11 April 2024

**The death penalty: developments since December 2022**

*Submission to the Secretary General’s report on a moratorium*

*on the use of the death penalty*

Eleos Justice, Faculty of Law, Monash University

\*\*\*

This note provides an overview of developments in States’ domestic laws, policies, and practices on the death penalty since December 2022.

**Positive Developments**

*Domestic laws and policies in moving away from the death penalty*

Several countries have continued the trend to move away from the death penalty through legislation. In December 2022, **Zambia** passed a bill to abolish the death penalty for all crimes.[[1]](#footnote-1) In April 2023, **Malaysia** abolished the mandatory death penalty for all 11 offences.[[2]](#footnote-2) The revision has retroactive effect, allowing those on death row to have a resentencing hearing, though some death sentences have been reconfirmed through this process.[[3]](#footnote-3) In July 2023, **Ghana’s** Parliament voted to remove the death penalty for ordinary crimes, although the death penalty remains in the country’s Constitution for high treason.[[4]](#footnote-4) Also in July, **Pakistan** removed the death penalty for drug offences under the *Control of Narcotic Substances Act*, making it ‘the first country to abolish the death penalty for drug offences in over a decade’.[[5]](#footnote-5) However, judges have reportedly continued imposing death sentences for drug offences as recently as January 2024, highlighting the need for information dissemination to judges, prosecutors, and lawyers.[[6]](#footnote-6)

In the United States, 29 states have either abolished capital punishment or discontinued executions through executive actions. In **Washington,** the Governor signed in April 2023 a legislation removing the death penalty from the state’s laws, five years after the Washington Supreme Court had declared the death penalty unconstitutional.[[7]](#footnote-7) In October 2023, the **Pennsylvania** House Judiciary Committee voted in favour of a bill to repeal the death penalty, a first step towards abolition at the state-level.[[8]](#footnote-8)

Abolition is also anticipated in **Kenya,** where theChief Justice sent a proposal to the Parliament in October 2023 calling for the abolition of the death penalty for certain crimes, to bring the country in line with international human rights norms.[[9]](#footnote-9) In March 2024, **Zimbabwe’s** Cabinet approved a bill that will abolish the death penalty if passed by Parliament.[[10]](#footnote-10) In April 2024, **Taiwan’s** Constitutional Court is set to hear arguments on the constitutionality of the death penalty. The Court is required to render a decision within three months.[[11]](#footnote-11)

Other positive developments include the adoption in December 2022 of a new Criminal Code in **Indonesia.** The new law no longer lists the death penalty as a ‘principal punishment’, but as a punishment to be applied ‘alternatively, as a last resort’.[[12]](#footnote-12) The new law also created a ‘probationary period’ of 10 years, after which death sentences may be commuted if certain conditions are met.[[13]](#footnote-13)Also in December 2022, the African Court on Human and Peoples’ Rights found **Tanzania’s** mandatory death penalty for murder to violate the right to life.[[14]](#footnote-14) The Court has previously made similar rulings concerning Tanzania, and criticised the country’s non-compliance with judicial orders mandating amendment of its mandatory capital laws.[[15]](#footnote-15)

*International commitments*

In October 2023, **Armenia** ratified Protocol No. 13 to the European Convention on Human Rights, thus formalising its abolition of the death penalty in all circumstances, including wartime. The country’s ratification came into effect on 1 February 2024, almost two decades after it first signed the instrument in 2006.[[16]](#footnote-16) **Azerbaijan** signed the Protocol in March 2023, although it is yet to ratify the instrument.[[17]](#footnote-17) **Ghana**, **Liberia**, and **Uganda** voted in favour of the UN’s biennial resolution calling for a moratorium on the use of the death penalty for the first time in 2022.[[18]](#footnote-18) **Myanmar,** which previously abstained from voting, voted in favour of the resolution.[[19]](#footnote-19)

**Negative trends: Upsurge in executions and expansion of the scope of the death penalty**

An upward trend in the number of executions continues in **Iran** (853 executions in 2023, a 48% increase from 2022 and the highest since 2015; 481 executions were for drug-related offences);[[20]](#footnote-20) **Iraq** (13 male prisoners executed on 25 December 2023, the largest number of prisoners executed in one day since 2020);[[21]](#footnote-21) **Saudi Arabia** (at least 172 executions in 2023 including 6 women);[[22]](#footnote-22) and **Singapore** (16 executions during March-November 2023 including one woman; all for drug-related offences).[[23]](#footnote-23) This was the highest number of executions in Singapore in over a decade.[[24]](#footnote-24) In February 2024, Singapore executed a man convicted of murder—the first execution for murder since 2019.[[25]](#footnote-25) **Kuwait**, which had not carried out executions during 2017-2021, executed 7 individuals in 2022, followed by 5 in July 2023.[[26]](#footnote-26)

