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. There are nine core international human rights treaties,[1] of which the United States of America (US) is a party to three: the International Covenant on Civil and Political Rights (ICCPR),[2] the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT),[3] and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).[4] Each of these treaties implicate various aspects of the government's use of the death penalty and as such is the focus of this Stakeholder Report.

2. We make recommendations focusing upon the necessity for abolition of the death penalty and urge the government to fulfil in good faith its obligations under the Charter of the United Nations (U.N. Charter)[5] and the Vienna Convention on the Law of Treaties (VCLT).[6] The government should meaningfully engage with treaty body reviews, provide timely and substantive replies to communications from U.N. Special Procedures, and fully comply with international court decisions. Considering the international standards and mechanisms, we urge the government to ensure that previously supported UPR recommendations lead to domestic legal change. Specifically the recommendations for the incremental abolition of the death penalty through:

    a. initiating a moratorium on executions,
    b. amend domestic law for *de jure* abolition, and;
    c. ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty (CCPR-OP2-DP).

3. In this submission we recommend that the government follows both the spirit and ordinary meaning of international law and we encourage the United States to join the growing bilateral and multilateral contributions towards global abolition.

    [Endnote key for status of recommendations: (S) – supported; (N) – noted; (S/N) – supported/noted]

DEATH PENALTY

A. The United States of America and International Law on the Death Penalty

4. The death penalty is incorporated into the U.S. Constitution 5th[7] and 14th[8] Amendments, and the majority of the jurisprudence of the U.S. Supreme Court interprets[9] the punishment as therefore acceptable under the 8th Amendment's cruel and unusual punishments' clause.[10] A different judicial choice can be made which reflects humanity in that the judges could decide that the very presence of the death penalty within the 5th and 14th Amendments is conditional upon it not being a violation of the 8th Amendment. If the death penalty is found today to constitute cruel and unusual punishment, it *ipso*

facto repudiates its applicability under the 5th and 14th Amendments. Indeed, Justice Ruth Bader Ginsberg stated:

> U.S. jurists honor the Framer's intent "to create a more perfect Union," I believe, if they read the Constitution as belonging to a global 21st century, not as fixed forever by 18th-century understandings.[11]

5. The current interpretive choice by the U.S. Supreme Court is primarily due to the etymological lineage of the 8th Amendment with the text of Article 10 of the English Bill of Rights (1688).[12] However, in 2020 the U.K. Supreme Court in *Elgizouli v Secretary of State for the Home Department,* held that the clause on 'cruel and unusual punishments' as applied within today's judicial interpretation cannot sustain a legitimate death penalty.[13] This decision is consistent with humanitarian principles for the global abolition of the death penalty. In *Elgizouli* Lord Kerr clarified that there exists a temporal sensitivity of the common law which endorses humane contemporary developments as:

> [t]he Bill of Rights, an always-speaking statute, forbade cruel and unusual punishment. It is surely now beyond controversy that the death penalty is regarded by the common law to constitute such punishment.[14]

6. However, the U.S. government currently rejects such reasonable interpretation and has maintained three capital jurisdictions: federal, state, and military. Following President Biden's commuting **37** of **40** federal death sentences, there are **3** inmates on federal death row.[15] **Twenty-seven** of the **50** states retain the death penalty and there is currently **2,183** people under sentence of death. There are **4** inmates under the military death penalty.[16]

7. In the period from the **Third** to the **Fourth Cycle** (2020-2025), the United States imposed **105 executions** (**2020 – 17; 2021 – 11; 2022 – 18; 2023 – 24; 2024 – 25; and 2025 (to 20th March) – 10**).[17] In September 2024 the **1600th person** was executed within the modern-era of the death penalty (since 1976),[18] and one state has now expanded the death penalty to non-homicide sexual offences in violation of the ICCPR article 6(2).[19]

