

# THE DEATH PENALTY IN LAW AND PRACTICE

## TUNISIA



**EC  
PM** TOGETHER  
AGAINST  
THE DEATH  
PENALTY

**CTCPM**

COALITION TUNISIENNE  
CONTRE LA PEINE DE MORT



**STATUS:**  
**MORATORIUM ON EXECUTIONS**

**DATE OF LAST EXECUTION:**  
**1991**

**NUMBER OF DEATH SENTENCES PASSED IN 2021:**  
**36**

**NUMBER OF PRISONERS ON DEATH ROW  
AT THE END OF 2021:**  
**136**

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

### **SITUATION OF DEATH ROW PRISONERS**

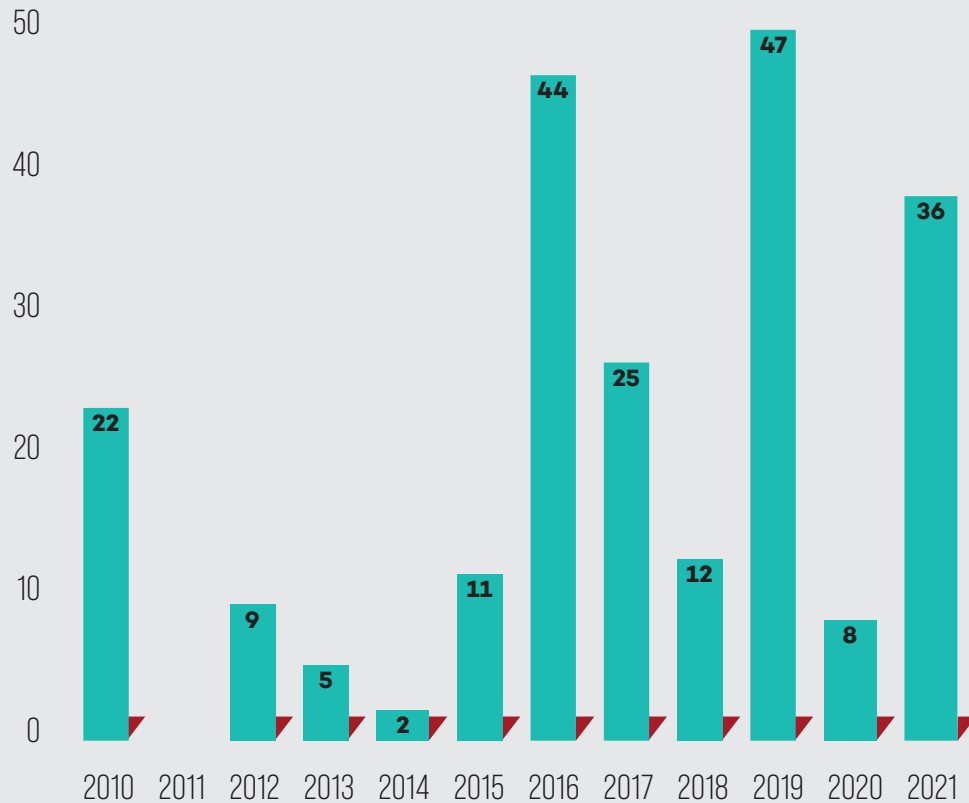
Until 1995–1996, those sentenced to death were isolated, held in solitary confinement, often shackled, even at night. In January 2011, in the wake of the popular protests that led to the fall of the dictatorial regime of Zine el-Abidine Ben Ali, the Revolution put an end to the most shocking abuses suffered by death row prisoners. They were once again allowed to have visits from their immediate families and to receive food baskets twice a week. Throughout their incarceration, until their sentences were commuted in 2012, death row prisoners lived in terror of being executed and developed pathologies linked to death row syndrome. Having suffered from isolation, prisoners experienced overcrowding, poor hygiene and food that was considered “vile”.

Paradoxically, the material conditions of detention of prisoners have deteriorated since the Revolution, as prisons are affected by budgetary restrictions and shortages. Although the situation varies enormously from one prison to another, depending on the centrality or remoteness of the region in which it is located, the medical and psychological care of prisoners on death row is generally inadequate. A large number of prisoners use and abuse anxiolytics and psychotropic drugs, which seem to be generously distributed to them to obtain a form of “social harmony”. Death row inmates have not had access to educational, vocational and technical training programmes and have not been given the opportunity to work. There is no system for support or reintegration assistance for death row prisoners who have received pardons and have been released, so they are left to fend for themselves when they leave prison. The conditions of detention and treatment of prisoners, particularly those on death row, are alarming and have deteriorated in the context of the health crisis linked to the Covid-19 pandemic.

### **PARDON**

Article 77 of the Tunisian Constitution provides that the President of the Republic has the power to grant pardons. Twenty-five death row prisoners received a “special pardon”, issued on 14 January 2012 by the interim President Moncef Marzouki. Their sentences were commuted to life imprisonment. Nine of them, the longest serving, were released on 14 January 2013 after spending more than two decades in detention in inhumane conditions.

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



## NATIONAL LEGAL FRAMEWORK

### CONSTITUTION

The 2014 Constitution does not expressly address the death penalty. However, Article 22 states: “The right to life is sacred and cannot be infringed upon except in grave cases as determined by law.” The introduction of this exception legitimises the existence of the death penalty within the Tunisian legal arsenal. Article 77 stipulates that the President of the Republic has the power to grant pardons.

### PENAL CODE

Article 5 of the Penal Code provides that the death penalty is one of the main penalties in criminal cases.<sup>1</sup> Articles 7, 8 and 9 of the Penal Code set out the conditions for the application of the death penalty. Death sentences are carried out by hanging. Pregnant women can only be executed after giving birth (Article 9) and minors cannot be sentenced to death (Article 43).

A large number of offences are punishable by death in Tunisia. They fall into two categories: ordinary crimes (homicide, aggravated rape, abduction followed by death) and political or military crimes (attacks on internal or external state security, high treason). Ordinary offences are prosecuted in the ordinary courts. Political offences can be prosecuted in civil or military courts.

Twenty-two provisions of the Penal Code provide for the application of the death penalty.

### CODE OF MILITARY JUSTICE

The Code of Military Justice applies when a member of the military or military property is involved. The Code provides for execution by firing squad (Article 45) and contains twenty provisions on the death penalty.

