

THE DEATH PENALTY IN LAW AND IN PRACTICE

IRAQ

الله أكبر

EC TOGETHER
PM AGAINST
THE DEATH
PENALTY

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

GLOBAL SITUATION OF DEATH ROW PRISONERS¹

The situation of death row prisoners in Iraq is dire and marked by significant human rights violations. Iraq retains the death penalty for a wide range of offenses, many of which do not involve intentional killing, contravening its obligations under international law, including the International Covenant on Civil (ICCPR) and Political Rights and the Arab Charter on Human Rights. The Anti-Terrorism Law (No.13) of 2005 is particularly problematic, as it allows for the death penalty for non-lethal offenses and has a broad definition of terrorism that can include individuals who have not committed any violent acts. This law mandates the death penalty for those who incite, plan, finance, or assist terrorists, without considering their level of involvement or the severity of their actions.

In 2023, there were at least 25,000 people on death row in Iraq, many of whom have been convicted on terrorism charges without a full appeal. In July 2024, 10 Iraqis “convicted of terrorism crimes and of being members of ISIS were executed by hanging” at Al-Hut prison in Nasiriyah². This collective execution follows that of 13 other prisoners in December 2023 in the central prison of Nasiriyah.

Torture is reportedly widespread in Iraq’s judicial system, with torture-extracted confessions being used to sentence individuals to death. This practice has been criticized by UN legal experts and former UN Special Rapporteur Agnes Callamard, who pointed out serious structural problems in Iraq’s legal system, including unfair trials and lack of adequate legal representation.

Furthermore, access to Iraq’s prisons is severely restricted, and the country has not published data on its use of the death penalty since 2014. However, a 2021 statement from Iraq’s Ministry of Justice indicated that there are 50,000 people detained on terrorism charges, half of whom have been sentenced to death, with 90% of these sentences not yet finalized.

WOMEN ON DEATH ROW³

Women on death row in Iraq particularly face harsh conditions and are disproportionately affected by the country’s justice system. As of January 2021, there were 332 women on death row, with the majority convicted on terrorism-related charges. Many of these women were sentenced for mere affiliation with terrorist organizations, often due to familial connections rather than direct involvement in violent acts.

¹ Source: Reprieve/ECPM 2023 report

² <https://english.alarabiya.net/News/middle-east/2024/07/22/iraq-hangs-10-convicted-of-terrorism-security-health-sources>

³ Source: Reprieve/ECPM 2023 report



The treatment of women in Iraq's prison system, especially those on death row, is a cause for serious concern. Reports indicate overcrowding, poor infrastructure, and inadequate material conditions in female prisons⁴. Women on death row also face additional challenges, including limited access to legal representation and family visitation. Many are mothers separated from their children, adding to their psychological distress. The lack of gender-sensitive approaches in the judicial process and detention facilities further exacerbates their vulnerability.

DEATH PENALTY AND FOREIGN NATIONALS⁵

Between 2018 and 2019, Iraq has sentenced more than 500 foreign nationals to death or long prison terms for their alleged membership of the Islamic State. These sentences are part of the Iraqi government's fight against terrorism, which executed at least 16 people in 2023, placing the country sixth in the world among states practising capital punishment. The trials of these foreigners raise serious concerns about respect for international human rights and fair trial standards. ECPM has denounced the serious dysfunctions of the Iraqi judicial system before the UN Human Rights Council.

In theory, foreign convicts are entitled to consular protection⁶, but in practice this is often limited. Some countries, such as France, have adopted an ambiguous position, declaring that their nationals tried in Iraq had received a fair trial, despite criticism from human rights organisations. This situation has led to diplomatic tensions and calls from civil society for the convicts to be repatriated. Faced with this situation, some European countries have begun to repatriate their nationals, mainly women and children, while others are still hesitant, fearing public reaction.

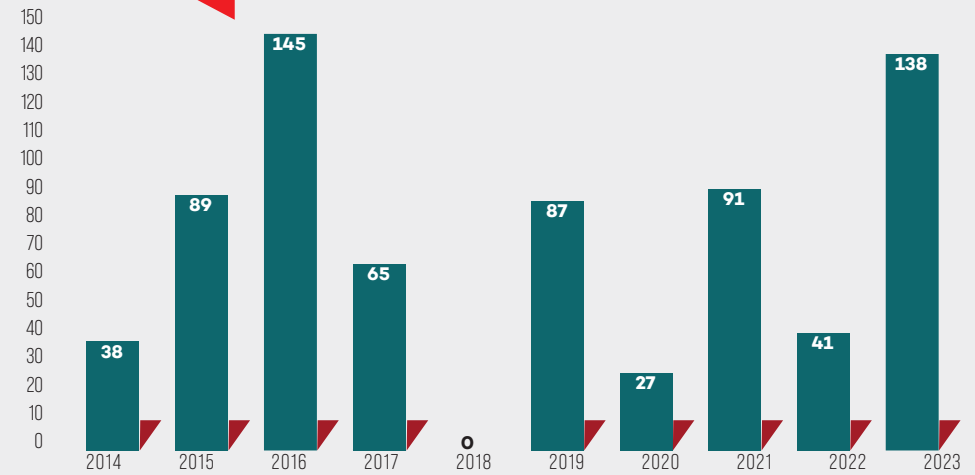
PARDON

The ICCPR requires that anyone sentenced to death has the right to seek clemency or pardon or commutation of the sentence⁷. However, in practice, pardons for death row prisoners in Iraq appear to be rare. While the Iraqi Constitution provides for the possibility of clemency, its application is limited.

