

**THE PROCESS  
OF ABOLISHING  
THE DEATH PENALTY  
IN MEMBER STATES  
OF THE ORGANISATION  
OF ISLAMIC  
COOPERATION**

**NAEL GEORGES**



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## LIST OF ABBREVIATIONS

ACAT	Action by Christians for the Abolition of Torture
AU	African Union
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CI-HRC	Côte d'Ivoire Human Rights Commission
CRC	Convention on the Rights of the Child
DHRL	Djiboutian Human Rights League
ECHR	European Convention on Human Rights
ECPM	Together against the Death Penalty
EU	European Union
FIACAT	International Federation of Action by Christians for the Abolition of Torture
FIDH	International Federation for Human Rights
ICCPR	International Covenant on Civil and Political Rights
IHR	Iran Human Rights
IOF	International Organisation of <i>La Francophonie</i>
IOP	International Observatory of Prisons
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
OIC	Organisation of Islamic Cooperation
OPCAT	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE	Organisation for Security and Co-operation in Europe
OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
SHRC	Senegal Human Rights Committee
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UPR	Universal Periodic Review
USSR	Union of Soviet Socialist Republics

## GLOSSARY

**Apostasy** • Renunciation of a religion

**Caliph** • Religious and civil leader in a Muslim country

**Sharia** • Islamic law

**Quran** • Allah's word for Muslims and the main source of Islamic law

**Quranism** • Islamic belief that Sharia should only be based on the Quran

**Corruption on Earth** • Accusation of violating the most fundamental principles of Islam

**Dar-al-Harb** • Territories outside *Dar al-Islam* where "infidels" rule

**Dar-al-Islam** • Islamic country with an Islamic Government and where Sharia prevails

**Second Optional Protocol to the International Covenant on Civil and Political Rights (OP2)** • The only international treaty aiming to abolish the death penalty by ending executions and providing the means to maintain the abolition

**Dhimmi communities** • Legal status of Christians and Jews in *Dar al-Islam* living under Islamic rule

**Dhimmi** • A non-Muslim in a *Dhimmi* community

**Diya** • Compensation paid to the family of a murder victim by the guilty party

**Fatwa** • Legal opinion or religious decision given by an expert or religious body to answer a specific question that the Quran does not explicitly answer

**Hadith** • Word or action by Islamic prophets

**Hirabah** • Crime related to "corruption on Earth"

**Hudud** • Legal punishments under Islamic law

**Ijmā** • Consensus of Islamic scholars of the same generation on a point of Islamic law

**Ijtihad** • Exertion in interpreting Islamic law

**Qiyas** • The deduction of legal prescriptions from Sharia to apply to a new case

**Abolitionist countries for all crimes** • States or territories whose laws do not impose the death penalty for any crime

**Abolitionist countries for ordinary crimes** • States or territories that only impose the death penalty in exceptional circumstances

**Abolitionist countries in practice** • States or territories which retain the death penalty but have not executed anyone in the past 10 years and do not oppose the most recent United Nations resolution in favour of a moratorium on executions and/or have ratified the OP2

**Retentionist countries** • States or territories which retain the death penalty

**Qisas** • Law of retaliation

**Sunna** • Body of sayings, traditions and practices of the Prophet Muhammad and sometimes his companions

**Ummah** • Community of Islamic believers, in other words, the nation as a religious community

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## FOREWORD

Most monotheistic religions, primarily Judaism then Christianity (excluding some evangelical churches), have a very clear stance against the death penalty. That certainly hasn't always been the case in the past. But opinions change. Nowadays, there's no denying that the idea of capital punishment as an instrument for justice has been very firmly rejected as "*Neither divine, nor human*", particularly by the Catholic Church (since the "Vatican II" reform then with Popes John Paul II, Benedict XVI and Francis). Pope Francis made the cause a key part of his vision for the Church's doctrine on social justice and set several countries on the path towards abolition.

The Islamic world is in a slightly different, yet contradictory, situation on this issue. When we talk about the death penalty worldwide, we automatically think of countries such as Saudi Arabia (a country famous for execution methods that are often said to be "medieval": public beheading with a sword, crucifixion, flagellation). Other countries that come to mind are Iran (the most reported executions per inhabitant), Egypt (countless political prisoners sentenced to death), Iraq, Afghanistan and Pakistan (where executions were reinstated in 2016 to combat terrorism yet the death penalty is actually mainly imposed for other crimes or accusations of blasphemy).

The reality we're all aware of stops us seeing another equally meaningful and illustrative reality of the Islamic world that many don't want to see: most of the Islamic world has abolished the death penalty in law or fact! In other words, countries with Muslim cultures are on the path to universal abolition just like the rest of the world. The Saudi or Iranian trees mustn't stop us seeing the forest.

The right to life is a universal value widely shared by countries with Muslim traditions or cultures, be they Sunni or Shia. Several Islamic thinkers or religious leaders put the spotlight on values of mercy and redemption, the constant quest for justice (particularly social justice) and a positive interpretation of "*an eye for an eye*".

Sharia may well have inspired several judicial systems (among other legal sources) but it doesn't form the basis of law. Most Islamic countries impose either positive law or common law in criminal justice cases. Very few countries use Sharia as the sole source of law. Even among these countries, capital punishment isn't used consistently and systematically.

The Organisation of Islamic Cooperation (OIC) represents these Muslim-majority countries. It's the perfect research subject to understand and demonstrate these realities. This publication is intended to discredit a widely-held yet damaging idea that the values of human rights are incompatible with Islamic values.

Almost three out of five OIC member States are abolitionist in law or in practice. The diversity is extraordinary among its 42% of retentionist States (24 States): 6 countries have had no executions for 5 years; they include the Maldives where nobody has been executed since 1954 and Qatar where there have been no executions for 17 years; 10 States regularly execute prisoners, including Yemen, Syria, Iraq and Somalia, in civil war, in the grip of violence and in complete violation of the rule of law.

Abolition is possible and this study proves it with its detailed examples of States that have achieved it. It provides a better understanding of the processes that led to abolition and is a valuable tool to support all the OIC member States on their path to abolishing the death penalty.

**Raphaël Chenuil-Hazan**  
General director of ECPM

## PREFACE



Sharia (Islamic law) recommended *qisas* (law of retaliation) in the Quranic text: “O ye who believe! Retaliation is prescribed for you for the slain.”

In reality, *qisas* is a unique term that is fundamentally different to the concept of execution. Linguistically, it means *justice* and not ending someone's life; a wise choice that has inspired Islamic legal experts in their search for justice-generating paths to combat present and future crimes.

In the Quranic text, *qisas* has three meanings: wounds, the violation of *hurumat* (sacred things related to pilgrimage) and the death of the murderer. The common denominator between the three uses shows Sharia's commitment to delivering justice in the fight against crime and the possibility of adapting this tool to achieve this noble objective.

We must not forget that the term *execution* is in no way mentioned in either the Quran or Sunna (Prophet's traditions). The very concept is the complete opposite of the foundations of Islamic belief whereby God alone has the power to give or take away life.

Also, the *qisas* punishment mentioned in the Quran only addresses the crime of murder. Other scenarios brought up by legal experts are nothing but interpretations and personal exertions.

It is a shame that several criminal justice laws in Islamic countries abuse the use of capital punishment by standardising it for a number of crimes with no proven basis in a clear text.

Even if Sharia deems the act of taking a murderer's life as one way among others to achieve *qisas*, it mentions fourteen other ways to deliver justice without having to murder the murderer i.e. requesting amnesty, compensation (blood money), benefit of the doubt, the claimant's prerequisite, retribution for the person receiving compensation, recess in the *qisas* that remains inseparable. These are the legal and objective provisions of Sharia that led to a significant reduction in the number of executions and

contributed to the creation of Islamic legal precedents, making it fairer and better at fighting crime.

Islamic caliphs made significant progress in restricting the use of capital punishment too. During the reign of the caliph Umar ibn Abd al-Aziz, his express agreement was required when using this penalty independently of its circumstances; a condition that significantly reduced the number of executions.

There's no doubt that the rising crime levels in the last few decades have forced us to review the nature of *qisas* and its conditions, given that no Islamic text details how to combat rape, drug, forgery and hacking. Active and constant jurisprudence is required to overcome these challenges. These challenges have already been brilliantly and skillfully overcome through legislative or parliamentary commissions in the Islamic world as there is an arsenal of dissuasive punishments that have their rightful place in Sharia.

The development of the justice system and establishment of new institutions imposing correctional sentences, such as detention centres and prisons, as well as breakthroughs by international conventions are valid reasons for instigating a revision of the death penalty and review of the *qisas* system. The latter is based on a form of justice with several possible options which the legislative institution can prioritise in accordance with Sharia rules.

Moreover, the widespread political assassinations in the Islamic world compel legal experts to exclude pretexts feeding the tyranny in whose name lives are taken, by ordering a moratorium on executions in all circumstances.

I have no doubt that the rules legal experts follow to understand texts and sources of deduction such as the consensus, approbations, restorations, habits and customs are sufficient for an in-depth revision that would enable the objectives of *qisas* to be achieved by using correctional penalties and ordering a moratorium on executions.

**D<sup>r</sup> Mohamad Habash<sup>1</sup>**

President of the Islamic Studies Centre in Damascus

<sup>1</sup> ECPM, "Mohammad Habash: réformateur convaincu" (Mohammad Habash: fervent reformer), 14 December 2012, in French on: <http://www.ecpm.org/mohammad-habash-reformateur-convaincu/>

***"He who slays a soul unless it be (in punishment) for murder or for spreading corruption on Earth shall be as if he had slain all mankind; and he who saves a life shall be as if he had given life to all mankind."***

*Surah Al-Ma'idah, 5:32*

***"Do not kill any person whom Allah has forbidden to kill."***

*Surah Al-Isra, 17:33*



## ALGERIA

*“The death penalty is useless: it does not deter criminals, it does not satisfy victims, it does not protect society.”*

### **Mohammed Bedjaoui**

*Former Minister of Foreign Affairs, former Minister of Justice, former President of the Constitutional Council*

## BENIN

*“Imposing the death penalty is of no benefit to justice.”*

### **Thomas Boni Yayi**

*Former President of the Republic, former President of the African Union*

## GUINEA

*“Whether it be terrorism or other intolerable acts, it should not stop African countries working towards abolishing the death penalty. Extreme punishment, meaning taking someone’s life, won’t resolve the issue of terrorism.”*

### **Cheikh Sakho**

*Former Minister of Justice*

## LEBANON

*“It has been proved that capital punishment has never stopped crime, has never resolved issues related to insecurity, has never stopped drug trafficking or acts of crime. The statistics are official proof of it in every country worldwide: the death penalty is not the answer and does not re-establish public order or keep citizens safe.”*

### **Ibrahim Najjar**

*Former Minister of Justice*

## BURKINA FASO

*“Respect for human life is of the utmost importance in Burkina Faso and so is the issue of abolishing the death penalty.”*

### **Bessolé René Bagoro**

*Minister of Justice, Keeper of the Seals*

## CÔTE D’IVOIRE

*“The death penalty has not been used since our country gained independence despite being in our previous legislation. The sacrality of the human person is an issue dear to our nation and it speaks to our shared conscience, so Côte d’Ivoire underlines its commitment to constantly work towards abolishing the death penalty.”*

### **Sansan Kambilé**

*Minister of Justice, Keeper of the Seals*

## MALAYSIA

*“Even though the death penalty has been applied throughout the world and throughout the ages, murders continue to occur. The death penalty has not acted as a deterrent.”*

### **Liew Vui Keong**

*Former Minister in the Prime Minister’s Department for Law*

## EGYPT

*“The death penalty is irreversible and its use has been universally rejected.”*

### **Mohamed El Baradaei**

*Former Vice-President, winner of the 2005 Nobel Peace Prize*

## MOROCCO

*"We're pleased about the debate on the death penalty supported by civil society and several parliamentarians and legal experts. It will help explore the issue further and more in-depth."*

**His Majesty King Mohammed VI**

## SENEGAL

*"No value can ever justify putting the value of human life into perspective so far as to eliminate it legally."*

**Abdou Diouf**

*Former President of the Republic, former General Secretary of the International Organisation of La Francophonie.*

## TUNISIA

*"The death penalty has never had any effect on the number of crimes and has always been used to eliminate opponents."*

**Moncef Marzouki**

*Former President of the Republic*

## TUNISIA

*"No one disputes the right to life. It is at the top of the ladder for moral values and legal standards. 'Thou shalt not kill': there can be no doubt over this peremptory rule."*

**Yadh Ben Hachour**

*Member of the United Nations Human Rights Committee, former President of the Higher Political Reform Commission of Tunisia*

## CHAD

*"The death penalty is a violation of the right to life. Chad shall call for the G5 Sahel States to try to work towards abolishing the death penalty."*

**Djimet Arabi**

*Minister of Justice*

## GAMBIA

*"There is currently a constitutional amendment process under way in Gambia and, as expected, the use of the death penalty has sparked countless debates at public consultations run by the Constitutional Amendment Commission. Nevertheless, the new Gambian Government unequivocally supports the total abolition of the death penalty in Gambia."*

**Abubacarr M. Tambadou**

*Attorney General and Minister of Justice*

## ALGERIA

*"Civil society organisations and politicians themselves must have an awareness campaign for the general public to instil the idea that the death penalty is cruel and discriminatory."*

**Maya Sahli Fadel**

*Commissioner of the African Commission on Human and Peoples' Rights, member of the Working Group on the Death Penalty in Africa*

## METHODOLOGY

This study is based on an in-depth analysis of documentary resources related to the processes involved in abolishing the death penalty in some of the OIC member States: periodic reports sent by these States to United Nations (UN) bodies – such as the Human Rights Council and Committee against Torture –, observations from these committees, regional reports related to human rights, national legislation and key political decisions adopted by the States in question. To fulfil the research aspect on the issue of the death penalty in Islam, we studied the sources of Islamic law, certain Islamic documents – including some relating to human rights in Islam – as well as publications stating the positions of a number of religious leaders on the abolition of the death penalty. As part of this study, we also identified certain international, regional, national and Islamic figures who may be able to enlighten us or who played a role in this battle. We conducted interviews with some of these figures, a list of which appears at the end of the publication. Using the documents in our possession and interviews, we examined issues surrounding abolishing the death penalty in Islam and the political and legal systems in the States in question.

This study shall show that the process towards abolition differs from one State to the next. The involvement of parliamentarians, figures in civil society and politicians tended to play a decisive role. International pressure and certain States wishing to present the image of a country that respects human rights or is open to democratic values also produced results. The involvement of certain States at international conferences, namely the UN and European Union (EU), resulted in a promise of abolition and support of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (OP2). There was a constitutional amendment to abolish the death penalty in some States such as Turkey; the role of the constitutional court in Benin proved decisive in stopping it being used; criminal and martial laws also required modification to remove any reference to capital punishment in abolitionist countries; last but not least, life being sacred in

certain African traditions led some African States to abolish it. Our work first requires an exploration of the death penalty in Islam then an observation of the processes towards abolition with case studies of several abolitionist OIC member States.

## INTRODUCTION

The use of the death penalty affects human dignity. It is an unjust punishment akin to torture. The States that apply it don't tend to have an independent legal system to guarantee fair trials. Moreover, this form of punishment is often inflicted on the most disadvantaged, discriminated or marginalised people in society, namely religious and ethnic minorities. Capital punishment is also used as a political weapon against opponents and those who exercise their unquestionable right to freedom of speech. It creates a climate of fear that increases when executions take place in public such as in countries with an authoritarian regime, as Iran.<sup>2</sup> The Palestinian poet and writer Ashraf Fayadh is currently in prison in Saudi Arabia. He was sentenced to death for "apostasy"<sup>3</sup> and promoting "atheism in his writing".<sup>4</sup> Mahmoud Muhammad Taha, a Sudanese religious thinker, was hanged in 1985 following pressure from Islamic fundamentalists for trying to modernise Islam.<sup>5</sup> Evolution in the interpretation of Islam have resulted in freedom of speech being respected and the death penalty being abolished. Its abolition in member States of the Organisation of Islamic Cooperation (OIC) is therefore essential to promoting respect for human rights, democratic change and development.

The involvement of States that are now members of the OIC in developing international human rights instruments has been a significant step towards the universal protection of these rights. Countless Muslim-majority States have contributed to writing the Universal Declaration of Human Rights (UDHR).<sup>6</sup> The declaration clearly states in its article 3 that "Everyone has the right to life, liberty and security of person."<sup>7</sup> Recent decades have also seen

2 Iran Human Rights (IHR) and Together against the Death Penalty (ECPM), *12<sup>th</sup> Annual Report on the Death Penalty in Iran, 2020*, p. 41 and *sqq.*, available on: <http://www.ecpm.org/en/release-of-the-12th-annual-report-on-the-death-penalty-in-iran/>

3 *Cf. infra*. Part 1, III. Sources of Islamic law and the death penalty.

4 His sentence was commuted to 8 years in prison and 800 lashes following international pressure on the Saudi Arabian Government.

5 *Cf. infra*. Part 1, IV. ii. Islam and secularism.

6 They include Egypt, Lebanon, Iraq, Syria, Afghanistan, Saudi Arabia, Iran, Pakistan, Turkey and Yemen.

7 In principle, like other international declarations, this declaration constitutes a voluntary instrument. It has no legally binding value for UN member States. However, the UDHR may constitute a source of international law due to its universal nature.

a significant change in the positions of OIC member States with regards to human rights.

This study intends to support the call to abolish the death penalty in all these States. It analyses the stages involved in the abolition process and details the role of various figures in this area to better understand the events that led some of them to abolish the death penalty. This work is intended for international, regional and national figures, including civil society and other human rights advocates. It is a tool that will ultimately support capacity building and advocacy activities. Analysing the political and legal issues surrounding the abolition of the death penalty in OIC member States provides a better understanding of its obstacles and an overview of the elements required for abolition to spread throughout the OIC.

Religion plays a significant part in the respect of human rights in general and the abolition of the death penalty in particular. Islam is a vital political and legal power in most OIC member States today. Several of these States' Governments often present the religious argument to justify imposing the death penalty: abolishing this sentence would be impossible as it would go against Islamic precepts. However, certain religious leaders agree that there is no religious consensus in Islam on the absolute necessity to enforce the death penalty and several Muslim-majority States have already abolished capital punishment.

Saudi Arabia and Iran are among the States that use the death penalty the most in the world. They continue to enforce a very strict interpretation of Islamic Sharia resulting in countless executions in the name of Islam. Capital punishment is used for purely religious crimes such as blasphemy, apostasy, adultery and homosexuality;<sup>8</sup> however, there is always a political factor: ordinary crimes such as conspiracy and drug trafficking are punishable by death. A report published in 2020 by the UN<sup>9</sup> states: "*The Human Rights*

8 Twelve States, all Muslim, currently impose the death penalty for "crimes" related to homosexuality: Afghanistan, Saudi Arabia, Brunei, United Arab Emirates, Iran, Mauritania, Pakistan, Qatar, Sudan, Yemen, Somalia and certain regions of Nigeria. See ECPM, *Le Bagne au pays des sables. Peine de mort, conditions de détention et de traitement des condamnés à mort - Mauritanie (Forced labour in the land of sand. The death penalty, prison conditions and treatment of death row inmates - Mauritania)*, 2019, p. 49, available in French on: <http://www.ecpm.org/wp-content/uploads/Mauritanie-Le-bagne-au-pays-des-sables.pdf>

9 Human Rights Council, *Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, Forty third session [A/HRC/43/61], 24 February-20 March 2020, available on: <https://undocs.org/en/A/HRC/43/61>

*Council has deemed public executions contrary to the provisions of the International Covenant on Civil and Political Rights. (...) The death penalty continues to be heavily imposed for a large number of offences, in violation of article 6 in the International Covenant on Civil and Political Rights which States that states parties that have not yet abolished the death penalty should only use it for the most serious crimes. Based on the unchanging definition of the Human Rights Council, the most serious crimes involve murder.<sup>10</sup> The Islamic criminal code does not restrict the death penalty to these offences. For example, the death penalty may be used in cases of adultery, sexual relations between consenting men or offences that are not clearly defined such as efsad-e fel-arz ('spreading corruption on Earth')."* The 12<sup>th</sup> Annual Report on the Death Penalty by Iran Human Rights (IHR) and Together against the Death Penalty (ECPM) provides an evaluation and analysis of trends regarding the death penalty in 2019 in the Islamic Republic of Iran, where at least 280 people were executed last year.<sup>11</sup>

This study aims to combat the death penalty worldwide and support its universal abolition. Considering the importance of religion in the debate surrounding the abolition or retention of the death penalty, it also reviews Islamic criminal law and addresses Islamic perspectives to move away from using this punishment.

