



**International Commission against the Death Penalty**

**The death penalty and the “most serious crimes”**

**A country-by-country overview of the death penalty  
in law and practice in retentionist states**

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# **The death penalty and the “most serious crimes”**

## **A country-by-country overview of the death penalty in law and practice in retentionist states<sup>1</sup>**

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It is a commonplace among anti-death penalty activists to state that the world is on the brink of universal abolition. Indeed – and without being too effusive – the use of the death penalty has decreased dramatically since the entry into force of the International Covenant on Civil and Political Rights (ICCPR) in 1976, in which the death penalty is carefully formulated as an exception to the right to life.<sup>2</sup>

Since 1976, the concept of exception to the right to life has been more fully elaborated, and has become more specific, narrowing the scope of the applicability of the death penalty by imposing limitations on who it is permissible to execute and under what conditions. Thus certain groups are excluded - juvenile offenders, the mentally ill, pregnant women and the elderly. Further elaboration of the concept of exception has resulted in strengthened procedural safeguards and progressive restrictions on the number and nature of serious crimes for which the death penalty may be applicable.

This document provides brief commentary on the concept of “most serious crimes”, followed by a country by country overview of criminal offences punishable by death in retentionist states (Annex A). Offences for which the death penalty is mandatory are noted and where available information is provided on capital offences under military law. Comments are included on whether capital offences under national law do or do not meet the threshold for “most serious crimes” as this is currently understood within international law. Each country entry provides brief information on the crimes for which the death penalty is actually imposed, along with a brief listing of the number of executions carried out each year from 2007 and to mid-2012. Annex B comprises a table summarising data on the status of retentionist states’ ratifications of relevant international standards, death sentences and executions, and the types of offences for which the death penalty is applicable.

### **1. Restricting the death penalty to “most serious crimes”**

#### **1.1 Origin and evolution of the notion of “most serious crimes”**

The legal basis for judicial executions in international law is found in Article 6 of the ICCPR, which addresses the right to life. Paragraph 2 introduces the formulation “most serious crimes”:

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 [...].

The concept of “most serious crimes” emerged as a compromise during the drafting process for Article 6. This is hardly surprising since by the end of the drafting process in 1954 only a minority of states had taken an abolitionist stand.

The formulation of Article 6 is open to wide interpretation. The notion of “seriousness” may vary according to national culture, religion, tradition and political context. However, a relativist approach is problematic as it potentially undermines the concept of universally applicable normative principles in international law. In the spirit of universality, Article 6 sets the direction towards abolition of the death penalty by establishing state obligations to progressively restrict its use.

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<sup>1</sup> The research was undertaken by consultant Christian Durisch for the International Commission against the Death Penalty. The research was carried out in May 2012.

<sup>2</sup> The term death penalty covers the imposition of the death penalty and the carrying out of executions.

According to the Safeguards Guaranteeing Protection of the Rights of those Facing Execution of 1984 (ECOSOC Resolution 1984/50), the scope of the death penalty “should not go beyond intentional crimes with lethal or other extremely grave consequences”. In his sixth quinquennial report, the UN Secretary-General stated that the above statement “is intended to imply that the offences should be life threatening, in the sense that this is a very likely consequence of the action”.<sup>3</sup> In 2006, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions further narrowed the interpretation of “most serious crimes” by defining them as “cases where it can be shown that there was an intention to kill, which resulted in the loss of life”.<sup>4</sup>

These progressively restrictive interpretations must be set within the overall context of a worldwide trend towards the abolition of capital punishment and the jurisprudence of national courts, which reflect a general trend towards limiting the application of the death penalty to intentional crimes with lethal consequences.

Despite this global trend, a minority of states have continued to show some resistance to the restrictive interpretation of “most serious crimes”. For instance, Nigeria challenged the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, arguing that:

The notion that executions for offences such as homosexuality and lesbianism are excessive is judgemental rather than objective. What may be seen by some as disproportional penalty in such serious offences and odious conduct such may be seen by others as appropriate and just punishment.<sup>5</sup>

Furthermore, the note verbale of disassociation signed by 53 UN member states in response to the 2010 UN General Assembly resolution entitled “Moratorium on the use of the death penalty” takes a similar line, stating that:

[T]he types of crimes for which the death penalty is applied, should be determined by each State, taking fully into account the sentiments of its own people, state of crime and criminal policy.<sup>6</sup>

Jurisprudence from a wide range of sources has brought some clarity to the question of which crimes can legitimately be classified as the “most serious”. This document uses the definition of “most serious crimes” proposed by the UN Special Rapporteur above – namely offences with intent to kill resulting in loss of life.

## **1.2 Crimes which do not meet the threshold for “most serious crimes”**

The UN and other international human rights bodies have advocated a progressively restrictive interpretation of offences which meet the threshold for “most serious crimes” and have sought to clarify the nature of offences which do not do so.

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<sup>3</sup> Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, <http://www.uncjin.org/documents>.

<sup>4</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/4/20, 29 January 2007, paragraphs 39-53 and 65. Guidance for the classification of crimes as “most serious crimes” has also been given by the Human Rights Committee in its General Comment 6 (16) on the right to life; by the UN Special Rapporteur for extrajudicial, summary or arbitrary executions, see UN Doc. A/HRC/11/2/Add.6, 26 May 2009, paragraph 84; and UN Doc. A/HRC/11/2/Add.5, 28 May 2009, paragraph. 23; and further by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/10/44, 14 January 2009, paragraph. 66; and by the UN Secretary-General in his report on the question of the death penalty and his quinquennial reports on capital punishment and implementation of the safeguards guaranteeing the protection of the rights of those facing execution, see UN Doc. E/2010/10.

<sup>5</sup> Response by Nigerian government representative to the oral report delivered by the Special Rapporteur on extrajudicial, arbitrary or summary executions at the Human Rights Council, 19 September 2008, cited in Amnesty International, *Love, hate the law and decriminalizing homosexuality*, 2008.

<sup>6</sup> <http://www.un.org/ga>.

### **Crimes against the state and military codes**

Most retentionist and a few other states that have abolished the death penalty for ordinary crimes, retain the death penalty for certain political offences, including offences against the state and public order, violations of military law in time of war, and for “terrorist” acts and acts of treason. Some of these offences may involve loss of life and could therefore be construed as intentional murder, but many are so broadly defined that the death penalty can be imposed for a range of offences that do not meet the threshold for “most serious crimes” identified above. Some could be described as political offences (see Annex A for a country by country review of death penalty law and practice in retentionist states).

### **Crimes resulting in death**

In some retentionist countries, serious crimes (or felonies) like arson, aggravated assault, burglary or robbery resulting in loss of life are punishable by death. Felony murder – where a killing was unintentionally committed during the commission of another crime – is also defined as a capital offence by some states. These crimes do not necessarily meet the “most serious crimes” threshold since loss of life may occur without actual intent to kill.

### **Drugs offences**

Drugs-related crimes for which the death penalty can be imposed include possession, production, trafficking or use of illicit narcotics. Generally, whether a person is sentenced to death or not depends on the type and quantity of drugs involved. In some countries possession of even a small amount of an illegal substance is punishable by death while in other countries drug possession per se is not a capital offence but may be construed as drug trafficking and hence subject to the death penalty.

## **2. Challenging the mandatory death penalty**

According to several UN and other international human rights bodies the mandatory death penalty is not compatible with the restriction of capital punishment to the “most serious crimes”. When the death penalty is mandatory the principle of mitigation is undermined, as the judge has no discretionary power to decide that the crime did not meet the “most serious crimes” threshold. Fully upholding the principle of mitigation requires judges to be permitted to apply individualised sentences that take into account all relevant mitigating factors and thence to determine that a particular criminal act does not fall within the category of “most serious crimes”.

In some states with Islamic legal systems Sharia law offences resulting in loss of life may be subject to the mandatory death penalty, as is the case for huddud offences (singular hadd, crimes which carry a fixed punishment as “claims of God”); and for qisas offences which require a fixed retaliatory punishment (according to the principle of “an eye for an eye”). In other states where Sharia law is in force the death penalty is mandatory for murder unless the victim’s kin can freely forgive the accused or demand compensation (diyya) in lieu of execution. In such cases the courts have no discretion regarding the sentence.<sup>7</sup>

Overall however, globally the number of states where the death penalty is mandatory for some offences is declining, largely as a result of judicial challenges to its application. Since 2000, at least 18 states have abolished it. National courts in sub-Saharan Africa, the Americas and India have all concluded that a mandatory death penalty is arbitrary, inhumane and unconstitutional, and some have additionally determined that it violates the right to life, the right to due process, and the principle of separation of powers. Despite this progress some 20 countries or territories maintain a mandatory death penalty for specific offences, many of which do not qualify as “most serious crimes”.<sup>8</sup>

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<sup>7</sup> It is noteworthy that for murder or qisas offences, even the executive has no power to grant pardon. See M. Cherif Bassiouni, “Death as a Penalty in the Shari’a”, in P. Hodgkinson and W. A. Schabas, *Capital Punishment: Strategies for Abolition*, London 2004, pp. 169-185.

<sup>8</sup> These states are: Afghanistan, Democratic Republic of the Congo, Equatorial Guinea, Guyana, Iran, Jordan, Kuwait, Libya, Malaysia, Nigeria, Pakistan, Palestinian Authority, Qatar, Saudi Arabia, Singapore, Sudan, Syria, Trinidad and Tobago, United Arab Emirates and Yemen. Furthermore, the mandatory death penalty may be authorised under some circumstances in Barbados, Botswana, Chad, Ethiopia, Somalia and South Sudan. For country information see Annex A.

### **3. Overview of the death penalty in law and practice in retentionist countries**

While international law progressively restricts the use of the death penalty to offences meeting the “most serious crimes” threshold, it is still applied for a wide range of offences in some countries. From available information a number of observations can be made.

In many states which retain the death penalty there are capital crimes which do not meet a restrictive definition of “most serious crimes”. Available data suggest that the majority of executions would not be carried out if states adhered to a strict interpretation of “most serious crimes”. In Iran, for example, it is estimated that more than 80 per cent of executions do not meet the international threshold for “most serious crimes”. In China, despite some welcome reforms, the death penalty is still imposed for non-lethal crimes and in Malaysia many of those on death row have been sentenced for drugs offences. Other countries define adultery, apostasy, armed robbery or gang robbery and sodomy as capital offences. In contrast, in the English-speaking Caribbean, despite a fervent belief that capital punishment deters crime, in practice the death penalty is only imposed for murder and executions are rarely carried out.

To conclude, there is a clear international trend away from capital punishment – according to the United Nations more than 150 countries have abolished the death penalty in law or do not execute. Despite this global trend some countries maintain that capital punishment deters crime and therefore can and should be imposed for a broad range of crimes even when there is no intent to kill or actual loss of life. This position runs counter to international law, most particularly the right to life and the narrow exceptions to that right. Clearly if these states adhered to a restrictive definition of “most serious crimes” there would be a significant decrease in the number of executions worldwide.

## **Annex A: Country information on the death penalty in law and practice**

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The following provides country by country information on the death penalty in law and in practice, along with brief comments on whether capital offences qualify as “most serious crimes”. The information was compiled from official statements, press reports, UN documents and NGO sources such as Amnesty International and Hands off Cain, and the Death Penalty Worldwide database at the Northwestern University School of Law, USA.

### **Afghanistan**

#### Death penalty in law

The constitution recognises that the death penalty is an exception to the right to life and stipulates that all executions must be approved by the president. The death penalty can be imposed for a wide range of crimes in Afghanistan although different schools of legal thought may not always concur on which crimes are punishable by death. A difficult security situation may also impact on respect for and implementation of the rule of law. The mandatory death penalty exists for murder but it is unclear to what extent it is mandatory for adultery, hirabah (highway robbery and armed robbery) and larceny.

Crimes punishable by death include: adultery; apostasy; blasphemy; homosexuality; killing during robbery; murder (intentional and unintentional); pederasty; and aggravated rape or statutory rape resulting in death. The death penalty is also applicable to political crimes including espionage during hostilities and times of war; “terrorist” attacks including arson against public utilities or resources, military assets, residential buildings, state buildings or crowded areas (whether resulting in death or not); and treason.

