



Pathways to Abolition: The Colonial Legacy of the Death Penalty in sub-Saharan Africa

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Received: 4 March 2026 / Accepted: 8 June 2026
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Abstract

The death penalty in sub-Saharan Africa remains a contentious issue: twenty-eight states have abolished the penalty, and twenty-one retain it. This paper situates the use or dis-use of capital punishment as a legacy of colonialism. Colonialism created conditions of ethnic fragmentation and economic vulnerability that prevented a meaningful transition to democracy at independence, resulting in weak states that relied on state violence to maintain power. Differing forms of colonial governance impacted the centrality of the death penalty to state power, and this paper addresses the distinction between direct rule and indirect rule in explaining why British Africa tends to retain the death penalty and the rest of Africa has tended to abolish.

Introduction

The death penalty in sub-Saharan Africa has been in flux, with a number of countries abolishing the punishment in recent years, bringing the *de jure* abolitionists in the region to twenty-eight, while twenty-one countries retain the death penalty, although eighteen of those are considered *de facto* abolitionist (Amnesty International 2024). These capital statutes are largely foreign imports,¹ imposed by the colonialists that also created the states themselves (Hatchard 1994). Colonialists defined the geographical and political constructs of African states, and, in order to assert their authority, they implemented structures of control (Herbst 2000; Amadife 1993). Colonisation did not create loyalty to the colonial state; its rule was based on conquest, and lacked legitimacy (Osterhammel 1997). The exercise of state power was therefore imposed through a monopoly on violence (Garland 2011). This paper argues that colonialism created conditions of ethnic fragmentation and economic vulnerability that prevented a meaningful transition to democracy at independence, resulting in weak states that have relied on state violence in order to maintain power. The death penalty was one

¹ Portugal's former colonies introduced the death penalty after independence.

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Table 1 Death penalty status

Coloniser	Retentionist	Abolitionist
Britain	Botswana, Eswatini, the Gambia, Kenya, Lesotho, Malawi, Nigeria, South Sudan, Sudan, Tanzania and Uganda	Ghana, Mauritius, Seychelles, Sierra Leone, South Africa, Zambia and Zimbabwe
France	Cameroon, Comoros, Mali, Mauritania and Niger	Benin, Burkina Faso, Central African Republic, Chad, Congo Brazzaville, Cote d'Ivoire, Djibouti, Gabon, Guinea, Madagascar, Senegal and Togo
Belgium	Democratic Republic of Congo	Burundi, Rwanda
Portugal		Angola, Mozambique, Guinea Bissau, Cape Verde, Sao Tome and Principe
Spain	Somalia, Eritrea	Equatorial Guinea
Italy		
German/South Africa		Namibia
Never colonised	Liberia, Ethiopia	

mode of state violence used both to uphold colonial and post-colonial rule, but it was particularly central to British rule (see Hynd 2023). Former British colonies are far more likely to retain the death penalty than any other colonial heritage (see Table 1). As Britain relied on a policy of divide and rule, it was easier to broadcast power and prevent serious threats to rule, meaning the death penalty was an efficient mechanism for re-establishing control. As direct rule sought to unify rather than divide its colonial subjects, nations like France, Belgium and Germany needed to utilise other forms of state violence to assert authority. How state violence was manifested has left its mark on the colonised nation, forging a system of domination which shaped the means in which power was achieved and maintained once the colonisers had left. The 'punitive coloniality' (Anderson et al. 2022) endures through the retention of the death penalty in modern day states.

This paper outlines the history of colonisation in sub-Saharan Africa, addresses direct and indirect rule on the continent, and the post-colonial histories that have shaped the development of criminal justice policy and practices. In doing so, the paper illuminates how the distinction between direct rule and indirect rule created legacies that are key to explaining why British Africa tends to retain the death penalty and the rest of Africa has tended to abolish.

Colonisation

Before 1885, very little of sub-Saharan Africa, beyond the coasts, was under foreign control (Herbst 2000). The colonisation of sub-Saharan Africa happened relatively late and it was done swiftly, with little effort and minimal conflict between competing powers. The continent was divided up by the Europeans at the 1884 Berlin Conference. African states were created by conquest--their borders were defined without reference to the existing tribal or geographical boundaries; rather, it was done entirely based on the competing interests and territorial gains of the European powers. Political and ethnic boundaries rarely matched (Colson 1969). As a result, there are 104 international borders existing in Africa, which

dissect 177 culture areas or groups (Asiwaju 1984), and represent on average 43% of their country's population (Englebert 2000).

Colonial rule was limited and incomplete, its authority lacked legitimacy for the colonised peoples, and therefore power was based on coercion. Young (1994) has argued that the need to rapidly assert control, and to bring in income to fund the colonial endeavour in Africa, meant that the resultant colonial state was particularly authoritarian.

Violence played a central role in state formation and governance. This was largely constituted through two institutions: the military and the criminal justice system. Military dominance served to impose colonial rule and subdue opposition. States used force when they were in jeopardy, in order to demonstrate an exercise of power (Herbst 2000; Wagner-Pacifici 2009).

The criminal justice system was key part of the 'coercive network' (Sherman 2009), as a means to impose and maintain power over the colonised. Practices of punishment were shaped by the desire to sustain foreign rule, establish the racial hierarchy and impose European notions of civilisation. Termed lawfare (Comaroff 2001), the criminal justice system was used as a tool of coercion to control the local population, serving to dissuade and punish challenges to state authority (Sarat 1999; Alexander & Kynoch 2011). The imported legal codes were part of the civilising mission of the colonisers, creating a form by which colonial knowledge and power could be transmitted (Tomlins 2001). They facilitated the establishment of colonial rule, and served to constitute social and economic relations (Malila & Makgala 2015).

