



# 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, having submitted seven reports and been 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. Papua New Guinea (PNG) is party to six of the nine core international human rights treaties.<sup>1</sup> This Stakeholder Report recommends that the government make positive commitments in the third cycle of the UPR, for the abolition of the death penalty. We call for the initiation of an official moratorium on the death penalty, as a step towards domestic *de jure* abolition. This will enable PNG to take the commendable decision to ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty,<sup>2</sup> and subsequently join the abolitionist countries in the UNGA biennial vote in support of the Resolution on the moratorium on the death penalty. PNG would then contribute positively to worldwide abolition.

### **A. Papua New Guinea and International Law on the Death Penalty**

#### *Papua New Guinea's Capital Judicial Process*

2. PNG's last execution was in 1954, and so the country is considered to be *de facto* abolitionist.<sup>3</sup> Death sentences continue to be imposed by the National Court, but have been commuted to prison terms by the Supreme Court of Papua New Guinea.<sup>4</sup> The most recent sentencing data demonstrates that in 2018 there were nine death sentences, none in 2019, and there are currently 20 people under sentence of death.<sup>5</sup>
3. Historically, the punishment was applied through colonial rule but it was rarely used.<sup>6</sup> The death penalty was provided for both territories of Papua and New Guinea under the Criminal Code (Queensland) (1899), s. 305. In 1907, the mandatory nature of s. 305 was replaced with discretionary application under the Criminal Code Amendment Ordinance of 1907.<sup>7</sup> Ordinance No. 72 of 1965 provided further discretionary powers to the courts,<sup>8</sup> and then in 1974 the Criminal Code Act repealed the death penalty for wilful murder.<sup>9</sup>
4. Following the work of the Constitutional Planning Committee (1972-1975), the country adopted the Constitution of the Independent State of Papua New Guinea, (1975, rev. 2014), and the relevant sections are, s.35 (Right to Life), with the death penalty exception in (1)(a) and the prohibition of 'punishment that is cruel or otherwise inhuman,' in s. 36(1), does not, 'contravene' s.35(1)(a). In 1991 the Criminal Code Amendment Act<sup>10</sup> provided for the death penalty for treason (s. 37), piracy (s. 81), attempted piracy (s.82), and wilful murder (s. 299(2)).
5. The scope of capital murder and the determination of whether it is mandatory or discretionary was considered in *Ume v. The State* (2006). The Supreme Court held it was discretionary<sup>11</sup> and set out some common law principles for the scope of 'wilful murder.'<sup>12</sup> The Criminal Code (Amendment) Act 2013, s. 1, expanded the capital offences to include aggravated rape, robbery, and the wilful murder of a person practicing sorcery.<sup>13</sup> However, recent cases demonstrate the National Court has exercised discretion to apply prison sentences.<sup>14</sup>

6. A further factor for the suspension of executions is that the legal parameters of the execution protocol are yet to be determined, including designating the method of execution, and the procedures for implementation.<sup>15</sup>

*International Law Promoting the Restriction and Abolition of the Death Penalty*

7. The United Nations has created a sophisticated framework for scrutinising the death penalty. Article 6 ICCPR, protects the right to life, Article 7 prohibits torture and inhumane punishment, and Article 14 provides for the right to a fair trial.<sup>16</sup> The Second Optional Protocol to the ICCPR rendered an opportunity to galvanise state abolition worldwide,<sup>17</sup> and the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty provide enhanced procedural, trial, and appellate protections for capital defendants.<sup>18</sup>
8. This corpus of legal protections contributes to the abolitionist initiatives in the General Assembly,<sup>19</sup> the OHCHR Special Procedures including Country Mandates<sup>20</sup> and Thematic Mandates of the various Special Rapporteurs and Working Groups,<sup>21</sup> the quinquennial reporting to the Secretary General,<sup>22</sup> the Secretary General's Question on the Death Penalty,<sup>23</sup> Human Rights Committee decisions,<sup>24</sup> and the Universal Periodic Review.<sup>25</sup>
9. This intricate UN machinery was reflected in the Human Rights Council on 4 March 2015, during the high-level panel which, 'exchange[d] views on the questions of the death penalty, and [addressed] regional efforts aiming at...abolition.'<sup>26</sup> Mr. Joachim Rucker, President of the Human Rights Council, noticed the, 'major achievement,'<sup>27</sup> that a significant majority of countries around the world had, 'either abolished the death penalty, introduced a moratorium or did not practice it.'<sup>28</sup> Ms. Ruth Dreifuss, former President of the Swiss Confederation, affirmed, 'humanity had made considerable advances towards the universal abolition of the death penalty.'<sup>29</sup> The panel concluded that in considering each of the human rights regions it is, 'possible to move gradually towards abolition through dialogue and advocacy,' and this is because the death penalty is, 'not about any particular culture or any religion.'<sup>30</sup> Abolition of the death penalty is therefore a universal ideal.
10. On 26 February 2019 an HRC high-level panel focused on the associated human rights violations and concluded:

[i]t is fundamentally unjust for a State to decide who deserved to live and who did not...the panel encouraged societies to seek reconciliation rather than meeting violence with violence by applying the death penalty.<sup>31</sup>
11. Reflecting this abolitionist focus, the General Comment on the Right to Life<sup>32</sup> provides an interpretive methodology 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>33</sup>

12. Article 6(6) provides a time-limiting mechanism that is designed to neutralise the ability of member states to perpetually claim domestic legitimacy in a continued use of the death penalty. This is reflected in the growing international consensus against capital punishment,<sup>34</sup> as affirmed in the Human Rights Council's Resolution 42/24 The question of the death penalty, on 27<sup>th</sup> September 2019.<sup>35</sup>

#### *Papua New Guinea and the UNGA Resolution on the moratorium on the use of the death penalty*

13. In the biennial vote of the UNGA Resolution on a moratorium on the use of the death penalty, PNG voted 'against' in 2007,<sup>36</sup> 2010,<sup>37</sup> 2014,<sup>38</sup> 2016,<sup>39</sup> 2018,<sup>40</sup> and 2020,<sup>41</sup> and 'abstained' in 2008<sup>42</sup> and 2012.<sup>43</sup>
14. PNG was signatory to the Joint Permanent Missions' *note verbale* of dissociation on 11 January 2008, which provided an objection to the Secretary General on the attempt to create a global moratorium,<sup>44</sup> and the subsequent Joint Permanent Mission's *note verbale* on 10 February 2009.<sup>45</sup> It then continued its support in the *note verbale* in 2011<sup>46</sup> and 2013.<sup>47</sup> However, the government did not sign the *note verbale* in 2015,<sup>48</sup> but supported it in 2017,<sup>49</sup> and 2019.<sup>50</sup>

#### *Papua New Guinea's National Report and the Lack of Statement on the Death Penalty in the UPR First and Second Cycles*

15. PNG's first and second cycle national reports did not engage with the death penalty, even though death sentences were registered during the review periods.<sup>51</sup>
16. PNG identified capacity and financial constraints on the country's ability to fully comply with UN treaty body reviews. The first cycle report conceded, '[i]n PNG, lack of capacity exists at all levels of government,'<sup>52</sup> that following the ratification of six of the nine core treaties, 'PNG is yet to ratify other important treaties and conventions. The delay is mainly attributed to resource and capacity constraints,'<sup>53</sup> and so, 'PNG Government invites the international community to consider providing technical and financial assistance.'<sup>54</sup> The report for the second cycle reemphasises the capacity issue in that, 'due to resource limitation the Government is not able to implement and report [to the UN treaty bodies].'<sup>55</sup>

## **B. Implementation of Recommendations from Cycle Two in 2016**

17. PNG received 161 recommendations in the second cycle of which 107 were accepted and 54 were noted.<sup>56</sup> Fifteen recommendations focused on the death penalty and were provided by 14 countries and the Holy See. None of the recommendations were accepted by PNG, nor have any been implemented.

18. PNG provided its observation on the Working Group Report:

Regarding the death penalty, it was not illegal under international law and for Papua New Guinea it was part of its domestic law. A de facto moratorium, as suggested by several States, was a sensitive issue.<sup>57</sup>

19. In response to the UPR recommendations, PNG stated that the '[d]eath penalty is in our national law, however, despite this, the current Government directive is not to implement until further directions are issued.'<sup>58</sup>

### *Recommendations Concerning De Jure Abolition*

20. Three recommendations focused on *de jure* abolition. **France** (para. 104.80) called for PNG to 'take all the necessary measures for the final de jure abolition of the death penalty.' **New Zealand** (para. 104.81) recommended the country, '[r]epeal all provisions in domestic law allowing for the death penalty.' **Panama** (para. 104.82) and **Norway** (104.83) also called for a '[r]epeal' of the death penalty. **Portugal** (104.85) and **Spain** (104.86) recommended PNG, '[a]bolish the death penalty.' **Philippines** (104.84) recommended, '[s]tep up the efforts to abolish death penalty,' and **Norway** (104.88) for PNG to, '[c]ommute all death sentences to terms of imprisonment.'