### ORGANIC LAW NO. 2015-26 OF 7 AUGUST 2015, ON COMBATING TERRORISM AND MONEY LAUNDERING

On 25 July 2015, the Tunisian Parliament adopted a new anti-terrorism law by a very large majority (174 votes in favour, 10 votes against and no abstentions). The law introduced the death penalty for a series of “terrorism” crimes. The death penalty was absent from the previous anti-terrorism law of 2003. The new law contains sixteen provisions on the application of the death penalty.

<sup>1</sup> Tunisian Penal Code, available online: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61250/60936/F1198127290/TUN-61250.pdf>

Thus, there are a total of fifty-eight legislative provisions on the application of the death penalty.

Some of these crimes cannot be considered the “most serious crimes” under international law. For example, Article 126 of the Penal Code provides for the death penalty to be imposed on anyone who commits violence against a judge or prosecutor by using or threatening to use weapons during a hearing.

## LIST OF LEGISLATIVE PROVISIONS ON THE DEATH PENALTY

### PENAL CODE

Article 5	The death penalty is one of the main penalties provided for in the Penal Code.
Article 7	The death sentence shall be carried out by hanging.
Article 8	The death sentence shall not take place, unless otherwise ordered in the judgment, on one of the public holidays determined by Article 292 of the Code of Civil and Commercial Procedure.
Article 9	A pregnant woman cannot be executed before giving birth.
Article 60	The following shall be guilty of treason and punished by death: <ol style="list-style-type: none"> <li>1 • Any Tunisian national who takes up arms against Tunisia in enemy ranks;</li> <li>2 • Any Tunisian national who passes intelligence to a foreign power, with a view to inciting it to undertake hostilities against Tunisia or to provide it, in any way whatsoever, with the means to do so;</li> <li>3 • Any Tunisian national who delivers to a foreign power, or its agents, Tunisian soldiers or territories, cities, fortresses, structures, posts, warehouses, arsenals, equipment, ammunition, ships or aircraft belonging to Tunisia;</li> <li>4 • Any Tunisian national who, in time of war, calls upon soldiers or navy personnel to enter the service of a foreign power or facilitates the means for them to do so, or recruits soldiers on behalf of a foreign power at war with Tunisia;</li> <li>5 • Any Tunisian national who, in time of war, has passed intelligence to a foreign power or its agents, with a view to promoting the aggressive actions of that power against Tunisia.</li> </ol>
Article 60 bis	The following shall be guilty of treason and punished by death: <ol style="list-style-type: none"> <li>1 • Any Tunisian national who delivers to a foreign power or its agents, in any manner and by any means whatsoever, a national defence secret or who obtains, by any means whatsoever, such a secret with a view to delivering it to a foreign power or its agents;</li> <li>2 • Any Tunisian national who destroys or wilfully damages ships, aircraft, equipment, ammunition, buildings or structures likely to be used for national defence purposes, or before or after their completion, knowingly causes them to be defective, in such a way as to render them unfit for use or to cause an accident;</li> <li>3 • Any Tunisian who knowingly participates in an action aimed at destroying the morale of the army or the nation in order to harm national defence.</li> </ol>
Article 60 ter	Any foreign national who is guilty of any of the acts referred to in paragraphs 2, 3, 4 and 5 of Article 60 and Article 60 bis of this Code shall be guilty of espionage and punished by death. Anyone who is guilty of incitement or of proposing to commit such acts shall be liable to the same penalties as those laid down for the offences referred to in Articles 60 and 60 bis of this Code.

**Article 61 quater** The following shall be guilty of undermining external state security and liable to the penalties provided for in Article 62 of this Code, without prejudice, where applicable, to the penalties incurred for attempting to commit the crimes provided for in Articles 60 and 60 bis of this Code:

1° • Any Tunisian or foreign national who enters, in disguise or under a false name or by concealing his status or nationality, a fortress, structure, post, arsenal, military camp, warship or commercial vessel used for national defence, aircraft, armed military vehicle, military or maritime facility of any kind whatsoever, facility or site involved in national defence,

2° • Any Tunisian or foreign national who, even without disguising himself or concealing his name, status or nationality, covertly organises any means of remote communication or transmission likely to harm national defence,

3° • Any Tunisian or foreign national who flies over Tunisian territory in a foreign aircraft without being authorised to do so by the Tunisian authorities or under a diplomatic convention,

4° • Any Tunisian or foreign national who, in a prohibited zone, without the authorisation of the military or maritime authorities, makes drawings, photographs or plans, or carries out topographical surveys in or around military or maritime structures, posts or facilities,

5° • Any Tunisian or foreign national who remains, in breach of a legal prohibition, in the vicinity of fortified structures or military or maritime facilities.

**Article 63** An attempt on the life of the Head of State shall be punished by death.

**Article 72** The perpetrator of an attack aimed at changing the form of government, inciting individuals to take up arms against each other or provoking disorder, murder or pillage on Tunisian territory shall be punished by death.

**Article 74** Anyone who assembles and arms gangs or who leads such gangs with the aim of plundering state or private funds, or of seizing or destroying movable or immovable property, or of attacking or resisting the forces of law and order acting against the perpetrators of such attacks, shall be punished by death.

**Article 76** Anyone who sets fire to or destroys buildings, military ammunition warehouses or other state property, using explosive materials, shall be punished by death.

**Article 126** If the contempt was committed against a judicial officer at the hearing, the penalty shall be two years' imprisonment. Anyone who is guilty of violence by using or threat to use weapons against a judge or prosecutor during a hearing shall be punished by death.

**Article 201** Anyone who, by any means whatsoever, wilfully and with premeditation commits murder shall be punished by death.

**Article 203** The perpetrator of parricide shall be punished by death. Parricide is defined as the murder of ascendants, regardless of degree.

**Article 204** The perpetrator of wilful killing shall be punished by death if the killing was preceded, accompanied or followed by another offence punishable by imprisonment or if its purpose was either to prepare, facilitate or carry out such

offence, or to facilitate the escape or ensure the impunity of its perpetrators or accomplices.

**Article 227** The following shall be punishable by death:

- 1 • The crime of rape committed with violence, use or threat to use a weapon;
- 2 • The crime of rape committed even without the use of the above-mentioned means on a person under the age of 10.