## INDONESIA

**"It is vital that we differentiate between the Koran, from which much of the raw material for producing Islamic law is derived, and the law itself. While its revelatory inspiration is divine, Islamic law is man-made and thus subject to human interpretation and revision."**

**Abdurrahman Wahid**  
former President of Indonesia

10 Cf. *supra*, General comment n° 36 of the UN Human Rights Committee.

11 IHR and ECPM, *op. cit.*, p. 7.

PART I  
**THE OIG  
AND THE DEATH  
PENALTY**

## THE OIC AND THE DEATH PENALTY

The position of OIC member States on the implementation or abolition of the death penalty isn't just based on political aspects in terms of governance and image on the international stage. It also involves religious aspects, as Islamic law tends to be a source or the main source for legislation. However, differences in interpreting Islamic law and its ambiguity lead to different positions depending on the country. That's why several States have abolished the death penalty or have a moratorium on executions.

To understand the different positions among OIC member States, it's important to present the organisation itself and its human rights-related documents, especially concerning the right to life, as well as to apprehend the diversity of its member States. To better understand the notion of OIC member States, we have to address the definition of an Islamic State before examining Islamic sources and the death penalty. We shall then explore the possibility of a different interpretation of Islamic precepts in light of contemporary society that could end the use of Sharia, or at least the death penalty.

### Presentation of the OIC

Unification attempts in the Islamic world date back to the dissolution of the Ottoman Empire and the end of the caliphate regime in the early 20th century: the Islamic *ummah* (nation) hasn't existed since then. After the dissolution, most Islamic States were colonised by western States such as France and Britain. Under these circumstances, Muslims tried to unify the Islamic world to liberate it and strengthen it by reinstating the caliphate. It was the subject of several Islamic meetings, including a conference in Cairo, in March 1926, presided over by Sheikh of Al-Azhar.<sup>12</sup> Nevertheless, the growth of national States in the early 20th century created a sense of belonging to a country rather than the *ummah*. The OIC, formerly the Organisation of the Islamic Conference,<sup>13</sup> was founded at a time that was heavily influenced by the Non-Aligned Movement founded in 1955 by Nasser, Nehru, Sukarno and Zhou Enlai.<sup>14</sup>

The OIC was founded on 25 September 1969 after a meeting attended by several Muslim-majority country rulers in Rabat (Morocco), following an arson attack at the Al-Aqsa Mosque in Jerusalem on 21 August 1969 by an Australian Christian fundamentalist.

The first Conference of Foreign Ministers was held in Jeddah in March 1970. It founded a general secretariat in charge of communication between the member States and coordinating action. It established a provisional HQ in Jeddah until the "liberation of Jerusalem". On 5 August 1990, the Conference of Foreign Ministers in Cairo adopted the Declaration on Human Rights in

<sup>12</sup> The Al-Azhar institution based in Cairo, Egypt, is both a mosque and a Quranic university.

<sup>13</sup> It changed name in June 2011.

<sup>14</sup> The Non-Aligned Movement is a forum of 120 developing world States that are not formally aligned with or against any major power bloc. *Le Monde diplomatique*, "De la conférence de Bandung au mouvement des non-alignés", Françoise Feugas, available in French on: <https://www.monde-diplomatique.fr/53274>



Islam, which can be seen as a desire to reinterpret human rights in line with Sharia.

The OIC is an intergovernmental organisation made up of fifty seven member States<sup>15</sup> including twenty two Arab League member States. Five States have observer status: Bosnia and Herzegovina, the Central African Republic, Thailand, the Russian Federation and Turkish Cypriot State. Certain organisations such as the League of Arab States, the UN and the African Union (AU) also have observer status.

The OIC is the biggest international organisation after the UN. OIC member States are spread over four continents. They are a diverse group whose States differ in terms of how much input Islam has on their population, politics and law. Some member States have a Muslim majority and Islam is the official religion according to the Constitution, whilst other States are secular and only have a Muslim minority. Each State's internal and external political orientation is equally diverse. That may explain why some of them abolished the death penalty decades ago whilst others are among those that execute the most people in the world.

#### Geographical spread of OIC member States



The OIC primarily aims to strengthen solidarity and cooperation among Islamic States, combat the colonisation of the Palestinian population and safeguard Sharia values. It confirms that “*The*

<sup>15</sup> Member and observer States.

*Organization has consultative and cooperative relations with the UN and other inter-governmental organizations to protect the vital interests of the Muslims and to work for the settlement of conflicts and disputes involving Member States.”*<sup>16</sup> The OIC Charter, drawn up in Jeddah (Saudi Arabia) in March 1972, states in its preamble that member States are committed to “*Principles of the United Nations Charter and fundamental human rights*”<sup>17</sup> and “*To preserve and promote the lofty Islamic values of peace, compassion, tolerance, equality, justice and human dignity.*” This charter helped build the OIC's structure by detailing its organs, including the Council of Foreign Ministers, the International Islamic Court of Justice and the Independent Permanent Human Rights Commission. Article 6 states that “*The Islamic Summit is composed of Kings and Heads of State and Government of Member States and is the supreme authority of the Organisation.*” Rulers meet at this kind of summit to explore the key issues faced by the *ummah*.

According to the official website, “*The Organisation is the collective voice of the Muslim world. It endeavours to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world.*”<sup>18</sup> The OIC drew up a plan<sup>19</sup> to work towards its main objectives, which include supporting Palestinians and combating Israel's occupation of their territory (occupied since 1967), fighting terrorism and Islamophobia, as well as contributing to intercultural peace and harmony.

This organisation is in capacity to have a significant influence on human rights in general and abolishing the death penalty in particular.<sup>20</sup> It helps underline the position of Islam and Islamic States on key issues in Islam, including fundamental rights. The OIC is an undeniable political and religious force on the

<sup>16</sup> Cf. official OIC website for Saudi Arabia: [https://www.oic-oci.org/page/?p\\_id=52&p\\_ref=26&lan=en](https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en)

<sup>17</sup> During the OIC Islamic Summit in Dakar in 2008, member States made new amendments to the Charter and renewed their support for the principles of the UN Charter.

<sup>18</sup> Cf. official OIC website: [https://www.oic-oci.org/page/?p\\_id=52&p\\_ref=26&lan=en](https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en)

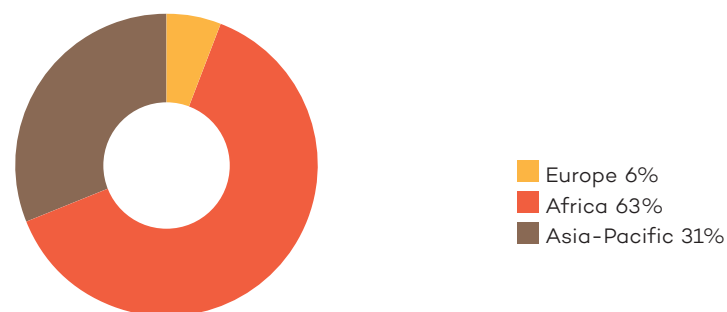
<sup>19</sup> OIC, 2025 programme of action, implementation plan (2016-2025), <https://www.oic-oci.org/upload/documents/POA/en/The%20OIC%20-2025%20POA%20Implementation%20Plan%202016-2025%20%28E%29.pdf>

<sup>20</sup> As an Islamic Organisation, the OIC displays a keen interest in protecting the rights of Muslim minorities in non-Islamic States.



international stage.<sup>21</sup> It has played an active role in laying the foundations for the main international human rights instruments. However, its position is true to traditional religious Islamic values which affect the universality of human rights. During the debate about the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,<sup>22</sup> the Iraq representative said on behalf of the OIC that “The Organisation’s member States expressed reservations in connection with any provision or wording in the declaration which might be contrary to Islamic law (Sharia) or to any legislation or act based on Islamic law.”<sup>23</sup>

#### Geographical spread of OIC member States that have abolished the death penalty



Out of the OIC’s fifty seven member or observer States, not including Syria which has been suspended, nineteen have abolished the death penalty for all crimes (sixteen States) or ordinary crimes (three States), fourteen States have a moratorium and twenty four are retentionist States. In North Africa, Algeria, Morocco, Mauritania and Tunisia have had a moratorium on executions for almost three decades.<sup>24</sup>

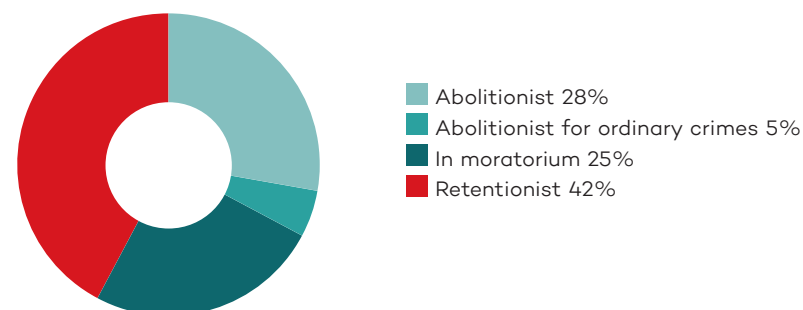
21 For further details, see Camara, H. D., *L’Organisation de la coopération islamique : une organisation originale de coopération*, law thesis, Paris XI, 1998 (only available in French).

22 Proclaimed by the UN General Assembly on 25 November 1981 - resolution 36/55.

23 UN General Assembly, 3rd Committee, Summary Record of the 43rd meeting [A/C.3/36/SR.43], 9 November 1981, pp. 8-9, available on: <https://undocs.org/en/A/C.3/36/SR.43>

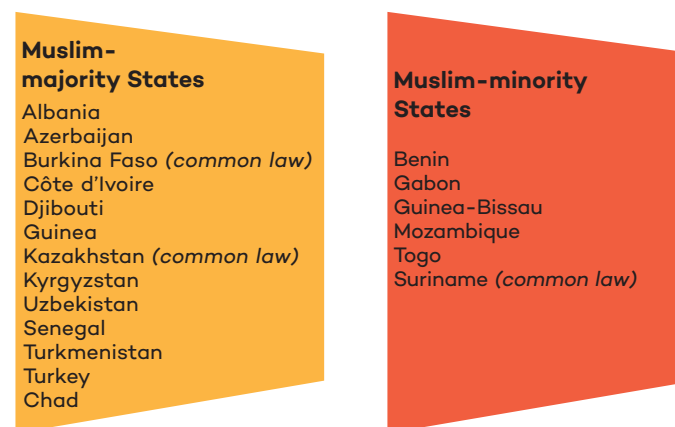
24 Algeria and Morocco have been in moratorium since 1993, Mauritania since 1987 and Tunisia since 1991.

#### Status of OIC member States

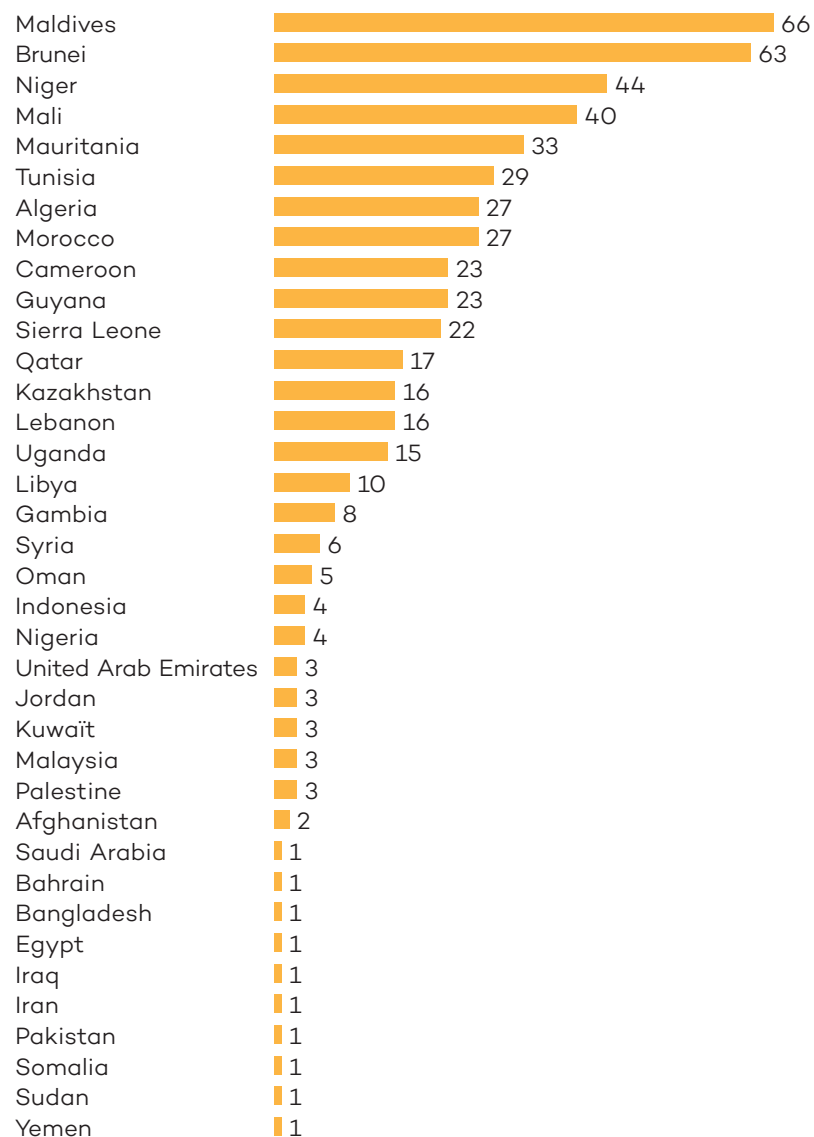


The reality of implementing the death penalty in the twenty four retentionist States does change from one country to the next. The Maldives, Brunei, Qatar and Libya have had no executions for over 10 years. For example, the Maldives is seen as retentionist but there haven’t been any executions since 1954.

Out of the nineteen States to abolish the death penalty, thirteen are Muslim-majority countries.



**Number of years since last execution in moratorium or retentionist States  
(on 1 June 2020):**



The issue of human rights in the OIC is not a fundamental pillar. However, the organisation has displayed growing interest in the subject in recent decades as we can see by the adoption of several human rights-related declarations. OIC member States have also ratified a number of international conventions for the protection of human rights.

**International and regional commitments  
by OIC member States**

For example, most of the OIC member States support the main universal conventions to protect human rights such as the International Covenant on Civil and Political Rights (ICCPR, 1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1981), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984) and the Convention on the Rights of the Child (CRC, 1984).

All these instruments protect the right to life and forbid torture.<sup>25</sup> They form a basic legal commitment to abolish the death penalty or at least restrict its implementation. Article 6 of the ICCPR states that the “Sentence of death may be imposed only for the most serious crimes.” The Human Rights Council described the meaning of “the most serious crimes” in its general comment n° 36, stating that the term “Must be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. Crimes where death is not the direct and intentional result, such as drug-related offences, attempted murder, corruption and other economic and political crimes, armed robbery, piracy, abduction and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder, cannot justify the imposition of the death penalty.”<sup>26</sup> Several abolitionist OIC member States have also ratified the OP2 (1989).

<sup>25</sup> Cf. article 6 of the ICCPR. Article 37 of the CRC states: “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

<sup>26</sup> Cf. General comment n° 36 of the UN Human Rights Committee on article 6 of the ICCPR, on the right to life, 30 October 2018, p. 9.

**SUMMARY TABLE  
OF THE STATES' INTERNATIONAL COMMITMENTS**

Country	ICCPR	OP2	CAT	OPCAT	CRC
Afghanistan	Ratified		Ratified	Ratified	Ratified
Albania	Ratified	Ratified	Ratified	Ratified	Ratified
Algeria	Ratified		Ratified		Ratified
Saudi Arabia			Ratified		Ratified
Azerbaijan	Ratified	Ratified	Ratified	Ratified	Ratified
Bahrain	Ratified		Ratified		Ratified
Bangladesh	Ratified		Ratified		Ratified
Benin	Ratified	Ratified	Ratified	Ratified	Ratified
Brunei Darussalam			Sign		Ratified
Burkina Faso	Ratified		Ratified	Ratified	Ratified
Cameroon	Ratified		Ratified	Sign	Ratified
Comores	Sign		Ratified		Ratified
Côte d'Ivoire	Ratified		Ratified		Ratified
Djibouti	Ratified	Ratified	Ratified		Ratified
Egypt	Ratified		Ratified		Ratified
United Arab Emirates			Ratified		Ratified
Gabon	Ratified	Ratified	Ratified	Ratified	Ratified
Gambia	Ratified	Ratified	Ratified		Ratified
Guinea	Ratified		Ratified	Sign	Ratified
Guinea-Bissau	Ratified	Ratified	Ratified	Sign	Ratified
Guyana	Ratified		Ratified		Ratified
Indonesia	Ratified		Ratified		Ratified
Iraq	Ratified		Ratified		Ratified
Iran	Ratified				Ratified
Jordan	Ratified		Ratified		Ratified
Kazakhstan	Ratified		Ratified	Ratified	Ratified
Kyrgyzstan	Ratified	Ratified	Ratified	Ratified	Ratified
Kuwait	Ratified		Ratified		Ratified
Lebanon	Ratified		Ratified	Ratified	Ratified

Libya	Ratified		Ratified		Ratified
Malaysia					Ratified
Maldives	Ratified		Ratified	Ratified	Ratified
Mali	Ratified		Ratified	Ratified	Ratified
Morocco	Ratified		Ratified	Ratified	Ratified
Mauritania	Ratified		Ratified	Ratified	Ratified
Mozambique	Ratified	Ratified	Ratified	Ratified	Ratified
Niger	Ratified		Ratified	Ratified	Ratified
Nigeria	Ratified		Ratified	Ratified	Ratified
Oman					Ratified
Uganda	Ratified		Ratified		Ratified
Uzbekistan	Ratified	Ratified	Ratified		Ratified
Pakistan	Ratified		Ratified		Ratified
Palestine	Ratified	Ratified	Ratified	Ratified	Ratified
Qatar	Ratified		Ratified		Ratified
Senegal	Ratified		Ratified	Ratified	Ratified
Sierra Leone	Ratified		Ratified	Sign	Ratified
Somalia	Ratified		Ratified		Ratified
Sudan	Ratified		Sign		Ratified
Suriname	Ratified				Ratified
Tadjikistan	Ratified		Ratified		Ratified
Chad	Ratified		Ratified	Sign	Ratified
Togo	Ratified	Ratified	Ratified	Ratified	Ratified
Tunisia	Ratified		Ratified	Ratified	Ratified
Turkmenistan	Ratified	Ratified	Ratified		Ratified
Turkey	Ratified	Ratified	Ratified	Ratified	Ratified
Yemen	Ratified		Ratified		Ratified

## OIC States and the Universal Periodic Review (UPR)

OIC States have received the highest number of recommendations related to the death penalty but they have only accepted 298 out of 1,261.<sup>27</sup> There have been 163 recommendations from OIC member States related to the death penalty; 45 have been accepted, 20 of which were issued to OIC member States and all accepted.

States that have issued recommendations include Albania, Côte d'Ivoire, Djibouti, Togo, Mozambique, Turkey, Benin, Sierra Leone, Albania, Gabon and Algeria. There's also Egypt, the only State to make recommendations in favour of using the death penalty.

Regionally, some human rights instruments protect the right to life and forbid the use of torture. The League of Arab States drew up the Arab Charter on Human Rights in 1994;<sup>28</sup> it protects the right to life in article 5 as *“Every human being has an inherent right to life.”*<sup>29</sup> The same article states that *“This right shall be protected by law. No one shall be arbitrarily deprived of his life.”*<sup>30</sup> Article 7 enforces strict conditions restricting the use of the death penalty and states that *“The death penalty shall not be inflicted on a person under 18 years of age, unless otherwise provided by the law in force at the time of the commission of the crime; The death penalty shall not be carried out on a pregnant woman prior to her delivery or on a nursing mother within two years from the date on which she gave birth. In any case, the interests of the infant shall prevail.”*<sup>31</sup> Article 8 states that *“No one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment.”*<sup>32</sup> The African Charter on Human and Peoples' Rights, adopted in 1981 in Nairobi (Kenya) by the AU member states, declares in its article 4 that *“The human person is inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”*<sup>33</sup>

27 The database of recommendations is available here: <https://upr-info-database.uwazi.io/en/>

28 Through resolution n° 54/37. This Charter was amended in 2004 and 2008.

29 Arab Charter on Human Rights, article 5, 2004.

30 *Ibid.*

31 *Ibid.*, article 7.

32 *Ibid.*, article 8.