The legal system helped to mould a cooperative labour force (Merry 1988), facilitating capitalism, which is a cornerstone of coloniality (Quijano 2000). The locals participated in the economy through coercion, such as compulsory cash crop production and forced labour (Mentan 1989). Given the financial constraints faced by colonial states, punishment often involved extracting money or labour from offenders (Alexander & Kynoch 2011). Convict labour was critical to social control and state formation (Coates 2018). The purpose of colonialism was to enhance the economic interests of the colonisers, at the expense of the local population. Their interests never formed part of the colonial agenda (Tauri & Porou 2014). These legal systems endured, and developed post-independence (Bringer 1981), but with little effort to develop or reform criminal law or incorporate the requirements of modernising African states—even after the transition to democracy in the 1990s. As a result, the criminal justice system retains cornerstones of colonial practice—what Anderson et al. (2022) term punitive coloniality. There was a failure to separate law from political administration, and nascent states relied on inherited policies based on maintaining law and order of authoritarian rulers (Coldham 2000; Alexander and Kynoch 2011). They were adopted by the post-colonial leaders,² who, left with the ethnic divides and economic underdevelopment created and sustained by the Europeans, resorted to the same tactics to broadcast and maintain power that lacked legitimacy to the people that they ruled.

The death penalty under colonial rule served expressly political rather than penal purposes, helping to bolster legitimacy in the event of state weakness. Hynd (2023) has comprehensively detailed the centrality of capital punishment to the British colonial project, identifying it as a form of violence that served to uphold state power. This became all

²For example, Malawi's Hasting Banda reinstituted some of the most repressive colonial laws after independence, and ZANU in Zimbabwe also resurrected security legislation to deal with dissent and threats to power (see Alexander and Kynoch, 2011).

the more pertinent during times when state security was threatened. Capital crimes were expanded under ‘state of emergency’ laws—as happened during the Mau Mau rebellion in 1950s Kenya (Anderson 2006). The death penalty served to maintain and demonstrate state power both during ordinary and extra-ordinary times. But, as Hynd (2023) points out, the death penalty was ultimately a sign of weakness of colonial rule. It represented an inherent contradiction, with the reliance on state violence conflicting with the civilising mission of colonisation. Using violence to secure its rule ultimately signified the weakness of the state.

The death penalty was not peculiar to the British experience—other European powers also utilised executions as a means to subdue the colonised people and prop up their rule—and the British also resorted to other means of state violence. But the British utilised the death penalty with far more frequency, and it formed a central pillar in the British coercive network in a way that it was not to other colonial powers (Hynd 2023; Karimunda 2014).

The British system of indirect rule meant more colonial use of the death penalty. Indirect rule was based on ethnic division which, at independence, subverted state consolidation. The inability of nascent states to unify contributed to military coups and state weakness, and the death penalty continued to be used to uphold power that lacked legitimacy. Direct rule relied far more on military intervention and attempted to assimilate colonial subjects, which did not rely on the death penalty, so at independence, the death penalty was not a central tool to address state power and weakness, meaning French colonies abolished the death penalty while British colonies only began to do so after the democratisation process in the 1990s.

Indirect Rule

Indirect rule is a system of governance where traditional structures were co-opted in order to impose colonial rule. It was decentralised, keeping a distance between the coloniser and the colonised (Blanton et al. 2001). The British favoured indirect rule. They used trading companies to subjugate and administer the colonies, then used the existing power structures to impose colonial rule, empowering the traditional elites for the day to day running of the colonies, and exploiting existing ethnic divisions to maintain control (Horowitz 1985; Robinson 2014). Maintaining the existing patterns of social organisation made it easier to effectively broadcast power, and the strategy of divide and rule helped to limit opposition, in that the fractured groups could not come together to form any meaningful resistance (Mukwedeza 2016).

British rule focused on creating a racial hierarchy by favouring one tribe above others—such as the Igbo in Nigeria and the Baganda in Uganda—and using that tribe to implement colonial rule, such as the Baganda in Uganda (Robinson 2014; Morrock 1973). This tactic of divide and rule ensured that the different ethnic factions did not unite against the British. The exploitation and politicisation of ethnic differences meant that they carried over to the post-colonial period, creating vested interests amongst different groups based on ethnicity, and therefore undermining the strength of the state—the 1966 constitutional crisis in Uganda, for example, which saw prime minister Milton Obote consolidate power and make himself President, was a result of the fallout with the Baganda monarch (Mutibwa, 1992; Southall 1974).

The British did prepare its colonies through elections and internal self-government ahead of independence (Bernhard et al. 2004), but ensured that they had a hand in elections during

the period of self-government (Morrock 1973). Political parties tended to be based on ethnic loyalties (Badru 2010). In Uganda, Britain supported the fragile alliance between a party headed by the *Kabaka* (king) of the Buganda tribe, and a party headed by a tribe which had been disenfranchised under colonialisation, specifically to avoid allowing a Catholic party from gaining power. This meant that at independence both political and military power were in the hands of tribes that British colonial policy had ensured had neither the training nor the education to lead in either. The result was civil war (Mutibwa 1992). Similarly, in Nigeria, the British brokered a constitution ahead of independence, which split the federation into three ethno-religious regions, and left a three-way coalition government in charge—the unresolved ethnic tensions led to the Biafran War (Babou 2010).

The formation of ethnically diverse nations meant that there were two potential group identities—ethnic and national. A strong sense of national identity creates consensus on what is in the state's best interest, whereas a strong ethnic identification is detrimental to democracy (Neuberger 2000). Englbirt et al. (2002) found, like Collier (1998) that a couple of large culturally homogenous ethnic groups were more likely to lead to polarisation than many smaller ones. Ethnic dominance doubles the risk of civil war, although fragmentation significantly reduces the risk (Collier and Hoeffler 1998, 2000). However, where there's a large majority ethnic group, that group comes to be the same as the state, like in Botswana, which protects against intrastate conflict (Posner 2004). Botswana is one of only a handful of countries in sub-Saharan Africa never to have experienced a coup (McGowan 2003; Barka & Mcube 2012).