The crime of rape committed otherwise than in the above cases shall be punishable by life imprisonment. Consent shall be deemed to be lacking when the victim is under the age of 13.

**Article 237** Anyone who, by fraud, violence or threats, abducts or attempts to abduct a person or moves, removes or transfers him, or attempts to move, remove or transfer him from his location, shall be liable to ten years' imprisonment. The penalty shall be increased to twenty years' imprisonment if the person abducted or removed is an official or member of the diplomatic or consular corps or a member of their family or a child under the age of 18. This penalty shall be applied, irrespective of the status of the person, if he was abducted or removed for the purpose of payment of a ransom or the execution of an order or condition. The penalty shall be life imprisonment if the abduction or removal was carried out with a weapon or using a false uniform or identity or a false order from a public authority or if it resulted in bodily incapacity or illness. The death penalty shall be incurred if these offences were accompanied or followed by death.

**Article 240** Anyone who knowingly conceals or evades detection of an abducted person of either sex shall be liable to the penalties provided for in Articles 237 and 238, as appropriate.

**Article 251** The penalty shall be twenty years' imprisonment and a fine of twenty thousand dinars:

- a - if the capture, arrest, detention or confinement was accompanied by violence or threats;
- b - if the operation was carried out with a weapon or by several perpetrators;
- c - if the victim is a civil servant or a member of the diplomatic or consular corps or a member of their families, provided that the offender knows the identity of the victim in advance;

- if one of these acts was accompanied by threats to kill the hostage, to harm his physical integrity or to continue to confine him, for the purpose of compelling a third party, whether a state, an international governmental organisation, a natural or legal person or a group of persons, to do a specific act or to refrain from doing so as an express or tacit condition for the release of the hostage. The penalty shall be life imprisonment if the capture, arrest, detention or confinement lasted for more than one month or if it resulted in bodily incapacity or illness, or if the purpose of the operation was either to prepare or facilitate the commission of a crime or misdemeanour, or to facilitate the escape or ensure the impunity of the perpetrators and accomplices of a crime or misdemeanour,

or for the execution of an order or condition, or to harm the physical integrity of the victim or victims.

The death penalty shall be incurred if these offences were accompanied or followed by death.

**Article 306 bis** Any person who, by violence or threat, seizes or exercises control over a land, sea or air vehicle shall be punished by ten years' imprisonment. The penalty shall be twenty years' imprisonment if injury or illness results from these acts. The penalty shall be life imprisonment if the death of one or more persons results, without prejudice to the application of Articles 28, 201, 203 and 204 of this Code, where applicable.

**Article 307** Anyone who wilfully, directly or indirectly, sets fire to buildings, ships, boats, warehouses, inhabited sites or sites used for habitation, and generally to inhabited places or places used for habitation, as well as to train carriages and other carriages containing persons or forming part of a convoy of carriages transporting persons, whether or not they belong to the perpetrator of the fire, shall be punished by life imprisonment.

Anyone who wilfully, directly or indirectly, sets fire to straw or the produce of a harvest in piles or stacks, or to wood in piles or stacks, or to carriages not forming part of a train containing persons, or to any other movable property not belonging to the perpetrator of the fire, shall be punished by twelve years' imprisonment.

The death penalty shall be incurred if the fire results in death.

## CODE OF MILITARY JUSTICE

**Article 45** After approval of the death sentence by the Head of State, the death penalty shall be carried out by gunfire.

**Article 46** Article 46 The death penalty may not be carried out on several prisoners at the same time. The death penalty may not be carried out on Fridays, Sundays and national or religious holidays designated by regulations and laws. The implementation of the death penalty on a pregnant woman shall be postponed until after she has given birth.

**Article 69** Any soldier guilty of desertion to the enemy shall be punished by death. [...]

**Article 70** Any desertion carried out in concert by two or more soldiers shall be deemed to be desertion by conspiracy. The head of the conspiracy to desert abroad shall be liable to fifteen years' imprisonment. If he is an officer, he shall be liable to ten years' imprisonment. The head of the conspiracy to desert within the country shall be liable to ten years' imprisonment. Other offenders guilty of desertion with conspiracy shall be punished by imprisonment of one to five years if the desertion takes place within the country and, if it takes place abroad, the penalty shall be doubled. In time of war, the following shall be punished by death with demotion: [...]

**Article 79** [...] D • If the refusal to obey takes place in the presence of the enemy or rebels, the penalty may not be less than ten years' imprisonment. If considerable losses resulted, the penalty shall be death. [...]

E • Any soldier who refuses to obey when ordered to march against the enemy or the rebels shall be punished by death.

**Article 80** The following shall be considered to be in revolt:

A • Soldiers under arms who, when assembled in numbers of at least four and acting in concert, refuse to obey the orders of their commanders at the first summons;

B • Soldiers who, numbering at least four, take up arms without authorisation and act against the orders of their commanders;

C • Soldiers who, numbering at least four, engage in violence by using their weapons and refuse, at the behest of their superiors, to disperse and return to order. [...]

If the revolt or instigation to revolt takes place in time of war or state of war or in a territory in a state of siege, the maximum penalties shall always be imposed. When the revolt or instigation to revolt takes place in the circumstances provided for in paragraph (C) of this Article, in the presence of the enemy, the penalty shall be death.

**Article 81** Any person who incites, by any means, a group of more than three military personnel to refuse to obey the orders of his superior or leader, to resist him or to use violence against him, shall be punished by six years' imprisonment, if such instigation has no effect.

If the instigator's actions resulted in damage to the services of the army, he shall be punished by imprisonment for a period of not less than six years.

The instigator of a revolt in time of war or state of siege shall be punished by death. If the instigator is a civilian, the penalty shall be reduced by half and the death penalty shall be reduced to fifteen years' imprisonment.

**Article 99** Any military or non-military person who, in a military force's area of operation, steals from a wounded, sick or dead soldier shall be punished by six years' imprisonment. The death penalty shall be imposed if the offender, in order to steal from the wounded or sick soldier, uses violence that aggravates the latter's state of health.

