THE UPR PROJECT AT BCU

Submitted by:

The UPR Project at BCU
Centre for Human Rights, School of Law
Birmingham City University

Submitted to:

The United Arab Emirate's Universal Periodic Review
Fourth Cycle
43rd Session of the UPR Working Group
Apr - May 2023

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

Compiled by:

Lead Author: Dr. Amna Nazir **Contributing Authors:** Dr. Alice Storey & Prof. Jon Yorke

Contact:

Dr. Alice Storey (Lead Academic of the UPR Project at BCU) Email: Alice.Storey@bcu.ac.uk
Address: Birmingham City University, School of Law, Curzon Building, 4 Cardigan Street, Birmingham, B4 7BD, UK.

INTRODUCTION

1. The United Arab Emirates [hereinafter UAE] is party to five of the nine core international human rights treaties: the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities.[1]

2. This Stakeholder Report focuses upon capital punishment and recommends the UAE to ratify the International Covenant on Civil and Political Rights (ICCPR) and safeguard the right to life. We make recommendations to the Government of the UAE on this key issue, implementation of which would also see the State under Review 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.

CAPITAL PUNISHMENT

A. <u>The UAE and International Law on the Death Penalty</u>

4. The death penalty remains a legal punishment in the UAE's penal system. Part Three of the UAE Constitution prohibits "torture or degrading treatment" and provides for due process and a fair trial however, it has no provision that specifically limits capital punishment. Under Article 7, "the Islamic Shari'ah shall be a principal source of legislation in the Union" which suggests the scope of the death penalty under the UAE's interpretation of the Shari'a is relevant to its constitutional scope. Article 108 provides that the death penalty cannot be carried out without the President's approval and he may commute the sentence subject to the approval of a six member committee selected by the Union Council of Ministers.[2]

5. The UAE continues to hand down death sentences every year and the death penalty remains a lawful punishment for several offences including conduct which contravenes the evolving jurisprudence on the 'most serious crimes' under international law.[3] For example, drug trafficking, espionage, and terrorism-related offenses not resulting in death are all capital crimes which can be found under the Anti-Narcotic Drugs and Psychotropic

Substances Law 1995, Penal Code 1987 (now replaced with the new Penal Code 2021), and Decree on Combating Terrorism Offenses 2004.[4]

International Law Promoting the Restriction and Abolition of the Death Penalty

6. 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,[5] its Second Optional Protocol,[6] the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,[7] the Secretary General's quinquennial reporting,[8] the Secretary General's Question on the Death Penalty,[9] and the Human Rights Committee decisions.[10] Other relevant treaties include the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment[11] and the Convention on the Rights of the Child.[12]

7. The General Comment on the Right to Life[13] 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.[14]

8. 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 eighth and most recent iteration, passed on 16 December 2020, had a total of 123 votes in favour with 38 votes against and 24 abstentions. The UAE has voted to abstain in all such resolutions to date.[15]

9. Despite its abstentions, the UAE'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.[16] In fact, the UAE has been a signatory to all such *note verbales* to date.

B. Implementation of Recommendations from Cycle Three in 2018

10. The UAE received 230 recommendations in the Third Cycle of which 132 were accepted and 98 were noted.[17] A total of 23 recommendations focused on the death penalty none of which enjoyed State support.[18]

Recommendations concerning the UAE's Adoption of International Law

11. Numerous states urged the UAE to ratify the ICCPR[19] with many also recommending the ratification of the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty. This included **Australia** (paras 141.11 and 141.13), **Chile** (para 141.13), **Ghana** (paras 141.13 and 141.14), **Iceland** (para 141.13), **Lichtenstein** (para 141.13), **Moldova** (paras 141.12 and 141.14), and **Slovakia** (para 141.15). **These were all noted and the UAE has not indicated any change to its position.**

Recommendations concerning Abolition

12. A number of States recommended a moratorium on the death penalty with a view to its abolition. This included **Australia** (para 141.101), **Belgium** (para 141.102), **France** (para 141.103), **Ireland** (para 141.104), **Italy** (para 141.105), **Mexico** (para 141.108), **Montenegro** (para 141.106), **Portugal** (para 141.99), **Slovakia** (para 141.15), and **Slovenia** (para 141.1). **Mozambique** (para 141.96), **Austria** (para 141.97) and **Liechtenstein** (para 141.98) recommended the UAE to abolish the death penalty with the latter two also recommending commutation of all death sentences. **The United Kingdom** (para 141.107) further recommended the UAE to "commute all death sentences in respect of drug offences and other non-lethal crimes, and amend legislation such that the death penalty is only available in respect of the most serious crimes and compliant with international minimal standards." **These were all noted and the UAE has not indicated any change to its position.**

13. It is also important to note that whilst recommendations to "establish a moratorium on the death penalty" or "abolish 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.[20] It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.[21] This would help the UAE initiate an incremental approach to reducing the scope of the punishment and map out the process for abolition.

14. In response to the death penalty recommendations, the UAE emphasised to the Working Group that the punishment was "applicable only in a few cases. The records proved that the United Arab Emirates was not keen to resort to capital punishment. Its relevant systems would be reviewed in the light of the third review cycle recommendations."[22] A number of legislative reforms were introduced by the State in 2022, including the new Penal Code (Federal Law No. 31/2021) effective 2 January 2022. Unfortunately, death penalty provisions remain in the new code with the punishment deemed lawful for a wide range of offences.