The ethnic-based racial hierarchy created by the British meant that social status was tied to ethnicity, which reinforced ethnic identity over a national one (Horowitz 1985). The asymmetries created resentment and rivalries. The Igbo in Nigeria had been favoured for education by the British, and during the civil war 1967–1970, one million Igbo were massacred in the competition for resources, namely the crude oil found on their land (Morrock 1973). It was along ethnic lines that much of the post-independence violence played out, because newly independence nations were not unified, a leader from one tribe did not have legitimacy with the other tribes, and the only way to constitute power was through coercion, resulting in the use of state violence to maintain rule, just as had happened under colonialism.

As previously discussed, capital punishment was central to the colonial network of power for the British (Garland 2011; Hynd 2023). The British executed far more people than any other colonial power, according to Karimunda (2014).³ Even then, the death penalty was used sparingly—except when colonial authority was challenged, such as when there were uprisings. During the Mau Mau uprising in Kenya in the 1950s, 1,090 people were hanged—744 (68%) for non-homicide offences after the use of the death penalty was expanded under state of emergency legislation (Anderson 2006; Novak 2014, 2018). Similarly, during the 1915 Chilembwe Uprising in Nyasaland (Malawi), thirty-six men were publicly hanged for treason (Hynd 2010). The exercise in excessive state violence was used to re-assert British authority, and was achieved through an overreliance on the death penalty, as opposed to other means of state violence. Moreover, during periods where colonial rule was threatened, state of emergency laws expanded the scope of the death penalty; something many former British colonies adopted after independence (discussed later).

³ Although an alternative explanation is that the British just kept better records of the judicial executions it carried out.

Britain's policy of indirect rule relied heavily on the death penalty as a means to secure its power because it was a minimal exercise of state power and was effective in maintaining control. Indirect rule created ethnic fragmentation that prevented significant resistance: for example, the Mau Mau rebellion remained, for the most part, confined to the Kikuyu tribe—it did not lead to a country-wide revolution (e.g. see Anderson, 2006). As Hynd (2023) states, the death penalty was specifically a political penalty when used during states of emergency: it propped up a state that had been shown to be weak.

Direct Rule

Direct rule is a highly centralised form of governance, where control of the state administration is fully taken over by the coloniser (Bernhard et al. 2004). The continental European powers utilised direct rule in various guises for their African colonies. This section will address each power in turn, starting with the French, who had the bulk of colonies in sub-Saharan Africa.

France was actively involved in military expansion in its sub-Saharan African colonies, and engaged in a system of cultural assimilation, whereby the colonised were integrated into French culture and language, as a means of 'civilising' the locals (Mentan 1989). Administration was centralised, with local power structures replaced and all ethnic groups incorporated into a single social system (Blanton et al. 2001). France treated its colonies as a single entity, thereby limiting the opportunity for any individual identity based on ethnicity or tribe. Initially, France instigated a hybrid legal system, with separate laws for Europeans and Africans, on the basis that Africans were not sufficiently developed to be ruled by French law—a reflection of the racial hierarchy of Quijano's (2000) coloniality of power. This was abolished in 1946, and all of French Africa was brought under French civil law (Berinzon and Briggs 2016). The legal systems were relatively homogenous, compared to British colonies.

Capital punishment was used in French colonies from the 1890s, when military conquest had ended and France was trying to consolidate its rule and impose its political order (Gendry, 2020). Senegal was the only African nation to adopt the French execution of choice, the guillotine; all other French colonies used the firing squad (Konate 2021, October 10). Death sentences in French Africa were routinely commuted, and Karimunda (2014) reports that some colonies—Dahomey (Benin), Ivory Coast and Togo—became *de facto* abolitionists as a result. The death penalty was not used as an instrument of oppression. As France had sought to unify rather than divide its colonial subjects, it needed to utilise military might to assert authority. When faced with resistance in its sub-Saharan African territories, the French responded with military force: for example, when West African soldiers of the Tirailleurs Sénégalais mutinied over pay in 1944, the French massacred them, with fatalities ranging from 35 to over 300. The criminal justice system barely featured in the colonial attempts to reassert control: of the mutineers who were sent to trial, the French President pardoned them all (Mourre 2017). As French colonial control was maintained through military intervention, the death penalty was far less central to the expansion of state power. Judicial execution did not serve the same purpose to strengthen the weak state; that was the role of the military.

In 1958, French colonies were given the opportunity to vote on independence, with the choice of being independent and receiving no aid from France, or to become autonomous republics, still tied to France through cooperation agreements which fundamentally meant France still maintained economic, political and cultural dominance. Only Guinea voted for immediate independence; the rest chose to gain sovereignty but remain part of the French Community (Martin 1985). The manner in which French Africa gained independence was contradictory to the notion of independent states, capable and able to self-govern. Instead, France ensured it retained its control and access to resources in its former colonies, and they simply lacked the economic and political power to resist. Guinea, the only colony to assert its right to full independence, free from the shackles of France, suffered the economic consequences of the decision (Berinzon & Briggs 2016). The path to independence meant France continued to engage in the politics and economies of its former colonies after independence: seven of its former colonies in West Africa use the CFA franc, pegged to the euro, and France has maintained military presence in former colonies, intervening in interstate conflicts throughout the post-colonial period. This ensured France's interests were maintained and protected in its former colonies—which has been blamed for the spate of recent coups (Martin 1985; Mbulle-Nziege & Cheeseman 2023, August 6).

Many former French colonies became one party states at independence: Guinea, Mali, Niger and Upper Volta (Burkina Faso). This was by design, as a means to unite the country under a single political organisation and eliminate ethnic based affiliations in politics (Bandyopadhyay & Green 2008; Collier 1982). But this did leave power consolidated with one leader, and no legitimate means to challenge their authority. For former French colonies, the colonial system of centralisation had eroded traditional authority, meaning those that had failed to assimilate were too disadvantaged to raise a threat after independence—but if they did, it was a military threat, because all other nonviolent means of dissent would quickly be suppressed (Blanton et al. 2001).

