoration of the death penalty prompted President Fidel Ramos and the Philippines Congress to reintroduce the death penalty in December 1993 when “Republic Act 7659” was signed into law, taking effect on 1 January 1994. The Act allowed the death penalty to be imposed for 46 separate offences, including non-violent crimes, 23 of the offences incurring a mandatory death sentence. By 2002, there were 52 offences carrying the death penalty. The Philippines became a country with one of the highest rates of death sentences in the world. Approximately 900 prisoners were under sen-

tence of death in 1999, the year that executions resumed after an interval of 23 years.

A powerful Task Force was formed to campaign against the death penalty in 1997. Its members were the Free Legal Assistance Group (FLAG), the Coalition Against the Death Penalty (CADP), the Catholic Bishops Conference and Amnesty International. The Roman Catholic Church appealed to President Joseph Estrada who, although a supporter of the death penalty, recognized possible serious flaws in some trials and the possibility of innocent people being under sentence of death. The last execution was carried out in 2000, and in December that year, the President imposed a one-year moratorium on executions, commuted all death sentences imposed by the lower courts and called on Congress to review how the death penalty was implemented.

The Philippines is a party since 1987 to the (first) Optional Protocol to the ICCPR which provides for complaints of individual petitioners about alleged breaches of their rights under the ICCPR. In October 2000, the UN Human Rights Committee expressed its concern about the executions of two men whose cases it was considering. The Committee held “*that the State committed a grave breach of its obligations under the Protocol by putting the alleged victims to death before the Committee had concluded its consideration of the communication*” (Piandiong et al v The Philippines, Communication No. 869/1999, 19 October 2000, CCPR/C/70/D/869/1999).

President Gloria Macapagal-Arroyo announced in 2001 another moratorium on executions. A few months later, following a spate of kidnappings, she threatened to reverse her position, saying executions would resume. Capital punishment was widely debated, including in Congress, but no executions took place. In 2001, proponents of capital punishment introduced

a bill to extend its scope even further, while the following year, in 2002, both senators and Members of the House of Representatives prepared bills to repeal the death penalty.

NGOs continued to campaign and FLAG represented individuals charged with offences carrying the death penalty. The Philippines Commission on Human Rights strongly opposed re-imposition of the death penalty. Religious groups were divided: the Philippine Evangelical Churches reaffirmed their support for the death penalty, but the Catholic Bishops' Conference of the Philippines renewed its appeals for abolition of the death penalty.

On 15 April 2006, on the occasion of Easter, President Arroyo announced a policy to commute death sentences to life imprisonment, affecting over 1,200 prisoners under sentence of death. In a letter sent to Senate President Franklin M. Drilon, the President said there was an urgent need for "abolishing death penalty as its imposition was shown to have not served its principal purpose of effectively deterring the commission of heinous crimes" and that abolition would remedy the findings that death penalty is anti-poor as it was often the underprivileged who could not afford legal representation and who were sentenced to death.

The Philippines Congress took swift action and on 6 June 2006, it passed bills abolishing the death penalty. The Senate voted 16-0, with one abstention, and the House of Representatives voted 119 for and 20 against. President Arroyo issued a statement saying: "We celebrate the victory of life as I thank Congress for its immediate action in abolishing the death penalty law. But make no mistake about it, the abolition of the death penalty will be complemented by a stricter and sterner enforcement of the law on all fronts." The law entered into effect on 24 June 2006, with President Gloria Macapagal-Arroyo signing 'An Act prohibiting

the imposition of the death penalty in the Philippines' (RA 9346).

President Rodrigo Duterte, who was elected in the elections in June 2016, came into office with a commitment to fight against the drug menace as he feared that the Philippines was a "narco state". Though President Duterte mentioned that he was in favor of the death penalty, the reinstatement of capital punishment did not appear to be a priority for him as it did not feature in his campaign or in his first state of the nation discourse. In July 2016, the ruling party proposed a bill to reintroduce the death penalty for a wide range of offences (including rape, arson, drug trafficking and possession of small amounts of drugs). Following debates, the number of offences proposed for application of the death penalty was reduced and the draft law focused on drug-related crimes. On 7 March 2017, the draft law, House Bill 4727, which sought "to reinstate the punishment of death for drug-related heinous crimes", was adopted by the House of Representatives with 217 votes in favour, 54 against and one abstention. The draft law was sent to the Senate for final approval. At the time of printing this publication, the draft law has not been discussed at the Senate and so, the law has not come into effect.

At the UNGA in 2007, the Philippines voted in favour of the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty and voted for subsequent death penalty resolutions adopted in 2008, 2010, 2012 and 2014. For the first time, the Philippines abstained in its vote for the Resolution in 2016.

The Philippines is a founding Member of ICDP's Support Group.

## PORTUGAL

**Portugal was the first major European country to abolish the death penalty for murder in 1867 and to refuse its use even before the abolition in law was published. The last registered execution reportedly was carried out in 1846 or 1849.**



The capital punishment was gradually abolished in Portugal. The abolitionist process started in 1852 under the reign of Queen Maria II. Several changes in the law were incorporated to make the abolition of the death penalty for political offenses possible. The second stage of the process took place during the reign of King Luis, which abolished the death penalty for ordinary crimes in 1867 for Portugal and in 1870 for all the colonies.

Later, in 1911, the death penalty was abolished for all crimes following the adoption of the Military Justice Code which abolished the capital punishment for military crimes. However, when Portugal entered the First World War in 1916 the death penalty was reestablished for military crimes in war time until 1918.

Once the First and the Second World Wars ended, and after the Revolução dos Cravos in 1974, the death penalty was definitively abolished for all crimes in 1976 with the approval of the Constitution of the Portuguese Republic whose article 24 states that "Human life shall be inviolable. The death penalty shall not exist under any circumstances."

In October 1986, Portugal acceded to Protocol no. 6 to the European Convention on Human

Rights, providing for abolition of the death penalty in peacetime. In October 2003, Portugal also ratified Protocol no. 13 to the Convention, abolishing the death penalty in all circumstances.

Furthermore, in 1990, Portugal became a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

At the UNGA in 2007, Portugal voted in favour of the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty and voted for all subsequent death penalty resolutions adopted in 2008, 2010, 2012, 2014 and 2016.

Portugal was a referent for different European countries since some of them followed its steps and abolished the death penalty as it happened in France in 1981, Spain in 1995 and the United Kingdom in 1998. In 2017, Portugal marked the 150th anniversary of the abolition of the death penalty with a considerable number of public events by the Government, Universities, Municipalities and Civil Society. In an article, Augusto Santos Silva, Portuguese Minister of Foreign Affairs, stressed two main ideas: the inviolability of human life and insisting on the fact that no circumstance justifies the application of the death penalty, torture or any other cruel or inhuman punishment, in line with articles 24 and 25 of the Portuguese Constitution<sup>2</sup>. He also stated that the country had three main ways to continue fighting against the death penalty in the world: Portugal's example as an abolitionist country; the mission of different international organizations like the European Union, the Council of Europe, the General Assembly of the United Nations,

<sup>2</sup> Augusto Santos Silva, "Portugal, protagonista da luta contra a pena de morte", Diário de Notícias, 1 July 2017. Available from: <https://www.dn.pt/opiniao/opiniao-dn/convidados/interior/portugal-protagonista-da-luta-contra-a-pena-de-morte-8605272.html>

etc.; and the Human Rights as an ever-present topic in Portugal's bilateral relations, aiming to spread all over the world the essential relevancy of the respect for the human being.

To affirm its international commitment to abolish the death penalty, Portugal is a founding Member State of ICDP's Support Group.

