

FROM ADVOCACY TO ABOLITION: HOW THE UNIVERSAL PERIODIC REVIEW CAN SHAPE THE TRAJECTORY OF THE ABOLITION OF THE DEATH PENALTY

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On January 30, 2023, a government delegation from Zambia appeared in Geneva, Switzerland, sitting at the front of the Human Rights and Alliance of Civilizations Room at the Palais des Nations,¹ headed by the country’s Minister of Justice, Mr. Mulambo Haimbe.² This day marked Zambia’s fourth appearance before the United Nations’ Human Rights Council for its Universal Periodic Review (UPR).³ What distinguished this appearance from the others was the first topic Mr. Haimbe addressed in his introductory remarks: the country’s full implementation of recommendations from the previous UPR to abolish the death penalty. Less than one month prior, Mr.

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1. United Nations, Creative Cmty. Outreach Initiative, *Human Rights Council*, <https://www.un.org/en/ccoi/human-rights-council> (last visited Apr. 1, 2023).

2. Hum. Rts. Council, *Draft Rep. of the Working Group on the Universal Periodic Review: Zambia*, ¶ 1, U.N. Doc. A/HRC/WG.6/42/L.11 (Feb. 1, 2023) [hereinafter *Draft Rep. of the Working Group on the Universal Periodic Review: Zambia*].

3. U.N. Hum. Rts. Council, *Universal Periodic Review - Zambia*, <https://www.ohchr.org/en/hr-bodies/upr/zm-index> (last visited Feb. 3, 2023).

Haimbe observed, Zambia's President had signed into law a bill abolishing the death penalty.⁴

Was the timing a mere coincidence? Or, did the UPR somehow accelerate Zambia's abolition process?

This article assesses whether there is evidence to suggest that the UPR can influence the timing of a country's decision to abolish the death penalty. The evidence arises out of the examination of thirty case studies of countries that abolished the death penalty, or ratified the leading treaty calling for abolition. This article concludes that in some circumstances the UPR does appear to influence that timing. These conclusions can assist civil society organizations as they refine their advocacy to encourage more countries to abolish the death penalty.

Part I of this article offers an introduction to the global abolitionist movement and two of its advocacy targets: the U.N. Human Rights Council and the UPR. Part II makes the case for focusing on the UPR to assess the efficacy of U.N. advocacy. Part III describes the process of abolition and offers several theories as to how the UPR might influence a country's trajectory toward abolition. Part IV sets out the study's methodology and encompasses the analysis of the case studies, focusing first on countries that have abolished the death penalty early in a UPR cycle, then on countries that have abolished at mid-cycle, and finally on countries that have abolished during the tail end of the cycle. The conclusion discusses the implications of these findings for civil society organizations working toward abolition of the death penalty.

I. AN INTRODUCTION TO THE GLOBAL ABOLITIONIST MOVEMENT, THE HUMAN RIGHTS COUNCIL, AND THE UPR

A. The Global Abolitionist Movement

In 2002, civil society organizations came together to create the World Coalition Against the Death Penalty, a global coalition to advocate for abolition of the death penalty in every country of the

4. Bronwyn Dudley, *Zambia is the 25th African State to Abolish the Death Penalty*, WORLD COAL. AGAINST DEATH PENALTY (Jan. 6, 2023), <https://worldcoalition.org/2023/01/06/zambia-abolishes-the-death-penalty/>.

world.⁵ Since then, 36 countries have abolished the death penalty for all crimes or for “ordinary crimes” (excluding military offenses),⁶ and the Coalition’s membership has expanded to 170 organizations⁷ in 56 countries.⁸

The abolitionist movement deploys a variety of advocacy strategies to achieve abolition, including, for example, workshops with lawmakers,⁹ litigation,¹⁰ film festivals,¹¹ and restrictions on exports of goods that might be used in executions.¹² Advocacy with U.N. human rights mechanisms is a common strategy, enabling civil society organizations to lobby U.N. experts and diplomats to press governments to abolish the death penalty.¹³

The Advocates for Human Rights (The Advocates) has served on the Steering Committee of the World Coalition Against the Death Penalty for more than a decade. In that capacity, it provides assistance

5. *Presentation & History*, WORLD COAL. AGAINST DEATH PENALTY, <https://worldcoalition.org/who-we-are/presentation-history/> (last visited Apr. 1, 2023).

6. *Countries That Have Abolished the Death Penalty Since 1976*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/policy-issues/international/countries-that-have-abolished-the-death-penalty-since-1976> (last visited Apr. 1, 2023).

7. *Member Organizations*, WORLD COAL. AGAINST DEATH PENALTY, <https://worldcoalition.org/who-we-are/member-organizations/> (last visited Apr. 1, 2023).

8. E-mail from Méline Szwarcberg, Women & Gender Project Manager, World Coal. Against the Death Penalty, to Amy Bergquist, Assoc. Program Dir., Int’l Just. Program, Advocates for Hum. Rts. (Feb. 3, 2023, 05:44 CST) (on file with author).

9. *PGA Members Attended a Workshop on the Abolition of the Death Penalty in Africa in Ouagadougou (Burkina Faso)*, PARLIAMENTARIANS FOR GLOB. ACTION (Dec. 28, 2016), <https://www.pgaction.org/news/workshop-adp-ouagadougou.html>.

10. *State v. Makwanyane* (CCT3/94), judgment, 391 (June 6, 1995) (decision of the Constitutional Court of the Republic of South Africa striking down the death penalty as inconsistent with section 33(1) of the Constitution).

11. Maria Wilkinson, “*The State of Texas vs. Melissa*” to Show in Taiwan’s Murder by Numbers Film Festival, NEWS LENS (Oct. 6, 2022), <https://international.thenewslens.com/article/174391>.

12. Regulation (EU) 2019/125 of the European Parliament and of the Council concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (codification), PE/59/2018/REV/1 (Jan. 16, 2019), <http://data.europa.eu/eli/reg/2019/125/oj>.

13. See, e.g., *High Hopes for Substantial Progress on the Death Penalty Tempered by Mild Rhetoric*, THE ADVOCATES FOR HUM. RTS. (Mar. 18, 2021), <https://www.theadvocatesforhumanrights.org/News/A/Index?id=16>.

to the Coalition and its members when a U.N. human rights mechanism is preparing to review the human rights record of a country that retains the death penalty. Since 2012, The Advocates has collaborated with the Coalition and its members on 155 reports to the U.N. on death penalty issues in 65 countries.¹⁴

B. *The Human Rights Council and the UPR*

The Human Rights Council, established in 2006, is a political human rights mechanism, in which government representatives discuss and vote on resolutions relating to human rights issues around the world.¹⁵ Unlike U.N. treaty-body mechanisms, which are composed of independent experts,¹⁶ the Council consists of forty-seven countries elected by the U.N. General Assembly, with regional representation.¹⁷ Delegates to the Council are typically members of a country's diplomatic corps, based at their country's Permanent Mission to the U.N. Offices in Geneva.¹⁸ Their engagement with the Council is shaped by their country's diplomatic priorities and concerns.¹⁹

The U.N. General Assembly established the UPR when it created the Council under Resolution 60/251.²⁰ The resolution called for the UPR to be "a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned," and "based on objective and reliable information."²¹ The first UPR session took place in April 2008, and since that time every U.N. Member

14. Email from Richnetta Parker, Int'l J. & Women's Hum. Rts. Program Assistant, to Amy Bergquist, Assoc. Program Dir., Int'l Just. Program, Advocates for Hum. Rts. (Feb. 2, 2023, 14:14 CST) (on file with author).

15. See *Human Rights Tools for a Changing World – UN Advocacy*, THE ADVOCATES FOR HUM. RTS. (Nov. 4, 2022), <https://www.theadvocatesforhumanrights.org/Res/UN%20Advocacy.pdf> [hereinafter *Human Rights Tools for a Changing World – UN Advocacy*].

16. *Id.* at 34.

17. *Id.* at 2–3.

18. *Id.* at 9.

19. *Id.*

20. G.A. Res. 60/251, ¶ 5(e) (Apr. 3, 2006).

21. *Id.*

State has completed three UPR “cycles.”²² Each cycle takes approximately five years,²³ and the fourth cycle began in November 2022.²⁴

The UPR is a unique human rights process²⁵ involving several steps. At the first step, the government of the state under review prepares and submits a “National Report,” highlighting the country’s human rights achievements and challenges since the prior review.²⁶ Several months later, the government sends a delegation to Geneva to participate in one of three annual UPR sessions, each involving the review of twelve to fifteen countries.²⁷ The Council sets aside 3.5 hours for each country’s review, during which the government delegation presents its National Report and responds to questions and concerns.²⁸ The State may also make “voluntary pledges” to take certain actions before the next review. For example, the pledges can include promises to submit a mid-term report or to implement a particular policy.²⁹ Each 3.5-hour meeting (referred to informally as the “interactive dialogue”) is webcast live on U.N. Web TV and available thereafter for viewing on the U.N.’s website.³⁰

The most important part of the 3.5-hour meeting is the actual “interactive dialogue,” when all U.N. Member States, as well as observers such as the Holy See, the State of Palestine, and the European Union, have the option of delivering brief interventions, ranging from 55

22. *UPR Sessions*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hr-bodies/upr/upr-sessions> (last visited Apr. 1, 2023).

23. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 4.

24. *Cycles of the Universal Periodic Review*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hr-bodies/upr/cycles-upr> (last visited Apr. 1, 2023).

25. *Universal Periodic Review*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hr-bodies/upr/upr-main> (last visited Apr. 1, 2023) [hereinafter *Universal Periodic Review*].

26. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 4.

27. *Universal Periodic Review*, *supra* note 25.

28. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 5.

29. *Basic Facts About the UPR*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hr-bodies/upr/basic-facts> (last visited Apr. 1, 2023) [hereinafter *Basic Facts About the UPR*].

30. United Nations Media, *Human Rights Council*, <https://media.un.org/en/search/categories/meetings-events/human-rights-council> (last visited Feb. 3, 2023).

seconds to 2 minutes, depending on the number of countries that sign up to speak.³¹ Those interventions may include questions as well as praise and criticism for the State under review, and they typically also include recommendations for the State under review to consider.³² Over the course of the 3.5 hours, a State may receive more than 300 recommendations.³³ The State under review must eventually respond to each recommendation by stating whether it accepts or rejects it.³⁴ Just days after the meeting, staff of the U.N. Office of the High Commissioner for Human Rights (OHCHR) compile a list of all the recommendations and thereafter they prepare a full record of the meeting in a document called “the Report of the Working Group.”³⁵ If the State under review acts quickly—generally within a few days of the interactive dialogue—OHCHR staff can include some or all of the State’s decisions on the recommendations within the Report of the Working Group itself.³⁶ Otherwise, the State under review has several months to respond to each recommendation,³⁷ typically in a document

31. *Overview of the Universal Periodic Review Mechanism*, INT’L COMM’N JURISTS 1, 7, <https://www.icj.org/wp-content/uploads/2014/02/UPR.pdf>. See also United Nations, *Non-Member States*, <https://www.un.org/en/about-us/non-member-states> (last visited Feb. 3, 2023).

32. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 5.

33. See, e.g., Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: United States of America*, ¶ 26, U.N. Doc. A/HRC/46/15 (Dec. 15, 2020).

34. In the diplomatic world of the UPR, the word “rejects” is too strong. The State under review simply “notes” the recommendations it decides not to accept. *A Guide for Recommending States at the UPR*, UPR INFO, 1, 9-10 (2015), https://www.upr.info/sites/default/files/documents/2015-09/upr_info_guide_for_recommending_states_2015.pdf.

35. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 5; see, e.g., Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Australia*, U.N. Doc. A/HRC/47/8 (Mar. 24, 2021).

36. See *infra* note 105; see, e.g., Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Suriname*, ¶ 97 (accepting dozens of recommendations), U.N. Doc. A/HRC/49/6 (Dec. 17, 2021) [hereinafter *Rep. of the Working Group on the Universal Periodic Review: Suriname* (Dec. 17, 2021)].

37. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 5.

called “the Addendum to the Report of the Working Group.”³⁸ Then, the State under review sends a smaller delegation to Geneva for a 30-minute meeting during which the Council formally adopts the outcome of the review for that country.³⁹ Between the adoption of the outcome and the start of the next cycle, the State under review is tasked with implementing all of the recommendations it accepted.⁴⁰

Civil society organizations have many opportunities to engage in advocacy during the UPR process.⁴¹ First, approximately six months before the interactive dialogue, organizations may submit stakeholder reports.⁴² Generally, these reports describe the situation on the ground in the country under review and suggest recommendations that diplomats might consider making during the interactive dialogue.⁴³ OHCHR staff compile these stakeholder reports into a summary report that highlights some of the main concerns that each stakeholder report identifies.⁴⁴ Second, organizations may participate in consultations organized by the State under review as it prepares its National Report.⁴⁵ Third, organizations may directly lobby Council delegates in person or electronically.⁴⁶ Fourth, organizations may organize side events on the margins of a Council session, targeting Council delegates who are seeking information to prepare their interventions during the upcoming UPR session.⁴⁷ Fifth, during the 3.5-hour meeting, organizations may engage in awareness raising activities, such as webcast viewing parties and live-tweeting.⁴⁸ Sixth, organizations may

38. See, e.g., Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Australia*, U.N. Doc. A/HRC/47/8/ Add.1 (June 2, 2021).

39. *Universal Periodic Review*, *supra* note 25.

40. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 6.

41. *Id.*

42. *Id.* at 7.

43. *Id.*

44. *Id.*; see, e.g., U.N. Office of the High Comm’r. for Human Rts., *Summary of Stakeholders’ Submissions on Russian Federation*, U.N. Doc. A/HRC/WG.6/30/RUS/3 (Mar. 9, 2018).

45. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 4.

46. *Id.* at 10.

47. *Id.* at 10–11.

48. *Id.* at 11.

advocate with local media about events in Geneva to try to generate publicity about abolitionist recommendations and the government's response.⁴⁹ Seventh, they may engage in direct advocacy with the government of the State under review in an effort to persuade the government to accept abolitionist recommendations.⁵⁰ Eighth, when the Council adopts the outcome of the UPR, organizations with consultative status⁵¹ may take the floor during the meeting to speak about the importance of abolition of the death penalty.⁵² Ninth, organizations may collaborate with the government on implementation of accepted recommendations.⁵³ Tenth, organizations may monitor implementation of accepted recommendations to prepare for the next UPR cycle.⁵⁴ Finally, advocates are continuing to come up with additional creative ways to engage with the process.

The Advocates uses many of these advocacy strategies in the context of the UPR. In collaboration with the Coalition and its members, it has submitted over 60 UPR stakeholder reports on death penalty issues since 2012.⁵⁵ In advance of each UPR session, staff of The Ad-

49. *Id.* See, e.g., *Ghanaian Media Lauded for Promoting Universal Periodic Review*, BUSINESS GHANA (Aug. 19, 2018), <http://www.businessghana.com/site/news/general/171187/Ghanaian-media-lauded-for-promoting-Universal-Periodic-Review>.

50. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 6; see, e.g., *High Hopes for Substantial Progress on the Death Penalty Tempered by Mild Rhetoric*, THE ADVOCATES FOR HUM. RTS. (Mar. 18, 2021), <https://www.theadvocatesforhumanrights.org/News/A/Index?id=16>.

51. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 6. See also *Human Rights Tools for a Changing World, A step-by-step guide to human rights fact-finding, documentation, and advocacy*, THE ADVOCATES FOR HUM. RTS. 1, 312–14 (explaining how to apply for U.N. consultative status) (Jan. 1, 2015), <https://www.theadvocatesforhumanrights.org/Res/change%202.pdf>.

52. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 43; see, e.g. Global Initiative for Economic, Social, and Cultural Rights, *Joint NGO Oral Statement on Women's Rights and Climate Change*, YOUTUBE (July 3, 2019), <https://www.youtube.com/watch?v=IIIJmTja0F4>.

53. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 6.

54. *Id.*

55. See *UN & Regional Submissions*, THE ADVOCATES FOR HUM. RTS., <https://www.theadvocatesforhumanrights.org/Publications> (filter by Issue: Death Penalty; Mechanism: UPR) (last visited Apr. 2, 2023); *Cameroon Stakeholder Report Submitted by The Advocates for Human Rights, a Non-Governmental Organization in Special Consultative Status, in Collaboration with Droits et Paix, a Cameroon-*

vocates send over eighty emails to permanent missions in Geneva,⁵⁶ attaching “one-pager” summaries of the reports and encouraging diplomats to make recommendations relating to the death penalty. Along with pro bono volunteers and partners, staff have made eight trips to Geneva since 2014 to lobby Council delegates in the lead-up to UPR sessions. The Advocates has also hosted virtual and in-person side events to highlight death penalty issues in upcoming UPR sessions,⁵⁷ and has live-tweeted and blogged about recommendations made during interactive dialogues.⁵⁸

In the abolitionist community, The Advocates is not alone in these UPR advocacy efforts. Other members of the World Coalition Against the Death Penalty, such as Ensemble Contre la Peine de Mort (ECPM),⁵⁹ Harm Reduction International,⁶⁰ the International Commission of Jurists,⁶¹ the International Federation of Action by Christians Against Torture (FIACAT),⁶² the International Federation for

based Member of the World Coalition Against the Death Penalty, and La Ligue Camerounaise des Droits Humains, THE ADVOCATES FOR HUM. RTS. (2012), https://www.theadvocatesforhumanrights.org/Res/cameroon_hrc_death_penalty_sept_2012%202.pdf.

56. E-mail from Nathan Madson, Staff Attorney, Int’l Just. Program, The Advocates for Hum. Rts., to Amy Bergquist, Assoc. Program Dir., Int’l Just. Program, The Advocates for Hum. Rts. (Feb. 2, 2023, 12:41 PM) (on file with author).

57. *World Day Against the Death Penalty: From Advocacy to Abolition*, THE ADVOCATES FOR HUM. RTS. (Oct. 10, 2022), <https://www.theadvocatesforhumanrights.org/Events/2022-death-penalty-cle>.