For the Belgians—as well as the Germans—state power was imposed through violent repression, rather than formalised justice systems. Germany lost its African colonies⁴ under the Treaty of Versailles in 1919, but its pre-war history was characterised by violence, the use of forced labour and the brutal response to frequent uprisings: between 40,000 and 100,000 locals were killed in response to the Herero Rebellion in German South-West Africa (Namibia) in 1904, and 80,000–300,000 killed when the Maji Maji rebellion in Tanzania was put down the following year (Kuss 2017). Criminal justice still played a role—Germany established more prisons than schools in Togo—but military might was key to retaining control in the colonies (van der Heyden 1999).

Belgium focused on economic gains and paternalism (Conteh-Morgan 1997). Belgian colonial rule in Congo was characterised by violence and repression. It was far more dictatorial and authoritarian than French or British rule (Akwei 1987). But this did not extend to the use of the death penalty. Belgium was circumspect in its use of capital punishment: Karimunda (2014) reports that only ten death sentences were imposed between 1935 and 1957 in Congo. Belgium instead relied on other forms of state violence to secure colonial rule, becoming notorious for its violent excesses in the Congo. This was in part because of the challenges of broadcasting power over a landmass of 2.345 million square kilometres, which meant it was not possible to effectively establish political control, or rule of law

⁴ German South-West Africa (Namibia), Cameroon, Togo and German East Africa (Tanzania, Rwanda and Burundi).

(Herbst 2000). Instead, power was imposed through arbitrary and coercive physical violence, specifically in the pursuit of economic exploitation. Forced labour was a cornerstone of the Belgian colonial project. Workers who failed to meet quotas had their hands or feet amputated, and those who refused to work would be beaten or killed (Hochschild 2012). Ocobock (2012) argued that corporal punishment was a means through which the colonial government broadcast its authority, although it was the lack of bureaucracy that permitted these abuses to continue—the government’s inability to establish its authority led to systematic abuse. Between five and ten million people are estimated to have been killed in the Congo under Belgian rule (Hochschild 2012). The failure of Belgian colonial regimes to effectively establish systems of state control left countries without appropriate systems to assert authority, resulting in genocides in two former colonies⁵ and ongoing patterns of intrastate conflict in another,⁶ with the death penalty losing legitimacy in Burundi and for Rwanda as the two nations transitioned to democracy in the 1990s (Hesselbein 2007; Badru 2010).

Portugal adopted an oppressive but assimilationist approach to colonisation (Conteh-Morgan 1997). It initiated aggressive operations against local resistance in its African colonies, which were some of the bloodiest that took place on the continent. Angola became a penal colony for Portuguese criminals (Coates 2018; Harrell-Bond & Forer 1981). The presence of banished persons, military control and the slave trade characterised Portuguese colonies, but there was no capital punishment (Novak 2014). Portugal had abolished its own death penalty in 1867 (Vansina 2003; Dudai 2021). It had a small population, and could not afford to kill off its criminals when they were of more use as forced manpower. Instead, convict labour was critical to social control and state formation in Portuguese colonies (Coates 2018). Portugal deemed its colonies an integral part of overseas provinces, and singularly failed to plan for independence, resulting in a violent process of liberation (Chabal 1992). By 1964, Portugal was waging war in all three of its major African colonies—Angola, Guinea-Bissau and Mozambique—and 40% of the national budget went to military expenditure. It was not until a military coup in Portugal in 1974 that independence was granted (Harrell-Bond and Forer 1981). Portugal’s failure to forge a path to independence led to civil wars in Angola and Mozambique (Englebert et al. 2002). Portuguese colonies gained independence a decade after most of the rest of sub-Saharan Africa, in the 1970s—a period that was rife with military rule and instability, where the death penalty was used extensively for political purposes, meaning former Portuguese colonies became independent in a very different regional climate than their neighbours. The violent nature of the independence struggle, and ongoing civil wars, resulted in former Portuguese colonies introducing the death penalty as a means to maintain power, using it almost exclusively for crimes against state security (Amnesty International, 1977, 1978). The death penalty was only abolished as the countries transitioned towards peace in the 1990s (Chabal 2001, 1992).

Colonialism was based on the concept of exploitation and domination, with power subsequently maintained through repression and violence (Quijano 2000; Collier 2009). The structures that were developed in order to enable and sustain colonial rule created patterns of power, including knowledge production and the establishment of social order, and these actively remained after the end of colonialisation (Maldonado-Torres 2007). The divergent

⁵ Burundi and Rwanda.

⁶ The Democratic Republic of Congo.

styles of colonial administration and the distinct ideologies and systems of control determined how state power was implemented. Indirect rule caused divisions that ensured less resistance, and therefore a minimal exercise of state power in the form of the death penalty was an effective means of bolstering state weakness; however, it created conditions of ethnic fragmentation and economic vulnerability that, at independence, resulted in weak states that relied on state violence to maintain power, specifically the death penalty. During Hasting Banda's autocratic rule in Malawi (1964–1994), for example, 233 people were executed—but no executions have been carried out since the transition to democratic rule in the 1990s (Amnesty International 2024). The first President of Zambia, Kenneth Kaunda (1964–1991), oversaw 68 executions—whereas only eight have been carried out since a return to democratic rule and prior to abolition in 2023 (Sishuwa 2023, January 9).

As direct rule focused on assimilation, rulers relied on other forms of oppression—often the military—to reassert the strength of the state. The French, particularly, have been actively involved in the political affairs of former colonies, intervening in Gabon in 1964 to restore toppled President Leon Mba, supporting Hissène Habré's coup in Chad in 1981, and maintaining Blaise Compaore's 27-year rule of Burkina Faso; all in order to secure French interests by choosing which regimes survive (First 1970; Mbulle-Nziege & Cheeseman 2023, August 6). Britain, on the other hand, has been disinterested in the survival of its former colonies, choosing not to help Nigeria during the first civil war (Daly, 2024). French interference has meant that power in former French colonies was secured through patronage and military might, meaning the death penalty was rarely used to counteract state weakness.