Some countries expanded the scope of the death penalty. **Belarus**—the last country in Europe to retain the death penalty in law and practice—has introduced a new law prescribing the death penalty for State officials and military personnel convicted of high treason, which entered into force in March 2023. This follows a 2022 amendment designating attempted terrorism as a capital offence.[[27]](#footnote-27) **Uganda**, despite its vote in favour of the 2022 UN Resolution on the moratorium on the use of the death penalty, introduced a new capital offence of ‘aggravated homosexuality’ in May 2023, and subsequently charged a man under the new legislation.[[28]](#footnote-28) The **Democratic Republic of Congo**, which voted against the 2022 UN Resolution for the first time,[[29]](#footnote-29) approved in March 2024 a proposal to lift the unofficial moratorium since 2003.[[30]](#footnote-30) Although the proposal concerned only military personnel convicted of treason, the final circular issued by the Ministry of Justice expanded the scope to include terrorism and urban banditry resulting in death, thus affecting both military and civilians.[[31]](#footnote-31)

In the United States, 2 laws were passed in **Florida** in April 2023. One lowered the threshold for the imposition of the death penalty by requiring only 8 of the 12 jurors to agree on a death sentence (almost all states require a unanimous jury verdict, except Alabama which requires at least 10 jurors to vote for the death penalty).[[32]](#footnote-32) Florida also expanded the application of the death penalty by passing a new law, providing for a discretionary death penalty for the rape of a child below 12 years old.[[33]](#footnote-33) No person in the US has been executed for an offence other than murder since 1964; and the US Supreme Court has previously ruled that the imposition of capital punishment for the rape of a child where the crime did not result in death was unconstitutional.[[34]](#footnote-34)

1. ‘Zambia: Amnesty International welcomes the abolishment of the death penalty’, *Amnesty International* (online, 24 December 2022) <https://www.amnesty.org/en/latest/news/2022/12/zambia-amnesty-international-welcomes-the-abolishment-of-the-death-penalty/>. [↑](#footnote-ref-1)
2. ‘Malaysia: UN experts hail parliamentary decision to end mandatory death penalty’, *UN Office of the High Commissioner for Human Rights* (online, 11 April 2023) <https://www.ohchr.org/en/press-releases/2023/04/malaysia-un-experts-hail-parliamentary-decision-end-mandatory-death-penalty>. [↑](#footnote-ref-2)
3. Sebastian Strangio, ‘Malaysia Commutes First Batch of Death Sentences Under New Law’, *The Diplomat* (online, 15 November 2023) <https://thediplomat.com/2023/11/malaysia-commutes-first-batch-of-death-sentences-under-new-law/>. [↑](#footnote-ref-3)
4. ‘Ghana: Landmark vote to remove death penalty from laws is a major step forward’, *Amnesty International* (online, 25 July 2023) <https://www.amnesty.org/en/latest/news/2023/07/ghana-landmark-vote-to-remove-death-penalty-from-laws-is-a-major-step-forward/>. [↑](#footnote-ref-4)
5. Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2023* (2024)19. [↑](#footnote-ref-5)
6. Ibid 20. [↑](#footnote-ref-6)
7. ‘Washington’s Unconstitutional Death-Penalty Law Stricken from the Books’, *Death Penalty Information Center* (Online, 24 April 2023) https://deathpenaltyinfo.org/news/washingtons-unconstitutional-death-penalty-law-stricken-from-the-books [↑](#footnote-ref-7)
8. ‘Pennsylvania House Committee Passes Death Penalty Bill’, *Death Penalty Information Center* (online, 7 November 2023) https://deathpenaltyinfo.org/news/pennsylvania-house-committee-passes-death-penalty-repeal-bill [↑](#footnote-ref-8)
9. Mohammed Yusuf, ‘Kenya’s Judiciary Proposes Abolishing Death Penalty Sentences’, *Voice of America News* (online, 25 October 2023) <https://www.voanews.com/a/kenya-s-judiciary-proposes-abolishing-death-penalty-reduced-sentences/7326123.html>. [↑](#footnote-ref-9)
10. Idriss Nassah, ‘Zimbabwe Considers Abolishing Death Penalty’, *Human Rights Watch* (online, 15 February 2024) <https://www.hrw.org/news/2024/02/15/zimbabwe-considers-abolishing-death-penalty>. [↑](#footnote-ref-10)
11. Wu Cheng-feng, ‘Constitutional Court to hear arguments on death penalty’, *Taipei Times* (online, 28 January 2024) <https://www.taipeitimes.com/News/front/archives/2024/01/28/2003812729>. [↑](#footnote-ref-11)
12. Daniel Pascoe, ‘Indonesia’s Revised Criminal Code and the Death Penalty – Progress Amid the Gloom?’ (2023) 24(1) *Australian Journal of Asian Law* 69-70. [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. *Marthine Christian Msuguri v United Republic of Tanzania (Application No. 052/2016)*, Judgment, African Court on Human and Peoples’ Rights,[78]. [↑](#footnote-ref-14)
15. Ibid [128]-[129]. [↑](#footnote-ref-15)
16. Aurélie Placais, ‘Entry into force of Armenia’s ratification of the European Protocol for abolition in all circumstances’, *World Coalition Against the Death Penalty* (Online, 22 March 2024) https://worldcoalition.org/2024/03/22/entry-into-force-of-armenias-ratification-of-the-european-protocol-for-abolition-in-all-circumstances/#:~:text=Good%20news,all%20circumstances%20entered%20into%20force. [↑](#footnote-ref-16)
17. Council of Europe, *Chart of signatures and ratifications of Treaty 187* (online, updated 7 March 2024) <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=187>. [↑](#footnote-ref-17)
18. 9th Resolution for a moratorium on the death penalty: the trend is growing’, *World Coalition Against the Death Penalty (WCADP)* (online, 20 December 2022) <https://worldcoalition.org/2022/12/20/9th-resolution-for-a-moratorium-on-the-death-penalty-the-trend-is-growing/>. [↑](#footnote-ref-18)
19. ‘Ibid. [↑](#footnote-ref-19)
20. #  ‘Iran executes 853 people in eight-year high amid relentless repression and renewed ‘war on drugs’, *Amnesty International* (Online, 4 April 2024) https://www.amnesty.org/en/latest/news/2024/04/iran-executes-853-people-in-eight-year-high-amid-relentless-repression-and-renewed-war-on-drugs/