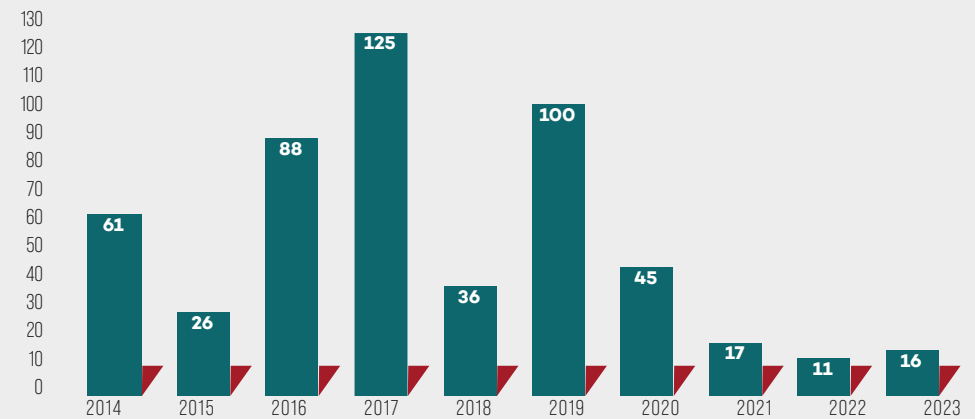
Recent data from the United Nations shows a troubling trend of mass executions in Iraqi prisons, with reports of at least 13 prisoners executed on a single day in December 2023. The UN has urged Iraq to grant clemency and commute death sentences as a step⁸ towards abolishing capital punishment. Despite these calls, there is little evidence of widespread pardons being issued to those on death row in Iraq, as the country continues its use of the death penalty, particularly in cases related to terrorism charges.

4 <https://www.ohchr.org/en/news/2022/04/experts-committee-against-torture-praise-iraqs-human-rights-training-police-and>
 5 Source : 10 questions pour mieux comprendre la situation des citoyens français condamnés à mort en Irak <https://www.ecpm.org/app/uploads/2022/08/10-questions-conference-Irak-061021-GRIS-MD2.pdf>
 6 Consular protection refers to the assistance that a country provides to its citizens when they are arrested, detained, or facing legal issues in a foreign country. This can include legal advice, communication with local authorities, and ensuring fair treatment.
 7 https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_HRO_DP_10Oct2014.pdf
 8 <https://reliefweb.int/report/iraq/iraq-must-immediately-stop-mass-unannounced-executions-un-experts>

EVOLUTION OF THE NUMBER OF EXECUTIONS OVER THE LAST 10 YEARS⁹



NUMBER OF EXECUTIONS



9 These data are an attempt to compile the number of death sentences handed down by civil and military courts.

NATIONAL LEGAL FRAMEWORK

It's important to note that Iraq has ratified the International Covenant on Civil and Political Rights (ICCPR), which places restrictions on the use of the death penalty. However, Iraq's national laws appear to be in conflict with these international obligations in many respects.

CONSTITUTION OF IRAQ (2005)¹⁰

Article 15 of the Iraqi Constitution of 2005 guarantees the essential rights to life, security, and liberty for all individuals. This article also states that “deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority”, emphasizing the importance of due process.

The constitution also delineates the powers of the President in Article 73, which includes the authority to issue special pardons upon the Prime Minister's recommendation, with certain exceptions for specific crimes. The President can also ratify death sentences issued by competent courts.

IRAQI PENAL CODE (LAW NO. 111 OF 1969)

The Iraqi Penal Code contains the most extensive provisions related to capital punishment in Iraq. However, its content has been revised to limit the number of crimes punishable by death. In 2003, under the influence of the Coalition Provisional Authority (CPA) and the Iraqi Interim Government, the death penalty was suspended in Iraq and replaced with life imprisonment or lesser sentences as prescribed by the Iraqi Penal Code. This suspension was part of the CPA's efforts to reform the Iraqi judicial system after the fall of Saddam Hussein's regime and align it with international human rights standards. When capital punishment was reintroduced in 2004, the government restricted its use to specific crimes.

These crimes include: serious political offenses such as attempting to overthrow the republican regime by force or inciting armed rebellion. Acts of terrorism or sabotage, such as destroying important public facilities, contaminating public water resources causing deaths, or sabotaging transportation infrastructure resulting in fatalities, are also included. Additionally, the code covers aggravated murders, including premeditated killings, those committed with toxic substances or explosives, for base motives or payment, against relatives or officials, or linked to other crimes. Kidnapping, particularly of minors or women, especially if accompanied by sexual assault, is also punishable by death. Aggravated robbery, committed at night by

¹⁰ <https://www.wipo.int/wipolex/en/text/230000>

armed groups, with use of force, or causing serious injury or death, is also listed. Finally, treason and espionage, especially during wartime, are included. Some of these offenses do not meet the international standard of most serious crimes.

Article 86 of the Iraqi Penal Code also specifies hanging as one of the main methods of execution.

MILITARY PENAL CODE (NO. 19 OF 2007)¹¹

The Iraqi Military Code of 2007 includes several provisions regarding the death penalty for military personnel. It specifies that the death sentence is carried out by shooting.

The code outlines numerous offenses punishable by death, particularly during times of mobilization, including assisting the enemy, causing harm to allied forces, or actions resulting in deliberate murder. These offenses range from instigating mutiny and disclosing military secrets to vandalizing combat equipment and obstructing commanders. The code also allows for the death penalty in cases where the use of force results in a victim's death. However, it provides some flexibility, allowing for life imprisonment instead of death in certain circumstances where provocation or mitigating factors are present.

THE COUNTER-TERRORISM ACT (NO. 13 (2005))¹²

The death penalty is provided for in Article 4 of the Iraqi Counter-Terrorism Act. Among the terrorist offences punishable by death are the direct commission and indirect support such as planning, financing or encouraging terrorist activities. The law broadly defines terrorism to include acts of violence, threats, sabotage and organised terrorist undertakings that endanger life, damage property or threaten national security.

