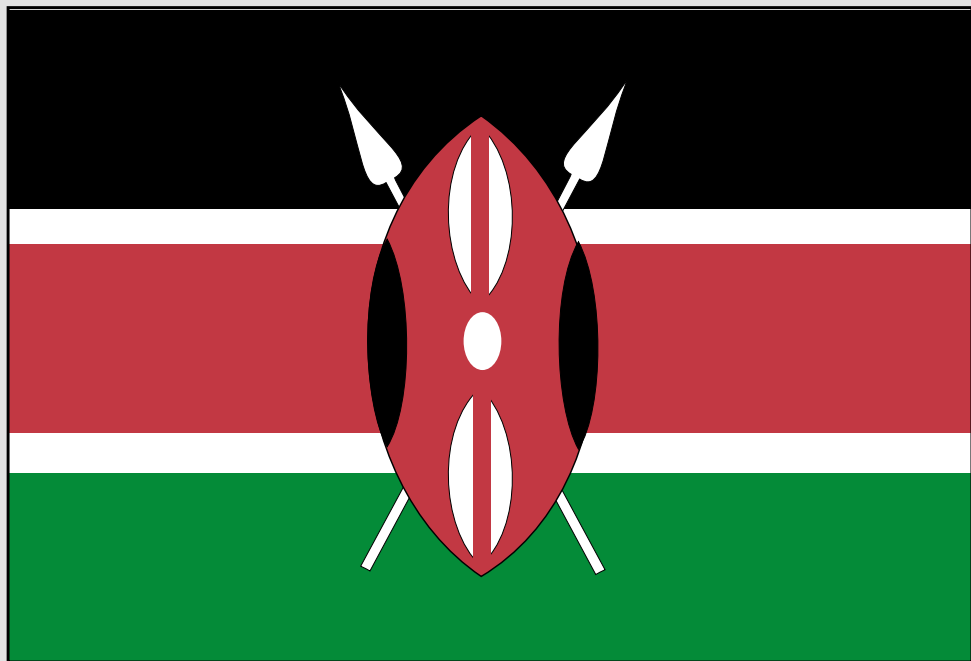


# THE DEATH PENALTY IN LAW AND IN PRACTICE

KENYA



**EC  
PM** TOGETHER  
AGAINST  
THE DEATH  
PENALTY



**CRIME  
SIPQA**

**YOUTH SAFETY  
AWARENESS INITIATIVE**

**THE DEATH PENALTY  
IN LAW AND IN PRACTICE**

**KENYA**

**KENYA**



**AREA** 580,370 KM<sup>2</sup>

**CAPITAL CITY** NAIROBI

**POPULATION** 57,052,004 (2023, WORLD BANK)

**OFFICIAL LANGUAGES** SWAHILI, ENGLISH

**HEAD OF STATE AND GOVERNMENT**

WILLIAM RUTO, PRESIDENT OF THE REPUBLIC SINCE SEPTEMBER 13, 2022

**MINISTER OF FOREIGN AFFAIRS**

WYCLIFFE MUSALIA MUDAVADI, PRIME CABINET SECRETARY OF KENYA,  
CS FOR FOREIGN AND DIASPORA AFFAIRS OF KENYA

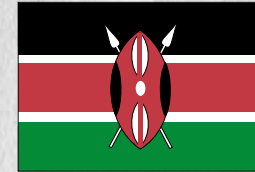
**MINISTRY IN CHARGE OF PRISON ADMINISTRATION**

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

#2

**THE DEATH PENALTY  
IN LAW AND IN PRACTICE**

**KENYA**



**STATUS  
ON A MORATORIUM ON EXECUTIONS**

**DATE OF THE LAST EXECUTION  
1987**

**NUMBER OF DEATH SENTENCES IN 2023  
131**

**NUMBER OF DEATH ROW PRISONERS AT THE END OF 2023  
120**

**METHOD OF EXECUTION  
HANGING**

#3

## APPLICATION OF THE DEATH PENALTY AND CONDITIONS OF DETENTION OF DEATH ROW PRISONERS

### THE DEATH PENALTY: A MANDATORY PUNISHMENT?

Within Kenya's legal framework, Section 204 of the Penal Code specifically provided for the mandatory death penalty for murder. Other sections of the Penal Code prescribed capital punishment for crimes such as robbery with violence, attempted robbery with violence, to take an oath to commit a crime punishable by capital punishment and treason. This mandatory sentencing scheme strips judges of their discretion and eliminates their ability to consider mitigating factors. Under such a system, a court cannot take into account any mitigating circumstances like mental disabilities or a clean criminal record; instead, a guilty verdict triggers an automatic death sentence. This rigid approach to sentencing leaves little room for judicial flexibility or humane considerations.