**Article 104** Any soldier who wilfully sets fire to, destroys or causes damage to, by any means whatsoever, constructions, buildings, depots, canals, railways, telegraph or telephone lines or stations, airfields, vessels, ships and any immovable objects for the use of the Army or contributing to National Defence shall be punished by death, with demotion. If the offender is an officer and has been sentenced to a penalty other than death as a result of the recognition of mitigating circumstances, he shall, in addition, be dismissed.

**Article 109** Any sentinel or sentry who abandons his post before completing the mission entrusted to him shall be punished by imprisonment of between ten months and ten years. If the sentry or sentinel is in the presence of rebels, he shall be punished by ten years' imprisonment.

The offender shall be punished by death if he is in the presence of the enemy. The offender shall be punished by two to five years' imprisonment if the act takes place in a territory in a state of war or siege, but not in the presence of the enemy or rebels.

**Article 111** Any soldier who abandons his post shall be punished by two to six months' imprisonment.

Post means the place where the soldier has gone or is present on the orders of his superiors to carry out a mission entrusted to him.

If the abandonment of post takes place in the presence of rebels or in a territory in a state of war or siege, the penalty shall be five to ten years' imprisonment.

**Article 113** Amended by Law No. 89-23 of 27 February 1989 - Any soldier who wilfully makes himself unfit for service, either temporarily or permanently, with the aim of evading the military obligations imposed by law, shall be punished by one to three years' imprisonment. The attempt to do so is a punishable offence. The punishment shall be death, with demotion, if the act takes place in the presence of the enemy.

The offender shall be punished by ten years' imprisonment if he commits the offence while in a territory in a state of siege or in the presence of rebels.

Military accomplices shall be punished by the same penalties as the principal perpetrator. If the accomplices are medical doctors or pharmacists, whether military or civilian, or health officers, the penalty shall be doubled.

This is in addition to a fine of between two hundred and fifty dinars and two thousand five hundred dinars for offenders who are military personnel, or offenders who are not treated as military personnel. If the offender is an officer and has benefited from mitigating circumstances, he shall also be dismissed.

**Article 115** Any commander or governor who has surrendered the place assigned to him without having exhausted all the means of defence available to him and without having done as his duty and honour dictate shall be punished by death with demotion.

The offender shall be brought to justice by virtue of a ruling by a board of enquiry designated by order of the commander-in-chief of the armed forces..

**Article 116** Any unit commander who capitulates in open country shall be punished by:

1 • the death penalty, with demotion, if the capitulation resulted in the cessation of combat or if, before dealing with the enemy, he has not done all that duty and honour dictate.

2 • dismissal in all other cases.

**Article 117** Any Tunisian soldier or soldier serving in the Tunisian army who bears arms against Tunisia shall be punished by death with demotion.

Any prisoner who is recaptured a second time, after having broken his word, carrying arms shall be punished by death.

Any Tunisian soldier or soldier serving in the Tunisian army who, having fallen into the power of the enemy, obtains his freedom only on condition that he no longer bears arms against that enemy, shall be punished by a term of imprisonment of three to five years. If the offender is an officer, he shall also be subject to dismissal..

**Article 118** The following persons shall be punished by death, with demotion:

1 • any soldier who delivers to the enemy, or in the interest of the enemy, either the troop he commands, or the place assigned to him, or the army's weapons, its ammunition or supplies, or the plans of places of war, factories, ports or roadsteads, or the watchword or the secret of an operation, an expedition or a negotiation;

2 • any soldier who passes intelligence to the enemy with the aim of favouring its endeavours;

3 • any soldier who participates in conspiracies with the aim of influencing the decision of the responsible military leader.

**Article 119** Any person who, in times of war or in a territory in a state of siege and with the aim of helping the enemy or harming the army or forces of the allied countries, is found guilty of the following crimes, shall be punished by death with demotion:

a • delivers to the enemy the watchword, specific signal, information or secrets concerning the depots and their guards;

b • distorts news and orders relating to the service in the presence of the enemy;

c • indicates to the enemy the locations of corps of troops or allied troops, or gives indications to these forces with a view to causing them to proceed in the wrong direction;

d • causes confusion in a Tunisian force or with a view to making it undertake erroneous operations or endeavours, or to prevent the rallying of dispersed troops.

**Article 121** The following persons shall be considered spies and punished by death, with demotion:

a • any soldier who enters a place of war, a military post or facility, an army work site, camp, bivouac or billet, in order to obtain documents or information in the interests of the enemy or which he believes to be in the interests of the enemy;

b • any soldier who procures for the enemy documents or information which are likely, or which he believes to be likely, to prejudice military operations or to compromise the security of posts, ports or other military facilities;

c • any soldier who knowingly harbours spies or enemies or causes them to be harboured.

**Article 122** Any enemy who enters the places referred to in the preceding Article in disguise shall be punished by death.

**Article 123** Any Tunisian national who enlists or causes a third party to enlist in the army of a state at war with Tunisia, or who joins the rebels, shall be punished by death.

Any Tunisian national who, in peacetime, enters into the service of a foreign army or a terrorist organisation operating abroad, shall be punished by ten years' imprisonment, disqualification from exercising civic rights, and confiscation of all or part of his property, irrespective of the penalties laid down for attacks on state security committed by the offender on his own initiative or in accordance with the instructions of that organisation.

The same penalty shall be imposed on anyone who incites the commission of any of these crimes or who facilitates their commission by any means. [...]

**ORGANIC LAW NO. 2015-26 OF 7 AUGUST 2015  
ON COMBATING TERRORISM AND MONEY LAUNDERING**

**Article 14** Any person who commits any of the following acts shall be guilty of a terrorist offence:

- First: Murder;
- Second: Inflicting wounds or blows or committing any other violence provided for in Articles 218 and 319 of the Penal Code;
- Third: Inflicting wounds or blows or committing any other violence not provided for in the second case;
- Fourth: Causing damage to the headquarters of a diplomatic or consular mission or an international organisation;
- Fifth: Undermining food security and the environment in such a way as to jeopardise the balance of the food and environmental systems or natural resources or to endanger the lives or health of the inhabitants;
- Sixth: Intentionally opening dam flood outlets or discharging toxic chemicals or biological products into these dams or water plants for the purpose of harming the inhabitants;
- Seventh: Causing damage to public or private property, vital resources, infrastructure, means of transport or communication, computer systems or public services;
- Eighth: Apostasy or advocating apostasy, or inciting or glorifying hatred or animosity between races, doctrines and religions.

