

ALGERIA, MOROCCO, MAURITANIA, TUNISIA FROM MORATORIUM TO ABOLITION OF THE DEATH PENALTY



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SITUATION IN NORTH AFRICA

146 states and territories around the world have now abolished the death penalty in law or observe a moratorium in practice.



ABOLITIONIST STATES FOR ALL CRIMES

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

None



STATES WITH A DE FACTO MORATORIUM

States or territories where the death penalty is in force but where no execution has been carried out for ten years, and which did not vote against the most recent UN resolution on a universal moratorium on executions and/or which have ratified OP2*.

Algeria, Morocco, Mauritania and Tunisia



RETENTIONIST STATES

States or territories which implement the death penalty.

Egypt and Libya

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

FROM MORATORIUM TO ABOLITION, A COMPLEX STEP

North Africa is resisting the global abolitionist trend; no state in this area has abolished the death penalty.

The Maghreb states maintain a de facto moratorium: Algeria and Morocco since 1993, Mauritania since 1987, and Tunisia since 1991. While none of them voted against the most recent UN Resolution calling for a universal moratorium on the use of the death penalty, none has ratified OP2. The suspension of the death penalty remains temporary, as abolition is only permanent once it is enshrined in law. Thus, executions could resume overnight. The suspension does not apply to sentencing. Thus, in all four states, judges continue to issue death sentences.

In **Algeria**, 9 death sentences were handed down in 2021, 4 in 2019, 1 in 2018, 27 in 2017 and over 50 in 2016. In **Morocco**, 10 people were reportedly sentenced to death in 2021 compared to 11 in 2020, 9 in 2019, 10 in 2018, 15 in 2017 and 6 in 2016.

In **Tunisia**, the number of death sentences rose sharply in 2021, with 36 people reportedly sentenced to death, compared to 8 in 2020. 2019 remains a record year with over 47 people sentenced to death. This figure surpasses

the number of death sentences handed down in 2016 (44 people) and far exceeds the figures for 2017 (25) and 2018 (12). Finally, more than 60 death sentences were reportedly handed down in **Mauritania** in 2021, compared to 10 in 2019, at least 5 in 2018 and at least one in 2017. Data for 2020 have not been made available.

Positive developments in the Maghreb states would provide leverage for progress towards abolition of the death penalty in North Africa and the Middle East. However, in recent years the political and security contexts have held back progress, including the adoption of legislative reforms.

Yet, local actors (parliamentarians, national human rights institutions, national coalitions against the death penalty, lawyers, etc.) remain strongly mobilised in the struggle for abolition of the death penalty. ECPM and its partners support them and work with them to promote progress towards abolition in Morocco and Tunisia, but also in Algeria and Mauritania.

THE CASE FOR ABOLITION

THE DEATH PENALTY BREACHES THE RIGHT TO LIFE.

It is a right from which no derogation is permitted, even in time of public emergency threatening the life of the nation.

According to the United Nations Human Rights Committee: *“Article 6, paragraph 6 reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights. It is contrary to the object and purpose of article 6 for States parties to take steps to increase de facto the rate and extent in which they resort to the death penalty, or to reduce the number of pardons and commutations they grant.”*

“The term ‘the most serious crimes’ must be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. Crimes not resulting directly and intentionally in death, such as attempted murder, corruption and other economic and political crimes, armed robbery, piracy, abduction, drug and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder, cannot justify the imposition of the death penalty. States parties are under an obligation to review their criminal laws so as to ensure that the death penalty is not imposed for crimes which do not qualify as the most serious crimes.”

United Nations Human Rights Committee,
General Comment No. 36 on Article 6 of the International
Covenant on Civil and Political Rights, on the right to life,
CCPR/C/GC/36, 2019

THE DEATH PENALTY IS CRUEL, INHUMAN AND DEGRADING.

Death row prisoners live in constant fear of being killed, and this perpetual terror often lasts twenty or thirty years, especially in countries with a moratorium.

THE DEATH PENALTY IS NOT JUSTICE.

It is revenge that perpetuates the cycle of violence and suffering, whereas justice aims instead to organise reparation of the situation.

THE DEATH PENALTY IS IRREVERSIBLE.

But the justice system can make mistakes. An innocent person can be sentenced to death.

THE DEATH PENALTY IS NOT A DETERRENT.

It does not make society safer, indeed the opposite is true.

THE DEATH PENALTY IS NOT A RELIGIOUS OBLIGATION.

Many high-ranking religious representatives have spoken out against capital punishment, and even those religions that do not oppose it are drastically reducing its use.

THE DEATH PENALTY IS DISCRIMINATORY.