Independence

Independence was a critical juncture, which helped shape the immediate future for the nascent states. Colonialism left African states poorly prepared to rule. The newly independent countries remained in their colonial format—borders were not re-examined (Herbst 2000). Post-colonial African leaders had to try and build nations from the artificial borders they had inherited (Robinson 2009). But colonially imposed borders do not automatically create a national identity: arbitrary boundaries have been shown to increase the likelihood of both inter and intrastate conflict, and weaken the stability of the government (Englebert et al. 2002). State building was rushed and financially focused: little thought or effort was put into developing a nation. For countries that were created as an amalgamation of different ethnic groups with no shared or common culture, language or history, made nation building was a challenging endeavour.

Colonisation had not created the infrastructure for democracy; it created systems of state power that were built on status asymmetries, and economic hierarchies based on race, which created ethnic and social fragmentation (Collier 2009; Abernethy 2000). This meant that western multi-party systems simply did not work, as they only served to exacerbate ethnic tensions (Laakso and Olukoshi 1996; Decalo 1989). Given the lack of infrastructure for democracy, the leader's power often lacked legitimacy, and the ethnic fragmentation led to tribal-based challenges—all exacerbated by the economic instability that resulted from the patterns of development created by the colonialists in order to exploit natural resources that left economies highly dependent on exports (Bernhard et al. 2001).

The lack of social cohesion in the newly independent states provided fertile ground for authoritarian regimes to flourish (Hesselbein 2007). The failure to create a national identity or unify the various ethnic factions from the colonially-created nation states left the post-independence leaders vulnerable. In a bid to impose their authority and minimise threats to power, they returned to the same repressive sanctions used by the colonisers. State weakness at independence required relying on state violence to remain in power.

Furthermore, the enforcers of state security, which had ensured order in the colonial state, had been removed, and now left a vacuum of oversight to check state power (Southall 1974). The independence leaders continued the colonial legacy of not being accountable to the people it ruled. Gaining power meant being able to monopolise the state apparatus of violence: the military and the death penalty. Many independence leaders reverted to the same tactics that the colonisers had used in order to assert their authority—utilising the very structures put in place by the Europeans. For example, Hastings Banda of Malawi used the death penalty as a means to quieten political unrest after the Chipembere Uprising in 1965, executing Medson Silombela in front of 400 witnesses—the same tactics the British had used in 1915 to respond to the Chilembwe Uprising (Hynd 2010; Novak 2018). Similarly, Zimbabwe's ZANU utilised some of Rhodesia's most repressive security legislation against the rival ZAPU in the 1980s (Alexander and Kynoch 2011).

The inability to form a nation state, and subsequent rebellions, was not just a fault of colonialism: both Liberia and Ethiopia experienced political violence, as a result of the founding communities (Americo-Liberians and Amhara) failing to create a national identity beyond that of an ethnic identity (Young 1982). Both countries have experienced a succession of coups, and both retain the death penalty as a means to bolster state weakness.

The military had been a means of enforcing and sustaining colonial rule, especially in the face of resistance, but armies had been kept small, and tightly controlled, in order to ensure they did not pose a threat to colonial rule. Officers were Europeans, and foot soldiers were local. Britain and Belgium recruited groups perceived as martial tribes into their militaries (Morrock 1973; Young 1982). The Acholi in Uganda, Tiv in Nigeria and Kamba in Kenya dominated the colonial army (Blanton et al. 2001). This again enforced a racial hierarchy, because the tribes chosen for uniform service were not the same as those favoured for administrative position: in fact, divide and rule meant that it was the economically and educationally deprived tribes that became soldiers, which was a successful means of ensuring they did not pose a threat to colonial rule. But it caused problems at independence, because there were no suitable locals to lead the army after the colonial officers departed, and unqualified soldiers got promoted to ranks they otherwise could not have attained, such as Uganda's Idi Amin (Mutibwa 1992).

The army became the arbiters of power after independence. Post-colonial states focused on protecting themselves from the populace, rather than building capacity to economically involve every sector of society (Laakso and Oluoshi 1996). When faced with opposition, the leader had a choice of either introducing legislation that decrease internal pressure, or bring in the army to maintain a monopoly on power (Caruso et al. 2015). In the early 1960s, there were eight democratic regimes in sub-Saharan Africa—compared to 23 emerging autocracies (Barka and Mcybe 2012).

The leader would empower the existence of the military to protect against outside threats, but as the army became more powerful, it also posed a threat to the state. Therefore, other counterforces were built up, often recruited based on ethnicity or other trust ties—such as the

secret police. With all alternative bases of power removed, except the army and its counter force, this led to a military coup (Southall 1974; Amoateng 2022).

Coups became the “functional equivalent of elections” (Decalo, 1990, p.2). A significant number of successful coups occurred in the 1960s, following independence, but became less successful in the 70s and 80s as countries developed and established political systems that buffered against coup attempts (Barka and Mcube 2012). British colonies experienced more frequent and longer coups, and periods of military rule: the countries with the greatest number of coups in sub-Saharan Africa are the Sudan (17), Ghana (10), Sierra Leone (10), Nigeria (8), all former British colonies, and Ghana, Nigeria, Sierra Leone, the Gambia and Uganda have all experienced prolonged periods under military rule (Daly 2024; Mbulle-Nziege & Cheeseman 2023, August 6). This is a direct consequence of the British policy, which had persevered traditional power structures, ensuring even the tribes the British disadvantaged were still able to politically mobilise, and, at independence, the lack of unification meant that different ethnic groups were competing for state control (Blanton et al. 2001).