58. The Advocates for Human Rights (@The_Advocates), TWITTER, https://twitter.com/The_Advocates (last visited Apr. 4, 2023).

59. Universal Periodic Review, ENSEMBLE CONTRE LA PEINE DE MORT, <HTTPS://WWW.ECPM.ORG/EN/CAMPAIGNS/UNIVERSAL-PERIODIC-REVIEW/> (last visited Apr. 2, 2023).

60. *Making the Universal Periodic Review Work for People Who Use Drugs*, HARM REDUCTION INTERNATIONAL (2019), <https://hri.global/wp-content/uploads/2022/10/UPR-people-who-use-drugs-report-2019.pdf>.

61. *See, e.g., Thailand: Joint Submissions by ICJ and Its Partners to the Universal Periodic Review (UPR)*, INTERNATIONAL COMMISSION OF JURISTS (Mar. 29, 2021), <https://www.icj.org/thailand-joint-submissions-by-icj-and-its-partners-to-the-universal-periodic-review-upr/>.

62. *Représentation Internationale: Nations Unies*, FIACAT, <https://www.fiacat.org/representation-internationale/nations-unies> (last visited Apr. 2, 2023).

Human Rights (FIDH),⁶³ and Reprieve,⁶⁴ for example, engage in similar efforts, either on their own or with member- or partner-organizations.

Considering these efforts, the global abolitionist movement would benefit from an opportunity to assess whether such advocacy can produce positive results. To date, there has been no scholarly research to assess the efficacy of advocacy at the U.N. to press for abolition of the death penalty. The purpose of this article is to take an initial step toward filling that gap.

This analysis can provide practical guidance to the abolitionist movement. To the extent it is possible to identify cases in which the UPR may have influenced the timing of a country's decision to abolish the death penalty, the movement should seek to examine what factors made the UPR influential. This assessment can help abolitionist civil society organizations refine their advocacy strategies and use their limited resources more wisely.

II. THE MERITS OF FOCUSING ON THE UPR

Several features of the UPR make it well suited to analysis of its efficacy in advancing the cause of abolition of the death penalty. First, as the name suggests, the UPR applies universally to all U.N. Member States, so all countries that retain the death penalty participate in the mechanism.⁶⁵ Second, the UPR offers a predictable five-year review cycle, facilitating analysis of the timing of decisions to abolish the death penalty.⁶⁶ Third, as part of the UPR, each state under review has the obligation to respond to each recommendation it receives, thereby putting itself "on the record" as accepting or rejecting recommendations to abolish the death penalty.⁶⁷ Fourth, the UPR encompasses all

63. *Nations Unies*, FÉDÉRATION INTERNATIONALE POUR LES DROITS HUMAINS, <https://www.fidh.org/fr/plaidoyer-international/nations-unies/> (last visited Apr. 2, 2023).

64. See, e.g., Jeed Basyouni, *Halfway There and Saudi Arabia Is Still Falling Short: Our Midterm Report on Saudi Arabia's UPR*, REPRIEVE (June 14, 2021), <https://reprieve.org/uk/2021/06/14/saudi-arabia-upr/>.

65. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 3.

66. *Id.*

67. *Id.* at 5.

human rights issues in the State under review, making the death penalty relevant for every retentionist country going through the review process, even if the State has not ratified a human rights treaty that restricts the use of the death penalty.⁶⁸

Lastly, the death penalty receives a great deal of attention during the UPRs of retentionist States. Over the first three UPR cycles, for example, countries made 3,973 recommendations relating to the death penalty,⁶⁹ compared with 2,176 recommendations on freedom of the press⁷⁰ and 2,658 recommendations on sexual orientation and gender identity.⁷¹ The number of death penalty recommendations increased from 913 in the first cycle⁷² to 1,626⁷³ and 1,434⁷⁴ in the second and third cycles, respectively. These figures are particularly remarkable in light of three facts: First, only a minority of countries retain the death penalty in law or practice.⁷⁵ Second, the number of retentionist countries has decreased over the three cycles.⁷⁶ Third, with the start of the second cycle, many countries adopted a practice of making no more than two recommendations per intervention.⁷⁷

Compared with the UPR, U.N. treaty-based mechanisms apply only to countries that have ratified a particular treaty.⁷⁸ Treaty bodies typically initiate their periodic review processes only after a State Party has submitted its periodic report—reports that are often long-

68. *Id.* at 3.

69. UPR Info Database, <https://upr-info-database.uwazi.io/en/library/> (last visited Apr. 2, 2023) (select “recommendations,” select cycles 1-3, select issue “Death Penalty”).

70. *Id.* (select “recommendations,” select cycles 1–3, select issue “Freedom of the Press”).

71. *Id.* (select “recommendations,” select cycles 1–3, select issue “Sexual Orientation and Gender Identity”).

72. *Id.* (select “recommendations,” select cycles 1, select issue “Death Penalty”).

73. *Id.* (select “recommendations,” select cycles 2, select issue “Death Penalty”).

74. *Id.* (select “recommendations,” select cycles 3, select issue “Death Penalty”).

75. *Death Penalty 2021: Facts and Figures*, AMNESTY INT’L (May 24, 2022), <https://www.amnesty.org/en/latest/news/2022/05/death-penalty-2021-facts-and-figures/> [hereinafter *Death Penalty 2021: Facts and Figures*].

76. *Countries That Have Abolished the Death Penalty Since 1976*, *supra* note 6.

77. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 5.

78. *Id.* at 1.

overdue.⁷⁹ Even though treaty bodies issue recommendations at the end of each reporting cycle,⁸⁰ the procedure does not require State Parties to go on the record as accepting or rejecting those recommendations.⁸¹ While the death penalty is relevant to many human rights treaties,⁸² some treaty bodies rarely address the death penalty in their final recommendations because the issue is not core to the rights recognized in their respective treaties.⁸³

III. THE PROCESS OF ABOLITION AND THEORIES ABOUT HOW THE UPR MAY INFLUENCE THE PROCESS

Before examining whether and how the UPR influences decisions to abolish the death penalty, it is important to understand the process by which countries abolish the death penalty. Abolition is a process, not a single moment in time. Although each country's trajectory toward abolition may be different, countries often go through similar stages of moving away from the death penalty before eliminating the punishment *de jure*. For example, many countries retain the death

79. See *List of States Parties Without Overdue Reports and Late and Non-Reporting States*, U.N. TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/LateReporting.aspx (last visited Apr. 2, 2023) (listing 36 U.N. Member States *without* overdue reports and listing 609 overdue reports, including 131 that have been overdue for 5–10 years and 168 reports that have been overdue for more than 10 years).

80. *Human Rights Tools for a Changing World – UN Advocacy*, *supra* note 15, at 38.

81. See *id.* at 38–39.

82. See, e.g., G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, Part III art. 6 (Dec. 16, 1966); G.A. Res. 39/46, annex, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at 197 (Dec. 10, 1984); G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination (Mar. 7, 1966); G.A. Res. 44/25, annex, Convention on the Rights of the Child, at 167 (Nov. 20, 1989); G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination against Women, at 193 (Dec. 18, 1979); G.A. Res. 61/106, Annex I, International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, at 65 (Dec. 13, 2006).

83. See, e.g., G.A. Res. 45/158, annex, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Dec. 18, 1990); G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, at 49 (Dec. 16, 1966); G.A. Res. 61/177, International Convention for the Protection of All Persons from Enforced Disappearance (Dec. 23, 2010).

penalty on the books but have not carried out executions for decades.⁸⁴ Courts in these countries may still sentence people to death, but a death sentence is a *de facto* sentence of life imprisonment. Some countries that retain the death penalty have a regular procedure of commuting death sentences,⁸⁵ while other countries institute a *de jure* moratorium on executions as a step toward abolition.⁸⁶ Finally, some countries' courts so rarely exercise their discretion to sentence people to death that there is no one on death row.⁸⁷

Amending domestic law to abolish the death penalty may involve many steps. Countries that have a mandatory sentence of death may move toward abolition by making the death penalty a discretionary punishment.⁸⁸ Countries that have the death penalty for a large number of crimes may amend the laws to limit the death penalty to the "most serious" crimes, as required under international human rights standards.⁸⁹ Some countries abolish the death penalty for "ordinary crimes"—crimes committed by civilians during peacetime—but retain the death penalty for some or all military offenses.⁹⁰ For each of these legal changes, the process of amending domestic law may involve multiple steps, depending on the nature of the country's legislative system.

Once lawmakers remove the death penalty from the criminal code and all other laws, there often remains a question about retroactivity for people on death row and whether their sentences are eligible for

84. AMNESTY INT'L GLOBAL REP.: DEATH SENTENCES AND EXECUTIONS 2021, at 63 (2022), <https://www.amnesty.org/en/documents/act50/5418/2022/en/>; See also *Death Penalty 2021: Facts and Figures*, supra note 75, at 63 [hereinafter AMNESTY INT'L GLOBAL REP.: DEATH SENTENCES AND EXECUTIONS 2021].

85. *Death Penalty 2021: Facts and Figures*, supra note 75, at 26. See also Daniel Pascoe, *Singapore and Thailand: Explaining Differences in Death Penalty Clemency*, COMPARATIVE CRIMINOLOGY IN ASIA (2017).

86. *Death Penalty 2021: Facts and Figures*, supra note 75, at 8 (reporting that Gambia, Kazakhstan, Malaysia, the Russian Federation, and Tajikistan continue "to observe official moratoriums on executions").

87. See, e.g., *id.* at 16–17 (reporting that of the 15 countries in the Americas that retain the death penalty, only 6 held people on death row as of the end of 2021).

88. See, e.g., *id.* at 36 (providing Singapore as one such example).

89. See, e.g., *id.* at 48 (describing efforts by Saudi Arabia's Human Rights Commission to limit the country's application of the death penalty to only the "most serious" crimes).

90. *Id.* at 63 (identifying eight countries as abolitionist for ordinary crimes only).

commutation. Moreover, in some countries, removing the death penalty from the law books is insufficient because the constitution may authorize the death penalty, and lawmakers may pursue a constitutional amendment to finalize abolition under domestic law.

Some countries temporarily revert to the death penalty after abolishing the practice. Chad, for example, abolished the death penalty in 2014,⁹¹ reinstated it for terrorism-related offenses in 2016, and then abolished it again in 2020.⁹²

At some stage in this process the country may also elect to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, or OP2. Because ratification of OP2 is irrevocable,⁹³ advocates often view ratification as the final step in making a country's abolition journey. But ratification of OP2 is not always the last step. Some countries, such as Brazil, ratify OP2 with reservations authorizing the death penalty for military crimes.⁹⁴ Other countries, such as Liberia, ratify OP2 before eliminating the death penalty from the law books.⁹⁵ In rare cases, such as the Philippines, a country may

91. *Le Tchad a un Nouveau Code Penal*, RADIO FRANCE INTERNATIONALE (Sept. 15, 2014), <https://www.rfi.fr/fr/afrique/20140915-tchad-nouveau-code-penal-peine-mort-homosexualite>.

92. *Chad Parliament Abolishes Death Penalty for Acts of Terror*, PUNCH (Apr. 28, 2020), <https://punchng.com/chad-parliament-abolishes-death-penalty-for-acts-of-terror/>; *Chad: Death Penalty Completely Abolished*, HANDS OFF CAIN (July 15, 2020), <http://www.handsoffcain.info/notizia/chad-death-penalty-completely-abolished-60311876>.

93. Pierre Desert, *Second Optional Protocol: Frequently Asked Questions*, WORLD COAL. AGAINST THE DEATH PENALTY (June 27, 2008), <https://worldcoalition.org/2008/06/27/second-optional-protocol-frequently-asked-questions/>.

94. *Death Penalty 2021: Facts and Figures*, *supra* note 75, at 64; Desert, *supra* note 93 (describing various countries' reservations in the ratification of OP2).

95. See Office of the High Comm'r for Hum. Rts., *UN Treaty Body Database, Ratification Status for Liberia*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=98&Lang=EN (last visited Mar. 29, 2023); J. Burgess Carter, *Liberia: Senate Votes to Abolish Death Penalty*, LIBERIAN DAILY OBSERVER (June 7, 2022), <https://www.liberianobserver.com/liberia-senate-votes-abolish-death-penalty>; *Just One More Step: Ratifying International and Regional Protocols*, WORLD COAL. AGAINST THE DEATH PENALTY (Mar. 28, 2022), <https://worldcoalition.org/campagne/just-one-more-step-ratifying-international-and-regional-protocols/> (noting that Liberia, the Gambia, and the State of Palestine have all ratified OP2 but have yet to abolish the death penalty in law).

threaten to reinstate the death penalty even after abolishing it and ratifying OP2.⁹⁶ Finally, countries may also ratify regional protocols.⁹⁷

With these approximate milestones in mind, it is possible to develop theories as to how the UPR might influence a country's progress toward abolition. A country's leadership may view the UPR and the attention it generates as an opportunity to showcase its human rights "wins." In such circumstances, leaders might be motivated to take final steps toward abolition prior to the interactive dialogue, so that they can speak about their achievements when they present their National Report and receive praise during the interactive dialogue.

Countries that have been *de facto* or *de jure* abolitionist for many years and that perceive themselves as leaders in the human rights world may seek to avoid scrutiny or criticism for failing to take final steps toward abolition. These countries may take those final steps well before the interactive dialogue to escape scrutiny for the delay.

Lawmakers in other countries may use the interactive dialogue as a springboard to action. After receiving many recommendations to abolish the death penalty, abolitionist leaders may use the UPR to mobilize lawmakers to finalize abolition before the Council adopts the UPR outcome. Other countries may see a list of UPR recommendations to abolish the death penalty as a "to-do" list and may take relatively swift action after the adoption of the outcome to tick those recommendations off that list before the next UPR cycle begins.

IV. ANALYSIS

A. Methodology

The UPR does not cause countries to abolish the death penalty. At most, the mechanism exerts pressure on lawmakers and compels them to act more swiftly. While it is impossible to read the minds of lawmakers who decide to abolish the death penalty, examining the timing

96. Dinda Royhan, *Philippines' Major Setback as Abolitionist Leader in South-East Asia*, WORLD COAL. AGAINST THE DEATH PENALTY (Jan. 23, 2020), <https://worldcoalition.org/2020/01/23/philippines-major-setback-as-abolitionist-leader-in-south-east-asia/>.

97. *Just One More Step: Ratifying International and Regional Protocols*, WORLD COAL. AGAINST THE DEATH PENALTY (Mar. 28, 2022), <https://worldcoalition.org/campagne/just-one-more-step-ratifying-international-and-regional-protocols/>.

of a country’s abolition decision relative to where the country is in the UPR cycle can identify some case studies that warrant closer examination.

Since the UPR began, 22 countries have ratified or acceded to OP2, and 21 countries have abolished the death penalty for all crimes or ordinary crimes. For each date of abolition or ratification, the study examines where the country was in its UPR cycle. If the country abolished or ratified less than one year before submitting its National Report, or less than one year after the adoption of the UPR outcome, or at any time between submitting the National Report and the adoption of the UPR outcome, the study deems it a candidate for closer scrutiny. The tables below divide the countries into three categories: abolishing “early” (taking the final step prior to the interactive dialogue); abolishing “during” the period between the interactive dialogue and the adoption of the outcome; and abolishing “after” the adoption of the outcome. Of the case studies, 14 abolished early, 5 abolished during, and 12 abolished after the UPR. The remaining countries fall outside the scope of the analysis because they either abolished the death penalty more than one year after adoption of the most recent UPR outcome or they abolished the death penalty more than one year before submitting the next National Report.

B. Abolishing Early in the UPR Cycle

TABLE 1: COUNTRIES THAT ABOLISHED THE DEATH PENALTY OR RATIFIED OP2 UP TO ONE YEAR BEFORE SUBMITTING THEIR NATIONAL REPORT

Country	Abolition	National Report submission	Number of days between abolition and submission
Benin OP2	7/5/2012 ⁹⁸	8/6/2012 ⁹⁹	32
Philippines OP2	11/20/2007 ¹⁰⁰	3/7/2008 ¹⁰¹	108

98. Office of the High Comm’r for Hum. Rts., *UN Treaty Body Database*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx (last visited Feb. 3, 2023) [hereinafter *UN Treaty Body Database*].

99. Hum. Rts. Council, *Nat’l Rep. Submitted Pursuant to Hum. Rts. Council Res. 5/1 and 16/21: Benin*, U.N. Doc. A/HRC/WG.6/42/BEN/1 (Oct. 27, 2022).

100. *UN Treaty Body Database*, *supra* note 98.

Country	Abolition	National Report submission	Number of days between abolition and submission
El Salvador OP2	4/8/2014 ¹⁰²	8/18/2014 ¹⁰³	132
Chile OP2	9/26/2008 ¹⁰⁴	2/16/2009 ¹⁰⁵	143
France OP2	10/2/2007 ¹⁰⁶	5/2/2008 ¹⁰⁷	213
Nicaragua OP2	3/25/2009 ¹⁰⁸	11/30/2009 ¹⁰⁹	250
Ukraine OP2	7/25/2007 ¹¹⁰	4/9/2008 ¹¹¹	259
Bolivia	2/7/2009 ¹¹²	11/16/2009 ¹¹³	282

101. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance With Paragraph 15(1) of the Annex to Hum. Rts. Council Res. 5/1: Philippines*, U.N. Doc. A/HRC/WG.6/1/PHL/1 (Mar. 7, 2008) [hereinafter *Nat'l Rep. Submitted in Accordance With Paragraph 15(1) of the Annex to Hum. Rts. Council Res. 5/1: Philippines*].

102. *UN Treaty Body Database*, *supra* note 98.

103. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance With Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: El Salvador*, U.N. Doc. A/HRC/WG.6/20/SLV/1 (Aug. 18, 2014) [hereinafter *Nat'l Rep. Submitted in Accordance With Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: El Salvador*].

104. *UN Treaty Body Database*, *supra* note 98.

105. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of the Annex to Hum. Rts. Council Res. 5/1: Chile*, U.N. Doc. A/HRC/WG.6/5/CHL/1 (Feb. 16, 2009) [hereinafter *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of the Annex to Hum. Rts. Council Res. 5/1: Chile*].

106. *UN Treaty Body Database*, *supra* note 98.

107. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of the Annex to Hum. Rts. Council Res. 5/1: France*, U.N. Doc. A/HRC/WG.6/2/FRA/1 (May 2, 2008) [hereinafter *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of the Annex to Hum. Rts. Council Res. 5/1: France*].

108. *UN Treaty Body Database*, *supra* note 98.

109. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of Hum. Rts. Council Res. 5/1: Nicaragua*, U.N. Doc. A/HRC/WG.6/7/NIC/1 (Nov. 30, 2009) [hereinafter *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of Hum. Rts. Council Res. 5/1: Nicaragua*].

110. *UN Treaty Body Database*, *supra* note 98.

111. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of the Annex to Hum. Rts. Council Res. 5/1: Ukraine*, U.N. Doc. A/HRC/WG.6/2/UKR/1 (Apr. 9, 2008) [hereinafter *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of the Annex to Hum. Rts. Council Res. 5/1: Ukraine*].

112. Hands Off Cain, *Bolivia*, <http://www.handsoffcain.info/bancadati/south-america/bolivia-60000261> (last visited Feb. 3, 2023); *List of Abolitionist and Retentionist Countries*, AMNESTY INT'L (Mar. 24, 2009), <https://www.amnesty.org/en/wp-content/uploads/2021/07/act500022009en.pdf>.

Country	Abolition	National Report submission	Number of days between abolition and submission
Uzbekistan	1/1/2008 ¹¹⁴	11/5/2008 ¹¹⁵	309
Gambia OP2	9/28/2018 ¹¹⁶	8/22/2019 ¹¹⁷	328
Suriname	3/5/2015 ¹¹⁸	2/17/2016 ¹¹⁹	349

TABLE 2: COUNTRIES THAT ABOLISHED THE DEATH PENALTY OR RATIFIED OP2 AFTER SUBMITTING THE NATIONAL REPORT BUT BEFORE THE INTERACTIVE DIALOGUE

Country	National Report submission	Abolition	Interactive dialogue
Suriname (military)	8/23/2021 ¹²⁰	August 2021 ¹²¹	11/1/2021 ¹²²

113. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance With Paragraph 15 (a) of the Annex to Hum. Rts. Council Res. 5/1: Plurinational State of Bolivia*, U.N. Doc. A/HRC/WG.6/7/BOL/1 (Nov. 16, 2009) [hereinafter *Nat'l Rep. Submitted in Accordance With Paragraph 15 (a) of the Annex to Hum. Rts. Council Res. 5/1: Plurinational State of Bolivia*].

114. *Uzbekistan abolishes the death penalty*, AMNESTY INT'L, <https://www.amnesty.org/en/latest/news/2008/01/uzbekistan-abolishes-death-penalty-20080111/> (last visited Feb. 3, 2023).

115. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of the Annex to Hum. Rts. Council Res. 5/1: Uzbekistan*, U.N. Doc. A/HRC/WG.6/3/UZB/1 (Sept. 5, 2008) [hereinafter *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of the Annex to Hum. Rts. Council Res. 5/1: Uzbekistan*]

116. *UN Treaty Body Database*, *supra* note 98.

117. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance With Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Gambia*, U.N. Doc. A/HRC/WG.6/34/GMB/1 (Aug. 22, 2019) [hereinafter *Nat'l Rep. Submitted in Accordance With Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Gambia*].

118. *Suriname and the Death Penalty*, PARLIAMENTARIANS FOR GLOB. ACTION, <https://www.pgaction.org/ilhr/adp/sur.html> (last visited Apr. 4, 2023).

119. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance With Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Suriname*, U.N. Doc. A/HRC/WG.6/25/SUR/1 (Feb. 17, 2019) [hereinafter *Nat'l Rep. Submitted in Accordance With Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Suriname*].

120. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Suriname*, U.N. Doc. A/HRC/WG.6/39/SUR/1 (Aug. 23, 2021).

121. *Rep. of the Working Group on the Universal Periodic Review: Suriname* (Dec. 17, 2021), *supra* note 36, ¶ 12.

Country	National Report submission	Abolition	Interactive dialogue
Togo OP2	8/17/2016 ¹²³	9/14/2016 ¹²⁴	10/31/2016 ¹²⁵
Zambia	11/4/2022 ¹²⁶	12/23/2022 ¹²⁷	1/30/2023 ¹²⁸

Tables 1 and 2 identify countries that abolished “early.” For these countries, the National Reports and statements during the interactive dialogue provide insights into how authorities present the fact of abolition or ratification and suggest circumstances in which the UPR seems to motivate progress toward abolition.

1. *Uzbekistan uses the first-cycle UPR to take abolition to the center stage.*

Uzbekistan used its first opportunity to take the stage for the UPR to highlight abolition as part of its broader commitment to human rights. Uzbekistan’s first-cycle National Report, dated September 5, 2008, gives significant attention to the country’s abolition of the death penalty.¹²⁹ Uzbekistan’s presidential decree abolishing the death penalty had been adopted three years prior, but it had taken effect on January 1, 2008.¹³⁰ The National Report explains that abolition had been

122. U.N. Hum. Rts. Council, *Universal Periodic Review – Suriname*, <https://www.ohchr.org/en/hr-bodies/upr/tg-index> (last visited Feb. 4, 2023).

123. Hum. Rts. Council, *Nat’l Rep. Submitted in Accordance With Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Togo*, U.N. Doc. A/HRC/WG.6/26/TGO/1 (Aug. 17, 2016).

124. *UN Treaty Body Database*, *supra* note 98.

125. U.N. Hum. Rts. Council, *Universal Periodic Review – Togo*, <https://www.ohchr.org/en/hr-bodies/upr/tg-index> (last visited Feb. 3, 2023).

126. Hum. Rts. Council, *Nat’l Rep. Submitted Pursuant to Hum. Rts. Council Res. 5/1 and 16/21: Zambia*, U.N. Doc. A/HRC/WG.6/42/ZMB/1 (Nov. 4, 2022) [hereinafter *Nat’l Rep. Submitted Pursuant to Hum. Rts. Council Res. 5/1 and 16/21: Zambia*].

127. Bronwyn Dudley, *Zambia is the 25th African State to Abolish the Death Penalty*, WORLD COAL. AGAINST THE DEATH PENALTY (Jan. 6, 2023), <https://worldcoalition.org/2023/01/06/zambia-abolishes-the-death-penalty/>.

128. U.N. Hum. Rts. Council, *Universal Periodic Review - Zambia*, <https://www.ohchr.org/en/hr-bodies/upr/zm-index> (last visited Feb. 3, 2023).

129. *Nat’l Rep. Submitted in Accordance With Paragraph 15(a) of the Annex to Hum. Rts. Council Res. 5/1: Uzbekistan*, *supra* note 115, ¶¶ 9, 23–24, 90.

130. *Id.* ¶¶ 23–24.

a part of the country's "systemic, gradual, liberal political, judicial and legal reforms affecting civil and political rights during its first years of independence,"¹³¹ and notes that abolition was one of the country's "most recent, significant steps taken to guarantee the right to life and the inviolability of the person in Uzbekistan."¹³² The National Report also states that abolition had paved the way for ratification of OP2, "and this is envisaged in the programme of action to mark the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights,"¹³³ on December 10, 2008.¹³⁴

By the time of the interactive dialogue, on December 11, 2008, Uzbekistan's delegation to Geneva was positioned to place both abolition and the imminent ratification of OP2 front and center, highlighting both actions at the beginning of the delegation's presentation of the National Report.¹³⁵ During the interactive dialogue, delegates offered praise for both actions.¹³⁶

2. *Bolivia uses the first-cycle UPR to reinforce its commitment to abolition.*

It is unclear whether Bolivia's imminent first-cycle UPR influenced the timing of the country's decision to abolish the death penalty. Bolivia used the UPR as an occasion to reinforce its commitment to abolition by promising to ratify OP2. Bolivia's 2009 first-cycle National Report does not mention the country's abolition, which had happened earlier that year, but simply states: "There is no death penalty in Bolivia."¹³⁷

131. *Id.* ¶ 22.

132. *Id.* ¶ 23.

133. *Id.* ¶ 24.

134. United Nations, *Human Rights Day 10 December*, <https://www.un.org/en/observances/human-rights-day> (last visited Mar. 31, 2023); Uzbekistan subsequently ratified OP2 on December 23, 2008. Office of the High Comm'r for Hum. Rts., *UN Treaty Body Database, Ratification Status for Uzbekistan*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=98&Lang=EN (last visited Mar. 31, 2023).

135. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Uzbekistan*, ¶ 5, U.N. Doc. A/HRC/10/83 (Mar. 11, 2009) [hereinafter *Rep. of the Working Group on the Universal Periodic Review: Uzbekistan*].

136. *See id.* ¶¶ 25, 29, 51.

137. *Nat'l Rep. Submitted in Accordance With Paragraph 15 (a) of the Annex to Hum. Rts. Council Res. 5/1: Plurinational State of Bolivia*, *supra* note 113, ¶ 27.

In presenting the National Report, the Bolivian delegation did not reference abolition but offered that the country “would soon be signing” OP2.¹³⁸ During the interactive dialogue, Bolivia received several recommendations to ratify OP2, and it accepted those recommendations just days later.¹³⁹ Bolivia ratified OP2 on July 12, 2013, more than one year before submitting the country’s second-cycle National Report.¹⁴⁰

3. *Benin, the Gambia, Suriname, Togo, and Zambia take swift action to honor their commitments from previous UPR cycles before taking the stage again.*

Benin, the Gambia, Suriname, Togo, and Zambia all abolished the death penalty or ratified OP2 after committing to do so during the previous UPR, and their National Reports framed those measures as responsive to recommendations in the previous cycle. The timing of abolition or ratification suggests that all five countries may have felt some time pressure to ensure that they could complete implementation of those recommendations before returning to Geneva for the next interactive dialogue.

Benin

The circumstances surrounding Benin’s second-cycle UPR suggest that the UPR may have influenced the timing of Benin’s decision to accede to OP2. Benin’s 2012 National Report makes reference to an act adopted on August 25, 2011,¹⁴¹ and a decree adopted on October

138. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Bolivia (Plurinational State of)*, ¶ 14, U.N. Doc. A/HRC/14/7 (Mar. 15, 2010) [hereinafter *UPR: Bolivia (Plurinational State of)*].

139. *Id.* ¶ 98.1. For a country’s decision on recommendations to be included in the Report of the Working Group, the country must submit the decision to the staff of the Office for the High Commissioner for Human Rights soon after the interactive dialogue, but before the adoption of the Report of the Working Group later in the week. *Basic Facts About the UPR*, *supra* note 29.

140. Hum. Rts. Council, *Nat’l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Plurinational State of Bolivia*, ¶ 7 (confirming that Bolivia had recently ratified OP2), U.N. Doc. A/HRC/WG.6/20/BOL/1 (July 21, 2014).

141. Hum. Rts. Council, *Nat’l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Benin*, ¶ 7, U.N. Doc. A/HRC/WG.6/14/BEN/1 (Aug. 6, 2012).

21, 2011.¹⁴² The act and decree authorized accession to OP2. The National Report also mentions that accession took place on July 5, 2012, just one month prior to the National Report.¹⁴³ The National Report also frames the country's accession to OP2 as part of its follow-up on its first-cycle review, recognizing that in its 2008 interactive dialogue the country had received two recommendations: (1) to abolish the death penalty; and (2) to consider ratifying OP2.¹⁴⁴ Indeed, during the adoption of the outcome of its first-cycle UPR, Benin had accepted those recommendations and had stated "that the right to life was guaranteed by law," offering assurances to the Council that "the debate on that question would continue in order that de facto abolition might become de jure."¹⁴⁵ Benin's delegation to Geneva on October 25, 2012, may have identified accession to OP2 as a bragging point; accession was the first substantive accomplishment the delegation mentioned in presenting the National Report.¹⁴⁶ During the interactive dialogue, Benin received praise from 19 countries for its decision to accede to OP2.¹⁴⁷

142. *Id.* ¶ 8.

143. *Id.* ¶ 33.

144. *Id.* ¶ 74; see Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Benin*, ¶ 7–8, U.N. Doc. A/HRC/8/39 (May 28, 2008) (discussing recommendations from the Holy See and Mexico).

145. Hum. Rts. Council, *Rep. of the Human Rights Council on Its Eighth Session*, ¶ 712, U.N. Doc. A/HRC/8/52 (Sept. 1, 2008) (noting Benin's acceptance of 33 of the 34 recommendations it received) [hereinafter *Rep. of the Human Rights Council on Its Eighth Session*]; *Id.* ¶ 714 (recording Benin's objection to a recommendation to decriminalize same-sex conduct between consenting adults); *Id.* ¶ 715 (discussing Benin's position with regard to recommendations to abolish the death penalty).

146. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Benin*, ¶¶ 1, 5–7, U.N. Doc. A/HRC/22/9 (Dec. 11, 2012). Benin's interactive dialogue occurred on October 25, 2012. *Id.* ¶ 1.

147. *Id.* ¶¶ 30, 32, 34–35, 41–43, 47, 55, 67, 69, 72, 76–77, 79, 82, 86, 88, 91 (Argentina, Cape Verde, Chile, Congo, Costa Rica, France, Germany, Holy See, Italy, Mexico, Netherlands, Norway, Romania, Slovakia, Slovenia, Spain, Switzerland, United Kingdom, Uruguay). Benin received six recommendations to amend its criminal code and code of criminal procedure to align them with its obligations under OP2. *Id.* ¶¶ 108.4–9 (United Kingdom, Uruguay, Australia, France, Italy, Spain). Benin accepted these recommendations. *Id.* ¶ 108 (stating that the recommendations listed under paragraph 108 "enjoy the support of Benin").

Gambia

Similar to Benin, the Gambia's third-cycle National Report frames the country's OP2 ratification as part of its implementation of recommendations it received in the second cycle.¹⁴⁸ After listing all of the second-cycle recommendations to ratify OP2, the report states: "This is fully implemented as the Government of the Gambia recently ratified the second Optional Protocol to the [International Covenant on Civil and Political Rights]. As part of its efforts to abolish the death penalty, the Government of the Gambia has also commuted all death sentences to life imprisonment and there is a moratorium on the application of the death penalty."¹⁴⁹

The report also notes that the country had established a Constitutional Review Commission which was to consider including the elimination of the death penalty as part of a slate of changes for an upcoming constitutional referendum.¹⁵⁰

The Gambian delegation to Geneva did not mention OP2 ratification in its introductory remarks during the interactive dialogue,¹⁵¹ but it did address ratification when it retook the floor during a break between rounds of recommendations.¹⁵² The government observed that despite OP2 ratification, the moratorium on executions, and the commutation of all existing death sentences, "the death penalty continued to divide public opinion," but maintained that "[t]he Government had made public its preference for total abolition."¹⁵³ During the interactive dialogue, a dozen countries praised the Gambia's efforts to ratify OP2 and work toward complete abolition.¹⁵⁴ Just days after the interactive dialogue, the Gambia accepted eleven recommendations to finalize abolition.¹⁵⁵

148. *Nat'l Rep. Submitted in Accordance With Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Gambia*, *supra* note 117, ¶¶ 4(e), 7.

149. *Id.* ¶ 7.

150. *Id.* ¶ 8.

151. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Gambia*, ¶¶ 5–10, U.N. Doc. A/HRC/43/6, ¶¶ 5–10 (Dec. 19, 2019).

152. *Id.* ¶¶ 80–88.

153. *Id.* ¶ 84.

154. *Id.* ¶¶ 12, 14, 19, 34, 54, 66–68, 72, 75, 89, 114.

155. *Id.* ¶ 127.21–.23, .91–.98. *See Basic Facts About the UPR*, *supra* note 29.

Suriname

Suriname abolished the death penalty for ordinary crimes nearly one year before submitting its second-cycle National Report.¹⁵⁶ The National Report lists the death penalty among thirteen categories of recommendations Suriname had accepted and implemented from the first cycle.¹⁵⁷ The report notes that the death penalty had been abolished in the criminal code, but was still in a part of the country's Military Penal Code that was "obsolete and will soon be abolished."¹⁵⁸ On May 6, 2016, Suriname's delegation to Geneva mentioned abolition when presenting the National Report, noting that the amendment to the penal code "was a first step towards arriving at the ratification of" OP2, and stating that "[t]he timeline for removal of the death penalty from the Military Penal Code was set for the end of the December 2016."¹⁵⁹ This timeline would soon prove to be optimistic.

As referenced in table 2, Suriname ultimately abolished the death penalty for military crimes in August 2021, after submitting its third-cycle National Report but before the third-cycle interactive dialogue.¹⁶⁰ In the National Report, Suriname states that it would consider ratification of OP2 "after the abolition of the death penalty in the

156. *Nat'l Rep. Submitted in Accordance With Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Suriname*, *supra* note 119, at 1; *Capital Punishment Abolished in Suriname*, WORLD COAL. AGAINST THE DEATH PENALTY (Mar. 6, 2015), <https://worldcoalition.org/2015/03/06/capital-punishment-abolished-in-suriname/>.

157. *Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Suriname*, *supra* note 119, ¶ 8.

158. *Id.* ¶ 93.

159. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Suriname*, ¶ 28, U.N. Doc. A/HRC/33/4 (July 1, 2016) [hereinafter *Rep. of the Working Group on the Universal Periodic Review: Suriname* (July 1, 2016)]. In its third National Report in 2021, Suriname conceded that it had not yet abolished the death penalty in the Military Penal Code. See *Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Suriname*, *supra* note 119, ¶ 6. It ultimately did so in August 2021, three months prior to its third interactive dialogue. *Rep. of the Working Group on the Universal Periodic Review: Suriname* (Dec. 17, 2021), *supra* note 36, ¶ 12.