It is particularly used against people from stigmatised minorities (migrants, homosexual persons, ethnic or religious groups, people with mental health problems, etc.).

THE DEATH PENALTY IS UNFAIR.

The socio-economic situation of a person sentenced to death has an impact before the crime, and during court proceedings. It influences the verdict and has serious consequences for the convicted person's family and friends during sentencing, during the period of detention and possibly after the execution.

INTERNATIONAL COMMITMENTS ON ABOLITION OF THE DEATH PENALTY

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

Article 6: “1. Every human being has the inherent right to life. This right shall be protected by law. 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court. 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.”

SECOND OPTIONAL PROTOCOL TO THE ICCPR AIMING AT THE ABOLITION OF THE DEATH PENALTY (OP2)

Article 1: “1. No one within the jurisdiction of a State Party to the present Protocol shall be executed. 2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”

INTERNATIONAL CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)

Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (UN Doc. 9 August 2012, para. 72): “States and judiciaries consider the death penalty to be a violation per se of the prohibition of torture or cruel, inhuman or degrading treatment.”

OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE (OPCAT)

Article 3: “Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).”

CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Article 37: “States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS (ACPHR)

Article 4: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person.”

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD (ACRWC)

Article 5-3: “Death sentence shall not be pronounced for crimes committed by children.”

RATIFICATION OF INTERNATIONAL TREATIES

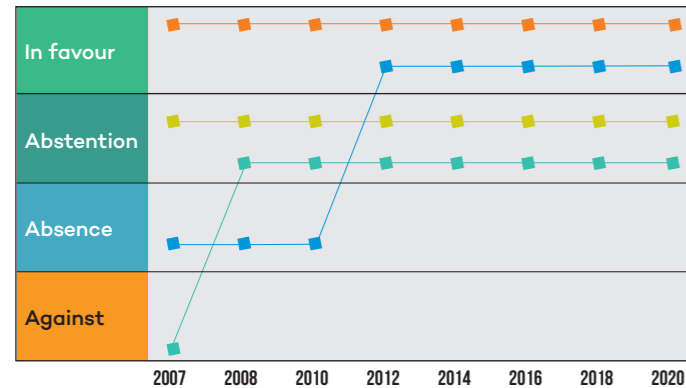
Country	ICCPR	OP2	CAT	OPCAT	CRC	ACHPR	ACRWC
ALGERIA	1989	No	1989	No	1993	1987	2003
TUNISIA	1969	No	1988	2011	1992	1983	No
MOROCCO	1979	No	1993	2014	1993	No	No
MAURITANIA	2004	No	2004	2012	1991	1986	2005

RESOLUTION FOR A UNIVERSAL MORATORIUM ON THE USE OF THE DEATH PENALTY

VOTING PATTERNS

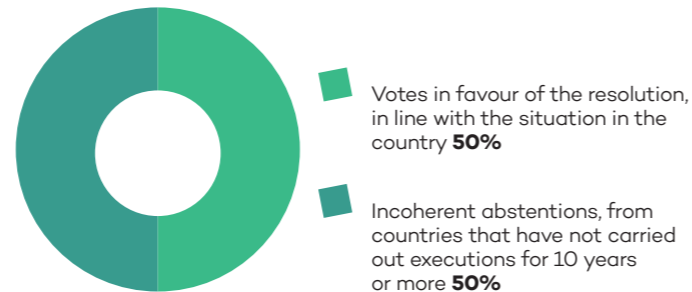
In 2020, there was no change in the four states' votes. Algeria has consistently voted in favour of the resolution since 2007. There has only been one occasion of a state in the region voting against the resolution: Mauritania in 2007. Since then, all four states have either abstained or voted in favour. Tunisia, which abstained in 2007, 2008 and 2010, has consistently voted in favour of the resolution since 2012.

■ Algeria ■ Tunisia ■ Morocco ■ Mauritania



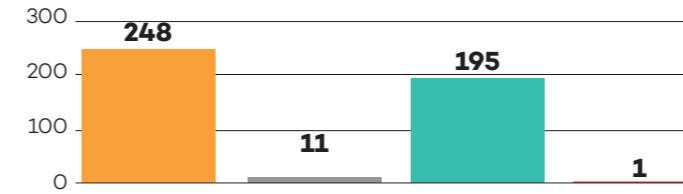
VOTING COHERENCE

Not all states vote in line with their situation. Indeed, while Algeria has consistently voted in favour of the resolution since 2007 and has co-sponsored it with other states, it has not yet taken any measures to abolish the death penalty at the national level. Mauritania and Morocco continue to abstain even though they have maintained a de facto moratorium for more than ten years. Despite voting consistently in favour of the resolution since 2012, Tunisia adopted a counter-terrorism law in 2015 that increases the scope of application of the death penalty (Organic Law No. 2015-26 of 7 August 2015, on combating terrorism and money laundering).

