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REPORT

# ADPAN DEATH PENALTY COUNTRY REPORT

LATEST STATISTICS AND INFORMATION  
ABOUT THE DEATH PENALTY IN ASIA

# **COUNTRIES UPDATE ON DEATH PENALTY**

## COUNTRIES UPDATE ON DEATH PENALTY

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# The Death Penalty in East Asia

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Pravina A/P Subramaniam, Sky Siaw

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## 1. Taiwan

Taiwan underwent the world's longest uninterrupted martial law from 1949 to 1987, where 197 offences carrying the death penalty were introduced in the state's legislation, with 89 of them carrying the mandatory death sentence.<sup>1</sup>

Since 2000, elected leaders have promised the abolition of the death penalty. Political support for the abolition of the death penalty did not lead to extensive public discourse on the issue, and public sentiment still leans toward supporting the death penalty as a form of revenge.<sup>2</sup> As of 2021, Taiwan remains a retentionist country where the death penalty is still retained in the law.<sup>3</sup> However, things have improved since the early 2000s, with laws requiring mandatory death sentences abolished in 2006.<sup>4</sup>

The most recent execution was documented on 1 April 2020. Taiwan executed a person convicted<sup>5</sup> of murder.<sup>6</sup> The execution was the second execution carried out during President Tsai's term. That execution coincides with the day the government donated 10 million masks to fight off the Covid-19 pandemic. The timing of the execution and the donation has been criticised as an attempt by Taiwan's government to conceal the execution.<sup>7</sup> As for 2021, there have been no new executions, and 38 individuals await their fates on death row.<sup>8</sup>

In January 2021, the Taiwan government has amended the "Regulations for Executing the Death Penalty". The amendments include new regulation that permits death row inmates to arrange a funeral and religious ceremonies according to their wishes; on the part of the prison service, a psychological consultation will be provided for the executioner after carrying out the sentence. However, the newly revised regulation still falls short of the international human rights standards outlined in the International

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1 'Taiwan Alliance To End The Death Penalty (TAEDP) - WCADP' (WCADP, 2021) <<https://worldcoalition.org/membre/taiwan-alliance-to-end-the-death-penalty-taedp/>> accessed 1 September 2021.

2 'Taiwan Alliance To End The Death Penalty (TAEDP) - WCADP' (WCADP, 2021) <<https://worldcoalition.org/membre/taiwan-alliance-to-end-the-death-penalty-taedp/>> accessed 1 September 2021.

3 'Everything You Need To Know About Human Rights In Taiwan | Amnesty International' (Amnesty International, 2021) <<https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/taiwan/>> accessed 1 September 2021.

4 'Taiwan - WCADP' (WCADP, 2021) <<https://worldcoalition.org/pays/taiwan/>> accessed 1 September 2021.

5 'Death row inmate Weng executed' (Taipei Times, 2020) <<https://www.taipeitimes.com/News/taiwan/archives/2020/04/03/2003733919>> accessed 25 November 2021.

6 (2021) <<https://www.deathpenaltyproject.org/second-execution-in-taiwan-under-president-tsai-huge-step-backwards-to-taiwans-commitment-to-abolish-the-death-penalty/>> accessed 1 September 2021.

7 '【台灣】人權倒退：蔡英文總統任內的第二起死刑處決' (國際特赦組織台灣分會, 2021) <<https://www.amnesty.tw/news/3381>> accessed 1 September 2021

8 'Taiwan - WCADP' (WCADP, 2021) <<https://worldcoalition.org/pays/taiwan/>> accessed 1 September 2021.

Covenant on Civil and Political Rights (ICCPR), ratified by Taiwan on 31 March 2009.<sup>9</sup> Article 6(2) of the ICCPR only allows the death penalty to be applied to the 'most serious crimes' - defined as crimes of extreme gravity involving 'intentional killing', and excludes offences such as sexual offences, drug-related offences, and economic and political crimes. Yet, there are still a broad range of offences punishable by death in Taiwan including, murder, drug trafficking, treason, military offences, espionage, and other offences resulting in death.<sup>10</sup>

The non-compliance with international human rights standards also includes the lack of documented rules requiring family members of death row inmates to be informed prior to execution and allows for the execution of people with known mental or intellectual disabilities.<sup>11</sup>

## 2. South Korea

In South Korea, executions were often carried out. For instance, seven people were executed in 1989, 5 men were executed in 1990, 14 people were executed in 1991<sup>12</sup> and 9 convicted murderers were executed in 1992.<sup>13</sup> Executions were continued to be carried out until 1997.<sup>14</sup>

The death penalty may be imposed for various criminal and political offences under the Criminal Code, the Military Penal Code, the National Security Law and several other laws.<sup>15</sup> Although death penalty provisions in the Criminal Act and the Military Penal Code sometimes use the word 'mandatory', Article 53 of the Criminal Act allows courts to consider extenuating circumstances to mitigate punishments.<sup>16</sup> A revised draft of the Criminal Code proposes that the death penalty be abolished for ten offences where there is no intention of causing the death of another. In 2021, South Korea is considered an abolitionist in practice as no execution was carried out for the past 23 years.<sup>17</sup> As of the year 2021, 61 people are currently on death row.<sup>18</sup>

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<sup>9</sup> '【台灣】死刑執行規則修正 應採納《公政公約》第36號一般性意見書' (國際特赦組織台灣分會, 2021) <<https://www.amnesty.tw/news/3517>> accessed 1 September 2021.

<sup>10</sup> 'Database — Cornell Center on The Death Penalty Worldwide' (Cornell Center on the Death Penalty Worldwide, 2021) <<https://deathpenaltyworldwide.org/database/#/results/country?id=75>> accessed 1 September 2021.

<sup>11</sup> '【台灣】死刑執行規則修正 應採納《公政公約》第36號一般性意見書' (國際特赦組織台灣分會, 2021) <<https://www.amnesty.tw/news/3517>> accessed 1 September 2021

<sup>12</sup> 'South Korea: Increased Use of The Death Penalty | Amnesty International' (Amnesty International, 2021) <<https://www.amnesty.org/en/documents/asa25/003/1991/en/>> accessed 1 September 2021.

<sup>13</sup> (Amnesty.org, 2021) <<https://www.amnesty.org/en/wp-content/uploads/2021/06/asa250061993en.pdf>> accessed 1 September 2021.

<sup>14</sup> 'Republic of Korea - WCADP' (WCADP, 2021) <<https://worldcoalition.org/pays/republic-of-korea/>> accessed 1 September 2021.

<sup>15</sup> (Amnesty.org, 2021) <<https://www.amnesty.org/en/wp-content/uploads/2021/06/asa250061993en.pdf>> accessed 1 September 2021.

<sup>16</sup> 'Database — Cornell Center On the Death Penalty Worldwide' (Cornell Center on the Death Penalty Worldwide, 2021) <<https://deathpenaltyworldwide.org/database/#/results/country?id=68>> accessed 1 September 2021.

<sup>17</sup> 'Everything You Need to Know About Human Rights in South Korea | Amnesty International' (Amnesty International, 2021) <<https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/south-korea/>> accessed 1 September 2021.

<sup>18</sup> 'Republic of Korea - WCADP' (WCADP, 2021) <<https://worldcoalition.org/pays/republic-of-korea/>> accessed 1 September 2021.

On 25 February 2010, the abolitionist movement was set back by a constitutional court ruling that decided the death sentence does not violate the “human dignity and worth” protected in the constitution. The decision runs counter to the current abolitionist trend in the country as no execution has not been carried out since President Kim Dae-Jung took office in February 1998. It should be noted that President Kim was previously sentenced to death in 1980.<sup>19</sup>

In 2018, commutations or pardons were given for prisoners on death row.<sup>20</sup> Despite the progress domestically, South Korea had previously abstained from the past United Nations General Assembly (UNGA) ’s global moratorium on the death penalty and only recently expressed support during the last voting on 16 December 2020.<sup>21</sup>

### 3. Japan

In Japan, the death penalty can be imposed for 17 offences. However, in recent years, the Japanese government has imposed death sentences for only the offences of murder, causing death in the course of robbery and causing death by explosives.<sup>22</sup>

At present, hanging is the method for execution in Japan.<sup>23</sup> Despite the notable shift in political structures during its modernisation and post-war occupation, Japan remained a retentionist country. In contrast to many other countries in the region, there are no laws that provide for the mandatory death sentence.

Four executions were carried out on 19 December 2017, where one of the individuals was convicted of murder and robbery, and the other was just convicted of murder.<sup>24</sup> Of the 15 individuals involved with the Aum Shinrikyo cult that was sentenced to death<sup>25</sup>, the last seven were executed without prior notice on 6 July 2018<sup>26</sup>. This effectively tripled the number of executions in Japan when compared to 2017. Three executions were carried out in 2019, and these were the last known executions before it was informally halted due to the Olympics and the UN Crime Congress in Kyoto.<sup>27</sup> As for 2021, there were no executions carried out, but 112 people remain on death row.<sup>28</sup>

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19 'South Korea Death Penalty Abolition Set Back by Constitutional Court Ruling | Amnesty International' (Amnesty International, 2021) <<https://www.amnesty.org/en/latest/news/2010/02/south-korea-death-penalty-abolition-set-back-constitutional-court-ruling/>> accessed 1 September 2021.

20 'The 2018 Death Penalty Facts and Figures You Need to Know' (Amnesty International, 2021) <<https://www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/>> accessed 1 September 2021.

21 'Everything You Need to Know About Human Rights in View the South Korea Report | Amnesty International' (Amnesty International, 2021) <<https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/south-korea/report-korea-republic-of/>> accessed 1 September 2021.

22 'The Death Penalty in Japan. Report of An AI Mission to Japan | Amnesty International' (Amnesty International, 2021) <<https://www.amnesty.org/en/documents/asa22/002/1983/en/>> accessed 1 September 2021.

23 (Fidh.org, 2021) <<https://www.fidh.org/IMG/pdf/jp359a.pdf>> accessed 1 September 2021.

24 (2021) <<https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA2281352018ENGLISH.pdf>> accessed 1 September 2021.

25 'The 2018 Death Penalty Facts and Figures You Need to Know' (Amnesty International, 2021) <<https://www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/>> accessed 1 September 2021.

26 (2021) <<https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA2281352018ENGLISH.pdf>> accessed 1 September 2021.

27 'Japan - WCADP' (WCADP, 2021) <<https://worldcoalition.org/pays/japan/>> accessed 1 September 2021.

28 '死刑確定者 全リスト'(Crimeinfo, 2021) <[https://www.crimeinfo.jp/data/dplist/dplist\\_all/](https://www.crimeinfo.jp/data/dplist/dplist_all/)> accessed 25 November 2021.

The political strength of the conservative-leaning Liberal Democratic Party and its ability to maintain public support, economic influence and political clout allow the ruling party to operate in a manner that disregards human rights norms.<sup>29</sup> The government has consistently rejected recommendations towards the abolition of the death penalty stated in the Universal Periodic Review (UPR), and there is a general reluctance by the authorities to engage others on the issue of the death penalty.<sup>30</sup>

In addition to the high number of executions, Japanese laws are relatively vague and leave doubt as to the legality of execution of individuals with mental and intellectual disabilities. In February 2020, the Osaka District Court denied the eighth request for a retrial for Kenji Matsumoto, who was sentenced to death in 1993 even though he was born with severe intellectual disability and developed a delusional disorder whilst in detention.<sup>31</sup> Iwao Hakamada served 46 years on death row in Japan and remains the world's longest-held death row inmate.<sup>32</sup> In December 2020, he was granted a retrial after the Supreme Court in Tokyo finally overturned a 2018 Tokyo High Court decision denying a retrial of his case.<sup>33</sup>

#### 4. China<sup>34</sup>

China remains a retentionist country and the year of last known execution is 2021. In China, death row inmates can be executed via shooting or lethal injection. There are no exact numbers as to the total number of death row inmates because the number of death sentences is classified as a state secret, but it is estimated there are thousands executed every year. It is difficult to estimate the death row population because prisoners do not remain on death row for a long time as they are either executed approximately after two months or given a suspended two-year sentence, after which they are either executed or have their sentence commuted.

There is no official moratorium on executions, and the country's constitution does not mention the death penalty, but executions are still carried out now and then. Offences that are punishable by death include aggravated murder, murder, terrorism-related offences resulting in death, rape, rape of a child, robbery, arson, kidnapping, burglary, drug trafficking, economic crimes, treason, espionage, military offences, other offences resulting in death and other offences not resulting in death. There is no mandatory death penalty, but Article 63 of China's Criminal Law states that when the law does not explicitly

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29 David T. Johnson, 'Why Does Japan Retain Capital Punishment?' [2019] The Culture of Capital Punishment in Japan.

30 (2021) <<https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA2281352018ENGLISH.pdf>> accessed 1 September 2021.

31 'Everything You Need to Know About Human Rights in Japan 2020 | Amnesty International' (Amnesty International, 2021) <<https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/japan/report-japan/>> accessed 1 September 2021.

32 Bangkok Limited, 'A Call for Justice' (<https://www.bangkokpost.com>, 2021) <<https://www.bangkokpost.com/life/arts-and-entertainment/1999207/a-call-for-justice>> accessed 1 September 2021.

33 'Everything You Need to Know About Human Rights In Japan 2020 | Amnesty International' (Amnesty International, 2021) <<https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/japan/report-japan/>> accessed 1 September 2021.

34 'Database — Cornell Center On the Death Penalty Worldwide' (Cornell Center on the Death Penalty Worldwide, 2021) <<https://deathpenaltyworldwide.org/database/#/results/country?id=16>> accessed 1 September 2021.

authorise a lesser punishment for a crime, the Supreme People's Court may mitigate any punishment under special circumstances.

Although China has a long list of offences carrying the death penalty, some categories of offenders are excluded. For instance, individuals below the age of 18 at the time of the crime, pregnant women, the elderly, and mentally ill individuals.

## 5. Mongolia<sup>35</sup>

Mongolia is a country that has abolished the death penalty for all crimes and maintains its status as an abolitionist.<sup>36</sup>

The last known execution was carried out in 2008, and information on the death penalty remained classified as a state secret.

Since 2008, the country has taken steps towards abolition. President Tsakhiagiin Elbegdorj has repeatedly mentioned that the death penalty must be abolished to respect the right to life. He argued that executions do not deter crimes, and the risk of a miscarriage of justice is inherent.

The death penalty was abolished in 2017 where a new Criminal Code was created, and Mongolia has set an example for all the other countries in Asia that still retains and carries out the death penalty.

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<sup>35</sup> 'Mongolia: Historic Vote Abolishes Death Penalty | Amnesty International' (Amnesty International, 2021) <<https://www.amnesty.org/en/latest/press-release/2015/12/mongolia-historic-vote-abolishes-death-penalty/>> accessed 1 September 2021.

<sup>36</sup> 'Everything You Need to Know About Human Rights in Mongolia | Amnesty International' (Amnesty International, 2021) <<https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/mongolia/>> accessed 1 September 2021.

# The Death Penalty in Southeast Asia

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Hana Wong, Michelle Chew

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## 1. Malaysia

While Malaysia continues to undergo an official moratorium on all executions (since October 2018),<sup>37</sup> the country is still classified as a retentionist of the death penalty, having inherited the practice from the British Colonial government.<sup>38</sup> It is currently retained for 33 offences, of which 12 offences carry the mandatory death sentence (such as murder,<sup>39</sup> kidnapping in order to murder,<sup>40</sup> possession of firearms<sup>41</sup> and drug trafficking). One of the most notable and commonly applied ones include the offence of drug trafficking under s. 39B of the Dangerous Drugs Act (DDA), followed by murder under s. 302 of the Penal Code.<sup>42</sup>

Malaysia's road to abolishing the death penalty has not been an easy one. In 2019, the then Pakatan Harapan government originally proposed to abolish the mandatory death penalty for 11 criminal offences, which included acts of terrorism, murder, and hostage-taking etc.,<sup>43</sup> an act that has been subject to heavy criticism<sup>44</sup> as it runs contrary to its original promise in 2018 of abolishing the death penalty altogether.<sup>45</sup> Following this in 2020, the late *de facto* Law Minister Datuk Liew Vui Keong announced that a proposal on alternatives to the death penalty would be submitted in January of the same year.<sup>46</sup>

Further complicating matters, Pakatan Harapan's collapse in March 2020 and the rise of the Perikatan Nasional Government essentially led to a standstill in any developments

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37 Charles Hector, "We Voted for a Moratorium on the Death Penalty" (The Star, 23 December 2020) <<https://www.thestar.com.my/opinion/letters/2020/12/23/we-voted-for-a-moratorium-on-the-death-penalty>> accessed 3 December 2021.