THE JUVENILE WELFARE ACT (NO. 76 (1983))¹³

The Juvenile Welfare Act is the primary legal instrument governing juvenile justice in Iraq. It stipulates that no death sentence can be imposed on individuals who were under 18 years of age at the time of committing an offense.

In total, at least 47 legislative provisions provide for the application of the death penalty in Iraq.

¹¹ <https://ihl-databases.icrc.org/en/national-practice/military-penal-code-law-n-192007>

¹² https://www.unodc.org/uploads/icsant/documents/Legislation/Iraq/Iraq/English/Act_No_13_2005_ENG.pdf

¹³ <https://juvenilejusticecentre.org/wp-content/uploads/2019/01/juvenile-welfare-law-iraq-76-of-1983.pdf>

LIST OF LEGISLATIVE PROVISIONS ON THE DEATH PENALTY

CONSTITUTION OF IRAQ – 1 PROVISION¹⁴

Article 73 The President of the Republic shall assume the following powers:
1 - To issue a special pardon on the recommendation of the Prime Minister, except for anything concerning a private claim and for those who have been convicted of committing international crimes, terrorism, or financial and administrative corruption ; [...]
8 - To ratify death sentences issued by the competent courts.

IRAQI PENAL CODE (LAW NO. 111 OF 1969) – 37 PROVISIONS¹⁵

Article 2 Anybody who cultivates poppies, coca or cannabis for the purpose of producing narcotic drugs or industrial non-medical psychotropic drugs shall be sentenced, in addition to his crops being destroyed, to the following punishments according to the amount of his or her cultivation:
1. First offense, a fine in the amount of ten million to one hundred million rials in cash.
2. Second offense, a fine in the amount of fifty million to five hundred million rials in cash, plus 30 to 70 lashes.
3. Third offense, a fine in the amount of one hundred million to one billion rials in cash, plus 1 to 70 lashes together with two to five years of imprisonment.
4. Fourth offense, death penalty.

Article 22 (1) Life imprisonment replaces the death sentence for political offences.

Article 25 A felony is an offence punishable by one of the following penalties:
(1) Death [...]

Article 31 Attempted felonies or misdemeanors are punishable by the following penalties unless otherwise stipulated by law.
(1) Life imprisonment if the prescribed penalty for the offence is death.

Article 72 If a child commits a felony, he shall be sentenced to confinement in a reform school for a period of not less than 2 years but not exceeding 5 years if the felony is punishable by the death sentence or life imprisonment and a period of not less than 1 year but not exceeding 4 years if the felony is punishable by imprisonment for a term of years.

¹⁴ <https://www.wipo.int/wipolex/en/text/230000>

¹⁵ https://menarights.org/sites/default/files/2016-11/IRQ_Penal%20Code%201969%20as%20amended_eng.pdf

Article 73 (1) If a young person commits a felony, he shall be confined in a school for young offenders, for a period of not less than 2 years but not exceeding 15 years if that felony is punishable by the death sentence or life imprisonment.

Article 79 No person between the ages of 18 and 20 at the time of committing an offence can be sentenced to death. In such a case, he will receive life imprisonment instead of the death sentence.

Article 85 The primary penalties are:
1. Death penalty [...]

Article 86 The death penalty is the hanging of the condemned person by the neck until he is dead.

Article 98 Any death sentence imposed on the condemned person means that, from the day it is imposed until the sentence is carried out, the condemned person is, in accordance with the law, deprived of the rights and privileges prescribed in the preceding 2 Articles. Any disposal or administrative transaction undertaken by him during the above period other than making a will or endowment are void. A legal or personalty court will, according to the circumstances and on the application of the public prosecutor or any person who has an interest, an executor for the condemned person.

Article 130 If there exists a mitigating excuse for a felony for which the penalty is death, the penalty shall be reduced to life imprisonment or imprisonment for a term of years or detention for a period of not less than 1 year. If the penalty is life imprisonment or imprisonment for a term of years; the penalty shall be reduced to a period of detention of not less than 6 months unless otherwise stipulated by law.

Article 132 If the court considers that the circumstances of a felony or of the offender call for leniency, it may substitute a lesser penalty for the penalty prescribed for the offence, as follows:
(1) Life imprisonment or imprisonment for a term of years not less than 15 years may be substituted for the death penalty

Article 136 If there exists any aggravating circumstances in the commission of an offence, the court may rule as follows:
(1) If the penalty prescribed for the offence is life imprisonment, the death penalty may be imposed.

Article 163 The following persons are punishable by life imprisonment or imprisonment for a term of years: [...]
(3) Any person who endangers military plans or plans for the defense of the country.
The penalty will be death if the offence occurs during time of war.

Article 190 Any person who attempts to overthrow by force or with the use of violence the constitutionally appointed Republican regime or change the constitution or the State or the formation of the government is punishable by life imprisonment or imprisonment for a term of years. If the offence is committed by a group using bombs, dynamite or other explosives or firearms, the penalty will be death or life imprisonment. The penalty will be death if the offence results in any fatalities.

Article 191 Any person who, with criminal intent, takes command of part of the armed forces or a military post or port or town without authorization from the government is punishable by death or life imprisonment. The same penalty applies to any person who remains in a position of military command in contravention of the orders given to him by the government and to any commander who maintains his units under arms or mobilized after the government has ordered their demobilization or disbandment.

Article 192 (1) Any person who attempts to incite armed rebellion against the constitutionally appointed authorities or who is a member of a conspiracy or group aspiring to that end is punishable by imprisonment. [...]
(3) If such rebellion results in an armed confrontation with the armed forces of the State or in fatalities or if the offender is the commander in charge of an armed force, the penalty will be death.

Article 193 Any person who is entitled to command units of the armed forces and who asks or instructs those units to obstruct the execution of the government's orders is punishable by life imprisonment or imprisonment for a term of years if he has criminal intent. If such an act does result in the obstruction of the government's orders, he is punishable by death or life imprisonment and any commander who obeys that person's orders is punishable by life imprisonment or imprisonment for a term of years.

