

THE UPR PROJECT AT BCU



Submitted by:

The UPR Project at BCU
Centre for Human Rights, School of Law
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About the UPR Project at BCU:

Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and National Human Rights Institutions, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights. The UPR Project at BCU engages with the UPR regularly as a stakeholder and is frequently cited by the OHCHR. You can read more about the UPR Project here: www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu

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INTRODUCTION

1. Equatorial Guinea is party to seven of the nine core international human rights treaties for which it should be commended.¹ This includes the International Covenant on Civil and Political Rights (ICCPR) and, in line with the Covenant's protection of the right to life and the prohibition against inhuman punishment, this Stakeholder Report focuses upon capital punishment.
2. We make recommendations to the Government of Equatorial Guinea on this key issue, implementation of which would also see Equatorial Guinea moving towards achieving Sustainable Development Goal 16 which aims for peaceful and inclusive societies, access to justice for all and effective, accountable and inclusive institutions at all levels.
3. We urge the State to make practical commitments in the fourth cycle of the UPR which include maintaining its recent abolition of the death penalty, ratifying the Second Optional Protocol Aiming to the Abolition of the Death Penalty, and establishing an independent National Human Rights Institution.
4. In this submission, we encourage Equatorial Guinea to commit to improving its human rights protection and promotion by engaging meaningfully with its fourth cycle of the UPR in 2024. This includes giving full and practical consideration to all recommendations made by Member States, effectively implementing the recommendations Equatorial Guinea accepts, and actively engaging with civil society throughout the process.

CAPITAL PUNISHMENT

A. Equatorial Guinea and International Law on the Death Penalty

5. After gaining independence from Spain in 1968, the death penalty continued to be imposed in Equatorial Guinea for the next four and a half decades. It was mandatory for premeditated murder and often applied to political opponents for crimes against the state. These were usually unfair trials held by military courts.²
6. The last known execution in Equatorial Guinea took place in January 2014 where nine individuals convicted of murder were executed by firing squad. This included one Mali national and eight Equatorial Guinea nationals.³ On 13 February of the same year, the state adopted a temporary moratorium on the use of death penalty in order to facilitate Equatorial Guinea's membership of the Community of Portuguese-Speaking Countries in July.⁴ There is currently no one on death row.⁵
7. On 19 September 2022, the state joined the global trend towards abolition by removing the punishment from its domestic legal framework which president hailed as a "unique moment" in the country's history.⁶ Equatorial Guinea became the 25th African nation to end capital punishment.

International Law Promoting the Restriction and Abolition of the Death Penalty

8. The United Nations' framework for regulating the application of the death penalty comprises a corpus of international human rights law and jurisprudence. Of particular relevance are Articles 6, 7, and 14 ICCPR,⁷ its Second Optional Protocol,⁸ the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,⁹ the Secretary General's quinquennial reporting,¹⁰ the Secretary General's Question on the Death Penalty,¹¹ and the Human Rights Committee decisions.¹² Other relevant treaties include the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment¹³ and the Convention on the Rights of the Child.¹⁴
9. The Human Rights Committee in its General Comment on the Right to Life¹⁵ provides an interpretive lens on the death penalty. Concerning ICCPR Article 6(6), which states '[n]othing in this article shall be invoked to delay or to prevent the abolition of capital punishment,' it endorses the position that:

States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable [...] and necessary for the enhancement of human dignity and progressive development of human rights.¹⁶
10. The growing international consensus against capital punishment is reflected in the UN General Assembly's biennial resolution to impose a global moratorium on the use of the death penalty. The ninth and most recent iteration of the resolution was passed on 15 December 2022. A total of 125 votes were recorded in favour with 37 votes against and 22 abstentions. Equatorial Guinea has voted in favour in four of these resolutions, including the most recent one, and abstained in the 2007 and 2016 resolutions.¹⁷
11. Equatorial Guinea's voting record is also reflected in its absence as a signatory to the Joint Permanent Missions' most recent *note verbale* of dissociation, which records a formal objection to the Secretary General of the United Nations on the attempt to create a global moratorium on the death penalty.¹⁸ Both its favour of a global moratorium and absence from the *note verbale* signal its anti-death penalty position for which it should be commended.