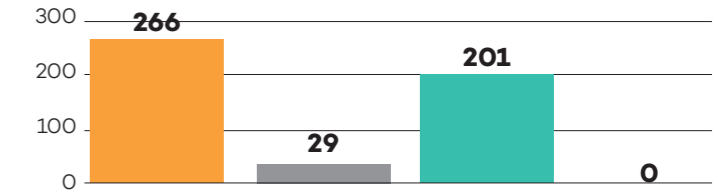


UNIVERSAL PERIODIC REVIEW CYCLE 3

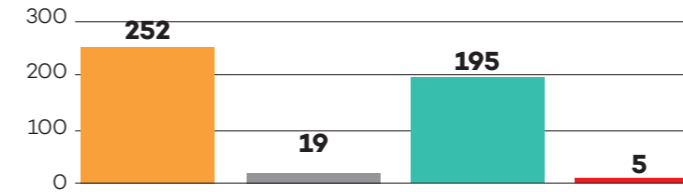
ALGERIA



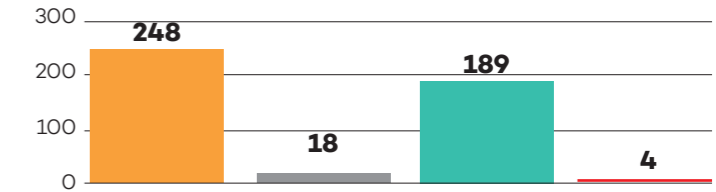
MAURITANIA



MOROCCO



TUNISIA



■ Total number of recommendations
■ Total number of accepted recommendations

■ Total number of recommendations on the death penalty
■ Total number of accepted recommendations on the death penalty

CONSTITUTIONS AND THE RIGHT TO LIFE

The constitutions of Morocco, Algeria and Tunisia explicitly protect the right to life in accordance with the provisions of the International Covenant on Civil and Political Rights. This is not the case with the Mauritanian Constitution.

ALGERIA

Constitution of the People's Democratic Republic of Algeria as amended by Presidential Decree No. 20-251 of 15 September 2020 (Official Gazette No. 54 of 16 September 2020).

Art. 38 – *“The right to life is inherent to the human person and must be protected by law. No one may be deprived of it except in cases provided for by law.”*

MOROCCO

Dahir No. 1-11-91 of 27 Chaabane 1432 (29 July 2011) on the promulgation of the text of the Constitution of the Kingdom of Morocco (Official Gazette No. 5964 bis of 30 July 2011).

Art. 20 – *“The right to life is the primary right of every human being. The law protects this right.”*

MAURITANIA

Constitution of the Islamic Republic of Mauritania.

Art. 13 – *“The honour and privacy of the citizen, the inviolability of the human person, his/her domicile and correspondence are guaranteed by the State. Any form of moral or physical violence is prohibited.”*

TUNISIA

Constitution of the Tunisian Republic (Official Gazette of the Tunisian Republic, 17 August 2022).

Art. 24 – *“The right to life is sacred and cannot be infringed upon except in grave cases as determined by law.”*

