

THE DEATH PENALTY IN LAW AND PRACTICE MOROCCO



**EC
PM** TOGETHER
AGAINST
THE DEATH
PENALTY





STATUS:
MORATORIUM ON EXECUTIONS

DATE OF LAST EXECUTION:
1993

NUMBER OF DEATH SENTENCES PASSED IN 2021:
10

NUMBER OF PRISONERS ON DEATH ROW IN 2021:
76 INCLUDING 2 WOMEN

[SOURCE: GENERAL DELEGATION FOR PRISON ADMINISTRATION AND REINTEGRATION]

IMPLEMENTATION OF THE DEATH PENALTY AND CONDITIONS OF DETENTION FOR DEATH ROW PRISONERS

SITUATION OF DEATH ROW PRISONERS

Conditions of detention for those on death row in Morocco are particularly harsh. In 2013, a report by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stated that detainees felt demeaned, marginalised and forgotten. The report also noted the overcrowding of prisons in Morocco. In a study conducted in July 2019, the *Coalition marocaine contre la peine de mort* (Moroccan Coalition against the Death Penalty) pointed to the lack of positive developments in the living conditions of death row prisoners.

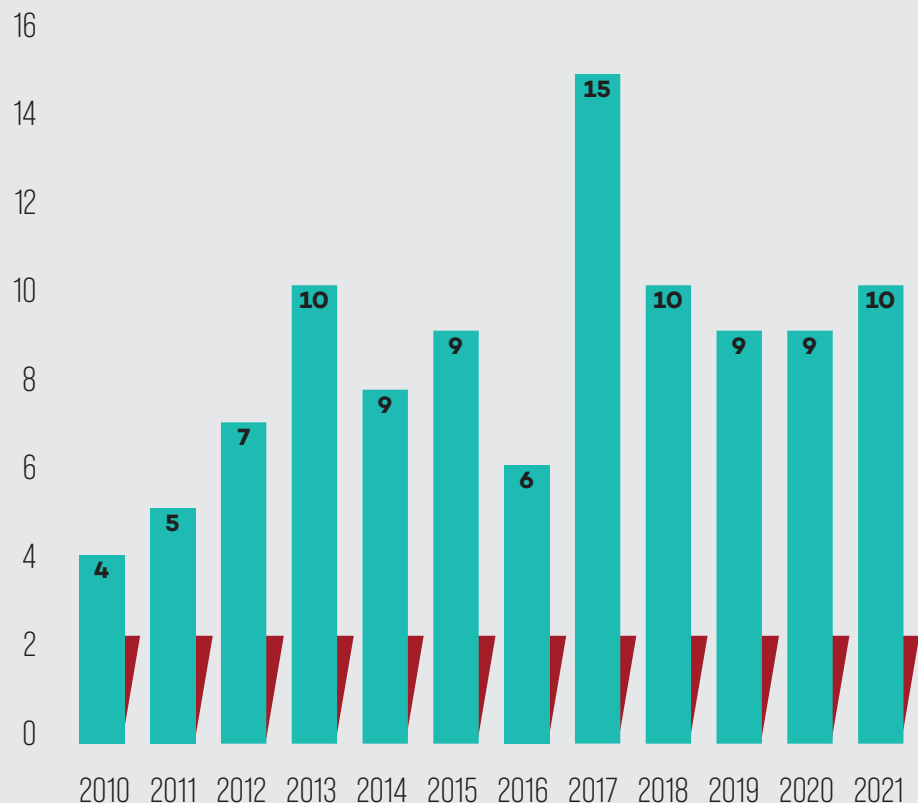
In July 2019, the *Coalition marocaine contre la peine de mort* conducted a field visit, during which 51 death row prisoners in Morocco were interviewed. Most of them were held in individual “accommodation” units, but 18% were held in collective units housing 6 to 13 prisoners (with 62.5% of collective units accommodating 9 people). It was noted, however, that all death row prisoners interviewed, regardless of their place of incarceration, were granted “recreation periods” of at least one hour, with the duration varying from one prison to another.

The study also highlighted that 18% of death row prisoners have no access to communication with the outside world and their families. Contact between those sentenced to death and their children is very limited. 78% of death row prisoners cannot receive visits from their children, thus further contributing to the dissolution of family ties. Finally, 58% of death row prisoners have no access to education and 96% have no access to vocational training.