## RWANDA

**In 2007, Rwanda became the first country in the Great Lakes region in Africa to abolish the death penalty for all crimes. This happened in the aftermath of the 1994 genocide in which an estimated 800,000 Rwandans were murdered. The last executions, reportedly 22 executions, were carried out in 1998.**



The death penalty existed under the Penal Code for a wide range of criminal offences and the State Security Court had jurisdiction over cases of a political nature, including offences carrying the death penalty. Executions were occasionally carried out. Between 1969 and 1974, 13 out of 120 people sentenced to death were executed. In 1982, President Juvenal Habyarimana commuted two death sentences imposed by the State Security Court in 1981, which had denied the defendants access to lawyers. However two months later, in September 1982, the Government signaled its intention to retain the death penalty when 43 executions were carried out, mostly for murder. In July 1987, President Habyarimana commuted all confirmed death sentences to life imprisonment, a move that affected 537 prisoners. The President then regularly commuted death sentences

Following the 1994 genocide, the Rwandan authorities tried those charged with involvement in the genocide in domestic courts. In 1998, 22 executions were carried out on charges of leading the genocide. These were the last judicial executions to be carried out in Rwanda, although death sentences continued to be imposed until 2003.

Eventually, involvement of the international community in establishing accountability for the genocide triggered Rwanda's successful move towards abolition of the death penalty. In November 1994, the UN Security Council established the International Criminal Tribunal for Rwanda (ICTR) to bring the perpetrators of genocide and other serious violations of international humanitarian law to justice. The death penalty was excluded as punishment notwithstanding strong opposition from Rwanda, which at the time had a seat in the Security Council. Rwanda's representative argued in the Security Council that the draft clause excluding the death penalty as punishment in the court's proposed statute was "not conducive to national reconciliation in Rwanda".

The subsequent UN Security Council decision to exclude the death penalty as punishment from the ICTR statute presented a dilemma for the Government: a fundamental injustice would occur if suspects tried in domestic courts were sentenced to death, while the many thousands of genocide suspects living abroad, some held by the ICTR, including alleged ringleaders, received a sentence of life imprisonment as a maximum punishment. Besides, Governments who detained those suspected of leading or participating in the genocide who had fled abroad, as well as the ICTR, refused to extradite to Rwanda suspects they had detained, fearing their execution. These Governments and the ICTR were also concerned about the lack of fair trial guarantees which had been a long-standing concern in death penalty cases. These con-

cerns first prompted the enactment, in 2007, of a special transfer law prohibiting execution of suspects due to be transferred from the ICTR to local Rwandan courts. Steps to abolish the death penalty for all crimes quickly followed.

In October 2006, the political bureau of the ruling party strongly recommended abolition and on 19 January 2007, the cabinet approved plans to abolish the death penalty. The Justice Minister, Tharcisse Karugama, said that prolonged public consultation showed that most Rwandans opposed capital punishment. Subsequently, the Chamber of Deputies on 8 June 2007, and the Senate on 25 July 2007 passed bills abolishing the death penalty. The Law Relating to the Abolition of the Death Penalty entered into force on 25 July 2007 when it was ratified by President Paul Kagame and published in the Official Gazette of Rwanda. The country abolished the death penalty for all crimes and removed the death penalty from the Penal Code.

President Kagame observed that his country's violent history of genocide was a main factor behind abolition of the death penalty. All death sentences –of some 600 inmates under sentence of death– were commuted to life imprisonment. Louise Arbour, then UN High Commissioner for Human Rights and a former Prosecutor of the ICTR, welcomed the decision, saying: "A country that has suffered the ultimate crime and whose people's thirst for justice is still far from quenched has decided to forego a sanction that should have no place in any society that claims to value human rights and the inviolability of the person. Rwanda is demonstrating leadership by action."

In November 1999, the Government hosted a meeting of the African Commission on Human and Peoples' Rights, which adopted its first resolution on the death penalty, urging States to consider observing a moratorium on executions. In September 2009, the first Regional Conferen-

ce on the Death Penalty was organized in Kigali, Rwanda, by the WGDP the African Commission on Human and Peoples' Rights to support the abolition of the death penalty in Central, Eastern and Southern Africa. Furthermore, in October 2011, Rwanda hosted a regional conference on the abolition of death penalty which ICDP Commissioner Ms Duvivier attended.

In 2013, Rwanda's Minister of Justice Johnston Busingye participated during the 5th World Congress on the Abolition of the Death Penalty in Madrid (Spain) and underlined Rwanda's commitment to the right to life saying that "*We came to the view that death could never serve as an instrument of justice even in the case of the most heinous imaginable crimes, and we have not regretted that decision for a moment. Abolishing the death penalty was an important step forward in the process of reconciliation*"

As part of the 1993 Arusha peace accords, which have constitutional force in Rwanda, the Government undertook to ratify the Second Optional Protocol to the ICCPR, which requires states to abolish the death penalty. This commitment to ratify was put into effect in December 2008.

At the UNGA in 2007, Rwanda voted in favour of the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty, and voted for subsequent death penalty resolutions adopted in 2008, 2010, 2012 and 2014. Rwanda was absent during the 2016 vote.

## SENEGAL

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**Senegal abolished the death penalty for all crimes on 10 December 2004 when its Parliament voted on an abolition Bill with a large**

**majority. The Bill was, earlier, unanimously approved by the Government in July 2004. This move came after debates amongst civil society organizations and, importantly, a change in President Abdoulaye Wade's view in favour of death penalty abolition.**



Since independence in 1960, Senegal carried out two executions, in 1965 and in 1967, both for the murder of political leaders. The country's Penal Code provided the death penalty for offences including murder and for its mandatory applicability, among other charges, those of espionage and treason.

Discussions about constitutional reform in 2001 included the possible abolition of the death penalty. The move was resisted by then President Abdoulaye Wade, who opposed abolition and argued that this was a matter to be addressed by passing legislation that provided for the abolition of the death penalty. Article 7 of the 2001 Constitution stated that "all human life is sacred and inviolable" and that everyone has the right to life, liberty, security "as well as to corporal integrity, and especially to protection against physical mutilation". No exception for the death penalty was mentioned and it remained in the statute books. In its July 2001 reply to Amnesty International on moves to abolish the death penalty, the Government said: "A process is underway where all parts of society will be involved in discussing a possible change to the law."

When the courts handed down death sentences in several cases in 2003 and 2004, a vigorous debate resumed among abolitionists and their opponents, especially when a bill was presented in Parliament in 2004 aiming to abolish the death penalty. Four prisoners were

then under sentence of death.

Senegal is a predominantly Muslim country. Opponents of abolition included the Coalition of Islamic Associations, which supports the retention of the death penalty and who also argued its supposed deterrent effect. However, Justice Minister Sergine Diop stated that in countries where the death penalty existed, the crime figures were not lower than in abolitionist countries. Supporters of the abolition of the death penalty included NGOs like the African Encounter for Human Rights and the Senegalese Committee for Human Rights, who relied on values of the sanctity of life in traditional Senegalese culture. The latter organization also emphasized that abolition of the death penalty was in line with the international movement to abolish the death penalty.

Most importantly, President Wade had changed his mind and became a strong supporter of the abolitionist bill. The Bill was unanimously approved by the Government on 15 July 2004 and on 10 December 2004 the Parliament abolished the death penalty for all crimes with a large majority and with the support of large sections of Senegalese society.

Senegal is a member of the Economic Community of West African States (ECOWAS) whose members remain divided on the issue of the death penalty. Debates in Senegal were closely watched by other ECOWAS members, six of whom are already considered to be abolitionist in practice, and six others, Benin, Cabo Verde, Côte d'Ivoire, Guinea Bissau, Senegal and Togo, having abolished the death penalty for all crimes. Additionally, Guinea has abolished the death penalty for ordinary crimes and only one member of the ECOWAS, Nigeria, still retains the death penalty<sup>3</sup>.

<sup>3</sup> When this report was first published in 2013, only two members of the ECOWAS had abolished the death penalty for all crimes: Senegal and Togo.

At the UNGA in 2007, Senegal was not present when the Assembly adopted the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty. The country had abstained in the votes on the subsequent death penalty resolutions adopted in 2008, 2010, 2012, and 2014; and was absent again during the vote in 2016. Senegal is also not a party to Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. When the country was assessed under the UPR in October 2013 several countries recommended the ratification of the ICCPR-2OP (A/HRC/25/4). In an Addendum, Senegal rejected the recommendations and found it irrelevant because of the country's "deep and unequivocal commitment to opposing the death penalty" (A/HRC/25/4/Add.1).

