

THE UPR PROJECT AT BCU



Submitted by:

The UPR Project at BCU
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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. Guyana is party to eight 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 Guyana on this key issue, implementation of which would also see the State 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 for the abolition of the punishment. As an initial step, we call for the suspension of the capital judicial process through the initiation of an official moratorium on the death penalty. This will enable the government to make a positive commitment towards domestic *de jure* abolition.
4. In this submission, we encourage Guyana to commit to improving its human rights protection and promotion by engaging meaningfully with the UPR. This includes giving full and practical consideration to all recommendations made by Member States, effectively implementing the recommendations Guyana accepts, and actively engaging with civil society throughout the process

CAPITAL PUNISHMENT

A. Guyana and International Law on the Death Penalty

5. The inclusion of the death penalty in Guyana's domestic laws is based on its presence in Article 138 of the Guyanese Constitution which provides that: "No person shall be deprived of his or her life intentionally save in execution of the sentence of a court in respect of an offence under the law of Guyana of which he or she has been convicted."² The Criminal Law (Offences) Act 2010,³ Narcotic Drugs and Psychotropic Substances (Control) Act 1998,⁴ and Defence Act 1966⁵ state that a death sentence can be handed down for multiple offences, including conduct which contravenes the evolving jurisprudence on the 'most serious crimes' under international law.⁶
6. Guyana eliminated the use of the mandatory death penalty in 2010, which is a positive step towards the restriction and ultimate abolition of capital punishment. Despite Guyana's *de facto* moratorium since 1997, it has continued to hand down death sentences. At least 7 death sentences were reported for 2023.⁷

7. In 2023, members of the Guyana Defence Force (GDF) sought to challenge the constitutionality of the death penalty. The case involved three former GDF Coast Guard members who, in 2013, were found guilty of robbery and murder and subsequently sentenced to death. Upon appeal, the Court declined to strike down the law as unconstitutional but overturned the death sentences and substituted them with life imprisonment.⁸
8. As Guyana's court of last resort, the Caribbean Court of Justice denied special leave to challenge the constitutionality of the death penalty. It strongly hinted, however, that the death penalty was not a "saved law" as the Court of Appeal had found.⁹

International Law Promoting the Restriction and Abolition of the Death Penalty

9. 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,¹⁰ its Second Optional Protocol,¹¹ the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,¹² the Secretary General's quinquennial reporting,¹³ the Secretary General's Question on the Death Penalty,¹⁴ and the Human Rights Committee decisions.¹⁵ Other relevant treaties include the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment¹⁶ and the Convention on the Rights of the Child.¹⁷
10. The General Comment on the Right to Life¹⁸ provides an interpretive lens on the death penalty and 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:

reaffirms 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.¹⁹
11. 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. Guyana has voted 'yes' in all such resolutions until 2018 where it changed its voting pattern and has consistently been abstaining in these resolutions (2018; 2020; 2022).²⁰
12. Guyana'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.²¹ The absence from the *note verbale* provides the platform for Guyana to signal its support for a global moratorium in the forthcoming resolution.

B. Implementation of Recommendations from Cycle Three in 2020

13. Guyana received 199 recommendations in the Third Cycle of which 140 were accepted and 59 were noted.²² A total of 18 recommendations focused on the death penalty, all of which were noted.²³

Recommendations concerning Guyana's Adoption of International Law

14. **Benin** (para 100.2), **Ukraine** (para 100.21.1), **Uruguay** (para 100.21.2), **Italy** (para 100.21.3), **Paraguay** (para 100.21.4), **Spain** (para 100.21.5), **Nepal** (para 100.22), **Australia** (para 100.80), **France** (para 100.81), and **Ireland** (para 100.84) recommended Guyana to ratify the Second Optional Protocol to the ICCPR. These were all noted and Guyana has not indicated any change to its position.