38 Amnesty Malaysia, 'A Brief History of the Death Penalty in Malaysia' <<https://www.amnesty.my/abolish-death-penalty/a-brief-history-of-the-death-penalty-in-malaysia/>> accessed 3 December 2021.

39 Section 302, Penal Code.

40 Section 307(2), Penal Code.

41 Section 3A, Firearms (Increased Penalties) Act 1971.

42 'Abolish Death Penalty - Amnesty Malaysia' (Amnesty Malaysia) <<https://www.amnesty.my/abolish-death-penalty/>> accessed 29 October 2021.

43 "Malaysia to Keep Death Penalty, but No Longer Mandatory" (CNA 13 March 2019) <<https://www.channelnewsasia.com/asia/malaysia-death-penalty-not-completely-abolished-892706&>> accessed 2 December 2021.

44 AFP, 'Malaysia accused of U-turn on death penalty abolition', (*New Straits Times*, 13 March 2019) <<https://www.nst.com.my/news/nation/2019/03/468937/malaysia-accused-u-turn-death-penalty-abolition>> accessed 3 December 2021.

45 NST Online, 'Death penalty to be abolished' <*New Straits Times*, 10 October 2018) <<https://www.nst.com.my/news/nation/2018/10/419931/death-penalty-be-abolished>> accessed 3 November 2021.

46 Rashvinjeet S. Bedi, "Committee on Alternatives to Mandatory Death Penalty Hands over Report to Govt" (The Star, 12 February 2020) <<https://www.thestar.com.my/news/nation/2020/02/12/committee-on-alternatives-to-mandatory-death-penalty-hands-over-report-to-govt>> accessed 3 December 2021;

Jerry Choong, 'Law minister says death penalty alternatives need fine-tuning' (*malaymail*, 10 December 2019) <<https://www.malaymail.com/news/malaysia/2019/12/10/law-minister-says-death-penalty-alternatives-need-fine-tuning/1817808>> accessed 8 December 2021.

with the proposal: While it was announced later on by Datuk Takiyuddin Hassan (the Law Minister for the new Perikatan Nasional Government) that the findings of the Datuk Liew's Committee would be presented in Cabinet in August 2020,<sup>47</sup> It was sadly declared in November 2020 that the proposal still required further scrutiny and could not be released to the public.<sup>48</sup> Since then, there has been no further action or development made likely due to the changing of government again in August 2021, although calls have been made by SUHAKAM urging for the release of the report this year in conjunction with the World Day Against the Death Penalty.<sup>49</sup>

As of 1 September 2021, 1,366 people were reported to be on death row in Malaysia, 529 of whom are foreign nationals.<sup>50</sup> Of the total figure, 405 people were convicted of murder under section 302 of the PC, whereas 927 people were convicted of drug trafficking under section 39B of the DDA.<sup>51</sup> Among the 837 Malaysian nationals who were on death row, 48.5% belonged to the Malay, 25% to the Indian, 21.6% to the Chinese, and 5.14% to other ethnic groups.<sup>52</sup>

From our dataset, one can decipher that the death penalty has mostly affected those from minority and lower-income family backgrounds, especially Malaysian-Indians and the B40 group, who are found to be overrepresented on death row.<sup>53</sup>

Additionally, it can be observed that a good majority of those convicted fall under drug trafficking offences, an issue that the country has continuously faced since 1983: despite the perception that Malaysia has amended the law that previously required the mandatory death sentence on drug trafficking cases, the reality is that the situation is not much different from before due to the ambiguity in the provisions and the high threshold that needs to be met for an offender to avoid the death sentence. As such, it is still common that many arrested for drug offences are still sentenced to death due to drug trafficking.<sup>54</sup>

Most notably, in 2021, a case involving a 55-year-old single mother (Hairun Jalmani) of nine children who were sentenced to death in Sabah on 15 October 2021 for trafficking 113.9g of drugs garnered much public attention on the use of the death penalty on drug

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47 Martin Carvalho, 'Suggestions for alternatives to be tabled soon' (*The Star*, 14 August 2020), <<https://www.thestar.com.my/news/nation/2020/08/14/suggestions-for-alternatives-to-be-tabled-soon>> accessed 8 December 2021.

48 Geraldine Tong, 'Mandatory death sentence abolition needs further scrutiny - minister' (*Malaysiakini*, 6 November 2020), <<https://www.malaysiakini.com/news/549686>> accessed 8 December 2021.

49 'Suhakam calls for release of report by Special Committee on death penalty' (*The Sun Daily*, 10 October 2021) <<https://www.thesundaily.my/local/suhakam-calls-for-release-of-report-by-special-committee-on-death-penalty-FF8447205>> accessed 8 December 2021.

50 Mesyuarat Pertama, Penggal Keempat Parlimen Keempat Belas 2021

51 *ibid.*

52 *ibid.*

53 *ibid.*

54 Charles Hector, 'Comment: 'Mandatory' Death Penalty Still Being Meted out for Drug Offences' (*Malaysiakini*, June 13, 2021) <<https://www.malaysiakini.com/columns/578706>> accessed December 2, 2021; Martin Carvalho, 'Calls Renewed to Abolish Mandatory Death Penalty for Drug Offences' (*The Star*, 19 October 2021) <<https://www.thestar.com.my/news/nation/2021/10/19/calls-renewed-to-abolish-mandatory-death-penalty-for-drug-offences>> accessed 2 December 2021

mules:<sup>55</sup> The video footage of the mother falling into emotional disarray following the sentence was released to the public via a Twitter handle that looks to be affiliated with the state division of the National Anti-Drug Agency (AADK).

As a result, the perceived injustice of the imposition of the death penalty triggered calls to abolish the mandatory death penalty for drug-related offences.<sup>56</sup> Furthermore, public commentaries also drew attention to the fact that severe punishment given under the Dangerous Drugs Act 1952 are often placed disproportionately against relatively minor cases involving vulnerable and less privileged individuals that are forced into the trade by kingpins of drug syndicates because of their circumstances, where else individuals involved in much higher positions within the syndicate that come from places of privilege are given a far more lenient treatment (e.g. fines, imprisonment).<sup>57</sup>

As of today, there have been no active official discussions to abolish the death penalty for all offences in Malaysia: Regardless, it can be said that public sentiment to remove the death penalty continues to gain momentum<sup>58</sup> as a result of various cases that have occurred over the year (e.g. Nagaenthran (see 'Singapore'), Hairun Jalmani). In addition, calls have been made in Parliament to abolish the death penalty for drug-related offences by the likes of YB Nazri Aziz in November 2021,<sup>59</sup> and steps have been taken towards reviewing and legalising the use of cannabis for medical purposes.<sup>60</sup>

It is also anticipated that Malaysia's membership into the United Nations Human Rights Council for 2022-2024<sup>61</sup> would help to bring back these discussions again - Nonetheless, it is unclear how long the nation's moratorium will last before executions take place again.

## 2. Singapore

As a retentionist of the death penalty, there are currently four offences in Singapore that warrant a mandatory death sentence and does not take into account any mitigating

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55 Maroosha Muzaffar, 'Single mother with nine children sentenced to death for meth possession in Malaysia', (*The Independent*, 19 October 2021) <<https://www.independent.co.uk/asia/southeast-asia/malaysia-mother-death-sentence-meth-b1941003.html>> accessed 3 December 2021.

56 Martin Carvalho, 'Calls Renewed to Abolish Mandatory Death Penalty for Drug Offences' (*The Star*, 2021) <<https://www.thestar.com.my/news/nation/2021/10/19/calls-renewed-to-abolish-mandatory-death-penalty-for-drug-offences>> accessed 29 October 2021.

57 "Fatally Flawed: Why Malaysia Must Abolish the Death Penalty - Amnesty.org" (2019) <<https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT5010782019ENGLISH.pdf>> accessed 3 December 2021.

58 *ibid.*

59 Kow Gah Chie, 'Nazri renews call for abolition of death penalty' (*Malaysiakini*, 10 November 2021) <<https://www.malaysiakini.com/news/598691>> accessed 3 December 2021

60 Bernama, 'Malaysia MPs launch bipartisan effort to review regulations on medical cannabis, ketum plant' (*CNA*, 14 October 2021) <<https://www.channelnewsasia.com/asia/malaysia-bipartisan-caucus-cannabis-ketum-legalise-2244246>> accessed 8 December 2021.

61 'Malaysia Elected to the United Nations Human Rights Council for the Term 2022-2024' (Official Portal | Ministry of Foreign Affairs Malaysia, 15 October 2021) <<https://www.kln.gov.my/web/guest/-/malaysia-elected-to-the-united-nations-human-rights-council-for-the-term-2022-2024>> accessed 8 December 2021.

circumstances: this includes murder<sup>62</sup>, drug trafficking<sup>63</sup>, terrorism<sup>64</sup> and possession of unauthorised firearms, ammunition, or explosives.<sup>65</sup>

As for the method of execution, Section 316 of the Criminal Penal Code states that a person sentenced to death will be hanged by the neck until death: Traditionally, executions take place at dawn on a Friday and are carried out via the long drop method.<sup>66</sup>

According to Amnesty International, it was recorded that there were four executions (with the last known ones taking place in 2018 and 2019), twelve recorded death sentences, and more than 40 people awaiting execution near the end of 2019.<sup>67</sup> However, as of May 2021, no new executions were recorded, possibly due to the ongoing COVID-19 pandemic and resurgence of community cases in the state,<sup>68</sup> Although there were two executions originally scheduled for drug traffickers Syed Suhail bin Syed Zin and Mohd Fadzir bin Mustafa on 18 September 2020 and 24 September 2020 respectively: Nonetheless, these were subsequently postponed due to stays of execution granted pending last-minute appeals against their death sentences.<sup>69</sup>

However, the most recent scheduled execution of Nagaenthran a/l K. Dharmalingam, an intellectually disabled person with an IQ of 69, garnered a significant amount of international attention<sup>70</sup> that sparked controversies about the use of the death penalty not only being conducted against drug mules but individuals with intellectual disabilities: Members of the public were largely sympathetic for Nagaenthran, as evidenced by a petition gathering a sizeable amount of more than 99,000 signatures calling for the

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62 Criminal Penal Code, Section 300, Chapter XVI.

63 Misuse of Drugs Act, Chapter 185, Schedule 2.

64 Terrorism (Suppression of Bombings) Act, Chapter 324A, Section 3.

65 Internal Security Act, Chapter 143, Chapter III, Section 58.

66 'Singapore Stands by Hanging' (*Abc.net.au*, 2005) <<https://www.abc.net.au/news/2005-11-21/singapore-stands-by-hanging/745506>> accessed 12 November 2021.

67 Safia Khan, 'Singaporean Man Avoids the Death Penalty Twice — Human Rights Pulse' (Human Rights Pulse, 2021) <<https://www.humanrightspulse.com/mastercontentblog/singaporean-man-avoids-the-death-penalty-twice>> accessed 12 November 2021; "Death penalty in 2019: Facts and figures" (Amnesty International April 21, 2020) <<https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures>> accessed 2 December 2021.

68 Chew Hui Min, 'NCID executive director explains how Delta variant is fuelling Covi-19 surge', (CNA, 2 November 2021) <<https://www.channelnewsasia.com/singapore/covid19-delta-variant-surge-cases-ncid-director-leo-ye-sin-2204181>> accessed 7 December 2021; Nadeem Badshah, Tom Ambrose, Martin Belam, Samantha Lock, 'Covid live: Singapore experiencing 'unusual surge' of cases; UK records 39,842 new infections and 165 deaths', (*The Guardian*, 28 October 2021) <<https://www.theguardian.com/world/live/2021/oct/28/coronavirus-live-singapore-sees-unusual-surge-in-cases-europe-covid-deaths-rise-14-in-a-week>> accessed 7 December 2021.

69 Anna Maria Romero, "Reprieve for Drug Trafficking Convict Sentenced to Die on Sept 18" (The Independent Singapore News, 17 September 2020) <<https://theindependent.sg/reprieve-for-drug-trafficking-convict-sentenced-to-die-on-sept-18>> accessed 2 December 2021; Jeremy Lee, "President to Grant Drug Trafficker Respite from Execution, M. Ravi Says He's Relieved" (Must Share News - Independent News For Singaporeans, 23 September 2020) <<https://mustsharenews.com/president-respite-from-execution>> accessed 2 December 2021.

70 'Singapore: Call off execution of man with intellectual disability' (Amnesty International, 29 November 2021). <<https://www.amnesty.org/en/latest/news/2021/11/singapore-death-penalty-case/>> accessed 8 December 2021.

execution to be commuted.<sup>71</sup> Alongside this, various NGOs,<sup>72</sup> celebrities,<sup>73</sup> and UN experts<sup>74</sup> have urged Singapore to call off Nagaenthran's execution, evidencing even more of the public pressure that the country continues to face as a result of this case.

Furthermore, The Minister of Foreign Affairs, the Prime Minister and the Yang Di-Pertuan Agong in Malaysia<sup>75</sup> had personally approached the Singaporean Minister of Foreign Affairs,<sup>76</sup> the Prime Minister<sup>77</sup> and President<sup>78</sup> requesting for Nagaenthran to be released or to lower his sentence: however, these efforts often resulted in replies noting that Nagaenthran was afforded full process of the law.<sup>79</sup>

Most notably, as a response, lawyer M Ravi filed a lawsuit citing that Nagaenthran's execution would have run contrary to the country's constitution: while the court had granted a stay of execution in the High Court,<sup>80</sup> The appeal hearing that was originally scheduled for the next day was postponed as Nagaenthran was tested positive for COVID-19.<sup>81</sup> Subsequently, the next appeal hearing, which was scheduled for 30 November 2021, was further delayed due to strong objections to a rushed date being

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71 "Sign the Petition" (Change.org) <<https://www.change.org/p/pardon-the-death-sentence-of-an-intellectually-disabled-man>> accessed 3 December 2021.

72 FMT Reporters, 'Don't execute mentally disabled Malaysian, rights group tells S'pore' (*Free Malaysia Today*, 29 October 2021)

<<https://www.freemalaysiatoday.com/category/nation/2021/10/29/dont-execute-mentally-disabled-malaysian-rights-group-tells-spore/>> accessed 8 December 2021;

Richard Paddock, 'Rights Groups Urge Singapore Not to Execute Man with Mental Disability' (*The New York Times*, 8 November 2021);

<<https://www.nytimes.com/2021/11/05/world/asia/singapore-capital-punishment-drugs.html>> accessed 8 December 2021; International Network of People Who Use Drugs (INPUD), International Drug Policy Consortium (IDPC), Harm Reduction International (HRI), 'Joint statement urging Singapore to halt impending execution of Nagaenthran K Dharmalingam for a drug offence' (International Drug Policy Consortium (IDPC), 3 November 2021) <<https://idpc.net/alerts/2021/11/joint-statement-urging-singapore-to-halt-impending-execution-of-nagaenthran-k-dharmalingam-for-a-drug-offence>> accessed 8 December 2021.

73 Richard Branson, 'Stop the killing of Nagaenthran Dharmalingam' (Virgin, 8 November 2021) <<https://www.virgin.com/branson-family/richard-branson-blog/stop-the-killing-of-nagaenthran-dharmalingam>> accessed 8 December 2021

74 Office of the High Commissioner for Human Rights, 'Singapore: UN experts urge halt to execution of drug offender with disabilities' (8 November 2021)

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27783&LangID=E>> accessed 8 December 2021.

75 Annabelle Lee, 'PM personally appeals to Singapore to save Nagaenthran' (*malaysiakini*, 7 November 2021) <<https://www.malaysiakini.com/news/598227>> accessed 3 December 2021; Faiz Zainudin, 'King wrote to Singapore president on Nagaenthran's behalf, Dewan told' (*Free Malaysia Today*, 23 November 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/11/23/king-wrote-to-singapore-president-on-nagaenthrans-behalf-dewan-told/>> accessed 3 December 2021.

