

## QUICK POLICY INSIGHT

# The death penalty in the Middle East and North Africa

Authors: Anastasia CALVIERI, Pekka HAKALA  
and Anete BANDONE

The abolition of capital punishment is a key objective for the European Union's human rights policy.

In the last 50 years, the fight for the abolition of capital punishment has become one of the most important human rights objectives. According to **Article 6 of the International Covenant on Civil and Political Rights** (ICCPR), which was signed in 1966 and entered into force in 1976, 'every human being has the inherent right of life'. This principle is strongly supported by a large group of non-governmental organisations (NGOs)<sup>1</sup>, as well as the European Union, which holds an emphatic and principled position against the death penalty. **Abolition is a key objective for the Union's human rights policy.** Abolition is, of course, also a pre-condition for membership in the Union.

Currently more than three quarters of the United Nations' Member States have either abolished the death penalty or introduced a moratorium. Despite this global trend, most countries in the Middle-East and North Africa (MENA) still widely apply the capital punishment.

## 1. Facts and figures

While a handful of countries in the region no longer apply capital punishment, all retain the death penalty on their books.

The countries of the region can be divided into two categories:

- Five countries (Israel, Algeria, Morocco, Tunisia and Mauritania) are regarded as 'abolitionist in practice'. All these countries except for Israel maintain executions for serious crimes such as murder and drug-related offences, but no executions have been carried out in a long time. Israel formally retains the capital punishment in exceptional circumstances but not for 'ordinary crimes'. The last Israeli execution was carried out in 1962.
- All other countries execute prisoners for crimes including ordinary crimes<sup>2</sup>.

**Figures 1 and 2:**  
The death penalty  
in the MENA  
region



Source: United Nations with additions by the Policy Department, DG EXPO

None of the MENA Countries has signed the Second Optional Protocol to the

A **Second Optional Protocol** of the ICCPR, aimed at abolishing the death penalty, was adopted by the UN General Assembly in 1989. Article 1 of the Protocol states that all the Protocol's Parties shall refrain from carrying out

ICCPR, which aims to abolish the death penalty.

executions and shall take all necessary measures to abolish the death penalty within their jurisdiction. **None of the countries in the MENA region has signed this act**, although most have signed and ratified the ICCPR.

**Table 1:**  
Death Penalty in the MENA region

AP = Abolitionist in Practice  
AO = Abolitionist for ordinary crimes  
R = Retentionist

Country	Death Penalty	Most recent execution	Reported juridical executions, 2011	Number people sentenced to death, 2011	2011 execution rate (per 100 000 ppl)	Reported juridical executions, 2012 (Jan-Nov)
<b>Algeria</b>	AP	1993	0	51+	0	0
<b>Bahrain</b>	R	2008	0	5	0	0
<b>Egypt</b>	R	2011	1+	123+	1.21	0
<b>Iran</b>	R	2012	360+	156+	<b>4.81</b>	282+
<b>Iraq</b>	R	2012	68+	291+	<b>2.06</b>	112+
<b>Israel</b>	AO	1962	0	0	0	0
<b>Jordan</b>	R	2006	0	15+	0	0
<b>Kuwait</b>	R	2007	0	17+	0	0
<b>Lebanon</b>	R	2004	0	8	0	0
<b>Libya</b>	R	2010	0	0	0	0
<b>Mauritania</b>	AP	1987	0	8	0	0
<b>Morocco</b>	AP	1993	0	0	0	0
<b>Oman</b>	R	2001	0	0	0	0
<b>PNA (West Bank)</b>	R	2005	0	1	0	0
<b>Gaza Strip</b>	R	2012	3	8	<b>4.86</b>	12
<b>Qatar</b>	R	2003	0	3+	0	0
<b>Saudi Arabia</b>	R	2012	82+	9+	<b>2.84</b>	60+
<b>Syria</b>	R	2012	+ <sup>1</sup>	+	n/a	1+
<b>Tunisia</b>	AP	1991	0	22+	0	0
<b>United Arab Emirates</b>	R	2011	1	31+	<b>1.26</b>	0
<b>Yemen</b>	R	2012	41+	29+	<b>1.65</b>	2

Sources: The World Bank (population figures), Amnesty International, Death Penalty Worldwide

<sup>1</sup> It is not possible to give the exact number of executions carried out in Syria in the last two years, due to the ongoing civil war and the lack of official information provided by Syrian authorities. However, unconfirmed reports by local media have recorded several cases of capital punishment.

## 2. Death penalty and Islamic law (*Shari'a*)

If the death penalty has proven difficult to eradicate in the MENA, this is due in large part to the religious basis of many countries' legal systems, which is more resistant to change than systems based solely on legislation. In a number of cases, these legal systems also derive from overlapping and entrenched sources, both historical and recent, religious and lay:

In most countries in the MENA region, the legal system is mainly based primarily on *Shari'a*. Unsurprisingly, Israel's legal system has different sources.