During the apartheid era, courts consisting of almost entirely white judges were widely reported to discriminate against black Africans and impose heavier sentences on them than on white defendants. Black defendants were nearly always poor and could not afford a lawyer. The death penalty applied to criminal offences as well as political offences. The latter were covered by the Terrorist Act, the Internal Security Act and the "Sabotage Act". The first and the last of these laws placed the burden of proof on the accused. These laws were used to impose the death penalty to such an extent that Amnesty International reported in 1979 that South Africa had one of the highest rates of judicial executions in the world. Between 1978 and 1987, 1,593 people were sentenced to death, and the annual number of executions that were carried out exceeded 100.

## SOUTH AFRICA

**South Africa abolished the death penalty in law for ordinary crimes in 1995, and for all crimes in 1997, after the Constitutional Court found the death penalty to be unconstitutional in 1995. The last execution was carried out in 1991.**



During the apartheid era, the death penalty was widely and disproportionately used against the black population. In 1995, the Constitutional Court, in a landmark judgement which separated post-apartheid South Africa from the repressive apartheid era, found the death penalty to be unconstitutional because it violated human dignity and the prohibition of torture or cruel, inhuman and degrading punishment. The death penalty was abolished for ordinary crimes in South Africa in 1995.

At the international level, a range of resolutions adopted by the UN Security Council and the UNGA in 1964, 1982, 1987 and 1989 demanded that South Africa cease carrying out executions of people "sentenced under arbitrary repressive laws for acts arising from opposition to apartheid".

In South Africa, the increased execution rate, particularly for those convicted of political protests against apartheid, stimulated intense discussion about the death penalty among religious and political groups, trade unions, human rights groups and members of the legal profession. Opposition to executions resulted in the creation of the Society for the Abolition of Capital Punishment in South Africa in 1971. It was reestablished in 1988, the year that the South African Council of Churches declared its total opposition to the death penalty.

In 1990, as the apartheid regime headed by President de Klerk entered its last days, the President announced a moratorium on executions. In July 1990, the Criminal Law Amendment Act

removed the mandatory death penalty for murder, provided for an automatic right of appeal and abolished it for housebreaking.

1990 was a momentous year: anti-apartheid leader Nelson Mandela, who was tried for offences carrying the death penalty and had proclaimed it to be a barbaric punishment, was released from prison and negotiations for constitutional change started. Abolition of the death penalty became a litmus test for the creation of a new social order and a tribunal was established to review all death sentences imposed before July 1990. This led to the Minister of Justice proclaiming in 1992 a formal moratorium on executions pending the introduction of a Bill of Rights. The Transitional Constitution of South Africa was adopted in 1993 and included a Bill of Rights which did not address the death penalty. That year two men who had been sentenced to death during the moratorium challenged the death penalty in court arguing its incompatibility with the human rights provisions in the Bill of Rights, laid down in Chapter III of the new Constitution. The Minister of Justice intervened to support the appellants, and the Attorney General brought a case in the newly established Constitutional Court for the death penalty to be declared unconstitutional.

This happened in the landmark judgement *the State v T. Makwanyane and M. Mchunu*, the first case heard by the Constitutional Court. On 6 June 1995 the court found that the death penalty for ordinary crimes was inconsistent with the “human rights culture” which respected the right to life and to dignity as cornerstones of the new interim Constitution. The court, which had held hearings on the death penalty in February 1995, firmly dismissed the argument of deterrence and held that the way to reduce violence in South Africa was to create that human rights culture which respects human life. One judge argued that the death penalty was part of South Africa’s colonial le-

gacy and that judicial processes of its indigenous societies traditionally did not provide the death penalty for murder. The court held that the death penalty would be inconsistent with the spirit of reconciliation in the new, post-apartheid era and emphasized the specific obligations of the Constitutional Court in deciding what was right, not what was popular, even while public opinion could be ambivalent about the death penalty. The Court’s President Arthur Chaskalson wrote:

*“Public opinion may have some relevance to the enquiry but, in itself, it is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold its provisions without fear or favour. If public opinion were to be decisive, there would be no need for constitutional adjudication (...) The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process.”* (*State v Makwanyane (1995) (3) SA 391, para. 88*).

In its judgement, the South African Constitutional Court drew extensively on international and comparative law. The Court distinguished the right to life provision in the South African constitution from the provision in the European Convention on Human Rights and the US constitution, which do not explicitly prohibit the death penalty. However, the Court, in the majority opinion, considered judgements in the US Federal and State Supreme Courts as well as the Supreme and Constitutional courts of Hungary and Canada for its conclusion that the death penalty was a form of cruel, inhuman or degrading punishment, prohibited in the interim Constitution.

.Despite strong pressure from some politi-

cal parties in the Parliament to reinstate the death penalty, the South African Parliament endorsed the opinion of the Constitutional Court. In 1997, the Parliament formally abolished the death penalty for all crimes by passing the Criminal Law Amendment Act, which removed all references to the death penalty from the statute book. It entered into force in 1998 and prisoners under sentence of death were re-sentenced to terms of imprisonment. In November 2006, the Constitutional Court ruled that the Government had fully complied with its 1995 judgement on the unconstitutionality of the death penalty.

Calls to reinstate the death penalty continued as a perceived means to combat the high crime rate in South Africa, including by the African National Party, but were rejected by South African leaders Nelson Mandela and former Archbishop Desmond Tutu. Such calls have not succeeded since the Constitutional Court successfully dismissed the supposed deterrent effect of the death penalty. On 15 December 2011, the South African President Jacob Zuma reconfirmed his Government's commitment to the abolition of the death penalty.

At the UNGA in 2007, South Africa voted in favour of the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty, and voted for all subsequent death penalty resolutions adopted in 2008, 2010, 2012, 2014 and 2016. South Africa became a party to the Second Optional Protocol to the ICCPR aiming at abolition of the death penalty in 2002.

To affirm its international commitment to abolish the death penalty, South Africa is a founding Member State of the Support Group of the ICDP.

## SPAIN

**The death penalty was abolished in Spain for the first time in 1932, but partially re-introduced in 1934 and fully reinstated in 1938. The last executions in Spain were carried out in late 1975, almost at the end of General Francisco Franco dictatorship. With the current Constitution, approved in 1978, the capital punishment was abolished for ordinary crimes. The death penalty was finally abolished for all crimes in 1995.**



Spain's first Criminal Code in 1822 introduced the garrote, as the execution method replacing hanging.

After a few years under an absolutist monarchy that reinstated hanging as the method of execution, in 1832, King Fernando VII removed it definitely and reintroduced the garrote. The subsequent Criminal Codes of 1848, 1850 and 1870 contributed to establish the garrote as the only method of carrying out executions, with the exception of executions by firing squad in the case of those found guilty under charges in the military legislation.

The death penalty was uninterruptedly used in Spain until 1932, when it was abolished as a result of a reform of the Criminal Code at the time of the Second Spanish Republic. However, this abolition was short lived as capital punishment was reintroduced two years later, in October 1934, for crimes of terrorism and banditry.

From 1936 to 1939, the Spanish Civil War that ended with the authoritarian rule of General Francisco Franco which would last until his death in 1975. In July 1938, Franco fully reinstated the death penalty in the Criminal Code, through a Decree-Law, arguing that the abolition of the capital punishment was against the smooth running of the State. Men and women, even minors,

were executed during the Spanish Civil War and under General Francisco Franco's rule.

The last executions were carried out on 27 September 1975, two months before General Francisco Franco's death. On that day, two members of the terrorist group ETA -Jon Paredes and Angel Otaegi- and three members of the FRAP, another terrorist group -José Luis Sánchez Bravo, Ramón García Sanz and Humberto Baena- were executed by firing squad. The death sentences provoked an important popular reaction and rejection and criticism by European countries. Different international leaders, including the Pope Paul VI, sent requests for clemency for those under sentence of death. There were protests in Western Europe against the executions and the Ambassadors of several European countries left Madrid in protest.

