

Between Retention and Abolition:

Making Sense of a Death
Penalty Without Executions



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THE
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We hope that this report serves to enable critical engagement with 'abolitionist *de facto*' (ADF) status at a national and international level, leading to clear-sighted efforts to encourage full abolition of the death penalty in all remaining ADF states.

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Foreword

In my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, I address violations of the right to life across the world on a daily basis, and many of the cases that come to my attention pertain to the adverse human rights implications of the death penalty, including in *de facto* abolitionist States. Against this backdrop, I welcome the findings of this report, which sheds light on the practice of maintaining capital punishment *de jure* while suspending executions *de facto*, categorised by the United Nations as abolitionist *de facto* (ADF), practised to date by 42 States.

The report's careful analysis of the ADF concept, and of the diverse practices grouped under this label, is timely. In its authoritative interpretation of the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee has clarified that Article 6(6) requires that "States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, *de facto* and *de jure*, in the foreseeable future". ADF status can be a valuable waypoint on that path, but it is not an end point. The experience referenced in this report shows that, while cessation of executions once tended to presage swift legal abolition, today some countries remain in prolonged stasis: neither executing nor taking the legislative steps needed to abolish.

As elaborated in this valuable report, many ADF States continue to impose death sentences, sometimes mandatorily and for offences that do not meet the "most serious crimes" threshold under international law. They also maintain death rows that hold people for years or even decades. Prolonged uncertainty on death row, often coupled with severe conditions of detention, has been recognised as causing profound mental suffering, known as "the death row phenomenon", which may amount to cruel, inhuman or degrading treatment. Where death sentences continue to be passed, ADF status does not shield against arbitrariness, discrimination or fair-trial violations. Nor does it prevent backsliding, including the resumption of executions after years of suspension.

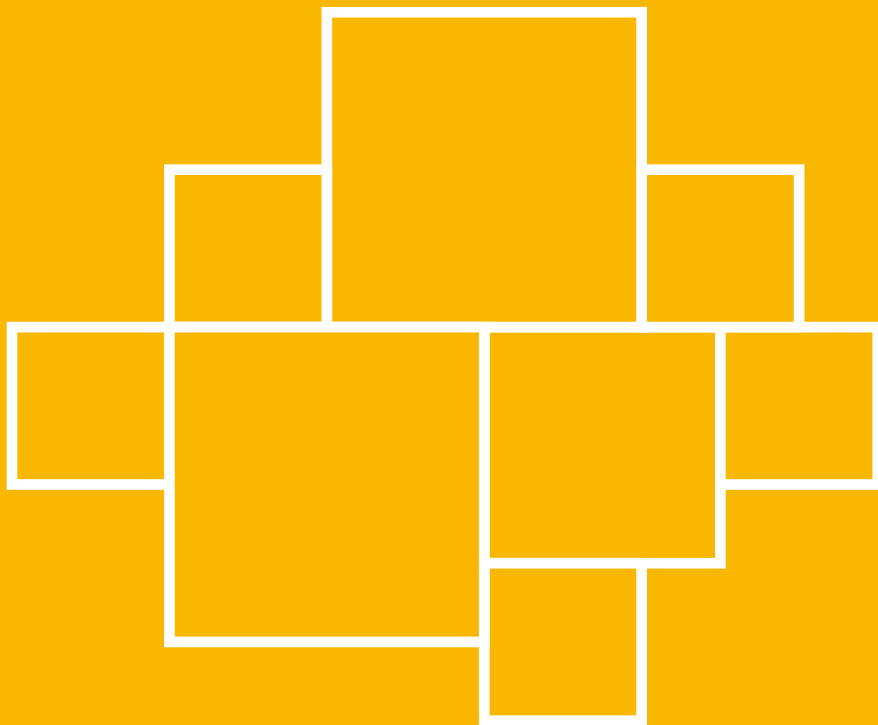
These realities carry concrete legal implications. States must move, with due diligence, from moratoria in practice to abolition in law, review and repeal legislation that prescribes mandatory capital punishment, ensure that no death sentence is imposed for offences beyond the "most serious crimes" threshold, and guarantee fair-trial safeguards in all capital proceedings. They should also address the situation of those currently on death row – through commutations, resentencing and measures to ensure humane conditions – while putting in place reforms that prevent new death sentences from being imposed.

The mandate I hold stands ready to support States along this trajectory. We do so by engaging in constructive dialogue, providing technical cooperation and guidance on law and policy reform, monitoring compliance with international standards, and sharing comparative experiences that have enabled States to move from ADF status to full abolition.

I commend this report for bringing clarity to a complex landscape, and for mapping the legal, institutional and political factors that sustain ADF status. I encourage all ADF States to take the remaining steps towards abolition in law and in practice, including by codifying moratoria, commuting existing death sentences, and ratifying the Second Optional Protocol to the ICCPR, thereby joining the ever-growing community of abolitionist nations.

Morris Tidball-Binz

UN Special Rapporteur on extrajudicial, summary or arbitrary executions



Executive summary

This report marks the 40th anniversary of the formal adoption by the United Nations' (UN) quinquennial reports of the 'abolitionist *de facto*' (ADF) category – states retaining the death penalty but not carrying out any execution for at least 10 years. As of 2025, 42 states fall into this category, with a significant concentration in Africa (20 states) and the Caribbean (13 states). Most have been without executions for several decades. Despite the absence of executions, most such states maintain active capital punishment systems in other ways. This could include charging for death-eligible offences, sentencing to death, and growing numbers of people at risk of 'death row syndrome'. In 2024, at least 263 new death sentences were issued across these jurisdictions.

To date, research and focused advocacy on such countries has been limited. This report responds to the knowledge gap concerning the significant and consequential nature of ADF status and states' experiences, which clearly merits attention. It provides detailed analysis of ADF states' practices and rationales, exploring the legal, political and symbolic roles of the death penalty in jurisdictions where it is dormant in practice but active in law, shaping criminal justice practice in sometimes unexpected ways.

Key findings on ADF states' purposes and practices



Heterogeneity across ADF states

Without legal change to remove the death penalty from statutes or to formally suspend executions, executions could be resumed. But beyond that common factor, such states vary widely in their legal systems, political contexts and their application of capital punishment. Some impose death sentences frequently, while others maintain death penalty laws without having sentenced anyone to death for a long time.



Continued existence of death row

While ADF status is often assumed to denote proximity to abolition, in fact, in the majority of ADF states, capital punishment systems continue to operate. Though there are no executions, nearly 70% of these states hold a total of at least 2,850 individuals on death row, often for decades, with their experiences of existential uncertainty typically compounded by harsh conditions. This can result in severe psychological distress and social stigmatisation. These punitive effects mirror those found in retentionist states, generating the psychological toll of 'death row phenomenon'.



Legal and political implications

The mere retention of capital punishment can influence related criminal justice processes – such as defendants' plea decisions – and legitimise punitive sentencing, including life imprisonment without parole. Judges may use death sentences to signal the seriousness of crimes, even when execution is not expected. ADF status may also shape international legal decisions, including those concerning extradition.



Symbolic role of capital punishment

Even without executions, the death penalty holds potent symbolic value. It is a marker of ultimate state power and sovereignty, reinforcing the state's authority to take life and serving political and cultural functions. Indeed, in many of these states, it is a tool of political communication, particularly in 'tough on crime' rhetoric, as can be seen by campaigns to expand death penalty laws to new offences and appeals to the purported 'deterrent effect' of capital punishment.



Challenging historical assumptions of a common trajectory

Contrary to historical assumptions of a common path through a period of ADF status towards the destination of *de jure* abolition, many of these states have not followed a linear trajectory. Analysis of the varied routes establishes, first, that many states have reached *de jure* abolition without a period of ADF status; second, ADF states have been known to resume executions, even if relatively rarely; and third, rather than demonstrating movement towards *de jure* abolition, many states have remained ADF for several decades in prolonged stasis, with death penalty laws seeming more entrenched over time. In some states, ADF status appears to have become the destination rather than a key stage on a journey. Therefore, while many states have reached *de jure* abolition through ADF status, as illustrated by the experience of many European countries, this is but one among several possible trajectories.



Competing logics framework

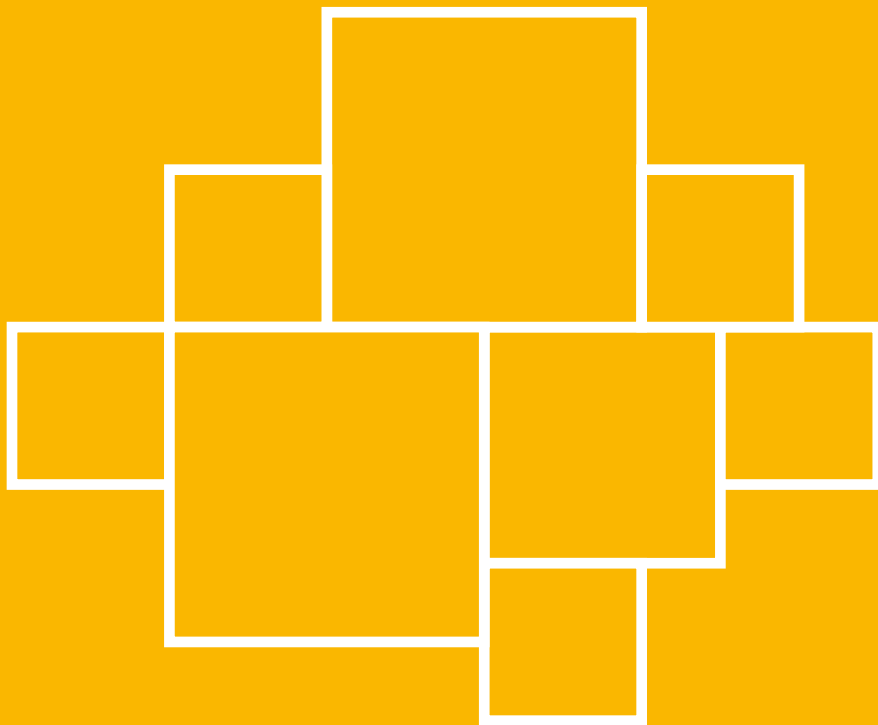
Moving beyond the historical assumption of a common trajectory in order to explain the experiences of today's ADF states, we propose a new theoretical approach centred on 'competing logics'. Within this approach, ADF status arises from the simultaneous presence of factors incentivising suspension of executions alongside factors incentivising retention of death penalty laws. There may be domestic motivations for retention, such as to demonstrate a punitive stance to the electorate, alongside international motivations to suspend executions, such as to avoid criticism in the international sphere.



Barriers to abolition

Beyond the common rationales of deterrence, public opinion and sovereignty found in both retentionist and ADF states, other barriers likely to be more pronounced in ADF states include particularly low public awareness and salience of the issue because of the absence of executions within the jurisdiction, together with the symbolic utility and political convenience of keeping the death penalty. This dynamic appears to encourage institutional and political inertia and entrenchment over time, stalling full legal abolition. ►

ADF states should be praised for the cessation of executions, but greater attention must be paid to their active contribution to the persistence of capital punishment worldwide. The ADF category remains a critical but understudied component of the global death penalty landscape. Recognising the complex, and often contradictory, functions of the death penalty in these states is essential for abolitionist efforts. Advocacy strategies should target both institutional and symbolic dimensions of ADF status, raising awareness of the hidden human, political and legal effects of retaining death penalty laws. Our review of current ADF states has revealed that abolition will not be achieved by time alone or through inaction. Indeed, time can be the enemy of progress, as inertial forces set in. Change requires active political will and informed engagement at both domestic and international levels. Encouraging ADF states to ratify international treaties aimed at abolition or to adopt official moratoria against the death penalty is critical, as is sustained scrutiny until *de jure* abolition. Progress will not come while we assume ADF states are merely paused on their journey to abolition. This report seeks to demystify the apparent enigma of ADF status by offering a competing logics approach to understanding stasis, encouraging nation-level and international engagement informed by a clearer understanding of the phenomenon of ADF. ■



Introduction

In discussions on the death penalty, attention is most often drawn to those states that retain the practice and carry out executions, or those that have gone through the process of abolishing it. Yet, between the two lies a less visible group of states: those that retain the death penalty in law but do not currently carry out executions. Once a retentionist state reaches a period of 10 years without an execution,¹ it is classified by the United Nations (UN) as an ‘abolitionist *de facto*’ (ADF) state. Applying this definition, we find that, at the time of writing, there are 42 states worldwide that would be classified as ADF,² with some regional patterns: the majority are found either in Africa (20 states) or in the Caribbean (13 states).

The ADF category was first included in the UN Secretary-General’s five-yearly reporting on global capital punishment in 1985, and the publication of this report in 2025 therefore marks the 40th anniversary of this key moment in the establishment of the ADF concept. Over the past 40 years, the number of states in this category has grown markedly. During this time, many states have progressed out of the ADF category to fully abolish the death penalty in law, while some others have – relatively rarely, but with some recent examples – resumed executions and returned to the retentionist group. Others, however, have remained in the ADF category over a long period of time. The average length of time since the last execution among the 42 states that we consider to be ADF is 33 years – while, at the maximum, this can reach up to seven decades (as in the case of the Maldives, which has not executed for 73 years). This 40th anniversary presents an opportunity to review the concept of ADF status and its functions from the vantage point of states’ experiences over recent decades.

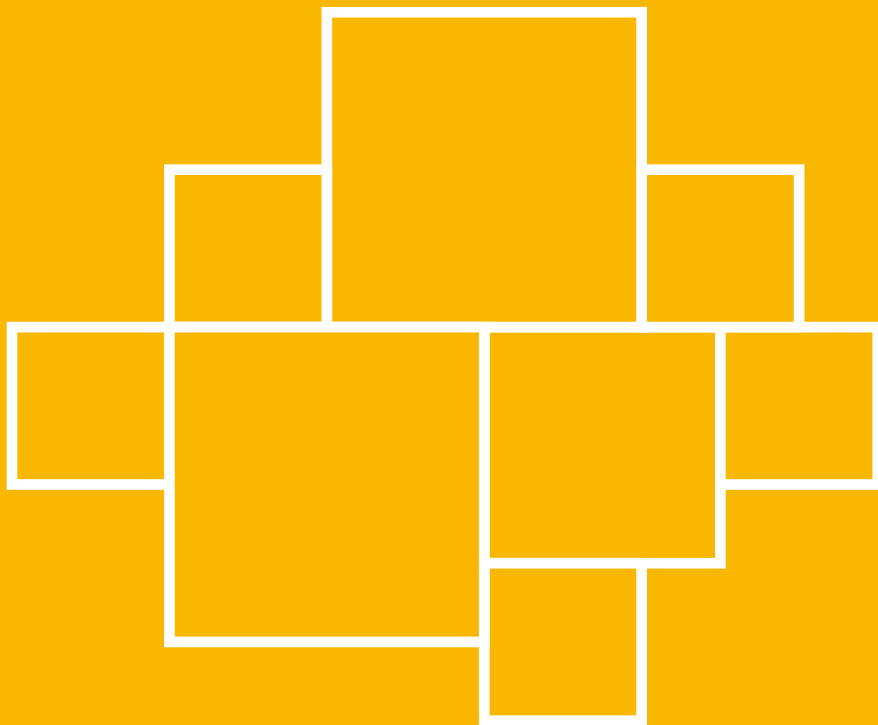
It was also in 1985 that Protocol No. 6 to the European Convention on Human Rights (ECHR), which “sought to eliminate the use of the death penalty in peacetime by the [Council of Europe’s] member states”, entered into force.³ Protocol 6 represented a significant step in the movement for abolition of the death penalty in Europe, and has since been ratified by all 46 member states of the Council of Europe.⁴ With the Council of Europe making abolition of the death penalty a mandatory requirement for membership during the 1990s, the following years saw a wave of abolition across Europe, such that, today, the Council can state that it “has created a death penalty free zone in its 46 member states”.⁵ In many instances, European states first suspended executions under conditions of moratoria, before proceeding to fully abolish the death penalty in law. As such, the European experience of abolition was relatively consistent, allowing us to compare this pattern to the somewhat different trajectories of today’s ADF states.

The concept of ADF status has been subject to limited critical analysis in the decades since its adoption, creating a knowledge gap concerning both the experiences of ADF states and the nature of the concept itself. The objective of this report is therefore to evaluate the

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1. Under the UN’s quinquennial reports, a state can also be classified as abolitionist *de facto* prior to the 10-year mark by virtue of adoption of an official moratorium on executions. See Sections 1 and 2 for further details. In reaching a total of 42 ADF states as of the time of writing, we rely only on the 10-year rule for determining ADF status.
 2. These are: Algeria, Antigua and Barbuda, Bahamas, Barbados, Belize, Brunei Darussalam, Cameroon, Comoros, Cuba, Democratic Republic of Congo, Dominica, Eritrea, Eswatini, Ethiopia, Gambia, Grenada, Guyana, Jamaica, Kenya, Lao People’s Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Malawi, Maldives, Mali, Mauritania, Morocco, Niger, Palestine, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, South Korea, Sri Lanka, Tajikistan, Tanzania, Tonga, Trinidad and Tobago, Tunisia and Uganda.
 3. Rick Fawn, *International Organizations and Internal Conditionality: Making Norms Matter* (Palgrave Macmillan 2013) 92.
 4. Council of Europe, ‘Chart of signatures and ratifications of Treaty 114’ (14 July 2025) <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty-num=114>> accessed 14 July 2025.
 5. Council of Europe, ‘Abolition of the death penalty in Europe’ (2025) <<https://www.coe.int/en/web/abolition-death-penalty/abolition-of-death-penalty-in-europe>> accessed 14 July 2025.

various properties of current ADF experiences and to approach the concept of ADF status from new perspectives that can allow for more nuanced understandings of how it operates in practice and its implications for policy change. Considered from the perspective of the global death penalty landscape, the trajectories taken by these 42 ADF states over the coming decades will have a significant impact, with the potential to expand the number of states that have fully abolished the death penalty in law and in practice, or the number of those in the retentionist group – though some will probably remain within the ADF camp, perhaps perceiving themselves as benefitting from the status quo.

This report proceeds through a thematic approach to the topic of ADF status. It begins in the first section by considering the establishment of the concept of ADF, how it subsequently developed, and debates over the definition and the category. In the second, it examines key variables among the group of ADF states, including their length of time under ADF status, whether death sentences are imposed or not, whether persons are still held on death row, the nature of their moratoria, and their voting patterns at the UN. The third section explores the continued presence of death row in many of today's ADF states, while the fourth explores some wider legal and political implications of the retention of death penalty laws, beyond the capital system itself. In the fifth section, we consider the meanings that have been attached to the concept of ADF status, and review ADF states' experiences against historical assumptions about their trajectories. Section six addresses states' rationales for ADF status, considering the question: why would a state retain death penalty laws without carrying out executions? Section seven then considers the function of the death penalty in the absence of executions, by focusing on its symbolic role in ADF states. Finally, the eighth section examines potential barriers to *de jure* abolition in ADF states, reviewing those that may be similar to rationales for retention found in retentionist states and identifying others that may be more pronounced in ADF states. ■



Section 1

The definitional debate

1.1 The development of the ADF concept

The UN categorises as ADF states that retain the death penalty in their laws but that have either reached a period of 10 years without an execution (the ‘10-year rule’) or have made an international commitment not to execute by establishing an official moratorium.⁶ Applying this definition, the ADF category is one of four main categories in the UN’s regular reporting on the death penalty, along with ‘abolitionist’ (states that have removed the punishment in law and practice), ‘retentionist’ (states with death penalty laws that have carried out an execution in the past 10 years) and ‘abolitionist for ordinary crimes’⁷ (states that have removed the death penalty from their laws other than for exceptional offences, such as military offences or treason).⁸ At the time of the UN’s earliest reporting on the death penalty, in the 1960s, when the concept of ADF status was first discussed, a different definition was applied. In the 1960 report of Marc Ancel to the UN, ADF status was defined as “those [states] whose positive law ... makes provision for the death penalty and where sentences of death are passed but in which such sentences are never carried out by virtue of an established custom”.⁹ At that time, Ancel classified only four states within this category: Belgium, which had not executed for an ordinary offence since 1918;¹⁰ Liechtenstein, which had not executed since 1785;¹¹ Luxembourg, which had not executed since 1949; and the Vatican City, which, from the time of its establishment as a sovereign state in 1929, had never carried out an execution. Ancel also referred to a selection of other states that could not yet be included in the ADF category but “in which an experiment in abolition appears to be in progress”, having not carried out executions for several years, although no precise metric was provided.¹²

From 1975 onwards, the UN issued global death penalty reports on a five-year basis, in the form of the Secretary-General’s quinquennial report on capital punishment.¹³ Initially, these reports did not use the ADF category, but, building on Ancel’s definition, used the category of ‘abolitionist by custom’, defined as states that “although their laws provide the death penalty for ordinary crimes, have not executed those sentenced to death, or have not sentenced anyone to death, for at least the past 40 years”.¹⁴ This relatively stringent 40-year rule may partly be explained by the definition’s additional reference to other newly

6. United Nations, ‘Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty – Report of the Secretary-General’ (2 June 2025) UN Doc E/2025/75, para 2(c). The concepts of official and unofficial moratoria are discussed in further detail in Section 2 of the present report.

7. United Nations (n 6) para 2.

8. There is some conceptual overlap between the categories of ADF and abolitionist for ordinary crimes. In both cases, states carry out no executions in practice while retaining the death penalty in law, albeit in a more limited way in states that are abolitionist for ordinary crimes. Some states have moved from ADF status by removing from their statutes death penalty laws for all ordinary offences, as we have seen recently in Equatorial Guinea (2022), Ghana (2023), Zambia (2023) and Zimbabwe (2024), which have retained the death penalty only for some extraordinary offences. These states have been widely considered to have effectively reached the point of *de jure* abolition, as was the case in the United Kingdom in the period between its passing of legislation to abolish the death penalty for the offence of capital murder in 1965, and its subsequent abolition in 1998 for some remaining extraordinary offences, including treason and offences under military law. The category of abolitionist for ordinary crimes also partly reflects the distinction made in some legal instruments between retention in peacetime versus time of war. For example, Protocol 6 to the European Convention on Human Rights (ECHR) of 1983 required abolition in peacetime, outside of times of war or imminent threat of war, whereas Protocol 13 to the ECHR of 2002 subsequently went further in requiring abolition in all circumstances. For more on the retention of the death penalty for treason offences in particular, see: Ron Dudai, ‘Exception, symbolism and compromise: The resilience of treason as a capital offence’ (2021) 61 *British Journal of Criminology* 1435.

9. UN Department of Economic and Social Affairs, *Capital Punishment: Part I: Report, 1960* (1968) 10.

10. Recorded as 1867 in the 1960 report, but we believe the correct date to be 1918. See: Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (OUP 2015) 50.