In 2015, Francis Murutatetu and other petitioners challenged the constitutionality of their death sentences, which had been handed down under Section 204 of the Penal Code. In a landmark 2017 judgment, the Supreme Court of Kenya ruled that the mandatory nature of the death sentence, as prescribed by Section 204, was unconstitutional. The Court ordered a re-hearing of sentences, prioritizing this process and calling for a comprehensive professional review to establish a framework for similar cases. The Attorney General was given a twelve-month window to report on progress, and it was recommended that laws be amended or enacted to align with the judgment, defining the parameters of what constitutes life imprisonment. This decision marked a significant step towards rectifying the harshness of the mandatory death penalty in Kenya and moving towards a more just and humane criminal justice system.

However, in July 2021, the Supreme Court issued directions and guidelines stating that the decision in Muruatetu was only applicable in respect to sentences of murder under sections 203 and 204 of the Penal Code.

### SITUATION OF DEATH ROW PRISONERS

According to a report by Penal Reform International,<sup>1</sup> death row prisoners live in prisons that are generally overcrowded, which has consequences for their living conditions and their access to basic services. Water shortages prevent prisoners from maintaining their personal hygiene and contribute to the spread of diseases such as typhoid. The

1 <https://cdn.penalreform.org/wp-content/uploads/2013/05/East-Africa-research-report-on-death-penalty-and-life-imprisonment.pdf>

lack of sanitary facilities causes detainees to relieve themselves in buckets, carrying other illnesses. However, access to health care is limited and prison medical staff do not have the basic equipment necessary to preserve the health of detainees. Access to food is also limited due to the large number of detainees in the prisons. In addition, prisons lack beds and enough space for all prisoners, to the point where most of them have to sleep in single file.

The urgency of the situation and the overcrowding engenders frustration, which turns into acts of violence among the detainees.

Another study by the Kenya National Commission on Human Rights<sup>2</sup> found that the conditions in which prisoners on death row lived had a psychological impact on them. They live isolated from other prisoners, recreational activities being little or not allowed to them depending on the prisons, and they suffer from discrimination due to their death row prisoner status. Some prisoners in the Kibos Maximum Prison (Western Kenya) are only allowed out of their cells to eat their meals. In addition, they are isolated from their families, who often abandon them once the death sentence pronounced.

### PARDON AND COMMUTATION OF SENTENCES

Article 133.1 of the 2010 Kenyan Constitution provides that “on the petition of any person, the President may exercise a power of mercy” by “granting a free or conditional pardon to a person convicted of an offence”, by “postponing the carrying out of a punishment, either for a specified or indefinite period”, by “substituting a less severe form of punishment” or even by “remitting all or part of a punishment”.<sup>3</sup>

In 2016, President Uhuru Kenyatta commuted the death sentences of 2,747 death row inmates, including 92 women, to life sentences.<sup>4</sup> As of 2021, 1,626 death row prisoners were seeking a pardon.<sup>5</sup> In 2022, the number of prisoners seeking presidential pardons reportedly fell by 30% following a Supreme Court ruling that declared the mandatory death penalty unconstitutional as they opted to apply for resentencing instead of presidential clemency.<sup>6</sup>

Finally, in July 2023, President William Ruto commuted the sentences of all those sentenced to death as of November 2022 to life in prison, following recommendations from the Advisory Committee on the Power of Mercy.<sup>7</sup>

2 [https://www.knchr.org/Portals/0/Penal%20Reforms/KNCHR%20Death%20penalty%20survey%20report%20\(Phase%20\).pdf?ver=2018-06-08-154200-080](https://www.knchr.org/Portals/0/Penal%20Reforms/KNCHR%20Death%20penalty%20survey%20report%20(Phase%20).pdf?ver=2018-06-08-154200-080)

3 [https://www.constituteproject.org/constitution/Kenya\\_2010.pdf](https://www.constituteproject.org/constitution/Kenya_2010.pdf)

4 <https://worldcoalition.org/2016/11/08/pardon-prisoners-on-death-row/>

5 <https://www.the-star.co.ke/news/2021-03-21-2509-prisoners-appeal-for-pardon/>

6 <https://www.businessdailyafrica.com/bd/economy/death-row-inmates-seeking-pardon-drop-30pc-3674624>

7 <https://www.kenyans.co.ke/news/91496-ruto-reduces-sentences-all-death-row-convicts>