33 African Union, African Charter on Human and Peoples' Rights, 18th Conference, 18 June 1981, article 4.

## Position of abolitionist OIC member States with regard to the vote of the moratorium resolution

Country	2020 status	2007	2008	2010	2012	2014	2016	2018
Afghanistan	Retentionist	Against	Against	Against	Against	Against	Against	Against
Albania	Abolitionist	For	For	For	For	For	For	For
Algeria	In moratorium	For	For	For	For	For	For	For
Saudi Arabia	Retentionist	Against	Against	Against	Against	Against	Against	Against
Azerbaijan	Abolitionist	For	For	For	For	For	For	For
Bahrain	Retentionist	Against	Against	Against	Against	Against	Against	Against
Bangladesh	Retentionist	Against	Against	Against	Against	Against	Against	Against
Benin	Abolitionist	For	For	For	For	For	For	For
Brunei	Retentionist	Against	Against	Against	Against	Against	Against	Against
Burkina Faso	Abolitionist for ordinary crimes	For	For	For	For	For	For	For
Cameroon	In moratorium	For	For	For	For	For	For	For
Comoros	In moratorium	For	For	For	For	For	For	For
Côte d'Ivoire	Abolitionist	For	For	For	For	For	For	For
Djibouti	Abolitionist	For	For	For	For	For	For	For
Egypt	Retentionist	Against	Against	Against	Against	Against	Against	Against
United Arab Emirates	Retentionist	Against	Against	Against	Against	Against	Against	Against
Gabon	Abolitionist	For	For	For	For	For	For	For
Gambia	In moratorium	For	For	For	For	For	For	For
Guinea	Abolitionist	For	For	For	For	For	For	For
Guinea-Bissau	Abolitionist	For	For	For	For	For	For	For
Guyana	In moratorium	For	For	For	For	For	For	For
Indonesia	Retentionist	Against	Against	Against	Against	Against	Against	Against
Iraq	Retentionist	Against	Against	Against	Against	Against	Against	Against
Iran	Retentionist	Against	Against	Against	Against	Against	Against	Against
Jordan	Retentionist	Against	Against	Against	Against	Against	Against	Against
Kazakhstan	Abolitionist for ordinary crimes	For	For	For	For	For	For	For
Kyrgyzstan	In moratorium	For	For	For	For	For	For	For
Kuwait	Retentionist	Against	Against	Against	Against	Against	Against	Against
Lebanon	In moratorium	For	For	For	For	For	For	For
Libya	Retentionist	Against	Against	Against	Against	Against	Against	Against
Malaysia	Retentionist	Against	Against	Against	Against	Against	Against	Against
Maldives	Retentionist	Against	Against	Against	Against	Against	Against	Against
Mali	In moratorium	For	For	For	For	For	For	For
Morocco	In moratorium	For	For	For	For	For	For	For
Mauritania	In moratorium	For	For	For	For	For	For	For
Mozambique	Abolitionist	For	For	For	For	For	For	For
Niger	In moratorium	For	For	For	For	For	For	For
Nigeria	Retentionist	Against	Against	Against	Against	Against	Against	Against
Oman	Retentionist	Against	Against	Against	Against	Against	Against	Against
Uganda	In moratorium	For	For	For	For	For	For	For
Uzbekistan	Abolitionist	For	For	For	For	For	For	For
Pakistan	Retentionist	Against	Against	Against	Against	Against	Against	Against
Qatar	Retentionist	Against	Against	Against	Against	Against	Against	Against
Senegal	Abolitionist	For	For	For	For	For	For	For
Sierra Leone	In moratorium	For	For	For	For	For	For	For
Somalia	Retentionist	Against	Against	Against	Against	Against	Against	Against
Sudan	Retentionist	Against	Against	Against	Against	Against	Against	Against
Suriname	Abolitionist for ordinary crimes	For	For	For	For	For	For	For
Syria	Retentionist	Against	Against	Against	Against	Against	Against	Against
Tajikistan	In moratorium	For	For	For	For	For	For	For
Chad	Abolitionist	For	For	For	For	For	For	For
Togo	Abolitionist	For	For	For	For	For	For	For
Tunisia	In moratorium	For	For	For	For	For	For	For
Turkmenistan	Abolitionist	For	For	For	For	For	For	For
Turkey	Abolitionist	For	For	For	For	For	For	For
Yemen	Retentionist	Against	Against	Against	Against	Against	Against	Against

For Abstention Absence Against

The OIC member States adopted different positions with regard to the vote on the United Nations General Assembly (UNGA) Resolution calling for a universal moratorium on executions. (See *table on previous page*)

### OIC documents pertaining to human rights

The OIC adopted the Dhaka Declaration on Human Rights in Islam in December 1983 at the fourth Conference of Foreign Ministers. This declaration contains nine paragraphs<sup>34</sup> detailing the historical role of the Islamic *ummah* “*To contribute to the effort of mankind to assert human right to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Sharia.*”<sup>35</sup> The declaration also declares equality for all, the abolition of discrimination and hatred but says nothing of the death penalty.<sup>36</sup>

The Cairo Declaration on Human Rights in Islam was adopted by the OIC Foreign Ministers on 2 August 1990 at the 19th Islamic Conference.<sup>37</sup> It contains a preamble and twenty five articles. They confirm affiliation to provisions in Islamic law;<sup>38</sup> they also underline the idea that fundamental rights and civil liberties come from God and his Prophet Muhammad. Article 18 states: “*Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.*” Article 19 provides certain guarantees in the field of criminal justice; sections *d* and *e* state: “*There shall be no crime or punishment except as provided for in the Shari’ah. A defendant is innocent until his guilt is proven in a fast trial in which he shall be given all the guarantees of defence.*”

These declarations did demonstrate a sense of human rights. However, they did not exceed the formal remit and did not commit

34 It is not divided into articles.

35 Dhaka Declaration on Human Rights in Islam, paragraph 6, 1983.

36 The full text is available on: <http://ww1.oic-oci.org/english/conf/fm/14/14%20icfm-org-en.htm#THE%20DHAKA%20DECLARATION%20ON%20HUMAN%20RIGHTS%20IN%20ISLAM>

37 OIC Resolution n° 49/19-P.

38 Cairo Declaration on Human Rights in Islam, articles 24 and 25, 1990.

member States' Governments in any way.<sup>39</sup> They have more of a moral and political value. Despite some fundamental rights not appearing in these documents,<sup>40</sup> their content complies with the provisions in the international human rights instruments.<sup>41</sup> Nobody can deny Islam's contribution to developing some areas of human rights, especially if we put these rights into their historical context.<sup>42</sup> The OIC considering the issue of human rights should be celebrated as a crucial albeit inadequate step. The growing interest surrounding this issue could entail a contemporary reading of Sharia to encourage the Islamic and international documents to align and move towards abolishing the death penalty in Islam. Conventions to protect human rights and systems to uphold these rights in the Islamic world must also be adopted.

We can see that the interpretation and implementation of Islam differs from one State to the next. There are several ways to organise relationships between Islam and the State in the Islamic world today. The State may be founded on a specific religion that completely dominates law, society and politics. It may partly separate religion from politics, as is the case in most Islamic countries. Last but not least, other States have no place for religion in their society; there's a strict separation between religion and law. In the latter case, the States are neutral and use a form of secularism in line with modern society and especially human rights, in general, and abolishing the death penalty, in particular.

39 Georges, N., “Des textes religieux a la pensée islamique moderne : la difficile application d'une lecture libérale du statut des chrétiens en Islam”, Arab Centre for Research and Policy Studies in Paris, May 2020, p. 13 and *sqq.* (available in French).

40 These rights primarily deal with religious freedom such as changing religion, restrictions in using the death penalty, equality between Muslims and non-Muslims and gender equality.

41 Most of the rights detailed in the Islamic documents are written identically to the provisions in international documents.

42 The rise of the three monotheistic religions took place in a violent and intolerable environment. Women had no rights, use of force and slavery were common etc.

## THE DEFINITION OF AN ISLAMIC STATE

This is a State whose articulation between legislative, executive and judicial powers and the criminal justice system heavily influence judicial independence, rules for fair trials and the use of the death penalty. The principle of the separation of powers,<sup>43</sup> which forms the basis of the rule of law, appears in most of the OIC member States' Constitutions. However, presidential or royal powers often grant permission to violate this principle<sup>44</sup> as detailed in the Constitution of Jordan for example.<sup>45</sup> On top of that, judicial power in authoritarian Islamic States is often controlled by security services.

It's worth mentioning that, like pre-Islamic and ancient societies, "Islamic criminal law doesn't recognise the main principles of equal punishments and equal forms of defence", notes Antoine Fattal.<sup>46</sup> This means religion plays a role in the legal system of some Islamic States, with its regulations and exceptions. Some Islamic scholars hold that Islamic law forbids the execution of a Muslim if the victim is a *dhimmi* (non-Muslim). A *hadith* confirms this reasoning: "No Muslim shall die except that Allah will place in his stead a Jew or a Christian in hellfire."<sup>47</sup> In this case, the guilty party will be sentenced to prison or to pay "blood money".<sup>48</sup> However, the law of retaliation applies to a *dhimmi* who kills or wounds another *dhimmi* or Muslim. That said, the *dhimmi* can escape punishment if they convert to Islam<sup>49</sup> and the victim's lawyer does not demand its application.<sup>50</sup> Based on these examples of criminal principles from religious texts and

43 The basis for the theory of the separation of powers was formulated by the French philosopher Montesquieu (1689-1755) in his book *The Spirit of Laws*, 1748.

44 It's called absolute monarchy.

45 It enables the King to control all the political powers in the country. Similarly, the Syrian Constitution allows the President, who has an executive power, to make laws.

46 Fattal, A., *Le Statut légal des non-musulmans en pays d'Islam*, Dar Al-Machreq, 1995, p. 113 (available in French).

47 "Story of Abu Burda", *Muslim*, XXXVII, 6666.

48 A non-Muslim's life was worth less than a Muslim's life. A woman's life, Muslim or not, was worth less than a man's life. It's worth highlighting that some Islamic scholars, such as Abū Hanīfa and Ibn Taymiyyah, demanded the execution of a Muslim who kills a *dhimmi*.

49 Converting to Islam was a good way for a *dhimmi* to avoid punishments (*hudud*) in certain cases.

50 Fattal, A., *op. cit.*, p. 114.

given the different articulations between law, justice, politics and religion depending on the different States, we shall attempt to give a precise definition of the criteria for describing an Islamic State within the OIC. The criteria shall include requirements put forward by Islamic scholars and specialists trying to provide an interpretation of Islam in line with a rule of law.

### Criteria according to the OIC

Article 8 of the former OIC Charter defined an Islamic State as any State "Which took part in the Conference of Kings and Heads of State and Government held in Rabat and the two Foreign Ministers' Conferences held in Jeddah and Karachi, and signatory to its Charter." However, some member States taking part in just one or two conferences demonstrates how weak this definition is.<sup>51</sup>

The OIC Charter, adopted in Dakar on 14 March 2008, did not reuse these provisions. Article 3 details that "Any State, member of the United Nations, having Muslim majority and abiding by the Charter which submits an application for membership may join the Organisation if approved by consensus only by the Council of Foreign Ministers, on the basis of the agreed criteria adopted by the Council of Foreign Ministers."<sup>52</sup>

Among the requirements put forward by the OIC, there is a quantity-based criteria whereby the Muslim population must account for 50% or more of the country's population for it to be an Islamic State; a constitutional criteria, whereby the country's Constitution must say that Islam is the State religion for it to be an Islamic State; and an institutional criteria, whereby the country's ruler must be Muslim for it to be an Islamic State<sup>53</sup>.

51 Al-Midani, M. A., "La Déclaration universelle des droits de l'homme et le droit musulman", in *Lectures contemporaines du droit islamique*, Strasbourg University Press, 2004, p. 155 (available in French).

52 In order to protect the rights of former members, article 3 adds: "Nothing in the present Charter shall undermine the present Member States' rights or privileges relating to membership or any other issues."

53 Amor, A., "Constitution et religion dans les États musulmans (I) : L'État musulman", *Conscience et Liberté*, n° 54, 1997, pp. 57-58 (available in French). See also Al-Midani, M. A., *op. cit.*, p. 155.



The criteria put forward by the OIC clearly broaden the definition of the Islamic State. We can't use these criteria to derive a coherent definition of the Islamic State or put all these States in a single category because of the variety of situations and differences between member States. For example, Saudi Arabia is made up almost entirely of Muslims and entirely founded in Islamic law so cannot be compared with a State like Lebanon which doesn't mention Islam in its Constitution and very rarely applies Sharia on its territory.<sup>54</sup>

### Criteria put forward by Islamic law specialists

A variety of criteria defining an Islamic State have been put forward by Islamic law specialists and Islamic scholars. Firstly, they make a territorial distinction between *Dar al-Harb* – “territory of war” – and *Dar al-Islam* – “house of Islam”. The latter refers to countries with an Islamic Government that applies Sharia law. On the other hand, *Dar al-Harb* refers to countries outside *Dar al-Islam* that are governed by “infidels”.<sup>55</sup> However, the end of the caliphate in 1924<sup>56</sup> saw the creation of independent States, making this criteria null and void given the geopolitical changes in the world.

Mohammed Amin Al-Midani, a Syrian expert in Islamic law, is close to the criteria provided by the OIC. He considers a State to be Islamic if it has one of these three aspects: 1/ Constitutional: the State religion is defined as Islam in the Constitution; 2/ Legal: when Islamic legal provisions are implemented in part or in full; 3/ Institutional: when a Muslim has executive power.<sup>57</sup> He adds that “*Besides the issue of definition, OIC member States now exist on the international stage.*”

Based on these criteria, we can conclude that the idea that all the OIC member States are Islamic States is exaggerated. For example, Turkey and Senegal are both OIC member States

<sup>54</sup> This is an application in the area of personal status and only for Lebanese Muslims.

<sup>55</sup> Some Muslim legal experts such as Mawardi add *Dar al-Sulh*, the territory of treaty, which is not subject to Islamic authority but pays it tribute.

<sup>56</sup> The Turkish National Assembly voted to abolish the caliphate on 3 March 1924.

<sup>57</sup> Al-Midani, M. A., “Les États islamiques et la Déclaration universelle des droits de l'homme”, *Le Courrier du Geri, Recherches d'islamologie et de théologie musulmane*, 1<sup>st</sup> year, volume 1, n° 3, October 1998, p. 181. Article published in the *Conscience et liberté* review, n° 5, first semester of 2002 (available in French).

whose Constitutions express their States' secularism which is incompatible with the principles of the Islamic State even according to Islamic scholars.

Whilst admitting the complexity of this issue, the Tunisian professor Abdelfattah Amor<sup>58</sup> makes the distinction between two types of States: those where Islam is restricted to belief, e.g. certain Sub-Saharan African States, and those which “*Give Islam a militant content and, in consequence, make it an ideology.*” He believes the notion of Islamic States only applies to the latter.<sup>59</sup> Meaning that secular States, which have separated Islam from the State, cannot be considered Islamic States. Also, some States that currently consider themselves to be Islamic may experience a change in how they interpret Islam. History has taught us that Islamic regimes can become secular ones.

We should add that the term “Islamic State” in itself is unfamiliar in Islam as no provision in the Quran or Sunna alludes to an Islamic State despite the existence of the *ummah*, meaning a community of believers i.e. the nation in its religious unity. Moreover, there's no place for division in Islam.

In conclusion, it is necessary to stress the fundamental difference between each State in terms of the influence of Islam or its degree of “Islamification”.

The case studies presented in the rest of this document clearly demonstrate the different ways in which States organise their relationship with Islam, Sharia and Muslims, no matter the criteria used to make a State an Islamic one. We shall also explore how the degree to which Sharia is used in legislation and the presence of a Muslim majority in a country affects the processes to abolish the death penalty.

<sup>58</sup> Died on 2 January 2012 in Tunis.

<sup>59</sup> Amor, A., *op. cit.*, pp. 57-58.

# SOURCES OF ISLAMIC LAW AND THE DEATH PENALTY

There are two aspects of Islam as a religion. The first is spiritual and based on the relationship between Muslims and their God. This study will not address this aspect. The second is all the rules that govern relationships in society, including Sharia. The sources of Islamic law need to be examined to better understand the basis of its interpretation and use in contemporary judicial systems in Islamic States. This will help us review the laws, inspired by these sources, that govern the use of the death penalty in Islam.

## Sources of Islamic law

The Quran, the word of God for Muslims, is the first source of law and the foundation of Islam. It includes 114 chapters (*surahs*) divided into 6,236 verses.<sup>60</sup> Around 600 of these verses – spread throughout the chapters – form the foundations of Islamic judicial laws. They cover a variety of areas of Muslim life, including punishments, called *hudud*. The interpretation of the Quran, called *Tafsir*, raises real issues as some passages are so vague they make them hard to understand.

Sunna is the second source of Islamic law; it is the word for the body of *hadiths*: sayings, traditions and practices of the Prophet Muhammad and sometimes his companions. Sunna is used alongside the Quran, especially to answer questions with no explicit answer in the Quran and to clarify the meaning of certain verses in the Quran. There are countless prophetic *hadiths* which appear in several private collections belonging to different religious groups. However, Sunna always ranks lower than the Quran in the hierarchy of Islamic law sources. Certain Muslims also criticise it for presenting a number of apocryphal stories for diverse reasons, namely political.<sup>61</sup> Some Muslim thinkers, called

<sup>60</sup> Cairo edition.

<sup>61</sup> Traditions are therefore judged in three terms: unquestionable or perfectly authentic *hadith (sahih)*, good *hadith (hasan)* – which is less sound than an authentic *hadith* –, and dubious or weak *hadith (da'if)*.

Quranists, have criticised Sunna and appealed for the Quran to be the sole source of Islamic law, which would reduce the number of crimes punishable by death.<sup>62</sup>

There are other secondary sources. *Ijmā* (consensus) means the agreement of Islamic scholars of the same generation on a point of Islamic law. *Ijmā* is not based on divine will but on the efforts of a group of Islamic scholars. It is therefore based on a rational interpretation of the written law.

*Qiyās* (analogy) is deemed the fourth source of Islamic law. It is a form of reasoning whereby a ruling stated in Sharia is applied to a new case. For example, the consumption of wine is forbidden in Sharia due to its intoxicating effects; as a result, any drink with similar effects to wine is forbidden. It is therefore not an interpretation of the law but a deduction from a decision in accordance with the ruling.

*Ijtihad* is the Islamic legal term for the effort put into interpreting legal issues, be it *ijmā* or *qiyās*. However, the gate of *ijtihad* was closed to the Sunni Muslim community in the 11th century and left *fatwas* (religious legal rulings)<sup>63</sup> to rule on points of ambiguous Islamic law.

The following section shall address capital punishment in Islamic law in order to grasp its effects and potential applications in Islamic States today. Verses from the Quran and *hadiths* about the death penalty can be contradictory; any interpretation is possible, as we shall see.

## The death penalty in Sharia sources

Based on Sharia sources, there are three fundamental issues at the root of the difficulties in reconciling Islamic law and human rights. The first is religious freedom, namely the issue of equality between Muslims and non-Muslims and the issue of apostasy. The second concerns the position of women and gender inequality

<sup>62</sup> Cf. *infra*, Part 1, III. ii. The death penalty in Sharia sources.

<sup>63</sup> They are often provided by a specialist or religious institution to answer a specific question. This type of rational effort is required where Islamic law is ambiguous.



in particular. The third is criminal sentences such as flagellation, amputation and execution e.g. stoning.<sup>64</sup>

The Quran explicitly advocates<sup>65</sup> the death penalty for anyone who wages war against God or His Prophet, a crime called *Hirabah* in Islam and related to “corruption on Earth”. Verse 5:33 details this punishment: “*The penalty of those who wage war against God and His messenger and seek corruption in the land is to be killed, or crucified, or to have their hands and feet cut on alternate sides, or to be banished from the land. That is their disgrace in this world, and in the Hereafter they shall have a great punishment.*” However, the following verse presents an exception to using this punishment: “*Except for those who repent before you apprehend them. And know that Allah is Forgiving and Merciful.*”

The Quran also allows for the law of retaliation (*qisas* in Arabic) and, by extension, the death penalty as stated in verse 2:178: “*O you who believe! Retaliation is prescribed for you in the matter of the murdered; the freeman for the freeman, and the slave for the slave, and the female for the female. If the offender is granted some remission by the heir of the slain person, the agreed penalty should be equitably exacted and should be discharged in a handsome manner. This is an alleviation from your Lord and an act of grace. He who transgresses after this shall have a painful punishment.*” Verse 2:179 adds: “*And there is life for you in retaliation, O men of understanding! That ye may ward off [evil]!*” According to the Quran, the law of retaliation applies to murder. In this case, heirs of the victim can get revenge on the murderer, as stated in verse 17:33: “*We have given authority to his heirs to demand retribution. But let them not transgress the prescribed limits in exacting retribution.*”

Muslim scholars believe stoning or flagellation for adultery is questionable.<sup>66</sup> The Quran sets out very strict conditions to provide proof that adultery has been committed. Verse 24:13 states: “*Why did they not produce four witnesses? If they could not produce any witnesses, they were indeed liars before God!*”<sup>67</sup>

64 Ben Achour, Y., “Islam et droits de l’homme”, in *Enjeux et perspectives des droits de l’homme*, L’Harmattan, Tome I, 2003, p. 118.