#### Death penalty in practice

Afghanistan adopted a new constitution in 2004 that made the application of the death penalty conditional on presidential approval. In his 2008 report to the Human Rights Council, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted that from February 2009 to April 2010 some 200 people were sentenced to death, some of whom were convicted of offences that could be classed as subject to qisas (i.e. requiring a retaliatory punishment).<sup>9</sup> Reports indicate that from 2008 individuals have been executed for aggravated murder, sexual assault resulting in death and “terrorist” offences.

Executions: 2011: 2, 2009, 2010: 0, 2008: 17, 2007: 15, 2005-2006: 0, 2004: 1, 2001-2003: 0.

### **Antigua and Barbuda**

See Caribbean Commonwealth and English-speaking Caribbean countries.

### **Bahamas**

See Caribbean Commonwealth and English-speaking Caribbean countries.

### **Bahrain**

#### Death penalty in law

The constitution does not refer to the death penalty and it is unclear whether the death penalty is mandatory for any offence in Bahrain.

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<sup>9</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/17/28/Add.6, 27 May 2011.

A wide range of offences carry the death penalty. They include arson; assault; calumny if it results in a death sentence that is carried out; drugs trafficking; kidnapping, especially under aggravating circumstances or resulting in death; murder; theft involving the use of force; rape, rape of a girl under the age of 16 and statutory rape or sexual assault if the (female) victim is under 14 years old especially under aggravating circumstances; and other crimes including deliberately obstructing funerals or memorial services; and certain crimes against agriculture, property or transportation under aggravating circumstances.

The death penalty is also applicable to offences which involve planning or committing “terrorist” acts. These include: deliberately causing damage to public buildings or property in order to cause panic or anarchy; endangering or obstructing the operation of a vehicle; obstructing a telecommunications medium intended for public use if it results in death; forming or leading an armed gang which uses force to occupy or destroy a public or government building, which has attacked the local population, which uses arms to resist public authority, or which aims to expropriate property or land; and acts that “disrupt the provisions of the Constitution or laws or prevent state enterprises or public authorities from exercising their duties”.

A wide range of offences of treason also carry the death penalty. They include: assisting the enemy in weakening the armed forces; attempts on the life or freedom of the amir or crown prince; deliberately committing an act which affects the country’s independence, unity, or territorial integrity; cooperating with a foreign power; espionage; facilitating enemy entry into Bahrain or surrendering state property intended for defence; inciting service in a hostile armed force; leading or forming an armed group in an attempt to overthrow the constitution, amiri rule or system of government); taking up arms against Bahrain; and using explosives to overthrow the state.

Capital offences under military law include: deliberately damaging weapons or other items used to defend the country during wartime; instructions by security forces officers to junior members of these forces to oppose government orders for an illegal purpose, if the instructions are implemented; and any felony committed in wartime with the intent of helping the enemy if the felony contributes to realising this purpose.

#### Death penalty in practice

There were at least nine people on death row in June 2012. It is confirmed that at least three of them were sentenced for murder. In 2012, one individual was sentenced to death for premeditated murder. Five persons were sentenced to death in 2011 and one was sentenced to death in 2010. The last known execution took place in 2010.

Executions: 2010: 1, 2009: 0, 2008: 1, 2007: 0.

## **Bangladesh**

### Death penalty in law

The death penalty is implicitly referred to in the constitution. A 2010 High Court ruling suggested that the mandatory death penalty in Bangladesh is probably unconstitutional.

Crimes punishable by death include: drugs-related offences; grievous injury; human trafficking; kidnapping of a child under the age of ten for the purpose of murder; aggravated murder and murder, felony murder and attempted dowry murder; slavery or sexual exploitation, or abetting (by concealment or confinement); and rape. Offences against national security include espionage and treason (waging war against Bangladesh, or attempting or abetting such an act). Some “terrorist” acts are capital offences and an Anti-Terrorism Bill, passed by the Parliament in 2012 seeks the imposition of the death penalty for involvement in, supporting or financing “militancy” and “terrorist” activities.

A number of offences (crimes which do not result in death) are punishable by death when committed by armed forces personnel. They include: aid to the enemy; cowardice and desertion and inducement

to such; desertion in war, espionage; false alarm in time of war, treacherous or cowardly use of a flag of truce or any act calculated to imperil Bangladesh.

#### Death penalty in practice

The number of individuals on death row in Bangladesh in June 2012 was thought to total 1,172. There were at least 18 death sentences for murder in 2012 and no executions. From available information it would seem that the executions were predominantly for crimes which met the “most serious crimes” threshold.

Executions: 2011: at least 5, 2010: at least 9, 2009: 3, 2008: 5, 2007: 6.

### **Barbados**

See Caribbean Commonwealth and English-speaking Caribbean countries.

### **Belarus**

#### Death penalty in law

The constitution defines the death penalty as an exceptional measure for especially grave crimes and explicitly contemplates its eventual abolition. Capital offences in Belarus encompass: illegal detention, disappearance, displacement, enslavement, genocide, aggravated murder, “terrorist” offences resulting or not resulting in death, torture or other atrocities committed in relation to protected status, treason – initiating or waging aggressive war, use of weapons of mass destruction; and violations of the laws or customs of war when intentionally causing death.

#### Death penalty in practice

There were 102 persons on death row in Belarus in June 2012. Executions in recent years appear to have been mainly for assault, murder and murder committed during an armed robbery, or for the rape and murder of a minor.

Executions: 2012: 2, 2011: 2, 2010: 2, 2009: 0, 2008: 4, 2007: 1.

### **Belize**

See Caribbean Commonwealth and English-speaking Caribbean countries.

### **Botswana**

#### Death penalty in law

The death penalty is referred to in the constitution. The extent of the court’s discretion in relation to the death penalty for aggravated piracy remains unclear. In the absence of detailed information from the government to clarify this question, the UN Human Rights Committee has stated that Botswana may retain the mandatory death penalty for this offence.

Crimes punishable by death include: espionage – providing intelligence to the enemy with intention to assist the enemy; murder; aggravated piracy – assault with intent to murder in the course of piracy); treason – assisting the enemy in wartime, assisting anyone who threatens the security of the state, attempting to forcibly change the law or government policies, attempting to overthrow the government, attempting to usurp the state’s executive power, or instigating invasion of the state.

Under military law capital offences include: aiding the enemy; cowardly behaviour; mutiny involving violence or the threat of violence; and failure to suppress mutiny with the intent to assist the enemy.

#### Death penalty in practice

There were at least seven persons on death row in June 2012. There was one death sentence for murder in 2012, one in 2011, and two in 2009. Reports indicate that Botswana predominantly imposes the death penalty for murder.

Executions: 2012: 1, 2011: 0, 2010: 1, 2009: 1, 2008: 1, 2007: 1.

### **Caribbean Commonwealth and English-speaking Caribbean countries**

#### Death penalty in law

The death penalty is explicitly or implicitly referred to in all constitutions of the English Caribbean and Commonwealth states. Caribbean Commonwealth countries impose the death penalty for the following crimes: genocide, murder and aggravated murder and treason. Military offences for which the death penalty can be imposed include: espionage, imperilling operations, and insubordination and mutiny when carried out to assist the enemy.

In Guyana, the death penalty is also imposed for other offences including drugs-related offences resulting in death; hijacking and piracy resulting in death (treated as “terrorist” acts or acts against the state); and robbery. In Jamaica, murder for hire, murder in the course or furtherance of another offence such as arson, robbery or rape or murder committed to further an act aimed at undermining the public peace and order, are also punishable by death.

The death penalty is mandatory for some offences in Barbados and Trinidad and Tobago, mostly for murder, although it may also be applicable for treason. However, the trend points toward abolition. Guyana abolished mandatory death penalties for all crimes in 2010 and Barbados has committed to doing so. In total, 13 Commonwealth Caribbean nations have abolished the mandatory death sentence for murder.

#### Death penalty in practice

Death sentences are still imposed in several Caribbean Commonwealth countries, although executions were rarely carried out in the last ten years. Bahamas executed one person in 2000, Saint Kitts and Nevis executed one person in 2008 and Trinidad and Tobago executed nine people in 1999. The death penalty is mainly imposed for the crime of murder.

In Belize, only one person remained on death row. In Guyana there were 34 people on death row in 2011. In April 2012 the government launched a national debate on whether to eliminate the death penalty following a pledge to this effect to the UN Human Rights Council. In Trinidad and Tobago, there were 31 people on death row in June 2012.

The continuing limitations and rare use of the death penalty were attributable in part to rulings by a number of judicial and quasi-judicial bodies including the Caribbean Court of Justice and the Eastern Caribbean Supreme Court, the UN Human Rights Committee, the Inter-American human rights system and the Judicial Committee of the Privy Council based in London (traditional court of appeal for Commonwealth nations). Between them these bodies have engaged in strategic litigation which has resulted in prohibition of the mandatory death penalty, limits on the number of years prisoners can spend on death row, and the restriction of capital crimes to exceptionally heinous murders (“worst of the worst”).

### **Chad**

#### Death penalty in law

The Constitution makes no reference to the death penalty and Article 17 states that “the human person is sacred and inviolable. Every person has the right to life, physical integrity, safety, freedom, and the protection of his or her private life and properties”, suggesting that the death penalty could be challenged as unconstitutional.

Crimes punishable by death in Chad include: aggravated murder (premeditated murder, parricide and poisoning; committing a murder to prepare or facilitate another crime or favour the escape or impunity of the authors of the offence); and treason (espionage and leading or organising a rebel movement). Various military crimes are punishable by death, including desertion to the enemy, incitement to desertion and unauthorised capitulation to the enemy.

#### Death penalty in practice

There were at least 33 persons under sentence of death in Chad in June 2012. The government informed the Human Rights Committee in June 2008 that it had commuted all death sentences to life imprisonment. However, reports indicated that the death penalty continued to be imposed.

In 2008, exiled former President Hissène Habré and 11 armed opposition leaders, including Timane Erdimi, leader of the Rally of Forces for Change, and Mahamat Nouri, leader of the National Alliance, were sentenced to death in their absence for crimes against Chad's "constitutional order, territorial integrity and security". The last reported executions were in 2003 when nine people were shot.

### **China**

#### Death penalty in law

The constitution does not refer to the death penalty. Fifty five crimes are punishable by death. They include: abduction, arson, burglary, drugs trafficking, various economic crimes, espionage, murder, rape, robbery, "terrorist" acts, treason and military offences.

Many of the specific offences under these categories do not meet the threshold for "most serious crimes". For example the imposition of the death penalty for economic crimes such as bribery and graft if particularly large sums of money or property value are involved; aggravated counterfeiting; certain types of economic fraud to the extreme detriment of the state; production or sale of fake medicine or tainted food causing serious injury; insider offences by personnel of state-owned enterprises whether within that enterprise or during assignment to a non-state enterprise; aggravated smuggling of armaments, counterfeit money or cultural relics, and providing armed escort to smugglers.

In February 2011, 13 offences were removed from the list of capital offences including financial and non-violent crimes such as tax fraud and "fraudulent activities involving financial bills", theft of cultural relics and trafficking in endangered wildlife.

#### Death penalty in practice

Information on death row prisoners and executions is a state secret but some 7,280 persons were thought to be under sentence of death in June 2012 and thousands of convicted prisoners are executed each year. The Supreme People's Court considers the five main categories of capital punishment to be: abduction, drug trafficking, intentional injury, robbery and murder.

However, available information indicates that people have been executed in China for a much broader range of crimes including: arson, arms or drugs trafficking, child abduction, bribery, corruption, economic crimes, embezzlement, espionage, fraud, gang offences, kidnapping, rape, rioting, robbery and tainting food. Nevertheless, it is estimated that around 80 per cent of executions are carried out for crimes resulting in the death of a victim.

In 2007, a review of death sentences by higher courts became mandatory. The Supreme People's Court grants about 10 per cent of the appeals and the lower courts appear to have become more cautious in imposing the death penalty. As a result, the number of death sentences has fallen by about 50 per cent according to Chinese scholars.

## **Comoros**

### Death penalty in law

The Constitution makes neither explicit nor implicit reference to capital punishment, although its preamble aspires to protect the rights and freedoms enshrined in international agreements.