- In the **Gulf countries**, *Shari'a* (Islamic law) is often combined with other sources. **Bahrain** bases its legal system on both Islamic and English common law, while **Kuwait's** system and that of the **United Arab Emirates** has have incorporated elements from French civil law. In **Oman**, Islamic law is the legal basis for family and personal matters, but not for cases involving commerce, for example, which are based on English common law. **Saudi Arabia's** legislation is based on both *Shari'a* principles and customary law (traditional common rule), and the Qur'an and the Sunna (see below) form the country's constitution.
- **Yemen's** legal system also draws on *Shari'a* and customary law.
- In **Iran**, Article 4 of the constitution posits Islamic law as 'the essential source for all the branches of legislation', including civil and penal legislation, financial regulations and military law. In 1983 Islamic codes of correction were introduced. In **Iraq**, Islam is the chief source of legislation according to the 2005 constitution.
- The legal system in **Jordan** is based on Islamic law for both civil and criminal matters, with the exception of non-Muslim communities' members' personal status. In **Syria**, a mix of Islamic and civil law is adopted for family courts.
- **Israel's** legal system combines English common law, British Mandate regulations and Jewish, Christian and Muslim religious laws. (Laws related to the personal status are based on principles of each of religious community.)
- **Palestine** has a divided legal system due to lack of a single authority ruling the state. In the Gaza Strip, Hamas has set up an independent legal system separate from that of the Palestinian National Authority in the West Bank. Divisions within the West Bank further complicate the situation, as Area C is under Israeli military rule, and Areas A and B have legal systems that derive from a number of sources, including Palestinian, Israeli, Jordanian and British Mandate laws.
- **Lebanon** has mixed legal system of civil law based on the French civil code and religious laws covering personal status of the Jewish, Islamic and Christian communities.
- **Egypt's** legal system is based on the principles of the *Shari'a*.
- All the countries of **Maghreb** have based their legal systems on a combination of Islamic law and French civil law. **Libya's** legal system is based on the *Shari'a*.

*Shari'a* has four levels of sources. The highest source is the *Qu'ran* (the divine revelation to Prophet Mohammed). The second is the *Hadith*, the collection of the Prophet's actions. The third source is the *Qiyas*, the

process of analogical reasoning based on the *Qu'ran* and the *Hadith*. Finally, there is the *Ijma*, the consensus of opinion among the scholars.

Islamic criminal law divides crimes into four categories.

- **Hudud** (حدود) crimes are considered dangerous for Islamic society. Their punishments are fixed in the *Qu'ran* and the *Hadith*. They include adultery, apostasy, armed robbery and rebellion.
- The second category is the **Qisas** (قصاص) crimes, which involve people; these include murder and injury. Punishment for these crimes either reflects the crime or consists of a material offset (*Diya*).
- Thirdly, the category of **Ta'zir** (تعزير) covers various crimes that may be punished according to the discretion of the judge<sup>3</sup>. The interpretation of this may vary among the different countries applying *Shari'a*.

Capital punishment represents the most dramatic collision between a UN-sponsored human rights concept and *Shari'a*. Within *Shari'a*, the death penalty is mandatory for a number of *Hudud* crimes. Moreover, some **execution methods** envisaged in the holy texts, such as flogging, stoning and amputation, violate international conventions that prohibit torture and cruel and inhuman treatments<sup>4</sup>.

### 3. The most flagrant executors

In 2012, Iran confirmed its lead position in the region with two executions per day. Despite its international obligations, Iran continues to execute juvenile prisoners.

**Iran** leads the capital punishment chart, with a great number of executions carried out in 2011 and the first ten months of 2012. Globally, only China executed more people. Iran's per capita execution rate is also very high. The exact number is hard to measure, in large part because a significant discrepancy exists between official figures registered by government authorities and those collected by human rights organisations. The yearly number of executions varies between 282 and 700 when both executions held in secret and those conducted in public are included. On average, two people per day were executed between January and June 2012. On 22 November 2012 the European Parliament approved a resolution condemning the use of the death penalty in Iran<sup>5</sup>.

The circumstances in which these people died and the type of offence with which they were charged are further sources of concern. According to the Iran Human Rights Documentation Centre (IHRDC) and its long, detailed 2012 executions' chart<sup>6</sup>, most of the people executed were accused of drug trafficking. But many NGOs and analysts fear that some of these executions were in fact motivated by political causes.