Article 194 Any person who organizes, directs or assumes command of an armed group that attacks any sector of the population or has, as its objective, the prevention of the rule of law, the invasion of territory or the appropriation by force of property belonging to the State or a group of people or who resists with the use of arms members of the public authorities is punishable by death. However, any person who joins such a group without participating in its formation or assuming control of it is punishable by life imprisonment or imprisonment for a term of years.

Article 195 Any person who has as his objective incitement to civil war or sectarian fighting by arming the population or by encouraging one section of the population to arm itself against another or by urging them to fight is punishable by life imprisonment. The penalty will be death if the objective is realized.

Article 196 Any person who attempts to occupy with the use of force or menaces any public property or building or building belonging to a government agency or departments or public utility or general establishment or to take control in any way of such property or prevent it from being used for the purpose for which it was intended.
If the offence is committed by an armed group, the penalty will be life imprisonment or imprisonment for a term of years for its members or death or life imprisonment for the person who formed the group or assumed the leadership or command of that group.

Article 197 (1) Any person who willfully destroys, demolishes, spoils or seriously damages a public building or property or property belonging to a government agency or department or public utility or general establishment or property belonging to associations considered by law to be for the public welfare or oil installation or any other state industrial installation or hydroelectric power station or means of communication or bridge or dam or public waterway or place set aside for public use or recreation or any public property of significant importance to the national economy with intent to overthrow the constitutionally appointed regime is punishable by death or life imprisonment.
(2) The penalty is death if the offender uses explosives in the commission of the offence or if that offence leads to the death of any person found in such place.

Article 269 Any person who enables another who has been seized, arrested or detained in accordance with the law to escape or helps or assists him to do so and such other person is accused of an offence for which the penalty is death is punishable by a period of detention not exceeding 7 years.

Article 271 Any public official or agent who is entrusted with the arrest of a person or with guarding a person under arrest, detainee or prisoner or with escorting or transferring such person and who subsequently enables him to escape or is negligent in respect of that person or is lax while carrying out the necessary procedures of the arrest with intent to assist him to escape is punishable by a term of imprisonment not exceeding 10 years if the escapee has already been sentenced to life imprisonment or imprisonment for a term of years or if he is accused of an offence for which the penalty is death.

Article 273 (1) Any person who, himself or through another, knowingly conceals or shelters another person who runs away following his arrest or the issue of a warrant for his arrest or who is accused or has been convicted of a felony or misdemeanor is punishable by the following penalties:
(a) A term of imprisonment not exceeding 7 years if the person concealed or given shelter has been sentenced to death or life imprisonment or imprisonment for a term of years or is accused of an offence for which the penalty is death.

Article 349 Any person who willfully causes or attempts to cause flooding which endangers the life or property of others is punishable by a term of imprisonment not exceeding 15 years. The penalty will be death or life imprisonment if such flooding results in the death of others or life imprisonment or imprisonment for a term of years if such flooding results in serious damage to property.

Article 351 (1) Any person who willfully endangers the life or safety of others by contaminating with substances, bacteria or other such material which cause death or serious harm to the public health, a well, water store, public storage depot or other such thing set aside for use by the public is punishable by life imprisonment or imprisonment for a term of years. The penalty will be death if such contamination results in the death of others.

Article 354 Any person who willfully endangers in any way safety of navigation in the air or at sea or the safety of a train, ship, aircraft or other mode of public transport is punishable by imprisonment.
The penalty will be life imprisonment if such act results in a train disaster or accident involving any of the modes of transport mentioned above. The penalty will be death or life imprisonment if it results in the death of others.

Article 355 (1) Any person who willfully causes damage to or sabotages a public highway or airport or bridge, or dam or railway or navigable channel or river is punishable by detention plus a fine or by one of those penalties. [...]
(3) The penalty will be death or life imprisonment if the offence results in a disaster or the death of others.

Article 406 (1) Any person who wilfully kills another is punishable by death in the following circumstances:
(a) If such killing is premeditated.
(b) If such killing occurs as a result of the use of toxic substances or explosives.
(c) If the motive for such killing is base or such killing is in exchange for money or if the offender uses brutal methods in the commission of the offence.
(d) If the victim is a parent of the offender.
(e) If the victim is a public official or agent while in the course of executing his duty or employment or if he is killed as a consequence of such duty or employment.
(f) If the offender intends to kill two or more people and does so as a result of a single act.
(g) If the murder is related to one or more other murders or attempted murders.
(h) If the killing is committed as a prelude to the commission of a felony or misdemeanor punishable by a period of detention of not less than 1 year or in order to facilitate the commission of such offence or while carrying out such offence or in order to enable the offender or accessory to make his escape or avoid punishment.
(i) If the offender has been sentenced to life imprisonment for murder and he commits murder or attempts to do so during the term of his sentence.
(2) The penalty will be death or life imprisonment in the following circumstances:
(a) If the offender intends to kill one person but his action results in the death of two or more persons.
(b) If the offender mutilates the body of the victim.
(c) If the offender sentenced to life imprisonment in circumstances other than those described in Sub-Articles (a)(i) of this Article and he commits murder during the term of his sentence.

Article 421 Any person who seizes, detains or deprives a person of his liberty in any way without an order from a competent authority in circumstances other than those described in the laws and regulations to that effect is punishable by detention. The penalty will be a death sentence in the following circumstances:
(1) If the offence is committed by a person who is wearing the uniform of a government employee without being entitled to do so or a distinctive official insignia belonging to such employee or assumes a false public identity or issues a false order for the arrest, imprisonment or detention of a person while claiming it to be issued by a competent authority.