76 Danial Dzulkify, 'Foreign minister has raised issue of mentally-impaired Malaysian on death row with Singaporean counterpart' (*malaymail*, 3 November 2021)

<<https://www.malaymail.com/news/malaysia/2021/11/03/foreign-minister-says-has-raised-issue-of-mentally-impaired-malaysian-on-de/2018092>> accessed 8 December 2021.

77 Bernama, "PM Ismail Sabri Seeks Leniency in Case of Malaysian in Death Row" (BERNAMA, 11 July 2021) <<https://www.bernama.com/en/news.php?id=2020659>> accessed 1 December 2021.

78 Zainudin F, "King Wrote to Singapore President on Nagaenthran's Behalf, Dewan Told" (*Free Malaysia Today* November 23, 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/11/23/king-wrote-to-singapore-president-on-nagaenthrans-behalf-dewan-told/>> accessed 1 December 2021.

79 'Malaysian drug trafficker Nagaenthran Dharmalingam 'accorded full due process under the law': President Halimah' (*CNA*, 3 December 2021)

<<https://www.channelnewsasia.com/singapore/nagaenthran-dharmalingam-malaysian-drug-trafficker-death-row-halimah-yacob-2355911>> accessed 8 December 2021;

Ian Cheng, 'Malaysian drug trafficker 'accorded full due process' under law: PM Lee, Minister Balakrishnan' (*CNA*, 12 November 2021)

<<https://www.channelnewsasia.com/singapore/nagaenthran-dharmalingam-malaysian-drug-trafficker-due-process-lee-hsien-loong-vivian-balakrishnan-2309296>>

accessed 8 December 2021.

80 'Singapore High Court grants stay of execution to Nagaenthran' (*The Star*, 8 November 2021) <<https://www.thestar.com.my/news/nation/2021/11/08/singapore-high-court-grants-stay-of-execution-to-nagaenthran>> accessed 8 December 2021.

81 Xinghui Kok, 'Singapore Delays Execution of Malaysian Drug Trafficker after Positive Covid Test' (*South China Morning Post*, 2021) <<https://www.scmp.com/week-asia/people/article/3155412/singapores-highest-court-grants-stay-execution-malaysian-drug>> accessed 12 November 2021.

fixed given to his counsel.<sup>82</sup> While this was granted, no new dates have been given for hearing since then, although rumours speculate that this will take place in January 2022.

While public sentiment against the death penalty continues to grow in light of this case, it is unclear if the Singaporean government will shift its mandate of the death penalty towards the growing movement, given its known stoicism of maintaining the safeness of the country.

### 3. Indonesia

Indonesia is classified as a retentionist, given that the Indonesian Criminal Code provides for the death penalty for a range of crimes such as murder, terrorism, illegal arms and drug trafficking, corruption, aggravated robbery, treason, espionage, and a range of military offences.<sup>83</sup>

The number of death sentences in Indonesia has been increasing over recent years: As of 2021, more than 350 people were reported to be on death row in Indonesia, and around 60% were convicted of drug trafficking.<sup>84</sup> According to the data collected by Impartial (an NGO that conducts monitoring of human rights situations), 129 people were reported to have been sentenced to death between March 2020 and September 2021.<sup>85</sup> In 2020, 117 people were reported to be on death row, an increase of 46% when compared to 80 people on death row in 2019.<sup>86</sup> Additionally, it was reported that 101 of the 117 people on death row were convicted of drug-related offences.<sup>87</sup>

Over the COVID-19 pandemic, Indonesia has sentenced many people on death row through online trials held on Zoom and other video conferencing applications where many critics deemed it an “inhumane” insult to those facing the firing squad.<sup>88</sup> According to Amnesty International, almost 100 people were condemned to death by judges, which they could only see on a television monitor.<sup>89</sup> In April 2021, it was reported that 13 members of a trafficking ring, including four foreign nationals, learned via video that they would be executed for smuggling 400 kilograms of methamphetamine into Indonesia.<sup>90</sup>

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<sup>82</sup> “Appeal Postponed for Disabled Malaysian on Death Row in Singapore” (The Star November 30, 2021) <<https://www.thestar.com.my/news/nation/2021/11/30/appeal-postponed-for-disabled-malaysian-on-death-row-in-singapore>> accessed 1 December 2021.

<sup>83</sup> Agenzia Fides, 'ASIA/INDONESIA - Abolition of The Death Penalty: A Civil Society Campaign - Agenzia Fides' (Fides.org, 2021) <[http://www.fides.org/en/news/70980-ASIA\\_INDONESIA\\_Abolition\\_of\\_the\\_death\\_penalty\\_a\\_civil\\_society\\_campaign](http://www.fides.org/en/news/70980-ASIA_INDONESIA_Abolition_of_the_death_penalty_a_civil_society_campaign)> accessed 29 October 2021.

<sup>84</sup> Agenzia Fides, 'ASIA/INDONESIA - Abolition of the Death Penalty: A Civil Society Campaign - Agenzia Fides' (Fides.org, 2021) <[http://www.fides.org/en/news/70980-ASIA\\_INDONESIA\\_Abolition\\_of\\_the\\_death\\_penalty\\_a\\_civil\\_society\\_campaign](http://www.fides.org/en/news/70980-ASIA_INDONESIA_Abolition_of_the_death_penalty_a_civil_society_campaign)> accessed 8 November 2021.

<sup>85</sup> *ibid.*

<sup>86</sup> *ibid.*

<sup>87</sup> *ibid.*

<sup>88</sup> 'Death By Zoom: Virus-Hit Indonesia Orders Executions Online' (The Star, 2021) <<https://www.thestar.com.my/tech/tech-news/2021/04/23/death-by-zoom-virus-hit-indonesia-orders-executions-online>> accessed 8 November 2021.

<sup>89</sup> *ibid.*

<sup>90</sup> *ibid.*

In addition, six people were sentenced to death using a video conference over their role in a prison riot in 2018.<sup>91</sup>

There may be no clear plans to abolish the death penalty in Indonesia to date: Previously, the ASEAN Parliamentarians for Human Rights (APHR) had called on the Indonesian government to hold a moratorium on the death penalty to abolish capital punishment altogether, but no response was made to this by the Indonesian government.<sup>92</sup>

Additionally, one of the main reasons explaining this retention could be due to the fact that public sentiment among the Indonesian public resonates closely with and has supported the use of capital punishment as an act of deterrence, especially against drug traffickers.<sup>93</sup> However, research conducted by the University of Oxford has tabled an argument that the public generally lacked knowledge about the death penalty; where only 2% considered themselves to be “very well informed” and only 4% stated that they were “very concerned” about the issue.<sup>94</sup>

#### 4. Myanmar

Although Myanmar retains the mandatory death penalty for several offences such as murder, drug trafficking and possession, and treason,<sup>95</sup> the country is classified as a *de facto* abolitionist (abolitionist in practice) given that its last known execution occurred in 1988,<sup>96</sup> and no new ones have been reported since then.

However, the country’s stance on the death penalty has been thrown into disarray ever since Myanmar underwent a military coup by the Tatmadaw earlier this year that still continues to this day.<sup>97</sup> The imposition of martial laws following the army’s takeover in February not only transferred all executive and judicial powers to the regional military commanders in Yangon and Mandalay<sup>98</sup> but also laid out 23 categories of crimes (involving high treason, sedition, obstructing military personnel and civil servants performing their duties, instigation, incitement, spreading ‘false’ news, possession of weapons, ties to unlawful associations, homicide, rape, robbery, corruption, drug abuse

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91 *ibid.*

92 “APHR Calls for Immediate Halt to Executions and Moratorium on Death Penalty in Indonesia” (ASEAN Parliamentarians for Human Rights, 9 November 2020) <<https://aseanmp.org/2020/11/09/aphr-calls-for-immediate-halt-to-executions-and-moratorium-on-death-penalty-in-indonesia>> accessed 2 December 2021.

93 Johannes Nugroho, ‘Why Calls for Abolishing the Death Penalty in Indonesia are Unrealistic’ (TODAY online, 2020) <<https://www.todayonline.com/commentary/why-calls-abolishing-death-penalty-indonesia-are-unrealistic>> accessed 8 November 2021.

94 Heru Andriyanto, ‘More Indonesians Oppose Death Penalty: Research’ (Jakarta Globe, 2021) <<https://jakartaglobe.id/news/more-indonesians-oppose-death-penalty-research/>> accessed 8 November 2021.

95 “Myanmar” (WCADP September 15, 2020) <<https://worldcoalition.org/pays/myanmar/>> accessed 30 November 2021.

96 Amnesty International, ‘Death Penalty: Countries Abolitionist in Practice’, <<http://www.amnesty.org/en/death-penalty/countries-abolitionist-in-practice>> accessed 2 December 2021; Cornell Center on the Death Penalty Worldwide, ‘Myanmar’, <<https://deathpenaltyworldwide.org/database/#/results/country?id=50#fn-22092-T60N93W467572>> accessed 2 December 2021.

97 Alice Cuddy, ‘Myanmar military coup: ‘Our world turned upside down overnight’ (BBC News, 1 February 2021) <<https://www.bbc.com/news/world-asia-55893736>> accessed 4 December 2021; ‘Russell Goldman, ‘Myanmar’s Coup, Explained’ (The New York Times, 29 November 2021) <<https://www.nytimes.com/article/myanmar-news-protests-coup.html>> accessed 4 December 2021.

98 Linda Lakhdir, ‘Martial Law in Myanmar a Death Knell for Fair Trials’ (Human Rights Watch, 16 March 2021) <<https://www.hrw.org/news/2021/03/16/martial-law-myanmar-death-knell-fair-trials>> accessed 3 December 2021; Martial Law Order 3/2021 (15 March 2021).

and vandalism - of which a majority would not usually be classified as capital crimes in civilian courts)<sup>99</sup> which will be charged in military tribunals in the 11 designated townships across the two cities, all of which carry a potential sentence of the death penalty.<sup>100</sup>

Criticism for these tribunals have always been evident, as they do not offer a chance to appeal against a conviction, sentence or process of trial,<sup>101</sup> except in the case of those on death row - however, this poses its own complications as these individuals would have to apply, via prison officials only, to the SAC Chair Sr. Gen. Min Aung Hlaing (who has been sanctioned in major Western countries for his involvement with serious abuses of human rights)<sup>102</sup> within 15 days of conviction, in which it would be up to his prerogative to approve the decision or change to a lesser penalty.<sup>103</sup> From this, we can observe that there is a clear violation of the right to a fair trial for citizens and a lack of judicial oversight in the process as well.

In connection to the context, it is no surprise that Myanmar's military junta have responded with an increasing amount of violence and repression to the nationwide anti-coup movement: Henceforth, the expansion of these new death sentences has raised fears of a return to active executions in the near future<sup>104</sup> as the military junta continues to deliver death sentences in what has been perceived as a tool for repression and tactic to instil fear in public.<sup>105</sup>

According to unofficial sources, 73 individuals have been sentenced to death (both in person and in absentia) as of 3 December 2021, although the exact numbers are yet to be verified.<sup>106</sup> This would, most prominently, include the case of 19 individuals who were involved in murder and robbery<sup>107</sup>: in this case, the defendants had killed a member of the military and wounded another and took a motorcycle and a gun from the assailed personnel.<sup>108</sup>

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99 Linda Lakhdir, 'Martial Law in Myanmar a Death Knell for Fair Trials' (*Human Rights Watch*, 16 March 2021) <<https://www.hrw.org/news/2021/03/16/martial-law-myanmar-death-knell-fair-trials>> accessed 3 December 2021.

100 Martial Law Order 3/2021; "Myanmar: Junta Tribunals Impose 65 Death Sentences" (*Human Rights Watch* July 20, 2021) <<https://www.hrw.org/news/2021/07/21/myanmar-junta-tribunals-impose-65-death-sentences>> accessed November 30, 2021.

101 Linda Lakhdir, 'Martial Law in Myanmar a Death Knell for Fair Trials' (*Human Rights Watch*, 16 March 2021) <<https://www.hrw.org/news/2021/03/16/martial-law-myanmar-death-knell-fair-trials>> accessed 3 December 2021.

102 Linda Lakhdir, 'Martial Law in Myanmar a Death Knell for Fair Trials' (*Human Rights Watch*, 16 March 2021) <<https://www.hrw.org/news/2021/03/16/martial-law-myanmar-death-knell-fair-trials>> accessed 3 December 2021.

103 "Myanmar: Junta Tribunals Impose 65 Death Sentences" (*Human Rights Watch*, 20 July 2021) <<https://www.hrw.org/news/2021/07/21/myanmar-junta-tribunals-impose-65-death-sentences>> accessed 30 November 2021.

104 David Cullen, "The Death Penalty in Post-Coup Myanmar: A Tool for Repression" (*Oxford Law Faculty*, 22 April 2021) <<https://www.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unity/blog/2021/04/death-penalty-post-coup-myanmar>> accessed November 30, 2021.

105 'Death sentences: the junta's latest tactic to instill fear' (*Myanmar Now*, 16 April 2021) <<https://www.myanmar-now.org/en/news/death-sentences-the-juntas-latest-tactic-to-instill-fear>> accessed 3 December 2021.

106 Assistance Association for Political Prisoners, 'Daily Briefing in Relation to the Military Coup' (2 December 2021) <<https://aappb.org/?lang=en>> accessed 3 December 2021.

107 "Myanmar: Junta Tribunals Impose 65 Death Sentences" (*Human Rights Watch*, 20 July 2021) <<https://www.hrw.org/news/2021/07/21/myanmar-junta-tribunals-impose-65-death-sentences>> accessed 30 November 2021.

108 Nikkei Staff Writers, 'Myanmar tribunal sentences 19 to death for violence towards military' (*Nikkei Asia*, 10 April 2021) <<https://asia.nikkei.com/Spotlight/Myanmar-Crisis/Myanmar-tribunal-sentences-19-to-death-for-violence-toward-military>> accessed 3 December 2021.

This sentence brought about heavy criticism as it was the first death sentence delivered since the coup and the passing of martial laws under Sections 396 and 397 of the Penal Code. Thus, this resulted in various human rights organisations condemning Myanmar for the use of force and violence in tackling civil disobedience and also going back to a time of execution.<sup>109</sup>

However, this did not stop further sentencing by the military junta: November 2021 saw 21 individuals who were reported to have been sentenced to death for alleged involvement in attacks on military targets.<sup>110</sup> In addition to this, several media sources have also reported that the junta's military tribunals sentenced 65 individuals to death, two of them were underage teenagers, for murder under Penal Code Sections 302, 396, and 397.<sup>111</sup> It must be noted that this is just a summarised list of notable sentences and does not fully encapsulate the sheer amount of other arrests made.<sup>112</sup>

Albeit the mass number of sentences that have been delivered, Myanmar still has not executed anyone throughout the coup. However, there are substantial concerns surrounding the extrajudicial killings committed by the military since the start of the coup: as of December 2021, it has been reportedly confirmed that 1302 individuals have been killed during this period, although the actual number of fatalities is likely to be higher.<sup>113</sup> Some notable examples involve the killing of 600 individuals who had refused to submit to the coup in February 2021,<sup>114</sup> the killing of an estimated 120 people during an anti-coup protest prior to the enactment of martial laws,<sup>115</sup> and military actions in Rakhine over the years.<sup>116</sup>

Much is uncertain about Myanmar's future in undertaking the death penalty, especially since it is not a party to the ICCPR, which would have served as a safeguard against executions,<sup>117</sup> and it remains unclear how much longer the coup may last.

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109 AFP, 'Rights group condemns Myanmar death sentences' (CNA, 10 April 2021) <<https://www.channelnewsasia.com/asia/rights-group-condemns-myanmar-death-sentences-208886>> accessed 3 December 2021.

110 The Irrawaddy, "Over 20 Anti-Coup Activists Sentenced to Death by Myanmar Junta" (*The Irrawaddy*, 25 November 2021) <<https://www.irrawaddy.com/news/burma/over-20-anti-coup-activists-sentenced-to-death-by-myanmar-junta.html>> accessed 30 November 2021.