### *Recommendations Concerning an Official Moratorium on the Death Penalty*

21. As a significant step towards abolition, eight recommendations called for PNG to adopt an official moratorium on the death penalty. **France** (para. 104.80), **New Zealand** (para. 104.81), **Norway** (para. 104.83), **Portugal** (para. 104.85), **Turkey** (para. 104.87), **Australia** (para. 104.89), **Holy See** (104.90), and **Italy** (104.91), proposed that a moratorium should be an initial policy step towards domestic abolition.

### *Recommendations concerning Papua New Guinea's Adoption of International Law*

22. Seven recommendations focused upon the ratification of the Second Optional Protocol. These can be read as building upon *de jure* abolition to incorporate the protocol for the country to then contribute to the growing international rejection of the punishment. These were: **Namibia** (para. 104.3) **Montenegro** (para. 104.4), **Portugal** (para. 104.4), **Panama** (para. 104.82), **Spain** (para. 104.86), **Turkey** (para. 104.87), and **Australia** (para. 104.89).

### **C. Further Points for Papua New Guinea to Consider**

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

23. A PNG National Human Rights Institution (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. Thirteen states recommended that PNG keep its commitments made in 2011 and 2016 concerning establishing an NHRI. These included: **New Zealand** (104.35), **Australia** (104.36), **France** (104.37), **Egypt** (104.38), **Honduras** (104.39), **Indonesia** (104.40), **Kyrgyzstan** (104.41), **Maldives** (104.42), **Netherlands** (104.43), **Portugal** (104.44), **Philippines** (104.45) **United Kingdom** (104.46), and **Brazil** (104.47).

#### *Adopting the UPR Recommendations to Enable the State to Benefit from Advances in Effective Penology*

24. The right to benefit from scientific advancement should 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,'<sup>59</sup> and the ICESCR Article 15 (1)(b) recognises the right of everyone, '[t]o enjoy the benefits of scientific progress and its applications.'

25. 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>60</sup>

26. In *The State v. Damanin* (No. 2) (2020), the National Court recognised the ineffectiveness of the punishment:

we all know that despite the prescription of the death penalty into our criminal law...the State through the Criminal Justice System has not succeeded in arresting this scourge in our society.<sup>61</sup>

27. The Special Rapporteur on extrajudicial, summary or arbitrary executions, stated in his report from the visit to PNG in 2014:

implementing capital punishment would provide a false sense of security and divert attention away from effective long-term solutions such as better policing, economic development, robust correctional institutions and education.<sup>62</sup>

28. Social science investigations demonstrate that it is now clear that the application of the death penalty renders an illegitimate and inhumane outcome.<sup>63</sup> In 2015, Prime Minister Peter O'Neill stated that the government would review the punishment, stating, '[w]e certainly do not want to be seen as a country that is actively promoting the death penalty as a means of enforcing law and order in the country.'<sup>64</sup> In 2020 the National Executive Council instructed the Constitutional Law Reform Commission to conduct a nationwide consultation on the death penalty.<sup>65</sup>
29. In 2003 PNG had joined 75 countries in support of a UN Commission on Human Rights' Resolution on the question of the death penalty.<sup>66</sup> This submission urges PNG to reflect upon and readopt this earlier governmental position for the promotion of abolition.

### *Due Process and Fair Capital Trial Safeguards*

30. During the 2014 visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions, he was, 'informed of shortcomings,' in fair trial standards and the violations included, 'extraction of confessions under duress, ill-treatment of persons in custody, lengthy proceedings, or high levels of corruption among various authorities.'<sup>67</sup>
31. This demonstrates that the PNG capital judicial process fails to comply with ICCPR article 14,<sup>68</sup> and the UN Safeguards.<sup>69</sup> There must be equality of arms, equal access to resources and sufficient time to prepare a capital defence, in accordance with the Basic Principles of the Role of Lawyers.<sup>70</sup>
32. PNG has failed to demonstrate adherence to the Guidelines on the Role of Prosecutors, including paragraph 12 to 'perform their duties fairly.'<sup>71</sup> It is clear that in capital cases, evidence had been used which was 'obtained through recourse to unlawful methods,' that, 'constitute[d] a grave violation of the suspect's human rights.'<sup>72</sup> The country's capital judicial process violates international law on the right to a fair trial.