(2) If the offence is accompanied by the threat of death or physical or mental torment.
(3) If the offence is committed by two or more persons or by a person openly carrying a weapon
(4) If the period of seizure, detention or deprivation of freedom exceeds 15 days.
(5) If the motive for the offence is financial gain or the sexual assault of the victim or the taking of vengeance on the victim or on another.
(6) If the offence is committed against a public official or agent in the execution of his duty or employment or as a consequence of it.

Article 422 Any person who himself or through another kidnaps a person under the age of 18 without the use of force or deception is punishable by a death sentence if the victim is female or by a death sentence if the victim is male. If the kidnapping is carried out with the use of force or deception or there exists any aggravating circumstance described in Article 421, the penalty will be the death sentence if the victim is female or the death sentence if the victim is male.

Article 423 Any person who himself or through another kidnaps a woman over the age of 18 with the use of force or deception is punishable by a death sentence. If the kidnapping is accompanied by any sexual intercourse with the victim or an attempt to have intercourse with her, the penalty will be death.

Article 424 If the use of force described in Article 422 and 423 or the torment described in Article 421 results in the death of the victim, the penalty will be death or life imprisonment.

Article 440 The penalty will be death if theft is committed in the following circumstances:
(1) If the offence is committed between dusk and dawn.
(2) If the offence is committed by two or more persons.
(3) If any of the offenders is openly carrying a weapon or carrying a concealed weapon.
(4) If the offence is committed in a place of residence or place set aside for that purpose or part thereof and if entry is gained by climbing a wall, forcing a door or other such method or by the use of a counterfeit key or by assuming an official identity or claiming to be on public service or by conspiring with a resident of such place or by deception.

Article 441 The penalty will be death for an offence of theft committed against a person on a public highway away from a town or city or on a train or other conveyance on land or at sea at such times when it is remote from any populated area and in the following circumstances:
(1) If the offence is committed by two or more persons and one of them is openly carrying a weapon or carrying a concealed weapon.
(2) If the offence is committed with the use of force by two or more persons.
(3) If the offence is committed by a person who is openly carrying a weapon or is carrying a concealed weapon between dusk and dawn with the use of force or by threatening with the use of a weapon or if he tortures the victim or uses extreme force.

Article 442 The penalty will be death for an offence of theft committed in any of the following circumstances:

- (1) If the offence is committed by two or more persons one of whom is openly carrying a weapon or is carrying a concealed weapon.
- (2) If the offence is committed between dusk and dawn by two or more persons with the use of force or by threatening another with the use of a weapon. Force or threats are considered to have been used even though the offender employs such tactics only after he has committed the theft with intent to retain the stolen goods or escape with them.
- (3) If the offence is committed with the use of force which results in a permanent disability or broken bone or harm or illness that prevents the victim from carrying out his normal business for more than 20 days or which results in the death of another

Article 443 The penalty will be death if an offence of theft is committed in any of the following circumstances:

- (1) If the offence is committed with the use of force.
- (2) If the offence is committed between dusk and dawn by a person openly carrying a weapon or carrying a concealed weapon.
- (3) If the offence is committed between dusk and dawn by three or more persons.
- (4) If the offence is committed between dusk and dawn in a place of residence or a place set aside for that purpose or part thereof.
- (5) If the offence is committed between dusk and dawn in a bank, shop, store or depot to which the offender gains entry by climbing a wall, forcing a door, making an opening or by using some other such method or with the use of a counterfeit key or by assuming the identity of a public official or claiming to be on public service or by conspiring with a resident of such place or by deception.

MILITARY PENAL CODE (NO. 19 OF 2007) – 7 PROVISIONS¹⁶

Article 10 Offences fall into two categories:
First: Original Penalties:
A) Death Sentence: Putting the convicted to death by means of shooting. Implementation is by virtue of the Law of "Principles of Military Trials" for military persons no. (30) of 2007 and Principles of Criminal Trials law no. 23 of 1971.

Article 15 First: Discharge or termination of contract shall be enforced in case of prescription of any of the following penalties:
a. Death sentence;

Article 29 Death penalty shall not be applied to whosoever commits any of the following crimes, during mobilization, with intent to assist the enemy or cause harm to the army or any forces of allied countries, or leads to deliberate murder or death of one or more military persons or civilians:

- First: Instigation, those who can carry arms of Iraqis or members of forces under countries allied with the Iraqi government, to take the enemy side;
- Second: Propagating the spirit of mutiny amongst Iraqi military forces or forces of an allied state in order to stir armed uprising against the constitution-based government;
- Third: Disclosure of secrets, countersigns, special signals, alerts or instructions of guards, patrolmen, patrol stations and wireless codes;
- Fourth: Distortion of information or service-related directions or negligence of the same at confrontations with the enemy;
- Fifth: Guiding the enemy to Iraqi government forces or forces in alliance with Iraqi government or deliberately misleading the latter authorities to the wrong road;
- Sixth: Causing panic within an Iraqi force or making it execute erroneous movements or actions via use of military sign, etc, or instigating to flee or hinder gathering of scattered soldiers;
- Seventh: Communicating with, or causing to communicate with, persons under enemy forces or residing in enemy states with the aim disclosure of conditions relating to management of war, whether in writing, verbally or via any other means of communication;
- Eighth: Negligence of carrying out part or all of his duty or alternation in an order by himself or instructing armed forces' personnel, under his command, to suspend government orders;
- Ninth: Announcement or distribution of enemy bulletins or statements among army forces maliciously;
- Tenth: Negligence of subsistence of the division under his charge;
- Eleventh: Release of prisoners of war or causing them to escape;
- Twelfth: Informing the enemy of the set of signs used at war or briefing them of the same;
- Thirteen: Vandalizing or destroying combat gear of military aircrafts or vessels, or their engines, or equipments, or destroying or reducing their combat

16 <https://ihl-databases.icrc.org/en/national-practice/military-penal-code-law-n-192007>

capabilities or causing the same in a manner that weakens the capabilities of security authorities in maintaining safety and security for citizens and their properties, as well as state borders;

- Fourteen: Deliberate execution of an action that would jeopardize security and safety of means of communication through enabling the enemy to tap communications relating to movements or warfare or acquisition of the communication equipment or the wireless network.