B. Implementation of Recommendations from Cycle Three in 2019

12. Equatorial Guinea received 221 recommendations in the Third Cycle of which 202 were accepted and 19 were noted.¹⁹ A total of 26 recommendations focused on the death of which 24 were supported and 2 noted.²⁰ This was a positive step by the State indicating its commitment to abolish the death penalty from its domestic law.

Recommendations concerning Abolition

13. **Argentina** (para 122.56), **Cape Verde** (para 122.57), **France** (para 124.1), **Iceland** (para 122.58), **Italy** (para 122.59), **Mozambique** (para 122.54), **Paraguay** (para 124.2), **Portugal** (133.85), **Rwanda** (para 122.15), and **Turkey** (para 122.55) issued similar recommendations to “abolish the death penalty” with **Georgia** (para 122.14) and **Namibia** (para 122.13) also recommending a moratorium. With the exception of France and Paraguay, these recommendations were accepted.
14. We are pleased to note that these recommendations have been **partially implemented** with the State under Review taking concrete steps to ensure the punishment is removed from its domestic legal system.
15. In September 2022, Equatorial Guinea abolished the death penalty becoming the 25th African nation to end capital punishment. On 19 September 2022, Vice President Teodoro Nguema Obiang Mangue announced on his social media that Equatorial Guinea had abolished the death penalty, describing it as a historical moment. This was preceded by the signing of a new penal code, dated 17 August 2022, by President Teodoro Obiang Nguema Mbasogo which removed the punishment from the State’s statute books.²¹ However, the Military Code of Justice still retains the death penalty for military law crimes.
16. It is pertinent to note that whilst such recommendations are welcomed, it is crucial that they remain specific and measurable in order to assess the level of implementation. Broad recommendations, whilst easy to accept, lack any impetus to bring about real change.²² It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.²³
17. Moreover, it would prove more beneficial if recommending States make reference to the review criteria, which includes “human rights instruments to which a State is party”.²⁴ For example, citing Article 6 ICCPR, a treaty which Equatorial Guinea has ratified, would strengthen the recommendations concerned. This Article explicitly indicates to the abolition of the death penalty.

Recommendations concerning Equatorial Guinea’s Adoption of International Law

18. The majority of death penalty recommendations urged Equatorial Guinea to “ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty”. These were received from **Angola** (para 122.8.1), **Australia** (para 122.1), **Belgium** (para 122.11), **Benin** (para 122.12), **Brazil** (para 122.8.2), France, **Georgia** (para 122.14), **Germany** (para 122.9), **Montenegro** (para 122.8.4), **Mozambique** (para 122.4), **Namibia** (para 122.13), **Paraguay**, **Portugal**, **Rwanda** (para), **Slovenia** (para 122.8.5), **Spain** (para 123.4), **Timor-Leste** (para 122.5), **Togo** (para 122.8.3), **Ukraine** (para 122.6), and **Uruguay** (para 122.7). Equatorial Guinea accepted the recommendations.
19. These recommendations have **not been implemented** and the State has now shown any commitment to ratify the treaty. As Equatorial Guinea has abolished the death penalty from

its laws, we now urge the state to ratify the Second Optional Protocol to the ICCPR. This would signify and strengthen Equatorial Guinea's commitment to the abolition of the death penalty.