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,[20] its Second Optional Protocol,[21] the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,[22] the Secretary General's quinquennial reporting,[23] the Secretary General's reports concerning the UNGA resolution on the moratorium on the use of the death penalty,[24] the HRC resolution on the question on the death penalty,[25] and the Human

Rights Committee decisions.[26] Other relevant treaties include the CAT, CERD, and the Convention on the Rights of the Child (CRC).[27]

9. The General Comment on the Right to Life[28] provides an interpretive lens 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.[29]

10. The growing international consensus against capital punishment is reflected in the UN General Assembly's biennial resolution to impose a global moratorium. The tenth and most recent iteration of the resolution was passed on 17th December 2024. A total of **130** votes were recorded in favour with **32** votes against and **22** abstentions.[30]

B. Consideration of Recommendations from the Third Cycle

11. In the **Third Cycle** the United States was reviewed by **UPR Working Group 36** in November 2020 and received a total of **347** recommendations of which **35 (10%)** focused upon different aspects of the capital judicial system (see, Matrix of Recommendations: UPR theme 'Death Penalty'). The government supported **10 (35%)**, supported/noted **2 (2%)**, and noted **23 (63%)**. Since the Third Cycle the federal government has:
    a. **made <u>insufficient contributions</u> to the debates for the abolition of the death penalty**;
    b. **<u>has not initiated</u> a formal process for discussions concerning a national moratorium**, and;
    c. **the US Supreme Court has '<u>largely abandoned the critical role</u>'[31] necessary to meaningfully review the death penalty under the U.S. Constitution**.

12. However, **3** states have abolished the punishment in this review period, **2** have imposed very limited exceptions imposed since 2019, and in **4** states there has been a pause on executions due to executive action.[32]

Recommendations concerning establishing a moratorium on the death penalty

13. The US government has failed to implement supported recommendations. **New Zealand** (26.189) unequivocally recommended the government, '[i]mpose urgently a moratorium on executions and work towards the complete abolition of the death penalty.' The recommendations from Chile and Italy provided political flexibility, **Chile**

(26.183) '[c]onsider establishing a moratorium on the death penalty,' and **Italy** (26.201) consider the 'possibility of adopting a moratorium.' The government supported/noted **Malta** (26.204) and **Mexico** (26.207), and it appears that the focus was on the support for a national moratorium, and the government's partial support concerns '[d]efer or suspend the application of the death penalty'. Therefore the government's lack of progress fails to implement what was agreed in Geneva at the UPR, and is more reflective of the stasis under the large number (**15**) of the noted recommendations of the other governments calling for a national moratorium.[33]

Recommendations on the de jure abolition of the death penalty

14. **Romania** (26.178) recommended the government, '[c]ontinue the efforts towards the abolition of the death penalty,' which was supported and affirmed by similar recommendations, **Paraguay** (26.181), **Austria** (26.182), **Cambodia** (26.210), and **Fiji** (26.211). However, the federal government did not provide a mandate for a clear discussion with retentionists states for either a moratorium or *de jure* abolition.[34] In fact on the question of abolition the official policy is more in-line with the government's noting of recommendations.[35]

Recommendations on the ratification of the Second Option Protocol to the ICCPR (CCPR-OP2-DP) and Optional Protocol to the CAT (CAT-OP)

15. Recommendations on the ratification of CCPR-OP2-DP, included, **Slovenia** (26.17) supported/noted, and the following were noted, **Timor-Leste** (26.59), **Slovakia** (26.188), **Argentina** (26.193) and **Latvia** (26.202). Also noted were **Liechtenstein** (26.35) and **Denmark** (26.55) who recommended ratification of the CAT-OP. The CAT-OP would provide greater protection for victims of the death penalty phenomenon and the implementation of torture and inhumane punishment in methods of execution. CCPR-OP2-DP would provide for the next step in affirmation of the abolition of the death penalty under international law.