Capital offences in Comoros include: arson resulting in death; arson of places or vehicles that are or are normally populated, or arson or explosion committed against the state; assault aggravated by treachery or with premeditation, when resulting in severe physical harm; assault with intention to kill a child under the age of 15, when resulting in severe physical harm; assault of a magistrate, officer or citizen in employ of the government or a utility, if intended to cause death; castration, if death occurs as a result; hijackings or general attacks committed while using a firearm or by threat of arson or explosion and some actions to cause civil strife; kidnapping under pretence of state authority or by threat of death, if the victim is physically tortured; aggravated murder (premeditated murder, parricide, poisoning, killings attended by cruelty or barbarism, or to prepare, facilitate, carry out or facilitate escape or impunity for a crime); armed robbery resulting in death.

A further range of political offences for which the death penalty can be imposed includes: espionage or incitement to espionage; treason (waging war, assisting a foreign or domestic power in waging war against Comoros). Waging or assisting civil war by a variety of means carries the death penalty for military personnel, civilians or foreigners who cooperate in the treasonous act; other forms of treason include armed attempts against the supremacy of the government or territorial integrity of the nation. Some treasonable offences are offences under military law, including rebellion and a commander's refusal to disperse military forces.

### Death penalty in practice

The number of persons on death row was believed to be four in June 2012 and there have been no reports of death sentences since 2009. Since it achieved independence in 1975 there have been 20 coups d'état or attempted coups in Comoros but the death penalty for treason was not imposed on convicted coup leaders. The last execution took place in 1997.

## **Cuba**

### Death penalty in law

There are 112 capital offences. These include: corruption of minors (criminal behaviour, homosexuality or prostitution.); drugs trafficking not resulting in death (if those trafficking, producing or transporting the drugs are public agents or utilise state resources to traffic drugs, if they utilise individuals under the age of 16, or if they are part of an international drug trafficking ring); espionage; working as a mercenary; murder; piracy; sabotage or impairment of social, economic or military resources, resulting in death; sabotage or impairment of social, economic or military resources, when using dangerous methods or agents, causing serious injury to health or property or threatening public security; rape resulting in serious injury by an offender previously convicted of the same crime or by an offender who knows that s/he suffers from a sexually transmitted disease; rape (including statutory rape) of a child under the age of 12; robbery not resulting in death; and treason.

The government has stated that the death penalty is necessary to counter the threat of "terrorist" attacks.

### Death penalty in practice

There were no prisoners under sentence of death in June 2012. The last executions in Cuba took place in 2003 when three people were executed after hijacking a ferry.

## **Democratic Republic of the Congo (DRC)**

### Death penalty in law

The 2006 constitution does not refer to the death penalty. Article 16 states that human persons are "sacred", and establishes the right to life, stipulating that the state must respect and protect it. Article 61 states that under no circumstances, even in times of emergency, may the state infringe upon

fundamental rights, including the right to life or the prohibition of cruel, inhuman or degrading punishment.

Death sentences can be handed down for crimes such as: armed robbery; destruction of military facilities resulting in death; espionage; genocide; murder; “terrorist” offences (including acts that result in death, leading, participating in, or providing weapons to a group formed in order to commit assaults against persons or property); treason (participating in an armed insurrection, including as a leader, organiser, or supplier of information or weapons), or committing acts of rebellion resulting in death; and for crimes of superstition, such as imposing trials by ordeal resulting in death.

Numerous military offences are punishable by death in time of war, including: assault on the head of state and assault or insult to superiors or sentries; capitulation; cowardice (fleeing before the enemy); crimes against civilians and serious violations of humanitarian law dereliction of duty or incitement thereto; desertion and incitement to desertion by an officer; drugs offences including cultivation, possession, trafficking or commercialisation of hemp or other narcotic substances in military facilities during wartime, or resulting in danger to the facilities; improper use, destruction or theft of facilities or equipment; insubordination and insurrection (plotting against a superior; preventing military recruitment or mobilisation, and demoralising the troops); mutiny or attempting to assist the enemy or prisoners of war; “terrorist” attacks as part of an armed gang; treason in time of war, including forgery or use of forged military documents if endangering national defence in time of war; and misappropriation by a public prosecutor of seized or confiscated goods in time of war.

#### Death penalty in practice

An estimated 330 to 500 persons were believed to be on death row in June 2012 although the UN Special Rapporteur on extrajudicial, summary or arbitrary executions observed that the authorities do not keep accurate records of the prison sentences of convicted criminals. The majority of death sentences in DRC are imposed against civilians by military courts.

Few executions took place before 2007 suggesting a possible movement towards abolition. There was an upsurge in executions after Laurent-Désiré Kabila seized power in 1997 and throughout the first phase of the armed conflict which ended with the Lusaka ceasefire agreement in July 1999. During this period military courts (Cour d’ordre militaire) imposed a monthly average of six death sentences and three execution orders. The number of executions decreased after the Lusaka agreement.

In 2001, the government announced a moratorium on the use of the death penalty. In 2000, 2001 and 2002 presidential decrees were issued granting amnesties and commuting some death sentences to life imprisonment. A decree passed on 19 February 2000 granted amnesty to all those sentenced for undermining “internal state security”, which was potentially applicable to many individuals convicted of crimes by the military courts.

Fifteen men were secretly executed in January 2003 after being convicted of crimes such as armed robbery and participation in organised crime, subversion and treason. A further 30 individuals were sentenced to death by a military court during the same year for involvement in the murder of President Laurent-Désiré Kabila but they have not been executed and no executions have been carried out since January 2003.

#### **Dominica**

See Caribbean Commonwealth and English-speaking Caribbean countries.

#### **Egypt**

##### Death penalty in law

Egypt’s constitution does not refer to capital punishment or the right to life but stipulates that Sharia law represents the “principal source of legislation”.

Crimes punishable by death include: arson resulting in death; drugs trafficking and possession; espionage; kidnapping of a female aggravated by rape; murder; perjury in a capital case resulting in the execution of an innocent person; possession or acquisition of firearms, ammunition or explosives for the purpose of disrupting the government, public security or peace, national unity, constitutional principles or the law; “terrorist” acts which include a wide and vaguely-defined range of offences not necessarily resulting in death; rape of a minor; and treason. After the fall of President Mubarak in 2012 the Supreme Council of the Armed Forces expanded the range of capital crimes to include hooliganism, rape, terrorism and thuggery.

Reports indicate that under martial law a number of military offences not resulting in death may be capital offences, including abuse of power, assisting the enemy, dereliction of duty, desertion, ill-treatment of the wounded, insubordination and looting.

#### Death penalty in practice

There is little reliable data on death sentences and executions in Egypt. Executions have decreased in recent years, although death sentences continue to be imposed (peaking in 2009 and 2010 with 269 and 185 death sentences respectively for these two years). The Arab Penal Reform Organization reports for 2008 and 2009 noted that death sentences were most frequently imposed for aggravated murder, simple murder and felony murder, with a few confirmed death sentences for drugs offences, aggravated rape and crimes related to state security and tried in exceptional courts.

Death sentences: 2012 (January to July): at least 6 for murder, 2011: 123, 2010: 185, 2009: 269, 2008: 87.

Executions: 2011: 1, 2010: 4, 2009: 5, 2008: 2.

### **Equatorial Guinea**

#### Death penalty in law

The 1995 constitution refers explicitly to the death penalty. However, the Criminal Code, Criminal Procedure Act and Code of Military Justice pre-date independence (1968), derive from the Franco dictatorship in Spain and contain principles and standards incompatible with the 1995 constitution and relevant international instruments.

Capital offences include: armed robbery under certain aggravating circumstances (when the offender intentionally raped or mutilated the victim, or when the victim was held as a hostage or for more than one day, or where the robbery was accompanied by an attempted kidnapping); espionage; aggravated murder (parricide and aggravated homicide); piracy; and treason (various crimes against the head of state, including murder and attempted murder, holding him against his will, forcing him to commit an act against his will under threat of intimidation, and causing him severe harm; armed rebellion and sedition).

Inducing a foreign power to declare war against “Spain” is also punishable by death although it is questionable how this provision would be applied in independent Equatorial Guinea.

Various military offences are punishable by death including committing crimes of war, desertion, insubordination, insult to sentry, guard or armed force, insurrection, negligent performance of duties, rebellion, and various offences against military honour. Under the Spanish Code of Military Justice the death penalty is mandatory for the following: disobeying the orders of a superior, insult to a sentry or guard, or superior; insurrection and offences against military honour.

#### Death penalty in practice

There were around 21 persons on death row in June 2012.

Executions: 2010: 4, 2007: 3.

## **Ethiopia**

### Death penalty in law

Capital offences include: armed robbery if a murder occurs; attacks on members of armed forces resulting in death; using dangerous methods to conceal or further another crime (or as a member of an armed band formed for robbery); espionage; genocide; aggravated murder (murder involving cruelty or suggesting on-going danger); rape resulting in death, particularly when the victim is under 18 years old; spreading human disease and when aggravated, for instance by deliberately infecting someone with HIV/AIDS by rape; participating in “terrorist” acts including threats of and attempted “terrorist” acts; treason; and war crimes.

Military offences punishable by death include: capitulation or abandonment of incapacitated personnel, cowardice, demoralisation, desertion, failure to perform duty, insubordination and mutiny.

Recently promulgated anti-terrorism legislation may have a bearing on the death penalty as it defines “terrorist” acts in broad terms creating the potential for the death penalty to be imposed for a broader range of offences than is currently the case.

### Death penalty in practice

There were approximately 122 prisoners on death row in June 2012. In the past 15 years there have only been three confirmed executions. No death sentences were reported from Ethiopia in 2011 and during the same year President Girma Woldegiorgis commuted to life imprisonment the death sentences of 23 high-profile members of the former government of Mengistu Haile Mariam. They had been convicted of genocide in 2008 for their involvement in killings and torture during the Mengistu era (1987 to 1991).

The Human Rights Committee has expressed concern that the death penalty was still imposed for crimes which appear to have a political dimension and recommended abolition of the death penalty, or at a minimum limiting its application to the “most serious crimes”.

## **Guatemala**

### Death penalty in law

The death penalty is mentioned explicitly in the constitution which limits its use. Guatemala has recognised the jurisdiction of the Inter-American Court on Human Rights which ruled against the mandatory death penalty in the case of *Raxcacó Reyes v. Guatemala* (15 September 2005).

Capital offences in Guatemala include: abduction for ransom, or to effect an exchange of persons, or to force another action by a third party (this is distinguished in law from abductions not intended to force an action by a third party, which are not punishable by death unless torture is involved, in which case the accused is tried for kidnapping in addition to abduction); arson, causing floods, causing buildings to collapse or other dangerous offences causing death, regardless of the offender’s intent; kidnapping; murder (application of the death penalty may be restricted to cases where the offender poses a continuing threat or has killed a youth or elderly person); poisoning.

“Terrorist” acts are capital offences if the circumstances of the crime reveal that the offender poses a continuing danger or if the crime resulted in the death of a person younger than 12 or older than 60); and torture by “terrorist” groups (tried as kidnapping). The Code of Military Justice provides for the death penalty for certain offences.

### Death penalty in practice

There were 16 people on death row in June 2012. The last death sentence was imposed in 2010 and the last execution was carried out in 2000.

## **Guinea**

### Death penalty in law

The May 2010 constitution does not refer explicitly to the death penalty but several articles protect the right to life and to bodily integrity. The most important of these, Article 6, enshrines the “right to life and to physical and moral integrity” and prohibits torture as well as cruel, inhuman or degrading treatment. Article 5 states that “the human person and his or her dignity are sacred”. The situation is unclear with respect to offences for which the death penalty is mandatory but there are indications that it may apply to the crimes of kidnapping and murder.

Capital offences in Guinea include: armed robbery; arson, castration resulting in the death of the victim within 40 days; kidnapping committed in order to further another crime or to obtain a ransom or advantage when resulting in death; kidnapping of a minor resulting in the minor’s death; aggravated murder (murder of one’s ascendants, poisoning, murder committed to further another crime and murder through abusive acts of a child younger than 15 years old; murder of a baby, except if the perpetrator is the mother of the child and the child is younger than two months); use of an explosive device, or destruction by any means of any building or infrastructure, in particular those of importance to the military; and poisoning, even where it does not result in death.

Other crimes punishable by death include “terrorist” acts which do and do not result in death. “Terrorist” offences include: arson of habitually occupied buildings or vehicles; destroying or damaging state-owned buildings or infrastructure through arson or the use of explosive devices; disrupting the security of the state by inciting to civil war or by leading an armed group to cause devastation, massacres or looting; and laying a bomb with criminal intent. Acts of espionage and treason and provocation or offer to commit such acts are also punishable by death.