111 "Myanmar: Junta Tribunals Impose 65 Death Sentences" (Human Rights Watch, 20 July 2021) <<https://www.hrw.org/news/2021/07/21/myanmar-junta-tribunals-impose-65-death-sentences>> accessed 30 November 2021; "At Least 64 Myanmar Protesters, Two of Them Underage, Sentenced to Death by Military Courts" (Radio Free Asia June 26, 2021) <<https://www.rfa.org/english/news/myanmar/courts-06252021194754.html>> accessed 30 November 2021.

112 *ibid.*

113 Assistance Association for Political Prisoners, 'Daily Briefing in Relation to the Military Coup' (2 December 2021) <<https://aappb.org/?lang=en>> accessed 3 December 2021.

114 AFP, 'Rights group condemns Myanmar death sentences' (*France 24*, 4 April 2021), <<https://www.france24.com/en/live-news/20210410-rights-group-condemns-myanmar-death-sentences>> accessed 3 December 2021.

115 "Myanmar: Junta Tribunals Impose 65 Death Sentences" (Human Rights Watch, 20 July 2021) <<https://www.hrw.org/news/2021/07/21/myanmar-junta-tribunals-impose-65-death-sentences>> accessed 30 November 2021.

116 Kyaw Hsan Hlaing, "Rumbles in Rakhine amid Strains between Myanmar Military, Rebels" (Al Jazeera, 24 November 2021) <<https://www.aljazeera.com/news/2021/11/24/rumbles-in-rakhine-amid-strains-between-myanmar-military-rebels>> accessed 3 December 2021.

117 Daniel Cullen, 'The death penalty in post-coup Myanmar: a tool for repression' (*Oxford Law Centre for Criminology*, 22 April 2021) <<https://www.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2021/04/death-penalty-post-coup-myanmar>> accessed 3 December 2021.

## 5. Brunei

Brunei is classified as *de facto* abolitionist, having conducted its last known execution in 1957,<sup>118</sup> although it retains the death penalty for some offences: Following the full implementation of the Sharia Penal Code in 2019,<sup>119</sup> crimes that attract the use of the death penalty include arson, abetting suicide, drug trafficking, murder, mutiny, terrorism, treason, and homosexuality, in which executions usually are carried out via hanging and stoning (which was implemented in 2014):<sup>120</sup> of these offences, murder,<sup>121</sup> kidnapping or abducting to murder,<sup>122</sup> gang robbery with murder,<sup>123</sup> and drug trafficking<sup>124</sup> is implied to carry the mandatory death penalty.

Most significantly, the passing of the anti-gay laws, which allows for death by stoning as a punishment for same-sex acts, has received a significant amount of backlash and criticism from many parties, including celebrities such as George Clooney and Elton John.<sup>125</sup> Thus, in a rare response to the criticism, the Sultan of Brunei announced that the moratorium on the death penalty was extended to the implementation of the Syariah Penal Code Order (SPCO).<sup>126</sup> However, despite the moratorium on executions, the international organisations were still concerned about the fact that the death penalty was not being repealed.<sup>127</sup>

As of 2020, only one known individual has been known to be on death row, and it was reported that members of the family business drug ring were sentenced to death under section 3A of the Misuse of Drugs Act, Chapter 27.<sup>128</sup>

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118 Cornell Centre on the Death Penalty Worldwide, 'Brunei' <<https://deathpenaltyworldwide.org/database/#/results/country?id=11>> accessed 3 December 2021.

119 Yvette Tan, "Brunei Implements Stoning to Death under Anti-LGBT Laws" (BBC News April 3, 2019) <<https://www.bbc.com/news/world-asia-47769964>&> accessed 2 December 2021.

120 James Nichols, "You Could Soon Be Stoned to Death for Being Gay in This Country" (The Huffington Post, 2 February 2016) <[https://web.archive.org/web/20170425024514/http://www.huffingtonpost.com/2014/04/15/brunei-gay-sex-law\\_n\\_5154960.html](https://web.archive.org/web/20170425024514/http://www.huffingtonpost.com/2014/04/15/brunei-gay-sex-law_n_5154960.html)> accessed 30 November 2021.

121 Brunei Penal Code s 302.

122 *ibid*, s 364.

123 *ibid*, s 396.

124 OHCHR, "Drug-related Offences, Criminal Justice Responses and the Use of the Death Penalty in South-East Asia" (2019) <<http://fileserver.idpc.net/library/drug-offences-death-penalty-in-south-east-asia.pdf>> accessed 4 December 2021.

125 "Brunei Says It Won't Enforce Gay Death Penalty after Backlash" (Reuters, 5 May 2019) <<https://www.reuters.com/article/us-brunei-lgbt-sultan-idUSKCN1SB0FS>> accessed 30 November 2021.

126 *ibid*.

127 "Brunei Death Penalty Will Not Be Repealed or Implemented" (Open Access Government May 8, 2019) <<https://www.openaccessgovernment.org/brunei-death-penalty/64515/>> accessed 30 November 2021.

128 "Brunei: Family Drug Ring Faces Death Penalty" (The Star, 27 September 2020) <<https://www.thestar.com.my/aseanplus/aseanplus-news/2020/09/27/brunei-family-drug-ring-faces-death-penalty>> accessed 30 November 2021.

## 6. Cambodia

As one of the two ASEAN countries to have abolished the death penalty,<sup>129</sup> Cambodia has been widely praised by the OHCHR and UNODC for its abolitionist position,<sup>130</sup> having banned the death penalty for all crimes since 1989 and remaining the longest to do so until this date.<sup>131</sup>

As a reaffirmation of its stance, Article 32 of the Constitution of the Kingdom of Cambodia came into effect in 1993, explicitly stating that ‘all people have the right to life, freedom and personal security. There shall be no capital punishment.’ Furthermore, the Royal Government of Cambodia has repeatedly voted in favour of a moratorium on the use of the death penalty as various UN General Assemblies, this being in 2007, 2008, and 2010.<sup>132</sup> Furthermore, Cambodia has repeatedly subjected criminals that have committed the most serious of crimes to life imprisonment, as seen in the case of Kaiang Guek Eav and the heinous crimes that were witnessed throughout the Khmer Rouge period,<sup>133</sup> a testament to their commitment to abolishing the death penalty both in theory and in practice.

However, in 2019, then Cambodian Prime Minister Hun Sen was reported to express favour for the reintroduction of the death penalty, possibly against child rapists - The comment was made when he was speaking to dozens of rape victims at Afesip Centre. In the statement, he reportedly suggested for a public referendum to be held to decide whether the public wants to change the constitution to allow for the reintroduction:<sup>134</sup> However, Prime Minister Hun Sen changed his stance on this soon after,<sup>135</sup> citing not only that someone innocent could be convicted but that education should be the way in circumventing the issue that Cambodia faced.

The Prime Minister’s views aside, Cambodia remains one of the few Southeast Asian countries that do not sentence drug traffickers to death. According to the media reports, if one is found guilty of trafficking more than 80 grams of illicit substances, then it is likely that they are to be sentenced to life imprisonment instead.<sup>136</sup>

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129 “ASEAN Countries Step Back on the Path towards Abolition” (WCADP, 27 January 2021) <<http://worldcoalition.org/2016/10/27/asean-countries-step-back-on-the-path-towards-abolition>> accessed 30 November 2021.

130 ‘Abolition of the death penalty: A growing worldwide trend’ (OHCHR and UNODC October 10, 2012) <<https://cambodia.ohchr.org/en/news/cambodia-forefront-abolishing-death-penalty-asia>> accessed 30 November 2021.

131 *ibid.*

132 *ibid.*

133 *ibid.*

134 “Cambodia Leader Hun Sen Considers Death Sentence for Rapists” (South China Morning Post, 10 March 2019) <<https://www.scmp.com/news/asia/southeast-asia/article/2189430/cambodia-leader-hun-sen-considers-death-sentence-rapists>> accessed 30 November 2021.

135 Ben Sokhean, ‘Hun Sen shifts stance on death penalty’ (*Khmer Times*, 12 March 2019) <<https://www.khmertimeskh.com/585852/hun-sen-shifts-stance-on-death-penalty/>> accessed 8 December 2021.

136 Thomas PC, “Cambodian Anti-Drug Police Seizes over 25 Kg Drugs, Arrest 3” (News Track Live, NewsTrack English 1, 29 November 2021) <<https://english.newstracklive.com/ampnews/cambodian-antidrug-police-seizes-over-25-kg-drugs-arrest-3-sc57-nu318-ta318-1195482-1.html>> accessed 30 November 2021; “Cambodia Destroys 7.62 Tons of Drugs, Illegal Substances to Mark Anti-Drug Day” (Xinhua, 19 July 2021) <[http://www.xinhuanet.com/english/asiapacific/2021-07/19/c\\_1310069836.htm](http://www.xinhuanet.com/english/asiapacific/2021-07/19/c_1310069836.htm)> accessed 3 December 2021; Law on Drug Control 2012, Chapter X, art.34.

In conclusion, Cambodia remains an abolitionist state albeit the Prime Minister's prior views on the death penalty and will continue to do so in the time being.

## 7. Vietnam

Vietnam remains a strong retentionist of the death penalty today - it is currently utilised for 18 offences and is separated into the following categories: crimes infringing on national security, human life or health, drug-related crimes, corruption-related crimes, and a few others that fall under the Penal Code of Vietnam,<sup>137</sup> including manufacturing and trading counterfeit medicines, terrorism, sabotaging of peace, provocation of war, and crimes against humanity.<sup>138</sup> While this may pose as a significant number, a revision of the Penal Code in November 2015 curtailed a more significant number of offences that previously carried the punishment to what we know now today - this included abolishing the death penalty for surrounding the enemy, opposing order, the destruction of projects related to national security importance, robbery, drug possession and appropriation and production and trade of fake foods.<sup>139</sup> Additionally, juvenile offenders, pregnant women, and women nursing children under 36 months or persons above 75 years of age at the time of the crime were also excluded from the death penalty as part of this amendment.<sup>140</sup>

As of 2020, there are approximately 1200 people on death row in Vietnam, with 850 executions having been conducted so far and the last known one occurring in 2018.<sup>141</sup> One clear reported case this year involved two brothers who were sentenced to death for killing three police officers during a confrontation between authorities and farmers defending their land.<sup>142</sup>

It must be noted, however, that reports on the death penalty have been proven to be inaccurate as data is classified as a state secret as per the Law on State Secrets in 2018 and cannot be disclosed to the public - anyone who does so are subject to criminal penalties of up to 15 years.<sup>143</sup>

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137 Pan Anh, "Vietnam to suspend lethal injection execution after three failed attempts" (*VN Express International*, 10 April 2020) <<https://e.vnexpress.net/news/news/vietnam-to-suspend-lethal-injection-execution-after-three-failed-attempts-4082203.html>> accessed 30 November, 2021.

138 European Union, UN Development Programme, Nguyen Thi Thanh Hai, Nguyen Van Hoan, Nguyen Minh Khue, 'On the possibility of Viet Nam ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty' (*World Coalition Against the Death Penalty*, October 2019) <<https://worldcoalition.org/document/on-the-possibility-of-viet-nam-ratifying-the-second-optional-protocol-to-the-iccpr-aiming-at-the-abolition-of-the-death-penalty/>> accessed 1 December 2021.

139 Dang Minh Tuan, Vu Thanh Cu, 'Why Vietnam justifies the death penalty', *Why Vietnam justifies the death penalty* <[https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0009/3605751/Vu-Thanh-Cu\\_Minh-Tuan-Dang.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0009/3605751/Vu-Thanh-Cu_Minh-Tuan-Dang.pdf)> accessed 1 December 2021.

140 Kien Tran, Cong Giao Vu, 'The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry'[2019] 9(3) *Societies* 56, 71.

141 Cornell Center on the Death Penalty Worldwide, <<https://deathpenaltyworldwide.org/database/#/results/country?id=85>> accessed 2 December 2021; Amnesty International, 'Death Sentences and Execution 2020' (21 April 2021) <<https://www.amnesty.org/2021/04/21/death-sentences-and-executions-2020/#:~:text=Amnesty%20International%20recorded%20483%20executions,to%20death%20globally%20in%202020.>>> accessed 2 December 2021.

142 'Vietnam upholds farmers' death penalty over land clash' (*UCA News*, 11 March 2021) <<https://www.ucanews.com/news/vietnam-upholds-farmers-death-penalty-over-land-clash/91715>> accessed 1 December 2021.

143 Law No. 29/2018/QH14 of the National Assembly on Protection of State Secrets; Human Rights Council, 'Question of the death penalty' (15 September 2021) A/HRC/48/29.

As per method of execution, the death penalty was carried out via firing squad - however, in November 2011, the country made a switch to lethal injections, as per the law on Execution of Criminal Judgments,<sup>144</sup> with its first case occurring on 6 August 2013 on Nguyen Anh Tuan.<sup>145</sup> However, in 2020, it was declared that those who remained alive after three failed attempts would have their executions suspended temporarily.<sup>146</sup>

Currently, there are no concrete plans to reform the death penalty, although Vietnam has been recommended to ratify the Second Optional Protocol to the ICCPR, especially since it is a party of the ICCPR.<sup>147</sup> Academics have attributed Vietnam's retention to the fact that there are no other alternatives to keep social order as many Vietnamese are convinced that the death penalty is the essential tool to keeping social serenity and national security (as seen in the case of Dang Tran Hoai in 2013),<sup>148</sup> the fact that lawmakers need to narrow the application scope for the death penalty and that there needs to be a public consultation should the death penalty be abolished.<sup>149</sup> Thus, the death penalty may continue to remain in Vietnam for the time being.

## 8. Laos

Laos is classified as an abolitionist *de facto*, although the country retains the death penalty for a number of crimes: these include drug trafficking and possession, murder, terrorism, robbery, kidnapping, and a range of other offences. Executions are carried out via firing squad, with the last known execution taking place in 1989.

Most prominently, Laos remains one of the retentionist countries that still impose the death penalty against drug-related crimes,<sup>150</sup> of which comprise 100% of individuals who were served the death sentence in 2020. In January 2020, 8 individuals were sentenced to death for their involvement in the major Southeast Asian drug ring run by drug kingpin Xaysana Keopimpha, better known as Mr X.<sup>151</sup>

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144 'Firing squad replaced by lethal injection' (*Vietnam News*, 23 September 2011) <<https://vietnamnews.vn/society/215697/firing-squad-replaced-by-lethal-injection.html>> accessed 7 December 2021.

145 David Hutt, 'Beware Vietnam's Death Machine' (*The Diplomat*, 20 April 2017) <<https://thediplomat.com/2017/04/beware-vietnams-death-machine/>> accessed 1 December 2021; 'Vietnam executed by lethal injection despite protest' (*DW*, 6 August 2013) <<https://www.dw.com/en/vietnam-executes-by-lethal-injection-despite-protest/a-17000124>> accessed 1 December 2021.

146 Phan Anh, "Vietnam to suspend lethal injection execution after three failed attempts" (*VN Express International*, 10 April 2020) <<https://e.vnexpress.net/news/news/vietnam-to-suspend-lethal-injection-execution-after-three-failed-attempts-4082203.html>> accessed 30 November 2021.

147 European Union, UN Development Programme, Nguyen Thi Thanh Hai, Nguyen Van Hoan, Nguyen Minh Khue, 'On the possibility of Viet Nam ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty' (World Coalition Against the Death Penalty, October 2019) <<https://worldcoalition.org/document/on-the-possibility-of-viet-nam-ratifying-the-second-optional-protocol-to-the-iccpr-aiming-at-the-abolition-of-the-death-penalty/>> accessed 1 December 2021.

148 'Death sentence maintained for child rapist, killer' (*Saigon Online*, 19 January 2013), <<https://www.sggpnews.org.vn/law/death-sentence-maintained-for-child-rapist-killer-62467.html>> accessed 3 December 2021.

149 Dang Minh Tuan, Vu Thanh Cu, *Why Vietnam justifies the death penalty*, <[https://law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0009/3605751/Vu-Thanh-Cu\\_Minh-Tuan-Dang.pdf](https://law.unimelb.edu.au/__data/assets/pdf_file/0009/3605751/Vu-Thanh-Cu_Minh-Tuan-Dang.pdf)> accessed 1 December 2021.

