



# THE UPR PROJECT AT BCU

## **Submitted by:**

The UPR Project at BCU  
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Birmingham City University

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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](http://www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu)

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## INTRODUCTION

1. Qatar is party to seven of the nine core international human rights treaties for which it should be commended.<sup>1</sup> 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 Qatar on this key issue, implementation of which would also see Qatar 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 Qatar 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 Qatar accepts, and actively engaging with civil society throughout the process.

## CAPITAL PUNISHMENT

### **A. Qatar and International Law on the Death Penalty**

5. The death penalty remains a legal punishment under Qatar's legislative framework. Qatar is a constitutional monarchy and the Sharia acts as a primary source of legislation.<sup>2</sup> The Constitution of Qatar (2004) does not guarantee the right to life or make direct reference to the use of the death penalty. The closest reference to can be found in Article 36: "Personal freedom shall be guaranteed...and no person may be subjected to torture, or any degrading treatment; and torture shall be considered a crime punishable by law" and Article 40: "No crime and no punishment save as prescribed by the law and no penalty save on the acts committed subsequent to the enforcement of that law; and punishment is personal."<sup>3</sup>
6. The Qatari Penal Code, contained in Law No. 11 of 2004, as amended, provides the death penalty for a range of offences including terrorism-related offences,<sup>4</sup> repeat drug

trafficking offences, treason,<sup>5</sup> espionage,<sup>6</sup> murder,<sup>7</sup> abduction leading to death,<sup>8</sup> rape,<sup>9</sup> incest,<sup>10</sup> and giving false witness with the consequence of inflicting capital punishment on the accused.<sup>11</sup> The penal code also provides the death penalty for a certain category of crimes under Islamic law known as *hudud* offences which include adultery and apostasy. Death sentences are to be executed by hanging or firing squad.<sup>12</sup>

7. Persons who were under the age of 18 at the time of the offense, pregnant women, and people with severe psycho-social disabilities are exempt from the death penalty.<sup>13</sup> For persons with intellectual disabilities, “‘mental defect’ resulting in partial incapacity is an extenuating excuse, while total incapacity precludes criminal responsibility.”<sup>14</sup>

#### *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,<sup>15</sup> its Second Optional Protocol,<sup>16</sup> the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,<sup>17</sup> the Secretary General’s quinquennial reporting,<sup>18</sup> the Secretary General’s Question on the Death Penalty,<sup>19</sup> and the Human Rights Committee decisions.<sup>20</sup> Other relevant treaties include the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment<sup>21</sup> and the Convention on the Rights of the Child.<sup>22</sup>
9. The General Comment on the Right to Life<sup>23</sup> 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.<sup>24</sup>
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. Qatar has voted against all such resolutions.<sup>25</sup>
11. Qatar’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.<sup>26</sup> In fact, Qatar has been a signatory to all such *note verbales* to date.

## **B. Implementation of Recommendations from Cycle Three in 2019**

12. Qatar received 270 recommendations in the Third Cycle of which 178 were accepted and 92 were noted.<sup>27</sup> A total of 10 recommendations focused on the death penalty none of which enjoyed State support.<sup>28</sup>

### *Recommendations concerning Abolition*

13. **Ireland** and **France** (para 134.87) recommended Qatar “abolish the death penalty” with **Spain** (para 148.94) similarly recommending it “implement measures to achieve the definitive abolition of the death penalty”. **Cyprus** (para 134.97) further recommended that the State “limit capital crimes with the aim of completely and permanently abolishing the death penalty”. These were all noted and Qatar has not indicated any change to its position.
14. It is also important to note that 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.<sup>29</sup> It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.<sup>30</sup> This would help Qatar initiate an incremental approach to reducing the scope of the punishment and map out the process for abolition.

### *Recommendations concerning Implementation of a Moratorium*

15. **Australia** (para 134.95), **Ireland** (para 134.88), **Italy** (para 134.89), **Lichtenstein** (para 134.27), **Portugal** (para 134.91), and **Rwanda** (para 134.92) recommended Qatar “establish a formal moratorium on the use of the death penalty” with a view to abolition, Australia, Ireland, Lichtenstein also recommended Qatar “ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty”. These were all noted and Qatar has not indicated any change to its position.
16. Since its last UPR, at least 2 death sentences were recorded in 2019,<sup>31</sup> 4 in 2020,<sup>32</sup> and 0 in 2021<sup>33</sup> and 2022<sup>34</sup>. Figures for 2023 are yet to be released at the time of submission.
17. It is disappointing to note that, in 2020, after a 17-year hiatus Qatar resumed the application of the death penalty and carried out its first execution since 2003.<sup>35</sup> There have been no known executions since.
18. We welcome the news that, in December 2023, Qatar commuted the death sentences of eight former Indian navy officers for alleged spying for Israel<sup>36</sup> and call upon the government to refrain from issuing further death sentences in contravention to

international law. We recommend the government to amend its death penalty laws and harmonise them with international human rights law as a matter of priority.