160. *Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Suriname*, *supra* note 119, ¶ 6; *Rep. of the Working Group on the Universal Periodic Review: Suriname* (July 1, 2016), *supra* note 159, ¶ 12.

Military Penal Code has been approved.”¹⁶¹ The August 2012 National Report states, “On 21 April 2021, the Council of Ministers approved the Bill amending the Military Penal Code The Bill has now been submitted to the State Council and after approval it will be tabled in Parliament.”¹⁶² Prior to the interactive dialogue, Panama submitted an advance question asking about “the current state of play of the process” of removing the death penalty from the Military Penal Code.¹⁶³

By the time the delegation from Suriname arrived in Geneva for the interactive dialogue in November 2021, it was able to say, in presenting the National Report, that the country “had abolished the death penalty in its Military Penal Code in August 2021”¹⁶⁴ Nonetheless, there apparently was some confusion about the status of abolition. Some countries intervening in the interactive dialogue, perhaps relying on the National Report, suggested that abolition was still pending,¹⁶⁵ while others commended Suriname for taking steps toward amending the Military Penal Code, for abolishing the death penalty in the Military Penal Code, or for making progress toward complete abolition.¹⁶⁶ When Suriname briefly retook the floor after the first round of interventions, the delegation “reiterated that it had abolished the death penalty in the Military Penal Code and that it would take further steps to ratify” OP2.¹⁶⁷ Just days after the interactive dialogue, Suriname accepted recommendations to complete efforts to remove the death penalty from the Military Penal Code,¹⁶⁸ and to ratify OP2.¹⁶⁹

161. *Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Suriname*, *supra* note 119, ¶ 6.

162. *Id.* ¶ 30.

163. Hum. Rts. Council, *Universal Periodic Review – Suriname: Third Cycle, Questions Submitted in Advance: Addendum 2, “Advance Questions to Suriname (Third Batch)”*, <https://www.ohchr.org/en/hr-bodies/upr/sr-index>.

164. *Rep. of the Working Group on the Universal Periodic Review: Suriname* (Dec. 17, 2021), *supra* note 36, ¶ 12.

165. *Id.* ¶¶ 49, 81.

166. *Id.* ¶¶ 30, 39, 43, 48, 54.

167. *Id.* ¶ 45.

168. *Id.* ¶¶ 97.25–.26, .29. *See UPR: Bolivia (Plurinational State of)*, *supra* note 138, ¶ 98.1. *See also supra* text accompanying note 139.

169. *Rep. of the Working Group on the Universal Periodic Review: Suriname* (Dec. 17, 2021), *supra* note 36, ¶¶ 97.5–.6, .25; *see UPR: Bolivia (Plurinational State of)*, *supra* note 138, ¶ 98.19. *See also supra* text accompanying note 139.

Togo

In its second-cycle UPR, Togo, like Suriname in its third-cycle UPR, had not yet ratified OP2 when it submitted its National Report.¹⁷⁰ Under the heading of “Follow-up to recommendations from the first cycle,” Togo reported in response to a recommendation to ratify OP2 that “[t]he ratification process is under way.”¹⁷¹ During its presentation of the National Report at the November 2016 interactive dialogue, the Togolese delegation stated that the country “had concluded its ratification of” OP2 “on 14 September 2016.”¹⁷² Some countries may have formulated their recommendations based on the National Report, however, making recommendations that Togo ratify OP2.¹⁷³ Within days of the interactive dialogue, Togo accepted these recommendations, observing that its “considers that they are already implemented or in the process of implementation.”¹⁷⁴

Zambia

As of March 2023, Zambia is the most recent country to abolish the death penalty. The timing of its abolition is similar to the timing of OP2 ratification by Suriname and Togo. Zambia submitted its fourth-cycle National Report on November 4, 2022.¹⁷⁵ One section of the National Report, titled “Partial implementation of recommendations,”¹⁷⁶ addresses “supported recommendations” from the third cycle “whose implementation was still ongoing during the period under review.”¹⁷⁷ In response to a recommendation to “[w]iden the scope of the 1996 Bill of Rights,” Zambia states that it “seeks to abolish the

170. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Togo*, U.N. Doc. A/HRC/WG.6.26/TGO/1 (Aug. 17, 2016) [hereinafter *Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Togo*]; *Togo abolishes the death penalty*, BBC NEWS, <http://news.bbc.co.uk/1/hi/world/africa/8116293.stm> (last updated June 24, 2009).

171. *Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: Togo*, supra note 140, ¶ 27.

172. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Togo*, ¶ 10, U.N. Doc. A/HRC/34/4 (Dec. 30, 2016).

173. *Id.* ¶ 129.1–2.

174. *Id.* ¶ 129.

175. *Nat'l Rep. Submitted Pursuant to Hum. Rts. Council Res. 5/1 and 16/21: Zambia*, supra note 126.

176. *Id.* ¶¶ 112–37.

177. *Id.* ¶ 112.

death penalty.”¹⁷⁸ Under the heading of “Pending recommendations,” analyzing “recommendations whose implementation was still pending and the associated challenges as well as steps taken to overcome them,” Zambia acknowledges that recommendations to ratify OP2 “remained outstanding during the period under review.”¹⁷⁹ And under the heading “Status of implementation of voluntary pledges,” the report states that “[t]he State party is in the process of amending the Penal Code and the Criminal Procedure Code to remove provisions relating to the death penalty.”¹⁸⁰

Less than two months after submitting its National Report, and just one month before the interactive dialogue, Zambia abolished the death penalty.¹⁸¹ When Justice Minister Haimbe took the floor to present the National Report, his first order of business was to highlight “that in relation to the abolition of the death penalty, relevant provisions in the Penal Code Chapter 87 and the Criminal Procedure Code Chapter 88 of the Laws of Zambia had been repealed.”¹⁸² During the interactive dialogue, 17 countries praised Zambia for its abolition of the death penalty.¹⁸³ Zambia received 16 recommendations to ratify OP2 and accepted all but one within days of the interactive dialogue.¹⁸⁴

4. *El Salvador downplays OP2 ratification in the second cycle.*

El Salvador stands in contrast to the countries discussed above. El Salvador may have felt time pressure to implement the relevant first-cycle recommendations, but it did not seek to highlight implementation in the context of the second-cycle UPR, perhaps because of the

178. *Id.* ¶ 115.

179. *Id.* ¶¶ 138–39(a). Zambia analyzed “recommendations whose implementation was still pending and the associated challenges as well as steps taken to overcome them.” *Id.*

180. *Id.* ¶ 153.

181. Bronwyn Dudley, *supra* note 4.

182. *Draft Rep. of the Working Group on the Universal Periodic Review: Zambia*, *supra* note 2, ¶ 5.

183. *Id.* ¶¶ 33, 41, 51–55, 64, 69–70, 76, 80, 91, 95, 101, 109, 113.

184. *Id.* ¶¶ 127.5–.15, .63. *But see id.* ¶ 128.9 (deferring decision on Paraguay’s combined recommendation to ratify OP2 as well as three other human rights treaties).

country's longstanding commitment to abolition. El Salvador abolished the death penalty for ordinary crimes in 1983.¹⁸⁵ El Salvador's second-cycle National Report mentions OP2 ratification only in passing.¹⁸⁶ The Salvadoran delegation mentioned OP2 ratification as one of the commitments the country had made during its first UPR when presenting the country's second second-cycle National Report in Geneva in October 2014.¹⁸⁷ But El Salvador garnered no praise for ratification during the interactive dialogue; in fact, two countries recommended that El Salvador withdraw its reservations to OP2.¹⁸⁸

5. *Chile, France, Nicaragua, the Philippines, and Ukraine downplay OP2 ratification in the first-cycle UPR.*

The UPR does not appear to have had a significant influence on the timing of ratification for several countries that ratified OP2 prior to their first-cycle interactive dialogues. For example, the UPR does not appear to have influenced the timing of the Philippines' decision to ratify OP2. The Philippines' National Report for its first-cycle UPR includes a paragraph dedicated to the death penalty, noting not only the country's abolition of the death penalty and ratification of OP2, but also its role in 2007 as co-sponsor and co-author of the first General Assembly resolution calling for a moratorium on executions.¹⁸⁹ The Philippines' delegation to Geneva for the interactive dialogue did

185. *El Salvador 2020*, HANDS OFF CAIN, <http://www.handsoffcain.info/bancadati/south-america/el-salvador-60000453> (last visited Apr. 2, 2023).

186. *Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Res. 16/21: El Salvador*, *supra* note 103, ¶¶ 7, 11.

187. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: El Salvador*, ¶ 10, U.N. Doc. A/HRC/28/5 (Dec. 17, 2014) [hereinafter *Rep. of the Working Group on the Universal Periodic Review: El Salvador* (Dec. 17, 2014)]; *see* Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: El Salvador*, ¶ 82.3, .9–.12, .24–.26, U.N. Doc. A/HRC/14/5 (Mar. 18, 2010); Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: El Salvador (Addendum)*, ¶ 2 (accepting all but two recommendations to abolish the death penalty or to ratify OP2), U.N. Doc. A/HRC/14/5/Add.1 (June 8, 2010).

188. *Rep. of the Working Group on the Universal Periodic Review: El Salvador* (Dec. 17, 2014), *supra* note 187, ¶¶ 105.22, 105.23.

189. *Nat'l Rep. Submitted in Accordance With Paragraph 15(1) of the Annex to Hum. Rts. Council Res. 5/1: Philippines*, *supra* note 101, ¶ 104. Unlike Benin's National Report, this report does not mention the date of ratification. *Id.*

not mention the death penalty,¹⁹⁰ however, suggesting that the timing of ratification was merely a coincidence.

The first-cycle National Reports and statements during the interactive dialogues of Chile, France, Nicaragua, and Ukraine similarly suggest that none of those countries saw the UPR as a platform to spotlight ratification of OP2. Chile abolished the death penalty for ordinary crimes in 2001, and at the time of its first-cycle UPR it was “one of the few countries in Latin America with the death penalty still on its books.”¹⁹¹ Its first National Report lists OP2 as one of several international human rights instruments that it “recently ratified.”¹⁹² In presenting its National Report in the 2009 interactive dialogue, the Chilean delegation to Geneva mentioned abolition of the death penalty as a “significant reform[,],” but did not mention ratification of OP2.¹⁹³

France abolished the death penalty in 1981, and since then the country has prided itself on its firm opposition to the death penalty and its support for global abolition.¹⁹⁴ Indeed, France’s first-cycle National Report discusses a 2007 amendment to the French Constitution which enshrined “the principle of abolition of the death penalty in all circumstances.”¹⁹⁵ The Report then simply lists OP2 among a long list of human rights instruments under the heading, “France has ratified the main international legal instruments on human rights.”¹⁹⁶ During France’s first-cycle interactive dialogue, the only mention of OP2 or

190. See Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Philippines*, ¶¶ 5–12, 39, 56–57, U.N. Doc. A/HRC/8/28 (May 23, 2008).

191. Gustavo González, *Human Rights-Chile: Parliament Abolishes Death Penalty*, INTER PRESS SERVICE (Apr. 4, 2001), <https://www.ipsnews.net/2001/04/human-rights-chile-parliament-abolishes-death-penalty/>.

192. *Nat’l Rep. Submitted in Accordance with Paragraph 15(A) of the Annex to Hum. Rts. Council Res. 5/1: Chile*, *supra* note 105, ¶ 15.

193. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Chile*, ¶ 8, U.N. Doc. A/HRC/12/10 (June 4, 2009).

194. *Abolition of the Death Penalty*, MINISTÈRE DE L’EUROPE ET DES AFFAIRES ÉTRANGÈRES (Fr.), <https://www.diplomatie.gouv.fr/en/french-foreign-policy/human-rights/abolition-of-the-death-penalty/> (last updated Oct. 2022).

195. *Nat’l Rep. Submitted in Accordance With Paragraph 15(a) of the Annex to Hum. Rts. Council Res. 5/1: France*, *supra* note 107, ¶ 5.

196. *Id.* ¶ 11.

the death penalty was Haiti's praise for the constitutional amendment.¹⁹⁷

Nicaragua's first-cycle National Report notes briefly that the Nicaraguan Constitution prohibits the death penalty and states that the country ratified OP2 in May 2009.¹⁹⁸ During the interactive dialogue, the Nicaraguan delegation did not mention the death penalty or OP2,¹⁹⁹ although a few countries praised Nicaragua's OP2 ratification.²⁰⁰

Ukraine's first-cycle National Report obliquely mentions the country being a party to the principal U.N. human rights treaties "and related Optional Protocols,"²⁰¹ but says nothing further about OP2 or the death penalty. Similarly, Ukraine's delegation to Geneva did not mention the death penalty or OP2.²⁰²

There are several plausible explanations for these countries' decisions to downplay OP2 ratification in the context of the UPR. The UPR at the time was a relative novelty and might not have registered on the radar of lawmakers. Countries may have not yet appreciated the UPR as a platform for international praise and scrutiny. On the other hand, these countries may have sped up ratification in an effort to avoid discussion of the subject during the interactive dialogue, recognizing that ratification had been long overdue and such scrutiny might provoke embarrassment.

197. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: France*, ¶ 52, U.N. Doc. A/HRC/8/47 (June 3, 2008).

198. *Nat'l Rep. Submitted in Accordance With Paragraph 15(a) of Hum. Rts. Council Res. 5/1: Nicaragua*, *supra* note 109, ¶ 37.

199. *See* Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Nicaragua*, ¶¶ 5–31, 58–66, 89, U.N. Doc. A/HRC/14/3 (Mar. 17, 2010).

200. *Id.* ¶¶ 44, 67, 74.

201. *Nat'l Rep. Submitted in Accordance with Paragraph 15(A) of the Annex to Hum. Rts. Council Res. 5/1: Ukraine*, *supra* note 111, ¶ 3.

202. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Ukraine*, ¶¶ 5–12, 23–31, 49–56, U.N. Doc. A/HRC/8/45 (June 3, 2008). The only mention of the death penalty was Slovenia's recognition of Ukraine abolishing the death penalty in 1999. *Id.* ¶ 34.

C. Abolition During the Period Between the Interactive Dialogue and Adoption of the Outcome

TABLE 3: COUNTRIES THAT ABOLISHED THE DEATH PENALTY OR RATIFIED OP2 AFTER THE INTERACTIVE DIALOGUE BUT BEFORE THE ADOPTION OF THE OUTCOME

Country	Interactive dialogue	Abolition	Addendum	Adoption of outcome
Burkina Faso	5/7/2018 ²⁰³	5/31/2018 ²⁰⁴	6/7/2018 ²⁰⁵	9/27/2018 ²⁰⁶
Fiji	10/29/2014 ²⁰⁷	2/10/2015 ²⁰⁸	12/17/2014 ²⁰⁹	5/28/2015 ²¹⁰
Madagascar	11/3/2014 ²¹¹	12/10/2014 ²¹²	2/16/2015 ²¹³	3/19/2015 ²¹⁴

203. U.N. Hum. Rts. Council, *Universal Periodic Review - Burkina Faso*, <https://www.ohchr.org/en/hr-bodies/upr/bf-index> (last visited Feb. 3, 2023).

204. *Burkina Faso and the Death Penalty*, PARLIAMENTARIANS FOR GLOB. ACTION, <https://www.pgaction.org/ilhr/adp/bfa.html> (last visited Feb. 3, 2023).

205. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Burkina Faso (Addendum)*, U.N. Doc. A/HRC/39/4/Add.1 (Sep. 11, 2018) [hereinafter *Rep. of the Working Group on the Universal Periodic Review: Burkina Faso (Addendum)*].

206. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Burkina Faso*, U.N. Doc. A/HRC/39/102 (Sep. 20, 2018) [hereinafter *Outcome of the Universal Periodic Review: Burkina Faso*].

207. U.N. Hum. Rts. Council, *Universal Periodic Review - Fiji*, <https://www.ohchr.org/en/hr-bodies/upr/fj-index> (last visited Feb. 3, 2023).

208. *Fiji Abolishes Death Penalty for All Crimes Through Amendment to Military Law*, WORLD COAL. AGAINST DEATH PENALTY, <https://worldcoalition.org/2015/02/23/fiji-abolishes-death-penalty-for-all-crimes-through-amendment-to-military-law/> (last visited Feb. 3, 2023).

209. *Id.*

210. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Fiji*, U.N. Doc. A/HRC/DEC/28/104 (May 28, 2015).

211. U.N. Hum. Rts. Council, *Universal Periodic Review - Madagascar*, <https://www.ohchr.org/en/hr-bodies/upr/mg-index> (last visited Feb. 3, 2023).

212. *Madagascar MPS Abolish the Death Penalty*, HANDS OFF CAIN, http://www.handsoffcain.info/archivio_news/index.php?iddocumento=18310244&mover=0 (last visited Feb. 3, 2023).

213. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Madagascar (Addendum)*, U.N. Doc. A/HRC/28/13/Add.1 (Feb. 16, 2015) [hereinafter *Rep. of the Working Group on the Universal Periodic Review: Madagascar (Addendum)*].

Country	Interactive dialogue	Abolition	Addendum	Adoption of outcome
Papua New Guinea	11/4/2021 ²¹⁵	1/22/2022 ²¹⁶	3/22/2022 ²¹⁷	3/29/2022 ²¹⁸
Uzbekistan OP2	12/11/2008 ²¹⁹	12/23/2008 ²²⁰	3/13/2009 ²²¹	3/20/2009 ²²²

Only five countries abolished the death penalty or ratified OP2 in the period between the interactive dialogue and the adoption of the UPR outcome. This figure is not particularly surprising, considering that the period between the interactive dialogue and adoption of the outcome is just four to five months.²²³ But the timing of abolition or ratification suggests that these countries were motivated to respond

214. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Fiji*, U.N. Doc. A/HRC/DEC/28/110 (May 28, 2015).

215. U.N. Hum. Rts. Council, *Universal Periodic Review - Papua New Guinea*, <https://www.ohchr.org/en/hr-bodies/upr/pg-index> (last visited Feb. 3, 2023).