C. Further Points for Equatorial Guinea to Consider

Creation of an Independent National Human Rights Institution

20. Seven states recommended Equatorial Guinea to “establish an independent national human rights commission in accordance with the Paris Principles”. These included **Chile** (para 122.21), **Costa Rica** (para 122.23), **Georgia** (para 122.32), **Mexico** (para 122.26), **Portugal** (para 122.22), **Senegal** (para 122.24), **Spain** (para 122.27), and **Ukraine** (para 122.25). These were all supported.
21. **Chad** (para 122.30), **Djibouti** (para 122.31), **Togo** (para 122.28), **Tunisia** (para 122.29), and **Maldives** (para 122.33) on the other hand made reference to an already established NHRI, recommending Equatorial Guinea “strengthen” the NHRI, “take adequate measures to grant full independence”, and “ensure the NHRI functions in line with the Paris Principles”. These states were most likely referring to what is known as ‘the Office of the Ombudsman’. The Office serves as “the High Commissioner of the Chamber of Deputies and Senate and is tasked with protecting individual and collective rights vis-à-vis the public administration”.²⁵ These recommendations were all supported.
22. It is disappointing to note that all recommendations concerning an independent NHRI have **not been implemented**. Whilst Equatorial Guinea has established the Office of the Ombudsman, it does not satisfy the requirement of independence and pluralism as outlined in the Paris Principles. Pursuant to Article 123 of the Constitution, the Ombudsman is appointed by a Parliament and under the directive of the President of the Republic.
23. A future, fully independent, NHRI could advise the government on its international law commitments for example, to maintain abolition, provide public education on how capital punishment renders harmful effects upon society, and demonstrate its ineffectiveness as a penological policy on deterrence.

The Universal Periodic Review Recommendations and the Contribution to the Sustainable Development Goals

24. Equatorial Guinea should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government's commitment to promoting the Sustainable Development Goals.²⁶ The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.²⁷
25. SDG 16 aims to promote peaceful and inclusive societies, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Specifically, SDG target 16.1 aims to “significantly reduce all forms of violence and related death rates

everywhere,” and to further this, SDG 16.A.1 identifies the importance of relevant national institutions, for building capacity at all levels, to prevent violence and combat terrorism and crime.

26. The use of the death penalty does not signal legitimate strength in institutions, but renders counterproductive and inhumane consequences, including a brutalising effect upon society. This was affirmed in the Special Rapporteur’s report on ‘pay-back’ violence and killings.²⁸ The death penalty is contrary to strong institutional processes for the fostering of the human dignity of the people of Equatorial Guinea. The government has recognised this by abolishing the punishment from its laws and should therefore accept recommendations received for the ratification of the Second Optional Protocol to the ICCPR to highlight its commitment to achieving SDG 16.

D. Recommendations

We recommend that, before the next cycle of review, the government of Equatorial Guinea should:

- i. Adopt an implementation matrix for recommendations received during the fourth cycle of the UPR and effectively implement it.
- ii. Uphold and enforce its international obligations to safeguard the right to life, pursuant to Articles 6, 7 and 14 of the ICCPR.
- iii. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
- iv. Remove death penalty provisions from the Military Code of Justice to facilitate the complete abolition of the punishment.
- v. Affirm its commitment to SDG 16 on access to justice and strong institutions through its continued support at the next biennial vote on the UNGA Resolution on the moratorium on the use of the death penalty.
- vi. Accept UPR recommendations on the abolition of the death penalty, as also signalling Equatorial Guinea’s affirmation of commitments to SDG 16 on strong institutions.
- vii. Establish an independent National Human Rights Institution, in line with the Paris Principles, fully independent from the government.

¹ The optional protocols have not been included in the core treaty count. See <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=56&Lang=EN>.

² Randall Fegley, 'The U N Human Rights Commission: The Equatorial Guinea Case' [1981] 3(1) Human Rights Quarterly 34-47.

³ Amnesty International, *Global Report: Death Sentences and Executions 2014* (2015) 62.

⁴ *ibid.*

⁵ Statistics for 2023 are yet to be released at the time of submission. In 2022, 0 persons were recorded on death row by Amnesty International.

⁶ 'Equatorial Guinea Latest African Country to Abolish Death Penalty' (*Reuters*, 20 September 2002) <www.reuters.com/world/africa/equatorial-guinea-scrap-death-penalty-eight-years-after-last-execution-2022-09-20/>; Death Penalty Information Centre, 'Equatorial Guinea Becomes 25th African Country to Abolish Death Penalty' (*Death Penalty Information Centre*, 20 September 2022) <<https://deathpenaltyinfo.org/news/equatorial-guinea-becomes-25th-african-country-to-abolish-death-penalty>> accessed 26 March 2024.