According to the reports, the international pressure might have been responsible for the decision to change the method of execution to shooting the 5 prisoners rather than by garrote. Earlier, on 2 March 1974, Salvador Puig Antic and Heinz Chez had been executed in Barcelona and Tarragona respectively, and were the last two persons to be executed by the garrote. Salvador Puig Antich, a Catalan anarchist, was judged and sentenced to death by a military court for the murder of a member of Spain's Guardia Civil. Heinz Chez, also sentenced for murder, was executed on the same day, in an attempt by the authorities to lead the public opinion to assume that common violence and political violence could be equated.

The 1978 Constitution, that consolidated democracy in Spain after Franco's authoritarian regime, abolished the death penalty for ordinary crimes. The capital punishment was still retained in the military jurisdiction in times of war. In this sense, the Military Criminal Code envisaged the death penalty as the highest

punishment for treason, military rebellion, espionage, sabotage and war crimes.

In 1995, with the abolition of the death penalty from the military jurisdiction, Spain became completely abolitionist.

It has to be noted that article 15 of the Spanish Constitution still mentions the capital punishment: *"Everyone has the right to life and to physical and moral integrity, and under no circumstances may be subjected to torture or to inhuman or degrading punishment or treatment. Death penalty is hereby abolished, except as provided for by military criminal law in times of war"*.

In January 1985 Spain acceded to Protocol no. 6 to the European Convention on Human Rights, providing for abolition of the death penalty in peacetime, and in December 2009, Spain also ratified Protocol no. 13 to the Convention, abolishing the death penalty in all circumstances.

Additionally, in 1991, Spain ratified the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

Spain's ratification of these Protocols shows the country's commitment to the abolition of the death penalty and has made the Constitutional provision regarding the capital punishment meaningless.

In 2007, Spain voted in favour of the first UNGA resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty and voted for all subsequent death penalty resolutions adopted in 2008, 2010, 2012, 2014 and 2016.

Spain's strong commitment to the universal abolition of the death penalty has been demonstrated in numerous occasions, working

at a bilateral level to fight for Spanish nationals under sentences of death abroad, and multilaterally, making it a priority for the country during its term at the Human Rights Council (2018-2020). Joaquin José Martínez became the first Spaniard and European to leave death row in the United States in 2001 after a second trial. He had been sentenced to death in 1997 in Florida on charges of committing a double murder. The Spanish Government and the Spanish Royal House collaborated with his family, Pope John Paul II, the European Parliament and other organizations to make his release possible.

A Spanish initiative in 2010 was the inspiration behind the establishment of the ICDP. Its Secretariat is based in Madrid. Spain is a Member of ICDP's Support Group and currently holds its Presidency.

## SURINAME

**On 13 April 2015, Suriname abolished the death penalty for all crimes. The country retains the death penalty in its Military Penal Code. The last executions in Suriname were carried out in 1982.**



On 6 May 2011, when Suriname was assessed under the UPR, it was pointed out that the Penal Code still provided the sentence of death for aggravated murder, premeditated murder and treason, even though a *de facto* moratorium had been in place since 1982. The Report of the Working Group on the UPR stated that the Penal Code was being revised and the draft amendment to the Penal Code would not stipulate the death penalty (A/HRC/18/12).

The last known executions in Suriname were carried out in 1982. Wilfred Hawker, a sergeant and political opponent of the military regime was executed by the military on 13 March 1982 after he had been found guilty of treason. On 8 December 1982, 15 political opponents were killed in what is known as the "December Murders". Nevertheless, these executions are not officially recognized by authorities and journalists who date the last known execution to have been carried out in 1927.

In a statement for the abolition of the death penalty, then Vice Speaker of the National Assembly of Suriname, Ruth Wijdenbosch, stated in a conference organized in Geneva by ICDP and the Inter Parliamentary Union on 10 October 2013 that "there is consensus amongst the leading political parties in the National Assembly and also within the Government about this very important amendment." Following a request by Vice Speaker Wijdenbosch, ICDP Commissioner and former President of Switzerland Ruth Dreifuss visited Suriname along with British Member of Parliament Greg Mulholland and met senior Government officials, and other important stakeholders on the issue of death penalty abolition. They encouraged the Government to adopt a Criminal Code that would have no provision for the death penalty.

In June 2014, the draft legislation to the Penal Code, substituting the death penalty for all crimes with long imprisonment ranging from 20 to 30 years, was introduced by the Government of Suriname.

A seminar was organized in Paramaribo from 2-6 February 2015 on the abolition of the death penalty in Suriname organized by the EU, the UK, France and the Netherlands where the keynote speaker was Professor Marc Bossuyt. Prof. Bossuyt's visit was coordinated by

ICDP. The Seminar included sessions with representatives of the National Assembly, civil society organizations, legal experts, and included a dialogue on the process of adoption of the draft Penal Code, which included abolition of the death penalty and encouraging Suriname to ratify the Second Optional Protocol and the Protocol to the American Convention on Human Rights to abolish the Death Penalty.

On 13 April 2015, the new Penal Code came into full effect, with which the death penalty was fully abolished in the country. According to reports that ICDP received, the penal code was published in the National Gazette (Staatsblad van de Republiek Suriname, 2015, N° 44; Wet wijz. Wetboek van Strafrecht (4)) on 13 April after President Dési Bouterse had signed it on 30 March. This new Criminal Code does not include provisions for capital punishment.

Suriname was assessed in the second cycle of the UPR on 2 May 2016. The country was commended on its decision to abolish the death penalty (A/HRC/WG.6/25/SUR/2). Suriname accepted the recommendations during this UPR session to abolish the death penalty in the Military Penal Code of Suriname as well to sign and ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (A/HRC/33/4).

At the UNGA in 2007, Suriname voted against the resolution, which called for a moratorium on executions worldwide with a view to abolish the death penalty. The country abstained in the voting process in 2008, 2010 and 2012. In 2014 and 2016, Suriname voted in favour of the resolutions calling for a moratorium on executions worldwide with a view to abolishing the death penalty.

## TOGO

**The Togolese Republic (Togo) domestically abolished the death penalty in law for all crimes in 2009. The last execution was carried out in 1978. Aiming at abolishing the death penalty internationally, Togo became State Party to the Second Optional Protocol to the ICCPR in the National Assembly in September 2016.**



On 27 February 1992, Togo signed the African Charter on the Rights and Welfare of the Child (OAU Doc. CAB/LEG/24.9/49 (1990)) which had been adopted on 11 July 1990 by the Organization of African Union (OAU), now the African Union (AU), and entered into force on 29 November 1999. In article 5, the Charter bans the death penalty for all human beings under the age of 18.

The Togolese Government, via the Council of Ministers, passed a bill aiming to abolish the death penalty on 10 December 2008. All death sentences, the last passed in 2002, were commuted to life imprisonment. The last execution in Togo was carried out in 1978.

Justice Minister Kokou stated that “[t]his country has chosen to establish a healthy justice system that limits judicial errors (...) and guarantees the inherent rights of the individual. This (new) system is no longer compatible with a penal code that maintains the death penalty and grants the judiciary absolute power with irrevocable consequences.”

With Togo’s President Faure Gnassingbe supporting the abolition of the death penalty, the National Assembly domestically abolished the death penalty for all crimes on 23 June 2009 (Act No. 2009-011) by unanimous vote. José Luis Rodríguez Zapatero, Prime Minister of

Spain (2004-2011) and driving force behind the international initiative to create the ICDP in 2010, attended this plenary session of the Togolese National Assembly in Lomé during which the death penalty was abolished.

Togo submitted its reports when it was observed under the UPR 2011 and accepted the subsequent recommendations of this review process in October 2011 and March 2012 to ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.