216. *Death Penalty Act Repealed*, POST COURIER, <https://postcourier.com.pg/death-penalty-act-repealed/> (last visited Feb. 3, 2023).

217. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Papua New Guinea (Addendum)*, U.N. Doc. A/HRC/49/11/Add.1 (Mar. 22, 2022) [hereinafter *Rep. of the Working Group on the Universal Periodic Review: Papua New Guinea (Addendum)*].

218. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Papua New Guinea*, U.N. Doc. A/HRC/DEC/49/106 (Mar. 29, 2022).

219. U.N. Hum. Rts. Council, *Universal Periodic Review - Uzbekistan*, <https://www.ohchr.org/en/hr-bodies/upr/uz-index> (last visited Feb. 3, 2023).

220. *Presidential Decree on the Abolition of the Death Penalty*, LEGISLATION ONLINE, <https://web.archive.org/web/20071028100531/http://www.legislationline.org/legislation.php?tid=144&lid=4241&less=false> (last visited Feb. 3, 2023).

221. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Uzbekistan (Addendum)*, U.N. Doc. A/HRC/10/83/Add.1 (Mar. 13, 2009).

222. Hum. Rts. Council, *Decision 10/115, Outcome of the Universal Periodic Review: Uzbekistan* (Mar. 20, 2009), https://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_10_115.pdf.

223. For the countries that have their interactive dialogues during the May UPR session, the adoption of the outcome takes place during the September Council session of the same year. For the countries that have their interactive dialogues during the November UPR session, the adoption of the outcomes takes place during the March Council session of the following year. For the countries that have their interactive dialogues during the January/February UPR session, the adoption of the outcomes takes place during the June Council session of the following year.

promptly to recommendations in the interactive dialogue, and that they were looking to return to Geneva for the adoption of the outcome with a concrete “win” under their belts. Examination of the Addendum, as well as statements during the interactive dialogue and during the adoption of the outcome, shed further light on possible motivations.

1. Uzbekistan, Burkina Faso, Madagascar, and Fiji leverage the UPR to build momentum for abolition.

Uzbekistan, Burkina Faso, Madagascar, and Fiji seemed motivated to implement recommendations before returning to Geneva for the adoption of the outcome.

Uzbekistan

As discussed above, in its National Report, Uzbekistan had committed to ratify OP2 to commemorate the 60th anniversary of the Universal Declaration of Human Rights (which was the day before its scheduled interactive dialogue), and it did so two weeks after the interactive dialogue.²²⁴ Perhaps due to the certainty and imminence of Uzbekistan’s commitment in the National Report, no country recommended that Uzbekistan ratify OP2.²²⁵ At the adoption of the outcome on March 20, 2009, Uzbekistan noted that its interactive dialogue had “coincided with the end of the sixtieth anniversary year of the Universal Declaration of Human Rights, which was marked by the implementation of a thorough programme of measures taken by presidential decree,” adding that “[i]n 2008, Uzbekistan had ratified eight very important international human rights documents.”²²⁶

Burkina Faso

The timing of Burkina Faso’s abolition of the death penalty seems directly tied to the UPR, demonstrating that a country’s stated need for “consultations” on UPR recommendations might not amount to a stalling tactic. During its second-cycle interactive dialogue, which took place in May 2018, Burkina Faso described an “ongoing” reform

224. See *supra* notes 133–136. See also *supra* notes 133–136 accompanying text.

225. *Rep. of the Working Group on the Universal Periodic Review: Uzbekistan*, *supra* note 135, ¶¶ 33, 39, 43, 44, 48, 50, 65, 67, 79, 87, 104–107.

226. Hum. Rts. Council, *Rep. of the Human Rights Council on Its Tenth Session*, ¶ 669, U.N. Doc. A/HRC/10/29 (Nov. 9, 2009).

process, including reviews of the Constitution and the Criminal Code, as well as consideration of “the enshrinement in the Constitution of . . . the abolition of the death penalty.”²²⁷ The delegation stated that “[t]he country was on the path to abolishing the death penalty, and awareness-raising activities had been conducted. Furthermore, the abolition of the death penalty was enshrined in the new draft Constitution and the new draft Criminal Code.”²²⁸ Soon after the interactive dialogue, Burkina Faso accepted 163 recommendations and rejected 8 recommendations,²²⁹ but it deferred consideration of 33 recommendations, many of which concerned abolition of the death penalty.²³⁰

Just weeks later, Burkina Faso’s National Assembly adopted a new criminal code, abolishing the death penalty for ordinary crimes.²³¹ The Addendum Burkina Faso submitted three and a half months later, however, reflected some slight ambivalence toward the death penalty recommendations. For example, Burkina Faso accepted recommendations to ratify OP2 and “[f]ormally” and “[f]ully abolish the death penalty,”²³² but it noted similar recommendations to ratify OP2 “without reservation,” and to ratify OP2 “with the ultimate aim of abolishing the death penalty in all circumstances.”²³³

At the adoption of the outcome in September 2018, Burkina Faso described how it had reached its decision on the 33 “pending” recommendations.²³⁴ It explained that “after the adoption of the report by the Working Group on the [UPR], the Government conducted national consultations to determine a final position on the recommendations.”²³⁵ Based on those consultations, the government had decided

227. *Outcome of the Universal Periodic Review: Burkina Faso*, *supra* note 206, ¶ 11.

228. *Id.* ¶ 76.

229. *Id.* ¶¶ 125, 127.

230. *Id.* ¶ 126.1–5, .11–16.

231. *Burkina Faso and the Death Penalty*, PARLIAMENTARIANS FOR GLOB. ACTION, <https://www.pgaction.org/ilhr/adp/bfa.html> (last visited Feb. 3, 2023).

232. *Rep. of the Working Group on the Universal Periodic Review: Burkina Faso (Addendum)*, *supra* note 205 (responding to recommendations 126.1, 126.4, 126.5, 126.11, 126.12, 126.13, 126.14, 126.15, 126.16).

233. *Id.* (responding to recommendations 126.2, 126.3)

234. Hum. Rts. Council, *Rep. of the Human Rights Council on Its Thirty-Ninth Session*, ¶ 334, U.N. Doc. A/HRC/33/2 (Nov. 23, 2018).

235. *Id.*

to support 21 of the recommendations and, the delegation observed, “[a]ctions to implement some of them have already been undertaken. As an example, the delegation referred to the abolition of the death penalty through the adoption of the new Penal Code in May 2018.”²³⁶

Madagascar

Madagascar also reacted swiftly to implement recommendations to abolish the death penalty. When presenting its National Report during its second-cycle interactive dialogue on November 3, 2014, it made reference to decisions to reject some recommendations, including “consideration by the Government Council and Council of Ministers of the bill ratifying [OP2], and the tabling before the National Assembly of the private parliamentary bill abolishing the death penalty.”²³⁷ At the same time, however, the delegation confusingly described several “recommendations that had been accepted and implemented,” including recommendations calling for “the consideration by the Government Council and Council of Ministers of draft legislation authorizing the ratification of” OP2.²³⁸ During a break after a round of interventions, the government delegation “stated that the process of ratifying [OP2] had already begun and would shortly be adopted by the Government prior to being submitted to Parliament.”²³⁹ Many countries recommended that Madagascar ratify OP2 or take other steps toward abolition of the death penalty, and Madagascar accepted those recommendations within days of the interactive dialogue.²⁴⁰

Madagascar abolished the death penalty on Human Rights Day, December 10, 2014.²⁴¹ Three months later, at the adoption of the outcome, Madagascar described how, after the interactive dialogue,

236. *Id.*

237. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Madagascar*, ¶ 5, U.N. Doc. A/HRC/28/13 (Dec. 23, 2014).

238. *Id.* ¶ 6.

239. *Id.* ¶ 67.

240. *Id.* ¶ 108.4, .9, .13, .21–.22, .32, .34, 35, .72, .76, .85, .89, .92, .98, .113. Madagascar’s Addendum does not reference these recommendations. *See Rep. of the Working Group on the Universal Periodic Review: Madagascar (Addendum)*, *supra* note 213.

241. *Madagascar MPS Abolish the Death Penalty*, HANDS OFF CAIN, http://www.handsoffcain.info/archivio_news/index.php?iddocumento=18310244&mover=0 (last visited Feb. 3, 2023).

“measures had been immediately adopted upon the return of the delegation to the country. During the celebration to commemorate the adoption of the Universal Declaration of Human Rights, on 10 December 2014, a meeting to consider the recommendations . . . had been organized with members of the Government, representatives of Parliament and of civil society, and technical and financial partners.”²⁴²

Fiji

Fiji used the UPR to set a timetable for parliament to act. During its second-cycle interactive dialogue on October 29, 2014, in response to questions about the abolition of the death penalty, the delegation from Fiji “noted that it had abolished the death penalty in 2001. However, it remained in the Military Code indirectly, by virtue of the applicability of the Army Act 1955 of the United Kingdom.”²⁴³ The Fijian delegation then “announced that in the forthcoming session of Parliament, the Military Code would be amended to remove the reference to the death penalty altogether.”²⁴⁴ Within days after the interactive dialogue, Fiji accepted recommendations to ratify OP2 and abolish the death penalty for all crimes.²⁴⁵ At the adoption of the outcome, the delegation from Fiji confirmed that “[t]he Government had presented a bill to Parliament at its first sitting in 2015 for the removal of all references to the death penalty in the military laws, and the bill had been subsequently approved by Parliament. Thus, Fiji had completely abolished the death penalty from all its laws.”²⁴⁶

242. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Twenty-Eighth Session*, ¶ 785, U.N. Doc. A/HRC/28/2 (May 7, 2019). *See also* Hum. Rts. Council, *Nat’l Rep. Submitted in Accordance with Paragraph 15(A) of the Annex to Hum. Rts. Council Resolution 5/1: Madagascar*, ¶ 45 (“Madagascar abolished the death penalty in 2014”), U.N. Doc. A/HRC/WG.6/34/MDG/1 (Aug. 21, 2019).

243. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Fiji*, ¶ 16, U.N. Doc. A/HRC/28/8 (Dec. 17, 2014).

244. *Id.*

245. *Id.* ¶ 99.5–.6, .52–.54.

246. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Twenty-Eighth Session*, ¶ 548, U.N. Doc. A/HRC/28/2 (May 7, 2019). Fiji still has yet to ratify OP2. *See* Office of the High Comm’r for Hum. Rts., *UN Treaty Body Database, Ratification Status for Fiji*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=60&Lang=EN (last visited Apr. 4, 2023); Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Fiji*, ¶ 140.3–.5 (deferring responses to recommendations to ratify OP2), U.N. Doc. A

2. *Papua New Guinea declines its win, asserting its “sovereignty”?*

Papua New Guinea is the anomaly in this group. Papua New Guinea’s engagement with the UPR at the time of abolition suggests not only that the UPR did not influence its decision to abolish the death penalty, but that the country did not even want to *suggest* that it was heeding UPR recommendations on abolition.

During its interactive dialogue on November 4, 2021, the delegation from Papua New Guinea made no commitments regarding the death penalty. Further, the delegation made no reference to the death penalty when presenting the National Report.²⁴⁷ When the country retook the floor after the first round of interventions, a member of the delegation simply said that “[o]n the death penalty, Papua New Guinea had legislation in place, however, it had not been implemented for various reasons, including cultural and religious beliefs.”²⁴⁸ After another round of interventions, a member of the delegation “mentioned the de facto moratorium in Papua New Guinea, since 1954, while referring to the criminal justice system of sovereign States and the importance of the right to life.”²⁴⁹ During the interactive dialogue, Papua New Guinea received twenty-one recommendations to work toward abolition of the death penalty and/or ratify OP2,²⁵⁰ but it deferred decision on all recommendations until the March 2022 Council session.²⁵¹

Notwithstanding this ambivalence, Papua New Guinea’s parliament voted to abolish the death penalty just two months later.²⁵² The timing of the decision to abolish the death penalty seems to have been

/HRC/43/8 (Dec. 23, 2019); Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Fiji (Addendum)* (noting/rejecting recommendations 140.3 and 140.4, which called for ratification of multiple treaties, but accepting recommendation 140.5, which simply called for ratification of OP2), U.N. Doc. A/HRC/43/8/Add.1 (Feb. 19, 2020).

247. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Papua New Guinea*, ¶¶ 5–68, U.N. Doc. A/HRC/49/11 (Dec. 30, 2021).

248. *Id.* ¶ 84.

249. *Id.* ¶ 110.

250. *Id.* ¶ 144.22, .25, .69–.87.

251. *Id.* ¶ 144.

252. *Death Penalty Act Repealed*, POST COURIER, <https://postcourier.com.pg/death-penalty-act-repealed/> (last visited Feb. 3, 2023).

prompted not by the UPR, but by a ruling by the Supreme Court of Papua New Guinea in August 2021 that had “lifted stays of execution for 14-death-row prisoners, removing the last legal hurdle preventing the first executions in 70 years.”²⁵³ In early January 2022, the Prime Minister and the Justice Minister “made several statements . . . indicating their willingness to do away with the death penalty.”²⁵⁴ When the Justice Minister presented the abolition bill to parliament, he said that the country lacked the “‘necessary administrative mechanisms and infrastructure’ to conduct executions humanely.”²⁵⁵ In other words, the court decision had placed lawmakers in Papua New Guinea at a crossroads: they could either “fix” the use of the death penalty by adopting a new law establishing an execution protocol, thereby opening the door to executions after a 70-year de facto moratorium, or they could abolish the death penalty. Abolition was the more palatable choice.

In light of these developments, Papua New Guinea’s subsequent engagement with the UPR process is a bit puzzling. Its Addendum, submitted in March 2022, provides further confirmation for the conclusion that the UPR did not play a significant role in the country’s decision to abolish the death penalty. Papua New Guinea rejected every recommendation relating to the death penalty, while at the same time stating that “Papua New Guinea amended the Criminal Code Act on 22 January 2022 to abolish the Death Penalty.”²⁵⁶ At the adoption of the outcome, the delegation from Papua New Guinea simply reiterated that the government had abolished the death penalty on January

253. Citing ‘*Christian Values, Papua New Guinea Abolishes the Death Penalty*,’ DEATH PENALTY INFO. CTR. (Jan. 24, 2022), <https://deathpenaltyinfo.org/news/citing-christian-values-papua-new-guinea-abolishes-the-death-penalty> [hereinafter Citing ‘*Christian Values, Papua New Guinea Abolishes the Death Penalty*’]; see *Papua New Guinea v. Tamate* (2021) SC2132 (available at <http://www.paclii.org/pg/cases/PGSC/2021/54.html>).

254. Aurélie Plaçais, *Papua New Guinea: One Step Away from Full Abolition of the Death Penalty*, WORLD COAL. AGAINST THE DEATH PENALTY (Jan. 21, 2022), <https://worldcoalition.org/2022/01/21/papua-new-guinea-one-step-away-from-full-abolition-of-the-death-penalty/>.

255. Citing ‘*Christian Values, Papua New Guinea Abolishes the Death Penalty*,’ *supra* note 203.

256. *Rep. of the Working Group on the Universal Periodic Review: Papua New Guinea (Addendum)*, *supra* note 217, at 4 (responding to recommendations 69–87); *id.* at 3 (noting recommendations 22 and 25 as well).

22.²⁵⁷ Papua New Guinea did not assert that it had accepted and implemented death penalty recommendations, even though it had in fact abolished the death penalty.²⁵⁸

One possible explanation for Papua New Guinea's reluctance to engage with the UPR on the subject of the death penalty ties back to its reference during the interactive dialogue to "the criminal justice system of sovereign States" in responding to recommendations to abolish the death penalty.²⁵⁹ Papua New Guinea had historically opposed the U.N. General Assembly resolution calling for a moratorium on the use of the death penalty. Opponents of the resolution employ rhetoric about the notion of "state sovereignty" over domestic criminal matters.²⁶⁰ Perhaps leaders in Papua New Guinea felt that accepting recommendations from other States to abolish the death penalty would be an affront to the country's sovereignty or would undermine its credibility with States that lead opposition to the resolution.²⁶¹

257. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Forty-Ninth Session*, ¶ 639, U.N. Doc. A/HRC/49/2 (June 24, 2022).

258. *See, e.g.*, Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Papua New Guinea*, ¶ 144.60 ("Limit capital crimes, with the aim of abolishing the death penalty"), U.N. Doc. A/HRC/49/11 (Dec. 30, 2021); *id.* ¶ 144.73 ("Abolish the death penalty de jure."); *id.* ¶ 144.75 ("Pursue efforts towards the full and unequivocal abolition of the death penalty."); *id.* ¶ 144.83 ("Adopt an immediate moratorium on the execution of the death penalty, with a view to its complete abolition"); *id.* ¶ 144.84 ("Establish a moratorium on the death penalty and consider as soon as possible its abolition and replacement by an alternative punishment that is fair, proportionate and in line with international standards."); *id.* ¶ 144.86 ("Establish an immediate official moratorium on executions, with a view to abolishing the death penalty, and repeal all provisions in domestic law allowing for the death penalty."); *id.* ¶ 144.87 ("Establish an immediate moratorium on the death penalty.").

259. *9th Resolution for a Moratorium on the Death Penalty*, *supra* note 212.

260. *See One-Pager on Sovereignty Amendment*, THE ADVOCATES FOR HUM. RTS. (Nov. 11, 2022), <https://www.theadvocatesforhumanrights.org/Publications/sovereignty-amendment-response>.