11. Recorded as 1798 in the 1960 report, but we believe the correct date to be 1785. See: Hood and Hoyle (n 10) 50.

12. UN Department of Economic and Social Affairs (n 9) 10.

independent states that had not yet sentenced anyone to death. As they had existed as states for less than 20 years, their intended long-term approach was inevitably uncertain.¹⁵ The 40-year rule for abolitionist by custom status was applied in the first quinquennial report in 1975 (to three states: Belgium, Luxembourg and Nicaragua)¹⁶ and the second quinquennial report in 1980 (when no states were included in the category).¹⁷

The ADF category was formally adopted for the first time in the third quinquennial report of 1985. There, alongside the abolitionist by custom category under the 40-year rule, ADF was introduced as a new category for states in which no executions had been reported for at least 10 years.¹⁸ The 1985 report included nine states in the ADF category: Argentina, Brunei Darussalam, Cyprus, Greece, Guyana, Ireland, Madagascar, Mauritius and New Zealand,¹⁹ while two, Belgium and Suriname, were categorised as abolitionist by custom.²⁰ By the time of the fourth quinquennial report in 1990, the abolitionist by custom category was no longer used, replaced entirely by the ADF category, which, by then, applied to 30 states.²¹

In subsequent editions of the UN quinquennial report, the ADF category has been preserved, using the 10-year rule, with significant growth in the number of states moving from the retentionist category to the ADF category. The fifth quinquennial report, in 1995, listed a total of 28 ADF states;²² the sixth, in 2000, listed 38;²³ the seventh, in 2005, listed 41;²⁴ the eighth, ►

13. William Schabas notes: "There are many inconsistencies in the early quinquennial reports. The Secretary-General largely relied upon replies to questionnaires for the information. Many states did not participate actively or consistently in the surveys." See: William Schabas, 'International law and the abolition of the death penalty' in Carol Steiker and Jordan Steiker (eds) *Comparative Capital Punishment* (Edward Elgar 2019) 225.
14. United Nations, 'Capital punishment – Report of the Secretary General' (12 February 1975) UN Doc E/5616, Annex I, 1.
15. United Nations (n 14) Annex I, 2-3.
16. United Nations (n 14) Annex I, 2-3. It should be noted that Luxembourg carried out executions for wartime offences in 1949 and 1950 respectively. In the case of Nicaragua, the death penalty was abolished for all offences when the revolutionary government came to power in 1979. See: Hood and Hoyle (n 10) 50, 70.
17. United Nations, 'Report of the Secretary General on capital punishment' (8 February 1980) UN Doc E/1980/9, Annex, 2-6.
18. United Nations, 'Report of the Secretary General on capital punishment' (26 April 1985) UN Doc E/1985/43, 30.
19. United Nations (n 18) 31-33. Brunei and Mauritius were not listed in the main report, but were categorised as ADF in an addendum document based on additional replies to the quinquennial survey: United Nations, 'Capital punishment – Addendum: Report of the Secretary-General' (8 January 1986) UN Doc E/1985/43/Add.1, 2.
20. United Nations (n 18) 32-33.
21. United Nations, 'Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty – Report of the Secretary-General' (20 March 1990) UN Doc E/1990/38. The 30 listed were: Andorra, Anguilla, Bahrain, Belgium, Bermuda, Bhutan, Bolivia, British Virgin Islands, Brunei Darussalam, Cayman Islands, Comoros, Côte d'Ivoire, Djibouti, Greece, Grenada, Hong Kong, Ireland, Madagascar, Maldives, Montserrat, Nauru, Nepal, Niger, Paraguay, Samoa, Senegal, Sri Lanka, Togo, Trinidad and Tobago, and Turks and Caicos Islands.
22. United Nations, 'Capital punishment and implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty' (8 June 1995) UN Doc E/1995/78, 48. The list of ADF states: Bahrain, Belgium, Bhutan, Bosnia and Herzegovina, Brunei Darussalam, Burundi, Central African Republic, Congo, Comoros, Côte d'Ivoire, Djibouti, Guatemala, Guinea, Madagascar, Maldives, Mali, Nauru, Niger, Papua New Guinea, Philippines, Rwanda, Samoa, Senegal, Sri Lanka, Suriname, Togo, Tonga and Turkey.
23. United Nations, 'Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty – Report of the Secretary-General' (31 March 2000) UN Doc E/2000/3, 71-73. The list of ADF states: Albania, Antigua and Barbuda, Armenia, Barbados, Belize, Benin, Bhutan, Brunei Darussalam, Burkina Faso, Central African Republic, Congo, Côte d'Ivoire, Dominica, Eritrea, Gabon, Gambia, Grenada, Guinea, Jamaica, Lao People's Democratic Republic, Madagascar, Maldives, Mali, Mauritania, Myanmar, Nauru, Niger, Papua New Guinea, Qatar, Samoa, Senegal, Sri Lanka, Suriname, Swaziland, Togo, Tonga, Turkey and Yugoslavia.
24. United Nations, 'Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty – Report of the Secretary General' (9 March 2005) UN Doc E/2005/3, 48-49. The list of ADF states: Algeria, Antigua and Barbuda, Barbados, Belize, Benin, Bhutan, Brunei Darussalam, Burkina Faso, Central African Republic, Democratic Republic of the Congo, Dominica, Eritrea, Gabon, Gambia, Ghana, Grenada, Jamaica, Kazakhstan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Russian Federation, Samoa, Senegal, Sri Lanka, Suriname, Swaziland, Togo, Tonga and Tunisia.

in 2010, listed 47;²⁵ the ninth, in 2015, listed 51;²⁶ the 10th, in 2020, listed a total of 50²⁷; and the 11th, in 2025, a total of 44.²⁸ In addition, one notable change to the definition was made from the 2005 report onwards: even if an execution had been carried out within the last 10 years, states could be included within the ADF category where they had “made an international commitment to the establishment of an official moratorium as a prelude to abolition”.²⁹ This continued growth since its establishment reflects not merely the change in definition from 40 to 10 years, but also the enduring presence of many countries under the ADF category, given the relative lack of movement towards abolition.³⁰

1.2 Consideration of additional criteria

The UN’s definition of ADF status has now remained relatively stable over time, consistently using the 10-year rule for the past 40 years of its reporting, and recognising states that have adopted official moratoria for the past 20 years. However, outside of the UN, other organisations have adopted temporal frameworks but added a more subjective approach to the process of defining. This can provide more nuance – taking into account policy intent – but, because of that, it is not without problems. Most notably, Amnesty International’s definition³¹ requires that states with death penalty laws have not carried out an execution for 10 years and “have a policy or established practice of not carrying out executions”.³² This is based on the organisation’s assessment of each state’s position, which could be contested.³³ Applying this stricter model, Amnesty International classifies 23 states as ADF in its most recent annual report – just more than half of the total of 44 recognised as such in the last UN quinquennial report in 2025.³⁴ The additional criterion means that many states that would be classified as ADF on the basis of the 10-year rule are instead categorised as retentionist. For example, until abolition in December 2024, Zimbabwe was considered retentionist by Amnesty International, notwithstanding the President’s avowed commitment to abolition. The Amnesty International approach also results, somewhat paradoxically, in the labelling of some states with empty death rows as retentionist, and others with significant death row populations as ADF, because of the emphasis placed on outward expression of states’ policies or practices.³⁵

25. United Nations, ‘Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty – Report of the Secretary-General’ (18 December 2009) UN Doc E/2010/10, 64–65. The list of ADF states: Algeria, Antigua and Barbuda, Bahamas, Barbados, Belize, Benin, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo, Dominica, Eritrea, Gabon, Gambia, Ghana, Grenada, Guatemala, Guyana, Jamaica, Kenya, Lao People’s Democratic Republic, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Republic of Korea, Russian Federation, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Sri Lanka, Suriname, Swaziland, Tajikistan, Togo, Tonga, Tunisia, United Republic of Tanzania and Zambia.

26. United Nations, ‘Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty – Report of the Secretary-General’ (13 April 2015) UN Doc E/2015/49, 65–66. The list of ADF states: Algeria, Antigua and Barbuda, Bahamas, Barbados, Belize, Benin, Brunei Darussalam, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cuba, Democratic Republic of the Congo, Dominica, Eritrea, Ghana, Grenada, Guatemala, Guinea, Guyana, Jamaica, Kenya, Lao People’s Democratic Republic, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mongolia, Morocco, Myanmar, Niger, Oman, Papua New Guinea, Qatar, Republic of Korea, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Sri Lanka, Suriname, Swaziland, Tajikistan, Tonga, Trinidad and Tobago, Tunisia, United Republic of Tanzania and Zambia.

27. United Nations, ‘Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty – Report of the Secretary General’ (17 April 2020) UN Doc E/2020/53, para 2(c), 50–51. The list of ADF states: Algeria, Antigua and Barbuda, Bahamas, Barbados, Belize, Brunei Darussalam, Cameroon, Central African Republic, Comoros, Cuba, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Eritrea, Eswatini, Ethiopia, Ghana, Grenada, Guyana, Jamaica, Kenya, Lao People’s Democratic Republic, Lebanon, Lesotho, Malawi, Maldives, Mali, Mauritania, Morocco, Myanmar, Nauru, Niger, Oman, Papua New Guinea, Qatar, Republic of Korea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Sri Lanka, State of Palestine, Tajikistan, Tonga, Trinidad and Tobago, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

28. United Nations (n 6) 54–55. The list of ADF states: Algeria, Antigua and Barbuda, Bahamas, Barbados, Belize, Brunei Darussalam, Cameroon, Comoros, Cuba, DRC, Dominica, Eritrea, Eswatini, Ethiopia, Grenada, Guyana, Jamaica, Kenya, Laos, Lebanon, Lesotho, Libya, Malawi, Malaysia, Maldives, Mali, Mauritania, Morocco, Nauru, Niger, Nigeria, Pakistan, Republic of Korea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sri Lanka, Tajikistan, Tonga, Trinidad and Tobago, Tunisia, Uganda, United Republic of Tanzania, Zimbabwe.

29. United Nations (n 24) 3.

The French abolitionist NGO Ensemble contre la peine de mort (ECPM) categorises as ADF³⁶ those states that retain death penalty laws without executions for at least 10 years and “which did not oppose the latest UN General Assembly resolution for a moratorium on the use of the death penalty and/or having ratified [the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)]”.³⁷ Given the occasional idiosyncrasies in voting behaviour, this approach could sometimes be misleading. For example, recorded votes have not always reflected states’ positions because of administrative errors.³⁸ The Hands Off Cain network, meanwhile, adopts a definition that is similar to that of the UN – states must satisfy the 10-year rule or “have binding obligations not to use the death penalty” – but also distinguishes another smaller category of states that it considers “retentionist countries observing a moratorium on executions”.³⁹ Some have suggested that only those states that have ‘official moratoria’ in place should be included within the ADF category, suggesting that “unofficial moratorium countries are more retentionist than abolitionist, though it is not clear what is meant by an ‘official moratorium’”.⁴⁰

1.3 Critical reflections on the efficacy of the label

Even at the level of the UN quinquennial reports, the utility of the category itself has been questioned. The sixth quinquennial report in 2000, referring to instances where formerly ADF states reverted to executions, expressed concern that “the concept of abolitionist *de facto*, based purely on the criterion of the number of years without any executions, may no longer have the credibility at one time ascribed to it”.⁴¹ The report suggested that “until [ADF states] have clearly indicated their intention to remove capital punishment from their legislation and to subscribe to international conventions which ban its reintroduction, they are best regarded as a subcategory of retentionist states, albeit ones that appear to be moving in the abolitionist direction”.⁴² This doubt about the adequacy of the term has also been expressed by those who prefer the label ‘suspended retentionist’, to emphasise the ►

30. Schabas (n 13) 226-7.

31. Amnesty International uses the term ‘abolitionist in practice’ rather than ‘abolitionist *de facto*’.

32. Amnesty International, *Death Sentences and Executions 2023* (2024) <<https://www.amnesty.org/en/documents/act50/7952/2024/en/>> accessed 14 July 2025, 42.

33. Pascoe and Bae (2021) note that Amnesty International has sometimes categorised states as ADF prior to the 10-year period, giving particular weight to adopting the Second Optional Protocol to the ICCPR, as they suggest may have been the case for Mongolia prior to its full abolition in law. Daniel Pascoe and Sangmin Bae, ‘Idiosyncratic voting in the UNGA death penalty moratorium resolutions’ (2021) 25(6) *International Journal of Human Rights* 974, 988.

34. Amnesty International, *Death Sentences and Executions 2024* (2025) <<https://www.amnesty.org/en/documents/act50/8976/2025/en/>> accessed 14 July 2025, 43.

35. For example, Antigua and Barbuda, Bahamas, Belize, Cuba, Dominica, Jamaica, Lesotho, Saint Kitts and Nevis and Saint Lucia, which have empty death rows, are labelled retentionist; Sri Lanka and Tanzania, with significant death row populations, are labelled ADF.

36. *Ensemble contre la peine de mort* uses the term ‘With a moratorium on executions’.

37. *Ensemble contre la peine de mort*, ‘ECPM – Our interactive map’ (2025) <https://www.ecpm.org/app/mu-plugins/ecpm_webmap_graphic_chart/public/?lang=en> accessed 14 July 2025.

38. See: Pascoe and Bae (n 33) 974.

39. As of the end of 2018, Hands Off Cain listed Algeria, Equatorial Guinea, Malaysia, Mali, Russia and Tajikistan in its ‘retentionist countries observing a moratorium on executions’ category. See: Hands Off Cain, ‘Country status on the death penalty’ (31 December 2018) <<https://www.nessunotocchicaino.it/documento.php?id=60311616>> accessed 14 July 2025.

40. Venus Alves, Bronwyn Dudley and Shahindha Ismail, ‘Importance of understanding phases of abolition: the danger of “abolitionist in practice”’ (*World Coalition Against the Death Penalty*, 6 November 2023) <<https://worldcoalition.org/2023/11/06/importance-of-understanding-phases-of-abolition-the-danger-of-abolitionist-in-practice/>> accessed 14 July 2025. For further detail on the concepts of unofficial and official moratoria, see Section 2 of this report.

41. United Nations (n 23) para 39.

42. United Nations (n 23) para 40.

continued presence of death penalty laws even in the absence of executions, and the risk of their resumption.⁴³

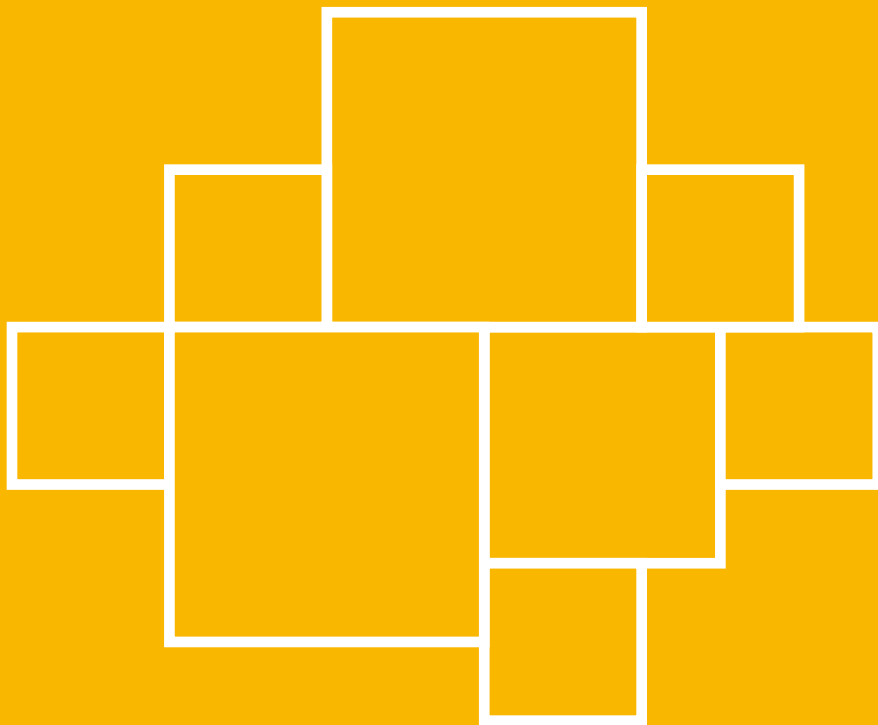
Subsequent UN quinquennial reports have, however, reasserted the predictive value of the ADF category. The eighth quinquennial report, in 2010, concluded that “*de facto* abolition appears to be a useful indicator of future behaviour, and a concept offering valuable assistance in understanding trends with respect to capital punishment in both practice and in law”.⁴⁴ The ninth report, in 2015, repeated this conclusion in slightly more emphatic terms. The 2015 report also noted that over the 30 years since the quinquennial reports had started recording the ADF category, in 1985, 82 states had been listed as ADF, of which only three had since resumed executions and conducted one or more during the period from 2004 to 2013 (albeit this reflects a narrow timeframe of just nine years, and other states have since resumed executions) – suggesting that the ADF category was a solid indicator that executions would not resume in future, and of the potential for movement towards abolition in law in many cases.⁴⁵

Conflicting positions over the definition of ADF status or its overall utility reflect the fact that it can encompass groups of states with significantly varying relationships to the death penalty. While some of the contestation over the most appropriate definition for the ADF category reflects an attempt to police the boundaries of which states should be included or excluded, considering these factors, and ADF states’ differences, can also enable a deeper understanding of the varied and complex nature of the ADF category. These factors are examined in further detail in the next section. ■

43. Roger Hood and Carolyn Hoyle, ‘Abolishing the death penalty worldwide: The impact of a “new dynamic”’ (2009) 38 *Crime and Justice in Historical Perspective* 1, 38.

44. United Nations (n 25) para 22.

45. United Nations (n 26) para 13.



Section 2

Different forms of *de facto* abolition

The purpose of categorising some states as ADF is to distinguish their relationships towards the death penalty from other types of relationships typical of abolitionist *de jure* or retentionist states. Abolitionist *de jure* states have unequivocally renounced the state's authority to use the death penalty and have either amended their constitutions or removed laws providing for it. Many have gone even further in denouncing the death penalty by becoming party to an international standard aimed at the abolition of the death penalty, such as the Second Optional Protocol to the ICCPR and Protocols 6 and 13 to the ECHR.⁴⁶ Retentionist states, on the other hand, continue to carry out executions, some intermittently and some at the rate of hundreds or more per year. ADF states clearly stand apart from both, precarious in that, without legal change to remove the death penalty from their statutes, executions could be resumed: "[the punishment's] dormant existence in law can readily be translated into a practical reality in response to a heightened fear of crime or political instability, such that the practice of executing offenders can be revived after decades without use".⁴⁷

Yet, beyond commonalities across ADF states, this category incorporates states with different characteristics and varying, complex relationships with the death penalty. Rather than assuming a high degree of homogeneity, it is crucial to account for these differences to understand what is meant by ADF status. As Dudai notes: "Paraphrasing Tolstoy, Garland (2010) argues that 'all abolitionist states seem alike, but every death penalty state is retentionist in its own way.' However, the category of *de facto* abolitionist states, which receives little attention and is often presented as merely a temporary stage towards inevitable formal abolition, can be more varied and dynamic than perhaps appears."⁴⁸

Taking a geographical perspective, the ADF category includes states from the Caribbean, Central Asia, East Asia, the Middle East, North Africa, the Pacific, South East Asia, South Asia and sub-Saharan Africa, and encompasses some very large states (e.g. Algeria, Democratic Republic of Congo, Libya) through to some much smaller states (e.g. Grenada, the Maldives, Saint Kitts and Nevis). Naturally the ADF category covers states with a diversity of legal, political, socioeconomic and cultural contexts. With respect to relationships towards the death penalty, several key variables can be highlighted: their length of time under ADF status; whether death sentences are imposed or not and, if so, how many; whether persons are still held on death row and, if so, how many; the nature of their 'moratoria' against executions; and how states vote on death penalty issues at the UN.

2.1 Length of time under ADF status

States within the ADF category differ as to the length of time since their last execution. Among the 42 states that we categorise as ADF, the average period since the last execution is 33 years. This average is broadly reflected across the two main regions in which ADF states are found, the Caribbean and Africa, with an average of 32 years since the last execution among ADF states in the Caribbean and 30 years among ADF states in Africa. Looking at the overall range, some states have only very recently crossed over the line established by the

46. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted 15 December 1989, entered into force 11 July 1991) 1642 UNTS 414; Protocol No 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty (adopted 28 April 1983, entered into force 1 March 1985) ETS No 114; Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (adopted 3 May 2002, entered into force 1 July 2003) ETS No 187.

47. Hood and Hoyle (n 10) 174.

48. Ron Dudai, 'Restraint, reaction, and penal fantasies: Notes on the death penalty in Israel, 1967-2016' (2018) 43(3) Law & Social Inquiry 862, 883.

10-year rule, while others have maintained their ADF status for many decades, reaching up to six or seven decades since the last execution.

To highlight more specific examples, there are six states that crossed the 10-year mark without executions within the last decade, making them the newest members of the ADF category: Gambia (13 years since the last execution in 2012); Libya (15 years, since 2010); Democratic Republic of Congo (17 years, since 2008); Saint Kitts and Nevis (17 years, since 2008); Ethiopia (18 years, since 2007); and Uganda (20 years, since 2005).

On the other hand, there are nine states that have not carried out executions for more than 40 years: Barbados (41 years, since 1984); Eswatini (42 years, since 1983); Tonga (43 years, since 1982); Mali (45 years, since 1980); Grenada (47 years, since 1978); Niger (49 years, since 1976); Sri Lanka (49 years, since 1976); Brunei Darussalam (68 years, since 1957); and the Maldives (73 years, since 1952).⁴⁹

The length of time that a state has spent in ADF status has relevance to both the extent to which its lack of executions might be understood to reflect an intentional commitment against carrying out the practice, as well as the extent to which it might be understood to be moving in the direction of *de jure* abolition. The fact that many states have now spent several decades in ADF status without appearing to move closer to *de jure* abolition presents an analytical challenge in explaining the functions of ADF status, one that is examined in greater detail in Section 5 on the trajectories of ADF states.

2.2 Imposition of death sentences

Despite executions not being carried out, the retention of death penalty laws in ADF states still allows for the imposition of death sentences. Beyond considering the date of the last execution, it is important to recognise the residual power to impose a sentence of death as another key characteristic distinguishing ADF states from those that are abolitionist *de jure*. The extent to which death sentences are imposed is a significant variable within the ADF category: some ADF states very rarely impose new death sentences or have not done so at all in recent years; some do so occasionally or at relatively low levels of single figures in a given year; and others impose tens of new death sentences or more in a given year. These patterns of sentencing may be reasonably consistent for a state, year on year, or may vary according to domestic circumstances.

The imposition of new death sentences in ADF states is reasonably common. During 2024, 16 ADF states (almost 40%) imposed new death sentences.⁵⁰ Of 50 countries categorised as ADF by the UN in 2018, 36 (more than 70%) had imposed at least one death sentence during the previous decade.⁵¹ The total number of new sentences recorded across ADF states in 2024

49. It is worth noting that in the case of both Brunei Darussalam and the Maldives, their last executions occurred prior to their full independence from colonial rule: Brunei Darussalam's last execution occurred in 1957, before it became self-governing in 1959 and achieved full independence in 1984; the Maldives' last execution occurred in 1954, before it achieved full independence in 1965.

50. The states that imposed new death sentences were: Algeria (8); Democratic Republic of Congo (at least 125); Ethiopia (at least 3); Kenya (3); Lao People's Democratic Republic (at least 2); Lebanon (at least 2); Libya (at least 11); Mali (at least 16); Mauritania (at least 23); Morocco (at least 2); Niger (at least 16); Sri Lanka (at least 25); Tanzania (at least 12); Trinidad and Tobago (1); Tunisia (at least 12); Uganda (at least 2). See: Amnesty International (n 34) 12.

51. Roger Hood, 'The enigma of *de facto* abolition of capital punishment' in Rosario de Vicente Martinez and others (eds) *Libro homenaje al profesor Luis Arroyo Zapatero: un derecho penal humanista* (2021) <https://www.law.ox.ac.uk/sites/default/files/migrated/field/field_document/roger_hood_the_enigma_of_de_facto_abolition_of_capital_punishment.pdf> accessed 15 July 2025, 9.

was at least 263.⁵² There is also a regional dynamic, with differences between the Caribbean and Africa: there was just one new reported death sentence across the 13 ADF states in the Caribbean region during 2024 (in Trinidad and Tobago, where the death penalty remains mandatory for murder); whereas among the 20 ADF states in Africa, there were at least 233 new death sentences – heavily skewed by the 125+ recorded in the Democratic Republic of Congo,⁵³ but with new sentences also imposed in 11 other ADF states in Africa.⁵⁴ While many ADF states apply a discretionary sentencing system, meaning that the death penalty is one of a number of options, some retain mandatory death sentences for certain offences, meaning that it is an automatic punishment required by law.⁵⁵ Where mandatory death sentencing is used, the likelihood of defendants receiving a death sentence is vastly increased.