Article 35 First: Whosoever escapes to join the enemy is punishable with death sentence

Article 43 First: Whosoever obstructs his Commander, or person of higher rank, using force or threat, from execution of an order relating to his duties is punishable with imprisonment not exceeding (10) ten years. The same penalty is applicable where obstruction is exercised against soldiers assigned or prepared for Commander's protection. (...)

Third: Where the assault occurs at time of mobilization, imprisonment not exceeding (15) fifteen years shall be applicable. Death sentence is applicable where the assault led to death of the higher-ranked officer.

Article 44 First: where offence stated in sections "First", "Second and "Third" of Article (XLII) herein due to lower-ranked officer's provocation by higher-ranked officer's committal of an act of breach of military system or rules, or as a result of exceeding the limitations of his powers, penalty shall be set at half of designated term. However, where designated penalty is death sentence, it shall be altered to life imprisonment, provided that court explains, in the grounds for its decision, the justification or circumstances necessitating extenuation.

Article 61 First: Whosoever utilizes the horror of war or misuses military power for unlawful or coercive seizure of other persons' possessions, or unauthorized collection of monies or funds or exceeding limitations of all warfare expenditure for his personal benefit, is punishable with imprisonment for a minimum period of (10) ten years. [...]

Seventh: Death penalty is applicable, provided that the use of force results in the death of the victim.

THE COUNTER-TERRORISM ACT (NO. 13 (2005)) – 1 PROVISION¹⁷

Article 4 1. Anyone who, as a primary perpetrator or accomplice, commits any of the terrorist actions set forth in articles 2 and 3 of the present Act, shall be punished by a sentence of death. Anyone who incites, plans, funds or enables terrorists to commit the offences set forth in the present Act shall be punished by the same penalty as a primary perpetrator.

THE JUVENILE WELFARE ACT (NO. 76 (1983)) – 1 PROVISION¹⁸

Article 76 In case the boy committed a felony punishable by imprisonment for a life or with capital punishment so the Juvenile's Court should pass a judgement against him instead of the penalty that is legally decided by sending him to the school of Rehabilitating the Boys for a period of (5) years.

¹⁷ https://www.unodc.org/uploads/icsant/documents/Legislation/Iraq/Iraq/English/Act_No_13_2005_ENG.pdf

¹⁸ <https://juvenilejusticecentre.org/wp-content/uploads/2019/01/juvenile-welfare-law-iraq-76-of-1983.pdf>

INTERNATIONAL LEGAL FRAMEWORK

MAIN INTERNATIONAL TEXTS ON THE ABOLITION OF THE DEATH PENALTY

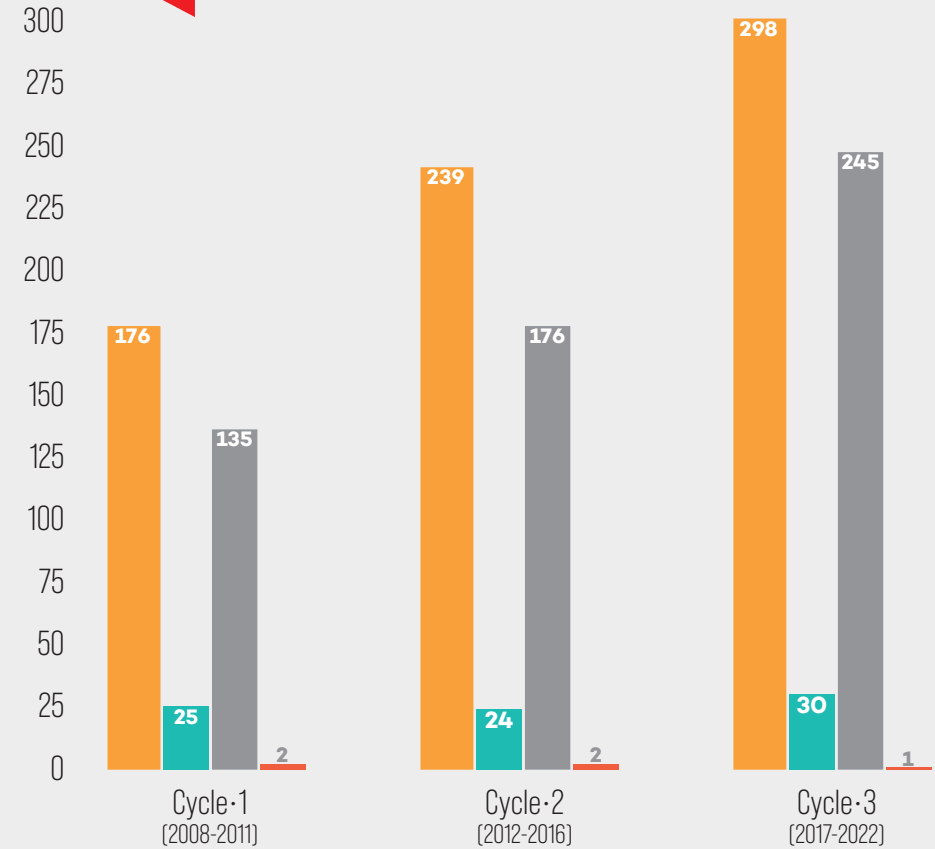
TEXT	DATE OF RATIFICATION OR ACCESSION
International Covenant on Civil and Political Rights, 1966	1971
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989	X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	2011
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002	X
International Convention on the Rights of the Child, 1989	1994

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



Since 2007, Iraq systematically votes against the UN General Assembly resolution calling for a universal moratorium on the use of the death penalty.