LEGISLATIVE PROVISIONS WHICH PROVIDE FOR AND GOVERN IMPLEMENTATION OF THE DEATH PENALTY

ALGERIA

69

legislative provisions

MAURITANIA

46

legislative provisions

MOROCCO

49

legislative provisions

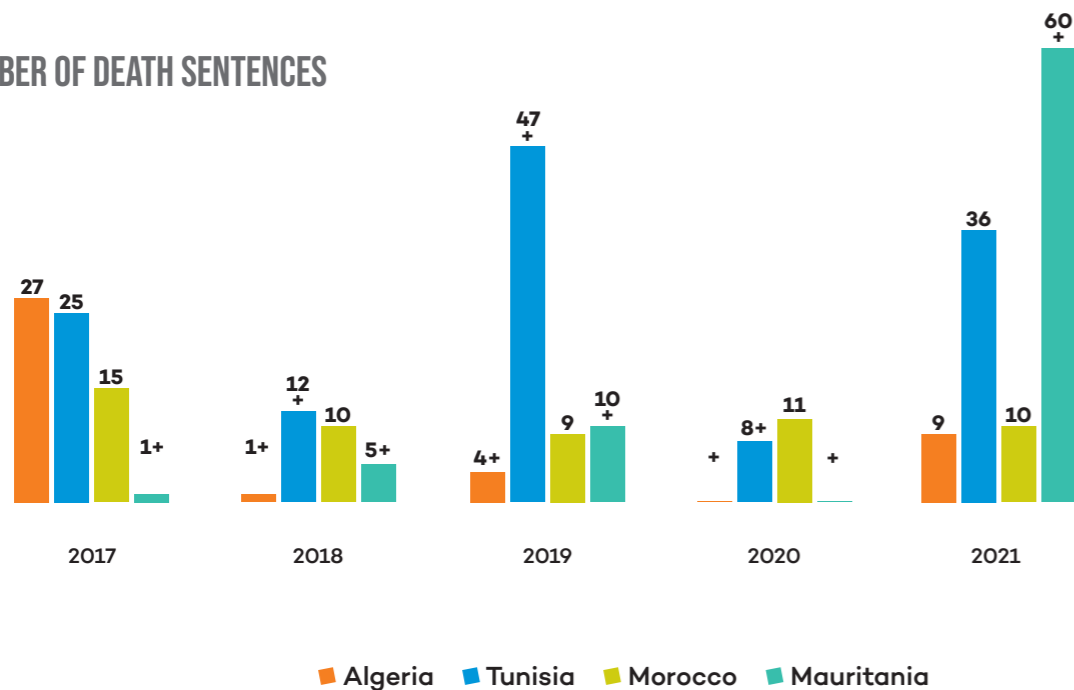
TUNISIA

58

legislative provisions

IMPLEMENTATION OF THE DEATH PENALTY

NUMBER OF DEATH SENTENCES



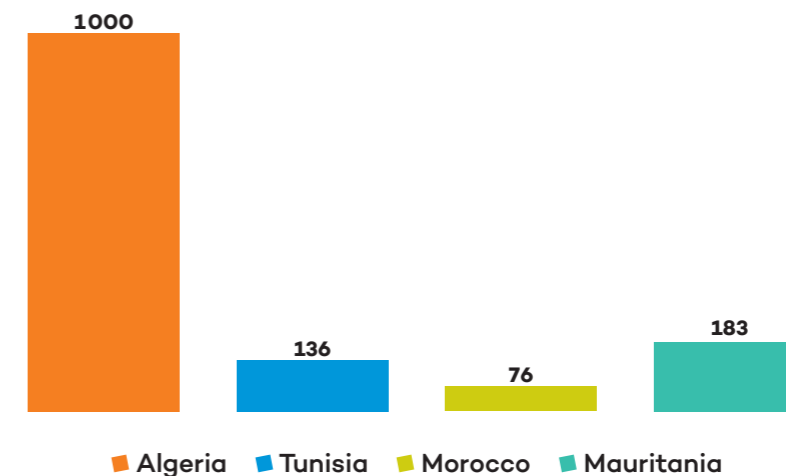
NUMBER OF PEOPLE UNDER A DEATH SENTENCE

In 2021, in Algeria there were reportedly more than 1,000 people under a death sentence.

Between 2020 and 2021, in Tunisia the number of death sentences quadrupled.

Between 2016 and 2017, in Morocco the number of death sentences increased threefold.

While reliable data is lacking, it should be noted that in Mauritania the number of death sentences increased sixfold between 2019 and 2021.



STEPS TOWARDS ABOLITION OF THE DEATH PENALTY

AT THE INTERNATIONAL LEVEL:

Vote in favour of the UN resolution calling for a universal moratorium on the use of the death penalty.

Make commitments to move towards abolition of the death penalty in international and regional human rights mechanisms, for example by accepting recommendations in this regard, including during Universal Periodic Reviews.

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

Promote dialogue within regional and international organisations.

MEMBERSHIP OF REGIONAL AND INTERNATIONAL ORGANISATIONS

	Arab Maghreb Union	League of Arab States	African Union	G5 Sahel	UN	Organisation of Islamic Cooperation
ALGERIA	X	X	X		X	X
MOROCCO	X	X	X		X	X
MAURITANIA	X	X	X	X	X	X
TUNISIA	X	X	X		X	X

AT THE NATIONAL LEVEL:

Provide for the express protection of the right to life in the Constitution.

Reduce the number of crimes punishable by death in legislation.

Formalise the moratorium on executions by enshrining it in law or by decision of a legitimate authority.

Commute all death sentences to other penalties.

Ensure that the rights of persons facing the death penalty are respected at all stages of the judicial process.

Guarantee the rights of detainees sentenced to death.

Ensure visiting rights of death row prisoners, including by parliamentarians, national human rights institutions, national torture prevention mechanisms and civil society organisations.

Publish transparent data on the number of death sentences passed, the number of death row prisoners, their place of detention and the grounds for their sentences.

Promote national debate on the issue of abolition.

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**ABOLITION
NOW**

**EC
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TOGETHER
AGAINST
THE DEATH
PENALTY