2.3 Death row population

The direct consequence of the continued imposition of death sentences in ADF states is that those who are sentenced to death are detained in prison awaiting execution, notwithstanding that executions are unlikely to be inflicted. The potential for persons to be detained on death row constitutes another key marker distinguishing ADF states from those that are abolitionist *de jure*. The result of ADF states' different death sentencing practices is that some have entirely empty death rows, while others have a population of persons living under sentence of death. Numbers vary, but at the most can reach hundreds of individuals or even thousands: for example, in 2009, the government of Kenya commuted the sentences of more than 4,000 individuals from death row; in 2016, it commuted those of a further 2,700, demonstrating the challenges of managing burgeoning death row populations in countries that sentence to death without executions.⁵⁶

As of the end of 2024, 29 ADF states (almost 70% of the total) were recorded as having persons on death row.⁵⁷ This finding is very significant for our understanding of ADF status, as it underlines the point that a majority of ADF states have active death rows (as discussed in further detail in Section 3, on death row under ADF status). Seven of these have more than 100 individuals on death row: Algeria (at least 262); Kenya (117); Mauritania (at least 150); Sri Lanka (at least 1,000 – currently, the largest); Tanzania (at least 703); Tunisia (148); and Uganda (104). 13 ADF states, for which the figure is known, have fewer than 100 individuals on death row: Barbados (four); Eswatini (one); Gambia (18); Grenada (one); Guyana (24); Lebanon (78); Liberia (at least 15); Maldives (20); Morocco (88); Niger (at least 24); Saint Vincent and the Grenadines (one); South Korea (57); Trinidad and Tobago (37).⁵⁸ A further nine ADF states have persons on death row, but the numbers are unknown.⁵⁹ In total, there are at least 2,850 individuals on death row in ADF states, with the true figure likely to be much higher than

52. Amnesty International (n 34).

53. A dramatic increase in death sentences in the Democratic Republic of Congo followed the lifting of a moratorium and official expressions of intent to resume executions, which would remove the country from the ADF category and return it to retentionist status. As of the time of writing in July 2025, executions have not been resumed. See: Olivier Lungwe Fataki, 'The death penalty in the DRC: An illusory means of combating impunity in the face of human rights implementation' (*World Coalition Against the Death Penalty*, 30 August 2024) <<https://worldcoalition.org/2024/08/30/the-death-penalty-in-the-drc/>> accessed 14 July 2025.

54. Amnesty International (n 34).

55. See Parvais Jabbar, 'Imposing a mandatory death penalty: A practice out of sync with evolving standards' in Carol Steiker and Jordan Steiker (eds) *Comparative Capital Punishment* (Edward Elgar Publishing 2019) 138.

56. Death Penalty Information Center, 'President commutes all death sentences in Kenya' (27 October 2016) <<https://deathpenaltyinfo.org/president-commutes-all-death-sentences-in-kenya>> accessed 14 July 2025; 'Kenyan president commutes all death sentences to life in prison' (*Reuters*, 25 October 2016) <<https://www.reuters.com/article/us-kenya-president-idUSKCN1201PN/>> accessed 14 July 2025.

57. Amnesty International could not provide new information on the death penalty in Palestine because of the impacts of armed conflict. Amnesty International (n 34) 10.

this.⁶⁰ Looking at this from a regional perspective, the phenomenon of empty death rows in ADF states is heavily concentrated in the Caribbean – of the 13 ADF states in the Caribbean, 10 have either zero or only one person on death row – while death row prison populations are more common in Africa, accounting for 57% of the known global ADF death row population.

Kenya is an archetypal example of the ‘high death sentencing, high death row population’ model in Africa: it regularly passes high numbers of death sentences each year (only three in 2024, but previously 131 in 2023,⁶¹ 79 in 2022⁶²), accumulating large death row populations, before using commutations to manage this. While not on the same scale as Kenya, in Zimbabwe, prior to *de jure* abolition in December 2024, death sentences continued to be imposed (one in 2021,⁶³ three in 2023⁶⁴) and there were approximately 48 individuals incarcerated on death row.⁶⁵ Meanwhile, both Belize and the Bahamas conform to the ‘low death sentencing, empty death row’ model now common across the Caribbean: there have been no death sentences imposed in Belize since 2005 and its death row has been empty since 2015;⁶⁶ no death sentences imposed in the Bahamas since 2013, and its death row empty since 2016.⁶⁷

2.4 Nature of moratoria under ADF

The concept of ADF status has significant overlap with that of a ‘moratorium’ on executions, which is defined by the World Coalition Against the Death Penalty (WCADP) as a “temporary suspension of executions and, more rarely, of death sentences”.⁶⁸ By the time a state is classified as ADF, having gone for 10 years without executions taking place, it can also be described as having an unofficial moratorium in place, on the basis of its practice. However, the two concepts diverge at the point at which a moratorium might be identified prior to the 10-year mark required for the ADF category, given that moratoria do not necessarily involve the same strict temporal element. Where a moratorium is recognised primarily on the basis of a state practice of consistently not carrying out executions, this is referred to as constituting an ‘unofficial moratorium’, sometimes also referred as ‘*de facto* moratoria’. In preference for conceptual clarity, this report does not use this term, to avoid confusion ►

58. Amnesty International (n 34).

59. Brunei Darussalam, Cameroon, Comoros, Democratic Republic of Congo, Ethiopia, Lao People’s Democratic Republic, Libya, Malawi and Mali: Amnesty International (n 34).

60. Total are the authors’ calculations based on figures provided in Amnesty International’s 2025 reporting: Amnesty International (n 34).

61. Amnesty International (n 32) 12.

62. Amnesty International, *Death Sentences and Executions 2022* (2023) <<https://www.amnesty.org/en/documents/act50/6548/2023/en/>> accessed 14 July 2025, 12.

63. Amnesty International, *Death Sentences and Executions 2021* (2022) <<https://www.amnesty.org/en/documents/act50/5418/2022/en/>> accessed 14 July 2025, 12.

64. Amnesty International (n 32) 12.

65. The Death Penalty Project, ‘Press release: Zimbabwe takes historic decision to abolish the death penalty’ (31 December 2024) <<https://deathpenaltyproject.org/press-release-zimbabwe-takes-historic-decision-to-abolish-the-death-penalty/>> accessed 14 July 2025; Tanyaradzwa Rusike, ‘29 death row inmates resented’ (*Zimbabwe Situation*, 23 June 2025) <<https://www.zimbabwesituation.com/news/29-death-row-inmates-resented/?tztc=1>> accessed 18 July 2025.

66. World Coalition Against the Death Penalty and The Advocates for Human Rights, ‘Belize: Stakeholder report for the United Nations Universal Periodic Review: The Death Penalty’ (July 2023) <<https://www.theadvocatesforhumanrights.org/Res/AHR%20Belize%20UPR%20Death%20Penalty%20Final%202.pdf>> accessed 14 July 2025, 2.

67. Greater Caribbean for Life, The Advocates for Human Rights and World Coalition Against the Death Penalty, ‘The Bahamas: Death Penalty: Joint Stakeholder Report for the United Nations Universal Periodic Review’ (June 2017) <https://www.theadvocatesforhumanrights.org/Res/bahamas_-_human_rights_council-_death_penalty_-_june_2017%202.pdf> accessed 14 July 2025.

68. World Coalition Against the Death Penalty, ‘Helping the world achieve a moratorium on executions’ (20 December 2022) <<https://worldcoalition.org/campagne/helping-the-world-achieve-a-moratorium-on-executions/>> accessed 14 July 2025.

with the definitionally more precise concept of ADF status. In some cases, the suspension of executions under an unofficial moratorium may be the result of an active internal choice not to carry them out; in other cases it may be for practical reasons, such as difficulty acquiring execution drugs in some states within the United States of America (U.S.), while sometimes the nature of the circumstances behind the suspension may appear unclear to external observers.

While all ADF states can be understood as operating at least an unofficial moratorium on the basis of their state practice of not carrying out executions, some states go one step further in their commitment to the suspension of executions, by establishing an ‘official moratorium’. An official moratorium involves the state issuing a formal decision confirming the suspension of executions (and possibly also death sentences). This decision could take a variety of forms, and may originate from the executive, the legislature or the judiciary. The establishment of an official moratorium can thus be understood as introducing additional legal and/or political barriers to the resumption of executions. Among states in the ADF category, then, some may be understood as operating an official moratorium, where deliberate actions of this kind have been taken in addition to the state practice of not carrying out executions.

Examples of the varied implementation of official moratoria from different elements of the state can be observed worldwide in recent decades. Some have involved a decision on the part of the executive: for example, in 2021 the U.S. Attorney General under the Biden administration issued a memorandum announcing the suspension of executions under the U.S. federal system.⁶⁹ Similarly, in 2019 the Governor of the U.S. state of California issued an executive order announcing a moratorium on executions in the state.⁷⁰ Elsewhere, decisions to establish official moratoria have emanated from the legislature. For example, in 1990, the Parliament of Bulgaria passed a decision “on deferral of the execution of death sentences”, formally implementing a moratorium on executions, which remained in place until the country’s *de jure* abolition in 1998.⁷¹ In Kazakhstan in 2004, an official moratorium announced by the President in 2003 was further formalised by the Parliament’s adoption of amendments to the Criminal Code, suspending the implementation of executions during the time of the moratorium.⁷² In other cases, official moratoria have been judicially established or confirmed, as with the confirmation of Russia’s Presidentially established moratorium by its Constitutional Court in 1999⁷³ and 2009,⁷⁴ and the U.S. Supreme Court case of *Furman v Georgia* (1972), which effectively imposed a moratorium on federal and state executions in the U.S. from 1972 to 1976 by declaring existing capital punishment laws unconstitutional.⁷⁵

69. Office of the U.S. Attorney General, ‘Memorandum for the Deputy Attorney General, The Associate Attorney General and Heads of Departments Components’ (1 July 2021) <https://www.justice.gov/d9/2022-12/attorney_general_memo_randum_july_1_2021.pdf> accessed 14 July 2025.

70. Executive Department of the State of California, ‘Executive Order N-09-19’ (13 March 2019) <<https://www.gov.ca.gov/wp-content/uploads/2019/03/3.13.19-EO-N-09-19.pdf>> accessed 14 July 2025.

71. *Iorgov v Bulgaria* App no 40653/98 (ECtHR, 11 March 2004), paras 12-19; Amnesty International, ‘Bulgaria: Abolition of the death penalty – a step forward in human rights protection’ (11 December 1998) <<https://www.amnesty.org/ar/wp-content/uploads/2021/06/eur150211998en.pdf>> accessed 14 July 2025.

72. Organization for Security and Co-operation in Europe (OSCE), *The Death Penalty in the OSCE Area* (2004) Background Paper 2004/1, Human Dimension Implementation Meeting <<https://www.osce.org/files/f/documents/c/d/13974.pdf#page=23>> accessed 14 July 2025, 23.

73. Penal Reform International, *The abolition of the death penalty and its alternative sanction in Eastern Europe: Belarus, Russia and Ukraine* (March 2012) <<https://cdn.penalreform.org/wp-content/uploads/2013/05/Eastern-European-research-Death-Penalty-Alternative-Sanctions-ENGLISH-March-2012.pdf#page=27>> accessed 14 July 2025, 25.

74. Haley Wojdowski, ‘Russia Constitutional Court extends moratorium on death penalty’ (*Jurist*, 19 November 2009) <<https://web.archive.org/web/20220307211816/https://www.jurist.org/news/2009/11/russia-constitutional-court-extends>> accessed 14 July 2025; Fawn (n 3) 127.

75. *Furman v Georgia* 408 US 238 (1972).

76. International Commission Against the Death Penalty, *How states abolish the death penalty: 29 case studies* (May 2018) <<https://icomdp.org/wp-content/uploads/2020/10/ICDP-2018-MAYO-PENA-DE-MUERTE-V3.pdf#page=62>> accessed 14 July 2025, 62.

The establishment of an official moratorium has been a key step preceding the shift to *de jure* abolition for many states. This was the case in Kazakhstan (as noted above), Kyrgyzstan, Mongolia, South Africa and the Philippines.⁷⁶ Turkmenistan also reached *de jure* abolition following an official moratorium.⁷⁷ The role of official moratoria in supporting *de jure* abolition can also be observed among the experiences of many European states that reached *de jure* abolition in the 1990s and 2000s. Selected examples from this era include the adoption of official moratoria by: Estonia in 1992, prior to *de jure* abolition in 1998;⁷⁸ Poland in 1995, prior to *de jure* abolition in 1997;⁷⁹ Latvia in 1996, prior to *de jure* abolition in 1999;⁸⁰ and Georgia in 1997, prior to *de jure* abolition in 2000;⁸¹ among various other examples from the same period. This dynamic is reflective of the requirement on the part of the Council of Europe from the 1990s onwards for aspiring member states to commit to abolition of the death penalty, including by adopting an immediate moratorium on executions.⁸²

However, an official moratorium is not the only possible route to *de jure* abolition, as others reached this stage following an unofficial moratorium, with Fiji, Guatemala, Guinea, Congo and Suriname as examples of this route.⁸³ Nonetheless, the nature of moratoria is another notable variable within the ADF category, which must be considered alongside the other factors raised in this section: whereas one state may have entered into the ADF category with minimal intention to do so and no official pronouncements or commitments not to execute in future, another may be following a consistent policy direction against executions and have put in place an official moratorium.

Considering some examples from current ADF states in the key regions of the Caribbean and Africa, Belize,⁸⁴ Bahamas,⁸⁵ Kenya⁸⁶ and Zimbabwe⁸⁷ all have (or had, in the case of Zimbabwe prior to its *de jure* abolition) in place something that could be named as an 'unofficial moratorium'. In the case of Bahamas,⁸⁸ Kenya⁸⁹ and Zimbabwe,⁹⁰ the presence of a moratorium has been referenced by the state in international fora (though in reality for some such states, this is not necessarily a strong political commitment to the cessation of executions; rather it could be seen as an acknowledgment that they have not executed for more than 10 years and so are ADF), while in Belize's case it has seemingly only been discussed implicitly, without reference to the term 'moratorium'.⁹¹ Among other current ADF states, Tajikistan has maintained an official moratorium since 2004, following the ►

77. Fawn (n 3) 103.

78. Council of Europe Parliamentary Assembly, 'Abolition of the death penalty in Europe' Doc 7589 (25 June 1996) <<https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7571&lang=EN>> accessed 14 July 2025.

79. Council of Europe Parliamentary Assembly (n 78).

80. Office of the President of the Republic of Latvia, 'Former presidents of Latvia: Guntis Ulmanis' (16 March 2021) <<https://www.president.lv/en/guntis-ulmanis>> accessed 14 July 2025.

81. Fawn (n 3) 100.

82. Parliamentary Assembly of the Council of Europe, 'Recommendation 1246 (1994) on the Abolition of Capital Punishment' (4 October 1994) <<https://pace.coe.int/en/files/15280>> accessed 14 July 2025; Council of Europe, 'Timeline: Abolition of the death penalty' (2025) <<https://www.coe.int/en/web/abolition-death-penalty/timeline>> accessed 14 July 2025.

83. International Commission Against the Death Penalty (n 76) 62.

84. World Coalition Against the Death Penalty and The Advocates for Human Rights (n 66) 2.

85. Greater Caribbean for Life, The Advocates for Human Rights and World Coalition Against the Death Penalty (n 67) 2.

86. World Coalition Against the Death Penalty, Reprieve, International Commission of Jurists Kenya and the Advocates for Human Rights, 'The Republic of Kenya: Joint Stakeholder Report for the United Nations Universal Periodic Review: The Death Penalty' (October 2024) <[https://www.theadvocatesforhumanrights.org/Res/Kenya%20UPR%20DP%20FINAL%20\(1\).pdf](https://www.theadvocatesforhumanrights.org/Res/Kenya%20UPR%20DP%20FINAL%20(1).pdf)> accessed 14 July 2025.

87. Amnesty International Zimbabwe, 'Zimbabwe: President must sign Death Penalty Abolition Bill into law following landmark passage by Senate' (12 December 2024) <<https://www.amnesty.org.zw/2024/12/zimbabwe-president-must-sign-death-penalty-abolition-bill-into-law-following-landmark-passage-by-senate/>> accessed 14 July 2025.

88. UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Bahamas' (18 June 2018) UN Doc A/HRC/28/9/Add.1, 2.

submission of a Bill to Parliament by the President, which was adopted as the Death Penalty (Suspension) Act, prohibiting the carrying out of executions and the imposition of new death sentences.⁹² Algeria, another ADF state, is classified by some observers as having maintained an official moratorium against executions since 1993.⁹³ Conversely, the Democratic Republic of Congo, in March 2024, formally announced the lifting of its moratorium on executions through the issuing of an official circular letter from the Ministry of Justice to this effect – although, as of the time of writing, no executions have since been carried out.⁹⁴ Actions that formalise an ADF state's moratorium against executions may provide additional guarantees against the likelihood of the resumption of executions.

2.5 UN resolution voting practices

A further area in which variance among states within the ADF category can be seen is in their voting practices at the international level. Every two years, the UN General Assembly holds a vote on a resolution calling for a universal moratorium on the use of the death penalty, which provides one of the foremost opportunities for states to formally express their current position on the issue. For those states in the retentionist and abolitionist categories, voting practices can be expected to broadly reflect their domestic positions: at the most recent vote in December 2024, 90% of abolitionist states voted in favour of the resolution, while 90% of retentionist states voted against, abstained or did not vote. Yet the voting practices of ADF states were much less predictable, with 15 (36%) voting in favour of the resolution, 12 (29%) voting against it, and 13 (31%) abstaining.⁹⁵ This further demonstrates the heterogeneous stances on the death penalty among ADF states. In providing an opportunity for states to express their positions on the death penalty at the international level, voting on this resolution also allows states to signal changes in their position: for example, in 2024, Morocco voted in favour of the moratorium resolution for the first time, reflecting the government's encouragement of a domestic political debate towards *de jure* abolition.⁹⁶ ■

89. Republic of Kenya, 'Statement by the Minister for Justice, National Cohesion and Constitutional Affairs, Hon. Martha Karua, at the presentation of Kenya's Initial Report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (November 2008) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FSTA%2FKEN%2F41%2F11030&Lang=en> accessed 14 July 2025, 4.

90. Peta Thornycroft, 'Zimbabwe: There is "de facto moratorium" on executions' (*The Star*, 10 August 2012) <<https://www.loc.gov/item/global-legal-monitor/2012-08-21/zimbabwe-de-facto-moratorium-on-capital-punishment/>> accessed 15 July 2025.

91. Government of Belize, 'Statement: 40th session of the Human Rights Council: Consideration of the outcome of the Universal Periodic Review of Belize, 14–15 March 2019' (March 2019) <https://upr-info.org/sites/default/files/documents/2019-04/belize_plenary_statement_2019.pdf> accessed 14 July 2025, 4.

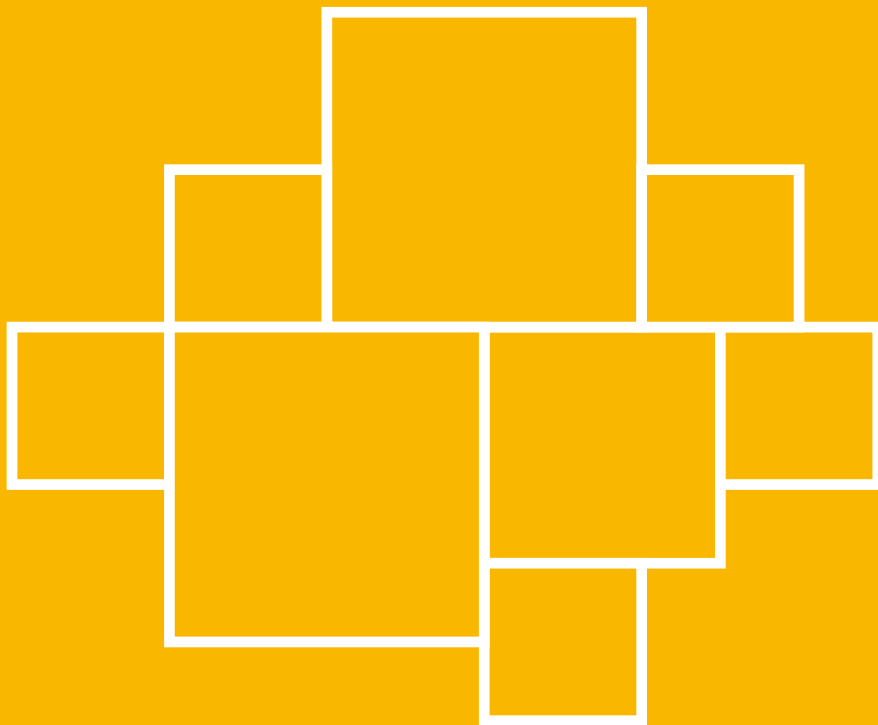
92. Penal Reform International, *The abolition of the death penalty and its alternative sanction in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan* (February 2012) <https://cdn.penalreform.org/wp-content/uploads/2013/05/Central-Asia-research-report-on-death-penalty-and-life-imprisonment_ENGLISH.pdf> accessed 14 July 2025, 38.

93. Florence Bellivier and Lorene du Crest, 'Algeria: It's time to move from the moratorium to the abolition' (*World Coalition Against the Death Penalty*, 24 May 2017) <<https://worldcoalition.org/2017/05/24/algeria-its-time-to-move-from-the-moratorium-to-the-abolition>> accessed 14 July 2025; International Commission of Jurists, *Flawed and Inadequate: Algeria's Constitutional Amendment Process: A Briefing Paper* (October 2020) <<https://www.icj.org/wp-content/uploads/2020/10/Algeria-NewConstitution-Advocacy-Analysis-Brief-2020-ENG.pdf>> accessed 14 July 2025, 17.

94. Ensemble contre la peine de mort, 'Lifting of the moratorium in the DRC: ECPM and CPJ call for the non-instrumentalisation of the death penalty' (March 2024) <<https://web.archive.org/web/20250211154911/https://www.ecpm.org/en/lifting-of-the-moratorium-in-the-drc-ecpm-and-cpj-call-for-the-non-instrumentalisation-of-the-death-penalty/>> accessed 14 July 2025.

95. The 15 ADF states that supported the resolution were Algeria, Antigua and Barbuda, Eritrea, Gambia, Kenya, Lebanon, Liberia, Malawi, Mali, Morocco, Republic of Korea, Sri Lanka, Tajikistan, Tunisia and Palestine, while those who voted against were Barbados, Brunei Darussalam, Ethiopia, Jamaica, the Maldives, Mauritania, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Tonga and Trinidad and Tobago. Abstentions were recorded for the Bahamas, Cameroon, Comoros, Cuba, Democratic Republic of Congo, Eswatini, Guyana, Lao People's Democratic Republic, Lesotho, Niger, Tanzania, Uganda and Zimbabwe. Dominica and Grenada did not vote.

96. Basma El Atti, 'Morocco moves to abolish death penalty, activists demand broad reform' (*New Arab*, 11 December 2024) <<https://www.newarab.com/news/morocco-moves-abolish-death-penalty>> accessed 14 July 2025; Conseil national des droits de l'Homme – Maroc, 'CNDH welcomes the Moroccan government's decision to vote for UN resolution on death penalty moratorium' (10 December 2024) <<https://www.cndh.ma/en/cndh-welcomes-moroccan-governments-decision-vote-un-resolution-death-penalty-moratorium>> accessed 14 July 2025.