261. *See, e.g.*, Singapore Ministry of Sustainability and the Environment, *Singapore and Papua New Guinea to Collaborate on Advancing Climate actions and Ambition*, Nov. 14, 2022, <https://www.mse.gov.sg/resource-room/category/2022-11-14-media-release-singapore-and-papua-new-guinea-collaborate-advancing-climate-actions-and-ambition>; *Singapore Cautions PNG Not to Involve in Conflicts Between Superpowers*, June 9, 2022, <https://news.pngfacts.com/2022/06/singapore-cautions-png-not-to-involve.html>. Papua New Guinea abstained in the General Assembly vote in December 2022. *9th Resolution for a Moratorium on the Death Penalty: The*

D. Abolishing The Death Penalty After the Adoption of the UPR Outcome

TABLE 4: COUNTRIES THAT ABOLISHED THE DEATH PENALTY OR RATIFIED OP2 UP TO ONE YEAR AFTER THE ADOPTION OF THE OUTCOME

Country	Adoption of outcome	Abolition	Number of days
Sierra Leone	10/1/2021 ²⁶²	10/8/2021 ²⁶³	7
Kyrgyzstan OP2	11/21/2010 ²⁶⁴	12/6/2010 ²⁶⁵	15
Nauru	4/6/2016 ²⁶⁶	5/12/2016 ²⁶⁷	36
Burundi	3/18/2009 ²⁶⁸	4/24/2009 ²⁶⁹	37

Trend is Growing, WORLD COAL. AGAINST THE DEATH PENALTY (Dec. 20, 2022), <https://worldcoalition.org/2022/12/20/9th-resolution-for-a-moratorium-on-the-death-penalty-the-trend-is-growing/> [hereinafter *9th Resolution for a Moratorium on the Death Penalty*].

262. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Sierra Leone*, U.N. Doc. A/HRC/DEC/48/114 (Oct. 1, 2021).

263. *Sierra Leone formally abolishes ‘inhumane’ death penalty*, Al Jazeera (Oct. 8, 2021), <https://www.aljazeera.com/news/2021/10/8/sierra-leone-president-formally-abolishes-death-penalty>.

264. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Kyrgyzstan*, U.N. Doc. A/HRC/DEC/15/101 (Sept. 21, 2010).

265. *UN Treaty Body Database*, *supra* note 98.

266. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Nauru*, U.N. Doc. A/HRC/DEC/31/104 (Apr. 6, 2016).

267. *Nauru: New Criminal Law is Welcome Improvement on Human Rights*, AMNESTY INT’L (June 16, 2016), <https://www.amnesty.org.au/nauru-new-criminal-law/>.

268. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Burundi*, U.N. Doc. A/HRC/DEC/10/103 (Mar. 18, 2009).

269. Innocent Habonimana, *Death penalty abolition under threat in Burundi*, IWACU ENGLISH NEWS, (Oct. 10, 2016), <https://www.iwacu-burundi.org/english-news/death-penalty-abolition-under-threat-in-burundi/>; *Burundi abolishes the death penalty but bans homosexuality*, AMNESTY INT’L (Apr. 27, 2009), <https://www.amnesty.org/en/latest/news/2009/04/burundi-elimina-pena-muerte-prohibe-homosexualidad-20090427/>; *Burundi: Promising advocacy workshop for the ratification of the abolitionist treaty*, WORLD COAL. AGAINST THE DEATH PENALTY (June 10, 2022), <https://worldcoalition.org/2022/06/10/burundi-promising-advocacy-workshop-for-the-ratification-of-the-abolitionist-treaty/>.

Country	Adoption of outcome	Abolition	Number of days
Argentina (military)	6/11/2008 ²⁷⁰	8/26/2008 ²⁷¹	76
Benin	3/19/2018 ²⁷²	6/5/2018 ²⁷³	78
Argentina OP2	6/11/2008 ²⁷⁴	9/2/2008 ²⁷⁵	83
Latvia	9/22/2011 ²⁷⁶	1/1/2012 ²⁷⁷	101
Armenia OP2	9/28/2020 ²⁷⁸	3/18/2021 ²⁷⁹	171
Chad	3/20/2014 ²⁸⁰	9/15/2014 ²⁸¹	179
São Tomé and Príncipe OP2	4/6/2016 ²⁸²	1/10/2017 ²⁸³	279
Guinea	7/29/2015 ²⁸⁴	7/4/2016 ²⁸⁵	341

270. *Rep. of the Human Rights Council on Its Eighth Session*, supra note 145.

271. Law No. 26394, Aug. 6, 2008 (Arg.).

272. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Benin*, U.N. Doc. A/HRC/DEC/37/109 (Mar. 19, 2018).

273. FIACAT, *FIACAT and ACAT Benin congratulate Benin on having removed the death penalty from its criminal legislation*, WORLD COAL. AGAINST THE DEATH PENALTY (June 6, 2018), <https://worldcoalition.org/2018/06/06/fiacat-and-acat-benin-congratulate-benin-on-having-removed-the-death-penalty-from-its-criminal-legislation/>.

274. *Rep. of the Human Rights Council on Its Eighth Session*, supra note 145.

275. *UN Treaty Body Database*, supra note 98.

276. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Latvia*, U.N. Doc. A/HRC/DEC/48/112 (Oct. 8, 2021).

277. Aurelie Placais, *Ratification of abolition treaties gathers pace in 2012*, WORLD COAL. AGAINST THE DEATH PENALTY (Mar. 20, 2012), <http://worldcoalition.org/2012/03/20/ratification-of-abolition-treaties-gathers-pace-in-2012/>.

278. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Armenia*, U.N. Doc. A/HRC/DEC/45/106 (Oct. 9, 2020).

279. Aurelie Placais, *Armenia ratifies international treaty for irreversible abolition of the death penalty*, WORLD COAL. AGAINST THE DEATH PENALTY (Mar. 25, 2021), <https://worldcoalition.org/2021/03/25/armenia-ratifies-international-treaty-for-irreversible-abolition-of-the-death-penalty/>.

280. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Chad*, U.N. Doc. A/HRC/DEC/40/112 (Mar. 20, 2019).

281. *Le Tchad a un nouveau code pénal*, RFI (Sept. 15, 2014), <https://www.rfi.fr/fr/afrique/20140915-tchad-nouveau-code-penal-peine-mort-homosexualite>.

282. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Sao Tome and Principe*, U.N. Doc. A/HRC/DEC/31/114 (Apr. 6, 2016).

283. *UN Treaty Body Database*, supra note 98.

Country	Adoption of outcome	Abolition	Number of days
Mongolia OP2	3/16/2011 ²⁸⁶	3/13/2012 ²⁸⁷	363

Twelve countries abolished the death penalty or ratified OP2 within one year after the adoption of the UPR outcome.²⁸⁸ Those countries’ decisions regarding UPR recommendations to abolish or ratify, as well as statements by their government delegations during the interactive dialogue and the adoption of the UPR outcome, provide additional insights into whether the UPR may have prompted swift action to abolish the death penalty or ratify OP2.

1. *The UPR places OP2 on Argentina’s agenda.*

The UPR seems to have directly influenced Argentina’s trajectory toward abolishing the death penalty for all crimes and ratifying OP2. The adoption of the outcome of Argentina’s first UPR took place in June 2008; the country abolished the death penalty for military offenses in August and ratified OP2 the following month.²⁸⁹ The only reference to the death penalty during the interactive dialogue in April 2008 was Nigeria’s recommendation²⁹⁰ that Argentina ratify OP2. Notably, Argentina accepted this recommendation within days of the interactive dialogue.²⁹¹ At the adoption of the outcome, Argentina provided an overview of what was then the new UPR process, observing that it had

284. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Guinea*, U.N. Doc. A/HRC/DEC/29/102 (Jul. 29, 2015).

285. *Guinea and the Death Penalty*, PARLIAMENTARIANS FOR GLOB. ACTION, <https://www.pgaction.org/ilhr/adp/gin.html> (last visited Feb. 3, 2023).

286. Hum. Rts. Council, *Outcome of the Universal Periodic Review: Mongolia*, U.N. Doc. A/HRC/DEC/16/103 (Apr. 11, 2011).

287. *UN Treaty Body Database*, *supra* note 98.

288. As Table 4 demonstrates, Argentina both abolished the death penalty for military crimes and ratified OP2 within one year after the country’s first-cycle UPR.

289. *See infra* Table 4.

290. Since the second cycle of the UPR, it is almost unheard of for a retentionist country such as Nigeria to make a recommendation that another country abolish the death penalty or ratify OP2.

291. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Argentina*, ¶ 64.21, U.N. Doc. A/HRC/8/34 (May 13, 2008).

been in the first group of countries to go through the UPR.²⁹² Argentina pointed out that it had accepted all of the twenty-one recommendations it had received.²⁹³ Regarding its acceptance of Nigeria's recommendation, "Argentina announced that on 21 May, the Congress approved the legislation authorizing the executive branch to ratify" OP2.²⁹⁴ This statement, and the absence of any other mention of the death penalty during the interactive dialogue, suggests that Nigeria's recommendation was the primary motivation for that legislation. Prompt implementation of each recommendation was made relatively easy by the modest overall number of recommendations. Argentina's three-month delay in ratification was likely due to the executive's insistence that the congress first abolish the death penalty for military offenses, so that Argentina would not feel compelled to lodge a reservation to ratification.

2. *The UPR gives Armenia, Benin, Burundi, and Latvia some momentum to complete the process of abolition.*

Armenia made a firm commitment to ratifying OP2 during its third-cycle UPR, and its ratification six months later reflects an effort to honor that commitment. Armenia had signed OP2 prior to the interactive dialogue, and in its Addendum it accepted four recommendations to ratify the Protocol, stating that it "will undertake all the necessary steps towards its ratification."²⁹⁵ At the adoption of the UPR outcome, Armenia did not mention OP2 specifically, but observed that it "had always been a strong supporter of the [UPR] process," adding that it "was a party to almost all the international human rights treaties, without any reservation to their provisions. The Constitution of

292. *Rep. of the Human Rights Council on Its Eighth Session*, *supra* note 145, ¶ 620.

293. *Id.* By way of comparison, Argentina received 287 recommendations during its fourth-cycle UPR in January 2023. Hum. Rts. Council, *Draft Rep. of the Working Group on the Universal Periodic Review*, ¶ 6, U.N. Doc. A/HRC/WG.6/42/L.2 (Jan. 27, 2023).

294. *Rep. of the Human Rights Council on Its Eighth Session*, *supra* note 145, ¶ 623.

295. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Armenia (Addendum)*, ¶ 2 (expressing support for recommendations 153.5–.8), U.N. Doc. A/HRC/44/10/Add.1 (July 6, 2020).

Armenia explicitly prohibited the death penalty.”²⁹⁶ Armenia ratified OP2 six months after the adoption of the UPR outcome.²⁹⁷

Benin had made significant progress toward abolition prior to its third-cycle UPR and, like Fiji, Benin’s delegation in Geneva set a timetable for parliament to take action. During the interactive dialogue in November 2017, the delegation from Benin clarified that the country had already ratified OP2, and “[t]he Constitutional Court had ruled that any death sentence would be unenforceable, and the sentences of the 14 persons currently sentenced to death were being commuted.”²⁹⁸ The delegation further explained that “[t]he new Criminal Code, which would be adopted in the first quarter of 2018 by Parliament, would formally confirm the abolition of the death penalty in Benin.”²⁹⁹ Days after the interactive dialogue, Benin accepted recommendations to adopt the new Criminal Code to prohibit the death penalty.³⁰⁰ On March 19, 2018, during the adoption of the UPR outcome, the delegation from Benin skirted over the fact that Benin’s parliament had not yet adopted the new criminal code.³⁰¹ Instead, the delegation stated that “the Council of Ministers has adopted Decree No. 2018-043 of 15 February 2018 with a view to commute the death sentence of 14 persons for sentences to life imprisonment, thus becoming Benin an abolitionist country, within full right.”³⁰² Benin finally adopted the criminal code three months later, in June 2018.³⁰³

296. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Forty-Fifth Session*, ¶¶ 583–84, U.N. Doc. A/HRC/45/2 (July 2, 2021).

297. Aurelie Placais, *Armenia ratifies international treaty for irreversible abolition of the death penalty*, WORLD COAL. AGAINST THE DEATH PENALTY (Mar. 25, 2021), <https://worldcoalition.org/2021/03/25/armenia-ratifies-international-treaty-for-irreversible-abolition-of-the-death-penalty/>.

298. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Benin*, ¶ 10, U.N. Doc. A/HRC/37/10 (Jan. 3, 2018).

299. *Id.*

300. *Id.* ¶ 118.37, .54, .56–60

301. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Thirty-Seventh Session*, ¶ 748-53, U.N. Doc. A/HRC/37/2 (June 14, 2018).

302. *Id.* ¶ 749.

303. FIACAT, *FIACAT and ACAT Benin congratulate Benin on having removed the death penalty from its criminal legislation*, WORLD COAL. AGAINST THE DEATH PENALTY (June 6, 2018), <https://worldcoalition.org/2018/06/06/fiacat-and-acat-benin-congratulate-benin-on-having-removed-the-death-penalty-from-its-criminal-legislation/>.

Burundi's circumstances were similar to Benin's—it was already on the verge of abolition, but the final steps took longer than anticipated. Burundi had already taken great strides to abolish the death penalty by the time of its first-cycle interactive dialogue, and the timing of abolition one month after the adoption of the UPR outcome seems to reflect the slow pace of lawmaking, which the UPR may have accelerated slightly. Burundi's National Report describes a bill to reform the Criminal Code which would abolish the death penalty.³⁰⁴ By the time of the interactive dialogue, the National Assembly had voted to approve abolition and the bill was awaiting consideration in the Senate.³⁰⁵ At the adoption of the outcome, responding to one recommendation to abolish the death penalty and ratify OP2, Burundi stated that “the new draft penal code [was] soon to be promulgated” and would abolish the death penalty.³⁰⁶ Approximately one month later, President Nkurunziza promulgated the law abolishing the death penalty.³⁰⁷

Latvia seemed to have been on track to abolish the death penalty for all crimes prior to its first-cycle UPR, but the UPR may have encouraged officials to take more prompt action. During its first-cycle interactive dialogue in May 2011, Latvia stated that “[t]he procedure to amend the relevant legislation regarding the abolition of the death penalty in times of war is underway.”³⁰⁸ During the interactive dialogue, Latvia received some criticism for its retention of the death penalty for military crimes. For example, Spain pointed out “that Latvia was the only country in Europe that still maintained the death penalty in its legislation,”³⁰⁹ and Australia expressed its “concern that the

304. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance with Paragraph 15(A) of the Annex to Hum. Rts. Council Resolution 5/1: Burundi*, ¶ 17, U.N. Doc. A/HRC/WG.6/3/BDI/1 (Sept. 15, 2008).

305. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Burundi*, ¶ 35, U.N. Doc. A/HRC/10/71 (Jan. 8, 2009).

306. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Tenth Session*, ¶ 307, U.N. Doc. A/HRC/10/29 (Nov. 9, 2009).

307. *Burundi abolishes the death penalty but bans homosexuality*, AMNESTY INT'L (Apr. 27, 2009), <https://www.amnesty.org/en/latest/news/2009/04/burundi-elimina-pena-muerte-prohibe-homosexualidad-20090427/>.

308. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Latvia*, ¶ 21, U.N. Doc. A/HRC/18/9 (July 11, 2011).

309. *Id.* ¶ 43.

death penalty remained at the domestic level.”³¹⁰ In response to these comments, the Latvian delegation said that “the four relevant commissions in Parliament held a debate in 2011, and all explicitly supported [the death penalty’s] abolition. The Ministry of Justice has initiated the process for the ratification of relevant treaties and amendment to the criminal law.”³¹¹ In its Addendum, Latvia accepted eight recommendations to abolish the death penalty and ratify OP2, adding that “on 12 July 2011 the Government approved a legislative package on the accession to the Protocol No. 13 to the European Convention on Human Rights and Fundamental Freedoms concerning the abolition of the death penalty,” and stated that after those laws entered into force, Latvia would “evaluate the possibility of ratifying” OP2.³¹² At the adoption of the outcome in September 2011, the Latvian delegation said that it “had accepted the recommendation on the ratification of [OP2] in order to abolish the death penalty in times of war,” and reiterated the statement the government had made about OP2 in the Addendum.³¹³ On January 1, 2012, Latvia abolished the death penalty for all crimes.³¹⁴

3. *Sierra Leone uses the UPR to spotlight progress and build momentum toward abolition.*

Sierra Leone’s abolition is the most recent in Table 4, and it took place just one week after the adoption of the country’s UPR outcome. As was the case with Fiji and Benin, the interactive dialogue suggests that the executive branch was using the UPR to publicize its role in setting an abolition agenda for parliament. During the interactive dialogue, the Sierra Leonean delegation announced that “the Cabinet had

310. *Id.* ¶ 47.

311. *Id.* ¶ 64.

312. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Latvia (Addendum)*, at 2 (accepting recommendations 93.6, 93.7, 93.8, 93.15, 93.35, 93.36, 93.37, and 93.38), U.N. Doc. A/HRC/18/9/Add.1 (Sept. 14, 2011).

313. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Eighteenth Session*, ¶ 401, U.N. Doc. A/HRC/18/2 (Oct. 22, 2012).

314. Aurelie Placais, *Ratification of abolition treaties gathers pace in 2012*, WORLD COAL. AGAINST THE DEATH PENALTY (Mar. 20, 2012), <http://worldcoalition.org/2012/03/20/ratification-of-abolition-treaties-gathers-pace-in-2012/>.

approved the abolition of the death penalty, and . . . the Deputy Minister of Justice had already briefed” parliamentary leaders on the matter.³¹⁵ Sierra Leone also made a voluntary pledge “[t]o legislate to abolish the death penalty in line with its international human rights obligations, the public pronouncement of the President, and the decision of Cabinet to abolish the death penalty.”³¹⁶ Sierra Leone subsequently accepted all recommendations to abolish the death penalty and ratify OP2.³¹⁷

In July 2021, after the interactive dialogue, Sierra Leone’s Parliament voted unanimously to abolish the death penalty.³¹⁸ President Julius Maada Bio, however, held off on signing the bill into law until October 8.³¹⁹ At the adoption of the outcome one week earlier, the delegation from Sierra Leone commented on its pledge, stating that it was “proud to formally notify the Human Rights Council and the international community that a law abolishing the death penalty was passed.”³²⁰ The government delegation expressed the country’s belief “that the death penalty was an inhumane form of punishment that violates the rights to life and all other human rights standards; and contradicted the principle of proportionality as a consideration in penal and restorative justice.”³²¹ Sierra Leone pledged “to never again execute anyone for any reason whatsoever.”³²² These statements suggested that President Bio’s signature of the abolition bill was imminent.

315. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Sierra Leone*, ¶ 10, U.N. Doc. A/HRC/48/17 (July 22, 2021).

316. *Id.* at 24.

317. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Sierra Leone (Addendum)*, ¶ 6 (accepting recommendations 8-10), U.N. Doc. A/HRC/48/17/Add.1 (July 21, 2021); *id.* ¶ 11 (accepting recommendations 61-79).

318. Saeed Kamali Dehghan, *Sierra Leone Abolishes Death Penalty*, GUARDIAN (July 24, 2021), <https://www.theguardian.com/global-development/2021/jul/24/sierra-leone-abolishes-death-penalty>.

319. *Sierra Leone formally abolishes ‘inhumane’ death penalty*, AL JAZEERA (Oct. 8, 2021), <https://www.aljazeera.com/news/2021/10/8/sierra-leone-president-formally-abolishes-death-penalty>.

320. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Forty-Eighth Session*, ¶ 952, U.N. Doc. A/HRC/48/2 (Dec. 23, 2021).

321. *Id.*

322. *Id.*

The question remains: Why did President Bio wait until one week after the adoption of the outcome on October 1, to sign the bill into law? The answer may be simple: World Day Against the Death Penalty is on October 10.³²³ President Bio may have waited to finalize Sierra Leone's abolition until October 8, the Friday before World Day, as a way to celebrate abolition with the global abolitionist community.

4. *Mongolia's President uses UPR momentum to press parliament on OP2.*

The first-cycle UPR seemed to give Mongolia's President, Tsakhiagiin Elbegdorj, some momentum to push the country's parliament to approve accession to OP2, similar to the dynamics between the Geneva delegations of Benin, Fiji, and Sierra Leone and their respective parliaments. Mongolia's National Report spells out in detail the country's position with respect to the death penalty. The National Report concedes that the Criminal Code authorized the death penalty, but notes that President Elbegdorj had "publicly declared [a] moratorium on [the] death penalty" as of January 14, 2010.³²⁴ Under the heading "National human rights priorities," the report explains that there was "[a]n ambiguous point of view" in Mongolia regarding abolition of the death penalty.³²⁵ The report recognizes the President's authority to declare the moratorium, but states that in order to abolish the death penalty "Mongolia must amend its related legislation, including the Criminal Code" and accede to OP2.³²⁶

Prior to its interactive dialogue, Mongolia received several questions about the death penalty.³²⁷ In an unusual step, Mongolia re-

323. *World Day: 20th World Day Against the Death Penalty – Death Penalty: A Road Paved with Torture*, WORLD COAL. AGAINST THE DEATH PENALTY (June 10, 2022), <https://worldcoalition.org/campagne/20th-world-day-against-the-death-penalty/>.

324. Hum. Rts. Council, *Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Resolution 16/21: Mongolia*, ¶ 20, U.N. Doc. A/HRC/WG.6/9/MNG/1 (Aug. 20, 2010).

325. *Id.* ¶ 97.

326. *Id.*

327. *Universal Periodic Review – Mongolia, First Cycle, Questions Submitted in Advance*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hr-bodies/upr/mn-index> (last visited Apr. 2, 2023).

sponded in writing before the interactive dialogue.³²⁸ The responses reflect a shift in favor of abolition, compared with the situation at the time of the National Report, detailing concrete steps the country had taken subsequent to that report. Responding to a question from Sweden, Mongolian authorities stated that the government had discussed the proposal to accede to OP2 on September 15, 2010, and decided to submit the matter to the relevant committee of parliament for consideration,³²⁹ and that committee, in turn, had asked for the opinion of the Standing Committee of Legal Affairs, which had placed the issue “under intensive consideration.”³³⁰ In response to a similar question from the United Kingdom, Mongolia wrote that the Minister of Justice had issued an order establishing a working group to develop draft amendments to the country’s criminal code.³³¹ The draft amendments would abolish the death penalty, and after ratification of OP2, that “working group will develop a draft regarding the abolishment of [the] death penalty.”³³² The response added that the working group was considering either abolishing the death penalty entirely or reducing the number of capital offenses in Mongolia’s criminal code.³³³ In response to another question from the Czech Republic about the classification of the death penalty as a “state secret,” Mongolia reiterated that it supported OP2 ratification and that upon ratification the new working group would draft amendments to the criminal code, which would address the law on state secrets.³³⁴

While presenting the National Report at the interactive dialogue in November 2010, the Mongolian delegation confirmed that the country’s parliament was considering accession to OP2.³³⁵ During the in-

328. *Universal Periodic Review – Mongolia, First Cycle, Written replies to advance questions, Advance Questions to Mongolia*, U.N. HUM. RTS. COUNCIL1, <https://www.ohchr.org/en/hr-bodies/upr/mn-index> (last visited Apr. 2, 2023).

329. *Id.*

330. *Id.*

331. *Id.* at 3–4.

332. *Id.*

333. *Id.* at 4.

334. *Universal Periodic Review – Mongolia, First Cycle, Written replies to advance questions, Advance Questions to Mongolia, supra* note 328. Mongolia offered a similar response to a similar question from the Netherlands. *Id.* at 4.

335. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Mongolia*, ¶ 11, U.N. Doc. A/HRC/16/5 (Jan. 4, 2011).

teractive dialogue, 23 countries praised Mongolia for the moratorium that President Elbegdorj had declared earlier that year.³³⁶ Just days later, Mongolia accepted all of the fifteen recommendations it received on abolition of the death penalty and accession to OP2.³³⁷ It seems likely that President Elbegdorj used these recommendations to motivate Mongolia's parliament to move forward with accession. At the adoption of the UPR outcome in March 2011, the Mongolian delegation provided an update that the country's parliament was scheduled to "debate Mongolia's accession to [OP2]" in its upcoming spring session.³³⁸ Mongolia acceded to OP2 in March of the following year.³³⁹

5. *The UPR provides Kyrgyzstan with a friendly nudge to finalize the ratification process.*

The UPR may have provided Kyrgyzstan with a necessary "nudge" to finalize its ratification of OP2. At Kyrgyzstan's first-cycle interactive dialogue, the government delegation mentioned as noteworthy parliament's ratification of OP2 in March 2010³⁴⁰ Belgium, likely having noticed that Kyrgyzstan had not yet deposited the instrument of ratification, emphasized during the interactive dialogue "that it is important that the process of ratifying [OP2] be concluded successfully."³⁴¹ Within days of the interactive dialogue, Kyrgyzstan accepted several recommendations to ratify OP2.³⁴² At the adoption of the UPR outcome, responding to one of these recommendations, the Kyrgyz delegation again stated that "Kyrgyzstan had already acceded to the Protocol in March 2010."³⁴³ Yet Kyrgyzstan still had not depos-

336. *Id.* ¶¶ 27, 29, 31, 33–36, 41, 43, 44, 46, 56, 58, 59, 63, 65, 66–69, 71–73.

337. *Id.* ¶ 84.7–.13, .63–.70.

338. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Sixteenth Session*, ¶ 413, U.N. Doc. A/HRC/16/2 (Nov. 14, 2011).

339. *UN Treaty Body Database*, *supra* note 98.

340. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Kyrgyzstan*, ¶ 9, U.N. Doc. A/HRC/15/2 (June 16, 2010).

341. *Id.* ¶ 63.

342. *Id.* ¶ 76.1–.3.

343. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Fifteenth Session*, ¶ 263, U.N. Doc. A/HRC/15/60 (Oct. 31, 2011).

ited the instrument of ratification,³⁴⁴ and ratification did not officially take place until December 6, fifteen days after the adoption of the outcome.³⁴⁵ It seems likely that during the adoption of the outcome, a State such as Belgium or an OHCHR representative contacted the Kyrgyz delegation to inform them of their procedural oversight, prompting authorities finally to deposit the country's instrument of ratification.

6. *Chad, Guinea, Nauru, and São Tomé and Príncipe give no strong indications that the UPR influenced the timing of their decisions to abolish or ratify.*

Chad

There is no strong indication that the UPR influenced the timing of Chad's first abolition of the death penalty.³⁴⁶ During Chad's second-cycle interactive dialogue in October 2013, the delegation to Geneva stated that, "[w]ith regard to the death penalty, . . . it was not enough simply to enact legislation, but . . . attitudes needed to be changed and . . . when the time was right, the State would decide what it needed to do in that regard."³⁴⁷ In its Addendum, Chad accepted recommendations to "[a]bolish the death penalty and ratify [OP2]," "[t]ake the appropriate measures to abolish the death penalty from its criminal justice system," and "[a]bolish the death penalty for all crimes, promote an official moratorium on executions, and commute

344. See *Vienna Convention on the Law of Treaties, 23 May 1969*, United Nations, Treaty Series, vol. 11655, p. 331, Art. 16(b) ("Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon . . . their deposit with the depositary."); Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, G.A. Res. 44/128, annex, 44 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/44/49 (1989), *entered into force* July 11, 1991, Art. 7(2) ("Instruments of ratification shall be deposited with the Secretary-General of the United Nations.").

345. Office of the High Comm'r for Hum. Rts., *UN Treaty Body Database, Ratification Status for Kyrgyzstan*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=93&Lang=en (last visited Apr. 2, 2023).

346. See *supra* notes 9191–9292.

347. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Chad*, ¶ 104, U.N. Doc. A/HRC/25/14 (Jan. 3, 2014) [hereinafter *Rep. of the Working Group on the Universal Periodic Review: Chad*].

the death sentences for imprisonment,” but without explanation it rejected seven similar recommendations.³⁴⁸ At the adoption of the outcome in March 2014, the delegation responded to recommendations to ratify OP2 by stating that “the Government was willing to ratify a number of international legal instruments on human rights, but it wanted to do so gradually.”³⁴⁹ Six months later, Chad adopted a new penal code that abolished the death penalty.³⁵⁰

Guinea

During its second-cycle UPR, Guinea was non-committal about abolition of the death penalty. The timing of its death penalty abolition one year later suggests that the UPR did not influence the country’s decision. At the interactive dialogue in January 2015, the government delegation noted that the country had had a *de facto* moratorium in place for several years. It added that “reform of the Criminal Code has begun and that the Ministry of Human Rights and Public Liberties planned to launch an awareness-raising campaign on the abolition of the death penalty.”³⁵¹ In its June Addendum to the Report of the Working Group, Guinea rejected thirteen recommendations to abolish the death penalty or ratify OP2, but accepted Chile’s recommendation to “[a]dopt legislative and normative measures towards the abolition of the death penalty and commute all those sentenced for prison sentences.”³⁵² Although the Addendum offered no explanation for accepting Chile’s recommendation, it explained that the country had “ob-

348. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Chad (Addendum)*, at 2 (accepting recommendations 13, 93, and 94 but noting recommendations 9-12, 14-15, and 95), U.N. Doc. A/HRC/25/14/Add.1 (Mar. 13, 2014); *Rep. of the Working Group on the Universal Periodic Review: Chad, supra* note 347, ¶¶ 110.9-15, .93-95.

349. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Twenty-Fifth Session*, ¶ 758, U.N. Doc. A/HRC/25/2 (July 17, 2014).

350. *Le Tchad a un nouveau code pénal*, RFI (Sept. 15, 2014), <https://www.rfi.fr/fr/afrique/20140915-tchad-nouveau-code-penal-peine-mort-homo-sexualite>.

351. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Guinea*, ¶ 40, U.N. Doc. A/HRC/29/6 (Apr. 10, 2015) [hereinafter *Rep. of the Working Group on the Universal Periodic Review: Guinea*].

352. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Guinea (Addendum)* (noting recommendations 118.4-.11, .24, .91-.94, but accepting recommendation 118.42); *Rep. of the Working Group on the Universal Periodic Review: Guinea, supra* note 351, ¶¶ 118.4-.11, .24, .42, .91-.94.

served a de facto moratorium on the death penalty since 2004,” which “demonstrates the Government’s commitment to working towards the abolition of the death penalty.”³⁵³ The Addendum also mentioned that the Guinean government had tabled a proposal to “repeal the death penalty . . . as part of the ongoing reform of the Criminal Code.”³⁵⁴

During the adoption of the UPR outcome, the Guinean delegation stated that it had launched “a large information and awareness campaign on the UPR recommendations,” and that “the Government had debated the recommendations.”³⁵⁵

The government “explained that due to the difficult political, social and cultural context, characterised by strong resistances” it had been forced to reject the recommendations on abolition.³⁵⁶ The delegation assured the Human Rights Council that “this position was not definitive since the role of a Government was to ensure” that all citizens enjoy their rights.³⁵⁷ It also added that the government would pursue additional “[a]wareness campaigns on the death penalty” and launch a “national debate” on the issue.³⁵⁸ The delegation reiterated its commitment to abolition, stating that “the revision of the Penal Code, which already proposed the abolition of the death penalty, had been drafted and would be submitted to [Guinea’s] National Assembly.”³⁵⁹ Nearly one year later, Guinea’s parliament adopted the new Penal Code and thereby abolished the death penalty.³⁶⁰

Nauru

The UPR does not appear to have influenced the timing of Nauru’s decision to abolish the death penalty. Rather, Nauru seemed pri-

353. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Guinea (Addendum)* (noting recommendation 118.4), U.N. Doc. A/HRC/29/6 (Apr. 10, 2015).

354. *Id.*

355. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Twenty-Ninth Session*, ¶ 407–08, U.N. Doc. A/HRC/29/2 (Nov. 25, 2015).

356. *Id.* ¶ 417.

357. *Id.*

358. *Id.*

359. *Id.*

360. *Guinea and the Death Penalty*, PARLIAMENTARIANS FOR GLOB. ACTION, <https://www.pgaction.org/ilhr/adp/gin.html> (last visited Feb. 3, 2023).

marily motivated by a desire to replace its outdated criminal code.³⁶¹ Nauru's position throughout the second-cycle UPR was that abolition would take a long time and the country was not willing to commit to any timeline. Nauru therefore rejected all recommendations to abolish the death penalty. It stated that it would "work on the removal of the death penalty after normal constitutional process, and national consultation ha[d] been followed."³⁶² Nauru added that abolition would be "progressively realized upon further consultation with government and relevant stakeholders."³⁶³ At the adoption of the UPR outcome, Nauru again stated that it had rejected the abolition recommendations, but reiterated that it would "continue to work with relevant authorities and departments on the progressive removal of the death penalty following a regular constitutional process and national consultations between Government and relevant stakeholders."³⁶⁴ It mentioned that its draft criminal code "does not recommend death as a penalty for any crime."³⁶⁵ One month later, the new criminal code took effect, abolishing the death penalty in Nauru.³⁶⁶

São Tomé and Príncipe

Apart from accepting four recommendations to ratify OP2, São Tomé and Príncipe did not engage with the issue of ratification of OP2 during its second-cycle UPR, suggesting that the UPR did not exert a strong influence on the timing of the country's decision to ratify. Although the delegation of São Tomé and Príncipe did not address the death penalty or OP2 during the country's second-cycle interactive dialogue, the country accepted four recommendations to ratify OP2 just

361. Daniel Pascoe & Andrew Novak, *Holdouts in the South Pacific: Explaining Death Penalty Retention in Papua New Guinea and Tonga*, 11 INT'L J. FOR CRIME, JUST. & SOC. DEM. 43 (2022), <http://classic.austlii.edu.au/au/journals/IntJLCrimJustSocDem/2022/47.html>.

362. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: Nauru (Addendum)*, ¶ 18, U.N. Doc. A/HRC/31/7/Add.1 (Mar. 14, 2016).

363. *Id.*

364. Hum. Rts. Council, *Rep. of the Hum. Rts. Council on Its Thirty-First Session*, ¶ 602, U.N. Doc. A/HRC/31/2 (July 22, 2016) [hereinafter *Rep. of the Hum. Rts. Council on Its Thirty-First Session*].

365. *Id.*

366. *Nauru: New Criminal Law is Welcome Improvement on Hum. Rts.*, AMNESTY INT'L (June 16, 2016), <https://www.amnesty.org.au/nauru-new-criminal-law/>.

days later.³⁶⁷ The Government of São Tomé and Príncipe did not send a representative to attend the adoption of the outcome in March 2016,³⁶⁸ but the country ratified OP2 in January 2017.

CONCLUSION

These case studies provide valuable insights that can assist civil society organizations seeking to accelerate a country's progress toward abolition of the death penalty. Some recommendations include:

1. Look for low-hanging fruit. The handful of abolitionist countries that still retain the death penalty for military offenses,³⁶⁹ including Burkina Faso, Chile, and El Salvador—all discussed above—may be well positioned targets for advocacy to abolish the death penalty for all crimes. Indeed, as was the case with Argentina, Fiji, and Suriname, the UPR can motivate countries that have abolished the death penalty for ordinary crimes to polish their abolitionist *bona fides* and join the ranks of countries that have abolished the death penalty entirely. Moreover, when a country abolishes the death penalty in its criminal code, advocates should scrutinize relevant domestic laws to determine whether the penalty remains on the books for military crimes—as appears to be the case in Zambia³⁷⁰—and should promptly push for repeal of those laws as well.

Another example of low-hanging fruit includes the twenty-three countries that have abolished the death penalty for all crimes, yet have

367. Hum. Rts. Council, *Rep. of the Working Group on the Universal Periodic Review: São Tomé and Príncipe*, ¶¶ 107.6, .8, .12, .14, U.N. Doc. A/HRC/31/17 (Jan. 13, 2016).

368. *Rep. of the Hum. Rts. Council on Its Thirty-First Session*, *supra* note 364, ¶ 1048.

369. AMNESTY INT'L GLOBAL REP.: DEATH SENTENCES AND EXECUTIONS 2021, *supra* note 84, at 62–63 (Brazil, Burkina Faso, Chile, El Salvador, Guatemala, Israel, Kazakhstan, and Peru). Zambia should probably be added to that list. *See* The Advocates for Human Rights, World Coalition Against the Death Penalty, and Prisoners' Future Foundation, *Zambia's Compliance with the International Covenant on Civil and Political Rights: The Death Penalty*, ¶ 6 (Jan. 30, 2023) (observing that Zambia's Defence Act and Constitution still recognize the death penalty).