Anyone who commits the act provided for in the first case, or if the acts mentioned in the other cases have caused the death of a person, shall be punished by death and a fine of two hundred thousand dinars.

Anyone who commits the act provided for in the third case, or if the acts, provided for in the fourth, fifth, sixth, seventh and eighth cases, have caused bodily harm such as those provided for in the third case, shall be punished by life imprisonment and a fine of one hundred and fifty thousand dinars.

The penalty shall be twenty years' imprisonment and a fine of one hundred thousand dinars, if the acts in the fourth, fifth, sixth, seventh and eighth cases have caused bodily harm such as that provided for in the second case.

Anyone who commits any of the acts provided for in the fourth, fifth, sixth and seventh cases shall be punished by ten to twenty years' imprisonment and a fine of fifty thousand to one hundred thousand dinars.

Anyone who commits any of the acts provided for in the second or eighth cases shall be punished by imprisonment for a term of one to five years and a fine of five thousand to ten thousand dinars.

**Article 15** Anyone who intentionally commits any of the following acts shall be guilty of a terrorist offence and liable to ten to twenty years' imprisonment and a fine of one hundred thousand dinars:

- 1 • Performing an act of violence against a person on board an aircraft in flight, if the act of violence falls within the scope of Articles 218 and 319 of the Penal Code and is likely to jeopardise the safety of the aircraft;
- 2 • Seizing or taking control, by any means whatsoever, of a civil aircraft in service or in flight;
- 3 • Destroying or causing damage to a civil aircraft in service which renders it unfit for flight or which is likely to affect its safety in flight;
- 4 • Placing or causing to be placed on a civil aircraft in service, by any means whatsoever, devices or substances of such a nature as to destroy it or cause damage to it resulting in its unfitness for flight, or which are of such a nature as to jeopardise its safety in flight;
- 5 • Destroying, damaging or hindering the operation of air navigation facilities which are likely to jeopardise the safety of civil aircraft in flight;
- 6 • Using a civil aircraft in service or in flight with the aim of causing bodily harm or damage to property or to the environment or to vital resources.

The penalty shall be twenty-five years' imprisonment and a fine of one hundred and twenty thousand dinars if any of the acts provided for in cases 2 to 6 have caused bodily harm falling within the provisions of Articles 218 and 319 of the Penal Code.

The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if any of the acts provided for in cases 1 to 6 have caused bodily harm not covered by Articles 218 and 319 of the Penal Code. The penalty shall be the death penalty and a fine of two hundred thousand dinars if any of the acts provided for have caused the death of a person.

**Article 16** Anyone who intentionally transports or facilitates the transport of the following on board a civil aircraft:

- explosive or radioactive materials, knowing that the purpose of their use is to cause death, bodily harm or damage to property or the environment or vital resources;
- a biological, nuclear or chemical weapon, with knowledge of its purpose;
- source material, special fissionable material, equipment, material specially designed or prepared for the processing, use or production of special fissionable material, knowing that the purpose of its use is a nuclear explosive activity or any other unsafeguarded nuclear activity;
- equipment, material, software or related technology, which significantly contributes to the design, manufacture or delivery of a biological, nuclear or chemical weapon, with the intention of using it for that purpose. The penalty shall be twenty years' imprisonment and a fine of one hundred thousand dinars if any of these acts result in bodily harm within the scope of Articles 218 and 319 of the Penal Code; shall be guilty of a terrorist offence and liable to ten to fifteen years' imprisonment and a fine of fifty thousand to one hundred thousand dinars.

The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if any of these acts result in bodily harm not covered by Articles 218 and 319 of the Penal Code.



The penalty shall be death and a fine of two hundred thousand dinars if any of these acts results in the death of a person.

**Article 17** Anyone who intentionally commits any of the following acts shall be guilty of a terrorist offence and punished by twenty years' imprisonment and a fine of one hundred thousand dinars:

- dropping or launching a biological, nuclear or chemical weapon, explosive or radioactive material or other similar material from a civilian aircraft in service or in flight that results in death, bodily harm, damage to property, the environment or vital resources;
- using a biological, nuclear or chemical weapon, explosive or radioactive material or other similar material against a civil aircraft in service, in flight or on board that results in death, bodily harm, damage to property, the environment or vital resources.

The penalty shall be twenty-five years' imprisonment and a fine of one hundred and twenty thousand dinars if any of these acts result in bodily harm within the scope of Articles 218 and 319 of the Penal Code.

The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if any of these acts result in bodily harm not covered by Articles 218 and 319 of the Penal Code.

The penalty shall be death and a fine of two hundred thousand dinars if any of these acts results in the death of a person.

**Article 18** Any person who intentionally endangers the safety of a civil airfield by means of a device, substance or weapon by committing any of the following acts shall be guilty of a terrorist offence and liable to twenty years' imprisonment and a fine of one hundred thousand dinars:

- 1 • committing serious violence against a person inside a civil airfield;
- 2 • destroying or seriously damaging the facilities of a civil airfield or an out-of-service civil aircraft on it;
- 3 • obstructing air navigation activities at a civil airfield.

The penalty incurred shall be twenty-five years' imprisonment and a fine of one hundred and twenty thousand dinars if one of the acts provided for in cases 2 and 3 has caused bodily harm falling within the provisions of Articles 218 and 319 of the Penal Code.

The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if any of the acts provided for in cases one to three have caused bodily harm not covered by Articles 218 and 319 of the Penal Code.

The penalty shall be death and a fine of two hundred thousand dinars if one of these acts results in the death of a person.

**Article 19** Any person who, by any means whatsoever, wilfully seizes or hijacks a civil vessel shall be guilty of a terrorist offence and liable to ten to fifteen years' imprisonment and a fine of fifty thousand to one hundred thousand dinars.