Section 3

Death row experiences in ADF states

Although executions are not carried out under ADF status, death row can persist as a result of the ability of ADF states to impose death sentences. In fact, as noted in Section 2, ADF states are more likely than not to have an active death row, with persons living under a death sentence: the majority (almost 70%) of ADF states were reported to have people on death row as of 2024.⁹⁷ This notable finding has received limited recognition elsewhere to date. As such, many of the features of death row in ADF states mirror those commonly found in retentionist states, while some elements may be particular to ADF states. This section explores key aspects of the experience of death row in ADF states, including: the psychological impacts on death-sentenced persons; prison conditions and treatment regimes; the impact on vulnerable and disadvantaged groups; social stigmatisation of those sentenced to death; and the use of commutations by some ADF states.

3.1 Psychological impacts of death row

Where people are detained on death row, they necessarily live in a state of significant existential uncertainty, with direct negative psychological consequences.⁹⁸ The specific effects of living under these conditions have been encapsulated in the concept of ‘death row phenomenon’ or ‘syndrome’, which has received recognition in international jurisprudence and in international tribunals over recent decades. Death row phenomenon is the result of a combination of factors: detention under poor conditions on death row, for extended periods of time, being faced with the ongoing threat of execution. This can result in severe harm to these individuals’ mental and physical wellbeing, and has been interpreted as a form of cruel, inhuman or degrading treatment.⁹⁹ The risk of this psychological harm applies to persons on death row in ADF states as it does in retentionist states: the fact that an ADF state has not carried out an execution for 10 years or more does not alter the reality that those on death row are still, in principle, awaiting execution: “While the torture of being under constant threat of execution in retentionist countries is well recognised, few appreciate that even in ADF countries the shadow of death is always there.”¹⁰⁰

These psychological impacts are reflected in reporting of experiences of death row from various ADF states. In Tanzania – which has the second-largest death row population among ADF states – conditions are very restricted and people are isolated, with those on death row “suffer[ing] from the psychological impacts of death row phenomenon like others on death row around the world do”.¹⁰¹ In Sri Lanka – which has the largest death row population among ADF states – a 2020 study by the Human Rights Commission of Sri Lanka found

97. Figures taken from Amnesty International’s annual death penalty report 2024: Amnesty International (n 34).

98. Hood and Hoyle (n 10) 202.

99. *Soering v United Kingdom* (1989) 11 EHRR 439 (ECtHR); *Hilaire v Trinidad and Tobago*, Inter-American Commission on Human Rights, Report No 66/99, Case 11.855, OEA/Ser.L/V/II.106 Doc 3 rev (1999); *Hilaire, Constantine and Benjamin et al v Trinidad and Tobago* (Merits) IACtHR Series C No 94 (2002). See also Hood and Hoyle (n 10) 340; *Pratt and Morgan v Attorney General for Jamaica* [1994] 2 AC 1 (PC).

100. Amanda Clift-Matthews, “‘We don’t execute’: The neglected reality of condemned prisoners in ADF countries” (*Death Penalty Research Unit Blog*, 10 October 2023) <<https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2023/10/we-dont-execute-neglected-reality-condemned>> accessed 14 July 2025.

101. Fulgence Massawe, ‘DPRU Q&As: Fulgence Massawe, Legal and Human Rights Centre (LHRC), Tanzania’ (*Death Penalty Research Unit Blog*, 13 March 2024) <<https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2024/03/dpru-qas-fulgence-massawe-legal-and-human-rights>> accessed 14 July 2025.

102. Human Rights Commission of Sri Lanka, *Prison study by the Human Rights Commission of Sri Lanka* (2020) <<https://doi.org/10.26180/13383260.v1>> accessed 13 June 2025, 464.

103. *Pratt and Morgan v Attorney General for Jamaica* [1994] 2 AC 1 (PC); *Kigula and 416 Others v Attorney General* [2005] UGCC 8 (10 June 2005) Constitutional Petition No 6 of 2003 (Constitutional Court of Uganda); Hood and Hoyle (n 10) 212–217.

104. Human Rights Watch, ‘Joint letter: South Korea’s abolition of the death penalty’ (27 March 2023) <<https://www.hrw.org/news/2023/03/27/joint-letter-south-koreas-abolition-death-penalty>> accessed 14 July 2025.

that those under sentence of death were likely to be affected by death row phenomenon, observing that: “The uncertainty of whether or not you might be hanged by the order of the executive tomorrow or next month or in a couple of years creates severe mental anguish... The prolonged time in detention compounds the unrelenting mental strain of living in fear of execution.”¹⁰² While comprehensive mental health assessments of death row populations in ADF states are lacking, it is likely that persons on death row across many ADF jurisdictions worldwide are affected in these ways.

From the perspective of an individual on death row, facing a death sentence in an ADF rather than a retentionist state may provide little reassurance, with concerns that executions may still be possible. As a result, those on death row in ADF states can spend very long periods of time living in fear of execution. The suffering inflicted by spending extended periods of time awaiting execution has been recognised in jurisprudence from the Judicial Committee of the Privy Council and other courts,¹⁰³ and this has played a major role in restricting the use of long-term detention on death row in the Caribbean region. But where such restrictions do not apply, the nature of ADF status means that it is possible for persons on death row to remain under sentence of death for many years or even decades. In South Korea, the longest-serving death-sentenced person has now spent more than 30 years on death row.¹⁰⁴ Furthermore, as discussed in Section 5, some ADF states can resume executions, and although this is relatively rare, there have been some recent examples of this. Even when they do not, the threat may sometimes be made, causing those on death row to be closely attuned to political shifts that might lead to their execution. For example, in 2021, the Attorney-General of Trinidad and Tobago (which has not carried out an execution since 1999) suggested that the country was planning to implement executions again.¹⁰⁵

3.2 Conditions on death row in ADF states

The experience of existential uncertainty for those on death row can be compounded by the harmful impacts of detention in poor conditions, which are common to many states’ death row facilities, including in ADF states (although conditions vary from state to state). Conditions on death row across the Caribbean have consistently been found to be poor by the assessments of international human rights bodies.¹⁰⁶ In the case of Guyana, for example, which has not carried out an execution since 1997 and had 24 individuals on death row as of 2024,¹⁰⁷ the prison system is reported to be afflicted by problems of overcrowding, along with poor sanitation and a lack of potable water.¹⁰⁸

In Mauritania, which has not carried out an execution since 1987 and had at least 150 individuals on death row as of 2024,¹⁰⁹ prison conditions are reported to be harsh, with overcrowding, sanitation issues and limited access to food and healthcare, with many

105. Clift-Matthews (n 100).

106. See: Inter-American Commission on Human Rights, ‘IACHR completes 174th period of sessions’ (20 November 2019) <https://www.oas.org/en/iachr/media_center/PReleases/2019/301.asp> accessed 26 June 2025. See also the Concluding Observations of the UN Human Rights Committee in relation to death row and prison conditions in Caribbean states, e.g. UN Human Rights Committee, ‘Concluding observations on the fourth periodic report of Jamaica’ (10 April 2009) UN Doc CCPR/C/JAM/CO/4, para. 31; UN Human Rights Committee, ‘Concluding Observations on the Initial Report of Belize’ (11 December 2018) UN Doc CCPR/C/BLZ/CO/1/Add.1, para 30.

107. Amnesty International (n 34) 16.

108. World Coalition Against the Death Penalty, Greater Caribbean for Life and the Advocates for Human Rights, ‘Co-operative Republic of Guyana, Joint Stakeholder Report for the United Nations Universal Periodic Review: The Death Penalty’ (11 October 2024) <[https://www.theadvocatesforhumanrights.org/Res/Guyana%20TAHR%20WCADP%20GCL%20UPR%20DP%20FINAL%20\(1\).pdf](https://www.theadvocatesforhumanrights.org/Res/Guyana%20TAHR%20WCADP%20GCL%20UPR%20DP%20FINAL%20(1).pdf)> accessed 14 July 2025, 2.

109. Amnesty International (n 34) 35.

persons on death row held in a remote and difficult-to-access facility in the desert.¹¹⁰ Reports from Sri Lanka also suggest that persons on death row experience prison overcrowding, poor sanitation and strict restrictions on time spent outside of their cells.¹¹¹ One individual who was formerly detained on death row in Kenya (referring to a period prior to reforms to the prison system) described spending the first years of his detention sharing a small cell with 13 others – with no mattresses or blankets, and sharing a bucket in the cell as a toilet, while subject to violent abuse from guards – as “torture”.¹¹²

While some aspects of the prison conditions that those on death row are subject to may reflect those of the wider prison system, they are often subject to even harsher treatment regimes: “...often treated separately and less favourably than other prisoners.”¹¹³ In certain ADF states in Africa and the Caribbean: “Death row prisoners are often segregated from the rest of the prison population. Reports by inmates of solitary confinement, or of being locked in their cell for 22 to 23 hours a day, are common.”¹¹⁴ In Tanzania, persons on death row are held in long-term solitary confinement, in segregation from the ordinary prison population and made to wear a different colour of clothing, without access to any of the activities that others in the prison can participate in.¹¹⁵ Persons on death row may also be excluded from activities intended to support rehabilitation, such as educational activities offered to others in the prison,¹¹⁶ as is the case in Trinidad and Tobago, for example.¹¹⁷

3.3 Impact on vulnerable and disadvantaged groups

Where death sentences continue to be imposed in ADF states, it is those from the most marginalised groups in society that are most likely to be found on death row. As in retentionist jurisdictions, the risk of wrongful convictions resulting in death sentences remains in ADF states. No system yet developed, no matter how sophisticated, has been able to overcome the inherent presence of arbitrariness, with the most vulnerable and disadvantaged in society subject to the greatest risk of execution and the significant risks of wrongful conviction. In fact, in some ADF states, these risks may increase if the assumption that executions will not be carried out reduces capital defendants’ access to effective legal representation and reduces post-conviction review of cases and wider scrutiny of the administration of the criminal process. A report published in 2022, based on interviews with 671 individuals who were currently or formerly held on death row in Kenya, found that they were overwhelmingly from disadvantaged backgrounds, with the majority poorly educated, and, perhaps in consequence, the vast majority reported not having been aware that the offence they were convicted of could result in a death sentence.¹¹⁸

110. Ensemble contre la peine de mort, *The death penalty in law and practice: Mauritania* (January 2023) <<https://www.ecpm.org/app/uploads/2023/01/flyer-MAURITANIE-GB-071222-MD-b.pdf>> accessed 14 July 2025, 3; Prison Insider, ‘Mauritania: Detention conditions of people sentenced to death’ (18 January 2022) <<https://www.prison-insider.com/en/articles/mauritanie-conditions-de-detention-des-condamnes-a-mort>> accessed 14 July 2025.

111. Human Rights Watch, ‘Sri Lanka: Death sentence for prison official’ (17 January 2022) <<https://www.hrw.org/news/2022/01/17/sri-lanka-death-sentence-prison-official>> accessed 14 July 2025.

112. David Rose, ‘Voices from death row: Pete Ouko’s 18 years on death row in Kenya’ (*Death Penalty Research Unit Blog*, 19 May 2023) <<https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2023/05/voices-death-row-pete-oukos-18-years-death-row>> accessed 14 July 2025.

113. Hood and Hoyle (n 10) 202.

114. Clift-Matthews (n 100).

115. Massawe (n 101).

116. Clift-Matthews (n 100).

117. World Coalition Against the Death Penalty, The Advocates for Human Rights and Greater Caribbean for Life, ‘Trinidad and Tobago’s compliance with the International Covenant on Civil and Political Rights: The death penalty’ (12 September 2023) <<https://www.theadvocatesforhumanrights.org/Res/TAHR%20GCL%20WCADP%20CCPR%20DP%20Final.pdf>> accessed 14 July 2025, 6.

3.4 Stigmatisation of persons on death row

The imposition of death sentences can also have the effect of attracting significant social stigma to those on death row in some social contexts, including in ADF states: “In Africa, in particular, there is the problem of ostracisation of condemned inmates by their families and communities. The stigma of a death sentence means that the prisoner is, in effect, expelled from their home village.”¹¹⁹ In some states, women on death row are likely to be separated from their children, who are brought up to disown them.¹²⁰ Such concerns about the social stigma borne by those on death row have been expressed by experts in Kenya, who note that those receiving a death sentence are perceived as “deserving of death”, with social stigma so strong that it can remain even if an individual has their sentence overturned or commuted and is released from prison.¹²¹ While the nature of any social stigma may differ between social contexts, it is important to appreciate that this can be an added, and often unseen, burden of being subject to a death sentence in an ADF state.

3.5 Use of clemency and commutations

Despite the lingering threat of execution in some ADF states, many death sentences are ultimately served as terms of imprisonment, which may eventually result in the individual’s release. Where executions are not currently being carried out, some ADF states use clemency¹²² or commutation processes to manage their death row populations. Under ADF status, “confinement in the restricted and often overcrowded conditions of a death row becomes an additional punishment to what will eventually become life imprisonment, the only means of escape being a successful plea for clemency. This may not occur until many years of suffering have been endured.”¹²³ Certain ADF states have made notable use of large-scale commutations in recent decades: the Kenyan government commuted the death sentences of more than 4,000 individuals in 2009 (the largest mass commutation from death row on record);¹²⁴ more than 2,700 in 2016¹²⁵ and more than 600 in 2023¹²⁶; Tanzania commuted those of 100 in 2002¹²⁷ and more than 250 in 2020;¹²⁸ and Malawi commuted those of 79 in 2004¹²⁹ ►

118. Carolyn Hoyle and Lucrezia Rizzelli, *Living with a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row* (The Death Penalty Project 2023) <<https://deathpenaltyproject.org/knowledge/kenya-socio-economic-report/>> accessed 14 July 2025; The Death Penalty Project, ‘Press release: New research exploring socio-economic profiles of Kenya’s death row prisoners’ (24 January 2023) <<https://deathpenaltyproject.org/new-research-exploring-socio-economic-profiles-of-kenyas-death-row-prisoners/>> accessed 14 July 2025.

119. Clift-Matthews (n 100).

120. Clift-Matthews (n 100).

121. Authors’ interviews with criminal justice experts in Kenya; Hoyle and Rizzelli (n 118) 54.

122. Daniel Pascoe, *Executive Clemency: Comparative and Empirical Perspectives* (Routledge 2021).

123. Hood and Hoyle (n 10) 203.

124. World Coalition Against the Death Penalty, ‘4,000 death sentences commuted in Kenya’ (6 August 2009) <<https://worldcoalition.org/2009/08/06/4000-death-sentences-commuted-in-kenya/>> accessed 14 July 2025.

125. Death Penalty Information Center, ‘President commutes all death sentences in Kenya’ (27 October 2016) <<https://deathpenaltyinfo.org/president-commutes-all-death-sentences-in-kenya>> accessed 14 July 2025.

126. Dominic Kabiru, ‘Press release: Commutation of death sentences to life imprisonment: A welcome move!’ (Kenya National Commission on Human Rights, 27 July 2023) <<https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1168/Press-Release-Commutation-of-Death-Sentences-to-Life-Imprisonment-A-Welcome-Move>> accessed 14 July 2025.

127. Amnesty International, *Amnesty International Report 2003* (2003) <<https://www.amnesty.org/en/documents/poi10/0003/2003/en/>> accessed 14 July 2025, 245.

128. Louis Linel, ‘256 death sentences commuted into life in Tanzania’ (World Coalition Against the Death Penalty, 11 December 2020) <<https://worldcoalition.org/2020/12/11/256-death-sentences-commuted-into-life-in-tanzania/>> accessed 14 July 2025.

129. Sandra Babcock and Ellen Wight McLaughlin, ‘Reconciling human rights and the application of the death penalty in Malawi: The unfulfilled promise of Kafantayeni v. Attorney General’ in Peter Hodgkinson (ed) *Capital Punishment: New Perspectives* (Routledge 2016) 181.

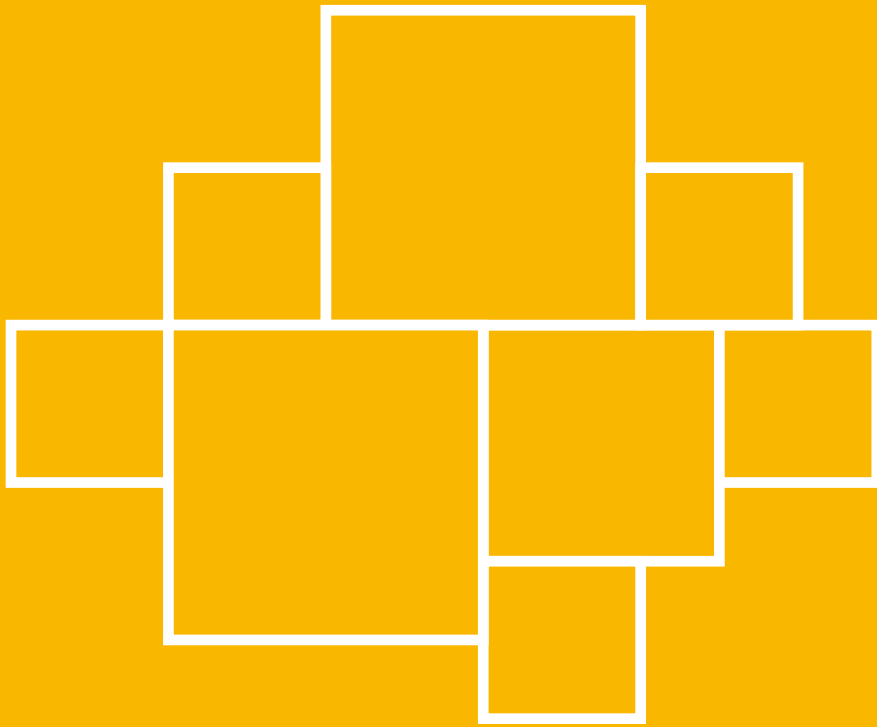
and a further 22 in 2022.¹³⁰ Experts in Kenya suggested two possible functions for these mass commutations: first, that they could serve a symbolic function, as a demonstration of the mercy of the state; and second, that they could be a method to manage the death row population, preventing the number of people on death row from growing to unmanageable levels while death sentences continue to be handed down.¹³¹ Where such commutations are used, individuals' death sentences are generally commuted to long prison sentences, such as a sentence of life imprisonment, and they may be eligible for release once this sentence has been served. Yet such outcomes can be highly arbitrary, and the possibility of commutation is unlikely to be clear to those sentenced to death during their time on death row.

Worldwide, the issues discussed in this section arising from the persistence of death row under ADF status impact several thousand individuals – especially in sub-Saharan Africa, which collectively accounts for 57% of the known total of ADF death row prison population (approximately 1,600, according to reported figures). Yet the situation of these individuals receives far less attention than that of those on death row in retentionist states, where the errors and arbitrariness of the capital punishment system, and the cruelty of holding people for long periods on death row awaiting execution, have led some – for example in the U.S. – to declare that they will no longer “tinker with the machinery of death.”¹³² While this lack of attention partly results from the fact that there is not the same level of threat of execution, this section has set out various ways in which persons on death row in ADF states endure the harmful effects of life on death row. As such, they are subject to very severe forms of punishment, which, for some, lasts over the course of decades. ■

130. Archangel Nzungaya, 'Human rights advocates applaud Chakwera for removing 22 prisoners from death row' (Malawi24, 18 August 2022) <<https://malawi24.com/2022/08/18/human-rights-advocates-applaud-chakwera-for-removing-22-prisoners-from-death-row/>> accessed 14 July 2025.

131. Interviews conducted by the authors with criminal justice experts in Kenya.

132. In the 1994 case of *Callins v. Collins*, U.S. Supreme Court Justice Harry Blackmun's dissenting opinion recorded that “from this day forward” he would no longer “tinker with the machinery of death” to describe a capital punishment system – with its cruelty and arbitrariness – that was fundamentally broken: 510 US 1141, 1145 (1994).



Section 4

Wider legal and political implications of ADF status

While executions are not carried out, retaining the death penalty in the law can shape ADF states' legal and political landscapes in a variety of indirect ways, including: influences on the state's approach to punishment; impacts for the criminal justice system; the risk of reduced external scrutiny of the death penalty system; and implications for decision-making in courts and human rights bodies in view of the state's death penalty practices.

4.1 Influence on the state's approach to punishment

The enduring presence of capital punishment in law can shape the state's broader approach to the punishment of crime. In a direct sense, retention of death penalty laws necessarily preserves the principle that the state can, if it chooses, take life through a judicial process. In other words: "While a state remains in ADF status, the idea that it is legitimate for the state to kill its citizens remains embedded in the culture."¹³³ This legitimating function normalises the potential for lethal state violence as part of the relationship between the citizen and the state.¹³⁴

Furthermore, retention of death penalty laws can be seen to bolster the use of other retributive punishments. In the U.S. context, the discriminatory presence of the death penalty as the apex punishment is seen by some to "legitimise all other harsh and discriminatory punishments".¹³⁵ In an ADF state, even if not executed, individuals may still be subject to years or even decades on death row, or ordinary prison sentences of very significant lengths, as an ostensibly less severe outcome than the implementation of the most punitive sentence available, execution. As such, death penalty laws may serve to legitimise the state's ability to kill and to impose other highly punitive punishments, including life without the prospect of parole, which may not be challenged by penal reformers if it is but the second most harsh sentence available.¹³⁶

In addition, under ADF status, death sentences may be imposed with the assumption, though never with the guarantee, that the punishment will not be carried out. A 2019 supplementary report to the UN Secretary-General's quinquennial report on the death penalty expressed concern that: "During long moratoriums, when death sentences continue to be handed down in the belief that they will not be implemented, such sentences can effectively begin to function as a way for the judge to underline the particular seriousness of the offence, with no intention or expectation on the part of the judge or other participants in the justice system that they will be carried out."¹³⁷ At the local level, reflecting on the intentions of judges imposing death sentences in Kenya, which has not executed anyone for decades, one observer has commented that "a central intention is to emphasise the severity of the offence".¹³⁸ This dynamic may even mean that defendants

133. Hood (n 51) 15. Similarly, ethical philosophers, Andre and Velasquez argue that: "Allowing the state to inflict death on certain of its citizens legitimises the taking of life." Claire Andre and Manuel Velasquez, 'Capital punishment: Our duty or our doom?' (Markkula Centre for Applied Ethics, 16 November 2015) <<https://www.scu.edu/ethics/focus-areas/more-focus-areas/resources/capital-punishment-our-duty-or-our-doom/>> accessed 2 May 2025.

134. Dudai (n 48) 872.

135. Ngozi Ndulue, cited in Death Penalty Information Center, 'Enduring injustice: The persistence of racial discrimination in the U.S. death penalty' (15 September 2020) <<https://deathpenaltyinfo.org/research/analysis/reports/in-depth/enduring-injustice-the-persistence-of-racial-discrimination-in-the-u-s-death-penalty>> accessed 2 May 2025; see also: Jonathan Simon and Christina Spaulding, 'Tokens of our esteem: Aggravating factors in the era of deregulated death penalties' in Austin Sarat (ed) *The Killing State: Capital Punishment in Law, Politics and Culture* (OUP 2001) 81, on the use of capital aggravators as "a kind of currency through which states seek to recognise various concerns and valorise certain kinds of subjects and situations".

136. Marion Vannier, *Normalising extreme imprisonment: The case of life without parole in California* (OUP 2021).

are at greater risk of facing capital charges and/or of receiving a death sentence because of expectations within the criminal justice system that executions will remain suspended.¹³⁹ In other words, some judges may be immoderate in their use of the death penalty, feeling safe in the assumption that it will not be executed and so can function as a deterrent or moral censure without harm, resulting in a less parsimonious approach to sentencing. Judges may also impose death sentences in order to meet perceived public demands for their imposition, on the basis that executions are unlikely to follow. In either case, this implies the risk of increased arbitrariness in sentencing and that suspension of executions may in fact facilitate harsher and more punitive sentencing practices.

