



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. Iraq 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 cruel and inhuman punishment, this Stakeholder Report focuses upon capital punishment.
2. We make recommendations to the Government of Iraq on this key issue, implementation of which would also see Iraq 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 Iraq 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 Iraq accepts, and actively engaging with civil society throughout the process.

CAPITAL PUNISHMENT

A. Iraq and International Law on the Death Penalty

5. The inclusion of the death penalty in Iraq's domestic laws is based on its presence in Article 15 of the Iraqi Constitution 2005 which provides that: "Every individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority."²
6. The Iraq Penal Code 1969, the Narcotics Act of 1965, the Anti-Terrorism Law 2005, and the Military Penal Code 2007 are some of the laws in place which 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.³ These include capital offences that do not result in death, including drug trafficking, kidnapping,

treason, and offences against transportation, infrastructure and telecommunications.⁴ Executions are carried out by hanging.⁵

7. Iraq has continued to hand down death sentences and impose executions at an alarming rate and is consistently amongst the top ten executioners globally and top five regionally. At least 138 death sentences and 16 executions were reported for 2023.⁶ Up to date figures for 2024 are yet to be released at the time of submission.

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 General Comment on the Right to Life¹⁵ 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.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. Iraq has voted against all such resolutions.¹⁷

11. Iraq's pro death penalty stance is solidified in its presence 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 In fact, Iraq has been a signatory to all such *note verbales* to date.

B. Implementation of Recommendations from Cycle Three in 2019

12. Iraq received 298 recommendations in the Third Cycle of which 250 were accepted and 48 were noted.¹⁹ A total of 29 recommendations focused on the death penalty none of which enjoyed State support, except one.²⁰

Recommendations concerning Adoption of International Law

13. **Togo** (para 147.25), **Ukraine** (para 147.25), **Uruguay** (para 147.25), **Mongolia** (para 147.27), **Poland** (para 147.126), **Croatia** (para 147.136), **Ireland** (para 147.146), and **Estonia** (para 147.149) recommended Iraq ratify the Second Optional Protocol to the ICCPR. Iraq noted these recommendations and has not shown any commitment to ratify the treaty.

Recommendations concerning Implementation of a Moratorium

14. Several countries recommended Iraq introduce a moratorium on the death penalty with a view to abolition; these formed the bulk of death penalty recommendations. This included **Portugal** (para 147.122), **Norway** (para 147.125), **Moldova** (para 147.125), **France** (para 147.125), **Albania** (para 147.125), **Australia** (para 147.125), **Chile** (para 147.125), **Poland** (para 147.126), **Slovenia** (para 147.127), **Sweden** (para 147.131), **Belgium** (para 147.135), **Croatia** (para 147.136), **Denmark** (para 147.139), **Latvia** (para 147.141), **Greece** (para 147.143), **Iceland** (para 147.144), **Ireland** (para 147.146), **Italy** (para 147.147), **Lichtenstein** (para 147.150), and **Mexico** (para 147.153). These were all noted and Iraq has not indicated any change to its position.
15. Whilst recommendations to “abolish the death penalty” or “establish a moratorium on the death penalty” are welcome, 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.²¹ It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.²² This would help Iraq initiate an incremental approach to reducing the scope of the punishment and map out the process for abolition.
16. **Cyprus** (para 147.137), and **Germany** (para 147.142) recommended Iraq reduce the number of capital crimes with **Spain** (para 147.128) and **Switzerland** (para 147.132) specifying that the death penalty should be restricted to ‘the most serious crimes.’ Switzerland’s recommendation was the only death penalty recommendation supported by the State, most likely because it did not make any direct reference to abolition and also mentioned “reform[ing] anti- terrorist legislation so as to guarantee a fair trial for the accused.”
17. It is disappointing to note that since its last UPR, Iraq has continued to hand down death sentences and impose executions at a steady rate. A total of 27 death sentences were

recorded in 2020,²³ 91 in 2021,²⁴ 41 in 2022²⁵ and 138 in 2023,²⁶ an alarming 237% increase. The number of executions were 45 in 2020,²⁷ 17 in 2021,²⁸ 11 in 2022,²⁹ and 16 in 2023.³⁰