 [↑](#footnote-ref-20)
21. ‘Iraq must immediately stop mass, unannounced executions: UN experts’, *UN OHCHR* (online, 30 January 2024) https://www.ohchr.org/en/press-releases/2024/01/iraq-must-immediately-stop-mass-unannounced-executions-un-experts [↑](#footnote-ref-21)
22. #  Andrew Purcell, ‘Saudi Arabia executed at least 172 people in 2023’, *Reprieve* (Online, 2 January 2024) https://reprieve.org/uk/2024/01/02/saudi-arabia-executed-at-least-172-people-in-2023/

 [↑](#footnote-ref-22)
23. ‘Singapore: Decade-High Surge in Executions’, *Human Rights Watch* (Online, 11 January 2024) https://www.hrw.org/news/2024/01/11/singapore-decade-high-surge-executions [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. Samuel Devaraj, ‘Man who killed ex-fiancee is first person to be executed for murder in Singapore since 2019’, *The Straits Times* (Online, 28 February 2024) https://www.straitstimes.com/singapore/courts-crime/man-who-killed-ex-fiancee-is-first-person-to-be-executed-for-murder-in-singapore-since-2019 [↑](#footnote-ref-25)
26. ‘Kuwait: Five hanged as Kuwait continues execution spree into second year’, *Amnesty International* (online, 28 July 2023) https://www.amnesty.org/en/latest/news/2023/07/kuwait-five-hanged-as-kuwait-continues-execution-spree-into-second-year/ [↑](#footnote-ref-26)
27. Morris Tidball-Binz and Anaïs Marin, *Communication report OL BLR 2/2023* (Report, 22 March 2023) <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27939>. [↑](#footnote-ref-27)
28. ‘Uganda man charged with ‘aggravated homosexuality’, faces death penalty’, *Al Jazeera* (online, 29 August 2023) <https://www.aljazeera.com/news/2023/8/29/uganda-man-charged-with-aggravated-homosexuality-faces-death-penalty>. [↑](#footnote-ref-28)
29. WCADP (n 18). [↑](#footnote-ref-29)
30. ##  'Democratic Republic of the Congo’, *Cornell Center on the Death Penalty Worldwide,* https://deathpenaltyworldwide.org/database/#/results/country?id=20

 [↑](#footnote-ref-30)
31. ‘Lifting of the Moratorium in the DRC: ECPM and CPJ Call for the Non-Instrumentalisation of the Death Penalty, *ECPM* (Online, March 2024) https://www.ecpm.org/en/lifting-of-the-moratorium-in-the-drc-ecpm-and-cpj-call-for-the-non-instrumentalisation-of-the-death-penalty/ [↑](#footnote-ref-31)
32. The Death Penalty in 2023: Year End Report’*, Death Penalty Information Center* (online, 1 December 2023) https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2023-year-end-report#developments-in-the-states [↑](#footnote-ref-32)
33. Ibid. [↑](#footnote-ref-33)
34. *Kennedy v. Louisiana*, 554 U.S. 407 (2008). [↑](#footnote-ref-34)