Recommendations on the abolition of the federal death penalty

16. The government supported the **Namibia** (26.209) recommendation to, '[c]omit to ending the death penalty federally.' It supported/noted **Malta** (26.204) '[e]stablish a moratorium on the death penalty at the federal level with a view to complete abolition,' and **Mexico** (26.207), called for the suspension of the death penalty, and to 'expedite the adoption of a federal law to comply with the ruling of the International Court of Justice in the Avena case.' **Finland's** recommendation was noted (26.197), which observed the 'regrettable resumption of the federal death penalty.'[36]

C. Further issues for the US government to consider

THE DEATH PENALTY AND THE INTERNATIONAL LEGAL ORDER

Recommendations on the creation of a National Human Rights Institution (NHRI)

17. Recommendations by **India** (26.95), **Somalia** (26.99) **Nepal** (26.96), **Sudan** (26.97), and **Malaysia** (26.98),[37] called for a consideration for establishing an NHRI. These were supported and could help the U.S. government incorporate a national mechanism for reporting and follow-up (NMRF) on the UPR. An NMRF would help ensure that the US implements supported recommendations for the amendment of state and federal law,[38] which would include the repudiation of the constitutionality of the death penalty.

The United States and the engagement with UN organs, Treaty Body Reviews and Special Procedures

18. The government's record is called into question concerning a meaningful cooperation with the UN human rights machinery and specifically, the Special Procedures, see **Republic of Korea** (26.83) and **State of Palestine** (26.87). This has been particularly evident in the assessment of the death penalty, with a cogent example being the creation of a new method of execution via forced nitrogen gas asphyxiation.

i. Nitrogen Gas Asphyxiation as a New Execution Method

19. Through developing new methods of execution the government is in violation of the ICCPR article 6(6). In the inter-review period, two states (Alabama and Louisiana) have execution people with this method. Alabama executed three inmates in 2024,[39] and Mr Demetrius Terrence Frazier on 6th February 2025, and Louisiana executed Mr Jessie Dean Hoffman Jr on 18th March 2025.[40]

20. Nitrogen gas executions have exceeded recognised durations to die and acceptable levels of pain under international law. Such executions demonstrate a **torturous struggle** on the gurney whilst breathing in the gas, and the durations can take up to **26minutes** to die.[41] The General Comment No. 20 affirms state executions must only be imposed through the, 'least possible physical and mental suffering,'[42] and following the Human Rights Committee's decision in *Ng v. Canada*, it was affirmed that **12minutes** to die is an excessive duration for an execution using gas inhalation in violation of the ICCPR article 7.[43]

i. The infliction of torture and inhumane executions

21. Following the Complaint submitted on behalf of Kenneth Smith in Alabama,[44] the Special Procedure mandates provided a Communication to express their 'alarm' over the potential human rights violations he would experience whilst being subjected to forced nitrogen gas asphyxiation.[45] The Spokesperson for the UN High Commissioner for Human Rights, Ravina Shamdasani, affirmed the UN's alarm at the impending

execution,[46] and then proceeding Alabama's killing of Mr Smith, the U.N. Special Procedures provided an unequivocal condemnation of this inhumane act of the state.[47]

22. However, Alabama has not provided an adequate response to the Special Procedures and on 15th November 2024, **7 Special Procedures** sent a communication to the U.S. government concerning the cases of Mr Rocky Myers, Mr David Wilson, and Mr Carey Grayson, all under sentence of death in Alabama.[48] Concerning David Wilson's case, the new question being considered by the U.S. courts concerns *inter alia* whether the gas asphyxiation will violate the rights to healthcare of someone suffering from ADHD and Hypersensitivity Disorder.[49] The Special Procedures communication noted that,

> **[r]egrettably, we have not so far received substantive responses from your Excellency's Government to USA 5/2022 and USA 29/2023**.[50]

23. The U.S. is not meaningfully engaging with the Special Procedure mandates, and instead is providing observations on its own 'complex federalist system.' This national legal framework is the reason for the thwarting of meaningful responses to the Special Procedures. It is submitted that such a restricting legal practice constitutes a violation of the Vienna Convention on the Law of Treaties, Article 27:

> **[a]party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.**

b. Violation of the UN Guidelines on Business and Human Rights

24. Whereas it is well known that the US used businesses (pharmaceutical companies) for its human rights abuses involving lethal injection,[51] there has recently been an identification of the business and human rights violations contributed to by nitrogen manufacturers, and consequently Alabama has heavily redacted the state execution protocol. This is partly in order to conceal the identify of the businesses which supply the execution technologies and apparatus for this new method. It is argued this constitutes a violation of the UN Guiding Principles on Business and Human Rights.[52]

Adopting the UPR Recommendations to Enable the People of the United States 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 UDHR, 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,"[53] and the ICESCR article 15 (1)(b) recognises the right of everyone, "[t]o enjoy the benefits of scientific progress and its applications."

26. Social science investigations[54] now demonstrate that reflecting appropriate government means that whilst capital punishment could be created within a legitimate parliamentary process,[55] it is now clear that the application of the death penalty renders an illegitimate and inhumane outcome.[56] Abolition in the United States 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

27. The United States should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government's commitment to promoting the Sustainable Development Goals.[57] The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.[58]

28. 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.

D. Recommendations

We recommend that, before the next cycle of review, the U.S. government 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. Initiate a national moratorium on the death penalty.
iv. Ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
v. Affirm its commitment to SDGs 10 (reduce inequalities), 12 (responsible production), and 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.
vi. Create a NHRI, initiate a UPR national review and follow-up, and appropriately engage with treaty body reviews and Special Procedure communications.
vii. Accept UPR recommendations on the abolition of the death penalty, as also signalling the US's affirmation of commitments to the SDGs.

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[1] OHCHR, 'The Core International Human Rights Instruments and their Monitoring Bodies' <www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

[2] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 [hereinafter referred to as 'ICCPR'].

[3] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 [hereinafter referred to as 'CAT'].
[4] International Covenant on the Elimination of Racial Discrimination (adopted 21 December 1965, entered in force 4 January 1969) UNGA Resolution 2106 (XX)2 Article 5(a) [hereinafter referred to as 'ICERD'].
[5] Charter of the United Nations, (1945) https://www.un.org/en/about-us/un-charter
[6] Vienna Convention on the Law of Treaties (1969) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
[7] Fifth Amendment of the Constitution of the United States, 'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.'
[8] Fourteenth Amendment of the Constitution of the United States, 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'
[9] Justice Scalia concurring in denial for cert. *Callins v. Collins*, 510 U.S. 1141, 1141 (1994): "The Fifth Amendment provides that "[n]o person shall be held to answer for a capital ... crime, unless on a presentment or indictment of a Grand Jury, ... nor be deprived of life, ... without due process of law." This clearly permits the death penalty to be imposed, and established beyond doubt that the death penalty is not one of the "cruel and unusual punishments" prohibited by the Eighth Amendment." Justice Thomas in *Baze v Rees*, 553 U.S. 35 (2008): "it is clear that the Eighth Amendment does not prohibit the death penalty. That is evident both from the ubiquity of the death penalty in the founding era…[and that there exists] the Constitution's express provision for capital punishment see, e.g., Amdt. 5 (requiring an indictment or presentment of a grand jury to hold a person for "a capital, or otherwise infamous crime," and prohibiting deprivation of "life" without due process of law)."
[10] For example, Chief Justice Joh Roberts has stated … not held a method of execution violates the 8th Am…
[11] Ruth Bader Ginsberg, *A Decent Respect for the Opinions of [Human]Kind": The Value of a Comparative Perspective in Constitutional Adjudication*, 26 St. Louis U. Pub. L. Rev. 187, 194 (2007).
[12] Article 10 'Punishments. And illegall and cruell Punishments inflicted' Bill of Rights, 1688, Chapter 2, 1 Will and Mar Sess 2. Modern-day translation, 'The excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.'
[13] In *Elgizouli v Secretary of State for the Home Department,* [2020] UKSC 10, the UK Supreme Court applied this to the issue of the death penalty. Following the global principles of humanity which call for the abolition of the death penalty, the appropriate evolution of the term 'cruel and unusual' should follow likewise. Lady Hale, the President of the UKSC, stated that Lord Kerr's judgment was 'the leading judgment [which was] essential reading,' (p. 2), and Lord Kerr held:

> Article 10 of the Bill of Rights 1688 prohibits the infliction of "cruel and unusual punishments". Of course, at the time, and for almost three centuries afterwards, the carrying out of the death penalty continued without its being thought to offend article 10…What is conceived to be cruel and unusual **adjusts**, like so many other **societal perceptions**, to **changes in the standards** and **values of society** which **develop over time** with the **growth of knowledge** and the **evolution of attitudinal changes**. (p. 29)

[14] Id. p. 43.
[15] President Biden Commutes Death Sentences of Nearly Everyone on Federal Death Row, 23rd December 2024, Equal Justice Initiative, https://eji.org/news/president-biden-commutes-death-sentences-of-nearly-everyone-on-federal-death-row/
[16] Death Penalty Information Center, The Death Penalty in 2024: Death Sentences and Executions Remain Near Historic Lows Amid Growing Concerns About Fairness and Innocence, (DPI, 2025), p. 8.
[17] Data from the Death Penalty Information Center, Execution Database, https://deathpenaltyinfo.org/facts-and-research/data/executions
[18] Following the decision in Gregg v. Georgia, 428 U.S. 153 (1976). In the modern era the Death Penalty Information Center state there have been 9,886 death sentences and to date there have been 1,607 executions.
[19] International Covenant on Civil and Political Rights (1976) 999 UNTS 171, Article 6(2), 'In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.'

[20] 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).
[21] 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.
[22] 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.
[23] 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).
[24] See, Secretary-General's report on a moratorium on the use of the death penalty, A/77/274, 8th August 2022.
[25] See eg, Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.
[26] For example, Judge v. Canada, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).
[27] Article 37(a) Convention on the Rights of the Child, G.A. Res 44/25, 20 November 1989.
[28] 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.
[29] ibid para 50.
[30] 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*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 79/179, 17 December 2024 adopted by 130 votes to 32, with 22 abstentions.
[31] Death Penalty Information Center, The Death Penalty in 2024: Death Sentences and Executions Remain Near Historic Lows Amid Growing Concerns about Fairness and Innocence (Year End Report), (DPI: 19 December 2024), p. 34. Available at https://deathpenaltyinfo.org/research/analysis/reports/year-end-reports/the-death-penalty-in-2024
[32] The 3 states to have abolished the death penalty in the inter-review period were Colorado (2020), Virginia (2021), and Washington (2023). In 2019 the New Hampshire Legislature voted for the abolition of the death penalty but there is one person remaining on death row. In the same year Oregon adopted highly restrictive legislation on the death penalty, the Oregon Supreme Court further limited the capital sanction, and in 2022 Governor Kate Brown commuted death sentences and described the state position as 'near abolition.' The four states which have paused executions due to executive action are California, Pennsylvania, Oregon, and Ohio. See, DPI, 'State by State,' https://deathpenaltyinfo.org/state-and-federal-info/state-by-state
[33] These are: **Switzerland** (26.179); **Norway** (26.180); **Portugal** (26.184); **Rwanda** (26.185); **Slovenia** (26.186); **Czechia** (26.187); **Slovakia** (26.188); **Australia** (26.190); **Cyprus** (26.191); **Iceland** (26.192); **Bulgaria** (26.194); **Spain** (26.196), **Liechtenstein** (26.203); **Lithuania** (26.205); and **Netherlands** (26.208) (all - N).
[34] In fact on the question of abolition the official policy is more in line with its noting of recommendations in **Bulgaria** (26.194) (N); **Liechtenstein** (26.203) (N); **Lithuania** (26.205) (N).
[35] Noted in **Bulgaria** (26.194) (N); **Liechtenstein** (26.203) (N)**; Lithuania** (26.205) (N).
[36] Including those by **Canada** (26.195) (N); **Ireland** (26.200) (N); **Slovakia** (26.188) (N); **Australia** (26.190) (N); **Cyprus** (26.191) (N); **France** (26.198) (N); **Germany** (26.199) (N); and **Sweden** (26.206) (N).
[37] Noted recommendations included establishing a national human rights institution in accordance with the Paris Principles, including, **Philippines** (26.91) (N) 'take steps', and other similar recommendations to 'establish' were noted, **Zambia** (26.92) (N), **Qatar** (26.93) (N), **Lithuania** (26.99) (N).
[38] For considering and continuing ongoing efforts for ratification of all remaining UN nine core treaties the US supported, **Somalia** (26.1) (S); **Ghana** (26.2) (S); **Myanmar** (26.38) (, and supported **Zambia** (26.4) (S), who stated categorical, '[t]ake the necessary steps to ratify the international human rights instruments that the US has already signed.' A group of states make a similar uncategorical recommendation concerning the remaining treaties not signed, **State of Palestine** (26.6) (S); **Azerbaijan** (26.7) (S); **South Africa** (26.8) (S); and **Republic of Korea**