PARDON

Article 53 of the Moroccan Penal Code provides that “the power to grant pardons is a prerogative of the Sovereign”. Royal pardons are occasionally granted to prisoners on a collective basis. Sometimes, such pardons are granted to prisoners on death row. In the first half of 2016, King Mohammed VI pardoned 35 death row prisoners on Throne Day and at Eid al-Adha. In 2018, one death row prisoner had his sentence commuted to life imprisonment. On 30 July 2019, Throne Day, the King commuted the sentences of 31 death row prisoners. In July 2020, a royal pardon was granted to two persons on death row.

EVOLUTION OF THE NUMBER OF DEATH SENTENCES OVER THE LAST 11 YEARS



NATIONAL LEGAL FRAMEWORK

CONSTITUTION

Article 20 of the 2011 Moroccan Constitution enshrines the right to life and provides that it is the most fundamental right of every human being. Article 23 of the Constitution guarantees all detainees the enjoyment of their fundamental rights and humane conditions of detention. It also provides for detainees to have access to training and reintegration programmes. Nevertheless, in the absence of an implementing decree, it is not currently possible to challenge the constitutionality of a law (preliminary ruling on constitutionality), particularly before the criminal courts.

PENAL CODE

Article 16 of the Penal Code provides that the death penalty is one of the main penalties in criminal cases. A large number of offences are punishable by death in Morocco. Crimes carrying the death penalty are not limited to violent crimes. For example, arson, kidnapping and treason are punishable by the death penalty. Thirty-seven provisions of the Penal Code provide for the use of the death penalty. A draft of the new Penal Code submitted by the former Minister of Justice proposed a reduction in the number of crimes punishable by death to 11. However, three new categories of crimes could carry the death penalty: genocide, crimes against humanity and war crimes. The draft of the new Penal Code is still under discussion.

CODE OF MILITARY JUSTICE

A new Code of Military Justice was adopted in 2014 and entered into force in May 2016. The court established by the new Code has jurisdiction over military offences committed by military personnel and persons treated as military personnel (Article 2). However, the military court has no jurisdiction to try acts committed by minors under the age of 18 at the time of the act (Article 5). The former Code of Military Justice already provided for the lack of jurisdiction of military courts in such cases. The new Code of Military Justice has significantly reduced the number of offences and crimes carrying the death penalty. Many of these offences are now punishable by life imprisonment. Twenty provisions of the former Code provided for the death penalty. Today, 11 articles provide for the imposition of the death penalty.

LAW ON THE REPRESSION OF CRIMES AGAINST THE HEALTH OF THE NATION

Article 1 of the Law of 29 October 1959 provides that those who manufacture or possess food products that are dangerous to public health are liable to the death penalty.

There are a total of 49 legislative provisions on the application of the death penalty.

LIST OF LEGISLATIVE PROVISIONS ON THE DEATH PENALTY

PENAL CODE

- Article 155-7** Anyone who, having been sentenced by irrevocable judgement to a criminal penalty, commits a second crime of any kind whatsoever, shall be sentenced: [...] to death if the first crime was punishable by life imprisonment and the penalty prescribed by law for the second crime is life imprisonment.
- Article 163** An attempt on the life or person of the King shall be punished by death. Such an attempt can never be excused.
- Article 165** An attempt on the life of the Heir to the Throne shall be punished by death.
- Article 167** An attempt on the lives of members of the Royal Family shall be punished by death.
- Article 181** Anyone who, in time of peace or war, is guilty of treason shall be punished by death. [...]
- Article 182** Anyone who, in time of war, is guilty of treason, shall be punished by death [...].
- Article 185** Any foreign national who commits any of the acts referred to in Article 181, paragraphs 2, 3, 4 and 5, and Article 182 shall be guilty of espionage and punished by death.
- Article 190** Any Moroccan or foreign national who has undertaken, by any means whatsoever, to undermine the integrity of Moroccan territory shall be guilty of undermining external state security. When the offence has been committed in times of war, the offender shall be punished by death. [...]
- Article 201** Anyone who commits an attack with the aim of either provoking civil war by arming or inciting the inhabitants to arm themselves against each other, or bringing devastation, massacre and pillage to one or more douars or localities, shall be guilty of undermining internal state security and punished by death.
- A conspiracy formed for the same purpose shall be punished by a term of imprisonment of between five and twenty years if it was followed by an act carried out or started in preparation for its execution.
 - If the conspiracy was not followed by an act carried out or started in preparation for its execution, the penalty shall be a term of imprisonment of one to five years.
 - A proposal made and not approved to form a conspiracy shall be punished by a term of imprisonment of six months to three years.
- Article 202** The following persons shall be guilty of undermining internal state security and punished by death:
- 1 • Anyone who, without the right or legitimate reason, takes or exercises the command of an army unit, one or several warships, one or several military aircraft, a stronghold, a military post, a port or a city;
 - 2 • Anyone who retains any military command against the order of the Government;
 - 3 • Any commander who keeps an army or a troop assembled after dismissal or separation has been ordered;
 - 4 • Anyone who, without order or authorisation from the legitimate power, raises armed troops or causes them to be raised, enlists or conscripts soldiers or causes them to be enlisted or conscripted, or supplies or procures arms or ammunition for them.