Coups represented a serious threat to state power, and the response was the use of violence to reassert authority. Given the number of coups in British Africa, it is not surprising that former British colonies carried out the greatest number of executions in the 1960s, as means to assert power. In contrast, former French colonies tended to commute death sentences during the same time period. The French had far greater influence in their former colonies, and as the abolitionist movement gathered momentum in France, this influenced judicial practices in French Africa, which therefore limited the use of the death penalty. France had imported its legal statutes wholesale to its colonies, irregardless of cultural differences, because the goal was assimilation, and development in the metropole continued to impact the function of the law in the colonies—including in the use of clemency for the executive, and the judicial reticence in passing death sentences (Karimunda 2014). Law in British colonies, however, was shaped by its application in an African context, meaning the death penalty statutes in British Africa were fundamentally different to the ones in Britain. The colonial death penalty was used far more frequently—ten Africans were hanged for every Briton hanged—and continued to be used even as the future of capital punishment in Britain was being debated (Hynd 2023). France’s continued influence on its former colonies meant the death penalty was rarely used as it grew out of favour at home, and state weakness was addressed through external military aid rather than execution. Britain left a legacy of execution to prop up a weak state, and did not intervene to limit the death penalty⁷—even as it was abolished domestically—nor to end civil wars in former colonies.

In more recent history, former French colonies have experienced a spate of coups—there have been nine successful coups since 2000, and nine unsuccessful coups, all in Francophone West Africa (Vines 2024). This is a consequence of France’s continued neo-colonial strategy to maintain the status quo in its former colonies which favours French interests (Martin 1985; Mbulle-Nziege & Cheeseman 2023, August 6). While initially French interference facilitated or replaced weak regimes, becoming the outside arbitrator of who had power, meaning the criminal justice system did not serve the purpose of propping up ille-

⁷ With the exception of Rhodesia after the Unilateral Declaration of Independence, which the British government did not recognise and therefore sought to prevent from carrying out executions, with HM the Queen granting the prerogative of mercy to three men who were subsequently hanged by Ian Smith’s government in 1968 (Novak, 2025).

gitimate rules; the French military did that instead. However, as states have strengthened, they are now able to stand up to French neo-colonialism: Mali, Burkina Faso, Niger, Chad, Senegal, and Ivory Coast have expelled French troops or terminated French defence contracts since 2022 (Lawal 2025, January 6; Ewokor & Therrien, 2025, January 1). As states strengthen, they are able to do away with colonial legacies of state control.

There have been more than 200 military coups in Africa since the 1960s, 45% of which have resulted in a regime change (Barka & Mcube 2012). By 1990, only one country in sub-Saharan Africa—Mauritius, in 1982—had ousted a ruling party from power through an election (Decalo, 1990). The intervention of the military in a political process, resulting in unconstitutional regime changes, undermined what little legitimacy existed in the state. Lacking a popular mandate to rule, and the legitimacy needed to do so, military leaders resorted to consolidate their power through coercion and violence. Military rulers do not govern any better than democratically elected leaders, and often are far worse, because they fail to create political order (McGowan 2003). Using state power does not create political stability (Iweriebor 1982). Instead, coups set the precedent for military intervention into politics, leaving a persistent legacy of instability (Shayamunda & Bhanye 2023). Weak states then had to find means of constituting power, and this contributed to overreliance on the death penalty.

The death penalty was used extensively to sustain unstable regimes. Governments rule by fear when unable to rule by consent (Garland 2011; Greenberg & West 2008). Achieving power through force creates a crisis of legitimacy for the new rulers—as the colonialists themselves contended with. Many countries introduced the death penalty to contend with political instability or expanded its use. Both Angola and Mozambique, former Portuguese colonies, introduced the death penalty after a contentious path to independence. Having fought the Portuguese, Angola entered independence in 1975 with a fragile transitional alliance of three warring liberation movements, the National Front for the Liberation of Angola (FNLA), the National Union for the Total Independence of Angola (UNITA) and the Popular Movement for the Liberation of Angola (MPLA), who quickly turned on each other, fighting for power. The MPLA declared itself the winner on Independence Day in November 1975, and assumed control, implementing its wartime Combatants Disciplinary Law on the country. This code had been created for MPLA soldiers, and enshrined the death penalty (Hoover, 1977), meaning Angola now became a retentionist country. Executions were carried out under this law, including of four foreign mercenaries in 1976, before being applied to civilians in 1978, through the People's Revolutionary Court, which had no right of appeal and operated independently from the civilian court system (Blanes 2023; Amnesty International 1979). Mozambique, too, descended into civil war after independence, with fighting between the ruling party Mozambique Liberation Front (FRELIMO) and rebel movement Mozambique National Resistance (RENAMO) (Chabal, 2001). The death penalty was introduced in 1979, for the crimes of treason, terrorism and sabotage. Capital cases were heard before the Revolutionary Military Tribunal, which had no right to legal counsel, nor to appeal. Twenty people were executed within six weeks of its implementation (Amnesty International 1979, 1980). For both Angola and Mozambique, the death penalty was introduced and used for crimes against state security, implemented under martial law but applied to both soldiers and civilians, with minimal oversight or rights. The lack of political transition to independence, and the ongoing conflicts, characterised by external interference, saw the death penalty introduced because it was a means to guard against threats to power

during active war. Dozens, if not hundreds, were executed by firing squad in both countries (Amnesty International 1980; Harrell-Bond and Forer 1981). The misuse of the death penalty became central during peace negotiations, with both countries abolishing it as they transitioned to civilian rule (FIDH, 2017).

The death penalty in former British colonies was used predominately for crimes against the state during the 1970s and 1980s, often under expanded legislation that placed the right to kill in courts outside the normal judicial system, without the procedural safeguards, or right to appeal (Amnesty International 1977, 1978, 1979, 1980, 1992b). Several former British colonies⁸ introduced the death penalty for armed robbery, a means to control the surplus of weapons in circulation as a result of the increased militarism.