370. The Advocates for Human Rights, World Coalition Against the Death Penalty, and Prisoners' Future Foundation, *Zambia's Compliance with the International Covenant on Civil and Political Rights: The Death Penalty*, ¶ 6 (Jan. 30, 2023).

not yet ratified OP2, including five countries discussed above: Burundi, Chad, Fiji, Guinea, and Suriname.³⁷¹ Civil society may be able to leverage the UPR to prompt these countries to ratify. Conversely, six countries have ratified OP2 but have not abolished the death penalty for all crimes, including three countries discussed above: Chile, El Salvador, and Gambia.³⁷² These countries may also be responsive to the pressure of an upcoming UPR to prompt them to take the next step in finalizing abolition.

The twenty-six countries that are “abolitionist in practice” meaning they have not carried out an execution in the last ten years and have a policy or established practice supporting this *de facto* abolition,³⁷³ may also be fruitful targets for UPR advocacy. Furthermore, a country that has signed but not ratified OP2, like Armenia before its third-cycle UPR, is also an obvious target for civil society organizations seeking to expand the number of countries that have formally abolished the death penalty.

2. Know the audience. If a civil society organizations have identified a target country, they should examine the country’s overall approach to the UPR. That understanding can help shape an effective UPR advocacy strategy. Advocates should consider the following questions when considering a country’s holistic approach to the UPR.

First, advocates should consider domestic engagement with the UPR process: Do local media outlets cover the interactive dialogue? Does the government view the UPR as a chance to garner positive publicity on the home front? Does the country take pride in accepting a large proportion of recommendations? Does the country tend to re-

371. Compare AMNESTY INT’L GLOBAL REP.: DEATH SENTENCES AND EXECUTIONS 2021, *supra* note 84, at 62 with UN Treaty Body Database, *supra* note 339. The other countries are Bhutan, Burundi, Cambodia, Congo, Cook Islands, Estonia, Haiti, Kiribati, Marshall Islands, Mauritius, Micronesia, Nauru, Niue, Palau, Samoa, Senegal, Solomon Islands, Tuvalu, and Vanuatu. The Holy See and Kosovo are also on the list, but they do not participate in the UPR as States under review.

372. Compare AMNESTY INT’L GLOBAL REP.: DEATH SENTENCES AND EXECUTIONS 2021, *supra* note 84, at 62, with UN Treaty Body Database, *supra* note 339. The other countries are Brazil, Kazakhstan, and Liberia. The State of Palestine has ratified OP2 and is not abolitionist for all crimes, but Palestine does not participate in the UPR as a State under review.

373. AMNESTY INT’L GLOBAL REP.: DEATH SENTENCES AND EXECUTIONS 2021, *supra* note 84, at 62–63 (including Sierra Leone and Zambia, which have since become abolitionist).

spond promptly to recommendations to ensure the responses are included in the Report of the Working Group, or does the country wait to submit an Addendum? If the government submits an Addendum, is it soon after the conclusion of the interactive dialogue or closer to the adoption of the outcome? Does the government typically engage in consultations before preparing the Addendum? Does the Addendum include explanations or does it simply respond positively or negatively to each recommendation?

Second, advocates should analyze how the country engages with the UPR process on the international level: Does the government tend to use the UPR as a platform to celebrate victories and garner positive international attention (like Mongolia and Uzbekistan in the first cycle and Zambia in the fourth cycle)? Or does the government use the UPR as a platform to create a list of future initiatives that it seeks to complete during the implementation phase of the UPR cycle? Does the government demonstrate a distaste for the whole process, seeking only to escape from Geneva without any major gaffes or missteps? Or does the government seem to have amnesia about the UPR process and need to be reeducated about it at the beginning of each cycle? Does history suggest that the government is burdened by the commitments it made during a previous UPR cycle? Or does it perhaps show signs of struggling to uphold the promises of a previous administration?

National Reports, Addenda, and the OHCHR summaries of interactive dialogues and adoptions of the outcome from previous cycles can provide substantial insight into some of these questions. Moreover, U.N. Web TV archives of these proceedings can supply advocates with a more robust sense of the dynamics behind a government delegation's engagement with the Human Rights Council. In sum, civil society organizations should undertake to understand a target country's relationship with the UPR as they develop strategies to leverage the UPR to advocate for abolition.

3. Gear up for the next cycle. Civil society organizations should pay careful attention to any accepted recommendations relating to the death penalty, particularly in the period when the government is likely preparing its next National Report. Recall that Benin, the Gambia, Suriname, Togo, and Zambia all rushed to abolish or ratify before the interactive dialogue so that they could demonstrate they had implemented recommendations they accepted during the previous cycle. At this stage, some governments may be seeking to put a positive spin on

their efforts to implement recommendations, and civil society can remind the relevant government stakeholders of promises made during the previous UPR and the need to document progress in the National Report. Some government stakeholders are likely unaware of the UPR or the commitments the government made during the previous cycle. Civil society organizations should seek to educate lawmakers about the promises previously made and the urgent need to fulfill those promises.

If a country has recently abolished the death penalty, advocates can prepare government officials for the likelihood that the country will receive recommendations to ratify OP2. In such circumstances, advocates can encourage officials to prepare a positive response to these recommendations to deliver in Geneva, following the lead of Bolivia in the first cycle and Zambia in the fourth cycle. Similarly, if the country has abolished the death penalty for ordinary crimes, as Suriname had done before its second-cycle UPR, then advocates can prepare government officials to respond positively to recommendations to abolish the death penalty for all crimes.

4. Develop a proactive engagement strategy. If the government is sensitive to local media coverage, advocates should prepare trainings and briefing materials to ensure journalists understand the UPR mechanism and how they can cover the proceedings remotely. Civil society organizations should cultivate relationships with journalists who cover international issues. Advocates can leverage these relationships to garner publicity for positive (or negative) developments in Geneva and can in effect become UPR “experts” to whom journalists will turn for insights. These relationships can enable advocates to put their own “spin” on the UPR and the government’s position regarding abolition.

Another effective strategy is to organize workshops for lawmakers, timed to coincide with the early stages of the UPR cycle. These workshops can educate officials about the UPR process and its relationship to the country’s human rights obligations and can highlight the importance of abolition. For example, before Sierra Leone’s third-cycle UPR, officials from the country’s ministries of justice and foreign affairs participated in workshops financed by the UPR Imple-

mentation Voluntary Fund³⁷⁴ to help them prepare for the review.³⁷⁵ One official at the Ministry of Justice commented that the administration had for many years made commitments to abolition, and in anticipation of the UPR remarked: “We could not go back to the UPR and say: ‘We are still looking at it’ and not do it now.”³⁷⁶ The workshop helped officials prepare the National Report and get ready for the interactive dialogue, positioning the country’s parliament to adopt legislation abolishing the death penalty just 72 days after the interactive dialogue.³⁷⁷

On World Day Against the Death Penalty on October 10, 2014, one month before Madagascar’s second-cycle interactive dialogue, FIACAT, the World Coalition, and ACAT Madagascar organized a workshop with the U.N. High Commissioner for Human Rights.³⁷⁸ The audience of the workshop included the President of Madagascar’s National Assembly, eight Members of Parliament, civil society organizations, U.N. representatives, and embassy staff from several abolitionist countries.³⁷⁹ During the workshop, a representative from the office of the President of the National Assembly confirmed that parliament was considering a bill to abolish the death penalty.³⁸⁰ The workshop set the stage for the interactive dialogue the following month and for the National Assembly’s vote to abolish the death penalty on December 10, Human Rights Day.³⁸¹

374. Hum. Rts. Council, *The Voluntary Fund for Financial and Technical Assistance in the Implementation of the Universal Periodic Review*, <https://www.ohchr.org/en/hr-bodies/upr/trust-fund-implementation> (last visited Apr. 4, 2023); *Sierra Leone The Universal Periodic Review [Infographic]*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/sites/default/files/2022-01/UPR38-Sierra-Leone-Infographic.pdf>.

375. Office of the High Comm’r for Hum. Rts., *Sierra Leone: UN Human Rights Recommendations Help Lead to End of Death Penalty* (July 21, 2022), <https://www.ohchr.org/en/stories/2022/07/sierra-leone-un-human-rights-recommendations-help-lead-end-death-penalty>.

376. *Id.*

377. *Id.*

378. *Madagascar MPS Abolish the Death Penalty*, HANDS OFF CAIN, http://www.handsoffcain.info/archivio_news/index.php?iddocumento=18310244&mover=0 (last visited Apr. 2, 2023).

379. *Id.*

380. *Id.*

381. *Id.*

5. Pitch the “big win.” Civil society organizations can examine the National Report and lobby their governments to make additional progress before the interactive dialogue, reassuring them that they will receive a positive reception in Geneva if they are able to report recent progress toward abolition. Civil society organizations can assure the government delegation that the interactive dialogue will include many comments about the country’s stance on abolition and can urge the delegation to prepare a statement on the issue. Civil society organizations might set the stage for the government delegation to use the interactive dialogue to announce a “big win” when it is on the international stage.

6. Leverage advance questions. Civil society organizations should strategically lobby Council delegates not only to make recommendations on the death penalty during the interactive dialogue, but also to pose written questions in advance of the meeting. Once those questions are published, advocates might reach out to contacts within the government to make them aware of the need to prepare a response for the interactive dialogue and to suggest that they also submit a written response. These questions can help prime the pump for the government delegation to adopt a thoughtful position to present in Geneva and can plant the seeds for the government to consider announcing further steps toward abolition, as Mongolia did in response to written questions before its first-cycle interactive dialogue. Questions can also prompt the government to make official, “on the record” statements during the interactive dialogue that may become useful advocacy tools. Questions can also serve as a diplomatic means to signal to a country like Kyrgyzstan that it might not have completed all of the steps to finalize the ratification process.

7. Scrutinize every word. Civil society organizations should carefully monitor the interactive dialogue and any statements the government delegation makes about abolition. They might be on the lookout for references to “sovereignty,” such as Papua New Guinea’s references during its third-cycle interactive dialogue, suggesting that the UPR does not provide fertile ground for the government to take a stand to embrace abolition. Or they might listen for updates on legislation or descriptions of upcoming consultations. They might also fact-check statements, like Kyrgyzstan’s repeated assertions that it had already ratified OP2, and adopt a strategy to help the government correct course. Advocates should also be eager to praise any positive

statements the delegation makes about abolition and to highlight those statements in outreach to the media.

8. Consultations? Act quickly! Advocates might think that government statements emphasizing the need for consultations with stakeholders before abolition represent delay tactics or a lack of political will to take swift action. But Burkina Faso's national consultations happened nearly immediately, with the legislature voting to abolish the death penalty just weeks after the interactive dialogue. Civil society organizations should immediately reach out to government officials to help organize these consultations and to ensure that supporters of abolition have a seat at the table.

9. Use the UPR to give an abolitionist head of state additional leverage over lawmakers. A country's executive authorities typically control engagement with the UPR. If the country's chief executive favors abolition but faces resistance in the legislative branch, she might use the UPR as a platform to make commitments to abolish that she can subsequently use to leverage action. Both Mongolia and Uzbekistan started their paths toward abolition with presidential decrees. The UPR served as a catalyst to enable the governments of those countries to press their legislatures to pick up the baton and formalize abolition. Sierra Leone's delegation to Geneva outlined the steps the government had taken to brief parliament on the status of the country's UPR commitments and the need for legislative action. Benin, Fiji, and Mongolia even used the interactive dialogue to outline a timeline for parliamentary action.

10. Consider whether fanfare is appropriate. Chile, El Salvador, France, Nicaragua, the Philippines, São Tomé and Príncipe, and Ukraine seemed to downplay or ignore the subject of abolition or ratification during their UPRs. For such countries, behind-the-scenes advocacy and recognition may be a more effective means of securing acceptance and implementation of recommendations to abolish the death penalty or ratify OP2.

11. Deferred recommendations should mobilize advocates. If a government follows the lead of Burkina Faso and neither accepts nor rejects death penalty recommendations within days of the UPR, so that those response are included in the Report of the Working Group, but instead defers decision until the next Council session, advocates should view this decision as a call to action. In the case of Burkina Faso, soon after the interactive dialogue the government conducted "na-

tional consultations” to decide how to respond to the deferred recommendations, and those consultations happened quickly, because the National Assembly adopted the criminal code just weeks after the interactive dialogue. Advocates should ensure that they are able to participate in these consultations and should mobilize their supporters and allies to ensure that officials see that there is strong and diverse support for abolition.

12. Don’t be discouraged by rejected recommendations. Some countries are not motivated by the UPR to work toward abolition, but the fact that a country rejects recommendations should not necessarily be a source of discouragement. Chad, Guinea, Nauru, and Papua New Guinea all rejected death penalty recommendations in the UPR but abolished the death penalty within the next year. The UPR is only one advocacy strategy. Advocates should explore other opportunities to press for change if the UPR seems ineffective.

13. Don’t take “slow” for an answer. In the context of the UPR, many countries insist that they need time to launch awareness-raising campaigns, to gradually build support for abolition, or to launch a national debate on the death penalty, as was the case with Chad, Guinea, and Nauru. Even Mongolia’s National Report expressed some ambivalence about the prospects for abolition, and Papua New Guinea’s delegation to Geneva cited cultural and religious beliefs as an impediment to abolition. Yet all five countries abolished the death penalty or ratified OP2 within one year of the adoption of the outcome.

14. Push for a voluntary pledge. Voluntary pledges are an often-overlooked part of the UPR process. Governments rarely make voluntary pledges to abolish the death penalty,³⁸² but they can be an opportunity to demonstrate leadership and initiative, rather than being perceived as “reactive” to the recommendations of other States. Sierra Leone’s voluntary pledge at the end of the interactive dialogue demonstrated its good faith commitment to abolition and set the stage for subsequent action by Parliament and the President.

15. Equip officials with technical assistance to complete the ratification process. As the Kyrgyzstan case study highlights, mistakes can happen. When a government asserts that it has ratified or ac-

382. See UPR-Info.org, Database, Select “Voluntary Pledges,” select Issues: “Death Penalty,” <https://upr-info-database.uwazi.io/en/library> (showing voluntary pledges on the death penalty from Guyana, the Maldives, Mali, Poland, and Togo).

ceded to OP2, advocates should consult the official UN database of treaty ratifications³⁸³ to verify that the government has deposited the instruments of ratification. If it has not, advocates might reach out to contacts in government, to a friendly abolitionist country, or to a local U.N. representative to provide technical assistance. As a last resort, advocates can reach out to diplomats in Geneva to point out during the interactive dialogue that the country needs to complete the ratification process, as Belgium did for Kyrgyzstan.

16. Don't discount the symbolic significance of October 10 and December 10. Civil society organizations should determine whether World Day Against the Death Penalty (October 10) and Human Rights Day (December 10) can serve as symbolic occasions for a government to take action on abolition, framing the act as part of a global human rights movement, as was the case with Madagascar, Sierra Leone, and Uzbekistan. They could work with U.N. officials in the country and embassies of abolitionist countries to organize an event where officials could announce their latest step toward abolition, inviting local media contacts to cover the event. Organizing the event can create an artificial deadline that may motivate officials to act swiftly.

17. Always advocate for more death penalty recommendations. Even if a country seems unresponsive to UPR recommendations to abolish the death penalty, advocates should take the time to lobby permanent missions in Geneva to make recommendations. These recommendations have symbolic and instrumental value. The sheer number of recommendations on the death penalty can reinforce the importance that the international human rights community places on abolition and can remind officials that they will not escape scrutiny. Recommendations on the Council floor can also inspire abolitionists, who often feel that their voices are not heard.

Advocates should not neglect the opportunity to lobby permanent missions of newly abolitionist countries. Fiji, Sierra Leone, and Togo now regularly take the floor during interactive dialogues to recommend that other countries abolish the death penalty, and Chile and France are now leaders in the "Friends of the Protocol" group that encourages other States to ratify OP2.

18. Be strategic in advocating for SMART recommendations. If a country seems unlikely to abolish the death penalty or ratify OP2

383. *UN Treaty Body Database*, *supra* note 98.

in the short term, civil society organizations should advocate for UPR recommendations that take an incremental approach toward abolition. For example, a recommendation might call for a country to eliminate the mandatory death penalty or limit the death penalty to intentional killings. Or if a country relies on public opinion to justify retention of the death penalty, advocates might seek a recommendation calling on the government to collaborate with civil society to conduct a public awareness-raising campaign on the death penalty and its alternatives.

Each recommendation should be “SMART”: Specific, Measurable, Achievable, Relevant, and Time-Bound.³⁸⁴ If a government accepts a SMART recommendation, advocates will undoubtedly have concrete avenues to collaborate with government on implementation. They can monitor implementation and measure progress against clear benchmarks, and by the time of the next UPR they will develop a clear picture of whether the government has implemented the recommendation.

* * *

Nearly fifteen years of experience show that the UPR can influence the timing of some countries’ decisions to abolish the death penalty or ratify OP2. This influence manifests itself in different ways for different countries. Abolitionist civil society organizations can improve the efficacy of their UPR advocacy work by examining the connections between the UPR and domestic decision-making. In so doing, they can develop a fine-tuned UPR advocacy strategy that will achieve even greater success in pressing individual countries to work toward abolition. And by working in solidarity with abolitionists around the world through organizations like the World Coalition Against the Death Penalty, they can expand the reach of their tools and strategies and become integral players in the global abolitionist movement.

384. For more information on SMART recommendations in the context of death penalty advocacy at the UPR, see The Advocates for Human Rights, *SMART Recommendations*, YOUTUBE (Oct. 2, 2020), <https://www.youtube.com/watch?v=7WGp01j8whQ&list=PL-fOkYTWG0U9l0LBxs0Fxx4nkQM8zhFoH&index=12>.