⁷ International Covenant on Civil and Political Rights (1976) 999 UNTS 171, Article 6 (right to life); Article 7 (the prohibition against torture and inhuman or degrading treatment or punishment); and Article 14 (the right to a fair trial and the principle of equality of arms).

⁸ The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, GA Res. 44/128, December 15, 1989.

⁹ Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council Resolution, 1984/50; Additions to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty as Agreed by the Economic and Social Council Resolution 1989/64; and the Strengthening of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty as Agreed by the Economic Council Resolution 1996/15.

¹⁰ See eg, ECOSOC Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty Report of the Secretary-General UN Doc E/2015/49 (13 April 2015).

¹¹ See eg, Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.

¹² For example, *Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).

¹³ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 10 December 1984.

¹⁴ Article 37(a) Convention on the Rights of the Child, G.A. Res 44/25, 20 November 1989.

¹⁵ UN Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018.

¹⁶ *ibid* para 50.

¹⁷ Resolution on the Moratorium on the use of the death penalty, UNGA Res. 62/149, 18 December 2007 *adopted by 104 votes to 54, with 29 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 63/168 18 December 2008, *adopted by 106 votes to 46, with 34 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 65/206 21 December 2010 *adopted by 109 votes to 41, with 35 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 67/176 20 December 2012, *adopted by 111 votes to 41, with 34 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 69/186 18 December 2014 *adopted by 117 votes to 37, with 34 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 71/187, 19 December 2016 *adopted by 117 votes to 40, with 31 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 73/175, 17 December 2018 *adopted by 121 votes to 35, with 32 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 75/183, 16 December 2020 *adopted by 123 votes to 38, with 24 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 77/222, 15 December 2022 *adopted by 125 votes to 37, with 22 abstentions*.

¹⁸ UNGA, ‘Note verbale dated 13 September 2019 from the Permanent Mission of Egypt to the United Nations addressed to the Secretary-General’ (16 September 2019) UN Doc A/73/1004.

¹⁹ UNHRC, ‘Report of the Human Rights Council on its forty second session’ (13 April 2021) UN Doc A/HRC/42/2, paras 772-773. See also UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Equatorial Guinea- Addendum’ (30 August 2019) UN Doc A/HRC/42/13/Add.1.

²⁰ UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Equatorial Guinea’ (30 August 2019) UN Doc A/HRC/42/13.

²¹ ‘Equatorial Guinea Latest African Country to Abolish Death Penalty’ (*Reuters*, 20 September 2002) <www.reuters.com/world/africa/equatorial-guinea-scraps-death-penalty-eight-years-after-last-execution-2022-09-20/> ; Death Penalty Information Centre, ‘Equatorial Guinea Becomes 25th African Country to Abolish Death Penalty’ (*Death Penalty Information Centre*, 20 September 2022) <<https://deathpenaltyinfo.org/news/equatorial-guinea-becomes-25th-african-country-to-abolish-death-penalty>> accessed 26 March 2024.

²² Amna Nazir, ‘A UPR Perspective on Capital Punishment and the Kingdom of Saudi Arabia’ (2022) 19 *Muslim World Journal of Human Rights* 77-94.

²³ See UPRinfo, ‘For impact on the ground the UPR needs SMART recommendations’ <<https://www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations>> (21 October 2015).

²⁴ UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 1(c).

²⁵ UNHRC, ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* Equatorial Guinea’ (25 February 2019) UN Doc A/HRC/WG.6/33/GNQ/1, para 12.

²⁶ See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>.

²⁷ The first two cycles of the UPR were reviewed under a data mining procedure and of the circa. 50,000 recommendations, it was possible to link more than 50% of those to SDG targets, see, The Danish Institute for Human Rights, *Linking the Universal Periodic Review to the SDGs*, p. 2.

²⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Papua New Guinea (3 to 14 March 2014), A/HRC/29/37/Add.1, 30 March 2015, para. 96, “...several interlocutors shared the opinion that the death penalty might actually lead to further killings... given the payback

culture. While the Special Rapporteur condemns the existence of the payback culture, he acknowledges that payback-related killings might increase if the death penalty is carried out.