150 "Death Penalty in 2020: Executions down a Quarter - New Report" (Amnesty International UK, 21 April 2021) <<https://www.amnesty.org.uk/press-releases/death-penalty-2020-executions-down-quarter-new-report>> accessed November 30, 2021.

151 "Laos Sentences Eight Members of Mr. X Drug Ring to Death" (Radio Free Asia, 11 October 2020) <<https://www.rfa.org/english/news/laos/laos-mr-x-drug-ring-8-death-penalty-01272020154027.html>> accessed 30 November 2021.

As of 2021, not much is known about the death penalty in Laos due to restrictive state practices that likely disallow for information on death penalty statistics to be published,<sup>152</sup> and it remains unclear approximately how many individuals are on death row.

## 9. Thailand

Thailand remains a retentionist state, whereby the country utilises lethal injections for their executions, ever since abandoning the use of a firing squad on 19 October 2003.<sup>153</sup> As of 2021, around 60 offences give rise to the death penalty, 30 of which are under the Criminal Code.<sup>154</sup> These are inclusive of crimes such as treason, murder, military crimes (e.g. collusion with the enemy), prostitution, or even attacks on the monarchy.<sup>155</sup>

In terms of overall data, official records from Thailand's Department of Corrections have indicated that 257 individuals were sentenced to death as of 3 March 2021,<sup>156</sup> and 254 people were recorded to be on death row as of February 2021.<sup>157</sup> One hundred thirty-two men and 31 women were sentenced to death for drug offences, while 89 men and two women were sentenced for other crimes.<sup>158</sup>

Statistically speaking, we can observe that men who have committed drug-related offenders contribute the most to the death row statistics.<sup>159</sup> However, in relation to this, Thailand has been criticised heavily for retaining the death penalty for drug trafficking, given that it is a signatory to the ICCPR, which states that capital punishment only be reserved for the most serious of offences (although it is not a signatory to the Second Optional Protocol that requests for members to abolish the death penalty without exception) - As of 2021, official records indicate that 58% of men and 100% of women under death sentences were found to be guilty of such offences<sup>160</sup>

Other than drug trafficking, the use of the death penalty for other crimes is still evident to this day: throughout the course of 2021, some of the individuals that have been

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152 Amnesty International, 'Death Sentences and Execution 2020' 6 (21 April 2021) <<https://www.amnesty.org/2021/04/21/death-sentences-and-executions-2020/#:~:text=Amnesty%20International%20recorded%20483%20executions,to%20death%20globally%20in%202020.>> accessed 2 December 2021.

153 'Death penalty 'here to stay'' (Bangkok Post, 20 June 2018) <<https://www.bangkokpost.com/thailand/general/1488498/death-penalty-here-to-stay>> accessed 2 December 2021.

154 Vitit Muntarbhorn, 'Slowly moving away from the death penalty', (The Bangkok Post, 22 April 2021) <<https://www.bangkokpost.com/opinion/opinion/2103711/slowly-moving-away-from-the-death-penalty>> accessed 1 December 2021

155 Vitit Muntarbhorn, 'Slowly moving away from the death penalty', (The Bangkok Post, 22 April 2021) <<https://www.bangkokpost.com/opinion/opinion/2103711/slowly-moving-away-from-the-death-penalty>> accessed 1 December 2021

156 International Federation for Human Rights, Union for Civil Liberty (UCL), '39th Session of the Working Group on the Universal Periodic Review' → this is for the UN Human Rights Council 25 March 2021 <[https://www.fidh.org/IMG/pdf/fidh\\_ucl\\_upr\\_thailand\\_march\\_2021.pdf](https://www.fidh.org/IMG/pdf/fidh_ucl_upr_thailand_march_2021.pdf)> accessed 1 December 2021

157 Cornell Center on the Death Penalty Worldwide <<https://deathpenaltyworldwide.org/database/#/results/country?id=78>> accessed 2 December 2021

158 *ibid.*

159 Vitit Muntarbhorn, 'Slowly moving away from the death penalty', (The Bangkok Post, 22 April 2021) <<https://www.bangkokpost.com/opinion/opinion/2103711/slowly-moving-away-from-the-death-penalty>> accessed 1 December 2021

160 International Federation for Human Rights, Union for Civil Liberty (UCL), 'Thailand: 39th Session of the Working Group on the Universal Periodic Review' 3 (25 March 2021) <[https://www.fidh.org/IMG/pdf/fidh\\_ucl\\_upr\\_thailand\\_march\\_2021.pdf](https://www.fidh.org/IMG/pdf/fidh_ucl_upr_thailand_march_2021.pdf)> accessed 3 December 2021.

sentenced include Somkid Pumpuang, who was sentenced to death for murder,<sup>161</sup> the case of Prasittichai Khaokaew (who also was convicted for murder),<sup>162</sup> and most recently, the case of Thitsan Utthanaphon and six others, who could face the death penalty if they are convicted of their charges.<sup>163</sup>

Albeit the number of death sentences delivered, the last known execution to have taken place in Thailand was in 2018, of Theerasak Longji.<sup>164</sup> Prior to that case, the previous execution occurred nine years before in 2009, thus indicating that executions are carried out sporadically.<sup>165</sup> Furthermore, clemencies were, and continue to be granted extensively by the monarchy,<sup>166</sup> with the most recent one coinciding with His Majesty the King's 69th birthday on 28 July 2021, whereby more than 200,000 prisoners were granted a royal pardon, including 35,000 inmates who will be released on parole.<sup>167</sup>

Similar to Vietnam, there are no clear plans to abolish the death penalty - the findings of the Universal Periodic Review (UPR) submitted to the UN Human Rights Council on 25 March 2021 declared that Thailand had failed to make any progress in the abolition of the death penalty,<sup>168</sup> attributed to the fact that Thailand had made 'no effort to reduce crimes subject to the death penalty, especially since there was seen to be an increase of offences (63 in total) being subject to the death penalty from 2014 to 2018.<sup>169</sup> Furthermore, public support for the death penalty (92.49%) is still high as per a 2018 poll conducted by the Bangkok Post, and then Prime Minister Prayut Chan-o-cha declared that the punishment was a necessary means "keep peace and teach others a lesson".<sup>170</sup> However, it must be noted that the evidence cited dates back to 2018, and it remains unclear what the case is now and where the public sentiment might stand today in 2021.

Regardless, academics have cited that Thailand may be gradually moving away from the death penalty as a sanction, given that the Ministry of Justice has invited members of the

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161 Chakrapan Natanri, 'Thai 'Jack the Ripper' gets death sentence', (Bangkok Post, 3 April 2021), <<https://www.bangkokpost.com/thailand/general/2094067/thai-jack-the-ripper-gets-death-sentence>> accessed 1 December 2021.

162 'Death penalty upheld for gold-heist schoolmaster' (The Bangkok Post, 20 July 2021) <<https://www.bangkokpost.com/thailand/general/2151915/death-penalty-upheld-for-gold-heist-schoolmaster>> accessed 1 December 2021.

163 Wassayos Ngamkham, 'Prosecutors to indict 'Joe Ferrari'' (The Bangkok Post, 12 November 2021) <<https://www.bangkokpost.com/thailand/general/2214535/prosecutors-to-indict-joe-ferrari>> accessed 1 December 2021.

164 A/HRC/48/29; Agence France-Presse, 'Thailand Carries Out First Execution Since 2009', (NDTV, 19 June 2018) <<https://www.ndtv.com/world-news/thailand-carries-out-first-execution-since-2009-1869721>> accessed 1 December 2021.

165 *ibid.*

166 'Thai king pardons, issues amnesty to tens of thousands in prison' (*Aljazeera*, 5 December 2020) <<https://www.aljazeera.com/news/2020/12/5/thai-king-to-pardon-cut-jail-sentence-of-tens-of-thousands>> accessed 3 December 2021; 'Between 30,000-50,000 prisoners to be freed on royal pardon in Thailand', (*EFE-EPA*, 10 May 2019) <<https://www.efe.com/efe/english/world/between-30-000-50-prisoners-to-be-freed-on-royal-pardon-in-thailand/50000262-3972969>> accessed 3 December 2021.

167 'HM King pardons inmates' (*The Bangkok Post*, 28 July 2021) <<https://www.bangkokpost.com/thailand/general/2155723/hm-king-pardons-inmates>> accessed 3 December 2021.

168 International Federation for Human Rights, Union for Civil Liberty (UCL), 'Thailand: 39th Session of the Working Group on the Universal Periodic Review' (25 March 2021) <[https://www.fidh.org/IMG/pdf/fidh\\_ucl\\_upr\\_thailand\\_march\\_2021.pdf](https://www.fidh.org/IMG/pdf/fidh_ucl_upr_thailand_march_2021.pdf)> accessed 3 December 2021

169 International Federation for Human Rights, Union for Civil Liberty (UCL), 'Thailand: 39th Session of the Working Group on the Universal Periodic Review' 3 (25 March 2021) <[https://www.fidh.org/IMG/pdf/fidh\\_ucl\\_upr\\_thailand\\_march\\_2021.pdf](https://www.fidh.org/IMG/pdf/fidh_ucl_upr_thailand_march_2021.pdf)> accessed 3 December 2021.

170 'Death penalty 'here to stay'' (Bangkok Post, 20 June 2018) <<https://www.bangkokpost.com/thailand/general/1488498/death-penalty-here-to-stay>> accessed 2 December 2021.

public to look beyond options of the death penalty.<sup>171</sup> Additionally, recent amendments have also removed the death penalty from offences such as corruption and disappplied it to those who are pregnant or under 18 years of age. Furthermore, a current draft is in the making for modifying situations related to drug offences that may give rise to the death penalty: if this was approved, the death penalty would only apply to two main categories of those at the top of these organisations and those regarding national security.<sup>172</sup> However, there is still a need for public awareness on the miscarriages of justice that have resulted from the death penalty, as per the result of public sentiment mentioned in the previous paragraph.

## 10. Timor-Leste

Timor-Leste is classified as an abolitionist of the death penalty, whereby the country suspended the use of capital punishment following a UN Administration in 1999 back when it was still a province in Indonesia. This was made official in 2002 under Section 29(3) of the Constitution,<sup>173</sup> which declares that “There is to be no death penalty in the Democratic Republic of East Timor”, under the right to life provision. Additionally, it is a signatory to the Second Optional Protocol to the ICCPR.

However, in 2010, President Jose Ramos Horta came under fire for threatening to deport drug offenders to countries that retained the death penalty,<sup>174</sup> a comment which ran contradictory to the constitution and also to Timor-Leste’s obligations as a signatory to international laws, most prominently being the 2004 General Comment No. 31 that states any party to the covenant, as per Article 2, should have an obligation not to extradite an individual where there are substantial grounds for believing that there is a real risk of irreparable harm.<sup>175</sup>

Nevertheless, no incidents related to the death penalty in Timor-Leste has arisen since then, and it can be affirmed that the country will continue to hold on to its abolitionist position.

## 11. Philippines

The Philippines has been notable for being the first country in South East Asia to abolish the death penalty in 1987,<sup>176</sup> although its abolitionist position has been tested from time to time - this can be seen clearly in the past when the death penalty was reinstated in

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171 Vitit Muntarbhorn, ‘Slowly moving away from the death penalty’, (The Bangkok Post, 22 April 2021) <<https://www.bangkokpost.com/opinion/opinion/2103711/slowly-moving-away-from-the-death-penalty>> accessed 1 December 2021.

172 *ibid.*

173 The Constitution of Timor-Leste, <[http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution\\_RDTL\\_ENG.pdf](http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf)> accessed 2 December 2021.

174 Harm Reduction International, ‘President of Timor-Leste steps out of bounds on human rights’ (15 September 2010) <<https://www.hri.global/ar/print/744>> accessed 2 December 2021.

175 Human Rights Committee, General Comment 31, (29 March 2004).

176 World Coalition, ‘Keep the Death Penalty Abolished in the Philippines’ (21 March 2021) <[https://worldcoalition.org/wp-content/uploads/2021/03/Philippines\\_Brochure2021\\_EN\\_V4-basse-def.pdf](https://worldcoalition.org/wp-content/uploads/2021/03/Philippines_Brochure2021_EN_V4-basse-def.pdf)> accessed 2 December 2021.

1993 to tackle rising crime rates, before being abolished once again in 2006 under then-President Gloria Macapagal-Arroyo's term.<sup>177</sup>

2021 proves even more so that the fight to maintain abolition is far from over: following the election of President Duterte in 2016, the President's pro-death penalty sentiments quickly caught on with legislators, many of which filed to reinstate capital punishment for a wide range of crimes.<sup>178</sup> While these were previously met with restraint, the Philippines's 2019 elections saw much of Duterte's allies being elected into Senate,<sup>179</sup> which would mean that any action to reinstate the death penalty would be stronger than ever, and threatens any progress that was made by the previous administration to keep it abolished.<sup>180</sup> To add to the sentiment, 2020 saw President Duterte deliver his 5th State of Nation Address, once again urging Congress to reintroduce the death penalty for offences under the Comprehensive Dangerous Drugs Act (2002) via lethal injection.<sup>181</sup>

As of August 2020, there are 13 draft bills before the House of Representatives and 11 before the Senate that involve the reintroduction of the death penalty for various offences, inclusive of drugs, treason, plunder, rape, and murder.<sup>182</sup> Most significantly, 2017 saw the approval of Bill 4727 in the House of Representatives and was under consideration in the Senate: if successfully passed, it authorises the use of the death penalty for several drug-related offences like importation, trafficking, manufacturing, sale and distribution.<sup>183</sup>

All in all, the passing of any of these bills would run contrary to the Philippines's obligations as a party of the ICCPR and a signatory to the Second Optional Protocol to the ICCPR.<sup>184</sup> Furthermore, Commissioner Gomez Dumpit reiterated that there was a lack of evidence that would prove the effectiveness of the death penalty as a deterrent on crime.<sup>185</sup>

Various human rights organisations have fought tirelessly to maintain the Philippines's abolitionist status and are very much against Duterte's stance: one organisation created a digital film series aiming to convey the ethical, psychological and spiritual toll of capital

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177 Representative Edcel C Lagman, 'Death to Capital Punishment' (*The Manila Times*, 2 December 2021) <<https://www.manilatimes.net/2021/12/02/opinion/columns/death-to-capital-punishment/1824420>> accessed 2 December 2021.

178 World Coalition, 'Keep the Death Penalty Abolished in the Philippines' (21 March 2021) <[https://worldcoalition.org/wp-content/uploads/2021/03/Philippines\\_Brochure2021\\_EN\\_V4-basse-def.pdf](https://worldcoalition.org/wp-content/uploads/2021/03/Philippines_Brochure2021_EN_V4-basse-def.pdf)> accessed 2 December 2021.

179 Preeti Jha, 'Philippine's death penalty: a fight to stop the return of capital punishment' (*BBC*, 16 August 2020) <<https://www.bbc.com/news/world-asia-53762570>> accessed 2 December 2021.

180 World Coalition, 'Keep the Death Penalty Abolished in the Philippines' (21 March 2021) <[https://worldcoalition.org/wp-content/uploads/2021/03/Philippines\\_Brochure2021\\_EN\\_V4-basse-def.pdf](https://worldcoalition.org/wp-content/uploads/2021/03/Philippines_Brochure2021_EN_V4-basse-def.pdf)> accessed 2 December 2021.

181 World Coalition, 'Keep the Death Penalty Abolished in the Philippines' (21 March 2021) <[https://worldcoalition.org/wp-content/uploads/2021/03/Philippines\\_Brochure2021\\_EN\\_V4-basse-def.pdf](https://worldcoalition.org/wp-content/uploads/2021/03/Philippines_Brochure2021_EN_V4-basse-def.pdf)> accessed 2 December 2021.

182 *ibid*; Amnesty International, 'Death Sentences and Execution 2020' 31 (21 April 2021) <<https://www.amnesty.org/2021/04/21/death-sentences-and-executions-2020/#:~:text=Amnesty%20International%20recorded%20483%20executions,to%20death%20globally%20in%202020.>>> accessed 2 December 2021.

183 Sara Kowal, Mai Sato, Preventing the Reintroduction of the Death Penalty in the Philippines', (World Coalition Against the Death Penalty, 10 August 2021.) <[https://worldcoalition.org/wp-content/uploads/2021/08/PHIL\\_2\\_page\\_handout\\_EN.pdf](https://worldcoalition.org/wp-content/uploads/2021/08/PHIL_2_page_handout_EN.pdf)> accessed 2 December 2021.