Recommendations concerning Abolition

15. A number of States recommended Guyana “abolish the death penalty.” This included **Costa Rica** (para 100.79.1), **Honduras** (para 100.79.2), **Panama** (para 100.79.3), **Portugal** (para 100.79.4), **Fiji** (para 100.79.5), **Iceland** (para 100.79.6) and **Ireland** (para 100.79.7), with **Australia** (para 100.80), **France** (para 100.81), and **Italy** (para 100.82) also recommending the State establish a moratorium on executions. Portugal and Paraguay also recommended Guyana amend its Constitution accordingly. Guyana noted all of these recommendations and continues to support the retention of capital punishment.
16. 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.²⁴ It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.²⁵ This would help Guyana initiate an incremental approach to reducing the scope of the punishment and map out the process for abolition.
17. Additionally, 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.”²⁶ For example reference to Article 6 and/or 14 ICCPR, a treaty the State under Review has ratified, would strengthen any death penalty recommendations.
18. In response to the death penalty recommendations, and in its National Report, Guyana emphasised that, in reality, courts are loathed to impose the death penalty and the state is even less willing to carry out executions. It cited the absence of any execution since 1997

and a “strict moratorium on the application of the death penalty” as evidence, and that “[c]onsultations and Cabinet deliberations are ongoing on this matter.”²⁷

19. The government further stated that it tasked a Parliamentary Select Committee to engage with national stakeholders on the issue and confirmed that

this issue remains one of particular concern for the majority of Guyanese. As a result, the Government has indicated willingness to have a referendum or other consultative processes to ascertain the will of the Guyanese people on this issue. This process remains on the Government’s agenda.²⁸

20. Guyana has yet to engage the public in meaningful discussion on the topic, causing efforts to move toward abolition to stall. We urge the government of Guyana to provide the platform for a comprehensive and inclusive public debate on the future of the death penalty in the country, allowing a group of people that is representative of all Guyanese citizens to provide their opinions.

21. Nevertheless, we welcome the establishment of the Constitutional Reform Commission (CRC) in April 2024, by virtue of the recently enacted Constitution Reform Commission Act 2022.²⁹ The CRC is tasked with work to reshape and, importantly, strengthen the country’s Constitution in order to “provide for the current and future rights, duties, liabilities, and obligations of the Guyanese people.”³⁰ We therefore call upon the CRC to work towards abolition of the death penalty by reviewing and removing death penalty provisions in the Guyanese Constitution, namely Article 138.

22. No death sentences were reported in 2020,³¹ 4 in 2021,³² 4 in 2022,³³ and 7 in 2023.³⁴ Up to date figures for 2024 are yet to be released at the time of submission. At the end of 2023, at least 24 people were under sentence of death.³⁵ As long as the death penalty remains a lawful punishment, the possibility of an execution is a reality for persons on death row.

C. Further Points for Guyana to Consider

The Role of the National Human Rights Institution

23. Guyana received 11 recommendations to establish its National Human Rights Commission in line with the Paris Principles. Only **Togo** (para 100.32: “appoint, within a given period of time, a President of the National Human Rights Commission in accordance with the...Paris Principles”) and **Portugal’s** (para 100.30: “finalize the process of establishing the Human Rights Commission and allocate adequate financial and human resources allowing it to carry out its mandate”) recommendations received state support.

24. The UPR delegation indicated that “the matter remained a priority of the Government and that there was a commitment to address it through a consultative process in the context of

the implementation of the Constitutional Reform Consultative Commission Act once it had become law.”³⁶

25. The Constitution Reform Commission Act was passed on 7 November 2022 with the CRC established in April 2024. Furthermore, Articles 212(G)-(P) of the Guyanese Constitution mandate the establishment of a Guyanese Human Rights Commission (GHRC) specifying its terms of reference, composition and functions. Unfortunately, despite the existence of a legal framework for an NHRI in Guyana, the GHRC has not yet been operationalised.
26. The GHRC, once established, could help address Guyana’s failure to domesticate ratified treaties and to submit its periodic and other state reports to the relevant treaty bodies on time. Furthermore, in the context of capital punishment, the GHRC (together with the Constitutional Reform Commission) could undertake important work on pushing for the abolition of the death penalty from Guyana’s legal system. The GHRC could advise the government on the abolition process, provide public education on how capital punishment renders harmful effects upon society, and demonstrate its ineffectiveness as a penological policy on deterrence.
27. We call upon the government to establish the GHRC without delay, ensuring it complies with the Paris Principles and to provide it with a mandate to advise on legislative amendment for abolition.