## RIGHT TO APPEAL

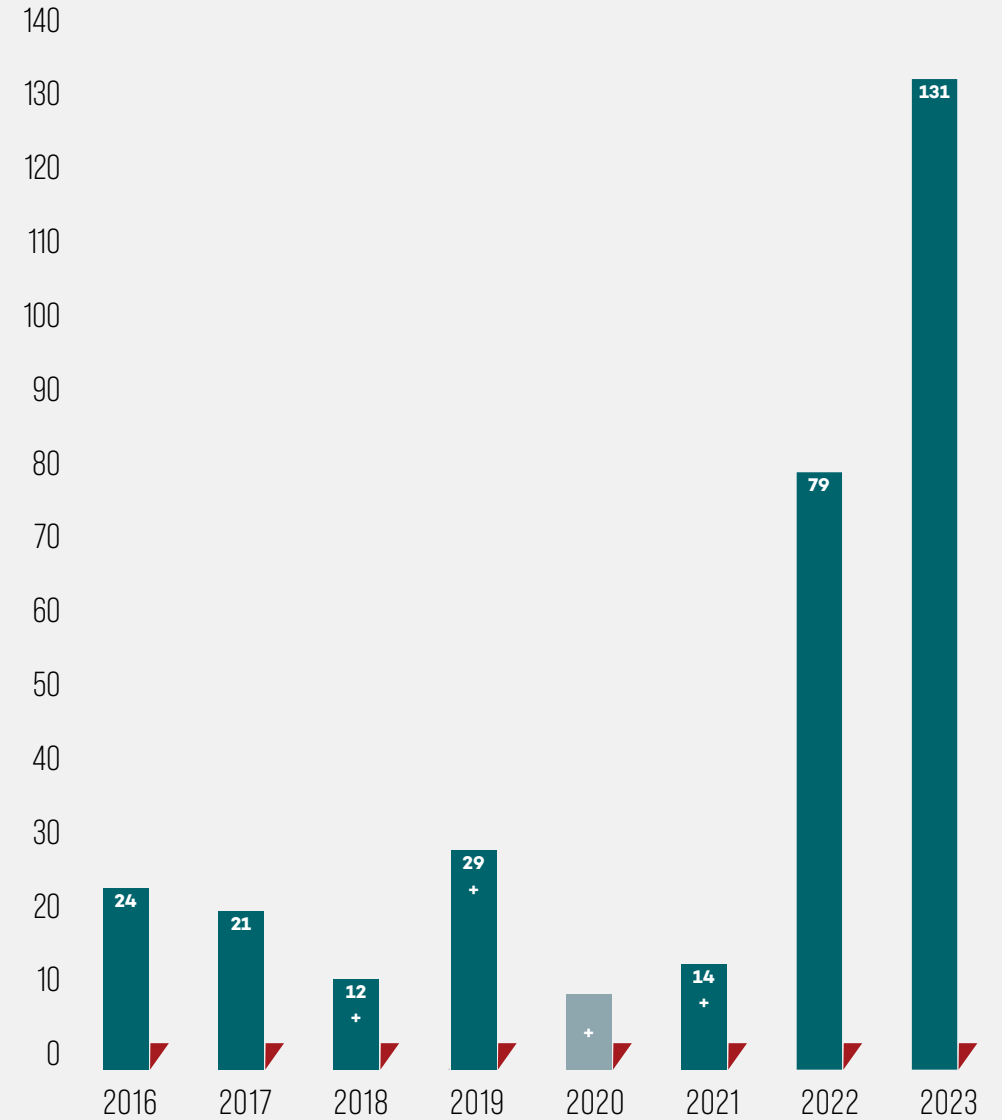
According to section 379 of the Kenyan Criminal Procedure Code, “a person convicted on a trial held by the High Court and sentenced to death, or to imprisonment for a term exceeding twelve months, or to a fine exceeding two thousand shillings, may appeal to the Court of Appeal :

- a) against the conviction, on grounds of law or of fact, or of mixed law and fact;
- b) with the leave of the Court of Appeal, against the sentence, unless the sentence is one fixed by law.”

However, a person sentenced to death cannot be granted bail pending his rehearing and determination of the appeal, as a person sentenced to a lesser sentence can if a judge of the High Court or the Court of Justice appeal decides (section 379.4).<sup>8</sup>

8 <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2075>

## EVOLUTION OF THE NUMBER OF DEATH SENTENCES OVER THE LAST 8 YEARS



## NATIONAL LEGAL FRAMEWORK

There are at least **41** provisions relating to death penalty in Kenya.

### THE CONSTITUTION OF 2010<sup>9</sup>

Article 26 of the 2010 Kenyan Constitution provides that everyone has the right to life, and sub article 3 states that “a person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or other written law”. However, no mention of the death penalty is made explicitly in the text.

### THE PENAL CODE OF 2009<sup>10</sup>

Section 24 of the Kenyan Penal Code acknowledges the death penalty as one of the criminal penalties applicable in Kenya. Section 25, however, specifies that a death sentence cannot be imposed on a person who was under the age of 18 at the time the crime was committed. Similarly, a pregnant woman sentenced to death will have her sentence converted to life imprisonment under section 211.

The Kenyan Penal Code provides that the offences punishable by death are treason, incitement to take an unlawful oath, murder or even aggravated robbery and aggravated assault.

In total, there are **17** provisions that provide for the application of the death penalty in the Kenyan Penal Code of 2009.

### THE CRIMINAL PROCEDURE CODE REVISED IN 2012<sup>11</sup>

The Criminal Procedure Code governs judicial proceedings in criminal matters. It provides rules and procedures for investigations, prosecutions, judgments or appeals in Kenya. Chapter X of the document consolidates the provisions relating to the death sentence.