On 21 January 2015, the Togolese Council of Ministers adopted a draft law authorizing the accession to the Second Optional Protocol to the ICCPR. The National Assembly then unanimously ratified the law on 10 July 2015, and on 14 September 2016, Togo acceded to the Second Optional Protocol, finalizing the ratification process at the UN.

At the UNGA in 2007, Togo abstained from voting the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty. It did the same in 2008. Since that vote, it changed and has voted in favor of all subsequent UNGA resolutions calling for a worldwide moratorium in 2010, 2012, 2014 and 2016. In 2014 and 2016 Togo also co-sponsored both resolutions calling for a worldwide moratorium on the death penalty.

Togo is a founding Member State of ICDP's Support Group, showing its international commitment to abolish the death penalty.

## TURKEY

**Turkey abolished the death penalty for ordinary crimes in 2001 and 2002 by constitutional and subsequent legal amendment.**

**In 2004, Turkey prohibited the death penalty for all crimes by another amendment to the Constitution and a subsequent amendment to the Penal Code. The lifting of martial law in 1987 facilitated abolition of the death penalty which took place after a *de facto* moratorium and the reduction in capital offences. The last execution took place in 1984.**



Sixteen articles of the 1926 Turkish Penal Code, as amended, provided for a mandatory death penalty for crimes against the State, the Government and the Constitution. In addition, eight articles provided for a mandatory death sentence for criminal offences such as murder. The death penalty could also be imposed under the Military Penal Code and the Law of Treason. Under Article 87 of the Constitution, prisoners sentenced to death who had exhausted all legal remedies could not be executed unless their sentences were approved by the Grand National Assembly (Parliament). The Judicial Commission of Parliament effectively halted some executions by not reviewing individual cases. Since the foundation of the modern Republic of Turkey in 1923, 588 executions were carried out for criminal and political offences.

Executions were more frequent following military coups in 1960, 1971 and 1980, although a *de facto* moratorium on executions was in place from 1973 to 1980 when death sentences were still passed but not confirmed by Parliament. The moratorium ended shortly after the military coup of 12 September 1980. According to Amnesty International, 50 executions were carried out between 1980 and 1984, 27 of which were for politically related crimes under Articles 125 and 146/1 of the Penal Code. Most death sentences were imposed by military courts under martial law, which came into force in December 1978, in trials that fell short

of international standards. The last execution was carried out in 1984 and caused an international outcry but death sentences continued to be handed down by the courts. Martial law was lifted completely in July 1987, a move that paved the way for abolition of the death penalty.

In November 1990, the Grand National Assembly ratified amendments to the Penal Code which reduced the number of offences punishable by death. The death penalty was, however, retained for 13 offences including murder and political offences such as separatism. In a further move towards abolition, the Parliament passed the Anti-Terror Law in April 1991 which commuted all death sentences for crimes committed before 8 April 1991. This affected prisoners who were sentenced to death for politically related crimes under the Penal Code and those sentenced to death for rape and drug smuggling - offences punishable under the Military Code. The Prime Minister immediately withdrew the files of 276 prisoners whose death sentences were pending ratification by the Grand National Assembly. Although Turkey maintained a *de facto* moratorium on executions, the death penalty remained on the statute books. The courts continued to sentence people to death and appeal courts upheld their sentences.

Turkey became member of the Council of Europe on 13 April 1950 and ratified the European Convention on Human Rights in 1954. At the Strasbourg Summit in 1997, Turkish State President Süleyman Demirel pledged to abolish the death penalty. In the interim period while the country took steps to abolish capital punishment, Turkey continued to uphold the existing moratorium on executions. A new draft penal code abolishing the death penalty and introducing a life sentence in its place was proposed by a parliamentary committee in 1997 and in early 1999 the Government informed the Council of Europe that passing the

bill was a priority for the Government. By June 1999, 47 death sentences had been upheld by the Appeals Court.

Pressure to resume executions increased when PKK leader Abdullah Öcalan was sentenced to death on 29 June 1999 for “treason and separatism”, even though the presiding judge reportedly expressed his general opposition to the death penalty after the trial had concluded. European Governments and intergovernmental organizations as well as NGOs called on Turkey to commute his death sentence and cautioned against a resumption of executions. The European Parliament warned Turkey in June 1999 that executing Öcalan “would be damaging for the process of integrating Turkey into the EU”. In January 2000, his death sentence was suspended pending a review by the European Court of Human Rights (ECHR) and in October 2002, the State Security Court commuted his death sentence before the ruling of the ECHR.

Following Turkey’s candidature accession to the EU, which requires abolition of the death penalty as a precondition for membership, the EU called for maintaining the *de facto* moratorium on executions in the short term and for abolition of the death penalty in the medium term, including ratification of the relevant protocols to the European Convention on Human Rights. In response, Turkey began the implementation of the steps towards abolition of capital punishment.

A Constitutional Amendment was passed in October 2001 in Article 38 prohibiting the death penalty for criminal acts but retaining it in times of war and for ‘terrorist crimes’. On 3 August 2002, the Parliament adopted a package of reforms that included a law abolishing the death penalty in peacetime and replacing the death penalty for ‘terrorist crimes’ with life imprisonment. In November 2002, 180 mem-

bers of the PKK and others had their death sentences commuted to life imprisonment. A year later, in November 2003, Turkey ratified Protocol 6 to the European Convention on Human Rights abolishing the death penalty in peacetime.

Two years into the term of the current Government led by Prime Minister Recep Tayyip Erdogan, Turkey took the final step, in 2004, of prohibiting the death penalty for all crimes in its Constitution and the Penal Code. On 7 May that year, the Parliament adopted Law No. 5170, removing language from Article 15 of the Constitution that allowed for the death penalty in wartime and adding to Article 38 that: “The death penalty ... shall not be imposed”. Then, on 14 July 2004, its Parliament adopted Law No. 5218, the ‘ninth harmonization law’, which removed the death penalty from all articles of the Penal Code and replaced it with life imprisonment.

Further underlining its abolitionist commitment internationally, Turkey acceded in 2006 to Protocol 13 to the European Convention on Human Rights abolishing the death penalty and acceded to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. At the UNGA in 2007, Turkey voted in favour of the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty and voted for all subsequent death penalty resolutions adopted in 2008, 2010, 2012, 2014 and 2016.

Recently, after a failed coup d’État in Turkey in July 2016, President Erdogan started calling for the reinstatement of the capital punishment in the country. On 16 April 2017, Turkey held a referendum on changes in the Turkish Constitution that would transform Turkey from a parliamentary system to an executive presidency, giving the President unprecedented powers. President Erdogan won the referen-

dum by a small majority of the votes (51.4% of the voters voted ‘yes’ to the constitutional reforms). President Erdogan has reportedly stated that if the Parliament were to back a draft law to reinstate the death penalty and if the law was presented to him, he would sign it. As of today, there have been no new developments on the issue of the reinstatement of the death penalty in the country.

Turkey is a founding Member of ICDP’s Support Group.

## UNITED STATES OF AMERICA

**Capital punishment was suspended in the United States of America (USA) between 1972 and 1976 after the Supreme Court’s decision in a number of cases that the death penalty had been administered in an unconstitutional way. Executions resumed in 1977, when Gary Gilmore waived his right to appeal and was executed by firing squad in Utah. In the USA, while the federal Government retains the death penalty, an increasing number of states have repealed the death penalty. As of March 2018, 19 states have repealed the death penalty and most of the 31 retentionist states did not carry out executions as eight states reportedly carried out executions in 2017.**



Executions are regularly carried out in a small number of states, mainly in the South. In 2017, 30% of all the executions were carried out in Texas. Eight states carried out executions in 2017, which represented an increase from 2016 when five states carried out executions. Numerous studies have concluded that racial and geogra-

phic bias mark the application of the death penalty in the USA. It was the only democratic, industrialized country to impose the death penalty on persons less than 18 years of age despite the Supreme Court's decision in the case of *Roper v. Simmons* (*Roper v. Simmons* 543 U.S. 551, 2005) where the Court concluded that this constituted "cruel and unusual punishment" prohibited by the constitution of the USA.