Adopting the UPR Recommendations to Enable the People of Guyana to Benefit from Advances in Effective Penology

28. The right to benefit from scientific advancement should also apply to the progress in social science research on the death penalty. The Universal Declaration of Human Rights, Article 27, states, “[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits,”³⁷ and the ICESCR article 15 (1)(b) recognises the right of everyone, “[t]o enjoy the benefits of scientific progress and its applications.”
29. Roger Hood and Carolyn Hoyle have produced the leading social science and criminological investigations into the death penalty worldwide and have concluded:

[t]hose who favour capital punishment ‘in principle’ have been faced with yet more convincing evidence of the abuses, discrimination, mistakes, and inhumanity that appear inevitably to accompany it in practice. Some of them have set out on the quest to find the key to a ‘perfect’ system in which no mistakes or injustices will occur. In our view, this quest is chimerical.³⁸
30. Social science investigations now demonstrate that reflecting appropriate government means that whilst capital punishment could be created within a legitimate parliamentary process,³⁹ it is now clear that the application of the death penalty renders an illegitimate

and inhumane outcome.⁴⁰ Abolition in Guyana would enable the people of the country to benefit from the advancement of the leading social scientific research on punishment policies.

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

31. Guyana should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government's commitment to promoting the Sustainable Development Goals.⁴¹ The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.⁴²
32. SDG 16 provides for "Peace, Justice and Strong Institutions" but the application of the death penalty is inconsistent with this goal. Specifically, SDG 16.1 aims to reduce death rates, promote equal access to justice, and "protect fundamental freedoms," 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.
33. 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.⁴³ The death penalty is antithetical to strong institutional processes for the fostering of the human dignity of the people of Guyana.

D. Recommendations

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

- i. Uphold and enforce its international obligations to safeguard the right to life, pursuant to Articles 6, 7 and 14 of the ICCPR.
- ii. Whilst it retains the death penalty, ensure it complies with the 'most serious crimes' principle, under Article 6 ICCPR, restricting punishment to crimes of intentional killing only.
- iii. Ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
- iv. Amend Article 138 of the Guyanese Constitution to remove the provision of the death penalty through the newly enacted Constitutional Reform Commission.
- v. Develop, in consultation with civil society and relevant regional bodies, a comprehensive action plan to formalise its moratorium, with a view to abolition, within the next four years.
- vi. Annually publish data on the use of the death penalty. This should include the number of death sentences and executions, the nature of the offences and the reasoning behind convictions, identity of executed prisoners, and the number of death sentences commuted and pardoned.

- vii. Provide the platform for a comprehensive and inclusive public debate on the future of the death penalty in Guyana, allowing a group of people that is representative of all Guyanese citizens to share their opinions.
- viii. Affirm its commitment to SDG 16 on access to justice and strong institutions through its support at the next biennial vote on the UNGA Resolution on the moratorium on the use of the death penalty.
- ix. Accept UPR recommendations on the abolition of the death penalty, as also signalling Guyana's affirmation of commitments to SDG 16 on strong institutions.
- x. Establish its National Human Rights Commission: (a) ensuring it complies fully with the Paris Principles and (b) provide it with a mandate on legislative abolition of the death penalty.
- xi. Ensure its prisons comply with the United Nations' Standard Minimum Rules for the Treatment of Prisoners.

¹ See <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=73&Lang=EN>.

² The Constitution of Guyana, art 138. See also arts 40, 155-156, 188-190.

³ See Criminal Law (Offences) Act of Guyana 1998, as updated through to 2010.

⁴ Narcotic Drugs and Psychotropic Substances (Control) Act of Guyana, sec. 6.

⁵ Defence Act of Guyana of 1966, arts 33(1), 34(1), 41(1), 42(i), 76(3)(a).