4.2 Impact on the criminal justice system

The continued presence of death penalty laws under ADF status has the potential to influence the operations of the criminal justice system. In jurisdictions in which death sentences are a discretionary punishment, defendants may be incentivised to plead guilty to seek to avoid, or reduce the risk of, receiving a death sentence. In urban counties in the U.S., “significantly more defendants plea bargain to a life or long sentence in states where the death penalty is available”.¹⁴⁰ Indeed, in the U.S. state of Georgia “the threat of the death penalty increases the probability of a plea agreement by approximately 20 to 25 percentage points”.¹⁴¹ Assuming that similar patterns apply in other jurisdictions beyond the U.S., the retention of death penalty laws in ADF states where the death penalty is discretionary may result in a greater likelihood of defendants pleading guilty to death-eligible offences, distorting patterns of individual decision-making. The spectre of the death penalty can also be deployed by prosecutors, even if only rhetorically, to emphasise the seriousness of the case and apply pressure on the defendant.¹⁴²

In some ADF jurisdictions, the mandatory death penalty is retained for certain offences (as detailed in Section 2). Where mandatory sentencing applies, the logic suggested above for discretionary sentencing would be reversed, and defendants may instead be incentivised to plead not guilty in order to avoid the certainty of a death sentence, with clear implications for the efficiency of the criminal justice system. In the UK, prior to *de jure* abolition, one reported effect of mandatory death sentencing for murder was a reluctance among juries to convict where they did not think the case was deserving of a death sentence, even if they were persuaded of the guilt of the defendant.¹⁴³ While the authors are not aware of any empirical studies evaluating the impact of the presence of mandatory death sentencing on defendants’ plea decisions, in ADF states or otherwise, we suggest that given the lack of discretion afforded to sentencing judges in such circumstances, the only available choice for defendants in seeking to avoid the risk of execution is to plead not guilty. ►

137. United Nations, ‘Capital punishment at the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty: Yearly supplement of the Secretary-General to his quinquennial report on capital punishment’ (28 August 2019) UN Doc A/HRC/42/28, para 39.

138. Jill Ghai, ‘What are Kenyan judges doing when they sentence someone to death?’ (*The Star*, 24 March 2024) <<https://katibainstitute.org/what-are-kenyan-judges-doing-when-they-sentence-someone-to-death>> accessed 2 May 2025.

139. United Nations (n 137) para 28.

140. Kent Scheidegger, ‘The death penalty and plea bargaining to life sentences’ (February 2009) Criminal Justice Legal Foundation Working Paper 09-01 <<https://www.cjlf.org/publications/papers/wpaper09-01.pdf>> accessed 2 May 2025.

141. Sherod Thaxton, ‘Leveraging death’ (2013) 103(2) *Journal of Criminal Law and Criminology* 475.

142. See: Dudai (n 8) 1444.

143. UK, HC Deb 10 February 1955, vol 536, col 2129; Julian Knowles, *The Abolition of the Death Penalty in the United Kingdom* (The Death Penalty Project 2015) <<https://www.deathpenaltyproject.org/wp-content/uploads/2017/12/DPP-50-Years-on-pp1-68-1.pdf>> accessed 2 May 2025, 21.

4.3 Reduced external scrutiny

The shift from the retentionist category to the ADF category once a state passes 10 years since its last execution can engender a reduction in external scrutiny over the administration of its capital punishment system. This point is aptly made by Dudai, who writes: “When countries are categorised as *de facto* abolitionist, they recede from the attention of the human rights machinery and activism, as well as of academic research.”¹⁴⁴ This is partially the result of the need for international institutions, organisations and researchers to focus limited resources on scrutinising retentionist states that are actively undertaking executions: during 2024, for example, the retentionist states responsible for the most executions worldwide included China, Saudi Arabia and Iran, with hundreds of executions in each (or thousands, in the case of China).¹⁴⁵ By comparison, reporting on and researching the death penalty among a group of 42 ADF states that collectively account for zero executions per year can appear to be a far less urgent task. This dynamic also partially results from the relative scarcity of information from many ADF states: if no executions are carried out, there is often far less official reporting and media coverage, and this lack of salience is even more pronounced in ADF jurisdictions where death sentences are rarely, if ever, imposed.

4.4 Evaluation of states’ practices in courts’ rulings

The retention of death penalty laws in ADF states has potential implications for decisions involving those states made by international, regional and national courts, and human rights treaty bodies. For the European Court of Human Rights (ECtHR), consideration of states’ practices with respect to moratoria has arisen in two main domains: first, in relation to decisions concerning extradition or the risk of refoulement of asylum seekers or migrants to non-Council of Europe member states; second, in decisions concerning applicants’ risk of execution in European states during periods of moratoria prior to their *de jure* abolition.

In relation to extradition and refoulement decisions, the ECtHR has held a consistent position against the removal of individuals to states where they could face a real risk of execution if satisfactory assurances against execution have not been provided by the requesting state.¹⁴⁶ In several past cases, the Court has considered such decisions in relation to states that operated moratoria, and considered the nature of the moratorium in reaching its decision.¹⁴⁷ In *Kabulov v Ukraine* (2009), the applicant’s extradition from Ukraine had been requested by Kazakhstan (prior to its *de jure* abolition), and the applicant contended that he would face a real risk of execution if he were extradited and the moratorium was lifted. In reaching its decision, as well as taking into account the assurances against the imposition of capital charges provided by the Kazakh authorities, the Court evaluated the

144. Ron Dudai, ‘Dead or alive? Reassessing the health of the death penalty and prospects of global abolition’ (2024) 28(2) *Theoretical Criminology* 139, 146.

145. Amnesty International UK, ‘Amnesty International’s Annual Report on the Death Penalty – 2024’ (8 April 2025) <<https://www.amnesty.org.uk/groups/reading/amnesty-internationals-annual-report-death-penalty-2024>> accessed 2 May 2025.

146. *Soering v United Kingdom* (1989) 11 EHRR 439 (ECtHR).

147. For an example of domestic-level jurisprudence demonstrating the potential for judicial examination of moratoria to go one step further than examining the risk of execution, also accounting for the impact of the experience of detention on death row, see: *Government of the Republic of Ghana v Gambrah* (2014) EWHC 1569 (Admin). In that case, the High Court of England and Wales considered a request to extradite an individual to Ghana, where he faced charges of murder. Ghana was an ADF state at the time, prior to its *de jure* abolition in 2023, and the death penalty was the mandatory sentence for the offence of murder. The Ghanaian authorities had provided assurances that if a death sentence was imposed, no execution would be carried out. The High Court held that the fact that a death sentence may be imposed was not itself a bar to extradition, and given the reliability of the assurances, there was no real risk of execution. However, it went on to consider the conditions of the individual’s potential detention on death row, together with the personal circumstances of his mental health. It concluded that his extradition to face a death sentence in Ghana could lead him to suffer inhuman and degrading treatment and prohibited his extradition on this basis.

nature of the moratorium in Kazakhstan at the time, and concluded that the applicant did not face a real risk of execution.¹⁴⁸ In *Baysakov and others v Ukraine* (2010), the Court considered another application from an individual whose extradition from Ukraine to Kazakhstan had been requested. The Court again was cognisant of the status of the moratorium in Kazakhstan, as well as official assurances against seeking capital charges in the case and concluded that there was not a real risk of the applicant facing execution if extradited – noting that the “mere possibility” of the moratorium being lifted could not constitute such a risk.¹⁴⁹

More recently, in *Saidani v Germany* (2018), the Court considered an application concerning the applicant’s deportation from Germany to the ADF state of Tunisia, where he faced terrorism charges that could attract a death sentence.¹⁵⁰ The Court accepted that the charges meant there was a real risk of the applicant receiving a death sentence, but considered the moratorium on executions, in place in Tunisia since 1991, together with diplomatic assurances that the death penalty, if imposed, would not be carried out.¹⁵¹ In doing so, the Court concluded that there was no real risk that the applicant’s execution would be carried out in Tunisia, with any death sentence likely to be commuted to a life sentence, so his deportation should not be prohibited on that basis.¹⁵² (One scholar has noted the apparent distinction between the approach of the ECtHR in extradition decisions of this kind and the recent approach of the Italian higher courts, arguing that extradition from Italy to any state with death penalty laws would be prevented in all circumstances, even where assurances against execution are provided.)¹⁵³

The Court’s contemporary approach aligns with that taken in older admissibility decisions reached by the former European Commission on Human Rights. In *Muhadri v Austria* (1997), for example, the applicant argued that he could face the death penalty if expelled to Yugoslavia, but the Commission concluded that, as Yugoslavia had had a moratorium in place since 1993, the applicant’s claim that the moratorium could in theory be lifted was not a sufficient risk to prevent his expulsion.¹⁵⁴

With regards to decisions concerning the death penalty in European states that have not yet reached *de jure* abolition, the ECtHR has also examined the nature of moratoria in place in order to evaluate whether the applicant was facing, or had faced, a real risk of execution. *Iorgov v Bulgaria* (2004) concerned an applicant whose death sentence was confirmed in 1990, at the time when a Parliamentary moratorium against executions was in place prior to Bulgaria’s *de jure* abolition in 1998, and who argued that his experience on death row had amounted to torture or inhuman or degrading treatment. While finding that the material conditions of his detention had violated the prohibition on inhuman and degrading treatment, the Court distinguished his experience of death row from that of those subject ►

148. *Kabuolov v Ukraine* App no 41015/04 (ECtHR, 19 November 2009), paras 101-103.

149. *Baysakov and others v Ukraine* App no 54131/08 (ECtHR, 18 February 2010), paras 79-82.

150. *Saidani v Germany* App no 17675/18 (ECtHR, 4 September 2018), paras 4-6.

151. *Saidani v Germany* (n 150) paras 32-33.

152. *Saidani v Germany* (n 150) paras 32-40. See also: *M.I. v Bosnia and Herzegovina* App no 47679/17 (ECtHR, 29 January 2019), paras 57-58, concerning the applicant’s extradition to Russia from Bosnia and Herzegovina, wherein the Court affirmed the effect of the moratorium on capital punishment in place in Russia in foreclosing any risk of execution.

153. Gianmarco Bondi, ‘Extradition and the death penalty: Perspectives from Italy’ (June 2025) Oxford DPRU Research Paper Series <<https://www.law.ox.ac.uk/sites/default/files/2025-06/Gianmarco%20Bondi%20-%20Extradition%20and%20the%20death%20penalty.pdf>> accessed 2 July 2025.

154. *Muhadri v Austria* App no 31007/96 (ECtHR, Commission Plenary Decision, 20 October 1997).

to death row phenomenon in retentionist states, given the moratorium against executions that remained in place throughout his time on death row.¹⁵⁵ The Court reached the same finding in the similar case of *G.B. v Bulgaria* (2004), which involved an applicant whose death sentence was confirmed in 1990, during the time of the moratorium against executions.¹⁵⁶ In *Poltoratskiy v Ukraine* (2003), the applicant had been sentenced to death in Ukraine in 1995, before the adoption of a moratorium on executions in 1997 and *de jure* abolition in Ukraine in 2000. In determining his claim of treatment amounting to torture or inhuman and degrading treatment, the Court accepted that his death sentence must have caused “uncertainty, fear and anguish” prior to abolition, but that the risk of execution and his related feelings must have decreased over time as the moratorium stayed in place.¹⁵⁷

The Court reached similar decisions in a series of cases involving the moratorium in place in Turkey prior to *de jure* abolition. In the Court’s admissibility decision in *Cinar v Turkey* (2004), the applicant had been sentenced to death in 1984, and had his sentence confirmed in 1987, and alleged exposure to death row phenomenon prior to an amnesty for death-sentenced prisoners in 1991. In its response, the Turkish government affirmed the nature of the moratorium during that period, citing the National Assembly’s “clear and established policy of not authorising enforcement of the death penalty” after 1984. The Court held that, given that no executions were approved after 1984, the risk of execution for the applicant had been “illusory” and rejected the application.¹⁵⁸ In *Demir v Turkey* (2005), the applicant had been sentenced to death in 1997, had his sentence confirmed in 1999 and also claimed that he had suffered from death row phenomenon. The Court held that, given the moratorium, the execution of the applicant was “purely hypothetical” and so he had not faced a real risk of execution.¹⁵⁹ The same approach was applied by the Commission in its earlier decision in *Z.Y. v Federal Republic of Germany* (1990), in which the applicant faced expulsion to Turkey after serving a prison sentence in Germany for drug trafficking, and argued that he could face the death penalty for the same offence in Turkey. The Commission emphasised the suspension of executions in Turkey since 1984 and rejected the applicant’s arguments relating to his risk of facing capital punishment.¹⁶⁰

The UN Human Rights Committee, which decides individual complaints against eligible states party to the ICCPR, has also previously considered the nature of death penalty moratoria in ADF states in its case law. In *Weerawansa v Sri Lanka* (2009), the complainant had received a mandatory death sentence for the offence of murder. Despite the state’s arguments that it had applied a moratorium on executions for several decades, the Committee found that the mandatory nature of the death sentence constituted an arbitrary deprivation of the right to life under Article 6(1) of the ICCPR, as the death sentence itself constituted the violation.¹⁶¹ In *Johnson v Ghana* (2014), the Committee again considered a complaint from an individual who had been subject to a mandatory death sentence for murder (determined when Ghana was still an ADF state, prior to its *de jure* abolition in 2023).

155. *Iorgov v Bulgaria* App no 40653/98 (ECtHR, 11 March 2004), paras 74–87.

156. *G.B. v Bulgaria* App no 42346/98 (ECtHR, 11 March 2004), paras 74–88.

157. *Poltoratskiy v Ukraine* App no 38812/97 (ECtHR, 29 April 2003), para 135.

158. *Cinar v Turkey* (dec) App no 17864/91 (ECtHR, 5 September 1994).

159. *Fikri Demir v Turkey* (dec) App no 55373/00 (ECtHR, 23 March 2005).

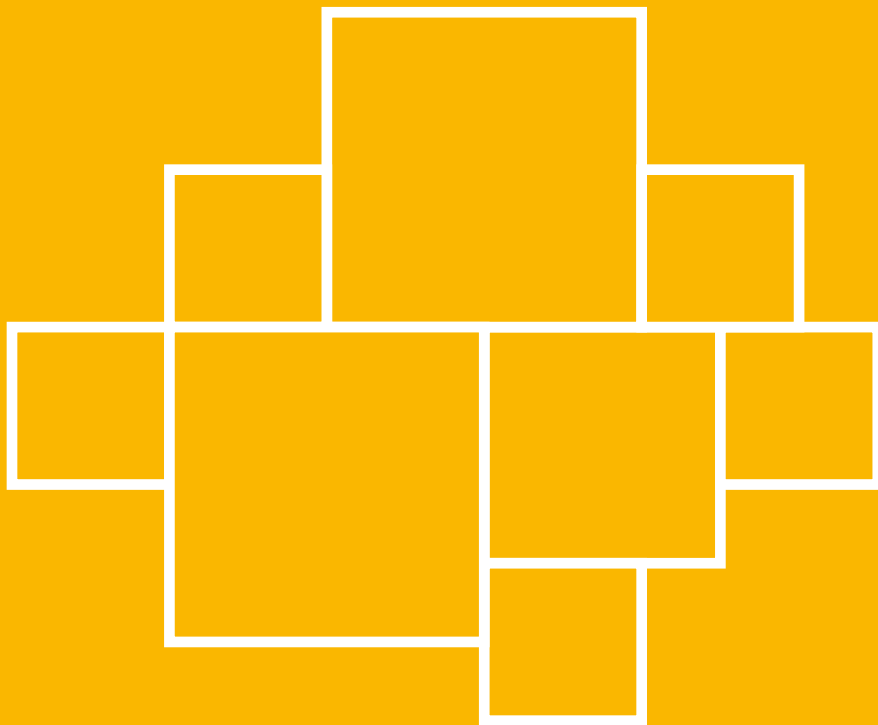
160. *Z.Y. v Federal Republic of Germany* App no 16846/90 (ECtHR, Commission, 13 July 1990).

161. *Weerawansa v Sri Lanka* (Human Rights Committee, 17 March 2009) Communication No 1406/2005, UN Doc CCPR/C/95/D/1406/2005, para 7.2.

In reaching the consistent decision that a moratorium did not overcome the fact that a mandatory death sentence was an arbitrary deprivation of life under Article 6(1) ICCPR, the Committee noted that, while it acknowledged Ghana's ADF status: "...the *de facto* moratorium does not guarantee that a death sentence will not be carried out at a later point." It also considered in its assessment the fact that Ghana had not yet voted in favour of the UN General Assembly resolution for a moratorium on the death penalty.¹⁶²

This section has reviewed some of the wider legal and political implications for states of retaining death penalty laws under ADF status. The key argument is that, despite the suspension of executions, ADF states retain all the ingredients of a death penalty system, bringing with it a range of implications beyond the process itself. Some of these pertain to international engagement with the state's practices, such as the extent of scrutiny of the death penalty system or decision-making in courts and human rights bodies. Other implications are domestic: shaping the state's relationship to punishment and potentially affecting defendants' plea decision-making, which can shape victims' and defendants' experiences of justice. There are a variety of further implications that could also be evaluated, but these factors alone highlight the complexity of ADF status and that, without *de jure* abolition, the retention of death penalty laws will continue to have a range of legal and political implications. ■

162. *Johnson v Ghana* (Human Rights Committee, 18 November 2013) Communication No 2177/2012, UN Doc CCPR/C/110/D/2177/2012, para 7.2.



Section 5

Assumptions about ADF trajectories

The creation of the concept of ADF status not only provided a means to distinguish such states from abolitionist and retentionist states, but also brought with it implicit meanings about the future trajectories of ADF states. In particular, conceptualisations of what it means to be ADF have been heavily shaped by the idea that ADF status constitutes a temporary phase preceding *de jure* abolition, with countries following a common trajectory towards this end point. This notion of a common trajectory drew inspiration from the views of Marc Ancel in his early report for the Council of Europe, published in 1962, where he wrote that: “The process of abolition has usually taken a long time and followed a distinctive pattern... leading to *de facto* abolition, and eventual abolition *de jure*.”¹⁶³ Although Ancel did not see this as the only route to *de jure* abolition, his words succinctly capture the widespread understanding of the function of ADF status: that it existed as a key step along a common ‘road to abolition’ as states progressed gradually in the direction of *de jure* abolition.¹⁶⁴

Assumptions about the function of ADF status are situated in broader expectations about the movement of states worldwide towards universal abolition of capital punishment. The expectation of a unidirectional shift of this kind is clearly expressed in the view that: “Progress towards the universal abolition of capital punishment may take much longer than the human rights movement desires, but the eventual outcome seems clear. The question is not ‘if’, but ‘when.’”¹⁶⁵ This broader expectation is critiqued by Dudai, who identifies what he terms a ‘teleological tendency’, which is “displayed in a common assumption that the world is moving inevitably towards full global abolition”,¹⁶⁶ with capital punishment “soon to be swept away by historical currents”.¹⁶⁷ Dudai argues that blending the normative view that the death penalty should be universally abolished with the empirical assumption that it is being universally abolished can pose analytical problems, obscuring the actual workings of the death penalty prior to its total demise, including the functions of the death penalty under ADF.¹⁶⁸ Reviewing states’ actual experiences of abolition trajectories can assist in establishing the accuracy of these assumptions.

5.1 De jure abolition without ADF status

First, history has shown us that a period of ADF status is not a prerequisite to moving to *de jure* abolition. This expectation might be based on the view that a period of time under ADF status would constitute a required interim phase, during which time a state could prepare for *de jure* abolition – for example, by engaging with its citizens to build public support for policy change. Yet this assumption is countered by the historical experiences of other states that have abolished the death penalty in law without a 10-year period without executions: between 1989 and 2014, of 52 states that abolished the death penalty in law, the majority (31) did so without a 10-year suspension of executions. For example, Turkmenistan and Cambodia both abolished in law only two years after their last executions (abolishing in 1999 and 1989 respectively), while South Africa abolished just four years after its last execution (abolishing in 1995).¹⁶⁹ These states’ experiences undermine the idea of a common trajectory

163. Marc Ancel, *The Death Penalty in European Countries* (Council of Europe 1962) 3.

164. Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (OUP 2008) 12.

165. David Johnson and Franklin Zimring, ‘The Death Penalty’s Continued Decline’ (2019) 118 *Current History* 316, 321.

166. Ron Dudai, ‘Symbolic laws, *de facto* abolitions and path dependence: When death penalty policies remain stable’ (2023) 62 *The Howard Journal of Crime and Justice* 11, 14.

167. Dudai (n 144) 150.

168. Dudai (n 144) 144.

169. Hood and Hoyle (n 164) 16–17.

of ADF status necessarily preceding *de jure* abolition, demonstrating that there are other possible routes.¹⁷⁰

5.2 Resumption of executions under ADF status

Second, the expectation that ADF status is a progressive step along a unidirectional path to *de jure* abolition is countered by the history of the resumption of executions in ADF states. As considered in Section 2, for as long as capital punishment is retained in law, the risk of executions being carried out will remain. Since the publication of the 10th UN quinquennial report on capital punishment in 2020,¹⁷¹ a number of states have moved from the ADF category to full abolition (Central African Republic, Equatorial Guinea, Ghana, Papua New Guinea, Sierra Leone, Zambia and Zimbabwe). Myanmar (resuming executions in 2022 after 34 years)¹⁷² and Qatar (resuming executions in 2020 after 20 years)¹⁷³ have returned to the retentionist category.¹⁷⁴ In Myanmar, the context for the resumption of executions was the aftermath of a military coup in 2021, with the first executions carried out against four pro-democracy protesters.¹⁷⁵ In the case of Qatar, the resumption of executions did not reflect any similarly dramatic shift in governance, but instead appears to reflect a longer-term pattern of low levels of executions, conducted at lengthy intervals, such that it was among several Gulf states previously described by Hood and Hoyle as having “desisted at times for over 10 years, giving the impression that they have become abolitionist *de facto*.”¹⁷⁶

The potential for ADF states to return to the retentionist category through resuming executions rather than progressing to *de jure* abolition is also evidenced in the past experiences of states including Benin (no executions 1974–1986), Burundi (no executions 1981–1997), Cameroon (no executions 1988–97), Comoros (no executions (1975–1996), the Gambia (no executions 1975–1981), Lebanon (no executions 1983–1994) and Libya (no executions 1957–1997), among others.¹⁷⁷ At the state level in the U.S., Nebraska successfully passed abolition legislation in 2015 after a period of almost 20 years without executions, only to have the death penalty reimposed against the will of state legislators after a citizens’ referendum in 2016, with four new death sentences and one execution following the reimposition.¹⁷⁸ And at the federal level in the U.S., in 2020 executions were resumed after a 17-year hiatus since the last federal execution, with 13 carried out in total. Of course, a period of suspension is likely to make executions rarer in future, unlikely to be pursued with the same vigour – and, indeed, ►

170. Hood (n 51) 6.

171. United Nations (n 47).

172. International Commission Against the Death Penalty, ‘Statement by the International Commission Against the Death Penalty: Myanmar carries out four executions: the first in 34 years’ (26 July 2022) <https://icomdp.org/wp-content/uploads/2022/07/2020_07_ICDP-07-2022_Myanmar-Junta_Resumption-of-executions.pdf> accessed 14 July 2025.

173. ‘Qatar executed Nepali man, ending 20 year hiatus: Amnesty’ (Barron’s, 21 April 2021) <<https://www.barrons.com/news/qatar-executed-nepali-man-ending-20-year-hiatus-amnesty-01619018414>> accessed 17 April 2025.