Despite the prohibition of international human rights law on applying capital punishment to people under the age of 18 (Article 6(5) of the ICCPR), Iran carries out juvenile executions. Amendments to the Iranian Penal Code that are currently proposed retain the practice (excluding for drug-related offences or *ta'zir*-based crimes). The most alarming elements of the proposed legal reform are new amendments of the age of criminal

responsibility: a draft of the updated penal code aligns the age of criminal liability with the age of 'maturity' (9 years for girls, 15 years for boys)<sup>7</sup>.

Iraq executed more than 62 people in 2011, and more than 102 in the first nine months of 2012.

The death penalty in **Iraq** was reintroduced in 2004. In recent months, the country has registered a sharp increase in the number of executions, exceeding its total tally for 2011. According to Amnesty International, in different cases trials regarding death sentences failed to comply with international fair trial standards<sup>8</sup>. Recently, on 5 October, six executions were held in Baghdad, although numerous breaches of due process during the trials and torture were noted. On 11 November, other 10 prisoners, 9 Iraqi and one Egyptian, were hanged for terrorism-related charges. Both Navi Pillar, the UN High Commissioner for Human Rights, and Christof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions have recommended a moratorium for Iraq.

The number of executions per capita in Gaza is the highest in the region.

In the **Gaza Strip**, Hamas has created an independent legal system, with the Gaza High Court of Justice no longer under the authority of the Palestinian National Authority. As a result, the legal requirement that the President of the Palestinian Authority sign all death sentences is not applied in the Gaza Strip. During 2012, Amnesty International counted 12 executions and 24 death sentences in the Gaza Strip. Among them, seven prisoners were charged for treason by collaborating with Israel, six of them shot on 20 November. Two other men were executed for murder and complicity in murder and one for abduction, rape and murder of a child<sup>9</sup>. The rate of executions per capita is the highest in the region. Many different NGOs and external observers, as well as the competent UN Special Rapporteur, call for a cessation of executions there<sup>10</sup>. On 2 October 2012, a statement by the EU heads of missions in Jerusalem and Ramallah condemned death sentences issued in the Gaza Strip on 12 September.

Apostasy and sorcery are among the crimes punishable by death in Saudi Arabia.

**Saudi Arabia's** legal system is based on a rigid Wahhabite interpretation of the Islamic law. The principal human rights concerns are the country's degrading punishments and its high level of gender discrimination. In 2012, more than 60 people have been executed and 250 people are on death row for offences such as apostasy and sorcery. Saudi Arabia has neither signed nor ratified the ICCPR.

In Yemen, more than 29 people have been executed in 2012.

According to reports from **Yemen**, several abuses and human rights violations were committed in 2011 by officials of the administrative bodies, internal security forces, terrorists and supporters of former President Ali Abdullah Saleh. On 17 February 2011, the European Parliament adopted a resolution on the situation of Yemeni juvenile offenders. The EP asked that the death sentences of two young demonstrators be commuted and that the Yemeni authorities halt all executions of people under the age of 18. In 2012, more than 29 executions have been reported, though this count is likely to be incomplete.

## 4. The international community's position on the death penalty

The United Nations and the European Union hold a strong position against the death penalty. Both organisations have expressed their concern about its wide use in the MENA region.

**The United Nations Human Rights Committee** is the independent body that monitors the implementation of the ICCPR commitments within the UN system, as well as the competent authority for the UN's Second Optional Protocol on the abolition of the death penalty.

The UN has long advocated abolishing the death penalty. In those cases where it is still used, it recommends at the very least restricting its use to only 'the most serious crimes'. The UN Secretary-General has also remarked some countries' alarming and unacceptable practice of executing juvenile offenders. While this has improved in a number of states, as recognised by the UN High Commissioner for Human Rights, due process guarantees, especially regarding legal assistance during the trial, must be scrupulously respected.

The UN launched three moratoria on the use of the death penalty between 2007 and 2011.

The **United Nations' General Assembly** recently launched three moratoria<sup>11</sup> on the use of the death penalty in the belief that the measures will contribute to 'respect for human dignity and to the enhancement and progressive development of human rights'<sup>12</sup>. A new moratorium is expected to be voted by the UN General Assembly in mid-December. Unfortunately, the aftermath of the civil war in Syria and the political tension in Libya and Yemen indicate that retentionist states in the region are far from reaching a turning point and moving towards the adoption of abolitionist amendments in the short term. In Syria, Yemen and Libya, the violence against the civilian population and the lack of reliable information make it impossible to gauge the extent of **extrajudicial executions** carried out there.

The European Union's campaign against capital punishment aims at persuading its partner countries to abolish death penalty, through political dialogue.