65 No other crime in Islam is this clear.

66 Cf. *infra*, Part 1, IV. i. Humanist reading of Islamic law sources.

67 In the same vein, verse 24:4 states: “*Those who accuse honourable women (of being unchaste) but do not produce four witnesses, flog them with eighty lashes, and do not admit their testimony ever after. They are indeed transgressors.*”

Some States’ laws call for the death penalty for anyone who renounces Islam, called apostate. The Quran does not call for any earthly punishment against apostasy. However, some Islamic scholars call upon the following *hadith*: “*If somebody discards his religion, kill him.*”<sup>68</sup> Blasphemy, insulting God or the Prophet, is punishable by death in some Islamic States such as Iran and Pakistan. The Quran says the following on the subject: “*Indeed, those who abuse Allah and His Messenger, Allah has cursed them in this world and the Hereafter and prepared for them a humiliating punishment.*”<sup>69</sup> This verse does not call for earthly punishment but leaves the punishment to God.

68 This is a *hadith* by Al-Bukhari, one of the main collections in the Sunna.

69 Verse 33:57. For further information about the limits of right to life in Islam, please see *Sharia Law and the Death Penalty: Would Abolition of the Death Penalty Be Unfaithful to the Message of Islam?*, 2015, available on: <https://www.penalreform.org/resource/sharia-law-and-the-death-penalty/>

# MODERN INTERPRETATION OF ISLAM AND ABOLITION OF THE DEATH PENALTY

The modern interpretation of Islam naturally implies an evolution towards greater respect of human rights including abolishing the death penalty. Progress could be made through a modern and humanist reading of Islamic law on the one hand or, on the other hand, their total abrogation by seeing Islam as a purely spiritual message and, therefore, advocating the establishment of secularism in Islamic States.

## Humanist reading of Islamic law sources

The modern interpretation of Islamic law is one of the main pillars to improve respect for human rights in Islamic countries.

Islamic thinkers have presented their understanding of Islamic precepts in the light of contemporary society for centuries. Some of these intellectuals realised that the selected sources of Islamic law would make a mark on how fundamental rights are respected in Islam.

With this in mind, Mahmoud Muhammad Taha (1909-1985) distinguished two phases in the Prophet's mission as it is presented in the Quran. The first when he lived in Mecca (610-622), which is when he founded a religion based on mankind's responsibility. The second is the so-called Medina phase (622-632), when he was a political leader. Taha believes that the first part of the Quran alone should be used, as the second was not revealed but imposed by political circumstances. This means he rejects the restrictive Medina Quran verses, which incite Muslims to the holy war or enforce physical punishment – and only accepts the more tolerant Mecca verses.<sup>70</sup>

Quranists have questioned the Sunna as a source of Sharia and called for the Quran to be the sole source.<sup>71</sup> Naturally, this

70 However, radical Muslims believe the Mecca verses are abrogated by the Medina verses.

71 For further information about this Islamic movement, please see: <http://www.ahl-alquran.com>

means fewer Islamic standards contradicting human rights. For example, the Quran does not impose any earthly punishment for apostasy and blasphemy.

Islamic jurists (*fuqahā*) receive increasing criticism from the moderate Muslim movement. They criticise their severe interpretation of the divine text by basing their understanding on political and historical circumstances. They appeal for the use of a non-dogmatic Islamic reading to overcome its incompatibility with human rights principles. Ali Abderrazak rejects the Islamic doctrine as something that shouldn't be seen as sacred. He believes that the revelation ended with the Prophet's death and what was added afterwards is in no way sacred as it is the work of man.<sup>72</sup>

The historicity argument has also been developed by other non-Arab thinkers such as Pakistan's Fazlur Rahman (1919-1988)<sup>73</sup> and Iran's Abdul Karim Soroush. The latter makes the distinction between religion and religious interpretation; he says religion is a message that is revealed whilst interpretation is just the human understanding of this message.<sup>74</sup> As for Muhammad Iqbal (1877-1938), he uses the sources to rebuild religious thought in Islam to create a modern and tolerant Islam.<sup>75</sup>

This modern movement believes the right to life is entirely respected in Islam. The movement's thinkers put forward several verses to prove their point, e.g.: “Whoever killed a person, other than in retribution for another person, or because of corruption in and on the Earth, it will be as if he had killed all of humanity.”<sup>76</sup> Or verse 17:33: “And do not kill the soul which Allah has forbidden.” As for *Hirabah*, the Egyptian judge Dr Muhammad Sa'id al-Ashmawi dismisses its use as specific to the Prophet and God.<sup>77</sup>

72 Charfi, M., “Religion, droits de l'homme et éducation”, *Islamochristiana*, n° 27, 2001, p. 88 (available in French). And Benzine, R., *Les Nouveaux penseurs de l'islam*, Albin Michel, coll. “L'islam des Lumières”, 2004, p. 22 (available in French).

73 Benzine, R., *op. cit.*, p. 131 and *sqq.*

74 *Ibid.*, pp. 65-66. See also Soroush, A., *Reason, Freedom, and Democracy in Islam*, Oxford University Press, 2000.

75 For further information, see Iqbal, M., *The Reconstruction of Religious Thought in Islam*, Sh. M. Ashraf, 1965.

76 It is verse 5:32.

77 Muhammad Sa'id al-Ashmawi (1932-2013).

The death penalty does not necessarily have to be used in murder cases as the victim's heir can forgive the murderer and receive compensation, called *Diya*, which the murderer pays.<sup>78</sup> A publication based on a discussion workshop exploring criminal justice in Mauritania states: “For any exegesis of qisas verses, the Quran has provided ‘an abatement’ (takhfif) for past sentences and the criminal legislation that it introduces is a ‘blessing’ (rahma) to them. To them, the Jews have only known strict vengeance and the Christians have only known forgiveness whilst Muslims have been given the choice between these many outcomes and their combination. They understand the Quranic expression wa lakum fi-l-qisâsi hayâtun (‘There is life for you in retaliation’) to mean: retaliation spares lives, it stops you killing each other.”<sup>79</sup>

Apostasy should not be banned or punished according to the modern movement. The *hadith* “If somebody discards his religion, kill him”<sup>80</sup> must be understood in its historical context. It only applies to an apostate drawing arms against Muslims. The Prophet never executed anyone for apostasy. Executing someone guilty of adultery would also go against the precepts of Islam.<sup>81</sup>

This modern interpretation helps empower a movement working to abolish the death penalty in Islamic States. However, this method still has its limitations as the text's clarity can make modern interpretations difficult. With this in mind, some Islamic thinkers completely reject the use of Sharia and the death penalty.

## Islam and secularism

There is a movement of liberal Muslims appealing for secularism to be established in the Islamic world as it is the most appropriate solution to combat poverty, tyranny and human rights violations.

78 For further information, see Penal Reform International, *op. cit.*, p. 13 and *sqq.*

79 ECPM, Mauritania - Atelier de réflexion Justice pénale, justice humaine et droit à la vie : enjeux et perspectives, organisé par l'Association mauritanienne des droits de l'homme et l'Association Rafah, 30 July 2016, available in French on: <http://www.ecpm.org/wp-content/uploads/ACTES-Mauritanie-2016-Fr.pdf>

80 It is a *hadith* in Al-Bukhari. On the issue of apostasy in Islam, see Helali, A., *La Liberté religieuse dans le Coran : étude de la problématique de l'apostasie, le Jihad et la jezia*, published by the Arab Cultural Centre, Casablanca, 2001, p. 105 (available in French). See also Al Nayfar, I., “De la *rida* (apostasie) à la croyance, ou de la conscience du paradoxe”, *Islamochristiana*, n° 13, 1987, pp. 1-12 (available in French).

81 For further reading, see Penal Reform International, *op. cit.*, p. 20 and *sqq.*

This form of secularism implies a division between politics and religion and the establishment of neutral States that give their people the freedom to practise their religion without any influence.

Liberal Muslims believe that Islam's message is to protect the interests of society and, therefore, it should be interpreted or understood in light of these interests. These thinkers say that true Islam contains a spiritual aspect alone and the rules on relations in society are not part of it. Yadh Ben Achour says the following on the subject: “Islam is therefore not a positive religion but instead a purely spiritual message and the State has total freedom to structure itself and make laws.”<sup>82</sup>

Several scholars share this opinion, namely Faraj Fodah and Khaled Mohamed Khaled from Egypt. The latter supported total separation between religion and the State from the time of Egyptian independence. He wrote: “Are we to confound religion and the State to the extent that we lose both? Or shall we leave each to its own so we can gain from them ourselves and gain our future?”<sup>83</sup> The Algerian intellectual Mohamed Arkoun,<sup>84</sup> an Islamic philosopher and historian, calls for secularism in Islamic States. He calls for a subversion of Islamic thought that would enable the modern world and secularism to come together.

These Islamic intellectuals believe Islam should be applied to the circumstances of time and place to achieve democracy. They demand politics be completely separated from religion. Abdelmajid Charfi justifies this belief with the words: “We live in such different times to our ‘founders’ that it would be false to keep to the formulations and solutions provided by past generations. Hence the need for a ‘revolution’ in terms of religious thought and its expressions if it wants to stay understandable and credible.”<sup>85</sup>

82 Ben Achour, Y., “L'articulation du droit musulman et du droit étatique dans le monde arabe actuel”, in *Lectures contemporaines du droit islamique*, Strasbourg University Press, p. 106 (available in French).

83 Khaled, K. M., *This is where... we start*, 1950, p. 135 (available in Arabic). Khair, A., “Draft Report: the Foundations of Power in the Constitutions of Countries in the Arab World”, in *The Constitutions of Arab Countries*, Beirut colloquium, Bruylant, 1999, p. 26 (available in Arabic).

84 He was born in Algeria in 1928 and died in 2010 in France.

85 Charfi, A. “L'Islam et les religions non-musulmanes: quelques textes positifs”, in *Islamochristiana*, n° 3, 1977, p. 39 (available in French).

Dr. Mohammad Habash, director of the Islamic Studies Centre in Damascus, rejects using the death penalty in the name of Islam as he sees it as an illegal punishment and form of vengeance. He believes Sharia only imposes the death penalty for murder. In the event of the latter, it is not absolute but can be replaced by paying the *Diya*.<sup>86</sup>

We can only underline the importance of the modern understanding of Islam to reduce the use of the death penalty or completely abolish it. However, the modern movement faces certain challenges, namely the delicate issue of freedom of speech in most Islamic States. Some contemporary Islamic scholars have been imprisoned for their modern interpretation of Islam. After publishing *The Proof by the Quran*, Al-Mahdawi spent years being taken to court.<sup>87</sup> Faraj Fodah was assassinated by a Muslim fundamentalist for his publications on 8 June 1992 in Cairo. The Quranist and Sufism movement are heavily oppressed by Islamists and authoritarian regimes.<sup>88</sup>

## PART II

# CASE STUDIES: ABOLITIONIST OIC MEMBER STATES

86 *Ammon News*, "Execution is an illegal term...", 20 December 2010, available on: <https://www.ammonnews.net/article/76119> See also Penal Reform International, *op. cit.*, p. 36.

87 He was freed in June 1999 by the Benghazi Court of Appeal.

88 To learn more about modern Islamic thought, see Georges, N., *op. cit.*, p. 14 and *sqq.*

As of 1 May 2020, sixteen OIC member States had already abolished the death penalty completely.

#### Chronology of abolition



16  
abolitionist States  
for all crimes

This section shall examine the experiences of some OIC member States that abolished the death penalty. In order to present a variety of situations, we have chosen countries where there is a Muslim majority (Djibouti, Turkmenistan) and countries where it is not the case (Côte d'Ivoire, Benin). We shall also explore the situation of abolitionist States for ordinary crimes such as Burkina Faso and Suriname. We shall detail the different legislative and institutional phases of abolition, the role of different actors including the authorities and national institutions as well as actors in civil society.

These case studies show that progress towards abolishing the death penalty was made by various legal and political processes such as establishing moratoriums on executions, adopting laws, constitutional changes and criminal and military laws. We shall examine States in chronological order of abolition, from oldest to newest.

# MOZAMBIQUE

YEAR OF ABOLITION: 1990

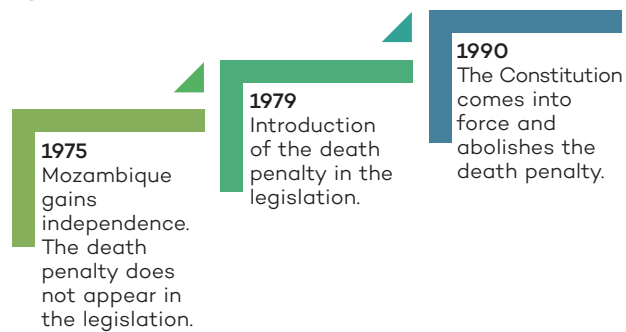
DATE OF LAST EXECUTION: 1986

CONSTITUTION: 2004 (revised in 2007), article 40<sup>89</sup>

*“Right to life:*

- 1. All citizens shall have the right to life and to physical and moral integrity, and they shall not be subjected to torture or to cruel or inhuman treatment.*
- 2. There shall be no death penalty in the Republic of Mozambique.”<sup>90</sup>*

## Main stages of abolition:



<sup>89</sup> Constitution of Mozambique, full text available on: [https://www.constituteproject.org/constitution/Mozambique\\_2007?lang=en](https://www.constituteproject.org/constitution/Mozambique_2007?lang=en)

<sup>90</sup> Unofficial translation.

# GUINEA-BISSAU

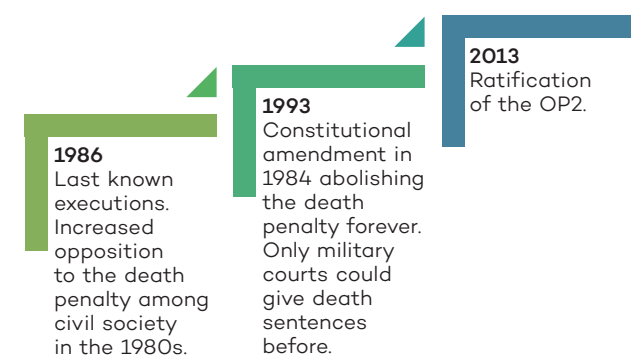
YEAR OF ABOLITION: 1993

DATE OF LAST EXECUTION: 1986

CONSTITUTION: 1984 (revised in 1993 and 1996), article 36<sup>91</sup>

*“In the Republic of Guinea-Bissau the death penalty shall not be applied in any cases.”<sup>92</sup>*

## Main stages of abolition:



<sup>91</sup> Constitution available on: [https://www.constituteproject.org/constitution/Guinea\\_Bissau\\_1996.pdf?lang=en](https://www.constituteproject.org/constitution/Guinea_Bissau_1996.pdf?lang=en)

<sup>92</sup> Unofficial translation.

# DJIBOUTI

**YEAR OF ABOLITION: 1995**

**DATE OF LAST EXECUTION: no executions since independence in 1977**

**CONSTITUTION: 1992 revised in 2010 by a constitutional law banning the death penalty, article 10<sup>93</sup>**

*"The human person is sacred. The State has the obligation to respect it and to protect it. All human beings are equal before the law. Every individual has the right to life, to the liberty, to the security and to the integrity of their person. No one shall be condemned to the death penalty."<sup>94</sup>*

## Main stages of abolition:

**1992**

Constitutional reform: article 10 of the Constitution states that "The human person is sacred."

**1995**

Adoption of new Criminal and Procedure codes removing the death penalty.

**2002**

Accession to the OP2.

Djibouti is a Muslim-majority Arab State.<sup>95</sup> It is the only member State of the Arab League to abolish the death penalty. It gained independence in 1977; there have been no executions since that date. However, it still appeared in the criminal justice law. In March 1991, a Tunisian citizen was sentenced to death for committing an act of terrorism. The President commuted his sentence to life imprisonment in June 1991.<sup>96</sup> Article 10 (para. 2)

<sup>93</sup> Constitution available on: [https://www.constituteproject.org/constitution/Djibouti\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Djibouti_2010.pdf?lang=en)

<sup>94</sup> Unofficial translation.

<sup>95</sup> A small Christian minority accounts for around 3% of the country's population.

<sup>96</sup> UN Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Initial Reports of States Parties, Djibouti* [CCPR/C/DJI/1], 13 July 2012, point 83, p. 13.

of the Constitution of Djibouti of 4 September 1992 states that "The human person is sacred" and makes the State responsible for ensuring the respect and enjoyment of the right to life.

The death penalty was abolished in 1995 for all crimes. The new criminal justice law and the criminal procedure of January 1995 no longer included the death penalty for any crime.

The Djibouti Government attributed the abolition to various factors: positive public opinion, political will from authorities and a lack of use.<sup>97</sup> According to Omar Ali Ewado, President of the Djiboutian Human Rights League (DHRL): "Djiboutian society is a semi-nomad and Islamic society so it was hard to make citizens understand the human reason for abolishing the death penalty. However, our awareness campaigns produced results."<sup>98</sup>

On 5 November 2002, Djibouti joined the OP2. But up to now, Djibouti has always abstained from voting in favour of the UNGA resolution calling for a universal moratorium on executions.

Article 10 of the aforementioned Constitution of Djibouti was amended by a constitutional law on 21 April 2010 with an addition to paragraph 3 stating: "No one shall be condemned to the death penalty." This law was signed by the President of the Republic Ismaïl Omar Guelleh.<sup>99</sup>

<sup>97</sup> UN Economic and Social Council, *Commission on Crime Prevention and Criminal Justice, Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, Tenth session* [E/CN.15/2001/10], 8-17 May 2001, p. 11. Available on: [https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_10/E-CN15-2001-10/E-CN15-2001-10\\_A.pdf](https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_10/E-CN15-2001-10/E-CN15-2001-10_A.pdf)

<sup>98</sup> Interview with Omar Ali Ewado, President of the Djiboutian Human Rights League, 26 March 2020.

<sup>99</sup> Constitutional law n° 92/AN/10/6<sup>th</sup> L, the full text is available in French on: <https://www.peinedemort.org/document/5070/Loi-Constitutionnelle-n92-AN-10-6eme-L-du-21-avril-2010>



# AZERBAIJAN

YEAR OF ABOLITION: 1998

DATE OF LAST EXECUTION: 1993

CONSTITUTION: 1995 (last revision in 2009), article 27<sup>100</sup>

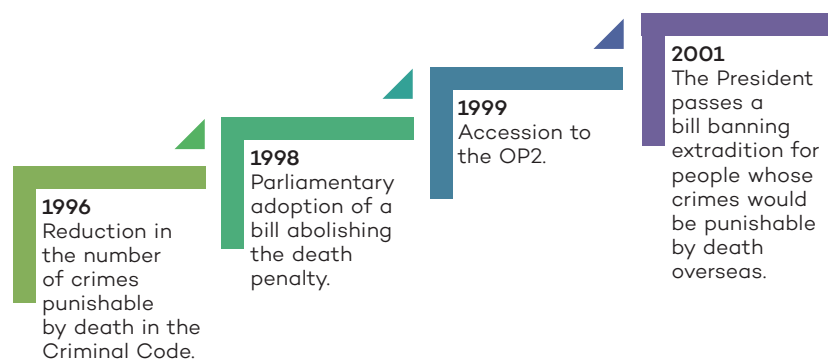
“Right to life:

I. Everyone has the right to life

II. Except extermination of enemy soldiers in a case of military aggression, when executing the sentence and in other cases envisaged by law, right of every person for life is inviolable. Everyone’s right to life shall be inviolable, except in the event of killing of enemy soldiers during their armed attacks, in the case of execution of capital punishment pursuant to a court judgment that has become effective, and in other cases as prescribed by law.

III. Capital punishment, until it has been completely abolished, may be prescribed by law as an exclusive penalty only for particularly serious crimes against the state, or against the life and health of a human being.”