174. Oman was categorised as ADF by the UN quinquennial report in 2020 and as retentionist by the UN quinquennial report in 2025. However, Amnesty International recorded two executions in the country in 2015, as well as executions in 2009. Amnesty International, Death sentences and executions 2015 (2016) <<https://www.amnesty.org/en/documents/act50/3487/2016/en/>> accessed 14 July 2025, 6.

175. Jonathan Liljeblad, ‘Myanmar’s regression on capital punishment: A pariah in Southeast Asia’ (2023) 24(1) Australian Journal of Asian Law 35.

176. Hood and Hoyle (n 164) 67.

177. See: Hood and Hoyle (n 163) 68, 78; Lilian Chenwi, ‘Initiating constructive debate: A critical reflection on the death penalty in Africa’ (2005) 38(3) Comparative and International Law Journal of Southern Africa 474. Pascoe and Bae provide the further examples of Bahrain, Chad and Guinea: (n 33) 994.

178. Aimee Clesi, ‘Charting death penalty abolition through abolitionist *de facto* states’ (MPhil thesis, University of Oxford 2024) <<https://ora.ox.ac.uk/objects/uuid:4ca6ef5e-cfec-47c8-a504-558e3b59b94c>> accessed 14 July 2025, 41.

many of those states listed as examples here have since returned to the ADF category or moved to *de jure* abolition, despite their past resumption.¹⁷⁹

5.3 ADF as a destination

Finally, now that several decades have passed since the adoption of ADF as an analytical category, it is clear that while many states have indeed passed through ADF to *de jure* abolition, many others have acquired ADF status but then remained in that position. Recalling the length of time that some states have spent in ADF status (as detailed in Section 2), while the average period since the last execution is 33 years, there are nine states that have now not executed for more than 40 years, reaching up to seven decades at most. For many of these states remaining in stasis in the ADF category, there appears to be little evidence of change towards *de jure* abolition. Furthermore, some ADF states insist that an absence of executions does not represent any shift in policy in the direction of *de jure* abolition – a phenomenon that is especially prevalent in the Caribbean region.¹⁸⁰ Schabas writes that: “Certainly many of those in the *de facto* abolitionist category would insist that their failure to carry out executions for a decade or more does not manifest any change in policy.”¹⁸¹ Observing this lack of movement beyond ADF status raises the question of whether, for some states, ADF may not be a ‘step along a journey’, but in fact a ‘destination’.

The lack of movement towards *de jure* abolition among some ADF states, or movement in the opposite direction – for example, through efforts to rhetorically embrace the death penalty in political discourse or extend it to encompass new offences – diverges from the historical assumption of a common trajectory towards *de jure* abolition through ADF. Indeed, might the opposite be the case: that additional time spent in ADF status may compound the status quo rather than provide more fuel for the abolition process? “Lack of change in policy does not necessarily mean that it is simply static... it can become increasingly stable.”¹⁸² Rejecting the teleological view of an inevitable drive towards universal abolition, Dudai adopts a ‘path dependence’ model, which emphasises the impact of historical decisions in establishing patterns that become more entrenched over time.¹⁸³ This perspective can be helpful in highlighting that, while some states can move from ADF status to *de jure* abolition, this shift may become increasingly difficult as the years pass, requiring greater political will to depart from a deeply entrenched status quo.

The lack of gradual movement towards *de jure* abolition among some ADF states appears to conflict with the international legal framework governing capital punishment. While the death penalty is permitted in restricted circumstances under Article 6(2) of the ICCPR, Article 6(6) emphasises the importance of abolition, specifying that: “nothing in this article shall be invoked to delay or prevent the abolition of capital punishment.”¹⁸⁴ Heyns and

179. Andrew Novak, ‘Review of Capital Punishment: New Perspectives, by Peter Hodgkinson’ (*Rutgers*, January 2015) <<https://cljbooks.rutgers.edu/books/capital-punishment/>> accessed 17 April 2025.

180. William Schabas highlights the example of Barbados in this regard, but there are other similar examples from the region. William Schabas, ‘Human rights, capital punishment and the Commonwealth: Still behind the curve’ (2012) Institute of Commonwealth Studies <https://sas-space.sas.ac.uk/4833/1/Jan_Opinion_v2.pdf> accessed 14 July 2025, 5.

181. Schabas (n 181) 5.

182. Dudai (n 166) 24.

183. Dudai (n 166) 12.

184. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6.

Probert, drawing on the drafting history of the treaty,¹⁸⁵ interpret this as a 'progressive abolitionist' position, meaning that international law "requires the abolition of the death penalty, either immediately or through taking steps in that direction".¹⁸⁶ This understanding has subsequently been affirmed by the UN Human Rights Committee, whose authoritative interpretation of ICCPR Article 6 concludes that Article 6(6) "reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, *de facto* and *de jure*, in the foreseeable future".¹⁸⁷ For ADF states, the implication of this legal position is that the failure over time to continue to take steps in the direction of *de jure* abolition does not meet states parties' international obligations under the ICCPR.¹⁸⁸

Notwithstanding the objections raised in this section to the historical assumption of a common trajectory under ADF – that ADF status is not a prerequisite to reaching *de jure* abolition; that executions have resumed in ADF states; and that many states have entered the ADF category and remained there – many states have indeed followed the trajectory of gradually reaching *de jure* abolition through a period of ADF status. Of the seven states that have abolished the death penalty *de jure* since 2021, six did so after a period of ADF status.¹⁸⁹ There are also numerous examples of European states following this path during the twentieth century: Ireland abolished in law for all offences in 1990, 36 years after its final execution in 1954;¹⁹⁰ Greece abolished in law for all offences in 1993, 21 years after its final execution in 1972;¹⁹¹ Cyprus abolished for ordinary offences in 1983,¹⁹² 21 years after its final execution in 1962;¹⁹³ while Belgium abolished for ordinary offences in 1990, 72 years after its final execution (for an ordinary offence¹⁹⁴) in 1918.¹⁹⁵ However, given the above objections, this trajectory is not one that can be expected of all states in the ADF category, nor can it provide an adequate explanation for all periods of ADF status. This further demonstrates the heterogeneity within the ADF category and the importance of undertaking a more nuanced analysis of its dynamics. If the historical assumption of a common trajectory under ADF diverges from the experiences of many ADF states today, this raises the question: how else can we explain and interpret long periods of ADF status? ■

185. Christof Heyns and Thomas Probert, 'The right to life and the progressive abolition of the death penalty' in United Nations (eds) *Moving Away from the Death Penalty: Arguments, Trends and Perspectives* (UN OHCHR 2015) 214, 217.

186. Heyns and Probert (n 186) 215.

187. UN Human Rights Committee, 'General Comment 36 on the right to life' (2018) UN Doc CCPR/C/GC/36, para 50.

188. Heyns and Probert (n 186) 215.

189. Central African Republic, Ghana, Papua New Guinea, Sierra Leone, Zambia and Zimbabwe all abolished *de jure* following a period of ADF status, while Equatorial Guinea abolished in 2022 after a period of eight years since its last execution in 2014.

190. Lynsey Black, 'Penal parsimony, paternalism and postcolonialism: Women and the death penalty in Ireland' (*Death Penalty Research Unit Blog*, 21 July 2013) <<https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2023/07/penal-parsimony-paternalism-and-postcolonialism>> accessed 14 July 2025.

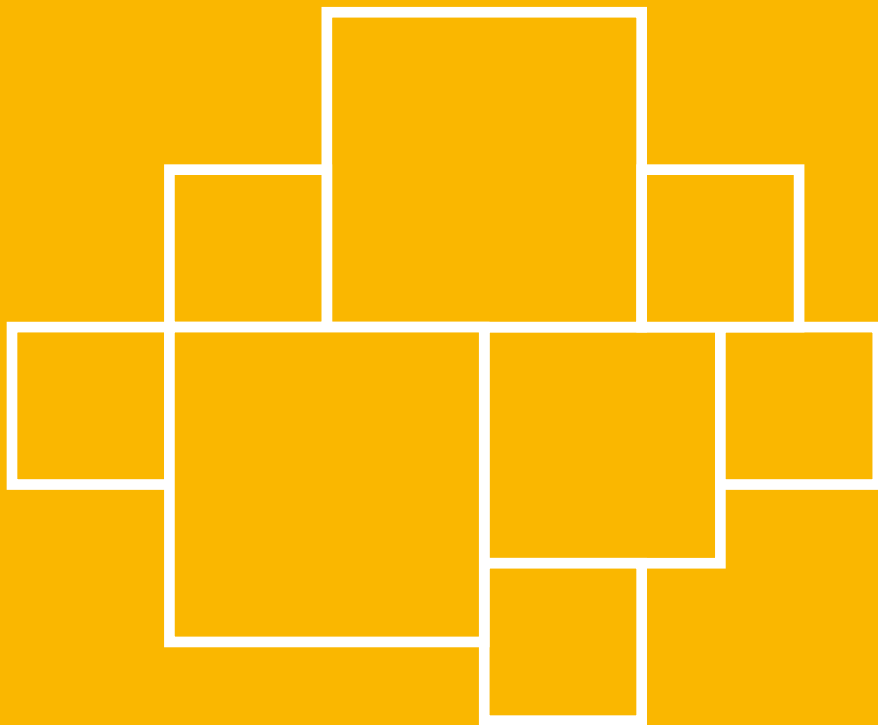
191. Parliamentary Assembly of the Council of Europe, 'Abolition of capital punishment' (4 October 1994) Resolution 1044 (1994) <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16455&lang=en>> accessed 14 July 2025. Philip Chrysopolous, 'August 25, 1972: The last execution in Greece before abolition of the death penalty' (Greek Reporter, 25 August 2019) <<https://greekreporter.com/2019/08/25/august-25-1972-the-last-execution-in-greece-before-abolition-of-death-penalty/>> accessed 14 July 2015.

192. Cyprus later abolished the death penalty for treason and military offences in 2002.

193. Hood and Hoyle (n 10) 50.

194. Belgium's last execution for wartime offences was carried out in 1950, and it abolished the death penalty for all offences, including wartime offences, in 1996.

195. International Commission Against the Death Penalty, *How states abolish the death penalty: A supplement of case studies* (November 2022) <https://icomdp.org/wp-content/uploads/2022/11/HOW-STATES-ABOLISH-THE-DEATH-PENALTY_A-SUPPLEMENT-OF-CASE-STUDIES.pdf#page=12> 12; Hood and Hoyle (n 10) 50.



Section 6

Conceptualising ADF

The question of how to explain and interpret long periods of ADF highlights the seemingly paradoxical nature of ADF status. It is largely straightforward to understand the motivations of a state that retains death penalty laws and continues to carry out executions, or a state that has fully abolished the death penalty in law. But the motivations of a state that retains death penalty laws without carrying out executions are harder to discern. The explanation provided by the historical assumption of a common trajectory under ADF has centred on one motivation: a state's gradual journey to full abolition. But if this account is not universally valid across ADF states, as the previous section has established, then new theories of states' motivations for remaining within ADF status are required. This section considers alternative types of ADF experience, before situating these in a broader framework of analysis.

6.1 Theoretical distinctions

Hood succinctly captured the complexity of the nature of ADF status in the title of his final academic paper: 'The enigma of *de facto* abolition of capital punishment.'¹⁹⁶ In his thoughtful reflections on the concept, Hood describes the ADF category as encompassing two distinct groups of states: one effectively conforming to the historical assumption of a common trajectory, with "ADF status as a steppingstone towards, or indication of intention to embrace, full abolition in principle" and the other without the same intention to move towards full abolition, instead treating ADF "as a compromise between retaining the death penalty as a symbol of ultimate state power but not enforcing it".¹⁹⁷ On the compromise type, Hood notes that the political factors behind the preference not to carry out executions could vary, but might include a diplomatic decision to avoid being associated with those retentionist states that vocally insist on continuing to execute as a matter of sovereign choice over penal policy¹⁹⁸ (as in the case of Singapore, which is among the strongest advocates for retention on the basis of sovereignty-based arguments).¹⁹⁹

Dudai articulates his own distinctions within the ADF category based on states' rationales for reaching the ADF position. In doing so, he draws on a dichotomy proposed by Johnson and Zimring²⁰⁰ for understanding retentionist states with low rates of execution, which can result either from inertia – where states "continue with their long-standing death penalty practices without much enthusiasm, though also without pressure to change" – or intention – where states "dedicate significant attention to capital punishment and regard it as a positive part of criminal justice systems, though without pushing for more executions".²⁰¹ Dudai transposes this dichotomy to the ADF setting, proposing that ADF status can also be understood as resulting either from inertial or intentional drivers. For Dudai, inertial ADF arises "where there is little public demand or political need to carry out executions, but also little demand or need to move to full abolition". Intentional ADF, meanwhile, arises where it is "an intentional policy with symbolic importance, frequently examined and debated, with investment and commitment from important political actors".²⁰²

196. Hood (n 51).

197. Hood (n 51) 10.

198. Hood (n 51) 10.

199. Carolyn Hoyle and Jocelyn Hutton, 'National sovereignty versus human rights: Drugs and the mandatory death penalty in Singapore' 45 *Amicus Journal* 37 <<https://www.law.ox.ac.uk/sites/default/files/2024-01/Carolyn%20Hoyle%20and%20Jocelyn%20Hutton%20-%20National%20sovereignty%20versus%20universal%20human%20rights.pdf>> accessed 17 July 2025.

200. David Johnson and Franklin Zimring, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (OUP 2009) 314.

In determining which of the two could apply to a given state, Dudai suggests some relevant criteria, including the domestic salience of the issue of the death penalty, the nature of public debate and missed opportunities to change policy. For example, a state where the death penalty is not a particularly salient issue, is rarely publicly debated, and where there have been no missed opportunities to change policy would be considered inertial ADF; conversely, where it is highly salient, intensely debated and abolition has been seriously contemplated, but not yet achieved, this could be considered to be intentional ADF.²⁰³ Returning to his analysis of the potential for ADF to become entrenched over time, Dudai tentatively suggests that ADF status may be more stable under conditions of intentional ADF, “because they involve mechanisms of ‘increasing stability’” rather than of inertial ADF.²⁰⁴

Both Hood and Dudai offer accounts of ADF status that go beyond the historical assumption of a common trajectory, each providing a bifurcated analysis (steppingstone/compromise and inertial/intentional). Underlying both accounts is an understanding of ADF as arising from the simultaneous presence of factors incentivising suspension of executions alongside factors incentivising retention of death penalty laws. Rather than looking retrospectively from the point of *de jure* abolition to see ADF as a temporary phase leading to full abolition, these accounts avoid the pitfalls of the teleological lens by explaining the purpose of ADF in the present, as a means of balancing these conflicting imperatives – presenting ADF as the result of ‘competing logics’. Regardless of the exact combination of factors, and whether or not a state is in fact moving towards *de jure* abolition, it is clarifying – and less paradoxical seemingly – to see ADF status as an outcome that satisfies the competing logics at play.

Viewed from the perspective of this competing logics approach, the two types set out by Hood can be seen as follows, noting the suggested rationales for suspension of executions alongside the suggested rationales for retention of death penalty laws:

Hood types	‘Steppingstone’ ADF ²⁰⁵	‘Compromise’ ADF ²⁰⁶
Rationales for suspension of executions	Intention in principle to fully abolish the death penalty	No intention of carrying out executions at present, e.g. to avoid diplomatic criticism
Rationales for retention of death penalty laws	Abolition is not considered immediately possible, e.g. for practical or political reasons, but ADF status can constitute a steppingstone towards it	The state can still rely on the symbolic power of the death sentence

201. Dudai (n 166) 24.

202. Dudai (n 166) 24.

203. Dudai (n 166) 24.

204. Dudai (n 166) 24.

205. Hood (n 51) 10.

206. Hood (n 51) 10.

Following the same approach, Dudai's types can be set out in the same manner:

Dudai types	'Inertial' ADF ²⁰⁷	'Intentional' ADF ²⁰⁸
Rationales for suspension of executions	There is little public demand or political need to carry out executions	The state intentionally holds a policy of not executing, e.g. because of opposition from political actors
Rationales for retention of death penalty laws	There is little demand or need to move to full abolition	Death penalty laws are of symbolic importance, with political actors committed to advocating for their retention

6.2 The competing logics approach

The competing logics approach can accommodate the historical assumption of a common trajectory under ADF, as articulated in Hood's steppingstone type: the rationale for suspension of executions is the sincere intention to fully abolish, while the rationale for retention of death penalty laws is to allow a period to take the necessary domestic steps to prepare for *de jure* abolition. But the approach also highlights that this is just one of many possible types and combinations of factors that could lead to ADF status. In some cases, the balance of these factors may remain static – and become more entrenched, as Dudai argues – over time, as in those states that have remained ADF for several decades. In other cases, the balance of factors may change over time, resulting in either an altered form of ADF equilibrium, or a more fundamental shift away from ADF to *de jure* abolition or retention.

The benefit of applying the competing logics analysis to states' ADF experience is that it is possible to identify other combinations of explanatory factors. Our own research has identified one type of ADF involving a distinction between incentives and framing at the domestic and at the international level. This can arise where suspending executions can benefit a state at the international level (e.g. the avoidance of international criticism) while simultaneously retaining death penalty laws provides benefits at the domestic level (e.g. accommodating a rhetorical commitment to a 'tough on crime' approach to placate the electorate who may have concerns about rising crime levels). This type of ADF has some explanatory power in the Caribbean in particular, especially for those states that "insist that their failure to carry out executions for a decade or more does not manifest any change in policy".²⁰⁹

The same analytical approach can be applied to other potential modes of ADF experience, even those that may only concern a small minority of ADF states. For example, Section 5 referred to the example of small states that have passed in and out of ADF status, going

207. Dudai (n 166) 24.

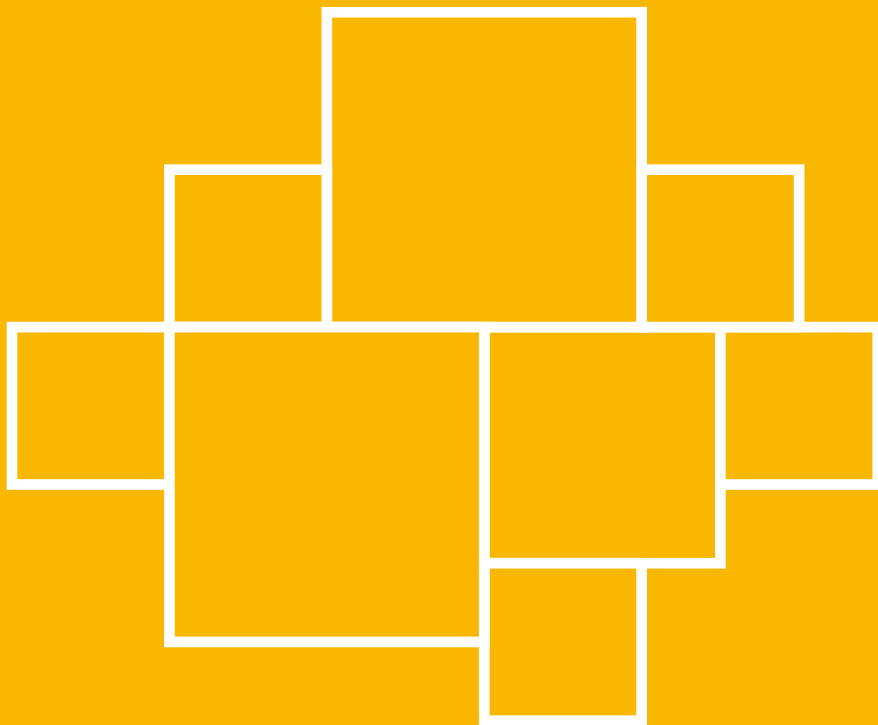
208. Dudai (n 166) 24.

209. Schabas (n 181) 5.

beyond the 10-year mark before carrying out executions again, as seen in the case of Qatar. Conceptualising this 'infrequent executions' type, the rationale for suspension of executions could be understood as arising from a criminal justice process that only very intermittently generates executions – for example, because of demographic variables such as population size or crime rates – while the rationale for retention of death penalty laws is that the state still identifies as retentionist and has no intention of foregoing its power to execute.

Returning to the question of how to explain and interpret long periods of ADF status, we suggest that applying the competing logics approach has significant explanatory power, such that ADF status appears much less of an enigma. The precise factors leading to ADF status in a given state may not always be obvious, but where these can be uncovered, it is suggested that some combination of rationales for suspending executions and rationales for retaining death penalty laws will be found. This approach expands our explanations of ADF beyond the historical assumption of a common trajectory, as a step on the road to full abolition – even if this still may apply to many ADF states today – and accounts for situations that do not conform to that assumption, without treating these as mere 'outliers' from the historical model. Through the deeper analysis of ADF that this approach enables, new questions also arise, including: what is the function of the death penalty without executions? In the next section, we approach this question from the perspective of the symbolic power of the death penalty.²¹⁰ ■

210. Dudai (n 166) 24.



Section 7

Symbolic functions of the ADF death penalty

In retentionist states, the power of the death penalty is explicit, with death sentences often leading to executions. In ADF states, however, the purpose of the death penalty is less obvious – a punishment available in principle but not currently implemented. This prompts the question: what is the function of the death penalty without executions? In the course of our research, the role of symbolism has emerged as a helpful explanation. Across different historical moments and cultural contexts, capital punishment has consistently held a visceral symbolic power, and we argue that this symbolism – which does not only arise from the carrying out of executions – is crucial to understanding the function of the death penalty in ADF states.

Zimring and Hawkins identified and analysed the role of symbolism within the institution of capital punishment, focusing on the U.S. context. They argue that “the symbolic significance of death penalty legislation, the ritual nature of the murder trial and the incantatory power of the death penalty constitute a large part of the appeal for supporters of the death penalty”,²¹¹ with the punishment symbolising “governmental willingness to employ ultimate power against those who threaten collective moral order”.²¹² In making this argument, they suggest that symbolism accounts for the decline in public support for the death penalty after abolition, which happens as the punishment’s symbolic power wanes;²¹³ and for the lack of public backlash against the imposition of non-capital sentences for death-eligible offences, as the existence of the capital system is sufficient.²¹⁴ Although not specifically addressing the issue of ADF status at length, they also suggest that a symbolic or ‘ritual’ function accounts for the preservation of death penalty laws in contexts where there is no apparent need to carry out executions, as this symbolism alone satisfies a “latent social function”.²¹⁵

The role of symbolism in the U.S. death penalty regime was subsequently developed by Garland, who identified symbolism not only as one part of the U.S. capital system, but in fact a driving force guiding its modern form. Taking a primarily sociological approach to interpreting the function of the U.S. death penalty, Garland emphasises the centrality of moral debate about the punishment, with this strained discourse displacing its traditional grounding in criminological theories of retribution or deterrence.²¹⁶ As a result, he sees the U.S. death penalty as “[having] been transformed from a penal instrument that puts people to death to a peculiar institution that puts death into discourse for political and cultural purposes”,²¹⁷ becoming “instead a symbolic battlefield”.²¹⁸ Garland highlights here a perceived shift from the role of the death penalty as a tool of penal policy and criminal justice, to one that operates predominantly on the level of symbolism.²¹⁹

While Zimring and Hawkins, and Garland, focus their analysis on the retentionist context of the U.S. death penalty, Dudai has since applied the lens of symbolism to the death penalty under ADF status. Dudai writes that some instances of ADF status should be understood as retention of a symbolic death penalty, the functions of which “are not crime-control but asserting political authority and cultural norms, and it is used sparingly, if at all, as its

211. Franklin Zimring and Gordon Hawkins, *Capital Punishment and the American Agenda* (CUP 1986) 11.

212. Zimring and Hawkins (n 212) 14.

213. Zimring and Hawkins (n 212) 13.

214. Zimring and Hawkins (n 212) 15.

215. Zimring and Hawkins (n 212) 11.

216. Clesi (n 178) 21-24.

symbolic functions do not require regular executions”.²²⁰ Whereas some authors have more dismissively evaluated the symbolic aspects of the death penalty as ‘mere symbolism’, Dudai instead asserts that the political and cultural effects of the symbolic death penalty under ADF have the potential to be very powerful.²²¹ He also notes that, within a given ADF context, these symbolic effects are not necessarily static, but can be adaptable and evolve over time.²²² In applying this ‘symbolic death penalty’ perspective to the category of ADF states, it is possible to delineate some of those aspects of the ADF death penalty that operate even in the absence of executions.