Anyone who intentionally compromises the safety of a civil vessel during navigation by committing one of the following acts shall be liable to the same penalties as those provided for in the previous paragraph:

- 1 • committing an act of violence, such as those provided for in Articles 218 and 319 of the Penal Code, against a person on board a civilian vessel;
- 2 • destroying or causing damage to a civilian ship or its cargo;
- 3 • placing or causing to be placed on a civil ship, by any means whatsoever, any apparatus or substance of such a nature as to destroy or cause damage to that ship or its cargo;
- 4 • destroying or damaging maritime navigation facilities or hindering their operation;
- 5 • using or discharging explosive or radioactive materials, or biological, chemical or nuclear weapons on or against a civilian ship in such a way as to cause death, bodily harm or damage to property, the environment or vital resources;
- 6 • discharging, from a civil vessel, hydrocarbons, liquefied natural gas or any dangerous substances, other than those referred to in the preceding case, in such quantity or concentration as to cause death, bodily harm or damage to property, the environment or vital resources;
- 7 • using a civil vessel in such a way as to cause death, bodily harm or damage to property, the environment or vital resources. The penalty incurred shall be twenty years' imprisonment and a fine of one hundred thousand dinars if the acts provided for in cases 2 to 7 result in bodily harm falling within the provisions of Articles 218 and 319 of the Penal Code. The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if the acts in cases 1 and 7 result in bodily harm not covered by Articles 218 and 319 of the Penal Code.

The penalty shall be death and a fine of two hundred thousand dinars if any of these acts results in the death of a person.

**Article 20** Any person who intentionally transports the following on board a civilian vessel in an illegal manner and outside the scope of ratified international conventions shall be guilty of a terrorist offence and liable to ten to fifteen years' imprisonment and a fine of fifty thousand to one hundred thousand dinars:

- 1 • explosive or radioactive materials, knowing that the purpose of their use is to cause death, bodily harm or damage to property, the environment or vital resources, or to threaten them;
- 2 • a biological, nuclear or chemical weapon, with knowledge of its purpose;
- 3 • source material, special fissionable material, equipment, material specially designed or prepared for the processing, use or production of special fissionable material, knowing that the purpose of its use is a nuclear explosive activity or any other unsafeguarded nuclear activity in accordance with the International Atomic Energy Agency Comprehensive Safeguards Agreement;
- 4 • equipment, material, software or related technology that contributes significantly to the design, manufacture or delivery of a biological, nuclear or chemical weapon, with the intention of using it for that purpose;
- 5 • transporting a person on board a civilian vessel with knowledge that he has committed an offence under this Article and Article 19 of this Law.

The penalty shall be twenty years' imprisonment and a fine of one hundred thousand dinars if any of these acts result in bodily harm within the scope of Articles 218 and 319 of the Penal Code. The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if any of these acts result in bodily harm not covered by Articles 218 and 319 of the Penal Code. The penalty shall be death and a fine of two hundred thousand dinars if any of these acts results in the death of a person.

**Article 21** Anyone who, in bad faith, disseminates false information that jeopardises the safety of civilian aircraft and ships during navigation shall be guilty of a terrorist offence and liable to imprisonment for a term of one to five years and a fine of five to ten thousand dinars. The penalty shall be six years' imprisonment and a fine of twenty thousand dinars, if the dissemination of this false information has caused bodily harm as provided for in Articles 218 and 319 of the Penal Code. The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if any of these acts cause bodily harm not covered by Articles 218 and 319 of the Penal Code. The penalty shall be the death penalty and a fine of two hundred thousand dinars if any of these acts result in the death of a person.

**Article 22** Anyone who seizes or takes control, by any means whatsoever, of a fixed platform located on a continental shelf shall be guilty of a terrorist offence and punished by ten to fifteen years' imprisonment and a fine of fifty thousand to one hundred thousand dinars. Anyone who intentionally compromises the security of a fixed platform located on the continental shelf by committing the following acts shall be liable to the same penalties as those provided for in the previous paragraph:

- 1 • committing violence, as provided for in Articles 218 and 319 of the Penal Code, against a person on a fixed platform located on the continental shelf;
- 2 • destroying or causing damage to fixed platforms located on a continental shelf;
- 3 • placing or causing to be placed on a fixed platform located on the continental shelf, by any means whatsoever and of any type whatsoever, equipment or substances of such a nature as to destroy or cause damage to that platform;
- 4 • using on or against a fixed platform, explosive or radioactive materials, or biological, chemical or nuclear weapons, or discharging them in such a way as to cause death, bodily harm, damage to property, the environment or vital resources;
- 5 • discharging from a fixed platform hydrocarbons, liquefied natural gas or any dangerous substances, other than those provided for in the preceding case, in a quantity or concentration likely to cause death, bodily harm, damage to property, the environment or vital resources.

The penalty shall be twenty years' imprisonment and a fine of one hundred thousand dinars if any of the acts referred to in cases 2 to 5 result in bodily harm within the scope of Articles 218 and 319 of the Penal Code. The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if any of the acts provided for in cases 1 to 5 result in bodily

harm not falling within the provisions of Articles 218 and 319 of the Penal Code.

The penalty shall be the death penalty and a fine of two hundred thousand dinars if any of these acts results in the death of a person.

**Article 23** Anyone who carries out the following acts shall be guilty of a terrorist offence and punished by six to twelve years' imprisonment and a fine of twenty thousand to fifty thousand dinars: intentionally delivering an explosive or incendiary device or a device designed to disseminate chemical, biological, radiation or radioactive materials, or any other device which causes death, bodily harm, damage to property, the environment or vital resources, or placing, launching or detonating such a device in or against a place open to the public or a state or public service, a public transport system or infrastructure, with the intention of causing death or bodily harm or damage to property, the environment or vital resources. The penalty shall be twenty years' imprisonment and a fine of one hundred thousand dinars if any of these acts result in bodily harm within the scope of Articles 218 and 319 of the Penal Code. The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if any of these acts result in bodily harm not falling within the provisions of Articles 218 and 319 of the Penal Code. The penalty shall be death and a fine of two hundred thousand dinars if any of these acts result in the death of a person.

**Article 24** Anyone who intentionally steals or obtains nuclear materials by means of fraud shall be guilty of a terrorist offence and punished by six to twelve years' imprisonment and a fine of between twenty thousand dinars and fifty thousand dinars. Anyone who intentionally commits the following acts shall be punished by twenty years' imprisonment and a fine of one hundred thousand dinars:

- 1 • taking control of nuclear or radioactive material or a radioactive device or a nuclear facility by using violence or threat of violence;
- 2 • receiving, possessing, using or threatening to use, transporting, modifying, disposing of or destroying nuclear materials, or using or damaging a nuclear plant in such a way as to cause the dissemination or threat of dissemination of radioactive materials, resulting in death or bodily harm, or damage to property, the environment or vital resources.