(26.22) (S), '[c]ontinue with the ongoing efforts to ratify outstanding core [instruments]' **Romania** (26.12) (S/N), for ratifying currently signed international treaties, and **Albania** (26.3) (S) urged that taking of 'necessary steps,' and ratification to facilitate the US government's meeting the Sustainable Development Goals, **Paraguay** (26.5) (S). Ratification focusing upon specific treaties and thematic issues, including, economic and social rights **El Salvador** (26.9) (S/N); **Myanmar** (26.38) (S); women's rights, **Pakistan** (26.10) (S/N), **Australia** (26.13) (S/N), **Israel** (26.30) (S); **Uganda** (26.41) (S); **North Macedonia** (26.42) (S); **Sri Lanka** (26.43) (S), **Niger** (26.45) (S); **Slovakia** (26.46) (S); **Rwanda**, **Bahamas**, **Namibia**, and **Morocco** (26.47) (S); children's rights, **Pakistan** (26.10) (S/N), **Australia** (26.13) (S/N), **Philippines** (26.11) (S/N), **India** (26.16) (S); **Nepal** (26.39) (S); **New Zealand** (26.40) (S); **Maldives** (26.37) (S); **Uganda** (26.41) (S); **North Macedonia** (26.42) (S); **Côte d'Ivoire** (26.24) (S); **Kazakhstan** (26.48) (S), **Switzerland**, **Rwanda**, **Bahamas**, **Luxembourg**, **Mali**, and **Morocco** (26.49) (S), and disability rights, **Australia** (26.13) (S/N); **Russian Federation** (26.18) (S); **Cuba** (26.26) (S); **Ukraine** (26.27) (S); **Afghanistan** and **Sudan** (26.20) (S); **Japan** (26.31) (S); **Kenya** (26.32) (S); **Lithuania** (26.36) (S); **Armenia** (26.56) (S); **Honduras** (26.57) (S); **Mali** (26.58) (S), and the rights of migrant workers, **Togo** (26.19) (S); **Indonesia** (26.53) (S); **Niger** (26.54) (S); re-engaging with the Human Rights Council, **Canada** (26.23) (S). Other member states provided recommendations of the wider engagement with the international legal order, including, acceding to the American Convention on Human Rights and recognising the jurisdiction of the Inter-American Commission and Inter-American Court of Human Rights **Chile** (26.63) (S), the withdrawal from the Paris Agreement on climate change, **Slovenia** (26.64) (S); **Fiji** (26.65) (S).

[39] Alabama used forced nitrogen gas asphyxiation to execute Mr Kenneth Smith on 26th January 2024, Mr Alan Miller on 26th September 2024, and Mr Carey Grayson on 21st November 2024.