184 United Nations high Commissioner for Human Rights, 'Situation of human rights in the Philippines', A/HRC/44/22, para 42. <<https://undocs.org/en/A/HRC/44/22>> accessed 2 December 2021.

185 Grace Keana O'Connor, 'Adoption of Bill Allowing the Imposition of the Death Penalty for a New Crime', (World Coalition Against the Death Penalty, 30 April 2021) <<https://worldcoalition.org/2021/04/30/adoption-of-bill-allowing-the-imposition-of-the-death-penalty-for-a-new-crime/>> accessed 2 December 2021.

punishment as means to reach out to younger audience members.<sup>186</sup> However, Duterte often expressed disdain for human rights,<sup>187</sup> which contributed to the Philippines leaving the International Criminal Court after the country was probed for accusations linked to his drug campaign, signifying a significant lack of accountability on the part of the government.<sup>188</sup>

However, on a more positive note, the 9 November 2021 saw Senator Panfilo Lacson, who was responsible for Senate Bill 27 (an Act that sought to reinstitute the death penalty in the Philippines), seeking to withdraw his authorship on reinstating the death penalty to the Philippines,<sup>189</sup> a move that was widely praised and welcomed by various human rights and church organisations.<sup>190</sup> Senator Lacson had cited reasons how “saving the life of a wrongly convicted person had more weight” and pursued him to change his views and withdraw his bill.<sup>191</sup> Shortly after, Senate President Vicente Sotto III followed suit as well.<sup>192</sup>

Outside of the death penalty, the Philippines has also been notorious for its extrajudicial killings, with President Duterte allegedly having issued the police with shoot-to-kill orders on suspected drug users and dealers<sup>193</sup> - official data sources cite that 8,000 individuals have been killed in anti-drug operations since President Duterte’s start of term in 2016 in an attempt to win the war on drugs, and there was an increase in killings by over 50% during the Covid-19 pandemic.<sup>194</sup> However, external sources such as the OHCHR and the Nation’s Human Rights Commission estimate that 27,000 individuals have been killed, a stark increase to the official amount recorded:<sup>195</sup> It must be noted that these datasets are recorded as of 2020, and current statistics in 2021 are still unknown and does not include those killed by unidentified gunmen.<sup>196</sup> Shockingly, these extrajudicial killings have never

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186 ‘Human Rights group coalesce, go digital to fight death penalty’ (*The Rappler*, 7 May 2021) <<https://www.rappler.com/video/act-one/coalition-against-death-penalty-panibagong-pagkakataon-film-series/>> accessed 2 December 2021.

187 ‘Philippines: Duterte Threatens Human Rights Community’ (*Human Rights Watch*, 17 August 2017) <<https://www.hrw.org/news/2017/08/18/philippines-duterte-threatens-human-rights-community>> accessed 3 December 2021.

188 Jason Gutierrez, ‘Philippines Officially Leaves the International Criminal Court’ (*The New York Times*, 17 March 2019) <<https://www.nytimes.com/2019/03/17/world/asia/philippines-international-criminal-court.html>> accessed 3 December 2021.

189 Currie Cator, ‘Lacson withdraws death penalty bill’, (*CNN*, 9 November 2021) <<https://www.cnnphilippines.com/news/2021/11/9/Ping-Lacson-withdraws-death-penalty-bill-Senate.html>> accessed 2 November 2021.

190 *ibid*; ‘CBCP Welcomes Lacson, Sotto’s withdrawal of support for DP’ (*ABS-CBN*, 8 November 2021) <<https://news.abs-cbn.com/news/11/08/21/church-welcomes-anti-death-penalty-stance-of-lacson-sotto>> accessed 2 December 2021.

191 Rambo Talabong, ‘Lacson, Sotto now against death penalty, instead want PH version of Alcatraz’, (*The Rappler*, 4 November 2021) <<https://www.rappler.com/nation/elections/lacson-sotto-now-against-death-penalty-want-alcatraz-philippines/>> accessed 2 December 2021.

192 Rambo Talabong, ‘Lacson, Sotto now against death penalty, instead want PH version of Alcatraz’, (*The Rappler*, 4 November 2021) <<https://www.rappler.com/nation/elections/lacson-sotto-now-against-death-penalty-want-alcatraz-philippines/>> accessed 2 December 2021.

193 Preeti Jha, ‘Philippine’s death penalty: a fight to stop the return of capital punishment’ (*BBC*, 16 August 2020) <<https://www.bbc.com/news/world-asia-53762570>> accessed 2 December 2021.

194 Human Rights Watch, ‘Philippines: Events of 2020’ <<https://www.hrw.org/world-report/2021/country-chapters/philippines>> accessed 3 December 2021.

195 Preeti Jha, ‘Philippine’s death penalty: a fight to stop the return of capital punishment’ (*BBC*, 16 August 2020) <<https://www.bbc.com/news/world-asia-53762570>> accessed 2 December 2021.

196 Human Rights Watch, ‘Philippines: Events of 2020’ <<https://www.hrw.org/world-report/2021/country-chapters/philippines>> accessed 3 December 2021.

been seriously investigated by authorities, indicating a severe lack of accountability,<sup>197</sup> with only one case in 2017 being investigated (likely because it was recorded).<sup>198</sup>

In conclusion, while the Philippines remains to be an abolitionist, it is unclear what lies ahead of the country's future: given the strong support for the death penalty in Congress because of President Duterte and his allies, there is a strong likelihood that the death penalty may make its presence known soon once the bills submitted have been passed.

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197 Human Rights Watch, 'Philippines: Events of 2020' <<https://www.hrw.org/world-report/2021/country-chapters/philippines>> accessed 3 December 2021; Lisa Sclein, 'UN Reports Cites No Accountability for Philippines Extra-Judicial Killings' (VOA News, 7 October 2021) <<https://www.voanews.com/a/un-report-cites-no-accountability-for-philippines-extra-judicial-killings/6261082.html>> accessed 2 December 2021.

198 Lisa Sclein, 'UN Report Cites No Accountability for Philippines Extra-Judicial Killings' (VOA News, 7 October 2021) <<https://www.voanews.com/a/un-report-cites-no-accountability-for-philippines-extra-judicial-killings/6261082.html>> accessed 2 December 2021.

# The Death Penalty in South Asia

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Ashna Devaprasad, Chan Li Syuen

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## 1. India

Today, India remains a retentionist state. According to available statistics, India has executed around 717 individuals between 1947 and 2000.<sup>199</sup> Since 2000, eight persons have been executed, with the last execution carried out in March 2020, wherein four men were sentenced to death for the gang rape and murder of a woman in Delhi in 2012.<sup>200</sup> At present, the administration of capital punishment in India is judge-centric in that it allows judges to exercise discretion in imposing sentences.<sup>201</sup> This trend can be traced to the Indian Supreme Court's 1980 ruling in *Bachan Singh v. State of Punjab*, which upheld the constitutionality of capital punishment. In doing so, the Supreme Court held that courts could impose capital punishment only in the 'rarest of rare' cases wherein courts must adequately consider the aggravating and mitigating circumstances of the crime and the criminal to determine if the alternative option of life imprisonment is 'unquestionably foreclosed.'<sup>202</sup> Although the rarest of rare doctrine remains the guiding principle, in theory, the judicial administration of the death penalty in India over the last four decades has been marred by the inconsistent application of precedent and interpretational errors.<sup>203</sup>

Apart from murder, the death penalty can be imposed for thirteen offences in the Indian Penal Code, including kidnapping for ransom, dacoity with murder, different kinds of sexual offences, offences against the state and the abetment of suicide.<sup>204</sup> In addition to this, various other special statutes, including the Explosive Substances Act, the Army Act, the Narcotic Drugs and Psychotropic Substances Act, also permit the imposition of the death penalty.<sup>205</sup> In 2018 and 2019, the government expanded the legislative ambit of the death penalty for sexual offences, especially for non-homicidal sexual offences against children below the age of 12.<sup>206</sup>

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199 'Prisoners Executed in India', Project 39A <<https://www.project39a.com/resources-prisoners-executed-in-india-since-independence>> accessed 19 November 2021.

200 Project 39A, 'Annual Statistics Report 2020' (January 2021)

<<https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/60075f28f8b2cd7343a3f921/1611095850145/Annual+Statistics+Report+2020.pdf>> accessed 19 November 2021.

201 *Bachan Singh v. State of Punjab* (1980) 2 SCC 684.

202 *ibid.*

203 Anup Surendranath, Neetika Vishwanath and Preeti Pratihriti Dash, 'The Enduring Gaps and Errors in Capital Sentencing in India' (2020) 32 NAT'L L. SCH. INDIA REV. 47.

204 'Crimes Punishable by Death', Project 39A <<https://www.project39a.com/resources-crimes-punishable-by-death>> accessed 19 November 2021.

205 *ibid.*

206 Criminal Law (Amendment) Act, 2018 <[https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct\\_14082018\\_0.pdf](https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf)> accessed 19 November 2021; Protection of Children from Sexual Offences (Amendment) Act, 2010

<<https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf>> accessed 19 November 2021.

At the end of 2020, 404 prisoners were on death row, with 77 death sentences imposed by lower courts during the year.<sup>207</sup> The COVID-19 pandemic and intermittent government lockdowns significantly lowered the number of death sentences imposed and the number of death penalty cases decided by the High Courts and Supreme Court.<sup>208</sup> However, there was a noticeable increase in the proportion of death sentences imposed for offences involving sexual offences, with 65% of all death sentences constituting cases of sexual violence, an 11.54% increase from 2019.<sup>209</sup>

As death sentences continue to be imposed in 2021, the judicial trend does not seem to be heading anywhere near abolition. More alarming is the increasing political support for the death penalty being touted in public discourse as an effective solution to address violence and other social issues. In 2020, two states, namely, Maharashtra and Andhra Pradesh, introduced three bills that permit the imposition of the death penalty for non-homicidal rape, gang rape as well as acid attacks.<sup>210</sup> The Maharashtra Shakti Act also expedited the investigation and trial process by setting short time limits for courts to pass sentences.<sup>211</sup>

In 2021, as COVID-19 continues to affect the country, lower courts carry on imposing death sentences. Calls for the legislative inclusion of harsher punishments are also on the rise. In July 2021, the Draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill introduced the death penalty for aggravated forms of human trafficking, where the victim is a child.<sup>212</sup> The bill has been severely criticised for its excessively punitive approach, draconian investigation process and removal of the presumption of innocence in favour of defendants.<sup>213</sup> In Madhya Pradesh, the State government has approved a bill to curb the sale and manufacturing of illicit liquor trade, providing the death penalty as a punishment for repeat offences.<sup>214</sup>

On the international front, unlike its global counterparts, India is yet to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). In

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<sup>207</sup>Annual Statistics Report 2020 (n 200).

<sup>208</sup> *ibid.*

<sup>209</sup> *ibid.*

<sup>210</sup> Special Correspondent, 'A.P.'s Disha Bill sent for inter-ministerial consultation: MHA' The Hindu (9 March 2021)

<<https://www.thehindu.com/news/national/andhra-pradesh/aps-disha-bill-sent-for-inter-ministerial-consultation-mha/article34029550.ece>> accessed 19 November 2021;

HT, 'Shakti act': Maharashtra's new bill on sexual crimes to have death penalty, hefty fines' Hindustan Times (12 December 2020)

<<https://www.hindustantimes.com/india-news/shakti-act-maharashtra-s-new-bill-on-sexual-crimes-to-have-death-penalty-hefty-fines/story-VD6Muv0aAFotsjgbVXgCpJ.html>> accessed 19 November 2021.

<sup>211</sup> Staff Reporter, 'Crimes against women and children: State clears Bill proposing death penalty for rape' The Hindu (10 December 2020)

<<https://www.thehindu.com/news/states/crimes-against-women-and-children-state-clears-bill-proposing-death-penalty-for-rape/article33293985.ece>> accessed 19 November 2021.

<sup>212</sup> Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021

<<https://wcd.nic.in/sites/default/files/DRAFT%20TRAFFICKING%20IN%20PERSONS%20%28PREVENTION%2C%20CARE%20AND%20REHABILITATION%29%20BILL%202021%20%281%29.pdf>> accessed 19 November 2021.

<sup>213</sup> Express News Service, 'Coalition of activists and lawyers' critiques Trafficking in Persons Bill 2021' The Indian Express (16 July 2021)

<<https://indianexpress.com/article/cities/pune/coalition-of-activists-and-lawyers-critiques-trafficking-in-persons-bill-2021-7406971/>> accessed 19 November 2021.

<sup>214</sup> Shruti Tomar, 'MP clears Bill to curb illicit liquor trade, provides for capital punishment' Hindustan Times (11 August 2021)

<<https://www.hindustantimes.com/india-news/mp-assembly-passes-bill-to-curb-illicit-liquor-trade-provides-for-capital-punishment-101628656769066.html>> accessed 19 November 2021; In the state of Bihar, 9 people were sentenced to death for their involvement in the trade of spurious liquor. Amarnath Tewary, 'Dry' Bihar faces spurious liquor menace' The Hindu <<https://www.thehindu.com/news/national/other-states/dry-bihar-faces-spurious-liquor-menace/article37349383.ece>> accessed 19 November 2021.

November 2020, consistent with its domestic position, India was part of a small minority of eleven other countries from the Asia-Pacific region that voted against a United Nations Resolution to abolish capital punishment.<sup>215</sup>

## 2. Pakistan

Since December 2014, Pakistan has executed nearly 516 people after lifting a seven-year moratorium on executions in response to the widespread outrage after a deadly terrorist attack on a school in Peshawar.<sup>216</sup> The administration of the death penalty in Pakistan is governed primarily by the constitution and other specific legislation, with the judiciary regulating its imposition right from lower courts to the Supreme Court. Part 6 of the Constitution allows courts to sentence an individual to death for death penalty eligible offences. Presently, 33 offences are punishable with death under the Pakistan Penal Code, a combination of Islamic law and common law.<sup>217</sup> These offences include murder, rape, sexual intercourse outside marriage, drug-related offences, blasphemy, kidnapping, and terrorism. Additionally, offences against the Armed Forces are also eligible to be punished with death under various statutes, including the Pakistan Air Force Act and the Pakistan Army Act.

According to reports in 2018, Pakistan accounted for every one in four persons sentenced to death worldwide and contributed to 13% of global executions between 2015 and 2017.<sup>218</sup> The sharp decline in the number of death sentences imposed in Pakistan in 2020 may have been a consequence of COVID-19 restrictions. 2020 saw at least 49 death sentences imposed, with at least 4000 people reported to be on death row at the end of the year and no reported executions.<sup>219</sup> However, of the individuals on death row, many suffered from psycho-social or intellectual disabilities, while others were denied their fair trial rights under internationally guaranteed standards.<sup>220</sup>

Despite extremely low rates of conviction in cases of sexual violence and numerous procedural flaws in trials,<sup>221</sup> political parties proposed new anti-rape laws in 2020 that were meant to 'toughen sentences for rapists' and 'allow speedy convictions' within four months of the crime.<sup>222</sup> In addition to the death penalty for gang rape, the Draft Anti-

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215 HRW, 'Asian Nations Reject UN Vote Against Death Penalty' Human Rights Watch (24 November 2020) <<https://www.hrw.org/news/2020/11/25/asian-nations-reject-un-vote-against-death-penalty>> accessed 19 November 2021.

216 Amnesty International, 'Amnesty International Global Report: Death Sentences and Executions 2020' (2021) accessed 19 November 2021; BBC, 'What is behind Pakistan's dramatic rise in executions?' (16 December 2015) <<https://www.bbc.com/news/world-asia-33033333>> accessed 19 November 2021.

217 List of Offences Punishable by Death (Justice Project Pakistan, 2019) <<https://data.jpp.org.pk/en/document/ngo5vvasxsr>> accessed 25 November 2021.

218 Justice Project Pakistan, 'Counting the Condemned: Data Analysis of Pakistan's Use of the Death Penalty' (2018) <<https://jpp.org.pk/report/counting-the-condemned/>> accessed 19 November 2021.