Military offences resulting in death are capitulation by a commander prior to the exhaustion of all means of resistance; desertion or flight in the face of the enemy; deliberate destruction of one’s ship or aircraft; failure, as the commander of a ship or aircraft, to leave it last; plotting against a superior; and instigating a rebellion in time of war or on a ship or aircraft.

### Death penalty in practice

There were at least 34 people on death row in June 2012. Sixteen death sentences were imposed in September 2011 (eight of them in absentia). The defendants were convicted of “premeditated murder, violent killings, criminal conspiracy and destruction of property” following confrontations between two ethnic groups in which at least 25 people were killed.

Executions were suspended in 1984, when President Lansana Conte came to power in a bloodless coup but resumed in 2001 when eight persons were executed.

## **Guyana**

See Caribbean Commonwealth and English-speaking Caribbean countries.

## **India**

### Death penalty in law

The constitution refers to the death penalty and confers on the president and state governors the right to commute, pardon, or suspend death sentences. In practice no mandatory death sentences are imposed. It appears likely that the courts will move towards formal abolition of the mandatory death penalty for drugs trafficking.

Crimes punishable by death in India include: using any “special category” explosive to cause an explosion likely to endanger life or cause serious damage to property; drugs-related offences in cases of recidivism; kidnapping or detaining an individual for ransom (death does not need to have necessarily resulted); aggravated murder and felony murder. In the state of Gujarat the sale and production of toxic alcohol is punishable by death.

Capital offences relating to national security include espionage, “terrorist” acts (for example sabotage of oil and gas pipelines if death is likely to occur as a result) and treason. The number of capital offences has increased in recent years, particularly for offences defined in anti-terrorist legislation.

Under military law the following crimes are punishable by death: cowardice; committing or inciting dereliction of duty; desertion or aiding desertion; committing, inciting, conspiring to commit, or failing to suppress mutiny; and treacherous acts including aiding the enemy; inducing individuals subject to military law not to act against the enemy; and imperilling Indian or allied military, air, or naval forces in any way.

#### Death penalty in practice

An estimated 400 to 500 prisoners were thought to be on death row in June 2012. The imposition of the death penalty was not always consistent or predictable. The Supreme Court ruled in 1983 that the death penalty was constitutional only when applied as an exceptional penalty in very rare cases – the “rarest of the rare”.

A de facto moratorium on executions was in force from 2004, when a convict was executed for the rape and murder of a minor (itself the first execution since 1995). However, this status quo was overturned with the 21 November 2012 execution of Mohammad Ajmal Amir Kasab, the sole surviving participant in the 2008 armed attacks in Mumbai which resulted in the killing of more than 160 people.

### **Indonesia**

#### Death penalty in law

Capital offences for common crimes in Indonesia include: drugs offences; economic crimes (including some acts of corruption detrimental to the finance or economy of the state); aggravated gang robbery resulting in death or serious injury; hijacking and piracy resulting in death; and murder. The semi-autonomous province of Aceh has enacted an Islamic criminal code that reportedly includes the punishment of stoning for adultery.

Treasonous acts include: assisting the enemy or prejudicing the state in time of war (such as by betrayal, destruction or demoralisation); collusion with foreign powers intended to cause and resulting in hostilities; espionage (for example officers of atomic installations and other organisations using atomic energy are punishable by death if they intentionally breach confidentiality); ethnocide; genocide and serious violations of humanitarian law.

“Terrorist” offences which carry the death penalty include creating, planning or inciting others to create a “widespread atmosphere of terror” by taking liberty or property or damaging state, environmental or public resources, or facilitating or attempting to facilitate “terrorism”; developing, producing, obtaining, transferring or using chemical weapons, or involvement in or incitement of the aforementioned; endangering food and housing; and serious violations of humanitarian law. Numerous military offences carry the death penalty under Indonesian military law.

#### Death penalty in practice

There were reportedly over 100 persons on death row in June 2012. At least 58 death row inmates were sentenced for drugs offences. Application of the death penalty has been sporadic, with almost half of the executions over the last decade occurring in 2008, alongside periods in which no executions occurred. The rate of executions depended heavily upon the executive in power, with 16 of the 21 executions over the last decade being carried out under President Yudhoyono (2004 to 2009). There have been no executions since November 2008.

Reports indicate that in practice the death penalty is mainly imposed for drugs trafficking offences, aggravated murder and “terrorist” acts. Drugs offences relating to narcotics and psychotropic drugs have accounted for most death sentences and executions since 1998.

Executions: 2008: 10, 2007: 1.

## Iran

### Death penalty in law

The constitution refers to the death penalty as an exception of the right to life.

Crimes punishable by death include: adultery; apostasy, armed robbery, blasphemy, recidivist consumption of alcoholic beverages; drugs trafficking (e.g. trafficking 30g of cocaine or derivatives, heroin or morphine); drugs possession; economic crimes such as bribery or corruption of officials, counterfeiting, disrupting production, smuggling and speculation; espionage; fornication by unmarried persons; extramarital sexual relations between non-Muslim men and Muslim women; heresy and witchcraft; homosexual relations; incest; kidnapping; murder; publishing pornography or using pornographic materials to elicit sex; producing or preparing tainted food, drink, cosmetics or sanitary items that lead to death when consumed or used; rape; recidivist theft and treason.

Offences defined as Moharebeh and/or Ifsad-e fil arz (enmity with God's ordinances and creating corruption on earth) for which the death penalty can be imposed include: membership of an organised group which takes up arms against the Islamic state and supporters, irrespective of whether they have or have not committed violent acts; plotting to overthrow the Islamic state and procuring weapons and explosives for this purpose; provision of financial means, tools, equipment of weapons to the above persons or organisations; and nomination for a significant post in a coup d'état government.

"Terrorist" acts include offences under laws for the "punishment of disruptors" of the oil industry, electricity, telecommunication and water facilities and flight security. Other capital offences for "terrorism" relate to arms smuggling and disruption of the railways.

Under the Armed Forces Offences Law of 2003, a number of military offences are punishable by death, including assisting the enemy, cowardice, dereliction of duty or undermining state security.

The death penalty is mandatory for adultery, blasphemy and murder. In general, crimes with a fixed penalty (huddud) may carry the mandatory death penalty, although it is difficult to ascertain the exact nature of the penalty for some crimes such as corruption and drug trafficking, some of which are believed to carry the lesser penalty of ta'zir (which is translated as "chastisement". Ta'zir penalties are left to the discretion of the Islamic judge).<sup>10</sup>

Offences such as consumption of alcohol, homosexual relations, rape and theft may carry a mandatory death penalty if the accused is a recidivist and the crimes are defined as huddud. It is similarly difficult to precisely establish the punishment for certain offences related to political dissent. Political prisoners continued to be executed for their involvement in the post-election demonstrations in 2009. The government often characterises political dissidents as committing the crime of moharebeh, which as noted, is a capital offence.

### Death penalty in practice

Reports indicate that several hundred executions were carried out in 2012. The vast majority of executions were for drug offences. Reports suggest that less than 10 per cent of the executions met the threshold for "most serious crimes". The 2007 draft Islamic Penal Code of Iran may result in minor modifications to the death penalty for some acts. For example the consumption of alcohol would not be a capital offence, nor would lesbianism or some activities linked to blasphemy.

Executions: 2011: 676, 2010: 650, 2009: 388, 2008: 346, 2007, 335.

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<sup>10</sup> The literal meaning of hadd (singular) and huddud (plural) is "limit" or "restriction". In Sharia law it usually refers to a class of punishments that are fixed for certain crimes considered to be "claims of God". They include adultery, apostasy, consumption of alcohol, and fornication.

## **Iraq**

### Death penalty in law

After the fall of Saddam Hussein in April 2003, the death penalty was temporarily abolished but it was re-introduced in 2004. Since then it has been extended to cover offences defined as “insurgency” and “terrorist” in nature. A large number of individuals are executed each year.

A wide range of crimes are punishable by death. These include crimes against humanity and war crimes; drugs offences for the purpose of funding or abetting insurgency; genocide; aggravated murder and murder; rape or attempted rape of an abducted person; and offences against state infrastructure (telecommunications and transport).

Acts defined as “terrorist” offences which involve targeting infrastructure, the population or state security, are also punishable by death, as are crimes related to insurgency, including nonviolent support for or facilitating groups or individuals accused of “terrorist” acts. The death penalty is also applicable for treason (crimes compromising state security or involving violence against the state).

The Kurdistan Regional Government (KRG) promulgates its own criminal laws and amendments to Iraqi criminal law. The KRG reportedly applies the death penalty for: espionage, kidnapping, membership of “terrorist” organisations, and aiding “terrorists” to enter or leave the country, as well as for murder and rape, and may apply the death penalty for other offences. Application of the death penalty within the KRG is variable because the Patriotic Union of Kurdistan (PUK), which controls some population centres, opposes the death penalty.

### Death penalty in practice

An estimated 835 persons were on death row in June 2012 and hundreds of executions were reported. There was a dramatic rise in executions in 2012. In 2011 at least 68 executions and hundreds of death sentences were reported. In that year, most death sentences and executions related to individuals convicted of involvement in an armed group responsible for acts of violence such as kidnapping, murder or rape.

The UN reported that between August 2007 and May 2009, Iraq imposed a temporary moratorium on executions but Amnesty International reported that the government carried secret executions during this period. In 2009 Iraq acknowledged executing 77 individuals for “terrorist” offences which may have included drugs trafficking to support “terrorist” organisations. Available information suggests that the death penalty is imposed and executions carried out mainly for violent crimes with lethal consequences, which may meet the threshold for “most serious crimes”. However, in 2010 there were reports that some individuals were executed for consensual sexual relations between adults of the same sex.

In the past few years there have been a few cases of executions in the region governed by the KRG.

## **Jamaica**

See Caribbean Commonwealth and English-speaking Caribbean countries.

## **Japan**

### Death penalty in law

In 1983, the Supreme Court of Japan ruled that “selection of the death penalty by a court should be an option in extremely heinous cases when there is room for virtually no other penalty”. There are 18 capital offences encompassing the following: arson to inhabited structures, and damage of inhabited structures by flooding; use of explosives, destruction by explosives; aggravated murder – aggravating factors are considered in determining whether the offender may be sentenced to death. Intentional killing is not necessary as robbery or rape resulting in death may be punishable by death; and treason – assisting the enemy through direct military service or otherwise affording military advantage, instigating foreign aggression against Japan, and leading an insurrection.

### Death penalty in practice

One hundred and thirty two individuals were on death row in March 2012. Reports suggest that the death penalty is only imposed for murder cases which involve killings under aggravating circumstances (such as aggravated murder, or “terrorist” attacks intended to result in death).

Executions: 2012: 5, 2011: 0, 2010: 2, 2009: 7, 2008: 15, 2007: 9.

## **Jordan**

### Death penalty in law

The constitution states that death sentences cannot be carried out until the Council of Ministers presents the sentences, with their commentary, to the king and the king confirms the sentence. The death penalty is mandatory for drugs trafficking and possibly for inciting others to commit war crimes.

Crimes punishable by death in Jordan include: drugs trafficking offences and dealing or dispensing drugs in conjunction with arms smuggling or money laundering/counterfeiting; aggravated murder – premeditated murder, murder committed in the commission of a felony, murder of an ancestor; murder during the commission of a highway robbery or assault along a public road or in the countryside; rape of a girl under 15; highway robbery with acts of torture or other barbaric acts during the commission of the crime.

“Terrorist” offences punishable by death even if not resulting in death include the use of explosives, radioactive materials, chemical, biological, or radioactive weapons during “terrorist” acts, or destroying or partially destroying a building in which one or more people are present. Acts of treason for which a death sentence can be imposed include crimes against the constitution – making an attempt on the life of the king, queen, or regent and working unlawfully to change the constitution; and espionage.

Under military law, individuals who participate or incite others to participate in war crimes relating to arrest, detention, torture or inhumane treatment may be sentenced to death.

Since 2006 various amendments have reduced the number of capital crimes. In 2010 amendments to Jordan’s criminal code eliminated the death penalty for arson and for crimes against the constitutional authorities through armed rebellion. An amendment to the Law on Narcotics and Mental Stimulants also abolished the death penalty for a number of drugs-related offences.