Military rule was less stable than civilian rule, and therefore required greater displays of state power, meaning the death penalty was used far more by military regimes. Nigeria experienced two periods of military rule, where the use of the death penalty was expanded significantly. During the first period, from 1970 to 1979, Amnesty International (1992b) estimates there were over 960 executions. During the subsequent period of civilian rule, from 1979 to 1983, a “relatively small number of executions” (Amnesty international 1992b, p.2) were carried out, but on return to military rule in 1984, 355 people were executed in that year alone, and a further 301 the following year. In total, more than 2,600 were executed during periods of military rule in Nigeria, many of whom had been convicted under a special military tribunal, the Robbery and Firearms Tribunal, with no right to appeal (Amnesty International 2008; Coldham 2000). Under military rule in Ghana, special courts were created in 1982, and over 270 people were sentenced to death, and at least 100 executed in the eleven years before Ghana returned to civilian rule in 1993. There have been no executions under civilian rule (Amnesty International 1993, 2024). Rhodesia’s white minority government, after the unilateral declaration of independence in 1965, also implemented state of emergency measures, which expanded the use of the death penalty to political crimes, including arms possession (Amnesty International 1976). More than sixty executions took place between 1968 and 1976. In 1975, the government refused to disclose executions figures, but an estimated 152 people were hanged in the following three years, largely for insurgency-related offences (Novak 2025). Botswana, by contrast, one of the few countries in sub-Saharan Africa never to have experienced military rule or a coup, has executed at a conservative and consistent rate over the years, carrying out eleven hangings in the 1970s, ten in the 1980s and six in the 1990s. All executions have been for murder (FIDH 2007).

Countries that managed to contain and control the power of the military did not escape the coup curse, although they did manage to maintain more political stability. Tanzania’s independence leader, Julius Nyerere, recognised the threat the army presented to power: he refused to include the colonial African officers into the army after independence, and, after a failed coup in 1964, completely restructured it, and ensured to keep it under tight civilian control. Likewise, Zambia ensured the military was kept small, and under civilian control. Both countries experienced failed coups, as a result of the British colonial legacy that left ethnically diverse countries without the infrastructure for democracy, but with the ability to mobilise. As neither country has utilised the army as a means to maintain power, it meant that the military was not strong enough in either country to raise a successful coup (Lindemann 2010). Both countries, however, used the death penalty—dozens of people were executed in Tanzania before 1994, when recent presidents have refused to sign death war-

⁸ Zambia, Uganda, Nigeria, Ghana, Malawi and Kenya (Coldham, 2000).

rants, with Zambia following a similar path, with presidents refusing to sign death warrants since the last execution in 1997, before eventual abolition in 2022 (FIDH 2005; Sishuwa 9th January 2023). The death penalty continued to be an overt display of state power during the post-independence period when it was threatened by attempted coups.

Given the instability and illegitimacy of authoritarian leaders, there was a persistent threat of coups, and so the use of the death penalty became a necessary tool of military regimes to preserve their own power: Ghana executed three former heads of state in 1979, and dozens of soldiers for attempted coups in the 1980s (Amnesty International 2000). The last executions in Kenya (1987), Angola (1977), Burkina Faso (1989), Gabon (1985), Guinea-Bissau (1986), Niger (1976), Senegal (1967) and Sierra Leone (1998) were all of coup leaders (Peel 2024). The (over)use of the death penalty became a symptom of state weakness, not just a response to it.

The death penalty continues to be justified because of the high level of political instability in sub-Saharan Africa (Anckar 2014). It is seen as necessary for state security (Hynd 2023; Hood and Hoyle, 2008). For example, the Ugandan government told Amnesty International that if the death penalty was abolished, the general public would lose confidence in the government, and instead take the law into their own hands (Amnesty International 1992a). But the death penalty is not a signal of strength, it in fact signals that the government's legitimacy rests on its ability to exercise violence over its citizens.

Threats to state power—in the form of treason and terrorism—have represented a stumbling block to abolition on the continent (Dudai 2021). Ghana, Burkina Faso, Equatorial Guinea and Zambia have abolished the death penalty, but retain it for treason. Ghana sentenced six soldiers to death, for their roles in an attempted coup, just a year after abolishing the death penalty for ordinary crimes (Peel 2024). Cameroon and Mali—retentionist former French colonies—have sentenced people to death for terrorism, and Niger has expanded its use of the death penalty for terrorism (World Coalition Against the Death Penalty 2016). Chad reinstated the death penalty a year after abolition in order to execute ten members of terror group Boko Haram, while the Congo has announced the end of a two-decade moratorium in order to resume executions for treason (Peel 2024). The death penalty becomes necessary when there are threats to state authority.

Path to Abolition

Since 1990, openly military regimes have declined, but the military still maintain a less visible form of power—former soldiers rule as heads of government in 15 sub-Saharan African countries (Basedau 2020). The more successful leaders that emerged from coups—such as Ghana's Jerry Rawlings, Rwanda's Paul Kagame, or Uganda's Yoweri Museveni—have managed to transition to elected leaders, legitimising their power through the democratic process and building public support (Decalo 1989). However, the death penalty continues to play an expressly political purpose of bolstering legitimacy in the event of state weakness. Many of these leaders began to monopolise power, becoming life presidents. There have been presidential term limit debates in Rwanda, Comoros, Central African Republic, Uganda, Burkina Faso, Senegal, Cameroon, Congo, Malawi and Zimbabwe. This has been termed a 'constitutional coup', a new means of retaining power when an outright seizure is no longer acceptable (Corrigan 2017). Uganda's President Museveni threatened to resume

executions in 2018 when abolishing the constitutional term limits (Biryabarema 2018, January 19), using the threat of capital punishment as a reminder of the power he could exert. Museveni, a former guerrilla fighter, seized power like five of the seven presidents before him: by overthrowing the previous regime. His two most recent opposition leaders have both been charged with treason, a capital crime (Byaruhanga 2018, August 25). The death penalty—or at least its threat—still serves an important purpose for maintaining state power.