[40] Ed Pilkington, Louisiana uses nitrogen gas for first time in death row execution, The Guardian, 19 March 2025, https://www.theguardian.com/us-news/2025/mar/18/louisiana-nitrogen-gas-execution-jessie-hoffman-jr

[41] Ed Pilkington, Alabama inmate executed with nitrogen gas was 'shaking violently', witnesses say, The Guardian, 26th January 2024, https://www.theguardian.com/us-news/2024/jan/25/alabama-executes-kenneth-smith-nitrogen-gas

[42] General Comment No. 20 - Article 7: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), CCPR/C/21/Add.3, para. 6

[43] Ng v. Canada, Communication No. 469/1991, U.N. Doc. CCPR/C/49/D/469/1991 (1994) para. 16.4. Ultimately in Ng, 'In the instant case and on the basis of the information before it, the Committee concludes that execution by gas asphyxiation, should the death penalty be imposed on the author, would not meet the test of 'least possible physical and mental suffering', and constitutes cruel and inhuman treatment, in violation of article 7 of the Covenant.' Citing the General Comment No. 20: Article 7: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), CCPR/C/21/Add.3, para. 6.

[44] Jon Yorke, The Complaint on behalf of Mr David P. Wilson under sentence of death and in the custody of the Alabama Department of Corrections, United States of America, Submission to Dr Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions, Dr Alice Edwards, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Dr Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dr Heba Hagrass, Special Rapporteur on the rights of persons with disabilities, Professor Margaret Satterthwaite, Special Rapporteur on the independence of judges and lawyers, Dr Livingstone Sewanyana, Independent Expert on the promotion of a democratic and equitable international order, Dr Matthew Gillett, Chair-Rapporteur, Working Group on Arbitrary Detention, and Professor Robert McCorquodale, Chairperson, Working Group on Business and Human Rights, OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland, 15th April 2024.

[45] Press Release: United States: UN experts alarmed at prospect of first-ever untested execution by nitrogen hypoxia in Alabama, 3rd January 2024, https://www.ohchr.org/en/press-releases/2024/01/united-states-un-experts-alarmed-prospect-first-ever-untested-execution

[46] Press Briefing Notes: US: Alarm over imminent execution in Alabama, 16th January 2024, https://www.ohchr.org/en/press-briefing-notes/2024/01/us-alarm-over-imminent-execution-alabama

[47] United States: UN experts horrified by Kenneth Smith's execution by nitrogen in Alabama, 30th January 2024, https://www.ohchr.org/en/press-releases/2024/01/united-states-un-experts-horrified-kenneth-smiths-execution-nitrogen-alabama

[48] Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers; the Independent expert on the promotion of a democratic and equitable international order; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Ref.: UA USA 27/2024, 15th November 2024

[49] See, David Wilson vs. John Q. Hamm, Columbia Center for Contemporary Critical Thought, https://cccct.law.columbia.edu/content/david-wilson-vs-john-q-hamm

[50] Ibid. In the Communication Ref: UA USA 29/2023, in the case of Mr Kenneth Smith, the Special Rapporteurs stated:

> Previously the special procedures mandate holders raised concerns regarding executions using lethal injection via communications, including USA 5/2022, USA 4/2018, and USA 13/2016…Regrettably, we have not received responses from your Excellency's Government to these communications. p. 1.

[51] For a detailed review of the botched executions and the misuse of science to justify lethal injection in Oklahoma, see Jon Yorke, Comity, Finality, and Oklahoma's Lethal Injection Protocol, Oklahoma Law Review, Volume 69 , 4, 2017.

[52] UN Guiding Principles on Business and Human Rights, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pd

[53] 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.

[54] Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, 5th ed, (Oxford University Press, 2015), Leading social science and criminological investigations into the death penalty worldwide 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.

[55] 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.

[56] 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.

[57] See the UN Sustainable Development Goals website, https://sustainabledevelopment.un.org/?menu=1300.

[58] 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.