Section 330 thus provides that the person sentenced to death must be informed of their right to appeal against their sentence. Section 331 provides any certificate from a clerk or judicial officer stating that a death sentence has been imposed as sufficient

9 [https://www.constituteproject.org/constitution/Kenya\\_2010.pdf](https://www.constituteproject.org/constitution/Kenya_2010.pdf)

10 <https://www.kenyapolice.go.ke/downloads/category/5-acts.html?download=7:penal-code>

11 <https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/85001/KEN85001.pdf>

evidence to place a person sentenced to death in custody. Section 332 deals with the procedure for applying pardons and commutations of sentences, exercised by the president, who is also the one who issues death warrants containing details of the date or place of the execution.

**4** provisions provide for the death penalty in this Code.

### THE ARMED FORCES ACT REVISED IN 2009<sup>12</sup>

This Act governs the activities, responsibilities, rights and duties of the Kenyan Armed Forces. It establishes the legal framework in which the armed forces operate and defines their functions, their structures, their internal organization, but also the sanctions to which they are exposed in the event of an offence. Regarding the death penalty, it can be pronounced for any officer or soldier who acts for the benefit of an enemy foreign State. Mutiny and the failure to prevent it are also punishable by death, as are treason and murder. The law also provides that anyone sentenced to death has the right to appeal their sentence and that the president must approve any such sentence.

A total of **20** provisions provide for the application of the death penalty in the Kenya Armed Forces Act, revised in 2009.

12 <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ArmedForcesAct.pdf>

## LIST OF LEGISLATIVE PROVISIONS ON THE DEATH PENALTY

### THE PENAL CODE OF 2009

- Section 24** The following punishments may be inflicted by a court -  
(a) death ;
- Section 25** (1) Where any person is sentenced to death, the form of the sentence shall be to the effect only that he is to suffer death in the manner authorized by law.  
(2)\* Sentence of death shall not be pronounced on or recorded against any person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years, but in lieu thereof the court shall sentence such person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct, and whilst so detained shall be deemed to be in legal custody.
- Section 33** A person convicted of an offence not punishable with death may, instead of, or in addition to, any punishment to which he is liable, be ordered to enter into his own recognizance, with or without sureties, in such amount as the court thinks fit, conditioned that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such recognizance, with sureties, if so directed, is entered into; but so that the imprisonment for not entering into the recognizance shall not extend for a term longer than one year, and shall not, together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.
- Section 37** Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof
- Section 38** When sentence is passed under this Code on an escaped convict, that sentence -  
(a) if of death, or fine, shall, subject to the provisions of this Code, take effect immediately;
- Section 40** (3) Any person who is guilty of the offence of treason shall be sentenced to death.
- Section 59** Any person who -  
(a) is present at, and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with death; (...)  
is guilty of a felony and is liable to imprisonment for life.

- Section 60** Any person who administers an oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence, punishable with death, is guilty of a felony and shall be sentenced to death.
- Section 61** Any person who -  
(a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the ways following, that is to say -  
(...)  
(ii) to commit any offence not punishable with death;  
(...)  
is guilty of a felony and is liable to imprisonment for ten years.
- Section 122** (1) Any person who by force rescues or attempts to rescue from lawful custody any other person -  
(a) is, if the last-named person is under sentence of death or imprisonment for life, or charged with an offence punishable with death or imprisonment for life, guilty of a felony and is liable to imprisonment for life;
- Section 204** Any person convicted of murder shall be sentenced to death.
- Section 211** Where a woman convicted of an offence punishable with death is found in accordance with the provisions of section 212 to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death.
- Section 212** (1) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the court before whom she is so convicted thinks fit so to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by the trial judge.
- Section 296** (1) Any person who commits the felony of robbery is liable to imprisonment for fourteen years.  
(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.
- Section 297** (1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a felony and is liable to imprisonment for seven years.  
(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.

**Section 300** (1) Any person who, with intent to extort or gain anything from any person -  
(a) accuses or threatens to accuse any person of committing any felony or misdemeanour, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any felony or misdemeanour; or  
(b) threatens that any person shall be accused by any other person of any felony or misdemeanour, or of any such act;  
or  
(c) knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid,  
is guilty of a felony, and if the accusation or threat of accusation is of-  
(i) an offence for which the punishment of death or imprisonment for life may be inflicted;  
(...)  
the offender is liable to imprisonment for fourteen years; and in any other case the offender is liable to imprisonment for three years.

**Section 389** Any person who attempts to commit a felony or a misdemeanour is guilty of an offence and is liable, if no other punishment is provided, to one-half of such punishment as may be provided for the offence attempted, but so that if that offence is one punishable by death or life imprisonment he shall not be liable to imprisonment for a term exceeding seven years.

## THE CRIMINAL PROCEDURE CODE REVISED IN 2012:

**Section 330 Accused to be informed of right to appeal**  
When an accused person is sentenced to death, the court shall inform him of the time within which, if he wishes to appeal, his appeal should be preferred.