## Main stages of abolition:



100 Constitution of Azerbaijan, full text available on: <https://en.president.az/azerbaijan/constitution>

# TURKMENISTAN

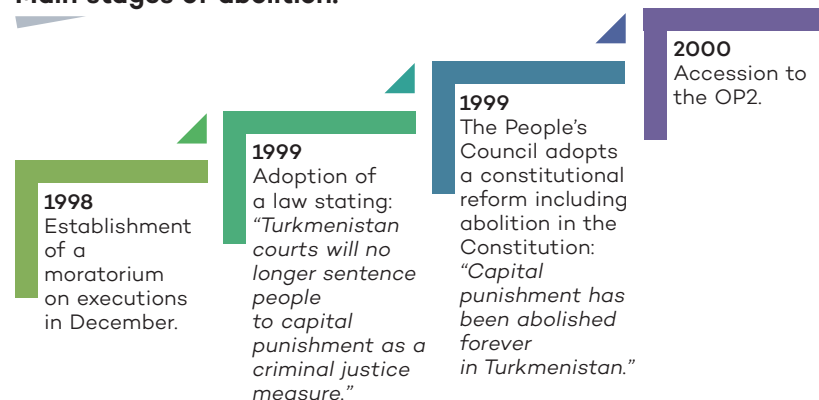
YEAR OF ABOLITION: 1999

DATE OF LAST EXECUTION: 1998

CONSTITUTION: 2008 (amended in 2016), article 32<sup>101</sup>

“Each individual has the right to life and liberty and the exercise (of this right). No one can be deprived of the right to life. The right of each person to free life is protected by the State on the basis of law. The death penalty has been abolished in Turkmenistan.”<sup>102</sup>

## Main stages of abolition:



Turkmenistan is a Muslim-majority country; Muslims account for 89% of its population and 9% are small minorities, namely Orthodox (9%).<sup>103</sup> Turkmenistan is renowned for its authoritarian political regime, especially under the leadership of Saparmurat Niyazov, who died in 2006.

Legal measures that led to the death penalty being abolished were adopted in 1998 and 1999, at a time when people were still being given the death sentence. There had been executions in

101 Constitution of Turkmenistan, full text available on: [https://constituteproject.org/constitution/Turkmenistan\\_2016.pdf?lang=en](https://constituteproject.org/constitution/Turkmenistan_2016.pdf?lang=en)

102 Unofficial translation.

103 *Hands Off Cain*, Turkmenistan, available on: <http://www.handsoffcain.info/bancadati/asia-middle-east-australia-and-oceania/turkmenistan-60000207>



previous years, mainly for drug-related crimes.<sup>104</sup> The victims were often executed soon after the court ruling without a fair trial. Poor detention conditions often led to countless deaths due to untreated illnesses and overpopulated prisons.<sup>105</sup> These executions and death sentences sparked indignation among the international community, namely in cases related to political opponents such as Mukhametkuli Aymuradov and Khoshali Garayev. In its resolution of 17th December 1998, the EU “Voices its concern over the high number of death sentences pronounced in Turkmenistan and asks the President of this country to use the authority granted by the Constitution to commute the death sentences given to Shaliko Maisuradze, Gulshirin Shykhyeva and Tylla Garadshayeva and any death sentence submitted to him.”<sup>106</sup>

On 3 December 1998, during an Organisation for Security and Co-operation in Europe (OSCE) meeting in Oslo, Turkmenistan announced it would stop executions. This promise soon became a reality as the State decreed a moratorium on the death penalty in December that year. The EU stated it “Greatly welcomes the moratorium on executions announced by Turkmenistan” and encouraged authorities “To continue their undertaking and their efforts to achieve abolition of the death penalty.”<sup>107</sup>

On 6 January 1999, the President of Turkmenistan not only made public the decree on the moratorium but also a law entitled *Implementing Rules for the Moratorium on Capital Punishment as a Criminal Justice Measure*. The first point of this decree states that “From 1st January 1999, Turkmenistan courts shall no longer use the death penalty as a measure of criminal justice.” The law’s second point adds that the moratorium “Applies to convicts sentenced to death before the moratorium comes into effect.” As for people sentenced to death before 1st January 1999, they “Shall be sent to prisons with the same detention conditions as people serving a sentence in special regime prisons” as per point 3 of the decree.

104 UNHCR, Turkmenistan, available on:  
<https://www.refworld.org/pdfid/3ae6aa18c.pdf>

105 Organization for Security and Co-operation in Europe, *The Death Penalty in the OSCE Area: a Survey, January 1998 – June 2001*, Human Dimension Implementation Meeting, September 2001, Paper 2001/1, p. 17, available on: <https://www.osce.org/odihr/16654?download=true>

106 Available on:  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1593365883812&uri=CELEX:51998IP1092>

107 28 December 1998 declaration available on:  
[https://ec.europa.eu/commission/presscorner/detail/en/PESC\\_98\\_163](https://ec.europa.eu/commission/presscorner/detail/en/PESC_98_163)

On 11 January 2000, Turkmenistan joined the OP2. It became the first State in Central Asia to abolish the death penalty. Given the definitive abolition, the People’s Council of Turkmenistan adopted a constitutional amendment making the abolition part of the Constitution on 29 December 1999. Article 20 of the Constitution was amended and an additional note was added: “The death penalty in Turkmenistan is completely abolished and banned forever.” Another constitutional law was adopted that day to pardon prisoners every year as part of the Muslim festival. Anyone pardoned by this law must swear an oath on the Quran to never commit crimes against society again.<sup>108</sup> Some modifications were made to Turkmenistan’s criminal justice system. The death penalty was replaced by 25 years in prison.<sup>109</sup>

Turkmenistan voted for the UNGA’s Resolution on 19 December 2018 but did not co-sponsor it, unlike in 2014 and in 2016.

108 *Hands Off Cain*, Turkmenistan, *op. cit.*

109 Information provided by the Permanent Mission of Turkmenistan to the United Nations Office in Geneva, 5 March 2020.

# CÔTE D'IVOIRE

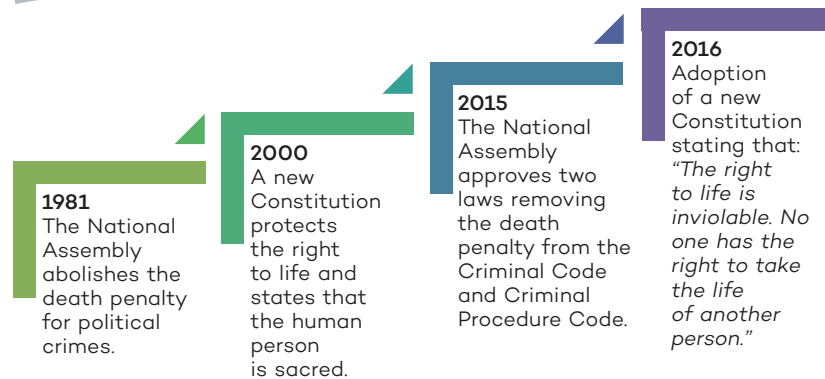
**YEAR OF ABOLITION: 2000**

**DATE OF LAST EXECUTION: no executions since independence in 1960**

**CONSTITUTION: 2016, article 3<sup>110</sup>**

*"The right to life is inviolable. No one has the right to take the life of another person. The death penalty is abolished."<sup>111</sup>*

## Main stages of abolition:



Côte d'Ivoire is a country with two main religious communities: a Muslim majority and a Christian and animist community.<sup>112</sup> The preamble in the Constitution of Côte d'Ivoire, promulgated on 4 November 1960, declares its devotion to the principles of democracy and human rights as per the 1789 Declaration of the Rights of the Man and of the Citizen and the UDHR of 1948. Article 2 describes Côte d'Ivoire as a secular and democratic republic. However, the right to life is not protected in writing.

<sup>110</sup> Constitution of Côte d'Ivoire, full text available on: [https://www.constituteproject.org/constitution/Cote\\_DIvoire\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Cote_DIvoire_2016.pdf?lang=en)

<sup>111</sup> Unofficial translation.

<sup>112</sup> For further information, see *La Croix Africa*, "Données géographiques et identité religieuse en Côte d'Ivoire" (Geographical and religious identity data in Côte d'Ivoire), available in French on: <https://africa.la-croix.com/statistiques/cote-divoire/>

The new Constitution of 2000<sup>113</sup> protects the right to life in article 2, which states that the human person is sacred and that: *"No one has the right to take the life of another person."* This constitutional reform was seen as the date the country abolished the death penalty. Côte d'Ivoire gained independence in 1960 and there have been no executions since then. However, between gaining independence and 2000, twelve people have been given the death sentence.<sup>114</sup> The criminal justice system also imposed execution using weapons for different types of crime including murder and treason.<sup>115</sup>

Government figures supported reducing the use of the death penalty from the 1970s. On 13 October 1975, the President of Côte d'Ivoire, Félix Houphouët-Boigny, declared *"That all death sentences would be commuted to 20 years of imprisonment."*<sup>116</sup> The Côte d'Ivoire National Assembly abolished the death penalty for political crimes on 31 July 1981. The new Criminal Code amended article 34 to state: *"The primary sentences are: death, except for political offences."*<sup>117</sup>

The death penalty wasn't abolished until 2000 when a new Constitution was adopted following a referendum in July 2000. However, the constitutional reform was not followed by a reform of the criminal justice system that continued using the death penalty. The Côte d'Ivoire National Assembly didn't approve two bills removing the death penalty from the Criminal Code and Criminal Procedure Code until 10 March 2015.<sup>118</sup> The death penalty was replaced by life in prison for civilians and life in military prison for soldiers found guilty of crimes that used to be punishable by death.<sup>119</sup> This criminal justice system reform was followed by the new and current Constitution being adopted in November 2016. This one is clearer than the last in regards to

<sup>113</sup> Promulgated by law n° 2000-513 of 1 August 2000 pertaining to the Constitution.

<sup>114</sup> The World Coalition against the Death Penalty, Ratification Kit, Côte d'Ivoire, available on: <http://www.worldcoalition.org/media/resourcecenter/CoteIvoire-EN.pdf>. For further information about the dates of these sentences, please see <https://www.peinedemort.org/zonegeo/CIV/Cote-d-Ivoire>

<sup>115</sup> Law n° 60-366 of 14 November 1960 instituting a Criminal Procedure Code and law n° 81-640 of 31 July 1981 establishing the Criminal Code.

<sup>116</sup> Death penalty: Côte d'Ivoire (available in French) <https://www.peinedemort.org/zonegeo/CIV/Cote-d-Ivoire>

<sup>117</sup> *Ibid.*

<sup>118</sup> Parliamentarians for Global Action, "Cote d'Ivoire and the Death Penalty", available on: <https://www.pgaction.org/ilhr/adp/civ.html>

<sup>119</sup> Côte d'Ivoire National Assembly, press release of 9 March 2015, available in French on: <https://www.peinedemort.org/document/8072/Cloture-de-la-premiere-session-extraordinaire-de-l-annee-2015-Trois-projets-de-loi-adoptes>

abolishing the death penalty. Article 3 states that “*The right to life is inviolable. No one has the right to take the life of another person. The death penalty is abolished.*”<sup>120</sup>

According to the Côte d'Ivoire Human Rights Commission (CI-HRC), the constitutional referendum of 30 October 2016 (93.42% votes in favour) and civil society organisations calling for the death penalty to be abolished show that the public opinion in Côte d'Ivoire is against the death penalty.<sup>121</sup>

At the international level, Côte d'Ivoire ratified the ICCPR on 26 March 1992 and its second optional protocol on 5 March 1997. However, it still hasn't ratified the OP2. Nevertheless, the country voted in favour of most of the UNGA's resolutions calling for a universal moratorium on executions, except in 2010 when it was absent. Côte d'Ivoire recently accepted the recommendation to join the OP2 following its Universal Periodic Review (UPR) by the Human Rights Council.<sup>122</sup>

At the regional level, Côte d'Ivoire is involved in encouraging other retentionist African States to abolish the death penalty. For example, in April 2018, the African Regional Congress Against the Death Penalty<sup>123</sup> (in the run-up to the 2019 Brussels World Congress Against the Death Penalty), run by EPCM in partnership with the CI-HRC, was held in Abidjan, the economic capital of Côte d'Ivoire. The Côte d'Ivoire Minister of Justice, Sanson Kambilé, said during the congress that “[*His*] country rejects any idea of using the death penalty.” He added: “*Our politicians must commit themselves wholeheartedly to implementing international instruments.*”<sup>124</sup>

120 Full text available in French on: <http://extwprlegs1.fao.org/docs/pdf/ivc160760.pdf>

121 Interview with Franck Donald Tape, head of department in charge of places of deprivation of liberty at the CI-HRC, 10 March 2020.

122 Human Right Council, Côte d'Ivoire, *Responses to Recommendations*, Third Review, Session 33, Adoption in the Plenary, 19 September 2019, p. 2. Available on: [https://www.upr-info.org/sites/default/files/document/cote\\_d039ivoire/session\\_33\\_-\\_may\\_2019/2rps\\_cote\\_divoire.pdf](https://www.upr-info.org/sites/default/files/document/cote_d039ivoire/session_33_-_may_2019/2rps_cote_divoire.pdf) This recommendation was made to several states, including Togo.

123 ECPM, Proceedings of the African Regional Congress against the death penalty, 9-10 April 2018, available on: <http://congres.ecpm.org/wp-content/uploads/2019/02/African-Regional-Congress-Against-the-Death-Penalty-Report.pdf>

124 African Press Agency (APA), “La Côte d'Ivoire rejette toute idée de l'application de la peine de mort” (Côte d'Ivoire rejects the use of the death penalty), 9 April 2018, available in French on: <https://www.peinedemort.org/document/9848/La-Cote-d-Ivoire---rejette-toute-idee-de-l-application-de-la-peine-de-mort--Ministre>

## TURKEY

**YEAR OF ABOLITION: 2004**

**DATE OF LAST EXECUTION: 1984**

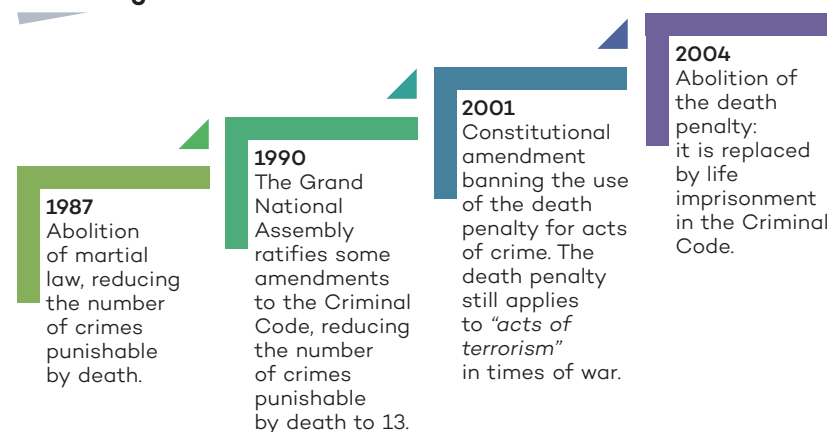
**CONSTITUTION: 1982, amended in 2017,<sup>125</sup> article 15**

*“In times of war, mobilization or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated. Even under the circumstances indicated in the first paragraph, the individual's right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable except where death occurs through acts in conformity with law of war [...]”*

*Article 17: “Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence [...]”*

*Article 38, line 9: “Neither death penalty nor general confiscation shall be imposed as punishment.”<sup>126</sup>*

### Main stages of abolition:



125 [https://www.constituteproject.org/constitution/Turkey\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Turkey_2017.pdf?lang=en)

126 Unofficial translation.

The 1924 Constitution of the Turkish Republic does not protect the right to life and states that Islamism is the Turkish state's religion (article 2).<sup>127</sup> The 7 November 1982 Constitution states that Turkey is a democratic, secular state (article 2). It also protects the right to life as article 17 states: "Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence." This article clearly refers to imposing capital punishment.

The death penalty was abolished in 2004 in Turkey. This decision was preceded by a series of laws and judicial amendments: constitutional amendments, criminal and martial law reforms, promulgated laws related to capital punishment, continued support for international and European treaties for abolishing the death penalty and banning torture.

Since the Turkish Republic was established in 1923, 588 people have been executed for ordinary or political crimes<sup>128</sup> primarily related to the military coups in 1960, 1971 and 1980. The last execution dates back to 1984; it was preceded by a wave of executions following a military coup on 12 September 1980. Amnesty International states that there were 50 executions between 1980 and 1984, 27 of which were for political crimes as per articles 125 and 146/1 of the Criminal Code. Most death sentences were made by military tribunals in accordance with martial law which came into effect in December 1978.<sup>129</sup> Martial law was abolished in July 1987 and resulted in fewer crimes punishable by death.

The Grand National Assembly used its legislative powers to ratify certain amendments to the Criminal Code in November 1990. This reduced the scope for using the death penalty to just thirteen crimes, including political offences such as separatism.<sup>130</sup> The Assembly also adopted an anti-terrorism law in April 1991 that commuted all death sentences for crimes committed before 8 April 1991. The law helped political prisoners on death row as per the Criminal Code and drug traffickers and rapists on death row – punishable offences in martial law. The Prime Minister immediately withdrew the cases for 276 prisoners, where

127 Available on: <http://genckaya.bilkent.edu.tr/1924constitution.pdf>

128 International Commission Against the Death Penalty, *How States Abolish the Death Penalty*, May 2018, p. 52, available on: <http://www.icomdp.org/cms/wp-content/uploads/2013/04/Report-How-States-abolition-the-death-penalty.pdf>

129 *Ibid.*, pp. 52-53.

130 For further information, see OSCE, *op. cit.* pp. 16-17.

the decision to use the death penalty was pending the Grand National Assembly's ratification.<sup>131</sup>

A parliamentary commission in 1997 put forward a new criminal justice bill abolishing the death penalty and replacing it with life imprisonment. The Government informed the Council of Europe that adopting the bill was a priority.<sup>132</sup>

The Kurdish leader Abdullah Öcalan's death sentence on 29 June 1999 attracted increased international pressure, including from Europe (particularly the European Parliament and Court of Human Rights), calling for his sentence to be commuted and encouraging the death penalty to be abolished in the country. Öcalan was found guilty of treason and separatism and had his sentence commuted to life imprisonment by the State Security Court in October 2002.

Turkey had to abolish the death penalty for its application to join the EU.<sup>133</sup> It had upheld a moratorium since 1984 and the Grand National Assembly had not voted for any death sentences that could be referred for definitive ratification.<sup>134</sup> As a member of the Council of Europe, the Turkish President Süleyman Demirel attended the Strasbourg summit in 1997. He agreed to abolish the death penalty at this event. According to official information, there were forty prisoners with death sentences in Turkish prisons on 1 January 1999.<sup>135</sup>

In October 2001, a constitutional amendment was made to article 38 to forbid using the death penalty for acts of crime but it still applied to exceptional crimes such as war crimes or acts of terrorism. Law n° 4771 was adopted on 3 August 2002 and abolished the death penalty in times of war and execution for acts of terrorism was replaced by life imprisonment.

Law n° 5170 of 7 May 2004 made some amendments to the Constitution<sup>136</sup> including the removal of the provision regarding the "Execution of death sentences" in article 15 and the amendment of article 38 to remove this provision: "The death penalty cannot be imposed except in the event of war or the imminent threat of war or for offences that constitute acts of terrorism." The Grand National Assembly adopted a new law n° 5218 on 14 July 2008

131 International Commission Against the Death Penalty, *op. cit.*, p. 53.

132 *Ibid.*

133 It was passed on 14 April 1987.

134 OSCE, *op. cit.*, p. 17.

135 *Ibid.*, p. 17.

136 Constitution of 7 November 1982.

that removed the death penalty from all the criminal law's articles and replaced it with life imprisonment.

Turkey supported several international and European instruments. It became a member of the Council of Europe on 13 April 1950 and ratified the European Convention on Human Rights (ECHR) that protects the right to life (article 2) and forbids torture (article 3). It supported the ECHR Protocols n° 6 and n° 13 pertaining to abolishing the death penalty in 2003 and 2006 respectively. Turkey signed the OP2 on 6 April 2004.<sup>137</sup> Since 2007 it has voted in favour of all the UNGA resolutions calling for a universal moratorium on executions to abolish the death penalty. These votes were in 2007, 2008, 2010, 2012, 2014 and 2016.

However, following a military coup in July 2016, the Turkish President Recep Tayyip Erdogan said he wanted to reinstate the death penalty in the country on several occasions. In spite of that, Turkey once again voted for the UNGA resolution calling for a universal moratorium in 2018.

<sup>137</sup> It came into force in Turkey on 2 June 2006.