18. Up to 150 individuals face imminent execution following the reported ratification of their death sentences by President Abdul Latif Rashid. On 22 October 2023, the Federal Appeals Court requested the ratification of death sentences for 51 individuals from the Presidency's Office. It is believed that over 8,000 prisoners are on death row in Iraq.³¹
19. We are deeply concerned that state authorities have resumed mass executions. On 24 December 2023, 13 Iraqi prisoners in Nasiriyah Central Prison, were executed without prior notice.³² This was the first mass execution recorded in Iraq since November 2020 when 21 people were executed.³³ A further 11 prisoners were mass executed on 22 April 2024 under broad terrorism charges.³⁴
20. We call upon the government of Iraq to immediately halt all executions and ensure the state complies with its commitments under international human rights law, namely its obligations under the ICCPR and CAT.

C. Further Points for Iraq to Consider

Secrecy of Capital Punishment in Iraq

21. Iraq's lack of transparency regarding its use of the death penalty continues to impede an accurate assessment of the use of the punishment. The state continues to hide the full extent of its use of the death penalty by restricting access to death penalty-related information. Hence, secretive state practices make it challenging to verify reports and assess the true extent of state sanctioned killings in the country.
22. Furthermore, people on death row in Iraq are not given advance notice of their execution which is a violation of the Convention Against Torture and the prohibition of cruel, inhuman or degrading treatment as set out in Article 7 ICCPR.³⁵ The secrecy surrounding the execution date also extends to the person's family, as their families are usually notified about the execution only after it has taken place.³⁶ The Committee on Torture has confirmed that "refusing to provide convicted persons and family members advance notice of the date and time of the execution is a clear human rights violation,"³⁷ and the UN Secretary General's 2021 Report on the Question of the Death Penalty also underlined the importance of transparency within capital punishment.³⁸ Whilst Iraq retains the death penalty, this practice must be halted and people on death row, as well as their families and legal teams, must be provided with timely notice of an execution date.
23. Transparency is a prerequisite for assessing whether the death penalty is being applied in compliance with international human rights law. We therefore urge the state to publish, on

an annual basis, information on the use of the death penalty, including the number of death sentences, executions, and persons under sentence of death, for each category of offence for which the death penalty is authorised, as well as the number of death sentences commuted and pardoned.

Role of the National Human Rights Institution

24. According to Article 102 of the Constitution, the Iraqi High Commission for Human Rights (IHCHR) is considered an independent institution under the oversight of the Council of Representatives, with its functions to be regulated by the law.³⁹ The Council formally established the IHCHR by virtue of Law No. 53 of 2008.⁴⁰

25. The IHCHR describes its mandate as to:

serve as Iraq’s national human rights institution working towards the promotion and protection of human rights of all Iraqis...The IHCHR has been established to act as the human rights watchdog on human rights in the country. Furthermore, the IHCHR monitors the international obligation[s] of Iraq regarding upholding and enforcing human rights law in the country.⁴¹

26. In the context of capital punishment, the IHCHR could undertake important work on pushing for the abolition of the death penalty from the country’s legal system, starting by limiting the types of crimes that attract the punishment. The IHCHR 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. We call upon the government to provide the IHCHR with a mandate to consider the question of the abolition of the death penalty.

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

27. 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,”⁴² and the ICESCR article 15 (1)(b) recognises the right of everyone, “[t]o enjoy the benefits of scientific progress and its applications.”

28. 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.⁴³

29. Social science investigations now demonstrate that reflecting appropriate government means that whilst capital punishment could be created within a legitimate parliamentary process,⁴⁴ it is now clear that the application of the death penalty renders an illegitimate and inhumane outcome.⁴⁵ Abolition in Iraq 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

30. Iraq should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government’s commitment to promoting the Sustainable Development Goals.⁴⁶ The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.⁴⁷

31. 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.

32. 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.⁴⁸ The death penalty is antithetical to strong institutional processes for the fostering of the human dignity of the people of Iraq.

D. Recommendations

We recommend that, before the next cycle of review, the government of Iraq 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. Develop, in consultation with civil society and relevant regional bodies, a comprehensive action plan to work towards an official moratorium, with a view to abolition, within the next four years.