**Section 331 Authority for detention**  
A certificate under the hand of the Registrar or other officer of the court that sentence of death has been passed, and naming the person condemned, shall be sufficient authority for the detention of that person.

**Section 332 Record and report to be sent to President**  
(1) As soon as conveniently may be after sentence of death has been pronounced, if no appeal from the sentence is confirmed, then as soon as conveniently may be after confirmation, the presiding judge shall forward to the President a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.  
(...)  
(3) The President shall issue a death warrant, or an order for the sentence of death to be commuted, or a pardon, under his hand and the Public Seal of Kenya to give effect to the decision, and—  
(a) if the sentence of death is to be carried out, the warrant shall state the place where and the time when execution is to be had, and shall give directions as to the place of burial or cremation of the body of the person executed;

(b) if the sentence is commuted for any other punishment, the order shall specify that punishment;  
(c) if the person sentenced is pardoned, the pardon shall state whether it is free, or to what conditions (if any) it is subject :  
Provided that the President's warrant may direct that the execution shall take place at such time and at such place and that the body of the person executed shall be buried or cremated at such place as shall be appointed by some officer specified in the warrant.  
(4) The warrant, or order, or pardon, of the President shall be sufficient authority in law to all persons to whom it is directed to execute the sentence of death or other punishment awarded, and to carry out the directions therein given in accordance with the terms thereof.

**Section 379 Appeals from High Court to Court of Appeal**  
(1) A person convicted on a trial held by the High Court and sentenced to death, or to imprisonment for a term exceeding twelve months, or to a fine exceeding two thousand shillings, may appeal to the Court of Appeal—  
(a) against the conviction, on grounds of law or of fact, or of mixed law and fact;  
(b) with the leave of the Court of Appeal, against the sentence, unless the sentence is one fixed by law.  
(...)  
(4) Save in a case where the appellant has been sentenced to death, a judge of the High Court, or of the Court of Appeal, may, where an appeal to the Court of Appeal has been lodged under this section, grant bail pending the hearing and determination of the appeal.

## THE ARMED FORCES ACT REVISED IN 2009:

**Section 14** (1) Any person subject to this Act who, with intent to assist the enemy-  
(a) abandons or delivers up any place or post which it is his duty to defend, or abandons his place of duty, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend, or induces any person to abandon that person's place of duty; or  
(b) does any act calculated to imperil the success of operations of the armed forces, or of any co-operating forces, or of any part of the armed forces or of any co-operating forces; or  
(c) having been captured by the enemy, serves with or aids the enemy in the prosecution of hostilities, or in the taking of measures calculated to influence morale, or in any other way whatsoever not authorized by international usage; or  
(d) furnishes the enemy with arms or ammunition or with supplies of any description or with any other thing (whether similar to the foregoing or not); or  
(e) harbours or protects an enemy who is not a prisoner of war; or  
(f) gives any false air signal, or alters or interferes with any air signal or any apparatus for giving an air signal; or  
(g) when ordered by his superior officer, or otherwise under orders, to carry out any warlike operations in the air, fails to use his utmost exertions to carry such orders into effect; or

(h) causes the capture or destruction by the enemy of any of the aircraft of the armed forces or of any co-operating forces,  
shall be guilty of an offence and liable, on conviction by court martial, to suffer death or any other punishment provided by this Act.

**Section 15** (1) Any person subject to this Act who, with intent to assist the enemy, communicates with or gives intelligence to the enemy or to any unauthorized person shall be guilty of an offence and liable, on conviction by court martial, to suffer death or any other punishment provided by this Act.

**Section 16** (1) Any person subject to this Act who is in command of any aircraft, ship, vehicle or establishment of the armed forces, and who with intent to assist the enemy-  
(a) fails to use his utmost exertions to bring into action any aircraft, ship or vehicle which it is his duty to bring into action; or  
(b) surrenders any aircraft, ship or vehicle of the armed forces to the enemy when it is capable of being successfully defended or destroyed; or  
(c) fails to pursue any enemy whom it is his duty to pursue, or to assist to the utmost of his ability any friend whom it is his duty to assist; or  
(d) in the course of any action by or against the enemy, improperly withdraws from the action or from his station, or fails in his own person and according to his rank to encourage the persons under his command to fight courageously; or  
(e) surrenders any establishment, or any part of an establishment, of the armed forces to the enemy when it is capable of being successfully defended or when it is his duty to cause it to be destroyed,  
shall be guilty of an offence and liable, on conviction by court martial, to suffer death or any other punishment provided by this Act.

**Section 17** Any person subject to this Act who is not in command of any aircraft, ship, vehicle or establishment of the armed forces, and who fails, when ordered to prepare for action by or against the enemy or during any such action, to use his utmost exertions to carry the lawful orders of his superior officers into execution, shall be guilty of an offence and liable, on conviction by court martial, if the offence is committed with intent to assist the enemy, to suffer death or any other punishment provided by this Act, and in any other case to imprisonment for life or any less punishment provided by this Act.