219 Amnesty International (n 216); According to numbers from the Human Rights Commission of Pakistan, at least 584 persons were sentenced to death in 2019, with 15 executions carried out. IANS, 'Pakistan awarded death penalty to 584 people, 17 for blasphemy in 2019: Human Rights Commission' The New Indian Express <<https://www.newindianexpress.com/world/2020/may/01/pakistan-awarded-death-penalty-to-584-people-17-for-blasphemy-in-2019-human-rights-commission-2137923.html>> accessed 19 November 2021.

220 Amnesty International (n 216).

221 Z Ali, 'Hardly 2% of domestic violence, rape cases end up in conviction' The Express Tribune <<https://tribune.com.pk/story/1993908/hardly-2-domestic-violence-rape-cases-end-conviction>> accessed 19 November 2021.

222 Ayaz Gul, 'Pakistan Enacts Law to Ensure Swift, Severe Penalty for Rapists' VOA News <[https://www.voanews.com/a/south-central-asia\\_pakistan-enacts-law-ensure-swift-severe-penalty-rapists/6199605.html](https://www.voanews.com/a/south-central-asia_pakistan-enacts-law-ensure-swift-severe-penalty-rapists/6199605.html)> accessed 19 November 2021.

Rape Ordinance also provides for the chemical castration in the case of “exceptional” first offenders or repeat offenders, irrespective of the applicable punishment.<sup>223</sup>

Further, in early 2020, the lower house of the Parliament tabled a resolution for public hangings of people convicted in cases of sexual violence and murder of children.<sup>224</sup> In 2021, reports indicate that death sentences continue to be imposed, notably in sexual violence and blasphemy cases<sup>225</sup>. In March, a court sentenced two men to death for the gang rape of a French-Pakistani woman after nationwide protests erupted on the issue.<sup>226</sup> Other widely reported cases include a woman school principal and an eight-year-old boy sentenced to death on blasphemy charges.<sup>227</sup>

However, a notable ruling of the Pakistan Supreme Court in February 2021 renewed some hope. The court ruled that prisoners with severe mental health problems who cannot comprehend their punishment cannot be legally executed for their crimes, as such a practice “will not meet the ends of justice.”<sup>228</sup> Human rights organisations have welcomed the ruling, viewing it as a positive step towards eventual abolition.<sup>229</sup> Pakistan remains an outlier in the international arena, joining a minority of Asian countries in failing to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and voting against the United Nation’s Resolution abolish capital punishment in 2020.<sup>230</sup>

### 3. Sri Lanka

Sri Lanka officially abolished the death penalty in 1956, during the tenure of Prime Minister SWRD. Bandaranaike.<sup>231</sup> However, the Prime Minister’s assassination during a

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223 Anti-Rape (Investigation and Trial) Ordinance, 2020

<[http://www.mohr.gov.pk/SitelImage/Misc/files/Anti-Rape%20\(Investigation%20and%20Trial\)%20Ordinance%2C%202020.pdf](http://www.mohr.gov.pk/SitelImage/Misc/files/Anti-Rape%20(Investigation%20and%20Trial)%20Ordinance%2C%202020.pdf)> accessed 19 November 2021; Ansar Abbasi, ‘Salient features of draft Anti Rape Act 2020’ The News (23 September 2020) <<https://www.thenews.com.pk/print/718924-salient-features-of-draft-anti-rape-act-2020>> accessed 19 November 2021; Saqib Virk, ‘Chemical castration, death penalty’: Draft of anti-rape ordinance finalised’ The Express Tribune (26 November 2020) <<https://tribune.com.pk/story/2273620/chemical-castration-death-penalty-draft-of-anti-rape-ordinance-finalised>> accessed 19 November 2021.

224 Amnesty International, ‘Pakistan: Public hangings are acts of unconscionable cruelty’ (7 February 2020)

<<https://www.amnesty.org/en/latest/news/2020/02/pakistan-public-hangings-are-acts-of-unconscionable-cruelty/>> accessed 19 November 2021.

225 ‘Pakistan Court sentences three to death for blasphemy’ (Al-Jazeera, 8 January 2021) <<https://www.aljazeera.com/news/2021/1/8/pakistan-court-sentences-three-to-death-for-blasphemy>> accessed 25 November 2021.

226 BBC, ‘Two men sentenced to death for motorway rape’ (20 March 2021) <<https://www.bbc.com/news/world-asia-56472645>> accessed 19 November 2021.

227 Haroon Janjua, ‘Eight-year-old becomes youngest person charged with blasphemy in Pakistan’ The Guardian (9 August 2021)

<<https://www.theguardian.com/global-development/2021/aug/09/eight-year-old-becomes-youngest-person-charged-with-blasphemy-in-pakistan>> accessed 19 November 2021; ET, ‘Pakistan court sentences woman school principal to death for committing blasphemy’ The Economic Times (28 September 2021) <<https://economictimes.indiatimes.com/news/international/world-news/pakistan-court-sentences-woman-school-principal-to-death-for-committing-blasphemy/articleshow/86578709.cms>> accessed 19 November 2021.

228 Asad Hashim, ‘Pakistan’s top court bans execution of people with mental illness’ Al Jazeera (11 February 2021) <<https://www.aljazeera.com/news/2021/2/11/pakistani-apex-court-bans-execution-of-mentally-ill-patients>> accessed 19 November 2021.

229 Haroon Janjua ‘Pakistan ends death penalty for prisoners with severe mental health problems’ (The Guardian, 2021) <<https://www.theguardian.com/global-development/2021/feb/12/pakistan-ends-death-penalty-for-prisoners-with-severe-mental-health-problems>> accessed 25 November 2021.

230 Status of Treaties: United Nations Treaty Collection, ‘Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty’ <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4)> accessed 19 November 2021; Amnesty International (n 217).

231 Anne Ranasinghe, ‘A case against the noose’ Daily Mirror (3 May 2003) <<https://web.archive.org/web/20070930224426/http://www.dailymirror.lk/2003/02/27/opinion/1.html>> accessed 19 November 2021.

public interaction led to the reinstatement of capital punishment in 1959.<sup>232</sup> After calls for its abolition began to grow in the decades that followed, the United National Party amended the constitution, allowing death sentences to be imposed by lower courts only through unanimous verdicts.<sup>233</sup> This meant that dissent or a difference of opinion on the bench resulted in an automatic commutation to life imprisonment. Since then, there have been intermittent attempts to reintroduce the death penalty in 1999, 2004, 2015 and 2018 due to political assassinations, high-profile murders, instances of drug trafficking and rising sexual violence against women and children.<sup>234</sup>

The Sri Lankan Constitution permits the imposition of a death sentence by a competent court following a 'procedure established by law'<sup>235</sup>. While the law permits the death penalty, Sri Lanka has been an abolitionist country in practice since 1976. While the death penalty remains a formal punishment in the statute books<sup>236</sup>, executions have not been carried out since the last execution in 1976. For all practical purposes, Sri Lanka has followed a four-decade-long de-facto moratorium on the use of the death penalty and has not legally carried out a single execution since 1976.<sup>237</sup> However, courts continue to impose death sentences under penal legislation, including for offences against the state, drug-related offences such as trafficking and manufacturing of certain drugs, murder, and abetment of suicide.<sup>238</sup> Notably, the Penal Code prohibits the imposition of the death penalty on minors, pregnant women, the intellectually disabled and the mentally ill.<sup>239</sup>

As of December 2020, more than 1000 individuals were sitting on death row. This includes 16 individuals sentenced to death in 2020/2021 alone—nearly 18% of these sentences involved drug-related offences.<sup>240</sup> Between early 2018 and 2019, Sri Lankan President Maithripala Srisena stated that he would sign death warrants to execute four drug offenders to tackle and clamp down on increasing drug addiction and trafficking.<sup>241</sup> Despite the President's decision being condemned by human rights advocates and international bodies, he went on to sign the warrants, only to be countered by court

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232 Mario Gomez, 'The Death Penalty in Sri Lanka: Hanging by a Thread' *Int'l J. Const. L. Blog* (8 August 2019) <<http://www.iconnectblog.com/2019/08/the-death-penalty-in-sri-lanka-hanging-by-a-thread/>> accessed 19 November 2021.

233 Ameerah Salie, 'Lifting the Moratorium on the Death Penalty: A Sri Lankan Perspective' *Ivint Blog* (30 June 2021) <<https://www.ivint.org/lifting-the-moratorium-on-the-death-penalty-a-sri-lankan-perspective/>> accessed 19 November 2021.

234 D Wes Rist, 'Sri Lanka reaffirms death penalty after killing of high court judge' *Jurist* (20 November 2004) <<https://www.jurist.org/news/2004/11/sri-lanka-reaffirms-death-penalty/>> accessed 19 November 2021; El, 'Sri Lanka may revive death penalty' *Economist Intelligence* (7 October 2015) <[http://country.eiu.com/article.aspx?articleid=273569011&Country=Sri%20Lanka&topic=Politics&subtop\\_8](http://country.eiu.com/article.aspx?articleid=273569011&Country=Sri%20Lanka&topic=Politics&subtop_8)> accessed 19 November 2021; Dinushika Dissanayake, 'Keeping the death penalty alive' *Himal South Asian* (28 September 2018) <<https://www.himalmag.com/keeping-the-death-penalty-alive-sri-lanka-capital-punishment/>> accessed 19 November 2021.

235 Constitution of Sri Lanka, Chapter III, Article 13 (4) <<https://www.parliament.lk/files/pdf/constitution.pdf>> accessed 19 November 2021.

236 Section 114, 129, 191, 296, 299 Penal Code <[http://hrlibrary.umn.edu/research/srilanka/statutes/Penal\\_Code.pdf](http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf)> accessed 25 November 2021

237 Mario Gomez (n 232).

238 Penal Code of Sri Lanka, Chapter 19 <[http://hrlibrary.umn.edu/research/srilanka/statutes/Penal\\_Code.pdf](http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf)> accessed 19 November 2021.

239 Ameerah Salie (n 233).

240 Amnesty International (n 216).

241 HRW, 'Sri Lanka: Resuming Death Penalty a Major Setback' *Human Rights Watch* (30 June 2019) <<https://www.hrw.org/news/2019/06/30/sri-lanka-resuming-death-penalty-major-setback>> accessed 19 November 2021.

proceedings initiated against the executions.<sup>242</sup> The Commissioner-General of Prisons even put out advertisements calling for able executioners.<sup>243</sup>

In July 2019, the Supreme Court of Sri Lanka issued a temporary injunction against the execution of the four individuals, citing due process concerns, potential fair trial concerns and the secrecy surrounding the execution.<sup>244</sup> Before the stay order, two Members of Parliament tabled a Private Member's Bill to enact legislation to repeal the death penalty from the statute books formally.<sup>245</sup> The bill was strongly criticised by President Sirisena, who called it illegal.<sup>246</sup> Currently, the executions remain stayed in light of temporary suspensions of criminal proceedings in the wake of COVID-19 related restrictions. More recently, in 2021, the European Union issued a statement urging Sri Lanka to abolish the death penalty legally.<sup>247</sup>

In June 2021, around 150 death row inmates languishing in prison launched a series of protests, including a hunger strike demanding their death sentences be commuted.<sup>248</sup> The widespread demonstrations came as a response to current President Gotabaya Rajapaksa's arbitrary decision to pardon a former Member of Parliament who had been sentenced to death in connection with an election-related murder.<sup>249</sup> On the international front, although Sri Lanka voted in favour of abolition at the 2020 United Nations General Assembly Resolution, it is yet to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).<sup>250</sup>

## 4. Nepal

Nepal is one of the few South Asian countries to have legally abolished the death penalty. However, like many other South Asian countries, Nepal saw protests regarding sexual violence against women. This was sparked by a movement in Chile in 2019. On 7 November 2020, approximately 1000 young Nepalese people protested the rising rape cases using a Chilean anthem.<sup>251</sup> There was an earlier protest a month before, with around 25 activists in each Nepal district. These protests were a reaction to violent rape

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242 ST, 'Sri Lanka faces challenges in bid to resume hangings' The Strait Times (1 July 2019) <<https://www.straitstimes.com/asia/south-asia/sri-lanka-faces-challenges-in-bid-to-resume-hangings>> accessed 19 November 2021.

243 Helan Regan, 'Sri Lanka advertising for executioners after plan to reinstate death penalty' CNN (13 February 2019) <<https://edition.cnn.com/2019/02/12/asia/sri-lanka-executioner-ad-intl/index.html>> accessed 19 November 2021.

244 'Sri Lanka court suspends executions until October 30' Al Jazeera (5 July 2019) <<https://www.aljazeera.com/news/2019/7/5/sri-lanka-court-suspends-executions-until-october-30>> accessed 19 November 2021.

245 'Abolition of capital punishment: Private Member's Bill submitted to Parliament' Sunday Observer (7 July 2019) <<http://www.sundayobserver.lk/2019/07/07/news-features/abolition-capital-punishment-private-member%E2%80%99s-bill-submitted-parliament>> accessed 19 November 2021.

246 AP, 'Sirisena says Bill to scrap death penalty is illegal' Associated Press (5 August 2019) <<https://www.thehindu.com/news/international/sirisena-says-bill-to-scrap-death-penalty-is-illegal/article28827022.ece>> accessed 19 November 2021.

247 Lahiru Pothmulla, 'EU encourages Sri Lanka to legally abolish death penalty' IDPC (30 January 2021) <<https://idpc.net/alerts/2021/01/eu-encourages-sri-lanka-to-legally-abolish-death-penalty>> accessed 19 November 2021.

248 'Death row inmates in Sri Lanka protest pardon granted to ex-MP' Al Jazeera (25 June 2021) <<https://www.aljazeera.com/news/2021/6/25/sri-lanka-ex-mp-pardon-death-row-hunger-strike>> accessed 19 November 2021.

249 *ibid.*

250 Status of Treaties: United Nations Treaty Collection, 'Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty' <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4)> accessed 19 November 2021; Amnesty International (n 216).

251 Bansari Kamdar, 'Rape Cases Surge in Nepal, Activists Question Death Penalty' The Diplomat (18 November 2020) <<https://thediplomat.com/2020/11/rape-cases-surge-in-nepal-activists-question-death-penalty/>> accessed 19 November 2021.

cases where children were the victims, similar to Bangladesh. There were demands to “hang the rapist”, but one of the key campaigners of the group Ajhai Kati Sahane stated that it would not be an effective policy to deal with sexual violence, citing concerns of unfair criminal procedure and wrongful convictions.<sup>252</sup> The group also sought to fight against the narrative that the death penalty was a viable solution that was promoted by celebrities in Kollywood and other South Asian countries.<sup>253</sup>

Despite similarities with Bangladesh, it is unlikely that the death penalty will be implemented, given that Nepal’s 2015 Constitution prohibits capital punishment<sup>254</sup>. Nepal is also a signatory to a number of human rights Charters, most notably the Second Optional Protocol of the International Covenant on Civil and Political Rights, which requires States to take all necessary measures to abolish the death penalty.<sup>255</sup>

## 5. Bangladesh

As of September 2021, 2475 people have been sentenced to death in Bangladesh since 2010.<sup>256</sup> Death penalty offences are tried by a Sessions Court, and if sentenced to death, the case will proceed to the High Court Division as a Death Reference Case to determine confirmation of the execution.<sup>257</sup> If confirmed, the prisoner is entitled to an appeal in the Appellate Division of the Supreme Court of Bangladesh.<sup>258</sup> The Appellate judgment may also be reviewed.<sup>259</sup> Once all avenues of appeal are exhausted, the method of execution is hanging by the neck.<sup>260</sup>

In total, there are 33 death penalty offences in Bangladesh besides laws regarding anti-espionage, international crimes and defence forces.<sup>261</sup> Nine of these offences were introduced under British colonial rule, but most were legislated after Bangladesh’s independence. Of these 33 offences, a death sentence may be given for 25 offences that do not have fatal consequences.<sup>262</sup> This is concerning because the breadth of crimes breaches the ICCPR, which has been ratified by Bangladesh.<sup>263</sup>

A significant development is the inclusion of rape as an offence that may attract the death penalty.<sup>264</sup> Two key rape cases in October 2020 sparked nationwide protests for better

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252 *ibid.*

253 *ibid.*

254 Constitution of the Kingdom of Nepal 1990, art 12.

255 *ibid.*

256 Odhikar, ‘Statistics of Death Penalty: 2010-2021 (as of September 2021)’ (Odhikar, 2021) <[http://odhikar.org/wp-content/uploads/2021/11/Death-Penalty\\_2010-2021.pdf](http://odhikar.org/wp-content/uploads/2021/11/Death-Penalty_2010-2021.pdf)> accessed 29 November 2021.