The penalty shall be twenty years' imprisonment and a fine of one hundred and twenty thousand dinars if any of the acts referred to in cases 1 and 2 result in bodily harm within the scope of Articles 218 and 319 of the Penal Code. The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if any of the acts referred to in cases 1 and 2 result in bodily harm not covered by Articles 218 and 319 of the Penal Code. The penalty shall be the death penalty and a fine of two hundred thousand dinars if any of the acts referred to in cases 1 and 2 results in the death of a person.

**Article 25** Anyone who commits violence against an internationally protected person shall be guilty of a terrorist offence and liable to ten years' imprisonment and a fine of fifty thousand dinars if the acts of violence fall within the provisions of Articles 218 and 319 of the Penal Code. The penalty shall be life imprisonment

and a fine of one hundred and fifty thousand dinars if the acts of violence do not fall within the provisions of Articles 218 and 319 of the Penal Code. The penalty shall be death and a fine of two hundred thousand dinars if the act of violence results in death.

**Article 26** Any person who intentionally commits any of the following acts shall be guilty of a terrorist offence and shall be liable to twenty years' imprisonment and a fine of one hundred thousand dinars:

- 1 • kidnapping or diverting a person benefiting from international protection or endeavouring to kidnap or divert him;
- 2 • capturing, arresting, imprisoning or confining an internationally protected person without lawful authority;
- 3 • causing damage to official buildings or private dwellings or to means of transport of bodies or persons enjoying international protection, of such a nature as to endanger their life or freedom or that of the persons residing with them.

The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if the above acts are committed for the purposes of payment of a ransom or the execution of an order or condition, by resorting to fraud, violence or the threat of violence, or by using a weapon, by wearing a false uniform, using a false identity, citing a false order from the public authority, or if bodily harm or illness results.

The penalty shall be death and a fine of two hundred thousand dinars if death results.

**Article 27** Anyone who deliberately kills an internationally protected person shall be guilty of a terrorist offence and shall be punished by death and a fine of two hundred thousand dinars.

**Article 28** Anyone who captures, arrests, imprisons or confines a person without legal authorisation and threatens to kill or harm him or to continue to confine him in order to compel a third party, whether a State or an international organisation or a natural or legal person or a group of persons, to do a specific act or to refrain from doing so as an express or tacit condition for the release of the hostage, shall be guilty of a terrorist offence and shall be punished with twenty years' imprisonment and a fine of one hundred thousand dinars. The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if the capture, arrest, imprisonment or confinement is accompanied by violence or threats or if the act is carried out using a weapon or by several persons or if the capture, arrest, imprisonment or confinement lasts more than one month or if it results in bodily harm or illness, or if the purpose of the operation is to prepare or facilitate the commission of a crime or misdemeanour, or to endeavour to ensure the escape or impunity of the perpetrators or their accomplices in relation to a crime or misdemeanour, as well as to carry out an order or condition, or to harm the physical integrity of a victim or victims. The penalty shall be death and a fine of two hundred thousand dinars if these acts result in death.

**Article 29**

Anyone who, in the context of a terrorist offence, commits an indecent assault on a person of either sex without his or her consent shall be guilty of a terrorist offence and shall be liable to imprisonment for a term of ten years to twenty years and a fine of fifty thousand dinars to one hundred thousand dinars.

The penalty shall be life imprisonment and a fine of one hundred and fifty thousand dinars if the victim is under the age of eighteen years or if the indecent assault is preceded or accompanied by the use of a weapon, threats, confinement or resulted in bodily harm or mutilation or disfigurement, or any other act likely to endanger the victim's life.

The penalty shall be the death penalty and a fine of two hundred thousand dinars if the indecent assault results in the death of the victim.

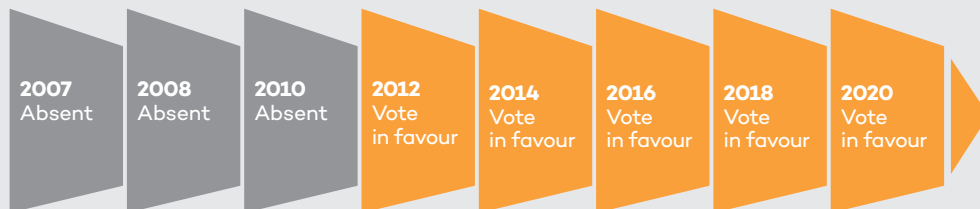
The death penalty shall also be imposed on anyone who intentionally commits the crime of rape against the victim in the course of committing a terrorist offence.

## INTERNATIONAL LEGAL FRAMEWORK

### MAIN INTERNATIONAL TEXTS ON THE ABOLITION OF THE DEATH PENALTY

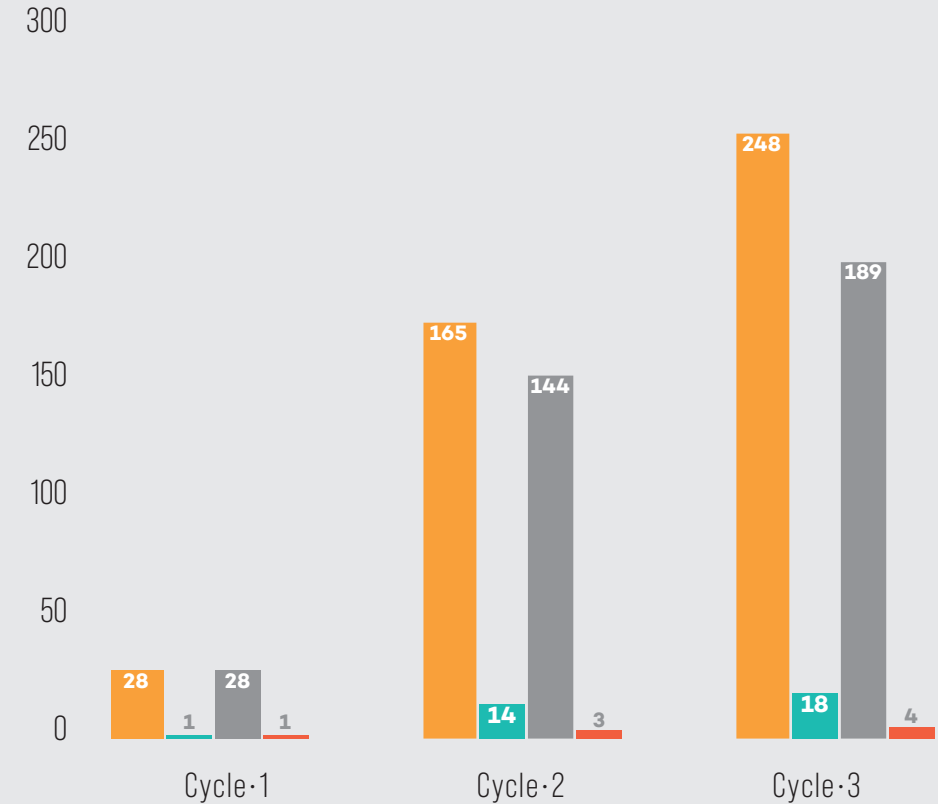
TEXT	DATE OF RATIFICATION OR ACCESSION
International Covenant on Civil and Political Rights, 1966	18 March 1969
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989	X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	23 September 1988
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002	26 June 2011
International Convention on the Rights of the Child, 1989	30 January 1992
African Charter on Human and Peoples' Rights	1983
African Charter on the Rights and Welfare of the Child	Signed (16 June 1995) but not ratified