### Death penalty in practice

There were an estimated 85 individuals on death row in May 2012. Five people were sentenced to death in 2012 for murder of which two involved rape. According to official data, 41 persons were executed between 2000 and 2006 for murder, sexual assault or “terrorist” offences. There have been no further executions since 2006.

## **Kuwait**

### Death penalty in law

The death penalty is mandatory for some crimes. For example the anti-terrorism law prohibits the application of mitigation for “terrorist” acts resulting in death and some sources also list drugs trafficking. There are indications that courts follow principles of Sharia law in sentencing for premeditated murder, which could include imply a mandatory death penalty in the absence of a settlement with the victim’s family.

Capital offences include: drugs-related offences; giving false witness, resulting in execution; human trafficking; kidnapping by force with the intent to kill, harm, engage in sex, disgrace the victim, force the victim into prostitution, or extort something from the victim or another party; murder; piracy resulting in death; rape and rape of girl under 16; and torture of an accused, a witness or expert by a public servant and resulting in death.

“Terrorist” capital offences include attacks on, or interference with transportation or communications with the goal of harming people or property, using explosives with the goal of killing, spreading fear or destroying certain sites. Attacks on buildings or utilities belonging to the government or to groups in which there is government ownership or a public interest, places of worship, areas where masses of people have gathered, or residential buildings are among those sites covered by the law.

Acts of treason for which a death sentence can be imposed include waging or inciting war against Kuwait, undermining national defence, disclosing state secrets or assaulting the emir or high officials and betrayal of military information or state secrets.

A number of military offences are subject to the death penalty such as: assisting the enemy, cowardice, dereliction of duty, disclosing secrets, insubordination, insurrection, and undermining national defence. Some humanitarian violations and offences set out in the criminal code are also punishable by death; and enemy soldiers can be punished by death for operating in disguise or violating international law.

The emir refused to sign a bill stipulating the death penalty for major religious offences in June 2012. The bill, passed by parliament in May, stipulates that Muslims who curse God, the Koran or the prophets and wives of the Prophet Mohammed, will be punished by death or life imprisonment. The emir has the power to reject the bill but parliament can override the rejection by passing the bill again with a two-thirds majority of the house membership of 49 members of parliament and 16 cabinet ministers.

Death penalty in practice

There were approximately 20 people on death row in June 2012.

Executions: There were some 70 executions between 1964 and 2007 when the last execution took place.

2007: 1, 2006: 11, 2005: 7, 2004: 9, 2003: 0, 2002: 5, 2001: 2.

## **Lebanon**

Death penalty in law

The constitution does not refer to capital punishment. The mandatory death penalty for some offences was repealed in 2001 but remains in force for collaboration with the enemy and treason.

Capital offences include attacks on property, including arson against certain types of structures, or sabotage of communications, transportation or industrial facilities causing death; gang assault involving torture and robbery; and gang assault if killing is committed in pursuance of a criminal activity; murder; sedition for the purposes of starting civil war, sectarian or religious strife, or promoting massacres or pillaging if the sedition is successful; and recidivism in relation to serious crimes. A person sentenced to perpetual forced labour (the most severe non-capital punishment) who commits a second crime of the same severity may receive the death penalty.

“Terrorist” capital offences include: complete or partial destruction of a building containing one or more persons, importing nuclear, toxic or hazardous waste or polluting rivers or waterways with harmful substances.

Acts of treason punishable by death include: bearing arms against the state on behalf of the enemy, espionage; interfering with munitions or supplies of the army during wartime or threat of war, or if causing death; participating in manoeuvres with, or passing information to the enemy, or to a foreign power for purposes of hostilities (in the latter case, only punishable by death if the action has consequences).

Military law specifies death for conspiracy, crimes against honour and military duty, desertion, destruction, robbery and treason.

#### Death penalty in practice

There were an estimated 95 people on death row in June 2012. An estimated 51 men were executed between 1947 and 2004 when the last executions took place. Most of the executions were for murder.

In April 2012, a military tribunal sentenced a gang of 26 individuals to death for crimes including abduction, armed robbery, bombings and murder. Although there are a wide range of capital crimes the death penalty is rarely imposed for offences which do not meet the “most serious crimes” threshold.

#### Executions

An estimated 51 men were executed between 1947 and 2004 when the last executions took place. Most executions were for murder.

### **Lesotho**

#### Death penalty in law

The death penalty is explicitly referred to in the constitution. Capital offences include: murder (when there are no extenuating circumstances); sexual assault involving vaginal or anal penetration by an offender who knows or has reasonable suspicion to know he is infected with HIV/AIDs; and treason.

Under military law aiding the enemy, communication with the enemy, cowardice, mutiny and failure to suppress mutiny, are punishable by death.

#### Death penalty in practice

There is little available information on the death penalty but there appeared to be no prisoners on death row or recent reports of death sentences as of June 2012. The last execution was in 1995 or 1996. The courts apparently apply extenuating circumstances in virtually all cases, which results in no death penalty being imposed in practice. During Lesotho’s Universal Periodic Review the government delegation informed the Human Rights Council that the death penalty was retained in law as a deterrent to serious crime.

### **Libya**

#### Death penalty in law

The information which follows relates primarily to the period of Colonel Gadhafi’s government. The death penalty is mandatory for intentional murder. It was unclear whether killing during a robbery carried a mandatory death sentence.

A broad range of offences carry the death penalty including drugs-related offences; murder and offences involving intentional killing, possibly felony murder and armed robbery with murder; acts aimed at “vandalizing, looting or killing people” and membership of organisations formed to commit such offences.

“Terrorist” offences when aimed at the security of the state carry the death penalty even if they do not result in death. Treason is a broadly-defined category encompassing many offences including armed resistance to the state; assisting the enemy; committing acts against Libya in the employ of a foreign interest; forming or promoting illegal organisations; instigating war against Libya; opposition to the state, including support for theories that de-legitimise the state; undermining the defence or the constitution, using explosives in an assassination attempt; waging civil war and attacks against the government.

Under military law, the death penalty can be imposed for abuse of power in opposition to the state; assisting the enemy; cowardice; dereliction of duty in face of the enemy; desertion to a hostile force;

espionage; insurrection in the face of the enemy; mistreating the wounded; returning to combat against Libya (in cases of released prisoners of war); undermining the defence or the territorial integrity of the state; vandalism and looting; and violations of humanitarian law.

#### Death penalty in practice

In May 2009 there were reportedly 506 individuals under sentence of death, with 186 of these sentences confirmed on appeal by the High Court. During the Universal Periodic Review process the delegation to the Human Rights Council stated that the death penalty was imposed for aggravated crimes. Most death sentences were for drugs-related offences and murder. Death sentences for political opposition were rare.

Executions: Available information suggests that the death penalty was mainly imposed for violent crimes involving intentional killing and therefore meeting threshold of “most serious crimes”.

2011: 0, 2010: 18, 2009: 13, 2008: 8, 2007: 9.

### **Malaysia**

#### Death penalty in law

The Malaysian constitution refers implicitly to the death penalty. The death penalty is mandatory for drugs trafficking; kidnapping; murder; aggravated robbery; “terrorist” offences; and offences against the person of any Malaysian federal or federated head of state.

Sharia law is in force for some offences but capital crimes are tried by the High Court under criminal law.

Capital crimes include: drugs-related offences; bearing false witness resulting in the conviction and execution of an innocent defendant; kidnapping for ransom or with intended murder; murder and felony murder; participating in an intended murder or intent to cause harm during robbery or extortion by using firearms and illegal possession or trafficking of firearms; and treason. “Terrorist” offences for which the death penalty can be imposed include unlawful possession of firearms or explosives in a designated security area, or supplying, receiving, or preparing to supply or receive firearms in a designated security area, or consorting with individuals who perform such acts; and treason.

Under military law abetting mutiny if mutiny is carried out is punishable by death.

#### Death penalty in practice

According to official figures there were approximately 503 prisoners on death row mainly for drugs-related offences in June 2012.

Executions: The number of executions has fallen in recent years but the government does not release yearly statistics on executions.

2011: at least 1, 2010: 0 reported, 2009: 0 reported, 2008: at least 1, 2007: 0 reported.

### **Nigeria**

#### Death penalty in law

The constitution provides for the death penalty. Twelve northern states of Nigeria apply Sharia Law. Southern states apply secular law. The death penalty exists in both legal systems, although a larger number of crimes are punishable by death in northern states. The death penalty is mandatory for a wide range of crimes in both secular and Sharia Law, including adultery, incest, murder and offences deemed as murder; rape; robbery resulting in death; and treason.

In secular law the death penalty exists for kidnapping, murder (or offences deemed as murder), robbery with or without result of death and treason.

In states applying Sharia law the death penalty applies for: adultery (death by stoning); cannibalism; use of firearms or explosives to undermine public order; homosexual sodomy (death by stoning); incest committed by a married person (death by stoning); murder; perjury or fabrication resulting in the execution of an innocent defendant; rape and rape committed by a married person; robbery resulting in death; and witchcraft and witchcraft resulting in death.

The Armed Forces Decree of 1993 lists armed robbery, dereliction of duty, misconduct in action, mutiny and treason as military offences punishable by death.

A majority of capital crimes do not meet the threshold for “most serious crimes” but there are no available comprehensive statistics on whether the death penalty is implemented for crimes which do not meet this threshold.

#### Death penalty in practice

An estimated 975 individuals were thought to be on death row in June 2012, of whom some 50 per cent were convicted of murder and 50 per cent for robbery or armed robbery. Available information suggests that a high number of death sentences were imposed for violent crimes which do not involve intentional killing or loss of life. While more than 2,600 people were convicted and executed between 1970 and 1999, the rate of executions dropped dramatically after the fall of the military government in May 1999. Since then Amnesty International estimates that at least 22 people have been executed.

There have been no reported executions since 2006.

### **Korea, Democratic People’s Republic (North Korea)**

#### Death penalty in law

Crimes are generally vaguely defined and the executive may dictate judicial outcomes, resulting in the arbitrary application of the death penalty to a range of political offences and acts embarrassing to the state or ruling party. The death penalty is not mandatory for any criminal offence and the criminal code states that its application should be limited to the gravest crimes only. However, given the lack of an independent judiciary it is questionable whether the lack of a mandatory death penalty has any meaning in practice.

There are 21 capital offences including: espionage; drugs trafficking; embezzlement, fraud, use of foreign currency; deliberate failure to fulfil a specific duty thus hindering the country’s industry, trade or the transport system; kidnapping; human trafficking; murder and aggravated murder; “terrorist” acts; theft (including for example theft of half a sack of rice); smuggling or trafficking (goods); treason (including defection and political opposition); and other acts of political dissent including “ideological divergence”, “opposing socialism” and acts defined as “counter-revolutionary crimes”.

Military crimes punishable by death include destruction of military facilities or national assets.

#### Death penalty in practice

The authorities maintain that the last execution took place in 1992 but reliable data on executions are scarce. Executions were carried out for crimes that do not meet the threshold for “most serious crimes” and rarely involved violence with lethal consequences. In 2011 thirty officials were executed for participating in inter-Korean dialogue.

Executions: 2012 (January to July): 1, 2011: 30, 2010: 60, 2009: 6, 2008: 15, 2007: 1. (The figures refer to known executions. The actual number is believed to be higher).

### **Oman**

#### Death penalty in law

The death penalty may be imposed for the following crimes: arson resulting in death; drugs trafficking and drug-related offences – for recidivism or if the offender is a public servant charged with enforcing

drug laws, or uses a minor to commit the offence, or is involved with an international smuggling gang, or exploits legally granted authority or immunity in committing the offence; false accusation or testimony resulting in the conviction and execution of the accused; and aggravated murder – murder of an ascendant or descendant, or with cruelty, or in furtherance or planning of another offence.

The death penalty is also applicable to a wide range of “terrorist” offences which result in death. These include: assault upon infrastructure (roads, communications and “other public facilities”) resulting in death; committing an act which causes a state of panic by means of which cause a public threat, resulting in death; hijacking resulting in death.

Similar “terrorist” offences which do not result in death may also be punishable by death, including acts which tend to cause a state of panic by means of which cause a public threat resulting in the destruction of a “populated building”; and hijacking resulting in the partial or total destruction of an aircraft.