In 2017, reports suggest that 41 death sentences were imposed in the USA, and 23 executions were carried out, representing an increase from 2016 in relation to number of death sentences and number of executions. However, despite this, the overall trend in terms of number of annual executions has decreased in the last decade, as has public support for the death penalty in many states. The key reasons for this trend include the mounting evidence about a range of wrongful convictions resulting in innocent persons being sentenced to death and even executed, increasing doubts about the deterrent value of capital punishment, considerations about the very high costs of executions that could be better used for law enforcement purposes as well as growing appeals from victims' families opposing capital punishment.

Religious organizations, representatives of minority groups, civil leaders, lawyers, state bar associations, municipalities and psychiatric associations have forcefully campaigned against the death penalty across the country or drawn attention to flaws in the system. Civil society organizations supporting the abolition of the death penalty including the Washington-based Death Penalty Information Center have played

an important role in informing the public about wrongful convictions. The media, including newspapers, has also played a role in opposing a return of the death penalty, as has been witnessed in the states of Iowa and West Virginia.

The death penalty has recently been reportedly abolished in seven states in the USA: Connecticut (2012), Delaware (2016)<sup>4</sup>, Illinois (2011), Maryland (2013), New Jersey (2007), New Mexico (2009), and New York (2007). The states of Colorado (2013), Oregon (2011), Pennsylvania (2015) and Washington (2014) have introduced a Governor's moratorium on executions. The Governor of the State of Colorado, John Hickenlooper stated that "I once believed that the death penalty had value as a deterrent. Unfortunately, people continue to commit these crimes in the face of the death penalty. The death penalty is not making our world a safer or better place." Recently, in February 2018, the Washington state Senate voted to repeal the death penalty in the state and the bill is now pending at the House of Representatives.

The abolition processes in the states of Connecticut, Maryland and New Mexico are reviewed below. State Governors played an important role in deciding the fate of capital punishment in their respective States. In the USA, a Governor of a state may also have powers to grant clemency to condemned prisoners and to sign or veto a bill to abolish the death penalty once it has been passed by the legislature.

The USA voted against UNGA resolution in 2007 and subsequent resolutions calling for a moratorium on executions worldwide with a view to abolition.

<sup>4</sup> According to reports reaching ICDP, Delaware Supreme Court, in 2016, struck down the state's death sentencing statute, leaving the state with no valid way to impose death sentences. However, in May 2017, the Delaware House of Representatives voted a Bill to reinstate the death penalty which is now pending in the Senate.

## Connecticut

**On 25 April 2012, the state of Connecticut abolished the death penalty, becoming the seventeenth state in the USA to do so. Governor Dannel Malloy signed the bill that replaced the death penalty with life imprisonment without parole. Eleven persons were at the time under sentence of death, and abolition did not retroactively apply to them.**

Connecticut reinstated the death penalty in 1973. In line with Supreme Court rulings, Connecticut did not carry out the death penalty if the offender was “mentally retarded” (Atkins v Virginia, 536 U.S. 304, 2002) or under 18 years of age at the time of the crime (ibid Roper v Simmons,). One person was executed in the state following reinstatement of the death penalty.

In 2009, a bill to repeal the death penalty had been passed by both legislative houses in the state but was vetoed by the then Governor. In 2011, a similar effort failed in the Senate, largely because of publicity surrounding a high profile death penalty trial.

Prominent campaigners against the death penalty in the state included the Catholic Church, the Connecticut Network to Abolish the Death Penalty (CNADP) and individuals formerly involved in law enforcement. Leading newspapers in the state carried editorials in favour of abolition. In 2004, the cities of New Haven and Hartford passed resolutions opposing the death penalty in Connecticut. In January 2003, the Connecticut Commission on the Death Penalty, created in 2001 by the Connecticut General Assembly (the state legislature), published a “Study of the Imposition of the Death Penalty” finding racial and geographic disparities in the imposition of Connecticut’s death penalty, which helped influence the debate.

In April 2012, the bill was passed by the Senate and the House of Representatives and Governor Dannel Malloy signed the bill into law. He said:

*“I spent years as a prosecutor (...) I learned first-hand that our system of justice is (...) subject to the fallibility of those who participate in it. I saw people who were poorly served by their counsel. I saw people wrongly accused or mistakenly identified. I saw discrimination. I came to believe that doing away with the death penalty was the only way to ensure it would not be unfairly imposed.”*

The Governor also highlighted the important role played by victims’ families who opposed and lobbied the state’s legislature against the death penalty. The death penalty was abolished even though 48% of voters in the state were reported to favour the death penalty, with 43% against.

## Maryland

**The state of Maryland abolished the death penalty in 2013. The repeal did not apply to the five detainees on death row. Governor Martin O’Malley commuted their death sentences to life imprisonment in January 2015. Maryland is the 18th state to abolish the death penalty in the United States.**

The death penalty was reinstated in Maryland in 1978, two years after the US Supreme Court decided that executions could be resumed (*Gregg v. Georgia*, 428 U.S. 153, *Proffitt v. Florida*, 428 U.S. 242, and *Jurek v. Texas*, 428 U.S. 26). Maryland had previously revised its statute to prevent arbitrariness in the death sentencing process. In 1987, Maryland passed a law excluding juvenile offenders from being sentenced to death (Laws of Maryland 1987, Chapter 626) and also introducing life without

the possibility of parole (LWOP) as an alternative in capital cases. Two years later, Maryland adopted legislation making capital punishment illegal for mentally challenged culprits. In 1993, House Bill 498 changed the execution method in Maryland from lethal gas to lethal injection.

In 1996, Governor Parris Nelson Glendening created a task force to investigate into “racial disparity in the administration of the death penalty in Maryland”. The *Report of Task Force on the Fair Imposition of Capital Punishment* found, that “the high percentage of African-American prisoners under sentence of death and [...] the low percentage of prisoners under sentence of death whose victims were African-American remains a cause for concern.” Nevertheless, the task force did not find evidence that racial discrimination had been applied directly or by reason of the race of the victim to any of the defendants eligible to the death penalty at that time.

Three years later, Governor Glendening initiated and funded “An Empirical Analysis of Maryland’s Death Sentencing System With Respect to the Influence of Race and Legal Jurisdiction”, a study which was conducted by the University of Maryland, College Park (Prof. Ray Paternoster). In 2003, the final report of the study concluded that racial and jurisdictional bias in death sentencing existed in Maryland, and that specifically homicides involving Caucasian victims and African American perpetrators and murders were most likely to result in death sentences.

Governor Glendening announced a moratorium on the use of the death penalty in Maryland in 2002, but limited it to the end of his time in office. His successor, Governor Robert Ehrlich Jr. lifted the moratorium in 2003 and allowed executions to be resumed.

In 2006, the Maryland Court of Appeals deci-

ded that the lethal injection protocol was invalid, and thus announced a *de facto* moratorium on executions in the state.

In 2008, House Bill 1111 provided for the establishment of the Maryland Commission on Capital Punishment (SB614/HB1111). The Commission investigated on racial, jurisdictional and, socio-economic disparities, the financial cost of capital punishment, as well as other issues evolving from sentencing of capital punishment. In its final report, the Commission recommended the abolition of the death penalty in Maryland. Important findings were that 1) racial and jurisdictional disparities existed in Maryland, that 2) the financial costs of death sentencing substantially exceeded the costs of life sentencing and that 3) there was no evidence that the death penalty reduced violent crime in Maryland.

The following year, instead of abolishing the death penalty, Maryland introduced the tightest death penalty restrictions in the United States. Capital punishment was limited to cases in which biological or DNA evidence linked the defendant to the murder or the guilt was evident through a videotaped, voluntary interrogation and confession of the defendant to the murder or through a video recording that conclusively linked the defendant to the murder. Sole eyewitness evidence became insufficient for pronouncing a death sentence.