- Article 203** Anyone who, [...], has placed himself at the head of armed groups, or has exercised any function or command in them, shall be guilty of undermining internal state security and punished by death. The same penalty shall be applied to those who have directed the association, raised or caused to be raised, organised or caused to be organised seditious groups or have knowingly and wilfully supplied or procured for them arms, ammunition and instruments of crime, or sent convoys of supplies, or who have in any other way given assistance to the leaders or commanders of the groups.
- Article 204** Where any of the crimes provided for in Article 201 have been committed or merely attempted by a group, the penalties laid down in that Article shall, under the conditions set out in Article 171, be applied to all individuals who are members of the group, without distinction of rank. (*Article 171 refers in particular to Articles 163, 165 and 167, which carry the death penalty*)
- Article 218-3** The introduction or placement in the atmosphere, on the ground, underground or in waters, including those of territorial seas, of a substance which endangers human or animal health or the natural environment shall also constitute an act of terrorism within the meaning of the first paragraph of Article 218-1 above. [...] The offender shall be punished by death when the acts result in the death of one or several persons.
- Article 218-7** The maximum penalties for offences referred to in Article 218-1 above shall be increased as follows, where the acts committed constitute offences of terrorism: - death where the penalty is life imprisonment; [...].
- Article 235** In the event that concerted action by civil authorities and military bodies or their leaders have the purpose or result of undermining internal state security, the instigators shall be punished by death and the others by life imprisonment.
- Article 267** Anyone who commits violence or assault against judges or prosecutors, public officials, commanders or law enforcement officials in the performance or in the course of their duties shall be punished by a term of imprisonment of three months to two years. [...] Where the violence results in death, with the intention of causing death, the penalty shall be death. [...]
- Article 392** Anyone who intentionally causes the death of another person shall be guilty of murder and punished by life imprisonment. However, murder shall be punished by death: Where it precedes, accompanies or follows another crime; Where its purpose is either to prepare, facilitate or carry out another crime or offence, or to facilitate the escape or ensure the impunity of the perpetrators or accomplices of that crime or offence.
- Article 393** Murder committed with premeditation or ambush shall be deemed to be wilful killing and punished by death.
- Article 396** Anyone who intentionally kills his father, mother or any other ascendant shall be guilty of parricide and punished by death.
- Article 397** Anyone who intentionally causes the death of a new-born child shall be guilty of infanticide and punished, in accordance with the distinctions set out in Articles 392 and 393, by the penalties laid down in those articles. However, a mother who is the main perpetrator or an accomplice in the murder or wilful killing of her new-born child shall be punished by a term of imprisonment of five to ten years. This provision shall not apply to her co-perpetrators or accomplices.