Acts of treason punishable by death include assault or attempt on the person or life of the sultan, or on his family members (when endangering their lives); assault to de-throne the sultan; espionage; leading an armed group that engages in spreading disorder, if the group assaults or resists a state authority charged with security; planning or instigating an armed insurrection (that actually occurs); and piracy resulting in death or the sinking of a vessel.

Further capital offences relate to treasonous acts against external security which include assisting or fighting for the enemy against the state; successful attempts against territorial integrity, or any violent attempt which results in a killing; life-threatening assaults against foreign heads of state or diplomats; espionage during war or for a hostile state; undermining national defence; and use of force to overthrow the regime.

Death penalty in practice

No death sentences or executions were reported between 2007 and 2012.

## **Pakistan**

Death penalty in law

The death penalty is implicitly referred to in the constitution. It is mandatory for adultery; blasphemy; murder (retaliatory sentence); robbery resulting in death and “terrorist” acts resulting in death.

Capital offences include: abduction to submit another to unnatural lust (which includes homosexual intercourse); adultery; apostasy; arms trafficking; assault on a woman and intentional display of her body in public view; blasphemy; drugs trafficking; kidnapping for murder, to cause harm, for slavery or sexual abuse or trafficking, or putting the victim in the danger of the foregoing; kidnapping for ransom or extortion; murder; rape and gang rape; “terrorist” offences – including for acts not resulting in death such as airplane hijacking, or assisting a hijacking and attempting to harm railway passengers such as by explosion or derailment; and treason.

Military capital offences include assisting the enemy; abetting a successful mutiny and mutiny; cowardice; giving up military passwords or intentionally using unassigned military passwords; and treachery.

Death penalty in practice

Eight thousand and fifty eight persons were believed to be on death row in June 2012. Information from the Pakistan Human Rights Commission indicated that about 90 per cent of death sentences were imposed for murder and other violent crimes. The death penalty is occasionally imposed for blasphemy but executions are never carried out for this offence. Recent legislative changes to protect women’s rights could reduce prosecutions for sexual offences punishable by death.

A de facto moratorium on executions, in force since December 2008, ended on 15 November 2012 with the execution of Muhammed Hussain, a soldier. He was convicted in 2008 by a military court for murdering his senior officer. A plea for presidential clemency was rejected in December 2011.

Executions: 2012: 1, 2008: 36, and 2007: 135.

### **Palestinian Authority**

#### Death penalty in law

Three separate criminal codes are in force in the Occupied Palestinian Territory: the Jordanian Penal Code, the Revolutionary Penal Code of the Palestine Liberation Organization (PLO) and the Palestinian Penal Code of 1936. The death penalty may be mandatory for espionage, some military offences, murder, “terrorist” offences (not necessarily resulting in death); and treason.

Capital crimes include: various forms of banditry such as roaming the highways and rural areas and forming armed gangs, to rob travellers or infringe on the rights of persons or property or other acts which result in death; felony if it causes the death of the victim or if his/her role in the crime leads to the death of the victim; medical violations or violence resulting in death; aggravated murder; sedition and disobedience; and vandalism.

“Terrorist” capital offences include acts of violence that cause death or the destruction of a populated building, or acts committed using explosives, inflammable materials, toxic products, epidemiological, biological, chemical, or radioactive materials. Other national-security related capital crimes include espionage and treason, which includes some economic crimes such as fraud which affect military/defence contracts, or breaching these contracts in times of war.

Military offences punishable by death include acts resulting in civil war, or threat or assault on the president’s or a foreign dignitary’s life, disguise, disobedience, sedition, and surrendering to the enemy.

#### Death penalty in practice

An estimated 87 people were thought to be death row in June 2012. In the Hamas-controlled Gaza strip there was a resurgence of death sentences in 2012, and executions for murder, rape and treason.

Executions (in Gaza): 2012: 6 (January to July), 2011: 3, 2010: 5, 2009: 0, 2008 and 2007: 0.

### **Qatar**

#### Death penalty in law

The constitution does not directly or indirectly refer to the death penalty or the right to life, but does state that “no person may be subjected to torture, or degrading treatment...” In recent decades the country has codified its criminal law and procedure, ratified human rights treaties and rationalised its courts under one Sharia-influenced secular system, which should render jurisprudence more predictable and unified than was possible under the former dualistic system. The scope of capital punishment was increased in 2004 when legislation created a mandatory death penalty for vaguely-defined “terrorist” offences which include acts aimed at causing terror or disunity, eco-terrorism and interference with the legal or public order.

Courts may not impose reduced sentences for “terrorist” offences, some of which carry the death penalty. The criminal code also states that for offences with huddud and qisas penalties, Sharia law applies if the accused or victim is a Muslim. Thus, adultery, hirabah (highway robbery or violent robbery) resulting in death, and murder carry the mandatory death penalty unless the victim’s family pardons the offender (in exchange for monetary compensation or as an act of forgiveness).

Capital crimes include: arson resulting in death; drugs trafficking offences including killing a public official when resisting enforcement of narcotics laws and recidivism for drugs trafficking offences;

extortion by threat of accusation of a crime of honour (such as adultery); bearing false witness when resulting in execution of an innocent person); hirabah (highway robbery or violent robbery) resulting in death when the offender or victim is a Muslim; kidnapping resulting in death; aggravated murder – parricide, murder by poisoning, explosion, murder of a public employee or murder aggravated by another offence; and premeditated murder (which might be defined as murder in the absence of immediate provocation); rape by a relative, guardian, caretaker or servant of the victim carries the death penalty (rape is presumed if the victim is known to the offender to be mentally unstable and thus unable to consent); and torture to obtain forced confession or self-incrimination resulting in death.

National security-related capital crimes include a wide array of “terrorist” acts. These include bearing arms for “terrorist purposes”; causing the death of a person in conjunction with an act with “terrorist purposes”; damaging or sinking a maritime vessel; dumping in, infecting, or otherwise spoiling water resources when resulting in death; founding an organisation or using an organisation to commit “terrorist” acts; purposely committing an act that could lead to the spread of infection or an epidemic when resulting in death; theft of merchandise aboard a plane or ship when resulting in death; and receiving paramilitary training in order to commit a “terrorist” act against Qatar.

Treasonous acts which carry the death penalty include offences against external security such as assisting hostile acts of a foreign state; giving information to an enemy; interfering with the defence (including by breach of a defence contract during time of war); and undermining the independence or territorial integrity of the state. Treasonous acts against internal security that are capital offences include attacks on the leader of a foreign nation, attempts on the person of the emir or vice-emir; bearing arms against the state or instigating the same (when recidivist); and espionage for the benefit of an enemy or any espionage damaging to the state.

#### Death penalty in practice

The death penalty is mainly imposed for crimes that involve murder and meet the threshold for “most serious crimes”. There were approximately 20 individuals on death row in June 2012 and the last execution took place in 2003. The authorities do not appear to interpret Sharia law in a manner that would result in frequent imposition of the death penalty.

### **Saint Kitts & Nevis, Saint Lucia, Saint Vincent & the Grenadines**

See Caribbean Commonwealth and English-speaking Caribbean countries.

### **Saudi Arabia**

#### Death penalty in law

Saudi Arabia does not have a comprehensive codified criminal law, and its courts apply Sharia principles to determine offences and penalties in areas that are not codified in secular law. The death penalty is mandatory for a wide range of offences including adultery, armed robbery resulting in death (regardless of individual cause or intent); homosexual relations, murder and “terrorism”.

Capital offences include: adultery; apostasy; arson; burglary under aggravating circumstances for repeated offences; consumption of intoxicants including alcohol (when recidivist); drugs trafficking; espionage; homosexual relations; murder (with or without intent); rape; robbery resulting in death; “terrorist” offences; and sorcery or witchcraft.

#### Death penalty in practice

There were at least 147 people on death row in June 2012, many convicted of drugs-related offences. Individuals have been executed for adultery, assault, burglary (without death), drugs offences, gang leadership, kidnapping, murder, rape and attempted rape, robbery and sorcery. Many of the capital crimes do not meet the international threshold for “most serious crimes”.

Executions: 2012: 28 (January to July), 2011: 82, 2010: 26, 2009: 69, 2008: 102, 2007: 158.

## **Singapore**

### Death penalty in law

The constitution implicitly refers to the death penalty.

The death penalty is mandatory for: drugs trafficking and manufacturing of drugs; genocide involving the killing of any person; murder and intentional murder by use of explosives or other lethal devices in public or against government facilities or infrastructure; and piracy endangering life or involving murder.

In July 2012 the deputy prime minister of Singapore announced that legislation would be introduced to give more discretion to the courts on imposing the death penalty for drugs offences. Mitigating circumstances could include that the defendant was a courier and cooperated with drugs enforcement agents, or that he or she had a mental disability. Under the new law defendants will be able to apply for re-sentencing.

Capital offences include: arms trafficking; drugs-related offences; hostage-taking if harm is threatened; kidnapping for ransom and kidnapping if putting the victim in danger of murder, or when harm is threatened for the coercion of third parties; murder and felony murder; and perjury or intentional use of false information in a capital case, if the accused is executed. A convict who attempts to commit murder while under a life sentence can be sentenced to death; and the death penalty can potentially be reinstated in the case of a convict who violates a condition of its remission.

Acts of treason punishable by death include: genocide; planning or supporting an offence against the person or sovereignty of the president; piracy endangering life or involving murder and waging war against Singapore.

Under military law, assisting the enemy or abandonment of a convoy or vessel by an officer or expert, misconduct in action and mutiny in the face of the enemy are punishable by death.

### Death penalty in practice

There has been a significant reduction in the use of the death penalty although it is still imposed, mainly for drugs offences and murder. There were at least nine people on death row in June 2012.

Executions: 2011: 1, 2010: 0, 2009: 1, 2008: 1, 2007: 2.

## **Somalia**

### Death penalty in law

Three legal systems coexist in Somalia – secular law, Sharia law and Xeer (customary law). Different regions of Somalia appear to apply different laws although the 1962 Penal Code is still applicable in much of Somalia. Courts in Puntland may apply Xeer and the Transitional Federal Government (TFG) has authorised the application of Sharia law by Islamic courts. There is no mandatory death penalty under secular or military law. Under Sharia law and Xeer the extent of the court's discretion in relation to the death penalty was unclear as was the extent to which the victim's family could influence the penalty imposed.

Under secular law, the following are capital offences: “carnage” – an act against public safety intended to result in death; murder; “terrorist” offences which include causing an epidemic resulting in death; treason – assisting the enemy, espionage undermining the defence or threatening state security, or espionage-related offences affecting allies; interfering with intelligence with the effect of undermining the defence, usurping military powers, and waging or leading armed aggression against the state.

Courts that practice customary law (Xeer) may pronounce death sentences if a murder is particularly violent even when the victim's family would prefer the payment of compensation. Unintentional killing may also be punishable by death under Xeer.

Under the 1963 Code of Military Criminal Law, the following are capital crimes: destruction or sabotage of military works; initiation of unauthorised hostilities by a commander if an engagement occurs, or if devastation (or loss of life) is a result; intelligence-related offences; and loss or capture of ships or aircraft by a commander (or service persons, by not being the last to abandon a ship); and usurpation of command (when endangering an operation).

#### Death penalty in practice

There were at least 10 prisoners on death row in June 2012. Individuals were mainly executed for murder but given the political complexity of Somalia and the lack of reliable data it was difficult to ascertain whether the threshold for “most serious crimes” is met in practice.

Executions: 2011: 11 (6 by the TGF, 3 in Puntland and 1 in Galmudug), 2010: 8+, 2009: 0, 2008: 0, 2007: 5.

### **South Sudan**

#### Death penalty in law

Capital crimes include bearing false witness or fabricating false evidence resulting in an innocent person’s execution; aggravated drugs trafficking; gang robbery; murder; “terrorist” acts; and treason. The situation with regard to military offences was unclear and it was unclear whether any capital crimes carry a mandatory death penalty.

#### Death penalty in practice

Around 150 prisoners were on death row in June 2012. There were five executions for murder in 2011 following independence in July of that year.

### **Sudan**

#### Death penalty in law

Sudan applies the mandatory death penalty for adultery, apostasy, armed robbery resulting in death, armed robbery aggravated by rape, bearing false witness or fabricating evidence resulting in the execution of an innocent person for a capital offence, drugs-related offences and murder.