**Section 25** (1) Any person subject to this Act who-  
a) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connexion with operations against, the enemy or the impeding of the performance of any such duty or service; or  
(b) incites any person to take part in such a mutiny, whether actual or intended, shall be guilty of an offence and liable, on conviction by court martial, to suffer death or any other punishment provided by this Act.

**Section 26** Any person subject to this Act who, knowing that a mutiny is taking place or is intended-  
(a) fails to use his utmost endeavours to suppress or prevent it; or  
(b) fails to report without delay that the mutiny is taking place or is intended,

shall be guilty of an offence and liable, on conviction by court martial-  
(i) if his offence was committed with intent to assist the enemy, to suffer death or any other punishment provided by this Act;

**Section 66** Any person subject to this Act who attempts to commit an offence under any of the foregoing provisions of this Part shall be guilty of an offence and liable, on conviction by court martial, to the same punishment as is provided for the offence attempted:  
Provided that, if the offence is one punishable by death or by imprisonment for life, he shall not be liable to any greater punishment than imprisonment for a term not exceeding seven years.

**Section 69** (1) Any person subject to this Act who commits a civil offence, whether in Kenya or elsewhere, shall be guilty of an offence and, on conviction by court martial-  
(a) if the civil offence is treason or murder, shall be sentenced to death;

**Section 86** (1) A court martial shall consist of a presiding officer and not less than two other members:  
Provided that a court martial shall consist of a presiding officer and not less than four other members if-  
(i) an officer is to be tried; or  
(ii) the only punishment or the maximum punishment which can be awarded in respect of the charge before the court is death.

**Section 98** (3) A conviction where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all members of the court; and, where all the members do not concur in a conviction in such a case, the court shall be dissolved and the accused may be tried by another court.  
(4) Where the accused is convicted and the court has power to sentence him either to death or to some other punishment, sentence of death shall not be passed without the concurrence of all the members of the court.

**Section 102** (1) The punishments which may be awarded to an officer by sentence of a court martial are, subject to the limitations hereinafter provided, those set out in the following scale-  
(a) death; (...)

**Section 103** (1) The punishments which may be awarded to a serviceman by sentence of a court martial are, subject to the limitations hereinafter provided, those set out in the following scale-  
(a) death; (...)

**Section 106** (2) Where the person is sentenced to death, the sentence shall not be executed until his case has been reviewed under section 111.

**Section 111** (3) A conviction and a sentence of a court martial shall not be treated as a conviction or a sentence of the court until confirmed:  
Provided that-  
(...)  
(ii) a sentence of death passed on a person on active service and the conviction in consequence of which it was passed need not be reviewed if in the opinion of



the confirming officer it is essential in the interests of discipline and for securing the safety of the force with which the person sentenced is present that the sentence should be carried out at once, and the confirming officer records that opinion on confirming the sentence.

**Section 113** Without prejudice to section 124, a sentence of death shall not be carried out unless it has been approved by the President: Provided that a sentence of death passed on a person on active service may be carried out without the approval of the President under that section, where in the opinion of the confirming officer it is essential in the interests of discipline and for securing the safety of the force with which the person sentenced is present that the sentence should be carried out at once, and the confirming officer records that opinion on confirming the sentence.

**Section 116** (3) Except in the case of a conviction involving sentence of death, the High Court may extend the period within which an application for leave to appeal must be lodged, whether that period has expired or not.

**Section 124** Where a person is convicted by court martial and sentenced to death-  
(a) the sentence shall not be executed until after the expiration of the period within which an application for leave to appeal to the High Court against the conviction may be lodged; and  
(b) if such an application is duly lodged, the sentence shall not be executed until either the application is finally refused or is withdrawn or (if it is granted) the appeal is determined or abandoned:  
Provided that the foregoing provisions of this section do not apply to a sentence of death passed on a person on active service, where in the opinion of the confirming officer it is essential in the interests of discipline and for securing the safety of the force with which the person sentenced is present that the sentence should be carried out at once, and the confirming officer records that opinion on confirming the sentence.

**Section 134** A person who is sentenced to death or imprisonment, and who is committed or transferred to a civil prison shall while in that prison be imprisoned and otherwise dealt with in the same manner as a person imprisoned therein under a similar sentence of civil court.

**Section 210** (4) Notwithstanding the foregoing provisions of this section, a sentence of death passed by a service court of a designated country shall not be carried out in Kenya unless under the law of Kenya a sentence of death could have been passed in a similar case.