## SENEGAL

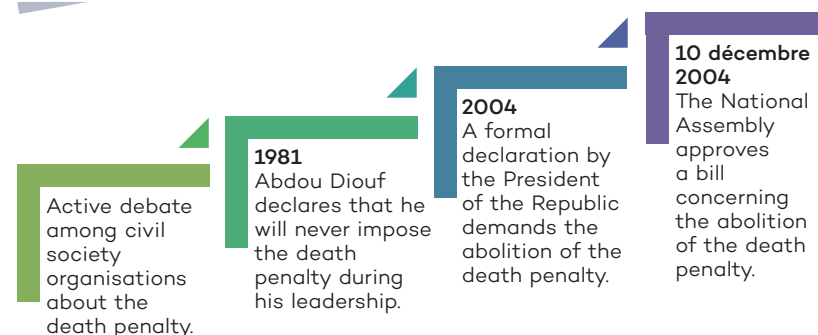
**YEAR OF ABOLITION: 2004**

**DATE OF LAST EXECUTION: 1967**

**CONSTITUTION: 2001, article 7<sup>138</sup>**

*"The human person is sacred. The human person is inviolable. The state shall have the obligation to respect it and to protect it. Every individual has the right to life, to freedom, to security, the free development of his or her personality, to corporal integrity, and especially to protection against physical mutilation."*

### Main stages of abolition:



Muslims account for almost 94% of Senegal's population and they tend to practise Sufism, a mystical school of Islam.<sup>139</sup> Article 1 of the current Constitution states that *"The Republic of Senegal is secular."* This article upholds equality for all citizens with no distinction in terms of background, race, gender or religion in the eyes of the law. It also upholds respect for all beliefs.

<sup>138</sup> Constitution of Senegal, full text available on: <https://www.wipo.int/edocs/lexdocs/laws/en/sn/sn006en.pdf>

<sup>139</sup> *Le Monde des religions*, "L'islam au Sénégal : 'Ce qui fait le terreau de l'extrémisme, c'est de laisser la voie libre à d'autres valeurs'" (Islam in Senegal: "What creates a hotbed for extremism is giving free rein to other values"), 23 January 2015, available in French on: [http://www.lemondedesreligions.fr/actualite/l-islam-au-senegal-ce-qui-fait-le-terreau-de-l-extremisme-c-est-de-laisser-la-voie-libre-a-d-autres-valeurs-23-01-2015-4484\\_118.php](http://www.lemondedesreligions.fr/actualite/l-islam-au-senegal-ce-qui-fait-le-terreau-de-l-extremisme-c-est-de-laisser-la-voie-libre-a-d-autres-valeurs-23-01-2015-4484_118.php)



Senegal's history shows that capital punishment was very restricted in law and practice and has been since the country gained independence in 1960. Article 6 of the previous Senegalese Constitution of 7 March 1963, which remained in force until the new Constitution was adopted in 2001,<sup>140</sup> deemed the human person sacred. This article added that “*The State has a duty to respect and protect it*” and “*Everyone has the right to life and physical integrity under the conditions defined by law.*” The Senegalese Criminal Code imposed the death penalty for kidnapping a minor if they were killed (article 346), for “*Taking hostages in order to plan or facilitate committing a crime or offence*”, according to article 337a, and for murder, espionage and treason.<sup>141</sup> However, it did not impose it for minors aged under 18. If they committed these crimes they would only be sentenced to 10 to 20 years in prison (article 52). Article 16 of the same Code stated that pregnant women could not be executed before giving birth. According to the Senegal state report issued to the UN Committee on the Rights of the Child, “*Capital punishment had only been imposed twice in 34 years of independence.*”<sup>142</sup> The 1996 report to the Human Rights Committee added that, “*In three decades of independence, this sentence was only given twice, in 1967.*”<sup>143</sup> The first time, A.N. Faye was sentenced on 11 April 1967 for the assassination of the MP Demba Diop on 3 February that year; the second time was M. Lo on 15 June 1967 for the attempted assassination of President Léopold Sédar Senghor on 22 March 1967. His successor, Abdou Diouf (1981-2000) officially announced that he would never allow the death penalty under his leadership.<sup>144</sup> The abolition process followed an active debate within civil society organisations.<sup>145</sup> Some non-governmental organisations (NGO) were in favour of it, such as the African Meeting for the Defense of Human Rights<sup>146</sup> and the Senegalese Human Rights Committee (SHRC), based on life being sacred in traditional Senegalese culture as confirmed by the country's constitutional system.

140 It protects the right to life in article 7 and includes a provision about the human person being sacred.

141 International Commission Against the Death Penalty, *op. cit.*, p. 45.

142 UN Committee on the Rights of the Child, *Senegal* [CRC/C/3/Add.31], 17 October 1994, point 35.

143 UN Human Rights Committee, *Senegal* [CCPR/C/103/Add.1], 22 November 1996, point 47.

144 Interview with Papa Sene, lawyer and President of the SHRC, 6 March 2020.

145 *Ibid.*

146 Secular NGO founded in Dakar in 1990.

International Observatory of Prisons (IOP) conducted a study that ended in 2000 on the need to abolish the death penalty on behalf of Senegal's National Human Rights Institution (NHRI).<sup>147</sup> The 9-page study, *Pourquoi le Sénégal doit-il abolir la peine de mort ? (Why should Senegal abolish the death penalty?)*, included a series of arguments split into three sections: the need to adapt the Criminal Code to national and international contexts in accordance with traditional values and the understanding of human rights; the impossible justification of using the death penalty, given it is a violation of the right to life and a source of irreparable errors that undermine the foundations of democracy as it doesn't act as a deterrent; the rise of an abolitionist movement since the conference on the death penalty held between 3 and 8 October 1997 in Ibadan, Nigeria.<sup>148</sup> However, some associations, including the Coalition of Islamic Associations, were against the abolition. Islamic religious leaders still demand its reinstatement. They believe abolition goes against the Quran's dictates.<sup>149</sup>

Within the Government, the death penalty was abolished after President Abdoulaye Wade had a change of heart (he was previously against it), as we can see during a discussion in 2001 about potential constitutional amendments.<sup>150</sup> As for the pro-abolition Minister of Justice, Sergine Diop, he declared that retentionist countries had as many crimes as countries that had abolished the death penalty.<sup>151</sup>

President Wade presided over Senegal's Council of Ministers meeting on 15 July 2004 which resulted in a formal declaration calling for an end to the death penalty which was supported by the Council. The Council of Ministers adopted a bill abolishing the death penalty in Senegal on 29 July 2004. A few months later, on 10 December 2004,<sup>152</sup> the National Assembly voted and adopted the bill on President Wade's request. This bill amended articles 337 and 346 of the Criminal Code and capital punishment was abolished.

147 Previous name of the SHRC, founded in 1970.

148 Interview with Papa Sene, *op. cit.*

149 *Cf. supra.*, III, The death penalty in Sharia sources.

150 International Commission Against the Death Penalty, *op. cit.* p. 45.

151 *Ibid.*

152 10 December is International Human Rights Day. It is the day when the UDHR was adopted in 1948.

Some high-ranking Senegalese politicians played a major role in the process in Senegal, such as Sidiki Kaba, former President of the International Federation for Human Rights (FIDH) then the Minister of Justice, and Abdou Diouf throughout his term as General Secretary for *La Francophonie* (2003-2015). At the opening of the 4th World Congress run by ECPM in 2010 at the UN's Palais des Nations in Geneva, he announced: “*The abolition of the death penalty is of the utmost importance to the French-speaking world.*” As a key figure in his country and on the international stage, he brought abolition to public attention. Senegal continues to be reticent on the international stage despite the abolition. It abstained from voting for the UNGA resolutions calling for a universal moratorium on executions in 2008, 2010, 2012 and 2014. It did not attend the 2007 and 2016 votes. Senegal hasn't yet ratified the OP2 but pledged to do so during its last UPR.<sup>153</sup>

Given the many crimes committed in 2015 in Senegal, the MP Seydina Fall introduced a bill to reinstate the death penalty.<sup>154</sup> It was supported by two Islamic Senegalese NGOs which suggested it should be used to “*Tackle the country's soaring insecurity and crime levels.*”<sup>155</sup> However, given the country's history, the person being sacred in Senegalese tradition and the legal arsenal protecting the right to life and abolishing the death penalty, it would be difficult to reinstate it.

153 Senegal agreed to the recommendation by several States, including Benin and Togo, to ratify the ICCPR's Second Optional Protocol in August 2019 during its Universal Periodic Review. Human Rights Council, Senegal, *Responses to Recommendations, Session 31, Adoption in the Plenary*, 18 December 2018, p. 1. Available on: [https://www.upr-info.org/sites/default/files/document/senegal/session\\_31\\_-\\_november\\_2018/2rps\\_senegal\\_31upr.pdf](https://www.upr-info.org/sites/default/files/document/senegal/session_31_-_november_2018/2rps_senegal_31upr.pdf)

154 “Sénégal : les avis divergent sur le rétablissement de la peine de mort” (Senegal: Opinions are Split on the Reinstatement of the Death Penalty), Xinhua, press dispatch, 12 August 2015, available in French on: <https://www.peinedemort.org/document/8546/Senegal-les-avis-divergent-sur-le-retablissement-de-la-peine-de-mort>

155 “Sénégal : deux ONG islamiques pour un referendum sur la restauration de la peine de mort” (Senegal: Two Islamic NGOs Support a Referendum to Reinstate the Death Penalty), APA, available in French on: <https://www.peinedemort.org/document/9194/Senegal-deux-ONG-islamiques-pour-un-referendum-sur-la-restauration-de-la-peine-de-mort>

## ALBANIA

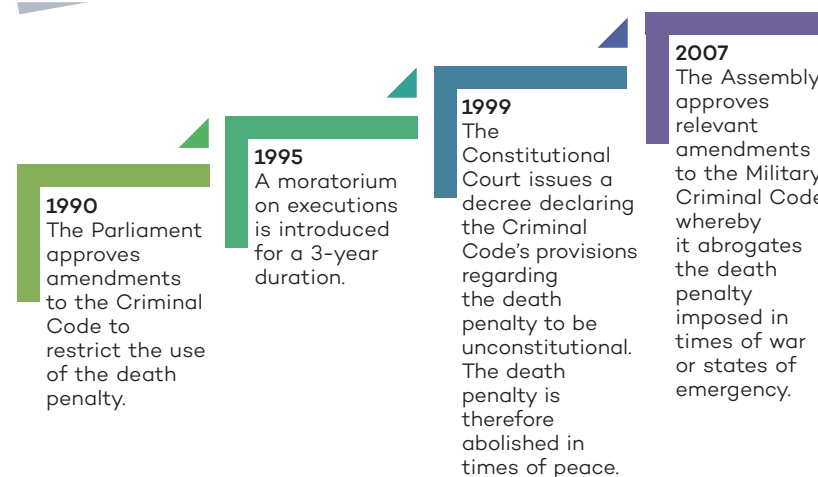
**YEAR OF ABOLITION: 2007**

**DATE OF LAST EXECUTION: 1992**

**CONSTITUTION: 1998 Constitution (as revised in 2016),<sup>156</sup> article 21**

“*The life of a person is protected by law.*”

### Main stages of abolition:



Following the fall of the Ottoman Empire, Albania became a so-called “popular democracy”. The country remained aligned with the USSR until 1960, when it decided to align with the People's Republic of China and left the Eastern bloc. The People's Socialist Republic of Albania was unique in that it was the last regime in Europe to officially remain Stalinist after 1956. It has a population of 3 million and a Muslim majority,<sup>157</sup> with a modern understanding of Islam.

156 Constitution of Albania, full text available on: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)064-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)064-e)

157 It accounts for 70% of the population whilst the rest are in the Christian community, including Orthodox and Catholic. Cf. *Hands Off Cain*, Albania, <http://www.handsoffcain.info/bancadati/europe/albania-60000192>

Albania works closely with European organisations which led to a criminal justice reform that included abolishing the death penalty.

Capital punishment began being less imposed in the early 1990s. The Albanian Parliament approved amendments to its Criminal Code to restrict its usage on 8 May 1990: it no longer applied to women and the number of crimes punishable by death dropped from thirty four to eleven (including treason, espionage, terrorism, premeditated murder and certain corporate crimes).<sup>158</sup> The debate about abolishing the death penalty began in Parliament in 1993. However, a vote found that only 70 out of 250 MPs were in favour of it.<sup>159</sup>

Albania joining the Council of Europe on 13 July 1995 was a decisive stage in the process.<sup>160</sup> It involved a commitment to adopt a moratorium on executions and abolish the death penalty in times of peace. On 29 June 1995, the President of the Albanian Parliament, Pjeter Arbënor, made a promise to “*Ratify Protocol n° 6 of the European Convention of Human Rights regarding the abolition of the death penalty in times of peace within three years of joining [the Convention] and introduce a moratorium on executions pending final abolition.*”<sup>161</sup> In reality, the moratorium on executions was introduced in May 1995 for a three year duration.<sup>162</sup> However, there were violent clashes in Albania in 1997 along with rising crime levels in the country. Under these circumstances it looked as though the moratorium would not be renewed. It was however upheld due to the Supreme Court’s competence and President’s jurisdiction to commute death sentences to life imprisonment.<sup>163</sup>

Hans Christian Krüger, Deputy Secretary-General of the Council of Europe, called on Albania to keep its promise to ratify the ECHR Protocol n° 6 to abolish the death penalty on 18 December 1998. M. Krüger added: “*The Council [was] prepared to support Albania in its war on organised crime and raising awareness about abolishing capital punishment,*

158 Death penalty: Albania (available in French), <https://www.peinedemort.org/zonegeo/ALB/Albanie>

159 Interview with People’s Advocate of Albania, 24 April 2020.

160 Law n° 7959 of 11 July 1995 for Albania becoming a member State of the Council of Europe. This law naturally suspended the use of the death penalty.

161 Death penalty: Albania, *op. cit.*

162 OSCE, *op. cit.*, p. 10, available on: <https://www.osce.org/odihr/16654?download=true>

163 *Ibid.*

*which is one of the organisation’s most important principles and objectives.*”<sup>164</sup>

Article 21 of the current Constitution of Albania, which came into force on 28 November 1998, protects life. Following the non-ratification of the ECHR Protocol n° 6, the Constitutional Court intervened with ruling n° 65 on 10 December 1999, declaring the death penalty provisions in the Criminal Code to be unconstitutional. The death penalty was therefore abolished in times of peace. However, martial law<sup>165</sup> still imposed the death penalty despite Protocol n° 6’s ratification on 21 September 2000. With this in mind, People’s Advocate of Albania, a justice-advising entity to the public, denounced the martial law provisions and called for the Assembly to remove them during a briefing in 2006.<sup>166</sup> The Albanian Assembly passed law n° 9722 on 30 April 2007 approving relevant amendments to the Military Criminal Code revoking the death penalty in times of war or emergency. Albania also ratified the OP2 in 2007.<sup>167</sup>

164 Council of Europe, press release on 18 December 1998, available in French on: <https://www.peinedemort.org/document/17/Pressant-rappel-a-l-Albanie-de-sa-promesse-d-observer-un-moratoire-sur-la-peine-de-mort>

165 Code n° 8003 of 28 September 1995.

166 Interview with People’s Advocate of Albania, *op. cit.*

167 It was ratified on 4 October 1991.



# KYRGYZSTAN

YEAR OF ABOLITION: 2007

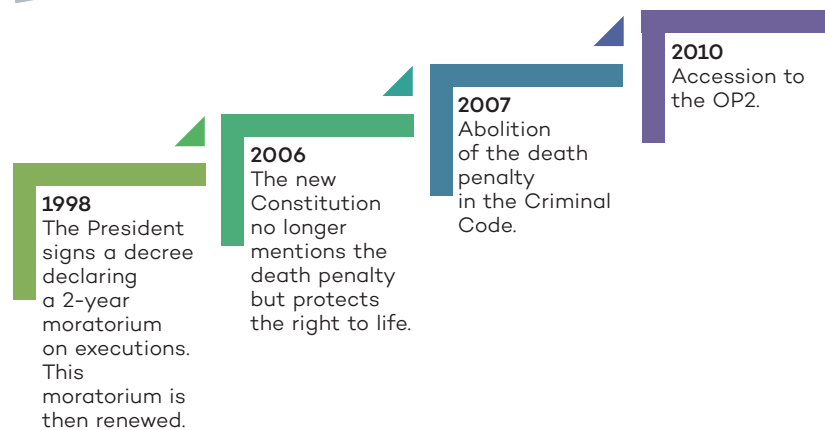
DATE OF LAST EXECUTION: 1998

CONSTITUTION: 2010, amended in 2016<sup>168</sup>

Article 20, § 4: "The following guarantees of prohibition established by the present Constitution shall not be subject to any limitations: on application of death penalty, torture and other inhuman, cruel and degrading forms of treatment or punishment [...]"

Article 21: "Everyone shall have an inalienable right to life. No one may be arbitrarily deprived of life. Death penalty is prohibited."<sup>169</sup>

## Main stages of abolition:



<sup>168</sup> Constitution of Kyrgyzstan, full text available on: <http://extwprlegs1.fao.org/docs/pdf/kyr127812E.pdf>

<sup>169</sup> Unofficial translation.

# UZBEKISTAN

YEAR OF ABOLITION: 2008

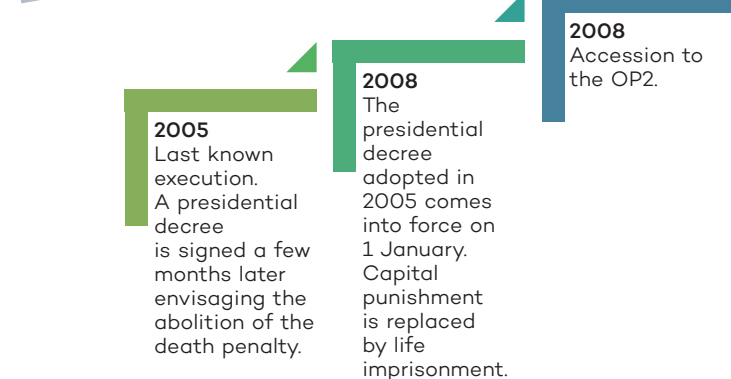
DATE OF LAST EXECUTION: 2005

CONSTITUTION: 1992,<sup>170</sup> article 13

"Democracy in the Republic of Uzbekistan shall be based on the principles common to all mankind according to which the ultimate value is a human being, his life, freedom, honour, dignity and other inalienable rights. Democratic rights and freedoms shall be protected by the Constitution and laws."

Article 24: "The right to life is an inalienable right of every human being. Infringement against it shall be regarded as the gravest crime."

## Main stages of abolition:



<sup>170</sup> Constitution of Uzbekistan, full text available on: <https://www.un.int/uzbekistan/uzbekistan/constitution-republic-uzbekistan>

# KAZAKHSTAN

**YEAR OF ABOLITION: 2007 (for ordinary crimes)**

**DATE OF LAST EXECUTION: 2003**

**CONSTITUTION: 1995 (amended in 2011 and 2017),<sup>171</sup> article 15 (as amended in 2017)**

*"1. Everyone shall have the right to life. 2. No one shall have the right to deprive life of a person arbitrarily. The death penalty is established by law as an exceptional punishment for terrorist offenses involving the death of people, as well as for particularly serious crimes committed in wartime, with giving the sentenced person the right to seek pardon."*

## Main stages of abolition:

**2007**

Adoption of a constitutional amendment regarding the abolition of the death penalty for ordinary crimes.

**2009**

Amendments to the Criminal Code to comply with the Constitution: scope for using the death penalty restricted to acts of terrorism causing death and exceptional crimes committed during times of war.

**2019**

Presidential announcement that a procedure to join the OP2 has launched.

<sup>171</sup> Constitution of Kazakhstan, full text available on: [https://www.akorda.kz/en/official\\_documents/constitution](https://www.akorda.kz/en/official_documents/constitution)

# TOGO

**YEAR OF ABOLITION: 2009**

**DATE OF LAST EXECUTION: 1978**

**CONSTITUTION: 1992 revised in 2019,<sup>172</sup> article 13**

*"The State has the obligation to guarantee the physical and mental integrity, the life and the security of every living person in the national territory. No one may be arbitrarily deprived either of their liberty or of their life. No one can be sentenced to death, life or life imprisonment."<sup>173</sup>*

## Main stages of abolition:

**2008**

The Council of Ministers, presided over by President Faure Essozimna Gnassingbe, drafts a bill to abolish the death penalty.

**2009**

The National Assembly passes the bill.

**2015**

The death penalty is completely removed from the justice system by the adoption of a new Criminal Code.

**2016**

Togo officially ratifies the OP2.

Togo is not a Muslim-majority country and the State is secular. It has been a member of the OIC since 1997. The first article of the Constitution states that *"The Togolese Republic is a State of law, secular, democratic and social."* Article 30 states that *"The State recognizes private denominational and secular instruction"* and article 144 that *"The Republican form and the secularity of the State may not be the object of a revision."<sup>174</sup>*

<sup>172</sup> Constitution of Togo, full text available in French on: [http://oit.org/dyn/natlex/docs/ELECTRONIC/38025/110367/F-1481961433/TGO-38025%20\(VERSION%20CONSOLIDEE\).pdf](http://oit.org/dyn/natlex/docs/ELECTRONIC/38025/110367/F-1481961433/TGO-38025%20(VERSION%20CONSOLIDEE).pdf)

<sup>173</sup> Unofficial translation.