In January 2013, Senate Bill 0276 aiming at the abolition of the death penalty in Maryland, and its substitution by life without the possibility of parole was introduced to the Senate. The bill was passed on 6 March by 27-20 votes and was sent to the Maryland House of Delegates one day later which approved it by a vote of 82 for and 56 against. On 2 May 2013, Governor Martin O’Malley signed into law Chapter 156 of the Senate Bill 276, the Act concerning “Death Penalty Repeal-Substitution of life without the

possibility of parole". O'Malley said, "I've felt compelled to do everything I could to change our law, repeal the death penalty, so that we could focus on doing the things that actually work to reduce violent crime." The repeal of the death penalty was not retroactive and did not apply to the five detainees under sentence of death. On 20 January 2015, one day before his second term in office ended, Governor O'Malley commuted the death sentences of the four men remaining under sentence of death in Maryland into life imprisonment.

One of the committed opponents of the death penalty in Maryland was Kirk Noble Bloodsworth. Bloodsworth, an innocent man, had served almost 9 years in prison in Maryland, two of them facing the death penalty, until he was exonerated in 1993. His case was the first in the United States in which DNA testing proved the innocence of the culprit.

## New Mexico

**On 18 March 2009, New Mexico became the USA's fifteenth abolitionist state when the state Governor Bill Richardson signed into law a bill abolishing the death penalty, replacing it with life imprisonment without the possibility of parole. The law did not apply retroactively to the two prisoners under sentence of death.**

Since the resumption of executions in the USA in 1977, New Mexico had only carried out one execution, in 2001. Before that one execution, the then Governor said "eliminating the death penalty in the future may prove to be better public policy, given the reality of the sentence today". Four men had been sentenced to death in New Mexico in 1974 but were exonerated two years later. On 10 February 2001, a bill to repeal capital punishment in New Mexico was narrowly defeated by one vote in the state Se-

nate. A state-wide poll in 2008 showed that 64% of New Mexicans supported replacing the death penalty with life without parole and restitution to victims' families.

There was a committed and persuasive lobby against the death penalty in the state including prominent voices within the Catholic Church – New Mexico is a predominantly Catholic state – and the families of victims of murder. Some legislators cited the high cost of executions as a reason for supporting the bill, others the possibility of executing the innocent. In considering abolition of the death penalty, the state's legislators also drew upon an authoritative 2008 study published in the *New Mexico Law Review* on the application of the death penalty between July 1979 and December 2007, which found that the imposition of the death penalty in New Mexico was influenced by legally irrelevant issues such as where or when the crime was committed and the race or ethnicity of the victim and the defendant.

New Mexico's 2009 abolitionist bill was passed with cross-party support by the state Senate (with a vote of 24 for and 18 against) and by the lower House of Representatives by 40 votes to 28. After passage of the abolitionist bill by the legislature in March 2009, then Governor Bill Richardson sought the views of citizens and was urged by former US President Jimmy Carter to support the bill. The possibility of miscarriage of justice was a key consideration in the decision of the Governor who had supported the death penalty when he assumed office, only to change his mind and sign the abolitionist bill. He said that his conscience was challenged by the very real risk that an innocent person could be executed and concluded that retaining the death penalty with the inherent risk that a serious miscarriage of justice might occur was wrong. Another factor had been the worldwide trend

towards abolition, he said: “From an international human rights perspective, there is no reason the United States should be behind the rest of the world on this issue”. He admitted that the decision to sign the bill had been “the most difficult decision of [his] political life”.

## UZBEKISTAN

**In 2005, the Republic of Uzbekistan (Uzbekistan) abolished the death penalty with effect from 1 January 2008 following President Islam Karimov’s Decree. Uzbekistan acceded to the Second Optional Protocol to the ICCPR in December 2008. The last known execution in Uzbekistan was carried out in 2005.**



The independence of Uzbekistan on 31 August 1991 was followed by two periods of reforms, in which human rights and freedoms were regarded as important objectives: 1) the first phase (1991-2000) of transitions and state building and 2) the second phase (2001-2007) of modernization and dynamic democratic renewal. During the first phase, Uzbekistan acceded to six major international human rights treaties of the UN and established institutions and promoted education for human rights at a national level. The abolition of the death penalty on 1 January 2008 was part of the second phase, which focused on an improvement of legislation and democratic structures.

At the time of its independence in 1991, over 30 articles of Uzbekistan’s Criminal Code still provided for the death penalty. In 1994, the new *Penal Code of the Republic of Uzbekistan* stipulated the death penalty in 13 articles. In 1998, the number of articles allowing for the

death penalty was reduced to 8, in 2001 to 4 articles and in 2003 to 2 (art. 97: premeditated murder in aggravating circumstances; art. 155: terrorism). The death penalty was prohibited for minors, women and people aged 60 years of age and older.

With the adoption of President Islam Abduganiyevich Karimov’s Decree “On abolition of death penalty in the Republic of Uzbekistan” on 1 August 2005, Uzbekistan announced the abolition of the death penalty for 1 January 2008 and its replacement by life imprisonment or long terms of detention. Although no moratorium had been officially introduced during the 28 months period between the Decree and the abolition of the death penalty, no death sentence had been passed since 2005.

An immediate abolition of the death penalty was rejected with the justification that there was a need for preliminary reforms, because, according to the President Decree, “[t]he abolition of the death penalty requires much public awareness campaigning [...], giving the people a firm understanding of the need for further liberalisation of criminal punishment, including the abolition of the death penalty.” The Decree further stated that “organizational-preparatory measures” needed to be undertaken, such as the construction of complexes and buildings for detainees whose death sentence had been commuted to life imprisonment and the training of personnel for working in those facilities. In addition to that, the criminal law, criminal procedure law and criminal-executive law needed to be improved by introducing amendments and additions; this process needed to be supported and facilitated by studying the legislation of countries which had already abolished the death penalty and by utilizing their experiences in legal processes of substituting the death penalty to life or long imprisonments. Uzbek President Islam Karimov stated that “The most impor-

tant trend in the process of liberalising the judicial-legal system and criminal punishment that is happening in the Republic of Uzbekistan is the gradual reduction of the sphere of application of the death penalty”.

On 29 June 2007, the law of the abolition of the death penalty was adopted by the Senate as amendments to the Constitution. On 1 January 2008, Uzbekistan abolished the death penalty for all crimes. Following the abolition, in April 2008 the Supreme Court of Uzbekistan began the process of revising the death sentences.

After the abolition of the death penalty and subsequent judicial and legal reforms, Uzbekistan acceded to the Second Optional Protocol to the ICCPR in December 2008.

At the UNGA in 2007, Uzbekistan voted in favor of the resolution calling for a moratorium on executions worldwide with a view to abolishing the death penalty. It did the same in 2008, 2010, 2012, 2014 and 2016.

# LESSONS LEARNT FROM THE EXPERIENCES OF STATES IN ABOLISHING THE DEATH PENALTY

This publication has described the experiences of 26 states and 3 USA states that have taken steps to abolish the death penalty. The following are some of the routes and the lessons learned from their experiences.

## 1. The route of international commitment toward abolition of the death penalty

Countries such as **Mongolia** and **Benin** have started their abolitionist journeys by adopting the relatively new route of international commitment: by becoming a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

**Madagascar** also signed the Second Optional Protocol to the ICCPR before final abolition but ratified it after finalizing the abolitionist process domestically.

Countries like **Guinea** and **Congo** voted in favour of UNGA resolutions calling for a global moratorium on the use of the death penalty before becoming abolitionists.

## 2. Constitutional Court judgements

In **South Africa** and **Guatemala**, the Constitutional Court played –and is playing in the case of Guatemala– a decisive role. In South Africa, the Constitutional Court ruled that the death penalty violated human rights whereas in Guatemala, thanks to the Constitutional Court rulings, the country became abolitionist for ordinary crimes.

### 3. Breaking with a repressive past

Countries have abolished the death penalty as a means to move away from an authoritarian past or after a conflict that involved genocide and crimes against humanity. **Cambodia, Germany, Haiti, Rwanda, South Africa** and **Spain** are examples of this route.