257 Bangladesh Code of Criminal Procedure 1898, ss 374, 30(2); Bangladesh Special Powers Act 1974, s 29; Bangladesh Suppression of Violence against Women and Children Act 2000, s 27; Bangladesh Acid Offence Control Act 2002, s 31(2); Bangladesh Anti-Terrorism Act 2009.

258 Constitution of the People’s Republic of Bangladesh 1972, art 103(2)(b).

259 *ibid* art 105.

260 Bangladesh Code of Criminal Procedure 1898, s 368(1).

261 Muhammad Mahbubur Rahman, ‘Living Under Sentence of Death: A study on the profiles, experiences and perspectives of death row prisoners in Bangladesh’ (Department of Law, University of Dhaka 2020).

262 *ibid* 22.

263 International Federation for Human Rights, ‘Bangladesh: Criminal Justice through the Prism of Capital Punishment and the Fight against Terrorism’ (International Federation for Human Rights 2010) <[www.fidh.org/IMG/pdf/Report\\_eng.pdf](http://www.fidh.org/IMG/pdf/Report_eng.pdf)> accessed 17 November 2021.

264 Women and Children Repression Prevention (Amendment) Act 2020.

methods of protecting women.<sup>265</sup> This led to Cabinet approving an amendment to include the death penalty for individuals found guilty of rape,<sup>266</sup> which was passed by Parliament.<sup>267</sup> Key supporters of the amendment include the Prime Minister, claiming it saves girls from “beasts.”<sup>268</sup> With regards to public opinion, a small survey of 20 people found that 88% of participants agreed with the amendment, but 76% of them believed it was not the optimal solution.<sup>269</sup> In contrast, the Rape Law Reform Coalition strongly opposes the amendment as it does not tackle rape culture.<sup>270</sup> This is in line with concerns that it is not an effective response to rising violence against women as victims may be killed to prevent them from reporting.<sup>271</sup>

From January 2020 to September 2021, a total of 407 people were sentenced to death.<sup>272</sup> Despite the COVID-19 pandemic, the number of sentences is consistent with those of previous years.<sup>273</sup> This indicates that the COVID-19 pandemic has not significantly prevented courts from sentencing people to death. These sentences took place in ignorance of fair trial standards and, in some instances occur without the defendant being present.<sup>274</sup> An example of recent sentences includes six people sentenced for killing LGBTQ activists.<sup>275</sup> In terms of executions, two people were executed in 2020— a man who had been convicted for murdering the first Bangladeshi President and another man convicted of two murders.<sup>276</sup> As of September 2021, three executions have taken place 2021.<sup>277</sup> In June 2021, two men were executed for killing their wives.<sup>278</sup> One of the executions had been expedited by a judge of the Speedy Trial Tribunal of Sylhet District

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265 UNB, ‘Lured with job offer, woman gang-raped in Jessore’ Dhaka Tribune (Dhaka, 13 February 2021) <<https://www.dhakatribune.com/bangladesh/nation/2021/02/13/lured-with-job-offer-woman-gang-raped-in-jessore>> accessed 17 November 2021.

266 International Federation for Human Rights, ‘Violence against women on the rise amid COVID-19 and rampant impunity’ (Dhaka, 24 November 2020) <<https://www.fidh.org/en/region/asia/bangladesh/violence-against-women-on-the-rise-amid-covid-19-and-rampant-impunity>> accessed 17 November 2021.

267 Women and Children Repression Prevention 2000, s 9(1); BBC Monitoring South Asia, ‘Highlights from Bangladesh’s Bengali-Language Press, Websites 18’ (BBC Worldwide Limited, 18 November 2020) <<https://search.proquest.com/wire-feeds/highlights-bangladeshs-bengali-language-press/docview/2461244012/se-2?accountid=12528>> accessed 17 November 2021.

268 BBC Monitoring South Asia, ‘Highlights from Bangladesh’s Bengali-Language Press, Websites 13’ (BBC Worldwide Limited, 13 October 2020) <<https://www.proquest.com/wire-feeds/highlights-bangladeshs-bengali-language-press/docview/2450165121/se-2?accountid=12528>> accessed 17 November 2021.

269 NB This survey has not been peer reviewed. Mohamad Rajib Hawlader et al., ‘The Reasons for the Increasing Rate of Rape: What the people of Bangladesh think?’ (East West University) <[https://www.researchgate.net/profile/Muhammad-Rajib-Hawlader/publication/352030780\\_The\\_Reasons\\_for\\_the\\_Increasing\\_Rate\\_of\\_Rape\\_What\\_the\\_people\\_of\\_Bangladesh\\_think/links/60b6662b299bf106f6f15e34/The-Reasons-for-the-Increasing-Rate-of-Rape-What-the-people-of-Bangladesh-think.pdf](https://www.researchgate.net/profile/Muhammad-Rajib-Hawlader/publication/352030780_The_Reasons_for_the_Increasing_Rate_of_Rape_What_the_people_of_Bangladesh_think/links/60b6662b299bf106f6f15e34/The-Reasons-for-the-Increasing-Rate-of-Rape-What-the-people-of-Bangladesh-think.pdf)> accessed 17 November 2021.

270 Asia News Monitor, ‘World: Death Penalty Not the Answer to Bangladesh’s Rape Problem’ (Thai News Service Group, 15 October 2020) <<https://search.proquest.com/newspapers/world-death-penalty-not-answer-bangladeshs-rape/docview/2450817759/se-2?accountid=12528>> accessed 17 November 2021.

271 Bansari Kamdar, ‘Death Penalty for Rape: An Ineffective Lethal Lottery in South Asia’ (The Diplomat, 4 January 2021) <<https://thediplomat.com/2021/01/death-penalty-for-rape-an-ineffective-lethal-lottery-in-south-asia/>> accessed 17 November 2021.

272 Odhikar (n 256).

273 *ibid.*

274 Amnesty International, ‘Amnesty International Global Report: Death Sentences and Executions 2020’ (2021) 14 accessed 17 November 2021.

275 Faisal Mahmud, ‘Six sentenced to death in Bangladesh for killing LGBTQ activists’ Al Jazeera (Dhaka, 31 August 2021) <<https://www.aljazeera.com/news/2021/8/31/six-death-penalty-bangladesh-lgbtq-gay-rights-activists-murder>> accessed 17 November 2021.

276 Arifur Rahman Rabbi and Hasan Al Javed, ‘Bangabandhu’s killer Majed hanged’ Dhaka Tribune (Dhaka, 12 April 2020) <<https://www.dhakatribune.com/bangladesh/2020/04/12/bangabandhu-killer-majed-hanged>> accessed 17 November 2021; United News of Bangladesh, ‘Laxmipur double murder: Condemned convict hanged at Kashimpur Jail’ United News of Bangladesh (Gazipur, 2 November 2020) <<https://unb.com.bd/category/Bangladesh/laxmipur-double-murder-condemned-convict-hanged-at-kashimpur-jail/59842>> accessed 17 November 2021.

277 Odhikar (n 256).

278 Odhikar, ‘Three-Month Human Rights Monitoring Report on Bangladesh - Reporting Period: April - June 2021’ (Odhikar, 9 July 2021), 29 <[http://odhikar.org/wp-content/uploads/2021/07/HR-Report\\_April-June\\_2021\\_Odhikar\\_English.pdf](http://odhikar.org/wp-content/uploads/2021/07/HR-Report_April-June_2021_Odhikar_English.pdf)> accessed 29 November.

and Sessions Judge's Court.<sup>279</sup> Most recently, in July 2021, a member of an Islamic extremist group was executed in Gazipur for the 2005 bomb attack in Netrokona.<sup>280</sup>

Related to judicial executions is the issue of extrajudicial killings, which is increasingly used by the government to control dissenting voices.<sup>281</sup> From January 2020 to September 2021, there were 296 extrajudicial killings that are known.<sup>282</sup> Though there are over 20 agencies that carry out extrajudicial killings, they mostly came from the police and RAB in 2020 and 2021.<sup>283</sup> The most popular forms of extrajudicial killings were if the victims were shot to death, tortured to death or caught in a crossfire.<sup>284</sup> The latter is alleged to be a cover-up of killings.<sup>285</sup> Victims include activists, Rohingyas and the accused in criminal cases like murder and rape.<sup>286</sup> The narrowing of civil society space makes it increasingly difficult for human rights defenders to support victims and their families.<sup>287</sup> There is a pressing issue of getting these voices heard as no judicial remedies are available for these executions.

The information above indicates political and legal trends of continued support for the death penalty, thus making abolition unlikely in the near future. It is indeed concerning that there is strong support for extrajudicial killing as well, which is harder to monitor. On the world stage, it is unlikely for this issue of the death penalty to be the focus because the Rohingya crisis has taken priority, especially at the United Nations. The implementation of capital punishment for rape contradicts Bangladesh's UPR report that they are phasing out the death penalty.<sup>288</sup> Bangladesh has also consistently voted against the moratorium on executions at the UN General Assembly, most recently in 2020,<sup>289</sup> again indicating continued support for the death penalty.

## 6. Maldives

According to available statistics from Amnesty International, the most recent death sentence was imposed in 2019.<sup>290</sup> No death sentences were imposed in 2020 and 2021, in part due to the temporary suspension of criminal proceedings.<sup>291</sup> Currently, 19 people

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279 *ibid.*

280 Raihanul Islam, 'JMB activist executed for 2005 Netrokona Udichi bomb attack' Dhaka Tribune (Gazipur, 16 July 2021) <<https://www.dhakatribune.com/bangladesh/militancy/2021/07/16/jmb-man-executed-over-2005-bomb-attack>> accessed 17 November 2021.

281 Odhikar, 'Three-Month Human Rights Monitoring Report on Bangladesh - Reporting Period: July - September 2021' (Odhikar, 9 July 2021) <[http://odhikar.org/wp-content/uploads/2021/10/HRR\\_July-September\\_2021\\_Odhikar\\_English.pdf](http://odhikar.org/wp-content/uploads/2021/10/HRR_July-September_2021_Odhikar_English.pdf)> accessed 29 November.

282 Odhikar, 'Statistics of Total Extra-judicial Killings: 2001-2021 (as of September 2021)' (Odhikar, 2021) <<http://odhikar.org/wp-content/uploads/2021/11/Total-KLEA-2001-2021.pdf>> accessed 29 November 2021.

283 *ibid.*

284 Odhikar (n 281); Odhikar, 'Annual Human Rights Report 2020: Bangladesh' (Odhikar, 25 January 2021) <[http://odhikar.org/wp-content/uploads/2021/01/Annual-HR-Report-2020\\_Eng.pdf](http://odhikar.org/wp-content/uploads/2021/01/Annual-HR-Report-2020_Eng.pdf)> accessed 29 November.

285 *ibid.*

286 *ibid.*

287 *ibid.*

288 UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review (Bangladesh)' A/ HRC/39/12/Add.1 cited in Odhikar (n 269) 31.

289 'Resolution adopted by the General Assembly on 16 December 2020' A/RES/75/183 <<https://undocs.org/en/A/RES/75/183>> accessed 25 November 2021

290 Amnesty International, 'Amnesty International Global Report: Death Sentences and Executions 2020' (2021) accessed 17 November 2021.

291 *ibid.* 24.

remain under the death sentence, all for the offence of murder.<sup>292</sup> Those on death row include one woman, juvenile offenders, and people known to have mental and intellectual disabilities.<sup>293</sup>

Similar to other South Asian countries, protests ensued in the Maldives due to violent rape cases where the victims were children. There was anger toward the Gender Ministry due to their negligence in ensuring the child's safety.<sup>294</sup> As a response, some called for capital punishment under Shari'ah, although there was opposition to that as some suggested it would only be ideal with a proper judiciary.<sup>295</sup> Despite similar protests in India and Bangladesh, which led to an expansion of the death sentence to the offence of rape, it is unlikely for the Maldives to follow suit as the two main political parties are against capital punishment.<sup>296</sup> The founder of a children's rights group, Voice of Children, has also opposed the death penalty as a solution because it may deter survivors from reporting their cases, and the weak judicial system may result in wrongful convictions.<sup>297</sup>

The most positive development was the Child Rights Protection Act of November 2019 that came into force in February 2020. It prohibits the death sentence against people below 18 years of age.<sup>298</sup> This amendment results in compliance with the United Nations Convention on the Right of the Child (CRC), which the Maldives is a signatory of.<sup>299</sup>

Despite the constant votes against the moratorium at the UN General Assembly, most recently in December 2020,<sup>300</sup> it is encouraging to observe that the Attorney General's Office of Maldives has confirmed that the government was committed to an "informal moratorium" on executions as its focus was to reform the judicial system and its independence.<sup>301</sup> The Prosecutor General has stated that public opinion must be considered before any amendment in favour of abolition. Thus abolition may be on the horizon if the said opinion is favoured by the public.

## 7. Bhutan

Bhutan abolished the death penalty in 2004 via a Royal Decree by His Majesty the Fourth King.<sup>302</sup> The last death penalty imposed was in 1964 for the assassination of a Prime

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292 *ibid.*

293 *ibid* 13-14.

294 Ameera Osmanagic, 'REPORT: Entire country in anger following the state's negligence in protecting a two-year-old child from rape' Times of Addu (18 January 2020) <<https://timesofaddu.com/2020/01/18/entire-country-in-anger-following-the-states-negligence-in-protecting-a-two-year-old-child-from-rape/>> accessed 17 November 2021.

295 *ibid.*

296 Fathmath Zunaam, 'Drug smugglers should get death penalty: Umar Naseer' Times of Addu (Malé, 29 June 2021) < <https://timesofaddu.com/2021/06/29/drug-smugglers-should-get-death-penalty-umar-naseer/>> accessed 17 November 2021.

297 Human Rights Watch, 'South Asia: Justice, Services Can Curb Sexual Violence' (Human Rights Watch, 17 December 2020) <<https://www.hrw.org/node/377352/printable/print>> accessed 17 November 2021.

298 Amnesty International, 'Amnesty International Global Report: Death Sentences and Executions 2020' (2021) accessed 17 November 2021.

299 United Nations Convention on the Right of the Child.

300 'Resolution adopted by the General Assembly on 16 December 2020' A/RES/75/183 <<https://undocs.org/en/A/RES/75/183>> accessed 25 November 2021.

301 Yameen Saeed, 'Death penalty will not be abolished without public opinion: AG Riffath' Times of Addu (Male, 5 November 2020) <<https://timesofaddu.com/2020/11/05/death-penalty-will-not-be-abolished-without-public-opinion-ag-riffath/>> accessed 17 November 2021.

302 Amnesty International, 'Death Penalty News' (London, June 2004) <<https://www.amnesty.org/fr/wp-content/uploads/2021/06/act530012004en.pdf>> accessed 17 November 2021.

Minister. Following that, no death sentence was given, in part due to Buddhist values and the monarchy's reluctance.<sup>303</sup> Currently, Bhutan's Constitution prohibits the death penalty.<sup>304</sup> Similar to other South Asian countries, there were calls for capital punishment to be reinstated in response to violent sexual crimes against children, although these calls have not led to constitutional amendments as many politicians oppose it.<sup>305</sup> Therefore Bhutan remains an abolitionist country, and its position appears to be cemented by its constitution despite some calls for capital punishment as a response to sexual violence.

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303 Constitution of Bhutan, art 3(1); Tenzing Lamsang, 'Bhutan and the Death Penalty' *The Bhutanese* (22 September 2019) <<https://thebhutanese.bt/bhutan-and-the-death-penalty/>> accessed 17 November 2021.

304 Constitution of Bhutan, art 7(18), 8(5).

305 Usha Drukpa, 'Govt and MPs not in favour of death penalty but favour stronger laws and policies to protect children' *The Bhutanese* (5 October 2019) <<https://thebhutanese.bt/govt-and-mps-not-in-favour-of-death-penalty-but-favour-stronger-laws-and-policies-to-protect-children/>> accessed 17 November 2021.