⁶ International Covenant on Civil and Political Rights (1976) 999 UNTS 171, Article 6(2).

⁷ Amnesty International, *Global Report: Death Sentences and Executions 2021* (2022) 36.

⁸ Death Penalty Project Press Release, 'Guyana's Court of Appeal Refuses to Declare the Death Penalty Unconstitutional' (*Doughty Street Chambers*, 22 December 2022) <www.doughtystreet.co.uk/sites/default/files/media/document/Press%20Release%20Guyana%20judgment_Final.pdf>.

⁹ 'CCJ Denies Special Leave Application for Guyana Defence Force Members' (*Guardian*, 28 July 2023) <www.guardian.co.tt/news/ccj-denies-special-leave-application-for-guyana-defence-force-members-6.2.1763096.9a09d1d86a>.

¹⁰ 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).

¹¹ 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.

¹² 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.

¹³ 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).

¹⁴ See eg, Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.

¹⁵ For example, *Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).

¹⁶ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 10 December 1984.

¹⁷ Article 37(a) Convention on the Rights of the Child, G.A. Res 44/25, 20 November 1989.

¹⁸ 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.

¹⁹ *ibid* para 50.

²⁰ 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.

²¹ 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.

²² UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Guyana – Addendum’ (30 September 2020) UN Doc A/HRC/44/16/Add.1, para 8.

²³ See UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Guyana’ (20 March 2020) UN Doc A/HRC/44/16.

²⁴ Amna Nazir, ‘The Universal Periodic Review and the Death Penalty: A Case Study of Pakistan’ (2020) 4(1) RSIL Law Review 126, 153.

²⁵ See UPRinfo, ‘For impact on the ground the UPR needs SMART recommendations’ <www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations> (21 October 2015).

²⁶ UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 1(c).

²⁷ UNHRC, ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Guyana’ (10 January 2020) UN Doc A/HRC/WG.6/35/GUY/1, para 111. See also UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Guyana’ (20 March 2020) UN Doc A/HRC/44/16, para 14; UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Guyana – Addendum’ (30 September 2020) UN Doc A/HRC/44/16/Add.1, p. 5.

²⁸ UNHRC, ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Guyana’ (10 January 2020) UN Doc A/HRC/WG.6/35/GUY/1, para 108.

²⁹ Clestine Juan, ‘Constitutional Reform Vital for Guyana’s Future’ (*Guyana Chronicle*, 4 April 2024) <<https://guyanachronicle.com/2024/04/04/constitutional-reform-vital-for-guyanas-future/>>.

³⁰ Guyana Constitution Reform Commission Act 2022 (rev. 2024), Article 7 available at <www.parliament.gov.gy/new2/documents/acts/23498-act_no._16_of_2022.pdf>.

³¹ Amnesty International, *Global Report: Death Sentences and Executions 2018* (2019) 11.

³² Amnesty International, *Global Report: Death Sentences and Executions 2019* (2020) 11.

³³ Amnesty International, *Global Report: Death Sentences and Executions 2020* (2021) 12.

³⁴ Amnesty International, *Global Report: Death Sentences and Executions 2021* (2022) 12.

³⁵ *ibid* 13.

³⁶ UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Guyana’ (20 March 2020) UN Doc A/HRC/44/16, para 62.

³⁷ It is further recalled that the Human Rights Council determined that the basis of the Universal Periodic Review includes consideration of the Universal Declaration of Human Rights, see, Institution-building of the United Nations Human Rights Council, A/HRC/RES/5/1 18 June 2007.

³⁸ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 7-8.

³⁹ John Rawls stated, “[a]t some point, the injustice of the outcomes of a legitimate democratic procedure corrupts its legitimacy,” in, *Political Liberalism* (Columbia University Press 2005) 248.

⁴⁰ Austin Sarat stated, “law cannot work its lethal will and ally itself with the killing state while remaining aloof and unstained by the deeds themselves,” in, *When the State Kills: Capital Punishment and the American Condition* (Princeton University Press 2001) 21.

⁴¹ See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>.

⁴² 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 SGGs, p. 2.

⁴³ 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.