- Article 398** Anyone who attempts to take a person's life by means of substances which may cause death with any degree of immediacy, regardless of the manner in which these substances have been used or administered, and regardless of the consequences, shall be guilty of poisoning and punished by death.
- Article 399** Anyone who, in the execution of an act qualified as a crime, uses torture or acts of barbarism shall be punished by death.
- Article 410-4** When the causing of bodily harm, violence, assault or deprivation referred to in Article 408 results in mutilation, amputation, deprivation of the use of a limb, blindness, loss of an eye or other permanent disability, the penalty shall be a term of imprisonment of ten to twenty years. [...] [Art. 408 refers to causing bodily harm, and deliberate failure to provide care and nourishment for a child under 15]. If the causing of bodily harm, violence, assault or deprivation was committed with the intention of causing death, the perpetrator shall be punished by death.
- Article 411** When the offender is an ascendant or any other person with authority over the child or with custody of the child they shall be punished: [...] 5° In cases provided for in paragraphs 3 and 4 of Article 410, with the death penalty.
- Article 412** Anyone guilty of the crime of castration shall be punished by life imprisonment. If death results, the offender shall be punished by death.
- Article 438** If the person who has been abducted, arrested, detained or held captive has been subjected to physical torture, the offenders shall, in all cases provided for in the preceding articles, be punished by death.
- Article 439** The penalties laid down in Articles 436, 437 and 438 shall be applicable, in accordance with the provisions of the said articles, to those who knowingly provide either a place to detain the victims or hold them captive, or a means of transport used to move them.
- Article 463** If death was caused with the intention of provoking it, the offender shall be punished, depending on the case, with the penalties provided for in Articles 392 to 397.
- Article 474** In cases provided for in Articles 471 to 473, abduction shall be punishable by death if it is followed by the death of the minor.
- Article 580** Anyone who wilfully sets fire to buildings, dwellings, lodgings, tents, cabins, including mobile cabins, ships, boats, warehouses, building sites, when they are inhabited or used for habitation, and generally to inhabited places or places used for habitation, whether or not they belong to the perpetrator, shall be punished by death. The same penalty shall be imposed on anyone who wilfully sets fire to vehicles, aircraft or carriages carrying persons, or to carriages not carrying persons but forming part of a convoy carrying them.
- Article 584** In all cases provided for in Articles 581 to 583, if the wilfully caused fire resulted in the death of one or more persons, the offender shall be punished by death.
- Article 585** The penalties laid down in Articles 580 to 584 shall apply, according to the distinctions provided for in those articles, to those who wilfully destroy, in whole or in part, or attempt to destroy, by means of a mine or any other explosive substance, buildings, dwellings, lodgings, tents, cabins, ships, boats, vehicles of any kinds, carriages, aircraft, warehouses or building sites or their appurtenances and, generally, all movable or immovable property of any kind.

- Article 588** If the offences provided for in Articles 586 or 587 result in the death of one or several persons, the offender shall be punished by death; if the offence has caused injury or permanent disability, the penalty shall be life imprisonment.
- Article 590** Anyone who wilfully destroys or knocks down, by any means whatsoever, in whole or in part, buildings, bridges, dykes, dams, causeways, port or industrial facilities which he knew to belong to another person, or who causes either the explosion of a steam engine or the destruction of an engine forming part of an industrial facility, shall be punished by a term of imprisonment of five to ten years. If the offence provided for in the preceding paragraph results in homicide, injury or permanent disability to a third party, the offender shall be punished by death in the case of homicide and by a term of imprisonment of ten to twenty years in all other cases.
- Article 591** Anyone who, with a view to causing an accident or hindering or obstructing traffic, places an object on a public road or path that obstructs the passage of vehicles or uses any means to hinder their progress, shall be punished by a term of imprisonment of five to ten years. If the offence provided for in the preceding paragraph results in the homicide, injury or permanent disability of a third party, the offender shall be punished by death in the case of homicide and by a term of imprisonment of ten to twenty years in all other cases.
- Article 594** Perpetrators of looting or devastation of foodstuffs, merchandise or other movable property, committed by a group or gang and with the use of force, shall be punished by a term of imprisonment of ten to twenty years, unless the act constitutes a more serious offence, such as one of the crimes provided for in Articles 201 and 203. [...]

CODE OF MILITARY JUSTICE

- Article 136** The Public Prosecutor's Office shall implement rulings dismissing appeals handed down by the Court of Cassation, or decisions of the military court, within the time limits set out in Articles 134 and 135 above, in accordance with the procedure set out in Article 138 below. Death sentences may be implemented only after an appeal for clemency, which shall be automatic, has been rejected.
- Article 139** A death sentence shall be passed and carried out in accordance with the provisions of the criminal procedure law, subject to the provisions of this law.
- Article 155** Penalties imposed by the military court for crimes are those laid down in Article 16 of the Criminal Code. [...] However, a death penalty sentence pronounced in application of this law shall only entail demotion or equivalent in the cases provided for in this law.
- Article 162** Any soldier or person treated as military personnel guilty of desertion to the enemy or to a rebel association or group shall be punished by death with demotion. [...]
- Article 163** [...] In time of war or in military zones of operation, the following persons shall be punished by death with demotion:
1 • Those guilty of conspiracy to desert in the presence of the enemy
2 • The leader of the conspiracy to desert abroad [...].
- Article 169** Incitement or assistance to desert, by any means whatsoever, whether or not followed by action, shall be punished by penalties laid down for desertion in Articles 160 to 163 above. [...]