7.1 Ultimate state power

The continued existence of the death penalty in law itself constitutes a crucial symbol of the power of the state. The maintenance of death penalty laws is associated with philosophical principles of state sovereignty, which are frequently invoked by some of the most prominent retentionist states as the basis of their right to determine their own penal policy, including capital punishment.²²³ Sarat suggests that: “Along with the right to make war, the death penalty is the ultimate measure of sovereignty and the ultimate test of political power.”²²⁴ Bedau similarly argues that: “The death penalty ... symbolises the ultimate power of the state, and of the government of society, over the individual citizen.”²²⁵ The symbolic power of the death penalty is inherent in the mere presence of death penalty legislation: the state in principle retains the power to take life through a judicial process and the actual enactment of executions is not necessary to demonstrate this.²²⁶ This residual symbolism of the state’s ultimate power is thus present in all ADF states.

7.2 Expansion of the ADF death penalty to new offences

In ADF states, political discourse can sometimes include the proposed expansion of death penalty laws to additional offences – without any immediate prospect of resuming executions to give this effect. For example, in 2024, the Tongan Legislative Assembly debated (but ultimately rejected) proposals to expand the death penalty to drug offences, having considered similar proposals in 2004 and 2021 – despite not having carried out an execution for more than 40 years.²²⁷ In Kenya, which is also nearing four decades since its last execution, in 1987, a governing party MP proposed a Parliamentary Bill in 2018 that would ►

217. David Garland, *Peculiar Institution: America’s Death Penalty in an Age of Abolition* (OUP 2010) 312.

218. Garland (n 218) 253.

219. Garland (n 218) 286; on the symbolism of the U.S. death penalty, see also: Simon and Spaulding (n 134) 81.

220. Dudai (n 145) 150.

221. Dudai (n 166) 15.

222. Dudai (n 166) 16.

223. Carolyn Hoyle, ‘Efforts towards abolition of the death penalty: Challenges and prospects’ (2023) Oxford DPRU Research Paper Series <<https://www.law.ox.ac.uk/sites/default/files/2023-12/Carolyn%20Hoyle%20-%20%27Efforts%20towards%20abolition%20of%20the%20death%20penalty%27.pdf>> accessed 14 July 2025, 2; Hoyle and Hutton (n 200).

224. Austin Sarat, ‘Capital punishment as a legal, political and cultural fact: An introduction’ in Austin Sarat (ed) *The Killing State: Capital Punishment in Law, Politics and Culture* (OUP 2001) 4.

225. Hugo Bedau, *Death is Different: Studies in the Morality, Law, and Politics of Capital Punishment* (1987) 246.

226. Dudai (n 49) 872.

227. Amnesty International, ‘Tonga: Government must not extend the death penalty to drug-related offences’ (10 June 2024) <<https://www.amnesty.org/en/documents/act50/8148/2024/en/>> accessed 14 July 2025.

have extended the death penalty to corruption offences,²²⁸ while, in 2019, the Government's tourism minister threatened to introduce legislation punishing wildlife poaching offences with death sentences.²²⁹ Neither proposal has progressed into law in Kenya.

In other ADF states, proposals to expand the death penalty to new offences have been successful: for example, in 2023, Uganda introduced new provisions under its 'Anti-Homosexuality Act' making same-sex sexual conduct punishable by death in some circumstances;²³⁰ in 2019, Brunei Darussalam adopted a new Penal Code significantly broadening the scope of its capital punishment laws, including offences involving consensual adult sexual conduct;²³¹ and a number of ADF states, such as Cameroon²³² and Tunisia,²³³ have expanded their death penalty laws to cover new terrorism-related offences. None of these states has since reverted to carrying out executions. While this is not an exhaustive list of proposed and actual expansions, these examples serve to demonstrate that, across many ADF states, politicians and policymakers appear to believe in the symbolic power of associating the death penalty with particular offences, even if it is unlikely that the punishment will be carried out for that or any other offence at present.

7.3 Appeals to capital punishment as a deterrent

Even in ADF states, appeals to the purported 'deterrent effect' of capital punishment are made by some officials and politicians. This can occasionally take the form of a justification for the retention of death penalty laws under ADF status. In 2022, the official delegation of Jamaica (which has not executed since 1988) informed a UN committee that: "...as a deterrent to violent crimes and as part of our efforts to maintain socio-economic stability, Jamaica continues to exercise its sovereign right to retain capital punishment as the ultimate penalty for the most egregious crimes..."²³⁴ Similarly, in 2015, the Justice Minister of Tonga (which has not executed since 1982) was reported to have defended the country's death penalty laws as a deterrent, stating: "Sometimes there are cases that definitely deserve the [death penalty]... We are comfortable just leaving it there in the law than repealing it all together."²³⁵ This may appear an unlikely argument, given that proponents of deterrence theory would traditionally emphasise the importance of "credible threats of punishment" in underpinning the belief that harsh punishments will deter criminal offending.²³⁶ In the absence of credible threats of carrying out executions, these arguments suggest some degree of belief in the deterrent power of death penalty legislation itself, regardless of penal practice.

228. Ngunjiri Wambugu, 'Graft must carry a death sentence' (*The Star*, 6 June 2018) <https://web.archive.org/web/20180614105538/https://www.the-star.co.ke/news/2018/06/06/graft-must-carry-a-death-sentence_c1768019> accessed 30 April 2025; Amnesty International, 'Death penalty is not the solution to corruption in Kenya' (8 June 2018) <<https://www.amnesty.org/en/latest/news/2018/06/op-ed-death-penalty-is-not-the-solution-to-corruption-in-kenya/>> accessed 30 April 2025.

229. Jane Dalton, 'Wildlife poachers in Kenya "to face death penalty"' (*The Independent*, 12 April 2019) <<https://www.independent.co.uk/climate-change/news/poachers-kenya-wildlife-death-penalty-capital-punishment-najib-balala-a8349966.html>> accessed 30 April 2025.

230. Diana Peel, 'The politics behind Uganda's Anti-Homosexuality Act' (*Death Penalty Research Unit Blog*, 19 December 2023) <<https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2023/12/politics-behind-ugandas-anti-homosexuality-act>> accessed 30 April 2025.

231. Human Rights Watch, 'Brunei's pernicious new Penal Code' (22 May 2019) <<https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>> accessed 30 April 2025.

232. Ensemble contre la peine de mort, 'In Yaoundé, launch of the first fact-finding mission on death row in Cameroon' (June 2019) <<https://web.archive.org/web/20250524031813/https://www.ecpm.org/en/in-yaounde-launch-of-the-first-fact-finding-mission-on-death-row-in-cameroon-press-release/>> accessed 30 April 2025.

233. Human Rights Watch, 'Tunisia: Counterterrorism law endangers rights' (31 July 2015) <<https://www.hrw.org/news/2015/07/31/tunisia-counterterrorism-law-endangers-rights>> accessed 30 April 2025.

In other ADF states in recent decades, we find various examples of threats of resumption of executions, on the basis of a need for a strong deterrent against crime, that have not materialised. In 2019, the President of Sri Lanka (which has not executed since 1976) announced his intention to resume executions because of concerns over drug trafficking – and even went so far as to advertise for the recruitment of hangmen²³⁷ – stating: “To curb the illegal drug menace, it is necessary to implement the death penalty” and suggesting that the suspension of executions had caused higher rates of criminal offending, including drug-related offences.²³⁸ In 2017, the President of the Maldives (which has not executed since 1952) threatened to resume executions to reduce violent crime and drug trafficking, with a spokesperson stating that: “It is to be used as a deterrent.”²³⁹ In other instances, officials have not directly threatened to resume executions, but have suggested that they would have a deterrent power if they were to execute: for example, in 2013, the Prime Minister of Belize (which has not executed since 1985) stated: “I believe that capital punishment, if we were able to implement it, would serve as a deterrent...”²⁴⁰ These rhetorical appeals to the deterrent power of the death penalty appear to rest on its symbolic value, such that, even in the long-term absence of executions, capital punishment can be deployed by officials and politicians to assert the strength of their commitment to reducing crime.

7.4 Symbolic communication with the public

It is argued that “...capital punishment legislation primarily serves the function of reassuring the public”, a “symbolic reassurance function”.²⁴¹ In ADF states, notwithstanding the absence of executions, death penalty legislation and death sentencing constitute a mechanism of symbolic communication between the state and the public: offering reassurance that the state is firmly committed to addressing criminal justice issues. This is illustrated by the resort of some ADF states to justifications based on public support for death penalty laws. Examples of such justifications include, inter alia: comments by Kenyan officials before a UN committee in 2013 that removal of death penalty laws was “not supported by the will of the Kenyan people”;²⁴² statements from representatives of Barbados during its UN Universal Periodic Review (UPR) process in 2013 that it would not adopt recommendations to abolish death penalty laws “until there is public support”;²⁴³ and comments from representatives of Cameroon in its UPR review in 2009 that the death penalty still had “public support for ▶

234. Permanent Mission of Jamaica to the United Nations, ‘Statement by His Excellency Brian Wallace, Permanent Representative, 11 November 2022’ (2022) <https://www.un.int/jamaica/sites/www.un.int/files/Jamaica/death_penalty_statement.pdf> accessed 1 May 2025.

235. Ben Robinson, ‘UN attention for Pacific countries that practice death penalty’ (*Radio New Zealand*, 12 October 2015) <<https://www.rnz.co.nz/international/programmes/datelinepacific/audio/201774068/un-attention-for-pacific-countries-that-practice-death-penalty>> accessed 1 May 2025.

236. Ernest van den Haag and John Conrad, *The Death Penalty: A Debate* (Springer 1983) 29.

237. ‘Sri Lanka advertises for two hangmen as country resumes capital punishment’ (*The Guardian*, 14 February 2019) <<https://www.theguardian.com/world/2019/feb/14/sri-lanka-advertises-for-two-hangmen-as-country-resumes-capital-punishment>> accessed 26 June 2025.

238. Bharatha Mallawarachi, ‘Sri Lanka destroys cocaine, to resume capital punishment’ (1 April 2019) <<https://apnews.com/general-news-43db522f50984dcc8dcd2089382d5b5f>> accessed 1 May 2025.

239. Shihar Aneez, ‘Maldives to restore death penalty after 60 years – official’ (*Reuters*, 22 August 2017) <<https://www.reuters.com/article/world/maldives-to-restore-death-penalty-after-60-years-official-idUSKCN1B20VW/>> accessed 1 May 2025.

240. ‘Death penalty will stay on our books!’ (*Amandala Belize*, 29 November 2013) <<https://amandala.com.bz/news/death-penalty-stay-books/>> accessed 1 May 2025.

241. Barbara Ann Schultz, ‘Congress and capital punishment: An exercise in symbolic politics’ (1983) 5(2) *Law & Policy* 157.

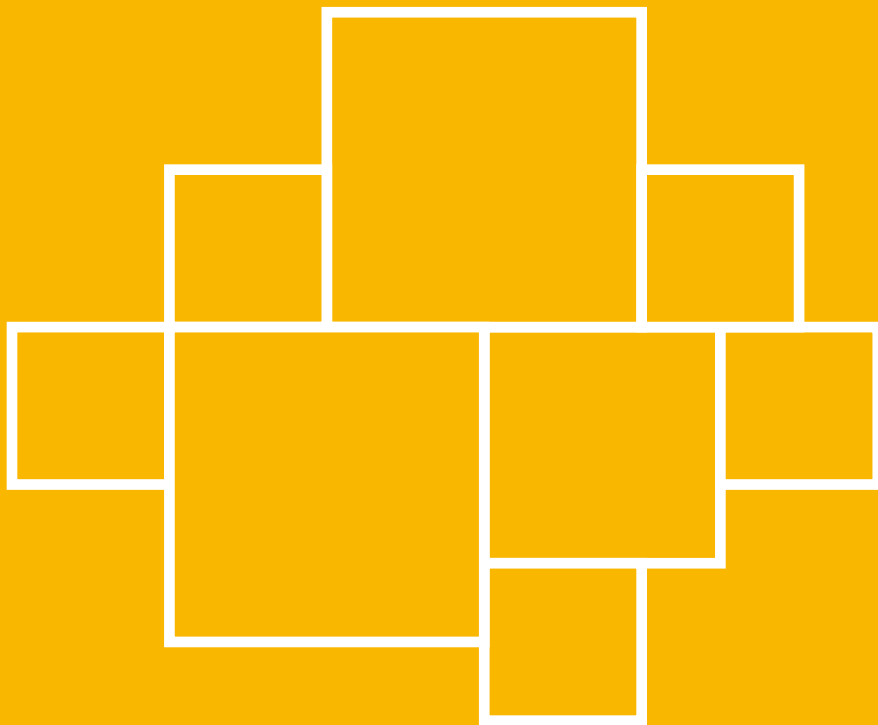
242. Carolyn Hoyle and Lucy Harry, ‘Why has Kenya not abolished the death penalty? Habit and inertia’ (*Death Penalty Research Unit Blog*, 26 September 2022) <<https://www.law.ox.ac.uk/node/52767>> accessed 1 May 2025.

243. UN Human Rights Council, ‘Report of the Working Group on Barbados: Annex’ (12 March 2013) UN Doc A/HRC/23/11/Add.1/Annex.

its retention".²⁴⁴ Although *de jure* abolition has with only a few exceptions been achieved through political leadership, without a clear majority of public support, these claims about the public appetite for the death penalty reflect an anxiety about the political impacts of removing its symbolic reassurance function.

This section began by proposing the role of symbolism in response to the question: what is the function of the death penalty without executions? Applying Dudai's notion of the symbolic death penalty under ADF status, several factors have been identified as demonstrating the symbolic power of the retention of death penalty laws in ADF states: death penalty laws as a symbol of the ultimate power of the state; efforts to expand death penalty laws to new offences; appeals to the purported deterrent effect of capital punishment; and the role of death penalty laws in symbolically reassuring the public. Taken together, these factors highlight the fact that, in ADF states, executions are not required in order for death penalty laws to have important symbolic effects. The exact nature of this symbolism is likely to vary widely between jurisdictions, but it is nonetheless crucial to account for the powerful role of symbolism in considering the barriers to *de jure* abolition in ADF states – as addressed in the next section (Section 8) – which can differ from those found in retentionist states. ■

244. UN Human Rights Council, 'Report of the Working Group on Cameroon: Addendum' (9 June 2009) UN Doc A/HRC/11/21/Add.1.



Section 8

**Why do some
states remain
in ADF stasis?**

This report has argued that states in the ADF category share some distinct characteristics and dynamics that set them apart in some key respects from abolitionist *de jure* and retentionist states. In understanding what is unique about the position of ADF states, it is important to also consider why, despite suspending executions, they have not yet abolished in law. In explaining this, evaluating the similarities and differences between ADF and retentionist states can serve to elucidate the rationales for retention that may be present in a given ADF state. This section argues that some of these rationales are likely to match those found in retentionist states, such as justifications for retention of death penalty laws based on public opinion, deterrence and sovereignty. It also argues that other barriers found in retentionist states may be more pronounced in ADF states: those based on the likely lack of salience of the death penalty and lack of public knowledge about it, while others still may reflect the unique nature of ADF states: the symbolic functions of the death penalty; the convenience of ADF status; and the risk of greater entrenchment over time.

8.1 Key rationales in retentionist and ADF states

One of the most prominent rationales for the retention of death penalty laws, across retentionist and ADF states, is that public opinion remains supportive of capital punishment, and society is not yet ready to accept *de jure* abolition.²⁴⁵ In the ADF state of Guyana, for example, the Attorney General contended, in response to a 2021 legal challenge, that the retention of death penalty laws was “a manifestation of the will of the Guyanese people”.²⁴⁶ Yet such claims often fail to represent the true complexity of public views, and may be made without a grounding in rigorous research into public opinion. Empirical research published in 2022 on the ADF state of Kenya, where public opinion has also been cited as a rationale for retention of death penalty laws, presented data based on in-depth questioning of 1,672 respondents. The study found that, while 51% of the public initially supported retention, only 32% were strongly in favour, with initial support falling once respondents were presented with more information about the application of the death penalty or realistic case scenarios. In fact, a majority (59%) of those initially in favour of retention said they would accept abolition if it was adopted as government policy.²⁴⁷ Similar research on public opinion from other retentionist and ADF states²⁴⁸ highlights the value of nuanced research: first, in putting public opinion into context and demonstrating the limits of reductive claims about public support; second, in addressing hesitations on the part of policymakers about *de jure* abolition based on perceived risk of a public backlash.²⁴⁹

Another of the most prominent rationales for the retention of death penalty laws, across both retentionist and ADF states, is that the death penalty is necessary because of its purported deterrent effect against certain serious crimes.²⁵⁰ More specifically, this justification is rooted in deterrence theory: the belief that sufficiently harsh punishment will

245. The Death Penalty Project, ‘Public opinion and the death penalty’ (2022) <https://deathpenaltyproject.org/wp-content/uploads/2022/11/The-Death-Penalty-Project_Policy-Public-opinion-and-the-death-penalty.pdf> accessed 14 July 2025, 2.

246. ‘Legal challenge to death penalty: Retention a manifestation of the will of Guyanese’ (*Guyana Times*, 21 October 2021) <<https://guyanatimesgy.com/legal-challenge-to-death-penalty-retention-a-manifestation-of-the-will-of-guyanese/>> accessed 14 July 2025.

247. Carolyn Hoyle, *The Death Penalty in Kenya: A Punishment that has Died Out in Practice: Part one: A Public Ready to Accept Abolition* (The Death Penalty Project 2022) <<https://deathpenaltyproject.org/knowledge/kenya-part-one-a-public-ready-to-accept-abolition/>> accessed 14 July 2025, 11.

248. Carolyn Hoyle, *Investigating Attitudes to the Death Penalty in Indonesia: Part II: Public Opinion: No Barrier to Abolition* (The Death Penalty Project 2021) <<https://deathpenaltyproject.org/knowledge/investigating-attitudes-to-the-death-penalty-in-indonesia-part-two/>> accessed 14 July 2025; Mai Sato, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?* (The Death Penalty Project 2018) <<https://deathpenaltyproject.org/knowledge/12-years-without-an-execution-is-zimbabwe-ready-for-abolition/>> accessed 14 July 2025.

dissuade rational individuals, who are informed about the legal system, from committing the relevant offences. Section 7 of this report detailed examples of appeals to the deterrent power of the death penalty in ADF states, both in the form of claims about the deterrent power of death penalty laws alone (in Jamaica and Tonga) and in relation to threats to resume executions (in Sri Lanka, the Maldives and Belize), based on their deterrent effect. However, “[d]espite the rhetorical prominence of deterrence in justifying the use of the death penalty, there has been a notable lack of empirical research evidence to support claims made about this theory”.²⁵¹ The majority of the limited existing studies on deterrence to date, primarily undertaken in the U.S., has not proven a deterrent effect of capital punishment. In ADF states, where executions are not currently carried out, claims of the deterrent effect of the punishment become even more tenuous – a point that can be compounded by limited public awareness of death penalty laws under ADF status.

A further common rationale for the retention of the death penalty is that it is a state’s sovereign right to determine its own penal policy, including capital punishment if it so chooses, regardless of objections made on the basis of human rights law and principles.²⁵² This is an argument advanced by a small subset of retentionist states, notably Singapore, whose Foreign Minister in 2016 stated that: “Every state has the sovereign right, indeed a sovereign duty, to decide for itself what works, and to take into account its own circumstances.”²⁵³ Some ADF states have also lent support to these arguments, including by supporting the Singapore-led amendment to the UN General Assembly resolution for a moratorium on the death penalty seeking to introduce language asserting states’ sovereign right to determine their own legal systems and criminal punishments: in 2024, 13 of the 38 states supporting this amendment were ADF states.²⁵⁴ Officials from ADF states, including Sri Lanka,²⁵⁵ Jamaica²⁵⁶ and Brunei Darussalam,²⁵⁷ have also, at times, appealed to principles of sovereignty to defend their retention of death penalty laws. These sovereignty-based justifications are generally made most forcefully on the part of retentionist states, but it is clear that they have some influence on the position of ADF states too. Furthermore, as noted in Section 7, in the absence of executions, sovereignty-based arguments may hold particular value in ADF states because of the residual symbolic power of the punishment.

8.2 Barriers that may be more pronounced in ADF states

The death penalty situation of many ADF states differs from that of actively executing retentionist states, in which high-profile executions may occur, and references to the

249. The Death Penalty Project (n 246).

250. The Death Penalty Project, ‘Deterrence and the death penalty’ (2022) <https://deathpenaltyproject.org/wp-content/uploads/2022/08/The-Death-Penalty-Project_Policy-Deterrence.pdf> accessed 14 July 2025.

251. The Death Penalty Project (n 251).

252. Hoyle and Hutton (n 200).

253. Hoyle and Hutton (n 200).

254. Antigua and Barbuda; Brunei Darussalam; Comoros; Eritrea; Jamaica; Lao People’s Democratic Republic; Lesotho; Libya; Saint Lucia; Saint Vincent and the Grenadines; Tonga; Trinidad and Tobago and Uganda. See: UN General Assembly, ‘Amendment to revised draft resolution A/C.3/79/L.37/Rev.1: Moratorium on the use of the death penalty’ (13 November 2024) UN Doc A/C.3/79/L.54.

255. “EU cannot interfere in Sri Lanka’s sovereignty”: President Sirisena on capital punishment row’ (*The New Indian Express*, 1 July 2019) <<https://www.newindianexpress.com/world/2019/Jul/01/eu-cannot-interfere-in-sri-lankas-sovereignty-president-sirisena-on-capital-punishment-row-1997932.html>> accessed 14 July 2025.

256. World Coalition Against the Death Penalty, Greater Caribbean for Life and the Advocates for Human Rights, ‘Jamaica’s compliance with the International Covenant on Civil and Political Rights: Suggested list of issues prior to reporting relating to the death penalty and death row conditions’ (2 May 2023) <<https://www.theadvocatesforhumanrights.org/Res/AHR%20GCL%20IJCHR%20WCADP%20Jamaica%20LOIPR.pdf>> 4.

257. ‘Brunei defends Islamic laws punishing gay sex with death in letter to European Parliament’ (*ABC News*, 23 April 2019) <<https://www.abc.net.au/news/2019-04-23/brunei-defends-death-by-stoning-for-gay-sex/11038554>> accessed 14 July 2025.

death penalty can arise frequently in media and political discourse. As a consequence of no executions, the public in ADF states may have limited opportunities to be exposed to, or to learn about, the administration of the death penalty (relative lack of public knowledge can also be found in retentionist states, but it is likely to be even more pronounced in ADF states).²⁵⁸ In Kenya, for example, research on public opinion found that only 66% of public respondents knew that the death penalty was retained in the country, while only 21% knew that no one had been executed in the past 10 years. Most respondents did not know how many people were on death row.²⁵⁹ Public research from Zimbabwe, conducted in 2018 (when Zimbabwe was still ADF, prior to its *de jure* abolition in 2024) found that, while 84% were aware that the country retained the death penalty, only 17% knew there had been no executions in the previous 10 years, with “attitudes towards the death penalty... based on incomplete knowledge of the issue”.²⁶⁰ Lack of public knowledge of the death penalty in ADF states could constitute a barrier to abolition because, if baseline public knowledge is low, there will be limited awareness of the harmful effects of the capital system, meaning that public sensitisation may be required in order to generate popular acceptance of the move from ADF status to *de jure* abolition.