<sup>174</sup> Constitution of Togo, articles 30 and 144.

The right to life is protected by the Togo Constitution.<sup>175</sup> However, the criminal justice system imposed the death penalty for several crimes including murder and offences against national security.<sup>176</sup> Article 73 of the 1992 Constitution gave the President of the Republic the right of pardon after the ruling by the Superior Council of the Magistrature.<sup>177</sup> The last execution in Togo dates back to 1978 for a murder.<sup>178</sup>

Togo has often been called on to review its legislation. In its observations on 10 August 1994, the UN Human Rights Committee stated its concern “Over the excessive number of offences punishable by the death penalty in the Togolese legislation which contravenes the provisions of article 6 of the Covenant.” The Committee urged the authorities of Togo to revise the Criminal Code with a view to reducing this number.<sup>179</sup> Amnesty International also asked Togo to ratify the OP2 in July 2003.<sup>180</sup> International and civil society figures played an essential role in encouraging the country to abolish the death penalty. Other organisations such as the Togolese League of Human Rights, FIDH, Action by Christians for the Abolition of Torture in Togo (ACAT-Togo) and the International Federation of ACATs have contributed to these efforts alongside Amnesty International. The Togolese Human Rights Commission (HRC) held meetings calling for members of the Government and members of the National Assembly’s Human Rights Committee to adopt the 2009 bill abolishing the death penalty.<sup>181</sup> The HRC-Togo also held consultations with civil society organisations to coordinate

175 Article 13 of the Constitution of 14 October 1992 states: “The State has the obligation to guarantee the physical and mental integrity, the life and the security of every living person in the national territory.” It adds: “No one may be arbitrarily deprived either of their liberty or of their life.” Cf. *infra.*, article 13 of the Constitution following the constitutional amendment on 8 May 2019.

176 Togo’s Criminal Code was adopted by law n° 80-1 on 13 August 1980.

177 The plea for clemency procedure is addressed in articles 515 to 522 of Togo’s Criminal Procedure Code. See also UN Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant*, Togo [CCPR/C/63/Add.2], 25 April 1994, points 20 and 21.

178 *Jeune Afrique*, “Le Togo abolit la peine de mort” (Togo Abolishes the Death Penalty), 24 June 2009, available in French on: <https://www.jeuneafrique.com/187172/societe/le-togo-abolit-la-peine-de-mort/>

179 UN Human Rights Committee, *Concluding Observations* [CCPR/C/79/Add.36], 10 August 1994, points 10 and 20.

180 Amnesty International, “West Africa Time to Abolish the death penalty”, [AFR 05/003/2003], p. 28, available on: <https://www.amnesty.org/download/Documents/100000/afr050032003en.pdf>

181 Interview with Komlan Agbelénkon Narteh-Messan, General Secretary of the Togo Human Rights Commission, 10 March 2020.

action with the authorities.<sup>182</sup> According to the organisation, “Religious authorities were in favour of abolishing the death penalty too, especially since they believe life is sacred as it is a gift from God.”<sup>183</sup>

In its 2001 report to the UN Human Rights Committee, Togo stated: “The National Legislation Harmonisation Commission is considering the issue of the death penalty in its revision of the Criminal Code.”<sup>184</sup> The first steps towards abolition were taken on 10 December 2008 when the Council of Ministers drew up a bill to abolish the death penalty; it commuted all death sentences to life imprisonment. During the Council of Ministers, presided over by President Faure Essozimna Gnassingbe, the Minister of Justice Kokou Tozoun announced: “The country’s decision to establish sound justice that restricts judicial errors, corrects, informs and upholds human rights is no longer compatible with a criminal law that still includes the death penalty and therefore gives absolute power to jurisdictions, the consequences of which are irreversible.”<sup>185</sup>

The bill was issued to the National Assembly and unanimously adopted by Togolese MPs on 23 June 2009. The National Assembly adopting the bill was presided over by El Hadj Abass Bonfoh and the meeting was attended by the visiting Spanish Prime Minister, José Luis Rodríguez Zapatero.<sup>186</sup> HRC-Togo believes that Zapatero provided support from Spain for the bill to be adopted. He announced to parliamentarians: “Togo has broken new ground in its restoration of democracy and protection of human rights. Spain praises and encourages this measure.”<sup>187</sup> The new law was made up of five articles; the first article stated that “The death penalty is abolished in Togo.”<sup>188</sup> Death sentences were converted to life imprisonment according to the second article.

However, the death penalty was still part of the Togolese criminal justice system. A new bill (n° 2015-010 of 24 November 2015) with the new Criminal Code wasn’t drawn up until 2015. This law was then unanimously adopted by the National Assembly on 9 July 2015. The death penalty was then entirely removed from

182 *Ibid.*

183 *Ibid.*

184 Amnesty International, *op. cit.*, p. 27.

185 *Jeune Afrique*, *op. cit.*

186 *Jeune Afrique*, *op. cit.*

187 Interview with Komlan Agbelénkon Narteh-Messan, *op. cit.*

188 The full legal text is available in French on: <http://www.droit-afrique.com/upload/doc/togo/Togo-Loi-2009-11-abolition-peine-de-mort.pdf>

the criminal justice system. On 21 January 2015, the Council of Ministers adopted a preliminary bill to join the OP2 which was officially ratified on 14 September 2016<sup>189</sup>, just before Togo's UPR by the UN Human Rights Council on 31 October 2016. Togo has voted in favour of UNGA resolutions calling for a universal moratorium on executions since 2009. The country is a member of the ICCPR since 24 May 1984.

Following the ratification of the OP2, several international figures welcomed this advance in human rights, including the EU. The spokesman for the High Representative of the Union for Foreign Affairs and Security and Vice-President of the European Commission stated: *"In doing so, Togo reinforces the global trend towards the abolition of the capital punishment, by becoming the 82nd State party to this important treaty. Togo's accession should encourage other countries to follow this example and also marks the remarkable abolitionist trend in Africa, as part of which many countries have done away with the death penalty in law or practice."*<sup>190</sup>

Togo also added the abolition of the death penalty to its Constitution. On 8 May 2019, the National Assembly passed a bill to amend the Constitution of 14 October 1992: article 13 now states that *"No one shall be deprived of their life. No one can be sentenced to death, life or life imprisonment."*

189 Togo ratified the ICCPR in 1984.

190 Statement on 20 September 2016, available on: [https://eeas.europa.eu/delegations/malawi/10118/statement-spokesperson-togos-accession-second-optional-protocol-iccpr-aiming-abolition-death\\_en](https://eeas.europa.eu/delegations/malawi/10118/statement-spokesperson-togos-accession-second-optional-protocol-iccpr-aiming-abolition-death_en)

## GABON

**YEAR OF ABOLITION: 2010**

**DATE OF LAST EXECUTION: 1985**

**CONSTITUTION: 1991<sup>191</sup> (revised in 2003, 2011 and 2018).**

**There's no specific reference to the right to life but article 1 §1 says:**

*"Each citizen has the right to the free development of his or her personality, while respecting the rights of others and the public order. No one may be humiliated, mistreated or tortured, even during moments of arrest or imprisonment."*<sup>192</sup>

### Main stages of abolition:

**2007**

President Omar Bongo Ondimba expressly demands the Council of Ministers to work on a bill to abolish the death penalty. The bill is adopted by the Council of Ministers the same year.

**2010**

Promulgation of law n°3-2010 on 15 February 2010 abolishing the death penalty in the Criminal Code and Military Criminal Code.

**2014**

Ratification of the OP2.

191 Constitution of Gabon, full text available on:

[https://www.constituteproject.org/constitution/Gabon\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Gabon_2011.pdf?lang=en)

192 Unofficial translation.

# BENIN

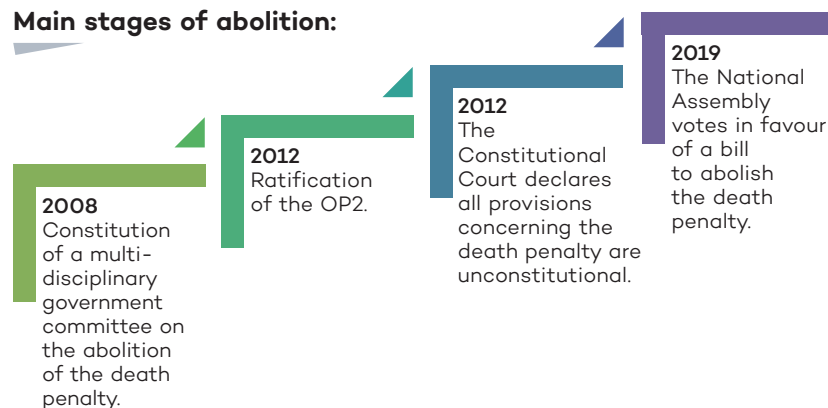
YEAR OF ABOLITION: 2012

DATE OF LAST EXECUTION: 1987

CONSTITUTION: 2019,<sup>193</sup> new article 15

*“Each individual has the right to life, liberty, security and the integrity of his person. No one shall be condemned to the death penalty.”<sup>194</sup>*

## Main stages of abolition:



Several religious groups live in Benin, including a Muslim community accounting for 27.7% of the population.<sup>195</sup> The Constitution of December 1990, currently in force following its amendment by the 2019 constitutional reform, declares the State’s secularism and article 15 says: *“Each individual has the right to life, liberty, security and the integrity of his person.”*

The last execution in Benin was in 1987. However, the official State’s position on the death penalty has long been in favour of it. In the initial report it presented to the UN Human Rights Committee in 2004, Benin attempted to justify using this form

of punishment: *“The Criminal Code includes the death penalty. Benin has had to uphold this extreme solution for cases envisaged by law due to the geopolitical environment. Essentially, the crime levels in the sub-region have forced the Government to retain the death penalty in its legal arsenal as a deterrent. Public opinion in Benin is that crime has reached concerning levels in the sub-region and the fear is that abolishing the death penalty in Benin would turn the country into a refuge for gangsters.”<sup>196</sup>*

Faced with calls from the international community to abolish the death penalty, the Minister of Justice agreed to it in 2006.<sup>197</sup> The change in the State’s position was clear from 2007, when Benin voted for the UN Resolutions calling for a moratorium on executions. It also voted in favour of this Resolution in 2008. That said, Benin courts continued sentencing people to death during this time. A multidisciplinary government committee was established to abolish the death penalty in 2008. A year later, President Boni Yayi took measures to include abolishing the death penalty in the Constitution and the Government called upon support from MPs. It was represented at the ECPM World Congress in Geneva in February 2010 and Madrid in 2013. It became one of the abolitionist countries playing a significant role in working towards universal abolition on the international stage. Benin adopted a new law (n° 2011-11) authorising support for the OP2 on 25 August 2011. The protocol came into force on 5 October 2012 in Benin. National legislation then needed to be revised by removing capital punishment from the Criminal Code which still included it. No amendments were made to the Code so, on 4 August 2012, the Constitutional Court declared that all the provisions related to the death penalty in the country’s criminal justice system were unconstitutional and called for the National Assembly to remove them. The Constitutional Court intervened again in 2016 to abolish the death penalty for all crimes.<sup>198</sup> It stated that *“No one can now be sentenced to capital punishment.”<sup>199</sup>*

193 Constitution of Benin, full text available on: [https://www.constituteproject.org/constitution/Benin\\_1990.pdf?lang=en](https://www.constituteproject.org/constitution/Benin_1990.pdf?lang=en)

194 Unofficial translation.

195 2013 census, cf. U.S Embassy in Benin, *Benin 2018 International Religious Freedom Report*, available on: <https://bj.usembassy.gov/wp-content/uploads/sites/162/BENIN-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>

196 UN Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Initial reports by States Parties*, Benin [CCPR/C/BEN/2004/1], 16 February 2004, points 102 and 103, p. 16.

197 Warburton, F. H., *Parliamentarians and the Abolition of the Death Penalty*, The World Coalition Against the Death Penalty, 2014, p. 66.

198 *Hands Off Cain*, Benin, <http://www.handsoffcain.info/bancadati/africa/benin-60000046>

199 Letter from the United Nations High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, 19 April 2018, available on: [https://www.upr-info.org/sites/default/files/document/benin/session\\_28\\_-\\_november\\_2017/letter\\_for\\_implementation\\_3rd\\_upr\\_ben\\_e.pdf](https://www.upr-info.org/sites/default/files/document/benin/session_28_-_november_2017/letter_for_implementation_3rd_upr_ben_e.pdf)

Despite abolishing the death penalty, prisoners on death row did not have their sentences commuted in the country. Fourteen men (ten from Benin, two from Nigeria, one from Togo and one from Côte d'Ivoire) were still on death row. Benin's President commuted their death sentences to life imprisonment on 15 February 2018<sup>200</sup> following the adoption of decree n° 2018-043. According to the President of the UN delegation in Benin, the decree was adopted after agreeing to a recommendation to abolish the death penalty at the country's UPR.<sup>201</sup>

Attempts to remove capital punishment from the Benin criminal justice system continued. But it took years for the criminal justice bill to be adopted. In its final observations after meetings on 27 and 28 October 2015, the United Nations Human Rights Committee asked Benin to adopt the amended Criminal Code as soon as possible.<sup>202</sup> A bill was issued to Parliament for review and adoption in March 2017 which included a provision about abolishing the death penalty, but it wasn't passed due to quorum.<sup>203</sup> A new criminal justice bill excluding the death penalty was drawn up at the same time. This Code didn't come into force until 1 January 2019. Benin's legislation has now clearly abolished the death penalty.<sup>204</sup> In terms of the Constitution, the Benin National Assembly only unanimously voted for law n° 2019-40 amending the 11 December 1990 Constitution on 31 October 2019.<sup>205</sup> Article 15 states that *"No one can now be sentenced to capital punishment."*

<sup>200</sup> Amnesty International, "Au Bénin, sauvés de l'exécution" (Saved from Execution in Benin), Oluwatosin Popoola, 12 April 2019, available in French on: <https://www.amnesty.fr/peine-de-mort-et-torture/actualites/au-benin-sauves-de-lexecution> See also HRC, *Report of the Human Rights Council, Thirty seventh session [A/HRC/37/2]*, 14 June 2018, p. 115. Available on: [https://www.upr-info.org/sites/default/files/document/benin/session\\_28\\_-\\_november\\_2017/a\\_hrc\\_37\\_2.pdf](https://www.upr-info.org/sites/default/files/document/benin/session_28_-_november_2017/a_hrc_37_2.pdf)

<sup>201</sup> *Ibid*, p. 115.

<sup>202</sup> UN Human Rights Committee, *Concluding Observations on the Second Periodic Report of Benin*, 3 November 2015, point 19. Available on: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsnKB82NyZV5e4fvxB6e-Lo8FYVM6D3CoDSmRKaiCTfweVDSiLzrn5OQxC1HwvXW%2By1ocyTXRwSCMX9gsh-QNemSBa%2B6lyF4PkBzz88YxP1dIM>

<sup>203</sup> *Hands Off Cain, Benin, op. cit.*

<sup>204</sup> *Ibid*.

<sup>205</sup> Official Benin National Assembly website (in French): <https://assemblee-nationale.bj/index.php/2019/11/05/la-proposition-de-loi-portant-modification-de-la-constitution-adoptee/>

## SURINAME

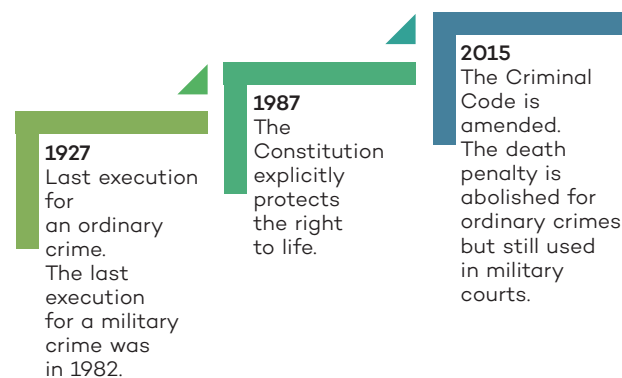
**YEAR OF ABOLITION: 2015 (for ordinary crimes)**

**DATE OF LAST EXECUTION: 1982 (execution for treason and 1927 for ordinary crimes)**

**CONSTITUTION: 1987,<sup>206</sup> revised in 1992, article 14**

*"Everyone has a right to life. This right shall be protected by the law."*

### Main stages of abolition:



<sup>206</sup> Constitution of Suriname, full text available on: <http://www.unesco.org/education/edurights/media/docs/dfceff4209dad7879549a7d46dc0bcbf82919c591.pdf>



# GUINEA

YEAR OF ABOLITION: 2017

CONSTITUTION: 2020,<sup>207</sup> article 6

*“Every person has the right to life and legal security. Every person whose life is in danger has the right to safety. The death penalty is abolished.”<sup>208</sup>*

## Main stages of abolition:

**2016**

Adoption of a new Criminal Code and Criminal Procedure removing the death penalty. The death penalty is abolished for ordinary crimes.

**2017**

The National Assembly adopts a new Military Criminal Code that no longer includes the death penalty. Capital punishment is completely abolished.

**2020**

The 2020 Constitution abolishes the death penalty in article 6.

<sup>207</sup> Constitution of Guinea, full text available in French on: <http://presidence.gov.gn/images/projetdenouvelleconstitution/NouvelleConstitution.pdf>  
<sup>208</sup> Unofficial translation.

# BURKINA FASO

YEAR OF ABOLITION: 2018 (for ordinary crimes)

DATE OF LAST EXECUTION: 1988

CONSTITUTION: 1991,<sup>209</sup> article 2

*“The protection of life, security, and physical integrity are guaranteed. Slavery, slavery-like practices, inhuman and cruel, degrading and humiliating treatments, physical or moral torture, abuses and mistreatments inflicted on children and all forms of the degradation of Man[,] are forbidden and punished by law.”<sup>210</sup>*

## Main stages of abolition:

**2012**

The Government founds the National Consultation Platform for political reforms.

**2014**

The Council of Ministers adopts a law concerning the abolition of the death penalty. It is not approved by the National Assembly.

**2018**

The National Assembly votes in favour of a criminal justice bill to replace the death penalty with life imprisonment.

Burkina Faso is a Muslim-majority country (over 60% of the population) but it has other large religious communities, especially Christian. The State is secular, as we can see in its legal system.<sup>211</sup> The 11 June 1991 Constitution protects the right to life in article 2, which states: *“The protection of life, security, and physical integrity are guaranteed.”* However, the former law n° 43-96 ADP of 13 November 1996 regarding the Criminal Code imposed capital punishment for different types of crime

<sup>209</sup> Constitution of Burkina Faso, full text available on: [https://www.constituteproject.org/constitution/Burkina\\_Faso\\_2012.pdf](https://www.constituteproject.org/constitution/Burkina_Faso_2012.pdf).

<sup>210</sup> Unofficial translation.

<sup>211</sup> Constitution of Burkina Faso, articles 27 and 31.

including assassinations, rape and murder or armed rape on public paths.<sup>212</sup> Prisoners sentenced to death could be granted amnesty or pardoned.<sup>213</sup> Convicts persons therefore had the right to seek clemency from the President under article 17 of the former Criminal Code: *“Execution cannot occur before having ruled on the plea for clemency according to the provisions of the Criminal Code.”*<sup>214</sup>

The last execution in Burkina Faso was in 1988.<sup>215</sup> Some people were sentenced to death after this date but a moratorium on executions was applied before the death penalty was abolished. The debate about abolishing the death penalty took off in 2012 when the Government founded the National Consultation Platform for legal reforms to review legal and political changes in the country, including abolishing the death penalty. The Ministry of Justice, Human Rights and Civic Promotion began a preliminary bill for abolishing the death penalty in 2014. The bill was adopted on 15 October 2014 by the Council of Ministers without actually being approved by the National Assembly.<sup>216</sup> The process was slowed down by the popular uprising of 30 and 31 October 2014, that led to President Blaise Compaoré being swept from power.

Nevertheless, the National Transition Council picked up the abolition as a bill that was passed on 10 June 2015 at a meeting in Ouagadougou.<sup>217</sup> Most of the figures involved in legislative

212 Burkina Faso Criminal Code, articles 324, 326 and 453.

213 Cf. article 10 of law n° 15-61/AN of 9 May 1961 regarding amnesty and articles 1-3 of law n° 60 of 18 April 1961 regarding pardon.

214 For further information, see UN Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Initial reports of States Parties expected in 2000, Burkina Faso* [CCPR/C/BFA/1], 5 March 2015, p. 16.