- Article 170** Any revolt in the presence of a rebel association or group in the case provided for in paragraph 3 of the first subparagraph above shall be punished by death.
- Article 171** [...] Any soldier or person treated as military personnel who refuses to obey when ordered to march against the enemy or to carry out any other mission ordered by his commander in the presence of the enemy shall be punished by death with demotion. [...]
- Article 174** [...] Offences provided for and punished by Articles 263, 392, 393, 398 and 399 of the Criminal Code, when committed in the performance of or in the course of service, shall be punished by the penalties set out in those articles.
- Article 182** Any soldier or person treated as military personnel who, in a military zone of operation in the field:
- steals from a wounded, sick or dead soldier or person treated as military personnel, shall be punished by a term of imprisonment of five to ten years;
 - commits cruel violence against a wounded or sick soldier or person treated as military personnel who are unable to defend themselves, shall be punished by a term of imprisonment of ten years to twenty years;
 - commits violence against a wounded or sick soldier or person treated as military personnel, for the purposes of stealing from them, resulting in the worsening of their condition,
 - shall be punished by life imprisonment.
- The provisions of the Penal Code relating to wilfully causing bodily harm and wilful homicide shall apply when the penalties provided for therein are more serious than those prescribed in this article.
- Article 206** Anyone who, in time of war, commits an offence with a view to undermining state institutions or the security of persons or property, if it is perpetrated for the benefit of the enemy or if it affects the armed forces, shall incur the maximum penalties provided for in the Penal Code. [...]
- Anyone who, in time of war, leads an armed group or assumes a mission or command in an armed group or joins it with a view to preparing for a change of regime or occupying part of the national territory, shall be punished by death.

LAW ON THE REPRESSION OF CRIMES AGAINST THE HEALTH OF THE NATION

- Article 1** Anyone who knowingly manufactures or possesses with a view to trading, distributes, offers for sale or sells products or foodstuffs intended for human consumption that are harmful to public health shall be punished by death.