Closely related to the lack of public knowledge about the death penalty under ADF status is the potential for it not to be seen as a ‘salient’ issue. Where no executions are currently carried out, and debates over the death penalty are limited or totally absent from public life, citizens may have little attachment to the issue at all – meaning it is not considered salient. This lack of salience can constitute a barrier to abolition in that it may be difficult for advocates to engage with the public and policymakers in ADF states on a political issue that they may not initially recognise as relevant.

In Belize, the death penalty is not a salient issue.²⁶¹ “The relegation of the death penalty to a non-issue allows Belizean politicians... to leave the ADF status quo unchallenged. That the sanction is uncovered and under-discussed, that it is not as active in the public consciousness in Belize as it is in Jamaica (for instance), allows politicians and opinion formers to uncritically accept the ADF status quo and to tacitly resist formal abolition.”²⁶²

Lack of salience has also been highlighted as a barrier to *de jure* abolition in Kenya. The absence of executions creates limited opportunities for significant public debate over the death penalty, which further encourages its entrenchment.²⁶³ Furthermore, the lack of media discussion and political debate over the death penalty may contribute to Kenya’s retention of death penalty laws under ADF.²⁶⁴ Overall, the lack of salience of the death penalty under ADF status may contribute to a bias towards maintaining the ADF status quo over pursuit of *de jure* abolition, as the issue may not be prominent enough to force change without concerted political will.

258. Roger Hood, ‘Is public opinion a justifiable reason not to abolish the death penalty? A comparative analysis of surveys in eight countries’ (2018) 23 *Berkeley Journal of Criminal Law* 218.

259. Hoyle (n 248) 25.

260. Sato (n 249) 20.

261. Jackson Foster, ‘Understanding and moving beyond *de facto* death penalty abolition in Belize’ (unpublished MSc dissertation, University of Oxford 2024).

262. Foster (n 262) 43.

263. Authors’ interviews with criminal justice experts in Kenya.

264. Authors’ interviews with criminal justice experts in Kenya.

8.3 Barriers that are specific to ADF states

In Section 7 of this report, we considered the role of symbolism as an answer to the question: what is the function of the death penalty without executions? Aspects of this symbolism included: the retention of death penalty laws as a symbol of the ultimate power of the state; efforts to expand death penalty laws to new offences under ADF status; appeals to the purported deterrent effect of capital punishment under ADF status; and the role of death penalty laws in providing symbolic reassurance to the public. The symbolic power of death penalty laws could form a distinct barrier to *de jure* abolition in ADF states, requiring a deeper understanding of the symbolic power of the ADF death penalty in specific contexts and political and legal cultures. This reflects an important area of divergence between retentionist and ADF states, and highlights the issue that some common abolitionist arguments deployed in retentionist states may prove less effective in ADF states (for example, arguments about innocence may have less traction where executions are not currently carried out, and issues of discriminatory sentencing will not arise in those ADF states where death sentences are not being actively imposed at present).

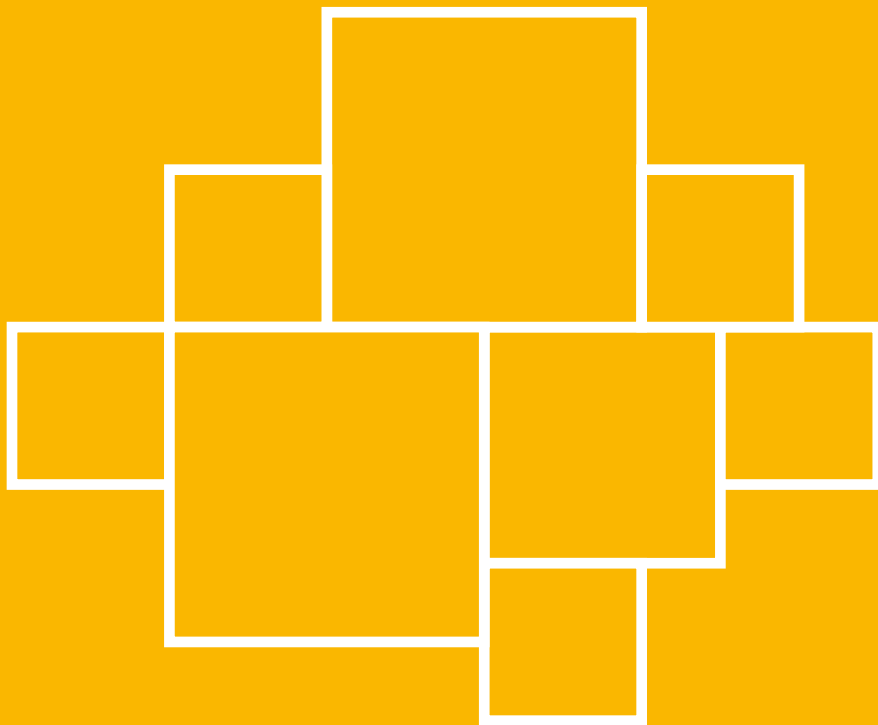
In Section 6, we suggested that ADF status, especially over the longer term, may be the result of competing logics, with incentives for suspension of executions present alongside incentives for retention of death penalty laws. Where this is the case, unless this equilibrium is significantly disrupted, the most convenient option for political leaders will often be to simply maintain the status quo – potentially contributing to further entrenchment of ADF status over time. As one interviewee from Kenya reflected: “ADF is a very useful position to be in. [The government] can say to their population that they still have the death penalty, and they can say to the international community that they’re not executing people. And that is a brilliant place to be for our politicians.”²⁶⁵ Such comments further reflect our finding that some states appear content with a situation in which they can present one message to a domestic audience and another to the international community. The implication of this barrier to abolition is that significant political will would probably be required to shift the situation away from a convenient equilibrium, including addressing both the incentives for full abolition and the need to overcome rationales for retention.

There is a risk that under ADF status some states’ death penalty laws may become more entrenched – ‘increasingly stable’ – over time, rather than the state necessarily moving gradually closer to *de jure* abolition (see Section 6). As Hood recognised, “...the longer they remain ADF, the possibility that states take the final bold steps to abolish the death penalty altogether diminishes over time.”²⁶⁶ If this is true for some ADF states, and they are indeed at risk of greater entrenchment, it may be that momentum towards *de jure* abolition and opportunities for policy change decrease as the decades pass beyond the 10-year mark. This is a barrier that necessarily does not arise in retentionist states. For those seeking to understand the position of an ADF state whose death penalty situation may have become entrenched, additional evaluations of the state’s trajectory over time vis-à-vis the death penalty may be necessary, to identify how this relationship has evolved, and how extensive the entrenchment may be across different areas of the political and public spheres and the criminal justice system. ►

265. Authors’ interviews with criminal justice experts in Kenya.

266. Hood (n 51) 15.

Understanding the relationship of ADF states towards the process of abolition is a different task from understanding that of retentionist states. This section has argued that, while some of the rationales present in ADF states are likely to be similar to those found in retentionist states – those based on public opinion, deterrence and sovereignty – and others may be more pronounced – those based on lack of salience and lack of public knowledge – the distinct features of ADF status mean that additional barriers may be present. In this regard, this section has reflected on themes of symbolic functions, convenience and entrenchment. Not all of the barriers considered in this section may arise in every ADF state, but we suggest that, in seeking to understand the situation of a given ADF state, it is worthwhile to evaluate the extent to which they may apply. ■



Conclusions

The publication of this report in 2025 marks the 40th anniversary of the formal adoption of the ADF category in the UN's quinquennial reports on capital punishment in 1985 – an important moment to reflect on the concept and what it means today. Over this time, there has been significant and sustained growth in the number of abolitionist *de jure* states worldwide and in the number of abolitionist *de facto* states, with an inevitable relationship between the movement in both. Indeed, in the past 10 years, a total of 16 states abolished in law, with 15 of these preceding this with a period of ADF status,²⁶⁸ showing ADF as a step towards – and even a predictor of – abolition in law.

The growth in the number of ADF countries has significant intrinsic value, increasing the number of jurisdictions that have ceased executions and are not likely to resume in the future. But it also has instrumental value for the abolitionist movement, given that, for many abolitionist *de jure* states, ADF status formed an integral part of their path to abolition. Yet, in moving beyond this simple observation to examine the nuances of the concept of ADF, we find a definition that encompasses a variety of states with different relationships to the death penalty, distinct from the types of relationships found among retentionist and abolitionist *de jure* states. In considering several key variables that can distinguish between ADF states, we have demonstrated the complexity and heterogeneity of the category, and exposed contemporary variations within their regional and historical settings.

One of our key findings has been the extent to which the capital punishment system continues under ADF status, despite the perceived proximity to abolition. Rather than having renounced the death penalty, the majority of such states (almost 70%) have persons on death row. The continued presence of active death rows in these states can expose those sentenced to death to the inevitable negative mental health impacts and poor conditions of detention, as in retentionist states. Worldwide, there are reported to be several thousand individuals living on death row in ADF states – as elsewhere, typically from the most marginalised groups in society – yet their situation receives little attention.

We have established that the retention of the death penalty in the law without executions can have other legal and political implications in ADF states. These include the potential for death penalty laws to influence the operations of the criminal justice system more broadly – for example, by shaping how defendants facing capital charges choose to plead. There can also be effects on states' approaches to the punishment of crime, with retention of death penalty laws preserving the principle that it is legitimate for a state to take life through a judicial process, encouraging a culture of penal punitiveness and, particularly, longer prison sentences. We have demonstrated too the potential for death penalty laws in ADF states to have powerful symbolic effects, seen, for example, in calls from politicians to expand death penalty laws to new offences. Such symbolic functions help us to explicate rationales for continued attachment to capital punishment in law.

Critical scrutiny of the meanings and expectations attached to the ADF category has demonstrated the significant influence of the historical assumption of a common

267. Benin (2016); Burkina Faso (2018); Central African Republic (2022); Chad (2020); Fiji (2015); Guinea (2016); Kazakhstan (2021); Madagascar (2015); Nauru (2016); Papua New Guinea (2022); Republic of Congo (2015); Sierra Leone (2021); Suriname (2015); Zambia (2022); Zimbabwe (2024). The one country that abolished without reaching ADF status was Equatorial Guinea, which abolished after a period of eight years without an execution. See Death Penalty Information Center, 'Countries that have abolished the death penalty since 1976' (2025) <<https://deathpenaltyinfo.org/policy-issues/policy/international/countries-that-have-abolished-the-death-penalty-since-1976>> accessed 4 July 2025.

trajectory whereby states would progress through a phase of ADF status to reach *de jure* abolition. Over the four decades since the inception of the category, many states took this journey, particularly in Europe during the 1990s. For those European states, ADF proved to be an important step in the abolition process, with suspension of executions through a moratorium a pre-condition for accession to the Council of Europe. Yet we found that this course is but one among many possible trajectories: some states abolish *de jure* without a period of more than 10 years without executions; others – in rare cases – resume executions; and others still have remained in ADF status for many decades without any movement.

To understand the range of experiences of those states within the ADF category today, we offer a new theoretical approach, from the perspective of ‘competing logics’. In applying this approach, we have argued that ADF status is the result of certain factors incentivising the suspension of executions alongside other factors incentivising retention of death penalty laws. This approach can accommodate varied explanations for ADF status, including that such states may wish to present one narrative to a domestic audience for political reasons, often about use of the death penalty to respond to or deter crime, and another narrative to an international audience, concerning their commitment to *de facto* abolition with a view to eventual abolition *de jure* in line with international law. Viewed from this perspective, ADF appears as far less of an enigma than once thought.

While this theoretical framework helps us to understand why states retain death penalty laws without executions, this report also seeks to answer the obvious question: if ADF states have suspended executions, why have they not reached abolition in law? The competing logics approach encourages us to be mindful of the convenience of the status quo, which placates both domestic and international audiences. However, we must look further than that. Significant change to penal policy requires active political will and informed engagement at both domestic and international levels. We argued that this may be hindered in some such states by the very nature of ADF. Some of the rationales for continued retention without executions are likely to match some of those found in retentionist states: rationales based on perceptions about public opinion; the deterrent effect of harsh punishments; and the state’s sovereign right to determine its own criminal laws and penal codes. However, while some barriers to abolition may be found in retentionist states, they are likely to be more pronounced in ADF states: those arising from the particular lack of salience of the death penalty and the lack of public knowledge about it. And other barriers still may reflect the unique nature of ADF states: those arising from the convenience of the status quo and the risk of entrenchment under ADF status.

The finding that inertia and entrenchment – a clear risk in some ADF states – may form particular barriers to abolition indicates that a new dynamic may be necessary in order for some ADF states to generate momentum towards *de jure* abolition. Here we identify positive movement that the international community could legitimately expect of such states at this point. Once states have passed the 10-year mark without executions and are therefore labelled as ADF, international observers could legitimately expect them to continue to take steps to prove their longer-term commitment to full abolition: as the UN Human Rights Committee has affirmed, under the ICCPR, states that have not yet removed the death penalty in law should be on an “irrevocable path” to *de jure* abolition “in the foreseeable future”.²⁶⁹ While a literal understanding of ‘irrevocable’ suggests that they do not resume executions, ‘path’ expresses an assumption of demonstrable progress ►

and the temporal reference suggests some imminence. Yet, today, there are many ADF states that show little evidence of any intention to follow such a path.

A variety of positive steps could demonstrate commitment to the path towards abolition. The adoption of an official moratorium represents a clear commitment to permanent suspension of executions. Official moratoria have previously constituted an important part of some states' trajectories to reach abolition in law. As well as suspending executions, an official moratorium can also suspend the imposition of death sentences, showing the state's willingness to stop increasing the death row population. Commutation of the death sentences of those already on death row can be another means of demonstrating the intention to move away from capital punishment – but it is important that this is combined with the suspension of death sentences, rather than used only to regulate the number of those held on death row. Other key steps include: the abolition of mandatory death sentencing (where that remains); the reduction of the number of capital offences; and voting in favour of the UN General Assembly resolution for a universal moratorium on capital punishment, or at the very least abstaining following a history of voting against. Constructive changes of this kind can serve as 'markers' of intent to continue the trajectory towards *de jure* abolition, and as such may reduce the risk of inertia or entrenchment.

For those ADF states that reach *de jure* abolition, their steadfast commitment to the abolition movement can be expressed and consolidated through the adoption of relevant international standards. Becoming a party to the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty, for example, constitutes a legally binding commitment to full abolition of capital punishment – as of the time of writing, there are 92 states parties worldwide.²⁷⁰ In Europe, many abolitionist states have made a similar commitment by adopting Protocol 6 to the ECHR (prohibiting the death penalty in peacetime),²⁷¹ which has 46 states parties,²⁷² and Protocol 13 to the ECHR (prohibiting the death penalty in all circumstances),²⁷³ which has 45 states parties.²⁷⁴ At the domestic level, these legally binding commitments symbolise the permanence of abolition, making it much more difficult for the death penalty to ever be reinstated in future. At the international level, they are important signals of a state's acceptance of the principle of universal abolition of capital punishment.

268. "Article 6(6) [of the ICCPR] reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, *de facto* and *de jure*, in the foreseeable future." See: UN Human Rights Committee (n 188) para 50.

269. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted 15 December 1989, entered into force 11 July 1991) UNTS 1642, 414.

270. Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty (opened for signature 28 April 1983, entered into force 1 March 1985) ETS 114.

271. Council of Europe, 'Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in peacetime' (2025) <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=114>> accessed 4 July 2025.

272. Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (opened for signature 3 May 2002, entered into force 1 July 2003) ETS 187.

273. Council of Europe, 'Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances' (2025) <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=187>> accessed 4 July 2025.

At the outset, this report noted that ADF states generally receive less attention in discussions of the global death penalty than retentionist states, which generate engagement within national and international communities when carrying out executions, and abolitionist states, whose journeys to abolition are often well-documented and publicised, attracting generous praise within international bodies even if the response at the domestic level may be more equivocal. This report is an attempt to begin to correct this imbalance, to give the concept of ADF the attention it merits, revealing its complexities and contradictions. But there is still a need for more research and discussion of the concept of ADF and the situation of ADF states. This includes increasing awareness about the tensions inherent in this status – for example, among criminal justice professionals, including law enforcement, prosecutors and members of the judiciary, who must navigate a justice system that may allow for a sentence of death that will probably never be executed. From the perspective of the global death penalty landscape, overcoming the barriers to abolition present in ADF states could have a significant impact on the global abolition movement, and increase the pressure felt by the remaining retentionist states.

Abolition inevitably requires political will, which will be more likely following informed engagement at domestic and international levels. Such engagement should be based on recognition that, inter alia, there is a difference between a state that has only recently passed 10 years without executions and another that has reached 40 years or more, and must consider what distinctive strategies may be advanced to encourage reform. To engage with ADF states, and with the issue in general, requires an understanding of the apparent contradictions and complexities, of the competing logics at play. In sharing our empirical, conceptual and theoretical insights, we hope that this report will prove useful to those who seek to foster the conditions for further change. Though cessation of executions in ADF states is to be applauded, the international community should be ever mindful that critical functions of the machinery of death continue. Furthermore, the examples of states that have resumed executions after a long period of being ADF demonstrate that there is no room for complacency over jurisdictions that assume ADF status for long periods without making progress towards *de jure* abolition. Indeed, our discussion above has shown that abolition will not be achieved by time alone; time can be the enemy of progress, producing states of inertia. ■

Afterword

The Council of Europe has played a leading role in creating a death penalty-free zone. No execution has taken place in any of our 46 member States since 1997. The abolition of the death penalty is now recognised as one of our fundamental values and essential to the respect for the inherent dignity of all human beings.

Following a proposal by the Parliamentary Assembly of the Council of Europe to legally abolish the death penalty, Protocol No. 6 to the European Convention on Human Rights was adopted by the governments of the member States in 1983. It was the first international legal instrument to prohibit the death penalty, but only applied in peacetime. The States that asked to join the Council of Europe after the fall of the Berlin Wall were required to introduce a moratorium on executions as a first step towards the abolition of the death penalty. When almost all the former Soviet-bloc States had acceded to the Organisation, Protocol No. 13, providing for the abolition of the death penalty in all circumstances, could be adopted in May 2002.

In parallel, the European Court of Human Rights developed a consistent caselaw on the death penalty. In 1989, it delivered its landmark decision, *Soering v the United Kingdom*, where it found the death row phenomenon to be contrary to the prohibition of inhuman and degrading treatment or punishment, and held that member States should not, therefore, extradite prisoners to a country when they would incur such treatment. In 2010, in the *Al-Sadoon and Mufdhi* case, the Court held that the death penalty, as it involves the deliberate and premeditated destruction of a human being by state authorities, causing physical pain and intense psychological suffering, could be considered as such contrary to Article 3 of the European Convention on Human Rights.

The number of countries applying the death penalty worldwide continues to decline. However, this has not prevented a recent increase in the number of executions being carried out globally, and there should be no room for complacency. At the Reykjavik Summit in 2023, Heads of States and Governments decided to strengthen the Council of Europe's work on the abolition of the death penalty, underlining that "it should pursue the fight against the reintroduction of the death penalty, and in favour of its universal abolition, in all places and in all circumstances". The position of coordinator for the abolition of the death penalty was created, and new projects have been launched to counter pro-death penalty narratives in Europe and beyond, and to advocate for global abolition.

As part of this work, we have commissioned the present analysis of the effect of moratoria – that is, the temporary suspension of executions (which can be qualified as 'de facto' or take the form of a legal text emanating from the executive, legislative or judicial power). Despite executions being suspended, death sentences often continue to be handed down, and moratoria, as temporary measures, can also be lifted.

We are glad to collaborate on this issue with the Death Penalty Research Unit at the University of Oxford and with The Death Penalty Project. They have done a wonderful job in drafting this comprehensive report, which sheds light on the frequent adverse effects of moratoria in practice, thus serving as a warning against relying on *de facto* solutions when not swiftly followed by *de jure* abolition.

We believe that this study also has the potential to be a valuable contribution in the United Nations context, and, more generally, to the abolitionist community. It demonstrates that, even when a country is considered to be abolitionist *de facto* for a long time, there can still be adverse effects stemming from the retention of the death penalty in the legislation. While, in the European experience, moratoria on executions have always been viewed as a temporary measure and a short step towards *de jure* abolition, the report shows that, elsewhere in the world, moratoria, be they official or unofficial, are not always seen as transitional.

Finally, the report should serve as a useful point of reference regarding the situation in countries with moratoria. Such information can be relevant when national authorities and courts in Europe, as well as the European Court of Human Rights, have to assess the risks likely to be incurred through the extradition or deportation of people to the country concerned.

I hope you have enjoyed reading this report and that it will help efforts to promote the universal abolition of the death penalty.

Gianluca Esposito

Director General of Human Rights and Rule of Law, Council of Europe

The authors



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Carolyn Hoyle is Professor of Criminology and Director of the Death Penalty Research Unit in the Faculty of Law at the University of Oxford. Alongside research on criminal justice, restorative justice, victims and wrongful convictions, she has been researching and teaching on the death penalty for 20 years. Her theoretical and empirical work focuses on the rationales for retention – not least deterrence and public opinion – as well as who is sentenced to death around the world. She uses that research to engage with governments and policymakers, and to support civil society organisations in their efforts to bring about abolition or progressive restriction of capital punishment.



Parvais Jabbar is the Co-Executive Director of The Death Penalty Project and a Visiting Professor of Practice at the Faculty of Law, University of Oxford. He has more than three decades of experience representing persons facing the death penalty at the appellate level, as well as before international human rights tribunals from a number of Commonwealth countries. He is an internationally recognised expert on the administration of capital punishment and criminal justice reform, and has led a number of international delegations seeking to build consensus for reform among a broad range of stakeholders. His work and expertise combine law, politics, policy and the practical to develop strategic change.

The Death Penalty Research Unit



Part of the University of Oxford's Centre for Criminology, the Death Penalty Research Unit (DPRU) focuses on the retention, administration and politics of the death penalty worldwide. The DPRU aims to understand the rationales for the death penalty, how it is used in practice, and its diverse application and impact on communities.

The DPRU is committed to working with partners in various regions on collaborative production and dissemination of empirical and theoretical knowledge. This work is not only aimed at elucidating the law and practice of capital punishment worldwide, but at challenging it, with the explicit aim of abolition or, failing that, progressive restriction.

The Death Penalty Project



The Death Penalty Project (DPP) is a legal action NGO with special consultative status before the United Nations Economic and Social Council.

Driven by a belief that the death penalty is cruel and often discriminates against the poorest and most disadvantaged members of society, the organisation works to safeguard the rights of those facing the death penalty and other vulnerable people. For more than three decades, DPP has been working in more than 30 countries to end and restrict the use of capital punishment, protecting thousands of people from execution.

DPP commissions, supports and publishes independent academic research examining attitudes towards the death penalty, using original data from public opinion surveys and other empirical research to engage in dialogue with policymakers and politicians, and to challenge popular misconceptions around the death penalty.

This report marks the 40th anniversary of the adoption of the 'abolitionist *de facto*' (ADF) category in the UN's quinquennial reports on the death penalty. Today, 42 states fall under the category of ADF – countries where no executions have taken place for at least a decade, but where the death penalty remains in law. Though an absence of executions must be commended, many ADF states still impose death sentences and, ultimately, sustain the legal infrastructure of capital punishment, with all the risks and harms this entails.

Until now, there has been limited research into the practices and rationales underpinning the ADF concept or on its effects. This study draws attention to the potential for *de facto* abolition to become a destination point, rather than a step on the path towards permanent legal abolition. It acts as a reminder that the absence of executions must not be mistaken for true abolition, and that the ultimate goal remains the complete eradication of the death penalty in law as well as in practice.



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