### **C. Further Points for Qatar to Consider**

#### *The Role of the National Human Rights Institution*

19. The National Human Rights Committee of Qatar (NHRC) was established by Sovereign Decree No. 38 of 2002 as an independent national body for the promotion and protection of human rights. It was later re-organised in 2010 according to Decree No.17 of 2010 issued by the Deputy Emir of Qatar.<sup>37</sup> Its first and foremost objective is to:

propose necessary means to promote and pursue the objectives stipulated by international conventions and instruments on human rights, to which the State of Qatar has become a party, and to recommend on the State's accession to other human rights conventions and instruments.<sup>38</sup>

20. In the context of capital punishment, Qatar's NHRC can 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 NHRC 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 NHRC with a mandate to consider the question of the abolition of the death penalty.

#### *Embracing the Pluralism of Islamic Law to Circumvent the Application of the Death Penalty*

21. A number of Muslim-majority nations retain the death penalty; however, its application is seen to vary. Some employ the use of capital punishment at alarmingly high levels whilst others apply it in the rarest of cases. Although religious justifications are often invoked by such states, the diversity of practice implies that there is a lack of consensus amongst Muslims as to the nature and scope of the death penalty and this is reflected in Islamic law.

22. The continued justification of the death penalty by these States appears increasingly untenable as a reasonable interpretation of Islamic law, and this is aggravated by the possibility of judicial errors and unfair trials in capital cases. The notion of Islamic law as an immutable and static ideal inclines to produce, "legal doctrines that are far more rigid, explicitly harsh, and resistant to change than Islam's historical tradition would have it – especially in criminal law."<sup>39</sup>

23. Given that part of Qatar’s penal code draws upon Islamic law to some extent, it is recommended that the state adopts an eclectic approach that draws upon the legal opinions of the different doctrinal schools in Islamic thought which favour the preservation of life.<sup>40</sup>
24. There should be a greater focus on utilising alternative interpretations on the question of the death penalty which is found under the fiqh genre. Fiqh is a man-made endeavour which is configured to varying degrees on epistemological hurdles and the advancement of alternative viewpoints. It is these alternative viewpoints on the status of the death penalty in Islam that must be given a platform, in order to effect real change.
25. Islam does not teach that the state must execute those guilty of serious crimes and neither does it insist on applying the death penalty. Whilst Muslims cannot deny the legitimacy of the death penalty in Islam, *in theory*, an enlightened reading of the faith demonstrates that it can contribute to the global promotion of flourishing lives and the protection of the right to life by the non-application of the punishment. The death penalty precludes the benefit of amnesty, pardon, or commutation of sentence. An execution is irreversible and an erroneous guilty verdict, whilst possible to be corrected on the record, cannot bring the executed person back to life.<sup>41</sup> The finality of the death penalty is recognised in Islam by the Prophet Muhammad’s injunction, which was adapted into a legal maxim, that any doubt must suspend the application of the death penalty for “it is better for the authority to err in mercy than to err in punishment.”<sup>42</sup>

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

26. 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,”<sup>43</sup> and the ICESCR article 15 (1)(b) recognises the right of everyone, “[t]o enjoy the benefits of scientific progress and its applications.”
27. 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.<sup>44</sup>
28. Social science investigations now demonstrate that reflecting appropriate government means that whilst capital punishment could be created within a legitimate parliamentary process,<sup>45</sup> it is now clear that the application of the death penalty renders an illegitimate

and inhumane outcome.<sup>46</sup> Abolition in Qatar 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*

29. Qatar should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government's commitment to promoting the Sustainable Development Goals.<sup>47</sup> The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.<sup>48</sup>
30. 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.
31. 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.<sup>49</sup> The death penalty is antithetical to strong institutional processes for the fostering of the human dignity of the people of Qatar.

**D. Recommendations**

We recommend that, before the next cycle of review, the government of Qatar 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. 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.
- iv. Ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
- v. Develop, in consultation with civil society and relevant regional bodies, a comprehensive action plan to work towards a moratorium, with a view to abolition, within the next four years.
- vi. 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.
- vii. Provide its NHRI with a mandate on legislative abolition of the death penalty.