**Section 227** (1) Subject to the powers of the President under this Act the Defence Council may make regulations for better carrying out the provisions and purposes of this Act and generally for the good government of the armed forces and the constabulary, and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to-  
(...)  
(q) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;

## INTERNATIONAL LEGAL FRAMEWORK

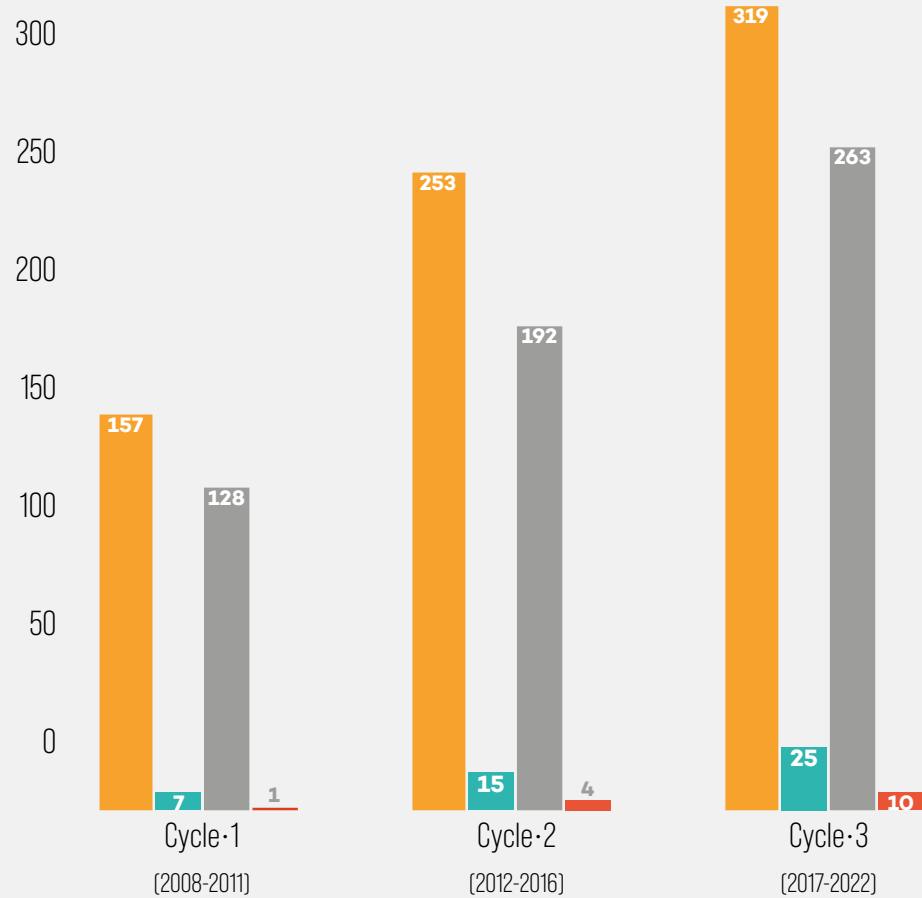
### MAIN INTERNATIONAL TEXTS ON THE ABOLITION OF THE DEATH PENALTY

TEXT	DATE OF RATIFICATION OR ACCESSION
International Covenant on Civil and Political Rights, 1966	1 May 1972 (accession)
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 Feb 1997 (accession)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002	X
Convention on the Rights of the Child, 1989	30 Jul 1990 (accession)
African Charter on Human and Peoples' Rights, 1981	23 Jan 1992
African Charter on the Rights and Welfare of the Child, 1990	25 Jul 2000

### 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 supported recommendations
- Number of supported recommendations on the death penalty

## RECOMMENDATIONS ON THE DEATH PENALTY MADE TO KENYA IN 2020

No.	RECOMMENDATION	Number	Supported	Noted
142.12	Consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Namibia);	1	1	
142.81	Commute the death sentences of the remaining 810 death-row inmates (Namibia);	1	1	
142.82	Finalize the implementation of the national court ruling declaring the death sentence to be unconstitutional (Angola);	1	1	
142.83	Adopt additional measures aiming at the abolition of the death penalty, so as to comply with the decision of the Supreme Court that the death penalty is unconstitutional (Brazil);	1	1	
142.84	Continue taking steps to abolish the death penalty (Georgia);	1	1	
142.85	Reconsider taking further steps to abolish the death penalty (Mozambique);	1	1	
142.86	Continue the steps necessary for the abolition of the death penalty (Romania);	1	1	
142.87	Consider further limitations on the use of the death penalty with a view to imposing a de facto moratorium on its use and aiming at its total abolition (Rwanda);	1	1	
142.88	Accelerate progress towards abolishing the death penalty (South Africa);	1	1	
142.89	Take the necessary measures to abolish the death penalty for all crimes (Switzerland);	1	1	
143.5	Consider taking the necessary steps to introduce a de jure moratorium on capital executions with a view to fully abolishing the death penalty, including by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Italy).	1		1
144.2	Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Honduras);	1		1
144.3	Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro);	1		1
144.4	Sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Uruguay);	1		1
144.5	Fully abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Spain);	1		1
144.6	Formalize its moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (New Zealand);	1		1
144.41	Fully abolish the death penalty (Cyprus);	1		1