UNIVERSAL PERIODIC REVIEWS (UPR)



During its second UPR cycle, Iraq supported or partially supported 176 recommendations. Two recommendations relating to the death penalty were supported. During its third UPR cycle in 2019, Iraq only supported one death penalty recommendation, specifically relating to the limitation of capital punishment to the most serious crimes.

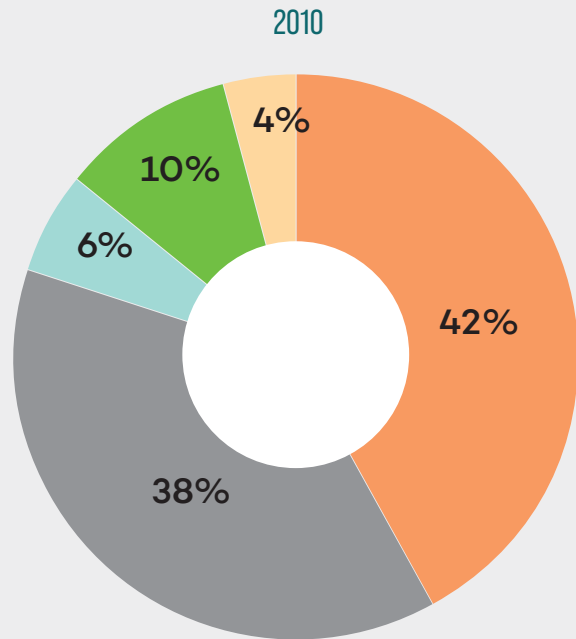
The next UPR review of Iraq is scheduled for January 2025.

RECOMMENDATIONS ON THE DEATH PENALTY MADE TO IRAQ IN 2019

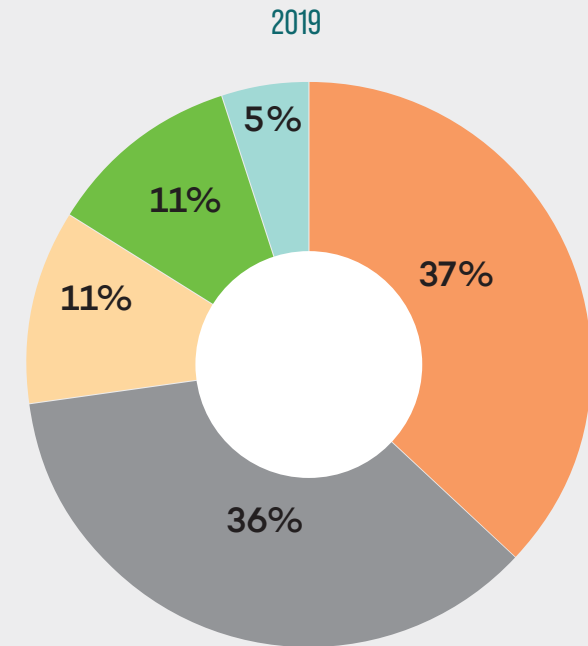
No.	RECOMMENDATION	Number	Accepted	Noted
147.125	Accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Togo) (Ukraine) (Uruguay);	3		3
147.127	Consider acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Mongolia);	1		1
147.122	Establish an official moratorium on executions that, in conformity with international human rights law, commutes all death sentences with a view to abolishing the death penalty (Portugal);	1		1
147.125	Establish an immediate moratorium on the death penalty with a view to its abolition (Norway); Establish an official moratorium on executions and commute all death sentences with a view to abolishing the death penalty (Republic of Moldova); Establish a moratorium on the application of the death penalty and repeal articles 110 and 111 of the Islamic penal code (France); Establish a moratorium on the death penalty with a view to its abolition (Albania); Establish a formal moratorium on the death penalty, as a step towards its complete abolition (Australia); Establish an official moratorium on the application of the death penalty with a view to its abolition (Chile);	6		6
147.126	Introduce a moratorium on the death penalty in order to abolish capital punishment, which would allow Iraq to become a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Poland);	1		1
147.127	Halt all executions and establish a moratorium on the death penalty with a view to abolishing capital punishment (Slovenia);	1		1
147.128	Adopt legislative reforms to restrict the death penalty to the most serious crimes, which would imply progress towards the abolition of the death penalty (Spain);	1		1
147.129	Continue to protect the historical heritage of the country and eliminate the death penalty for some crimes related to the theft, purchase and sale of antiques (Spain);	1		1
147.131	Immediately introduce a moratorium on the death penalty, as a first step toward its abolition (Sweden);	1		1
147.132	Limit capital punishment to the most serious crimes and reform antiterrorist legislation so as to guarantee a fair trial for the accused (Switzerland);	1	1	
147.135	Abolish the death penalty, and, as a first step, adopt an immediate moratorium on executions (Belgium);	1		1
147.136	Establish a moratorium on the death penalty with a view to its abolition alongside ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Croatia);	1		1

147.137	Recommend as an initial step the reduction of the number of offences punishable by death (Cyprus);	1		1
147.139	Reintroduce a moratorium on the use of the death penalty as a first step towards its abolition (Denmark);	1		1
147.141	Consider a moratorium on the death penalty with a view to abolishing it (Latvia);	1		1
147.142	Reduce the number of crimes punishable by death as a first step to an overall moratorium and eventually the abolition of the death penalty (Germany);	1		1
147.143	Establish a moratorium on executions with a view to abolishing the death penalty (Greece);	1		1
147.144	Implement a moratorium on all executions, with a view to abolishing the death penalty (Iceland);	1		1
147.146	Establish a 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 (Ireland);	1		1
147.147	Take into consideration the possibility of introducing a de facto moratorium on the death penalty with a view to its abolition (Italy);	1		1
147.149	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 (Estonia);	1		1
147.150	Immediately establish an official moratorium on executions and commute all death sentences with a view to abolishing the death penalty (Liechtenstein);	1		1
147.153	Establish a moratorium on the use of the death penalty for conduct that does not constitute the most serious offences, such as drug trafficking or terrorism, when no intentional killing is involved (Mexico);	1		1
Total		30	1	29