Capital crimes include: adultery; apostasy; armed robbery resulting in death; armed robbery aggravated by rape; bearing false witness or fabricating evidence resulting in the execution of an innocent person; active involvement in criminal organisations; drugs-related offences; embezzlement by officials; espionage; genocide; aircraft hijacking; homosexual relations upon the third offence; homosexual incest or incest by a married person; murder; running premises for prostitution upon the third offence; homosexual rape and rape by married person; heterosexual sodomy upon the third offence; “terrorist” acts; treason; and war crimes and crimes against humanity.

#### Death penalty in practice

There were approximately 300 prisoners on death row in June 2012. Individuals were executed mainly for murder or treason. There have been several cases involving a sentence of death by stoning for adultery but no recorded cases of the sentence being carried out.

Executions: 2012 (January to July): 0, 2011: 7, 2010: 13, 2009: 19, 2008: 3, 2007: 7.

### **Syria**

#### Death penalty in law

The constitution does not refer to capital punishment or the right to life. The death penalty is mandatory for some offences. Under the Narcotic Drugs Law of 1993, courts are prohibited from considering mitigating circumstances if recidivism or other specified criteria are met. In December 2011, President Assad signed into effect a law allowing for death sentence for anyone providing, or helping to provide, arms “intended for the carrying out of terrorist acts”.

Capital crimes include: arson resulting in death; drugs-related offences including falsification of material evidence resulting in a third party being convicted for a drugs offence and sentenced to death, and murder of a state employee charged with implementation of the Narcotic Drugs Law during the performance of his duty; gang-robbery resulting in death, and torture or barbaric treatment during the commission of gang-robbery; premeditated murder, murder to further a felony, and murder of one's ascendants or descendants; "terrorist" acts and the financing of "terrorism"; and treason which covers a broad range of offences including various forms of political dissidence, including membership of the Moslem Brethren Group (Muslim Brotherhood). Recidivist offenders convicted of a crime carrying a sentence of forced labour for life can also be sentenced to death.

Under military law desertion, espionage, insubordination and rebellion are punishable by death.

#### Death penalty in practice

The number of prisoners sentenced to death was unknown as of June 2012. More than 30 death sentences were known to have been imposed in recent years, but some were reportedly commuted to life imprisonment. At least one execution was carried out in 2011. None were known to have been carried out between 1993 and 2001 but they appear to have resumed in 2002, mostly for deliberate or aggravated murder. Before the current hostilities, reports suggested a tendency to restrict the use of the death penalty to crimes meeting the threshold for "most serious crimes".

Executions: 2011: 1+, 2010: 17, 2009: 8, 2008: 1+, 2007: 7.

### **Taiwan**

#### Death penalty in law

The constitution is considered neutral on the death penalty. There is no mandatory death penalty. There are reportedly 52 offences which carry the death penalty, only 20 of which involve violent crimes resulting in death.

Capital offences include: drugs-related offences; aggravated murder and murder; and other violent crimes resulting in death such as armed robbery.

Under military law, 19 crimes are punishable by death. They include aiding the enemy; disclosing secrets to the enemy; dereliction of duty; disobedience; destruction of facilities, vessels or aircrafts; failure to resist the enemy; failure to safeguard some kinds of information; initiating aggressive hostilities; insubordination or during time of war taking arms and leaving "position of service"; treasonable offences including espionage; theft and sale of ammunition and theft or destruction of aircrafts, facilities or vessels.

#### Death penalty in practice

There were around 55 individuals on death row in June 2012. Taiwan's rate of executions decreased from 1987 to 2007, with spikes in 1990 and again in the late 1990s. Executions declined from 2000-2003 and ceased entirely by 2006 but resumed in 2010. The great majority of death sentences were imposed for murder, with a few for drugs offences, kidnapping and robbery. By the end of 2010, there were no individuals under a final sentence of death for drug offences (i.e. sentences confirmed by the Supreme Court), although there were some death row prisoners sentenced to death at their first or second trials.

In 2009 the legislature adopted the ICCPR as domestic law in Taiwan. In future this could affect whether the death penalty is applied for crimes such as drugs trafficking.

Executions: 2012: 0 (January to July), 2011: 5, 2010: 4, 2009: 0, 2008: 0, 2007: 0.

## **Thailand**

### Death penalty in law

The Constitution does not explicitly refer to the death penalty. The government's Second National Human Rights Plan (2009-2013) proposes to replace the death penalty with life imprisonment but this had yet to be implemented.

Under the criminal code there are 35 capital crimes. They include: arson; bribery; corruption; drugs-related offences (e.g. possession of more than 20g of narcotics, or more than 100g of heroin); gang robbery, human trafficking resulting in death; kidnapping for ransom; aggravated murder and murder; rape, and other felonies resulting in death.

"Terrorist" capital offences include destruction of places of mass gatherings, religious sites, or transportation resources, and airplane hijacking not resulting in death. Acts of treason punishable by death include assisting or procuring advantage for the enemy; deadly or violent action or attempt on the person of a head of state or a foreign representative accredited to the Royal Court; committing any act with intent to cause danger to the external security of the state, if such danger occurs; espionage during war; human trafficking of women or minors; certain illegal use of firearms or explosives; and waging war on Thailand as an insurgent or in support of Thailand's foreign enemies.

Military crimes include: espionage or recruiting for the enemy; initiating or organising a conspiracy or armed rebellion using armed threats, armed assault, or by creating public unrest; insubordination in face of the enemy; instigating any member of the armed forces to commit a breach of discipline; desert the service, commit mutiny or neglect his duties; surrender against orders, or commit instigation to surrender troops or material to the enemy against orders; and undermining the effectiveness of government troops as part of a plan to overthrow the government or to change the political system or the war economy.

### Death penalty in practice

There were 622 individuals on death row in February 2012. Reports suggest that about 50 per cent of capital cases are for drugs offences.

Executions: 2012: 0 (January to July), 2011 and 2010: 0, 2009: 2, 2008 and 2007: 0.

## **Trinidad and Tobago**

See Caribbean Commonwealth and English-speaking Caribbean countries.

## **Uganda**

### Death penalty in law

The death penalty is referred to in the constitution. In 2005 the Constitutional Court ruled that the mandatory death penalty is unconstitutional because it prevents a judge from taking all mitigating circumstances into account in a capital case. The Supreme Court of Uganda upheld the decision of the Constitutional Court. There have been unsuccessful attempts to define recidivist homosexual relations as a capital offence.

The criminal code stipulates 15 capital crimes. These include nine separate offences grouped under the collective heading of "treason" and offences against the state; and a further six offences which are defilement; murder; aggravated kidnapping; rape; aggravated robbery; and aggravated smuggling.

According to the 1992 Uganda People's Defence Forces Act, the following crimes, if committed by members of the Ugandan People's Defence Force are punishable by death: breach of duty, breach of security, command offences, cowardice, defection, desertion, insubordination or disobedience, endangerment of lives or equipment, mutiny, murder, rape, treachery and treason.

## Death penalty in practice

Use of the death penalty has decreased significantly although the death row population remained high at around 534 in June 2012. As a consequence of rulings by the Supreme Court and the Constitutional Court, at least 417 death-sentenced prisoners were being or will be re-sentenced. Those awaiting execution for more than three years will have their sentence commuted to terms of imprisonment.

The last military execution was in 2006 and the last civilian execution in 1999.

## **United Arab Emirates**

### Death penalty in law

The constitution stipulates that federal death penalties cannot be carried out without the president's approval and that the president must obtain the approval of a Council of Ministers to commute a death sentence. The death penalty is mandatory for huddud and qisas offences. Some "terrorist" offences resulting in death may carry the mandatory death penalty if they can be characterised as hadd or carry a retributive penalty (qisas). Adultery carries the penalty of stoning as hadd for married participants, although it is almost impossible to prove owing to the evidentiary requirements of Sharia law.

The criminal laws of the United Arab Emirates are decrees promulgated with reference to the constitution and other specified laws. The drugs trafficking and anti-terrorism laws are promulgated in reference to the criminal code and other laws. Article 1 of the criminal code establishes the primacy of Sharia law for offences under religious law and those which carry retaliatory penalties. Article 98 establishes a universal mitigation provision which is applicable where Sharia law does not prevent judicial mitigation.

The death penalty is applicable to numerous crimes when their commission results in the death of a victim. They include: arson or illegal use of explosives to destroy a variety of buildings used for industry, whether inhabited or in uninhabited areas, or of means of transportation, or of forests or crops, when resulting in death; calumny, resulting in conviction; successfully inciting the suicide of a person "afflicted with total lack of free will or reason".

Drugs-related capital crimes include the intentional or unintentional killing of a public official charged with enforcing drug laws to resist their enforcement and use of drugs or an existing drug-induced state to incite a person to commit an offence that results in death.

Other capital crimes resulting in death are: acts of indecent assault (whether statutory or due to coercion) resulting in death; kidnapping resulting in death; aggravated murder according to statutory law and if carrying a retributive penalty (qisas); and perjury, resulting in the conviction of an innocent person who is executed.

In addition to the above, a further range of non-lethal offences are punishable by death. They include sexual offences such as adultery (a hadd crime), rape of a female or a child under 14 and sodomy of a man; and drugs-related offences including the acquisition or abuse as well as the cultivation, preparation for cultivation, export or import, manufacture, possession or procurement of drugs with the intention of trafficking or promotion. The death penalty is applicable only upon repeated offence for certain scheduled drugs.

"Terrorist" capital offences which result in the death of a victim include: assaulting a member of the security forces; attacks on a head of state or his family or a representative or officer of a state; coerced conscription of individuals into a "terrorist" organisation; hijacking; hostage-taking; infringement of diplomatic or consular premises in committing a "terrorist" act; and use of nuclear, chemical or biological weapons.

"Terrorist" capital offences not resulting in death include: forming or leading an organisation with intent to commit "terrorist" acts; working with a foreign state or foreign or international group to commit "terrorism" if the act is committed; threatening to use nuclear, chemical or biological

weapons; using explosives or nuclear, chemical or biological weapons in a hijacking or assault upon security forces.

Treasonous capital offences include bringing nuclear substances or waste into the national territory or burying, disposing, dumping or storing such waste in any form within the national territory; and espionage when revealing defence secrets or obtaining them with the intent to reveal them to an enemy.

It is unclear what military crimes might incur the death penalty.

#### Death penalty in practice

There were estimated to be at least 95 persons on death row in June 2012. Most death sentences were imposed for drugs offences and murder. There were reports of convicts sentenced to death by stoning but no confirmed reports of the sentences being carried out. Reports indicate that the death penalty is carried out for the “most serious crimes”. The two known executions were for murder.

Executions: 2011: 1, 2010: 0, 2009: 0, 2008: 1, 2007: 0.

### **United States of America**

#### Death penalty in law

Seventeen states within the USA have abolished the death penalty. Each state applies its own criminal law within the limits defined by the constitution. Federal criminal law exists in parallel in all states.

Capital crimes include: drugs trafficking in large amounts (federal and in some states); genocide; aggravated murder (first degree murder), and murder (second degree murder), on federal and state level and felony murder (in some states); perjury resulting in the execution of an innocent person (in a few states); “terrorist” offences (in some states including when death does not result from the act); treason (federal and in some states) including espionage; recidivist rape of a child (in a few states) and aggravated rape (Louisiana).

Capital crimes under military law include: aiding the enemy, cowardice, dereliction of duty (particularly to commit an offence under the laws of war); desertion, disclosure of parole, disobedience, espionage, failure to perform sentinel duties, improperly hazarding a vessel, mutiny or sedition, offences against non-combatants and offences against persons such as child rape. In practice military death sentences are only imposed for murder and felony murder.

#### Death penalty in practice

The number of prisoners on death row in January 2012 was 3,189. In practice the death penalty is almost exclusively used for murder and there have been no executions for crimes not involving murder since 1976. The federal death penalty was not used between 1963 and 2001 but has been used three times since then. No executions have occurred in the military justice system since 1961.

Executions: 2012: 19 (January to June), 2011: 43, 2010: 46, 2009: 52, 2008: 37, 2007: 42.

### **Viet Nam**

#### Death penalty in law

Viet Nam’s constitution does not explicitly refer to the death penalty but suggests a limited constitutional protection of life.

Viet Nam reduced the number of capital crimes from 44 to 29 in 1999. The criminal code was amended in 2009 to further reduce the number of capital crimes to 22. The following offences are therefore no longer punishable by death: bribery (giving bribes), counterfeiting money, destruction of military weapons, drugs use, fraud, hijacking, piracy, aggravated rape of adults, and smuggling.