INTERNATIONAL LEGAL FRAMEWORK

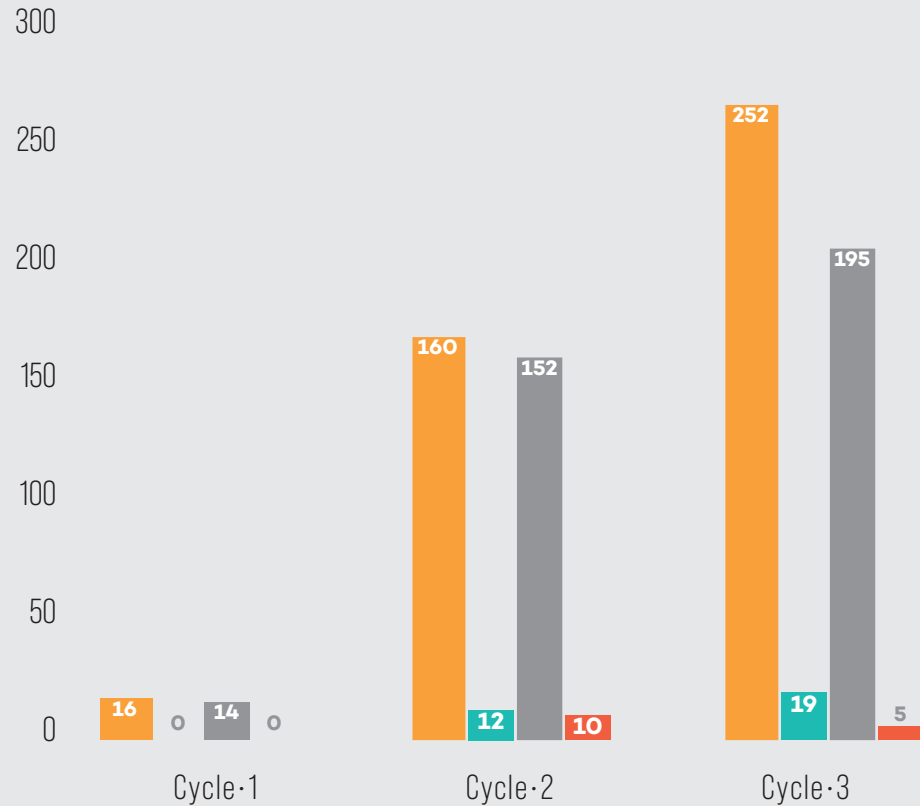
MAIN INTERNATIONAL TEXTS ON THE ABOLITION OF THE DEATH PENALTY

TEXT	DATE OF RATIFICATION OR ACCESSION
International Covenant on Civil and Political Rights, 1966	3 May 1979
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989	X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	21 June 1993
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002	24 November 2014
International Convention on the Rights of the Child, 1989	21 June 1993
African Charter on Human and Peoples' Rights	X
African Charter on the Rights and Welfare of the Child	X

VOTE ON THE UNITED NATIONS GENERAL ASSEMBLY RESOLUTION CALLING FOR A UNIVERSAL MORATORIUM ON THE USE OF THE DEATH PENALTY



UNIVERSAL PERIODIC REVIEWS



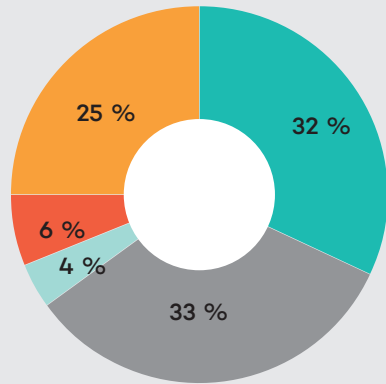
- Total number of recommendations
- Number of recommendations on the death penalty
- Total number of accepted recommendations
- Number of accepted recommendations on the death penalty

RECOMMENDATIONS ON THE DEATH PENALTY MADE TO MOROCCO IN 2017

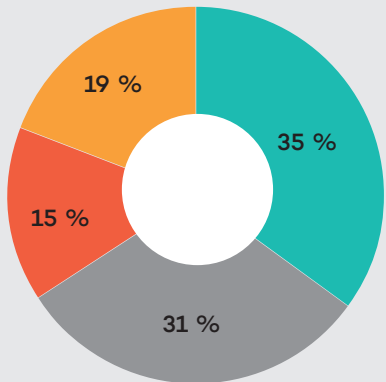
N°	RECOMMENDATION	Number	Accepted	Noted
2	Ratify OP2 aiming at the abolition of the death penalty (Belgium) (Estonia) (Hungary); accede to OP2 aiming at the abolition of the death penalty (Portugal) (Togo)	5		5
3	Move towards the ratification of OP2 (Chile)	1		1
4	Consider ratifying OP2 (Norway)	1	1	
5	Formally abolish the death penalty and ratify OP2 (Australia)	1		1
18	Take the necessary steps to achieve the total abolition of the death penalty (Brazil)	1		1
92	Abolish the death penalty (France)	1		1
93	Intensify national discussions with a view to abolishing the death penalty (Italy)	1	1	
94	Keep the moratorium on the death penalty and intensify dialogue on capital punishment and its impact, with a view to its full abolition for all crimes (Montenegro)	1		1
95	Continue the current national debate on the abolition of the death penalty and consider formalising the de facto moratorium currently observed (Albania)	1		1
96	Maintain its de facto moratorium on the use of the death penalty with a view to its total abolition, including through the ongoing process of reform of the Penal Code (Rwanda)	1		1
97	Continue the national debate on the abolition of the death penalty (South Africa)	1	1	
98	Consider formalising the de facto moratorium on the death penalty (Ukraine)	1	1	
99	Consider abolishing capital punishment (Namibia)	1	1	
100	Eliminate the death penalty from its national legislation (Paraguay)	1		1
101	Maintain the moratorium on the death penalty, followed by the definitive abolition of the death penalty (Austria)	1		1
TOTAL		19	5	14

EVOLUTION OF THEMES OF RECOMMENDATIONS MADE TO MOROCCO BETWEEN 2012 AND 2017

EPU 2012



EPU 2017



- Abolition
- Commutations
- Debate
- Moratorium
- OP2



The distribution of themes addressed in recommendations on the death penalty made to Morocco shows that traditional themes such as the continuation or formalisation of the moratorium and commutations of death sentences were given less attention in 2017 than in 2012, and there was a greater focus on ratification of OP2 and the pursuit of national debate.

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