**The European Union** is committed to use all its tools of diplomacy and financial assistance to challenge the retention of the capital punishment in the world. In 1998, it adopted guidelines for third countries on the death penalty as a part of its human rights policy. These guidelines set out the essential principles for the EU monitoring action towards the use of the death penalty. Principally, EU actions will aim at persuading retentionist third countries to abolish death penalty, through general or specific demarches, made during its periodical dialogues or in specific circumstances, respectively. Furthermore, these guidelines form the general framework for the **financial assistance** offered by the EU through its European Instrument for Democracy and Human Rights (EIDHR), born in 2007. In the first EIDHR Strategy Paper 2007-2010, the abolition of the death penalty was included as one of the human rights issues set as key priorities in Objective 3. The indicative financial contribution fixed for supporting actions towards the abolition of death penalty amounted to EUR 8 million<sup>13</sup>, assigned to 21 projects. Four of them were carried out in countries in the MENA Region (Yemen, Jordan and Egypt)<sup>14</sup>. In the last

In the 2007-2010 period, the EU allocated EUR 8 million to 21 projects worldwide, 4 of which were in the MENA

region. The indicative budget for 2011-2013 is EUR 7 million.

EIDHR Strategy Paper 2011-2013, the indicative allocation for the same purpose was of EUR 7 million<sup>15</sup>. Through these instruments — rather modest in absolute terms — the EU confirmed its position as 'the leading institutional actor and donor to the campaign to abolition of the death penalty around the world'<sup>16</sup>. The High Representative for Foreign Policy and Security Policy and EC Vice-President Catherine Ashton named the abolition of capital punishment as a 'personal priority' in her speech to the European Parliament on human rights on 16 June 2010<sup>17</sup>.

**The European Parliament** strongly opposes the death penalty in all circumstances. Whether for punishment, redress or deterrence, the death penalty can never be justified. In its Resolution of 7 October 2010<sup>18</sup>, the Parliament underlined the proved ineffectiveness of capital punishment as a deterrent for violent crimes and its disproportionately heavy effect on underprivileged people. At the same time, the EP expressed deep concerns about the imposition of the death penalty on minors and on persons with mental or intellectual disability, and called for this practice to be immediate and definitively halted.

The EP President regularly reiterates this fundamental opposition with the Parliament's interlocutors. On 10 October 2012, President Martin Schulz called on 'all states that still resort to the death penalty to give up this inhumane and cruel punishment and embrace the abolitionist movement.'

In the enhanced political dialogue with the countries of the region of the Middle East and North Africa, the issue should remain high on the Parliament's human rights agenda.

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<sup>1</sup> [Amnesty International, International Standards on the Death Penalty.](#)

<sup>2</sup> [Amnesty International, Abolitionist and Retentionist Countries](#)

<sup>3</sup> E. PEIFFER, 'The Death Penalty in Traditional Islamic Law and as interpreted in Saudi Arabia and Nigeria', *Wm&Mary J; Women & L.* 507, pp. 507-519, 2005

<sup>4</sup> ABIAD, N., *Sharia, Muslim States and International Rights Treaty Obligations: A Comparative Study*, British Institute of International and Comparative Law, London, 2008

<sup>5</sup> [EP Resolution of 22 November 2012](#)

<sup>6</sup> Iran Human Rights Documentation Center, *Chart of Execution by Iran*, 2012

<sup>7</sup> [Human Rights Watch, Iran: Proposed Penal Code deeply flawed](#)

<sup>8</sup> [Amnesty International: Iraq Report 2012, Iraq: spiralling executions signal urgent need to end use of death penalty](#)

<sup>9</sup> H. SHERWOOD, 'Gaza executions: Hamas condemned over 'inhuman punishment'', *The Guardian*, 10 April 2012

<sup>10</sup> [Amnesty International: Gaza: executions flout legal process, 18 July 2012](#)

<sup>11</sup> [UN GENERAL ASSEMBLY: Resolution 62/149 of 18 December 2007; Resolution 63/168 of 18 December 2008; Resolution 65/206, Mar. 28, 2011](#)

<sup>12</sup> [UN GENERAL ASSEMBLY, Moratorium on the use of death penalty](#)

<sup>13</sup> [The European Instrument for Democracy and Human Rights \(EIDHR\) Strategy Paper 2007-2010](#)

<sup>14</sup> [The European Instrument for Democracy and Human Rights \(EIDHR\) Compendium 2007-2010 on the abolition of the death penalty worldwide](#)

<sup>15</sup> [The European Instrument for Democracy and Human Rights \(EIDHR\) Strategy Paper 2011-2013](#)

<sup>16</sup> [European External Action Service, Background: the Death Penalty and the EU's policy on its abolition](#)

<sup>17</sup> [HR/VP Catherine Ashton: speech to the European Parliament on human rights, Strasbourg 16 June 2010](#)

<sup>18</sup> [Resolution of the European Parliament of 7 October 2010 on the World day against the death penalty](#)