- v. 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.
- vi. Provide the platform for a comprehensive and inclusive public debate on the future of the death penalty in Iraq, allowing a group of people that is representative of all Iraqi citizens to share their opinions.
- vii. 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.
- viii. Accept UPR recommendations on the abolition of the death penalty, as also signalling Iraq's affirmation of commitments to SDG 16 on strong institutions.
- ix. Provide its NHRI (Iraqi High Commission for Human Rights) with a mandate on legislative abolition of the death penalty.

¹ See <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=82&Lang=en>.

² The Constitution of Iraq 2005, art 15. Available at <https://www.constituteproject.org/constitution/Iraq_2005>.

³ 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.

⁴ Cornell Center on the Death Penalty Worldwide, 'Iraq' <<https://deathpenaltyworldwide.org/database/#/results/country?id=34>> accessed 1 May 204.

⁵ Amnesty International, *Global Report: Death Sentences and Executions 2023* (2024) 10.

⁶ *ibid* 9, 12.

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 Working Group on the Universal Periodic Review: Iraq - Addendum’ (26 December 2019) UN Doc A/HRC/43/14/Add.1, paras 1-2.

²⁰ See UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Iraq’ (20 December 2019) UN Doc A/HRC/43/14.

²¹ Amna Nazir, ‘A UPR Perspective on Capital Punishment and the Kingdom of Saudi Arabia’ (2022) 19 *Muslim World Journal of Human Rights* 77-94.

²² 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).

²³ Amnesty International, *Global Report: Death Sentences and Executions 2020* (2021) 12.

²⁴ Amnesty International, *Global Report: Death Sentences and Executions 2021* (2022) 12.

²⁵ Amnesty International, *Global Report: Death Sentences and Executions 2022* (2023) 12.

²⁶ Amnesty International, *Global Report: Death Sentences and Executions 2023* (2024) 12.

²⁷ Amnesty International, *Global Report: Death Sentences and Executions 2020* (2021) 10.

²⁸ Amnesty International, *Global Report: Death Sentences and Executions 2021* (2022) 10.

²⁹ Amnesty International, *Global Report: Death Sentences and Executions 2022* (2023) 10.

³⁰ Amnesty International, *Global Report: Death Sentences and Executions 2023* (2024) 9.

³¹ ‘Iraq: At least 13 people executed amid alarming lack of transparency’ (*Amnesty*, 24 April 2024) <www.amnesty.org/en/latest/news/2024/04/iraq-at-least-13-people-executed-amid-alarming-lack-of-transparency/>.

³² Astha Rajvanshi, ‘13 Men Suddenly Executed in Iraq as the Country Resumes Mass Executions’ (*TIME*, 26 January 2024) <<https://time.com/6589057/iraq-mass-executions-capital-punishment/>>.

³³ ‘Deeply troubling reports of 21 executions in Iraq yesterday – Bachelet’ (*OHCHR*, 17 November 2020) <www.ohchr.org/en/press-releases/2020/11/deeply-troubling-reports-21-executions-iraq-yesterday-bachelet>.

³⁴ ‘Iraq hangs 11 convicted of ‘terrorism’: security, health sources’ (*New Arab*, 24 April 2024) <www.newarab.com/news/iraq-hangs-11-convicted-terrorism-sources>.

³⁵ “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

³⁶ ‘Iraq: At least 13 people executed amid alarming lack of transparency’ (*Amnesty*, 24 April 2024) <www.amnesty.org/en/latest/news/2024/04/iraq-at-least-13-people-executed-amid-alarming-lack-of-transparency/>.

³⁷ See eg, UN Committee Against Torture, ‘Concluding Observations on the Second Periodic Report of Japan’ (28 June 2013) CAT/C/JPN/CO/2.

³⁸ Report of the Secretary General, Question of the Death Penalty (15 September 2021) UN Doc A/HRC/48/29. The report itself was focused upon the requirement for transparency within the death penalty.

³⁹ Article 102: The High Commission for Human Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law.

⁴⁰ Law No. 53 of 2008 available at <<https://www.ihchr.iq/upload/upfile/en/7.pdf>>.

⁴¹ Iraqi High Commission for Human Rights, ‘About Us’ <<https://www.ihchr.iq/index.php?name=Pages&op=page&pid=74>>.

⁴² 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.

⁴³ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 7-8.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>.

⁴⁷ 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.

⁴⁸ 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.