EVOLUTION OF THEMES OF RECOMMENDATIONS MADE TO IRAQ
BETWEEN ITS FIRST (2010) AND LAST CYCLES (2019)



- Moratorium
- Abolition
- Commutations
- Legislative Reform
- Respect of International Standard



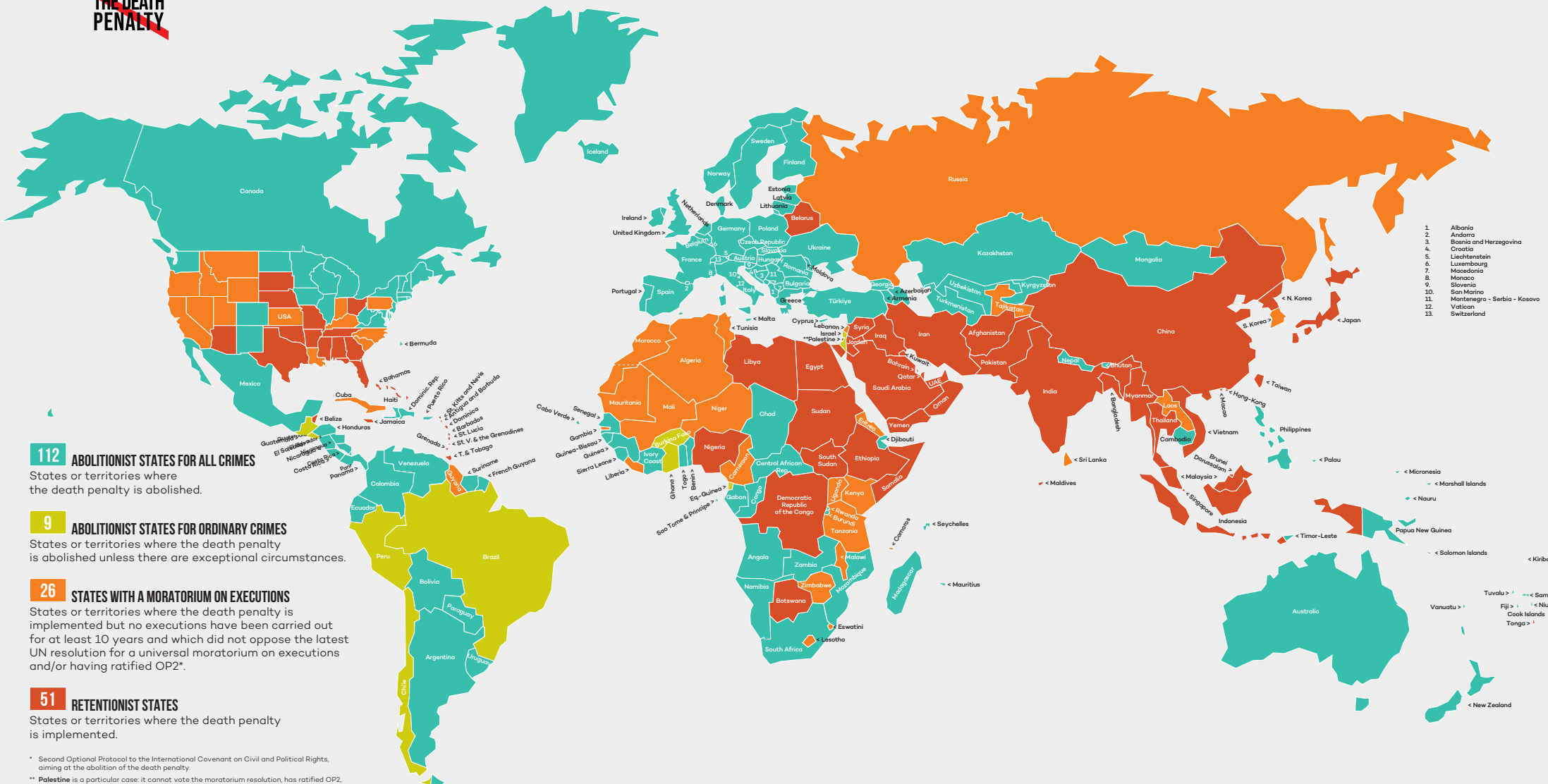
- Moratorium
- Abolition
- OP2
- Legislative Reform
- Commutations

Since 2010, the main recommendations addressed to Iraq during the UPR process have concerned the introduction of a moratorium (1), the abolition of the death penalty (2), and the reform of the legislation. In 2019, while the commutation of sentences still represents the smallest part of the recommendations, OP2 was introduced among the recommendation themes.

**EC
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TOGETHER
AGAINST
THE DEATH
PENALTY

THE DEATH PENALTY WORLDWIDE 2023

**ABOLITION
NOW**



112 **ABOLITIONIST STATES FOR ALL CRIMES**

States or territories where the death penalty is abolished.

9 **ABOLITIONIST STATES FOR ORDINARY CRIMES**

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

26 **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*.

51 **RETENTIONIST STATES**

States or territories where the death penalty is implemented.

1. Albania
2. Andorra
3. Bosnia and Herzegovina
4. Croatia
5. Liechtenstein
6. Luxembourg
7. Macedonia
8. Monaco
9. Slovenia
10. San Marino
11. Montenegro - Serbia - Kosovo
12. Vatican
13. Switzerland

* Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
** Palestine is a particular case: it cannot vote the moratorium resolution, has ratified OP2, but the death penalty is still applied in Gaza (last documented executions in 2023).

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