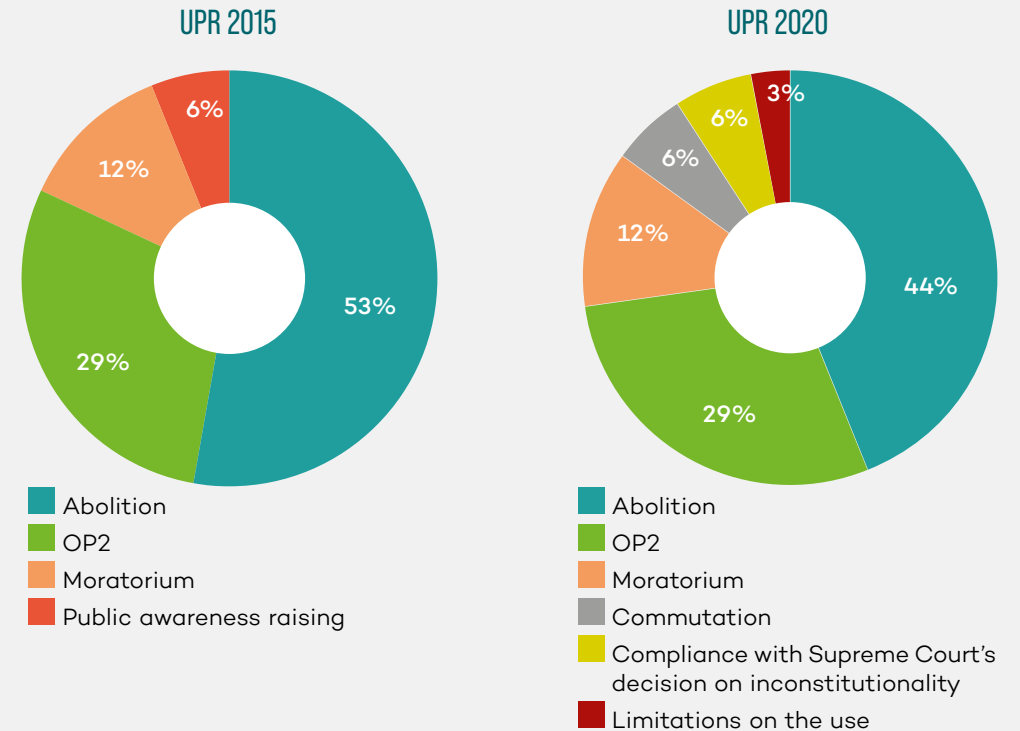
144.42	Establish a formal moratorium on the death penalty and commute all existing death sentences with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Australia);	1		1
144.43	Abolish the death penalty (Cabo Verde) (Slovenia) (Togo);	3		3
144.44	Abolish the death penalty completely, in law and in practice (Fiji);	1		1
144.45	Formally abolish the death penalty for all crimes (France);	1		1
144.46	Giving continuity to recent progress in this field, abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Portugal);	1		1
144.47	Fully abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Iceland);	1		1
<b>TOTAL</b>		<b>25</b>	<b>10</b>	<b>15</b>

The 44<sup>th</sup> session of the UPR highlighted an increase in the number of recommendations made to Kenya on the issue of the death penalty, since there were 25 in 2020 compared to 15 in 2015, which represents an increase by 66%. The weight of the theme of the death penalty remains however light compared to the 319 recommendations made in total for Kenya.

Out of 25 recommendations relating to the issue of the death penalty made in 2020, Kenya supported 10. In 2015, it only supported 4 out of 15. This decision is consistent with the country's moratorium status.

In 2024, Kenya voted for the first time in favour of the UN resolution calling for a moratorium on the use of the death penalty, after having continually abstained from previous votes.

## EVOLUTION OF THEMES OF RECOMMENDATIONS RELATING TO THE DEATH PENALTY MADE TO KENYA BETWEEN 2015 AND 2020



Comparing the distribution of themes addressed in the recommendations on the death penalty made to Kenya over the last two UPRs, the range of topics has become more varied and specific. In 2020, following on from the recommendations made in 2015, the main focus was on the abolition and ratification of OP2.

With the number of death penalty recommendations increasing, some other themes were introduced: calls for commutations of death sentences, for the implementation of the national court ruling declaring death sentences unconstitutional and for further limitations on the use of capital punishment.

# THE DEATH PENALTY IN AFRICA - 2024



**25** ABOLITIONIST STATES FOR ALL CRIMES

States or territories where the death penalty is abolished.

**3** ABOLITIONIST STATES FOR ORDINARY CRIMES

States or territories where the death penalty is abolished unless there are exceptional circumstances.

**18** STATES WITH A MORATORIUM ON EXECUTIONS

States or territories where the death penalty is implemented but no executions have been carried out for at least 10 years and which did not oppose the latest UN resolution for a universal moratorium on executions and/or having ratified OP2\*.

**9** RETENTIONIST STATES

States or territories where the death penalty is implemented.

# ABOLITION NOW

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🌐 [www.ecpm.org](http://www.ecpm.org)



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