Coups remain an ongoing threat because leaders are not standing down, and therefore they look to utilise the mechanisms of state violence in order to retain power. For Rwanda, the death penalty is not an option—the country was pushed to abolish the death penalty in 2007 as many countries refused to extradite genocide suspects if they faced execution (Asimwe 2007, August 9). President Paul Kagame, a former guerrilla who has been in power for twenty-four years, instead uses other techniques of repression, both inside and outside its borders (Human Rights Watch 2023).

Since 1990, 78% of the 27 coups in sub-Saharan Africa have been in former French colonies. Recently coups in Mali, Niger and Burkina Faso saw the new leaders expel French soldiers. The colonial structures that established political systems designed to extract resources while controlling the populace through repressions—specifically the one-party state systems that France initiated ahead of independence—have created these grievances. France has a long history of supporting repressive and autocratic leaders, and, combined with the constitutional coups, has created the conditions for these military takeovers (Mbulle-Nziege and Cheeseman 6th August 2023). However, in former French colonies, there has been a steady rate of abolition—with twelve out of the seventeen abolishing the punishment since the 1990s; of the five retentionists, there have been no executions in over twenty-five years (Amnesty International 2024). The death penalty was never as central to the French colonial project; executions were rare, and France was far more directly involved in its colonies, and continued to be so after independence, managing post-colonial state weakness through military intervention. The death penalty did not serve the purpose of maintaining state power. The military was a more prominent feature of French colonial policy, and has not ceased despite independence: in 2022, France had 5,500 soldiers based in its former African colonies (Haroche 2023, August 22). It has led at least 30 direct military interventions between 1964 and 1995 (Faye 2023, November 6). The French military has remained the arbitrator of power in its former colonies, with no counter force to check its power, but as states are strengthened, they are better able to challenge French military dominance and assert their sovereignty.

Abolition

While state weakness resulted in the use and maintenance of the death penalty, state strengthening has contributed to its abolition. The abolition movements in the 1990s happened when many countries were going through a democratisation period which strengthened the state: political transitions, peace and reconciliation processes and constitutional reforms (FIDH 2017). These transitions usually happened when the death penalty had become synonymous with the violent excesses that characterised autocratic and military regimes, and ceased to be seen as legitimate. Namibia and Mozambique both abolished the death penalty in their respective constitutions in 1990, because it was incompatible with the new nations.

For Namibia, the decision was influenced by the arbitrary use of the death penalty under German colonial rule. For Mozambique, the internal security struggles that characterised the years of civil conflict after independence had led to a significant loss of life (Hatchard 1994). For both countries, their histories of the misuse of violence by the state led to new nation states that valued the right to life. Mozambique had been a Portuguese colony. The death penalty had not been a part of the colonial project for Portugal, and each former colony had introduced it post-independence. All of Portugal's colonies abolished the death penalty by constitutional reform (FIDH 2017).

For countries that retained the death penalty, its use declined. In Europe, as states became better established, the primary purpose of the death penalty shifted, to become an instrument of penal policy (Garland 2011). There has therefore been the assumption that abolition will follow the path of European nations: long term decline in use and eventual repeal (Greenberg and West, 2008). But the death penalty has not yet become a purely penal policy, it is still inextricably tied to the political: Ghana abolished the death penalty for ordinary crimes in 2023, then a year later sentenced six men to death for treason, which remained a capital crime. Zambia, too, has retained the death penalty for treason, despite abolishing for ordinary crimes in 2022 (Peel 2024). Abolition for ordinary crimes is a positive step, as the majority of people on death row in both countries were there for ordinary crimes (Amnesty International 2017; The Advocates for Human Rights 2023); however, retaining the death penalty for treason is still a continuation of colonial practices. The death penalty was part of the colonial project, designed for political rather than penal purposes, a tool to maintain state power, especially when that power lacks legitimacy (see Hynd, 2023), and therefore can be revived when state power is threatened.

Conclusion

Colonialism does not belong solely in the past (Aliverti et al. 2021). It created systems of domination and exploitation that persisted, and the apparatus of coercion in the colonial state has continued in the post-colonial state (Quijano 2000; Anderson et al. 2020). The different styles of colonial administration meant that power was manifested and maintained in different manners, and this impacts the retention and use of the death penalty. The legacy of colonialism on sub-Saharan Africa has been one of turmoil, with almost every country facing some form of political instability as they sought to create a nation state from a colonial state. Independence was characterised by state weakness, and leaders co-opted the same means of state violence that the colonisers had used in order to legitimise and prop up their rule.

British colonial rule was indirect, and relied on preserving and encouraging ethnic divides to maintain power. As a result, after independence, different ethnic groups competed for state control (Blanton et al. 2001). The death penalty was far more central to the British colonial project than other colonial powers, as a symbolic embodiment of authority that could be used if state power was ever challenged, and this legacy continued in its former colonies (Hatchard 1994). The majority of retentionist countries in sub-Saharan Africa are former British colonies; the only peaceful country that still executes is a former British

protectorate.⁹ For states with a colonial legacy of direct rule, the death penalty did not serve the same purpose, as the colonised became a unified group—executions did not and could not bolster a weak state in the same manner. Instead, greater show of force, in the form of military interventions, were used to legitimise the colonial state.

As the state strengthened, the death penalty declined. Yet it is retained because, despite the transition of most states to multi-party democracies, state power is often unstable—as the 2007 elections in Kenya demonstrate (Eifert et al. 2010). The persistent instability has served to highlight the fragility of rule in Africa, and for countries where the death penalty has a historically bestowed legitimacy as means to demonstrate authority, it serves a symbolic purpose: it is there to be revived should a display of state power ever be needed.

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⁹ Its relatively unique colonial history and the reasons for its continued use of the death penalty is discussed elsewhere (Peel, forthcoming).

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