Among the crimes punishable by death are: bribery (receiving bribes); embezzlement if the appropriated property is valued at five hundred million dong or more or if the crime was committed causing other particularly serious consequences; drugs offences; manufacturing and/or trading in fake goods – foodstuffs, curative medicines, and preventive medicines if the act results in serious consequences; aggravated murder (i.e. murder of more than one victim, murder of family members or public officials and murder committed in a particularly cruel way); aggravated rape of a child aged from 13 to 15 years; statutory rape of a child under the age of 13; and aggravated robbery.

“Terrorist” offences for which the death penalty can be imposed include acts intended to oppose the people’s administration and infringe upon the life of citizens, officials or public employees. Acts of treason punishable by death include: conducting armed activities with a view to opposing the government; acting in collusion with a foreign country to harm the regime or the state; destruction of important national security works or facilities; espionage; organised banditry; sabotage of the material and technical foundations of the country; and serious violations of humanitarian law.

Capital crimes under military law include: disobeying orders of direct commander and surrendering to the enemy with particularly serious consequences.

#### Death penalty in practice

Information on the death penalty is classified as a state secret which makes it difficult to establish the nature or extent of its use. According to state media some 400 prisoners were on death row in June 2012. Most of the defendants appear to have been sentenced to death for drugs offences or murder.

In 2011 the method of execution was changed from shooting to lethal injection. State media reports have suggested that drug shortages have prevented some executions from taking place.

Executions: 2012: 0 (January to July), 2011: 5, 2010: 0, 2009: 9, 2008: 19, 2007: 25.

### **Yemen**

#### Death penalty in law

The constitution states that no death sentence may be carried out without the president’s endorsement. The death penalty is mandatory for adultery; apostasy; espionage; drugs offences, murder (retaliatory sentences); homosexual sodomy; and treason.

Capital offences include: adultery; apostasy; banditry; drugs offences; espionage; kidnapping in conjunction with rape; recidivist procurement for prostitution of one’s wife or daughters (a wife who consents to recidivist acts of procurement of her daughters is also punishable); murder; perjury resulting in the execution of an innocent person; robbery involving petty sums, leading to injury; homosexual sodomy; “terrorist” acts with lethal consequences; and treason.

Military capital crimes include cowardice, desertion or voluntary surrender in the field by personnel or surrender or abandonment of hostilities by any commander prior to the exhaustion of all means of resistance.

#### Death penalty in practice

The death row population was estimated at 1000 persons in May 2012. Reports indicate that prisoners have been executed for banditry, drugs trafficking and murder.

Executions: 2011: 41+, 2010: 62, 2009: 30, 2008: 13, 2007: 15.

### **Zimbabwe**

#### Death penalty in law

The constitution implies the legitimacy of the death penalty and states that delays in execution are not considered as cruel, inhuman or degrading punishment.

During the 1990s the trend was to reduce the scope of the death penalty. However, after 2000 the range of crimes for which the death penalty could be imposed was expanded to include: genocide resulting in death; attempted murder, incitement or conspiracy to commit murder; “terrorist” acts that result in death; and war crimes under the Geneva Conventions of 1949.

Capital crimes include: genocide when it results in death; murder, attempted murder or incitement or conspiracy to commit murder; treason; and war crimes.

In addition the death penalty may be imposed on those convicted of a broad range of “terrorist” offences when death results from the “terrorist” act. These include: causing or furthering an insurrection; causing forcible resistance to government defence forces or law enforcement agencies; damaging or destroying property; inflicting substantial financial loss on another person; obstructing the movement of air, land or water traffic or disrupting an essential service; and procuring by force the alteration of any government law or policy.

Under military law capital crimes include desertion in the face of the enemy and mutiny.

#### Death penalty in practice

There were an estimated 58 people on death row in June 2012, mainly for murder convictions. The courts continued to impose the death penalty although the last execution was in 2004.

Annex B: Data summary on the death penalty in law and practice in retentionist states

| Country                               | Date last execution | UNGA Vote Resolution 67/176 2012 | ICCPR      | Rome Statute of the International Criminal Court | Death sentences in 2011 | Executions in 2011 | DP for robbery (armed or gang) | DP for drugs offences      | DP for sexual offences | DP for religious offences |
|---------------------------------------|---------------------|----------------------------------|------------|--|-------------------------|--------------------|--------------------------------|----------------------------|------------------------|---------------------------|
| Afghanistan                           | 2007                | N                                | A          | A  | at least 1              | 2                  | Y                              | N                          | Y                      | Y                         |
| Antigua & Barbuda                     | Not known           | Absent                           | Not signed | R  |                         |                    | N                              | N                          | N                      | N                         |
| Bahamas                               | 2000                | N                                | R          | S  |                         |                    | N                              | N                          | N                      | N                         |
| Bahrain                               | 2006                | N                                | A          | S  | 5                       |                    | Y                              | Y                          | N                      | N                         |
| Bangladesh                            | 2011                | N                                | A          | R  | 49                      | 5                  | Y                              | Y                          | Y                      | N                         |
| Barbados                              | Not known           | N                                | A          | R  |                         |                    | N                              | N                          | N                      | N                         |
| Belarus                               | 2010                | A                                | R          | Not signed                                       | 2                       | 2                  | Y                              | N                          | N                      | N                         |
| Belize                                | 1985                | N                                | A          | R  |                         |                    | N                              | N                          | N                      | N                         |
| Botswana                              | 2006                | N                                | R          | R  | 1                       |                    | N                              | N                          | N                      | N                         |
| Chad                                  | 2004                | Y                                | A          | R  | at least 1              |                    | N                              | N                          | N                      | N                         |
| China                                 | 2011                | N                                | S          | Not signed                                       | 1000s                   | 1000s              | Y                              | Y                          | N                      | N                         |
| Comoros                               | 1997                | A                                | S          | R  |                         |                    | Y                              | N                          | N                      | N                         |
| Cuba                                  | 2003                | A                                | S          | Not signed                                       |                         |                    | Y                              | Y                          | Y                      | N                         |
| Democratic People's Republic of Korea | 2011                | N                                | A          | Not signed                                       | at least 1              | 30                 | N                              | Y                          | N                      | Y                         |
| Democratic Republic of Congo          | 2003                | A                                | A          | R  | at least 1              |                    | Y                              | N (except in times of war) | N                      | N                         |
| Dominica                              | 1986                | N                                | A          | A  |                         |                    | N                              | N                          | N                      | N                         |
| Egypt                                 | 2009                | N                                | R          | S  | 123                     | 1                  | Y                              | Y                          | N                      | N                         |
| Equatorial Guinea                     | 2010                | Absent                           | A          | Not signed                                       |                         |                    | Y                              | N                          | N                      | N                         |
| Ethiopia                              | 2007                | N                                | A          | Not signed                                       |                         |                    | Y                              | N                          | N                      | N                         |
| Guatemala                             | 2000                | Y                                | A          | A  |                         |                    | N                              | N                          | N                      | N                         |
| Guinea                                | 2001                | A                                | R          | R  |                         |                    | Y                              | N                          | N                      | N                         |
| Guyana                                | 1996                | N                                | R          | R  | 3                       |                    | Y                              | N                          | N                      | N                         |
| India                                 | 2012                | N                                | A          | Not signed                                       | 110                     |                    | N                              | Y                          | N                      | N                         |
| Indonesia                             | 2006                | A                                | A          | Not signed                                       | 6                       |                    | Y                              | Y                          | Y (in Aceh)            | N                         |
| Iran                                  | 2011                | N                                | R          | S  | 156                     | 676                | Y                              | Y                          | Y                      | Y                         |
| Iraq                                  | 2009                | N                                | R          | Not signed                                       | 291                     | 68                 | N                              | Y                          | N                      | N                         |
| Jamaica                               | 1988                | N                                | R          | S  |                         |                    | Y                              | N                          | N                      | N                         |
| Japan                                 |                     | N                                | R          | A  | 10                      |                    | Y                              | N                          | N                      | N                         |
| Jordan                                | 2005                | A                                | R          | R  | 15                      |                    | Y                              | N                          | N                      | N                         |

| Country                  | Date last execution | UNGA Vote Resolution 67/176 2012 | ICCPR      | Rome Statute of the International Criminal Court | Death sentences in 2011 | Executions in 2011 | DP for robbery (armed or gang) | DP for drugs offences | DP for sexual offences | DP for religious offences |
|--------------------------|---------------------|----------------------------------|------------|--|-------------------------|--------------------|--------------------------------|-----------------------|------------------------|---------------------------|
| Kuwait                   | Not known           | N                                | A          | S  |                         |                    | N                              | Y                     | N                      | N                         |
| Lebanon                  | 2004                | A                                | A          | Not signed                                       | 8                       |                    | Y                              | N                     | N                      | N                         |
| Lesotho                  | 1995                | A                                | A          | R  |                         |                    | N                              | N                     | N                      | N                         |
| Libya                    | 2007                | N                                | A          | Not signed                                       |                         |                    | N                              | Y                     | N                      | N                         |
| Malaysia                 | 2002                | N                                | Not signed | Not signed                                       | 108                     | at least 1         | Y                              | Y                     | N                      | N                         |
| Nigeria                  | 2007                | A                                | A          | R  | 72                      |                    | Y                              | N                     | Y                      | N                         |
| Oman                     | 2009                | N                                | Not signed | S  |                         |                    | N                              | N                     | N                      | N                         |
| Pakistan                 | 2012                | N                                | R          | Not signed                                       | 313                     |                    | Y                              | Y                     | Y                      | Y                         |
| Qatar                    | 2003                | N                                | Not signed | Not signed                                       | 3                       |                    | Y                              | Y                     | Y                      | N                         |
| St Kitts                 | 2008                | N                                | Not signed | A  |                         |                    | N                              | N                     | N                      | N                         |
| St Lucia                 | 1995                | N                                | S          | R  | 1                       |                    | N                              | N                     | N                      | N                         |
| St Vincent               | 1995                | N                                | A          | A  |                         |                    | N                              | N                     | N                      | N                         |
| Saudi Arabia             | 2011                | N                                | Not signed | Not signed                                       | 9                       | 82                 | Y                              | Y                     | Y                      | Y                         |
| Singapore                |                     | N                                | Not signed | Not signed                                       | 5                       |                    | Y                              | Y                     | N                      | N                         |
| Somalia                  | 2011                | Y                                | A          | Not signed                                       | 37                      |                    | N                              | N                     | Y                      | N                         |
| South Sudan              | –                   | Y                                | Not signed | Not signed                                       |                         |                    | Y                              | Y                     | N                      | N                         |
| Sudan                    | 2010                | N                                | A          | S  | 13                      | 7                  | Y                              | Y                     | Y                      | Y                         |
| Syria                    | 2007                | N                                | A          | S  | at least 1              | at least 1         | N                              | Y                     | N                      | N                         |
| Thailand                 | 2005                | A                                | A          | S  | 40                      |                    | Y                              | Y                     | N                      | N                         |
| Trinidad & Tobago        | 1999                | N                                | A          | R  | 2                       |                    | N                              | N                     | N                      | N                         |
| Uganda                   | 2009                | N                                | A          | R  | 5                       |                    | Y                              | N                     | N                      | N                         |
| United Arab Emirates     | 2009                | A                                | Not signed | S  | 31                      | 1                  | N                              | Y                     | Y                      | Y                         |
| United States of America | 2011                | N                                | R          | S  | 78                      | 43                 | Y (10 in total)                | Y                     | N                      | N                         |
| Viet Nam                 |                     | A                                | A          | Not signed                                       | 23                      | 5                  | Y                              | Y                     | N                      | N                         |
| Yemen                    | 2008                | N                                | A          | S  | 29                      | 41                 | Y                              | Y                     | Y                      | Y                         |
| Zimbabwe                 | 2003                | N                                | A          | S  | 1                       |                    | N                              | N                     | N                      | N                         |
| Palestinian Authority    | 2005                |                                  | N/A        | N/A  | 5                       | 3                  | Y                              | Y                     | N                      | N                         |
| Taiwan                   | 2011                |                                  | N/A        | N/A  | 16                      | 5                  | Y                              | Y                     | N                      | N                         |

Key: A= Accession, S = Signature, R = Ratification.