215 Amnesty International, “Burkina Faso. Abolition of Death Penalty a Hard-Won Victory”, 1 June 2018, available on: <https://www.amnesty.org/fr/latest/news/2018/06/burkina-faso-abolition-of-death-penalty-a-hardwon-victory/>

216 In October that year and as part of the 12th World Day Against the Death Penalty, the Minister of Foreign Affairs in Burkina Faso co-signed an appeal to abolish the death penalty. The appeal states that *“State-imposed execution no longer has a place in the 21st century. Modern justice cannot just be punitive and vindictive.”* The appeal adds: *“With capital punishment, an ever-possible judicial error, inevitably means an innocent person is executed. The poor, vulnerable and marginalised are often disproportionately sentenced to death, thus increasing discrimination against the weakest in our societies.”* Available in French on: <https://www.peinedemort.org/document/7656/Appel-conjoint-du-10-octobre-2014> A similar appeal was launched in 2015 and co-signed by the Burkina Faso Minister of Foreign Affairs, Moussa Bédializoun Nédié, to encourage States to abolish the death penalty. Available in French on: <https://www.peinedemort.org/document/8561/Appel-conjoint-du-10-octobre-2015>

217 *Hands Off Cain*, “Burkina Faso: Towards the Abolition of the Death Penalty”, 10 June 2015, available on: [http://www.handsoffcain.info/archivio\\_news/201506.php?iddocumento=19304266&mover=2](http://www.handsoffcain.info/archivio_news/201506.php?iddocumento=19304266&mover=2)

procedure did not support the initiative, as the Minister of Justice M. Bessolé René Bagoro explained.<sup>218</sup>

Several figures, especially in civil society, played a decisive role in achieving abolition under these circumstances, namely by educating the public and working with Government figures and MPs. The abolition had to be passed at a time when the country and its national security were shaken by acts of violence. The Burkina Faso Coalition against the Death Penalty<sup>219</sup> organised awareness, information campaigns and petitions in favour of abolition. On 10 October 2016, the coalition published a press release demanding capital punishment be abolished forever in the country.<sup>220</sup> The HRC-Burkina Faso ran several campaigns to support the process including hosting a cinema debate about abolishing the death penalty on 17 June 2013. Other international figures supported the process too. The International Organisation of *La Francophonie* (IOF) funded a project called *Action citoyenne en faveur de l’abolition définitive et irréversible de la peine de mort au Burkina Faso* (Citizen action in favour of the final and irreversible abolition of the death penalty in Burkina Faso). ECPM hosted a regional parliamentary seminar about the death penalty in French-speaking Sub-Saharan Africa in December 2016, in partnership with the FIACAT, the Minister of Foreign Affairs and IOF.<sup>221</sup>

It was difficult to adopt a law specific to abolition despite these efforts. The Government proposed a draft Criminal Code that no

218 UN Human Rights Committee, “Le Comité des droits de l’homme examine le rapport du Burkina Faso” (The Human Rights Committee Examines Burkina Faso’s Report), press release, 29 June 2016, available in French on: <https://www.peinedemort.org/document/8963/Le-Comite-des-droits-de-l-homme-examine-le-rapport-du-Burkina-Faso> The Minister states that *“It is hard to convince the population, the MPs themselves are convinced – most of them – of this punishment’s place (...) The Government is convinced that the death penalty is absolutely no deterrent, the challenge now is for it to convince the general public and its politicians.”* He adds: *“In 2015 (...) seven regional workshops were held to create awareness among figures about abolishing the death penalty. The intangible nature of the right to life was one of the themes explored during these workshops. The official position is abolitionist and we need to ‘lay the groundwork’ for public opinion (...).”*

219 Made up of several figures in civil society including Amnesty International, CIFDHA (African Human Rights Information and Training Centre) and MBDP (Burkina Faso Movement for Human and People’s Rights).

220 “Une coalition exige l’abolition définitive de la peine de mort au Burkina Faso” (A Coalition demands Burkina Faso Abolishes the Death Penalty Forever), APA, dispatch, 10 October 2016, available in French on: <https://www.peinedemort.org/document/9125/Une-coalition-exige-l-abolition-definitive-de-la-peine-de-mort-au-Burkina-Faso->

221 Information provided by the HRC-Burkina Faso, 11 March 2020.



longer imposed the death penalty to the National Assembly.<sup>222</sup> The abolition therefore “*Happened as part of a full revision of the Criminal Code. That eased any tension surrounding the issue. The last challenge is abolishing the death penalty by way of the Constitution.*”<sup>223</sup> The Centre for the Democratic Governance published a survey of public opinion at the time of abolition with the results of a poll about abolishing the death penalty commissioned by Afrobarometer in Burkina Faso. According to the results published on 18 June 2018, 54% of Burkina Faso’s population were against abolishing the death penalty.<sup>224</sup>

The National Assembly didn’t vote in favour of the draft Criminal Code bill until 31 May 2018. It was passed with 83 votes against 43; life imprisonment replaced the death penalty.<sup>225</sup> The Ministry of Justice that drew up the new Criminal Code attended the vote to champion it before the National Assembly.<sup>226</sup> According to the Ministry of Justice’s statistics, fourteen people were sentenced to death and imprisoned during abolition, eleven of whom were convicted before 1991 and three in 2015.<sup>227</sup> The new Criminal Code was promulgated in June 2018.

This justice reform made Burkina Faso an abolitionist country for ordinary crimes alone. The death penalty is now expected to be abolished for martial law and for it to be clearly stated in the country’s Constitution. In March 2016, the President of Burkina Faso set up a Constitutional Commission which published a draft of the Constitution on 10 January 2017, in which article 5 states that “*No one can be sentenced to capital punishment.*” That said, the new Constitution has still not appeared. It is expected to be voted on during a referendum in 2020.<sup>228</sup>

Burkina Faso joined the ICCPR and its Optional Protocol that recognises the Human Rights Committee’s authority to receive and examine communication from individuals. However, the protocol for abolishing the death penalty has still not been ratified. Following its UPR in 2018, Burkina Faso agreed

to several recommendations from several States, including Togo, to completely abolish the death penalty and ratify the OP2.<sup>229</sup>

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222 Interview with Issa Saferiba Fayama, magistrate and Director of the cabinet for the Ministry of Justice, Human Rights and Civic Promotion, Keeper of the Seals, 3 March 2020.

223 HRC-Burkina Faso, *op. cit.*

224 *Ibid.*

225 The new Code revised law n° 043-96/ ADP of 13 November 1996 concerning the Criminal Code.

226 Interview with Issa Saferiba Fayama, *op. cit.*

227 HRC-Burkina Faso, *op. cit.*

228 An initial vote was scheduled for 14 March 2019 but was postponed.

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229 Human Rights Council, *Burkina Faso, Responses to Recommendations*, Session 30, Adoption in the Plenary, 20 September 2018, p. 11. Available on: [https://www.upr-info.org/sites/default/files/document/burkina\\_faso/sesion\\_30\\_-\\_mayo\\_2018/burkina\\_faso\\_2rp.pdf](https://www.upr-info.org/sites/default/files/document/burkina_faso/sesion_30_-_mayo_2018/burkina_faso_2rp.pdf)

# CHAD

YEAR OF ABOLITION: 2020

DATE OF LAST EXECUTION: 2015

CONSTITUTION: 2018,<sup>230</sup> article 17

*“The human person is sacred and inviolable. Every individual has the right to life, to the integrity of their person, to security, to liberty, to the protection of their privacy and of their property.”<sup>231</sup>*

## Main stages of abolition:

2013

Acceptance of the UPR recommendation to abolish the death penalty.

2017

Adoption of a new Criminal Code removing the death penalty. However, the sentence still applies to acts of terrorism.

2020

The National Assembly unanimously votes to abolish the death penalty for acts of terrorism.

Chad is a country with a population of 11.23 million, with 55.3% Muslim and 40.6% Christian.<sup>232</sup> Article 17 of its Constitution of 4 May 2018 states that *“The human person is sacred and inviolable. Everyone has a right to life.”*

The first signs of the Chad Government’s willingness to abolish the death penalty appeared during its UPRs in 2013 and 2018, when recommendations in favour of the abolition were accepted. In its 2013 report presented to the UN Human Rights Committee, *“The Government of Chad considers that the abolition of the death penalty contributes to the promotion of human dignity*

<sup>230</sup> Constitution of Chad, full text available on:

[https://www.constituteproject.org/constitution/Chad\\_2018.pdf?lang=en](https://www.constituteproject.org/constitution/Chad_2018.pdf?lang=en)

<sup>231</sup> Unofficial translation.

<sup>232</sup> *La Croix Africa*, “Données géographiques et identité religieuse au Tchad” (Geographical and religious identity data in Chad), available in French on: <https://africa.la-croix.com/statistiques/tchad/>

*and to the advancement of human rights. For that reason, it has reaffirmed that its goal is to abolish the death penalty in Chad.”<sup>233</sup>*

The former 1967 Criminal Code imposed the death penalty for approximately forty crimes including treason, espionage and murder. 2017 saw the adoption of a new Criminal Code<sup>234</sup> that no longer included the death penalty. The punishment did still apply to acts of terrorism subject to law n° 034/PR/2015 of 5 August 2015. Terrorist attacks by the group Boko Haram among others did not help the abolition’s cause: ten supposed members of this group were shot on 29 August 2015 after being sentenced to death the day before,<sup>235</sup> marking the return of executions, the last of which was in 2003.<sup>236</sup> The Office of the United Nations High Commissioner expressed its disappointment about the death penalty being used after such a long period of moratorium.<sup>237</sup>

Alongside international organisations, figures in civil society played a major role in the process of abolishing the death penalty by organising awareness events and meetings for parliamentarians and other members of the Government. Some MPs played an active part in this battle; they took part in preparatory seminars to draw up legislation in favour of the abolition as well as events such as the World Congress Against the Death Penalty in Brussels in 2019. The HRC-Chad also played an active role in the abolitionist movement.<sup>238</sup>

FIACAT published a report in June 2016 entitled *The Death Penalty in Chad: Raising Awareness for its Abolition*.<sup>239</sup> Several religious leaders outlined their position on the death penalty including Sheikh Abdel-Daim, President of the High Council for Islamic Affairs in Chad. Based on his conclusion, *“Even though Islam accepts the death penalty, its implementation is so regulated that*

<sup>233</sup> UN Human Rights Committee, *Initial Report Presented by Chad* [CCPR/C/TCD/2], 28 January 2013, point 124.

<sup>234</sup> By law n° 001/PR/2017, promulgated on 8 May 2017.

<sup>235</sup> Article 5 of the former 1967 Criminal Code states that *“Convicts shall be executed by firing squad.”*

<sup>236</sup> These executions took place on 6 and 9 November 2003. Prior to this date, the country had adopted a moratorium from 1992. Cf., UN Human Rights Committee, *Initial Report Presented by Chad* [CCPR/C/TCD/1], 6 June 2008, point 133.

<sup>237</sup> UN News, “UN Human Rights Office ‘Deeply Regrets’ Resumption of Executions in Chad”, 2 September 2015, available on: <https://news.un.org/en/story/2015/09/507782-un-human-rights-office-deeply-regrets-resumption-executions-chad>

<sup>238</sup> Interview with Dr Jacques Laouhngamaye Dingaomaibe, MP at the Chad National Assembly, 8 May 2020.

<sup>239</sup> Published on 13 June 2016 with the support of the French Development Agency (FDA) and European Union, available in French on: <https://www.fiakat.org/images/pdf/Publication-Tchad-Bassedef.pdf>

*it is very difficult to impose. Moreover, implementing the death penalty in Chad has nothing to do with Islam, the executions that have taken place in Chad since independence were based on a principle of criminal law which is secular.*"<sup>240</sup>

The N'Djamena Court of Appeal imposed the death sentence on four people accused of murdering a Chinese woman on 27 August 2018. The sentence was based on the law for acts of terrorism despite the debatable nature of the murder.<sup>241</sup> The execution didn't take place.

It wasn't until 2020 that the National Assembly unanimously voted for the death penalty for acts of terrorism to be abolished on 28 April. Chad became the 22nd abolitionist State in Africa.

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<sup>240</sup> *Ibid.*

<sup>241</sup> Essentially, article 3 of the law states that "An act of terrorism is: a) any act or threat of an act which is likely to endanger life, physical integrity, the liberties of a person or a group of people, that causes or may cause damage to private or public property, natural resources, the environment or cultural heritage, and committed with intent: 1) to intimidate, provoke a terror situation, force, exert pressure or cause any Government organisation, institution, population or group of people to join or stop an initiative, adopt or renounce a specific position or act on certain principles; or 2) to disrupt the normal function of public services, the provision of essential services for the general public or create a crisis situation among the general public; 3) to spark a general uprising in a State Party. b) Any promotion, funding, contribution, order, aid, incitement, encouragement, attempt, threat, conspiracy, organisation or equipment of any person with the intention of committing any act mentioned in paragraph a) 1-3." (Unofficial translation)

## CONCLUSION

Abolishing the death penalty in the Islamic world collides with the belief that this form of punishment cannot be abolished in an Islamic State. However, this study on the death penalty in OIC States shows us just how wrong this belief is. If we consider States that have a moratorium on executions (14) and abolitionist States (19), we can see that there are far more of them than retentionist States (24). This means most OIC member States tend towards abolishing the death penalty.

Some Islamic religious traditions still affect universality and respect for human rights, including the right to life, in Muslim countries. However, recent decades have seen Islamic States open up to universal values of human rights. The proof is these States supporting international instruments in the battle for human rights and the removal of several restrictions issued when these instruments were ratified. Democratic progress and globalisation have naturally encouraged the rest of the OIC member States to accept universality and, therefore, abolish the death penalty.

In terms of abolishing the death penalty in the Islamic world, we have to wonder if the restrictions that are expressly detailed in the Quran and other sources of Sharia can be overcome. Several Quranic provisions have actually been abolished in most Islamic States, namely corporal punishment and the *dhimma* status attributed to non-Muslims on Islamic territory (verse 29:9).<sup>242</sup> The influence of Sharia varies from one Islamic State to the next depending on its politics and demographics. Officially, Islamic law applies to few areas in most of these States. Most corporate, civil and criminal laws are of western origin and Sharia only has a small role in the internal legal order. However, some studies have found that laws in several Muslim-majority States exaggerate resorting to the death penalty in relation to provisions in Islamic law.<sup>243</sup> As we have seen, Islamic law has very strict conditions

<sup>242</sup> Official abolition of the *dhimma* status by the 1856 *Hatt-i Humayoun* Ottoman decree.

<sup>243</sup> Amnesty International, "Studies of the Death Penalty and Right to Life in the Arab World", 2007, available in Arabic on: <http://www.amnestymena.org/ar/Magazine/Issue15/DPstudiesarabworld.aspx?articleID=1012>

for its implementation and its modern interpretation can result in total abolition. So it's time to consider the religious basis of imposing the death penalty in most Islamic States despite the lack of clarity in Islamic law sources or the ability to interpret them to abolish the death penalty.

Most retentionist Islamic States have ratified international conventions protecting the right to life, especially the ICCPR: this means they can only give the death penalty to the most serious crimes.<sup>244</sup> The punishment can no longer be imposed for offences related to adultery, homosexuality, apostasy, blasphemy or any other political crime.<sup>245</sup> It goes against their obligation in terms of international law.

The abolition of the death penalty in all Islamic States requires different areas to work together be they media, popular, political or religious. The appearance and solidification of a human rights culture in the Islamic world is a step in the right direction. There are several humanist movements in retentionist Islamic countries working to ensure international human rights instruments are respected. They aim to reduce the violation of fundamental rights as well as to establish States practising better criminal law.

In this context, it is vital to support abolitionist movements, especially civil society, which must raise public awareness of the need to abolish the death penalty. Support from the international community is critical to this reform to win the battle of abolition. Respect for freedom of speech can but empower the work of enlightened Muslims, key figures in this battle and in abundance in the Islamic world. The fight for secularisation and civil liberties will help abolish the death penalty. Abolition processes are certainly slow, difficult and can be risky.<sup>246</sup> However, there are many reasons for hope, especially given the growing number of Islamic States that have become abolitionist.

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<sup>244</sup> Cf. *supra*. Introduction

<sup>245</sup> Cf. *supra*. Introduction

<sup>246</sup> Proof is the oppression of human rights militants and free thinkers today.

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# APPENDIX

## List of people/institutions questioned

- **Narteh-Messan Komlan Agbelénkon,**  
Secretary General of the Togo Human Rights Commission (HRC-Togo)
- **Jacques Laouhingamaye Dingaomaibe,**  
Chad National Assembly MP
- **Papa Sene,**  
lawyer and President of the Senegalese Human Rights Committee (SHRC)
- **Omar Ali Ewado,**  
President of the Djiboutian Human Rights League
- **Enio Haxhimihali,**  
Director of People's Advocate of Albania
- **Issa Saferiba Fayama,**  
magistrate and Director of the cabinet for the Minister of Justice, Human Rights and Civic Promotion, Burkina Faso.
- Burkina Faso Human Rights Commission (HRC-Burkina Faso)
- **Franck Donald Tape,**  
Head of Department in charge of places of deprivation of liberty at the Côte d'Ivoire Human Rights Commission (CI-HRC)
- **Pauline Jobson,** Executive Officer at Penal Reform International
- Permanent Mission of Turkmenistan to the United Nations Office at Geneva



## Provisions of applicable international law

<b>The Universal Declaration of Human Rights</b>	Article 3: "Everyone has the right to life, liberty and security of person."
<b>The International Covenant on Civil and Political Rights</b>	Article 6: "1. Every human being has the inherent right to life. This right shall be protected by law. 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court. 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."
<b>Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty</b>	Article 1: "1. No one within the jurisdiction of a State Party to the present Protocol shall be executed. 2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction."
<b>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</b>	Article 2: "1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."
<b>Optional Protocol to the CAT</b>	Article 3: "Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism)."
<b>Convention on the Rights of the Child</b>	Article 37: "States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

<b>African Charter on Human and Peoples' Rights</b>	Article 4: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person."
<b>African Charter on the Rights and Welfare of the Child</b>	Article 5: "Death sentence shall not be pronounced for crimes committed by children."
<b>The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</b>	Article 4: "1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited. 2. States Parties shall take appropriate and effective measures to: a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public."
<b>Protocol n° 6 to the European Convention for the Protection of Human Rights and Fundamental Liberties</b>	Article 1: "The death penalty shall be abolished. No-one shall be condemned to such penalty and executed."
<b>Protocol n° 13 to the European Convention for the Protection of Human Rights and Fundamental Liberties</b>	"Being resolved to take the final step in order to abolish the death penalty in all circumstances..." Article 1: "The death penalty shall be abolished. No one shall be condemned to such penalty and executed."
<b>The Protocol to the American Convention on Human Rights to Abolish the Death Penalty</b>	Article 1: "The States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction."
<b>The Arab Charter on Human Rights</b>	Article 5: "1. Every human being has an inherent right to life. 2. This right shall be protected by law. No one shall be arbitrarily deprived of their life." Article 6: "The death penalty shall be inflicted only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. Such a penalty can only be carried out pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence." Article 7: "1. The death penalty shall not be inflicted on a person under 18 years of age, unless otherwise provided by the law in force at the time of the commission of the crime. 2. The death penalty shall not be carried out on a pregnant woman prior to her delivery or on a nursing mother within two years from the date on which she gave birth. In any case, the interests of the infant shall prevail."



**THE PROCESS  
OF ABOLISHING  
THE DEATH PENALTY  
IN MEMBER STATES  
OF THE ORGANISATION  
OF ISLAMIC  
COOPERATION**

*“No value can ever justify putting the value of human life into perspective so far as to eliminate it legally” – **Abdou Diouf**, former President of the Republic of Senegal, former General Secretary of the International Organisation of La Francophonie.*

*“Even though the death penalty has been applied throughout the world and throughout the ages, murders continue to occur. The death penalty has not acted as a deterrent” – **Liew Vui Keong**, former Minister in the Prime Minister’s Department for Law of Malaysia.*

*“Imposing the death penalty is of no benefit to justice” – **Thomas Boni Yayi**, former President of the Republic of Benin and former President of the African Union.*

149 States worldwide have now abolished the death penalty in law or in practice. The issue of the death penalty in the OIC member States clashes with the belief that it would be impossible for an Islamic State to abolish this punishment. However, certain religious leaders agree that there is no consensus in schools of Quranic interpretation on the absolute necessity of enforcing the death penalty, and several Muslim-majority states have already abolished capital punishment in law.

Of the 57 OIC member States, 19 have abolished the death penalty for all crimes or ordinary crimes, 14 have a moratorium on it and 24 are retentionist States. Most of the Islamic world has abolished the death penalty in law or in practice. Abolition is possible and this study proves it with detailed examples of States that have achieved it. It provides a better understanding of the processes leading to abolition. This publication is based on interviews and research conducted by ECPM and Nael Georges. It is a valuable tool to help all OIC member States to work towards abolishing the death penalty and discrediting popular misconceptions.



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