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- <sup>1</sup> See <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=140&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=140&Lang=EN)>.
- <sup>2</sup> Constitution of Qatar (2004) available at <[www.gco.gov.qa/wp-content/uploads/2016/09/GCO-Constitution-English.pdf](http://www.gco.gov.qa/wp-content/uploads/2016/09/GCO-Constitution-English.pdf)>.
- <sup>3</sup> *ibid.*
- <sup>4</sup> Law No. 11 of 2004, Articles 250, 252.
- <sup>5</sup> *ibid* Articles 98-101, 103, 105, 114, 118, 130-132, 135.
- <sup>6</sup> *ibid* Articles 107, 110, 111.
- <sup>7</sup> *ibid* Articles 300-302.
- <sup>8</sup> *ibid* Article 318.
- <sup>9</sup> *ibid* Article 279.
- <sup>10</sup> *ibid* 279, 280, 284.
- <sup>11</sup> *ibid* Article 173.
- <sup>12</sup> *ibid* Article 59.
- <sup>13</sup> *ibid* Article 20.
- <sup>14</sup> Cornell Center on the Death Penalty Worldwide, ‘Qatar’, last accessed 30 March 2024, <<https://deathpenaltyworldwide.org/database/#/results/country?id=59>> (citing Qatar Penal Code, art. 54, Law No. 11 of 2004).
- <sup>15</sup> 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).
- <sup>16</sup> 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.
- <sup>17</sup> 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.
- <sup>18</sup> 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).
- <sup>19</sup> See eg, Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.
- <sup>20</sup> For example, *Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).
- <sup>21</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 10 December 1984.
- <sup>22</sup> Article 37(a) Convention on the Rights of the Child, G.A. Res 44/25, 20 November 1989.
- <sup>23</sup> 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.
- <sup>24</sup> *ibid* para 50.
- <sup>25</sup> 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*.
- <sup>26</sup> 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.
- <sup>27</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Qatar- Addendum’ (30 August 2019) UN Doc A/HRC/42/15/Add.1, paras 2-4.
- <sup>28</sup> See UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Qatar’ (11 July 2019) UN Doc A/HRC/42/15.
- <sup>29</sup> Amna Nazir, ‘A UPR Perspective on Capital Punishment and the Kingdom of Saudi Arabia’ (2022) 19 Muslim World Journal of Human Rights 77-94.



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- <sup>30</sup> 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](http://www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations)> (21 October 2015).
- <sup>31</sup> Amnesty International, *Global Report: Death Sentences and Executions 2019* (2020) 11.
- <sup>32</sup> Amnesty International, *Global Report: Death Sentences and Executions 2020* (2021) 11.
- <sup>33</sup> Amnesty International, *Global Report: Death Sentences and Executions 2021* (2022) 11.
- <sup>34</sup> Amnesty International, *Global Report: Death Sentences and Executions 2022* (2023) 12.
- <sup>35</sup> *ibid* 10.
- <sup>36</sup> See ‘Qatar commutes India ex-navy officers’ death penalty’ (*BBC*, 29 December 2023) <[www.bbc.co.uk/news/world-asia-india-67831563](http://www.bbc.co.uk/news/world-asia-india-67831563)>.
- <sup>37</sup> NHRC, ‘About Us’ <[www.nhrc-qa.org/about/who-we-are](http://www.nhrc-qa.org/about/who-we-are)>.
- <sup>38</sup> Decree Law No. (17) of 2010 on the Organization of the National Human Rights Committee (NHRC) available at <[www.nhrc-qa.org/page/56](http://www.nhrc-qa.org/page/56)>.
- <sup>39</sup> Intisar A Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (CUP 2015) 321.
- <sup>40</sup> See eg Amna Nazir, ‘Islamic Member State and the Scrutiny of the Death Penalty in the Universal Periodic’ (PhD thesis, University of Birmingham and Birmingham City 2019).
- <sup>41</sup> Working Group on the Death Penalty in Africa, ‘Study on the Question of the Death Penalty in Africa’ (The Gambia: Baobab Printers) 39.
- <sup>42</sup> al-Tirmidhī, *Jāmi‘ al-Tirmidhī*, Hadith no. 1424.
- <sup>43</sup> 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.
- <sup>44</sup> Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 7-8.
- <sup>45</sup> 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.
- <sup>46</sup> 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.
- <sup>47</sup> See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>.
- <sup>48</sup> 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.
- <sup>49</sup> 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.”