15. More severe sentences, including the death penalty, have been included in the new penal code. For example, Article 155 imposes life imprisonment or the death penalty for whoever "intentionally commits an act that compromises the sovereignty of the state or its independence, its unity or its territorial integrity." Not only is this a vaguely defined article which is open to abuse by authorities, an earlier version of this article provided sentences up to a maximum of life imprisonment only.[23] Moreover, according to Article 174, anyone

who commits an act against a foreign country which could harm political relations faces up to life imprisonment, however it also adds the possibility of the death penalty if the court rules that the harm did occur.[24]

16. Since its last UPR, the UAE has continued to hand down death sentences every year in contravention to international law. At least 18 death sentences were recorded in 2019,[25] 4 in 2020,[26] and 9 in 2021.[27] Figures for 2022 are yet to be released at the time of submission. Furthermore, in 2021, after a hiatus of several years, the UAE resumed the death penalty and carried out its first execution since 2017.[28]

17. We call upon 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 the UAE to Consider

The Role of the National Human Rights Institution

18. During its third UPR, the UAE received 19 recommendations to establish a national human rights institution, in line with the Paris Principles, and these were all supported.[29] **This has been implemented**. The National Human Rights Institution (NHRI) was established under the Federal Law No (12) of 2021 and began operating the same year.[30]

19. In the context of capital punishment, the NHRI can undertake important work on pushing for the abolition of the death penalty from the UAE's legal system, starting by limiting the types of crimes that attract the punishment. The NHRI 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 NHRI 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

20. 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.

21. 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."[31]

22. Given that part of the UAE'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.[32]

23. 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.

24. 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.[33] 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."[34]

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

25. 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,"[35] and the ICESCR article 15 (1)(b) recognises the right of everyone, "[t]o enjoy the benefits of scientific progress and its applications."

26. 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.[36]

27. Social science investigations now demonstrate that reflecting appropriate government means that whilst capital punishment could be created within a legitimate parliamentary process,[37] it is now clear that the application of the death penalty renders an illegitimate and inhumane outcome.[38] Abolition in the UAE 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

28. The UAE should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government's commitment to promoting the Sustainable Development Goals.[39] The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.[40]

29. SDG 16 provides for "Strong Institutions and Access to Justice and Build Effective 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.

30. 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.[41] The death penalty is antithetical to strong institutional processes for the fostering of the human dignity of the people of the UAE.

D. Recommendations

We recommend the government of the UAE to:

i. Ratify the International Covenant on Civil and Political Rights and the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
ii. 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 three years.
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. 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.

v. Provide its NHRI with a mandate on legislative abolition of the death penalty.

[1] See <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN>.
[2] United Arab Emirates' Constitution of 1971 with Amendments through 2004 available at <www.constituteproject.org/constitution/United_Arab_Emirates_2004.pdf>.
[3] See UN Doc CCPR/C/GC/R.36/Rev.2.
[4] For a comprehensive overview of capital crimes in the UAE, see Cornell Center on the Death Penalty Worldwide Database at < https://deathpenaltyworldwide.org/database/#/results/country?id=83>.
[5] 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).
[6] 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.
[7] 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.
[8] 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).
[9] See eg, Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.
[10] For example, Judge v. Canada, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).
[11] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 10 December 1984.
[12] Article 37(a) Convention on the Rights of the Child, G.A. Res 44/25, 20 November 1989.
[13] 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.
[14] ibid para 50.
[15] 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*.
[16] 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.
[17] UNHRC, 'Report of the Working Group on the Universal Periodic Review: The United Arab Emirates-Addendum' (14 June 2018) UN Doc A/HRC/38/14/Add.1, paras 2-4.
[18] See UNHRC, 'Report of the Working Group on the Universal Periodic Review: The United Arab Emirates' (18 April 2018) UN Doc A/HRC/38/14.
[19] ibid.
[20] Amna Nazir, 'A UPR Perspective on Capital Punishment and the Kingdom of Saudi Arabia' (2022) 19 Muslim World Journal of Human Rights (forthcoming).
[21] 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).
[22] UNHRC, 'Report of the Working Group on the Universal Periodic Review: The United Arab Emirates' (18 April 2018) UN Doc A/HRC/38/14, para 67.
[23] Human Rights Watch, 'UAE: Sweeping Legal 'Reforms' Deepen Repression: Abusive Provisions Remain; New Measures Increase Rights Restrictions' (*HRW,* 5 June 2022) <www.hrw.org/news/2022/06/05/uae-sweeping-legal-reforms-deepen-repression>.
[24] ibid. See also Mena Rights Group, 'New UAE Penal Code: Increased Restrictions on Fundamental Freedoms' (*Mena rights,* 18 May 2022) <https://menarights.org/en/articles/new-uae-penal-code-increased-restrictions-fundamental-freedoms>.

[25] Amnesty International, *Global Report: Death Sentences and Executions 2019* (2020) 11.
[26] Amnesty International, *Global Report: Death Sentences and Executions 2020* (2021) 11.
[27] Amnesty International, *Global Report: Death Sentences and Executions 2021* (2022) 11.
[28] ibid 10.
[29] See UNHRC, 'Report of the Working Group on the Universal Periodic Review: The United Arab Emirates' (18 April 2018) UN Doc A/HRC/38/14.
[30] For the NHRI's work see < https://nhriuae.com/en>.
[31] Intisar A Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (CUP 2015) 321.
[32] 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).
[33] Working Group on the Death Penalty in Africa, 'Study on the Question of the Death Penalty in Africa' (The Gambia: Baobab Printers) 39.
[34] al-Tirmidhī, Jāmiʿ al-Tirmidhī, Hadith no. 1424.
[35] 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.
[36] Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 7-8.
[37] 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.
[38] 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.
[39] See the UN Sustainable Development Goals website, https://sustainabledevelopment.un.org/?menu=1300.
[40] 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.
[41] 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.