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



#22

## UNIVERSAL PERIODIC REVIEWS



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

#23

## RECOMMENDATIONS ON THE DEATH PENALTY MADE TO TUNISIA IN 2017

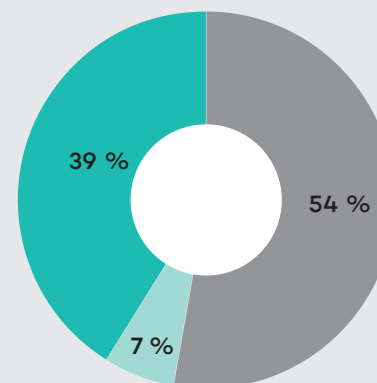
No.	RECOMMENDATION	Number	Accepted	Noted
127.15	Ratify OP2 (Togo)	1	1	1
127.16	Ratify OP2 aiming at the abolition of the death penalty (Montenegro)	1	1	1
127.17	Re-consider ratification of OP2 aiming at the abolition of the death penalty (Slovenia)	1	1	1
127.20	Adopt appropriate measures to abolish the death penalty (Togo)	1	1	1
127.21	Consider abolishing the death penalty (Mozambique)	1	1	1
127.22	Continue to take practical steps to expedite the abolition of the death penalty (Namibia)	1	1	1
127.23	Formally abolish the death penalty, with a view to ratifying OP2 (Australia)	1	1	1
127.24	Abolish the death penalty and consider withdrawing reservations submitted by Tunisia to OP2 as announced by the Government (Austria)	1	1	1
127.25	Abolish the death penalty and ratify OP2 (Spain)	1	1	1
127.26	Abolish the death penalty and ratify OP2, aiming at the abolition of the death penalty (France)	1	1	1
127.27	Abolish capital punishment and ratify OP2 (Portugal)	1	1	1
127.28	Abolish the death penalty in conformity with OP2 (Iceland)	1	1	1
127.29	Abolish the death penalty in its Constitution. Despite a de facto moratorium, people continue to be sentenced to death (Luxembourg)	1	1	1
127.30	Review its anti-terrorism law and Penal Code to definitively abolish the death penalty and ratify OP2 (Norway)	1	1	1
125.64	Continue dialogue at the national level, with a view to reaching consensus to abolish the death penalty in the Constitution (Costa Rica)	1	1	1
125.65	Promote a national debate on the abolition of the death penalty (Italy)	1	1	1
125.66	Maintain its de facto moratorium on the use of the death penalty with a view to its total abolition (Rwanda)	1	1	1
125.67	Facilitate a public debate on the death penalty, with input from the Human Rights Commission, other relevant constitutional bodies and civil society, with a view to ratification of OP2 (Ireland)	1	1	1
<b>TOTAL</b>		<b>18</b>	<b>4</b>	<b>14</b>

The 27<sup>th</sup> UPR session saw a higher number of recommendations made to Tunisia on the issue of the death penalty than at the previous session: 18 recommendations in 2017 compared to 14 in 2012, an increase of 28%. However, less weight was given to the issue of the death penalty in relation to the total number of recommendations made to Tunisia, of which there were significantly more.

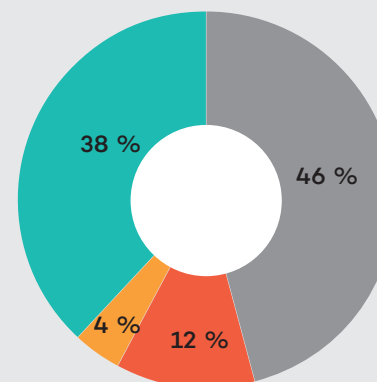
Tunisia accepted fewer recommendations on the death penalty in 2017 than it noted, although it accepted one more recommendation than in 2012. In general, it accepted a greater number of recommendations than in 2012.

## EVOLUTION OF THEMES OF RECOMMENDATIONS MADE TO TUNISIA BETWEEN 2012 AND 2017

UPR 2012



UPR 2017



The distribution of themes addressed in recommendations on the death penalty made to Tunisia shows that the issues addressed in 2017 were more varied than in 2012, despite the fact that there were no recommendations on the commutation of death sentences.

## 55 MEMBERS OF THE AFRICAN UNION

### 22 ABOLITIONIST STATES FOR ALL CRIMES

States or territories where the death penalty has been completely abolished.

### 1 ABOLITIONIST STATE FOR ORDINARY CRIMES

States or territories where the death penalty has been abolished except in exceptional circumstances.

### 22 STATES WITH A MORATORIUM ON EXECUTIONS

States or territories where the death penalty is in force but where no executions have taken place for ten years and which did not oppose the most recent UN resolution for a universal moratorium on the use of the death penalty and/or which have ratified OP2\*.

### 10 RETENTIONIST STATES

States or territories which apply the death penalty.

\* Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.



[ecpm@ecpm.org](mailto:ecpm@ecpm.org)  
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