### 4. Constitutional amendments

Countries such as **Cambodia, Haiti, Kyrgyzstan, Republic of the Congo, Turkey** and **Uzbekistan** abolished the death penalty by amending their Constitutions, before removing it from their laws.

In **Mexico**, the death penalty was first abolished by law and then reinforced by Constitutional Amendment.

### 5. The role of the National Assembly/Parliament

In **Australia**, its Commonwealth Parliament prohibited the death penalty. In **Fiji, Madagascar, New Zealand** and **Senegal**, their Parliaments voted in favour of abolition of the death penalty. The National Assembly of **Togo** domestically abolished the death penalty for all crimes and unanimously ratified the law to accede to the Second Optional Protocol to the ICCPR. In **Uzbekistan**, the Senate adopted the law of the abolition of the death penalty as amendments to the Constitution. In **Suriname**, a member of the National Assembly raised international awareness of the situation of the death penalty and called for support from the international community. The follow-up actions helped in reinvigorating the process towards abolition of the death penalty in Suriname.

### 6. The importance of the international community

The international community –including the UN, the EU, and their institutions, and civil society organizations- have played a decisive role in different countries, in combination with political leadership. International pressure had an impact in the abolitionist processes of countries like **Rwanda** and **Spain**. The organization of discussions at National Assemblies and events during the World Day against the Death Penalty was also key in **Madagascar** and **Suriname**.

### 7. Establishing a moratorium on executions

The establishment of an official moratorium on death sentences and executions has been the first step taken in several countries such as in **Kazakhstan, Kyrgyzstan, Mongolia, South Africa** and the **Philippines**.

Other countries –like **Fiji, Guatemala, Guinea, Congo, Suriname** and **Turkey**- did not carried

out executions for a long period of time and were considered to have established a *de facto* moratorium on executions.

The moratoria have usually been accompanied by commutations of death sentences to terms of imprisonment as witnessed in the experiences in **Mongolia, Guatemala** and the **Philippines**.

## 8. Reducing the scope of the death penalty

The scope of the use of the death penalty has been reduced in different ways, and has been chosen by some countries in their move towards the eventual abolition of capital punishment:

- **Argentina, Fiji, Guinea, Portugal** and **South Africa** decided to abolish the death penalty first for ordinary crimes before becoming fully abolitionist. As of today, **Kazakhstan** and **Guatemala** have also abolished the death penalty for ordinary crimes.
- In **Kazakhstan** and **Turkey** the number of crimes carrying out the death penalty was progressively reduced.

## 9. Political leadership

Underlying all these initiatives and experiences is the important role of political leadership. In some cases it is shaped by personal belief and commitment of the leaders: for instance, in **France, Mongolia** and the **Philippines**, as well as the decisive role of Governors in abolishing the death penalty in their respective **USA states**.

In other cases, political leadership ensures the implementation of the abolition by moving away from an authoritative past, beyond conflict, or in consolidating democratic institutions like national assemblies and the rule of law. Countries like **Mexico** have taken steps to protect its nationals abroad who are under sentence of death.

Leadership is key in the abolition of capital punishment as it increases respect and protection of the fundamental right to life. It thereby constitutes principled leadership by heads of State, and often includes important contributions by heads of Government, heads of the Parliament, heads of the Constitutional Court, Governors and Attorney Generals.

# THE INTERNATIONAL COMMISSION AGAINST THE DEATH PENALTY

The International Commission against the Death Penalty (ICDP) was created on 7 October 2010 in Madrid as a result of the Spanish initiative to reinforce the global trend towards the abolition of the death penalty. ICDP opposes capital punishment in all situations and urges the immediate establishment of a universal moratorium on executions as a step towards total abolition of the death penalty.

The Commission is composed of 21 high-profile Commissioners and led by its President, Judge Navi Pillay. These Commissioners represent all world regions – demonstrating that abolition of the death penalty is a global concern and not the cause of a particular region. They do not represent their country and act with independence in their decision-making. Its members are:

- **Navanethem (Navi) Pillay (President):** Former UN High Commissioner for Human Rights (2008-2014), former judge of the International Criminal Court in the Hague (2003-2008) and former judge and President of the International Criminal Tribunal for Rwanda (1995-2003).
- **Ruth Dreifuss (Vice-President):** Former President (1999) and Minister of Home Affairs, Switzerland.
- **Ibrahim Najjar (Vice-President):** Former Justice Minister, Lebanon (2008-2011).
- **Michèle Duvivier Pierre-Louis (Steering Committee Member):** Former Prime Minister, Haiti (2008-2009).
- **Hanne Sophie Greve (Steering Committee Member):** Judge and Vice President of the Gulating High Court for Western Norway and former Judge at the European Court of Human Rights (1998-2004).
- **Louise Arbour:** Former UN High Commissioner for Human Rights (2004-2008).
- **Marc baron Bossuyt:** Member of the UN Committee on the Elimination of Racial Discrimination, Member of the Permanent Court of Arbitration, and former Judge of the Constitutional Court of Belgium. He is the author of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted on 15 December 1989 by the UN General Assembly.

- **Marzuki Darusman:** Former UN Special Rapporteur on the situation of human rights of the DPRK (North Korea) (2010-2016); Former Attorney General, Indonesia (1999-2001).
- **Tsakhiajiin Elbegdorj:** former President of Mongolia (2009-2017).
- **Sylvie Kayitesi:** Deputy Chief Justice of the Constitutional Court of Rwanda; Chairperson, Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa of the African Commission on Human and People's Rights; former Minister of Public Service and Labour, Secretary of State at the Ministry of Lands, Human Resettlement and Environmental Protection in Rwanda.
- **Ioanna Kuçuradi:** UNESCO Chair of Philosophy and Human Rights (1998-present); Professor of Philosophy and Director of Center of Research and Application of Human Rights, Maltepe University, Istanbul, Turkey (2006-present).
- **Gloria Macapagal-Arroyo:** Former President, The Philippines (2001-2010).
- **Bill Richardson:** Former Governor, New Mexico, USA (2002-2010).
- **Ivan Simonovic:** former UN Assistant-Secretary-General (2010-2016), Special Adviser of the Secretary-General on the Responsibility to Protect (2016-2018), and former Minister of Justice of Croatia (2008-2010).
- **Horacio Verbitsky:** Argentinian well-known political columnist and writer.
- **Federico Mayor Zaragoza (Honorary President):** Former Director General, UNESCO (1987-1999); Minister of Education and Science, Spain (1981-1982); Member of European Parliament (1987).
- **Giuliano Amato (Honorary Member):** Former Prime Minister, Italy (1992-1993; 2000-2001).
- **Robert Badinter (Honorary Member):** Former Minister of Justice, France (1981-1986).
- **Mohammed Bedjaoui (Honorary Member):** Former Foreign Minister, Algeria (2005-2007); Judge, International Court of Justice (1982-2001).
- **José Luis Rodríguez Zapatero (Honorary Member):** Former Prime Minister, Spain (2004-2011).
- **Marta Vilardell Coma (Honorary Member):** Former Spanish Ambassador on Humanitarian Affairs, Social issues and against the Death Penalty (2015).
- **Rodolfo Mattarollo (1939-2014):** Former Deputy Secretary for Human Rights, Argentina (2005-2007).
- **Asma Jilani Jahangir (1952-2018):** Former United Nations Special Rapporteur on Arbitrary, Summary and Extrajudicial Executions (2002-2010).

For more information on the ICDP see [www.icomdp.org](http://www.icomdp.org)

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## Acknowledgments

ICDP particularly thanks Spain for organizing and part-sponsoring the publication of the second edition of *How States Abolish the Death Penalty*, as well as the Members States and Observers of ICDP Support Group that have helped in drafting the history of the abolition of the death penalty in their respective countries.

The inspirational support, advice and encouragement of ICDP Commissioners has been key in order to make this second edition a reality.



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