### *The Universal Periodic Review and the Sustainable Development Goals*

33. PNG should consider adopting the UPR recommendations as an expression of mutual reinforcement of commitments to promote the Sustainable Development Goals (SDGs).<sup>73</sup> The human rights values expressed in both the UPR and the SDGs can be weaved together to promote policy coherence.<sup>74</sup>
34. 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.<sup>75</sup> 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 independent national human rights institutions. Consistent with this goal PNG should establish a National Human Rights Institution and provide it with a mandate to advise on an official moratorium as a step towards abolition.

35. 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>76</sup> The death penalty is antithetical to strong institutional processes for the fostering of the human dignity of the people of PNG.

#### **D. Recommendations**

The UPR Project at BCU recommends that the government of Papua New Guinea should:

- i. Support and implement the recommendations from the second cycle of the UPR:
  - a. to adopt an official moratorium on the death penalty;
  - b. amend national legislation to abolish the punishment in all circumstances; and,
  - c. ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
- ii. Create a PNG National Human Rights Institution.
- iii. Support the next biennial vote on the UNGA Resolution on the moratorium on the use of the death penalty, and withdraw support for any future *note verbale* on dissociation.
- iv. Increase its support for the Asia Pacific Forum of National Human Rights Institutions in their important contribution to the regional abolition of the death penalty.
- v. Accept UPR recommendations on the abolition of the death penalty, as also signalling PNG’s affirmation of commitments to SDG 16 on strong institutions.

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<sup>1</sup> The core international treaties that Papua New Guinea has ratified are: International Covenant on Civil and Political Rights, (1976) 999 UNTS 171 (ratified on 21 July 2008); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) 16 December 1966 (ratified on 21 July 2008); Convention on the Rights of the Child, G.A. Res. 44/25, 20 November 1989 (ratified on 2 March 2003); Convention on the Elimination of All forms of Discrimination Against Women, New York, 18 December 1979 (ratified 12 January 1995); Convention on the Elimination of All Forms of Racial Discrimination, New York, 21 December 1965 (ratified on 27 January 1982); and, Convention on the Rights of Persons with Disabilities, New York, 13 December 2006 (ratified 26 September 2013). PNG is yet to ratify: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46 10 December 1984; the International Convention on the Protection of the Rights of All Migrant Workers and members of Their Families, G.A. Res 45/158, 18 December 1990; the Convention for the Protection of All Persons from Enforced Disappearances, New York, 23 December 2010.

<sup>2</sup> The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, G.A. Res 44/128 15 December 1989.

<sup>3</sup> Amnesty International, *Death Sentences and Executions 2019*, ACT 50/1847/2020 (Amnesty International, 2020), p. 55.

<sup>4</sup> The judicial practice is explained in: *Ume v. The State* [2006] PGSC 9; SC836 (19 May 2006); *State v. Lati (No. 2)* [2009] PGNC 121; N3740 (17 July 2009), and *State v. Damanin (No. 2)* [2020] PGNC 210; N8420 (14 July 2020).

<sup>5</sup> Amnesty International, *Death Sentences and Executions 2019*, ACT 50/1847/2020 (Amnesty International, 2020), p. 21.

<sup>6</sup> See, *Ume v. The State*, [2006] PGSC 9; SC836 (19 May 2006). In discussing the colonial history of the death penalty in Papua New Guinea, and the early Penal Codes, including the Criminal Code (Queensland), and the Criminal Code Amendment Ordinance of 1907, the Supreme Court stated:

There is only one reported case of a ‘native’ being executed by hanging [under the 1907 Ordinance]; see Sir Hubert Murray’s speech in 1924 reported in ‘Papua of Today’ quoted by Prentice J in *Regina v. Peter Ivoro* [1971-1972 PNGLR 374.] (para. 19).

<sup>7</sup> Criminal Code Amendment Ordinance of 1907 (Amendment No. 4 of 1907).

<sup>8</sup> Criminal Code Amendment Ordinance of 1965 (Amendment No. 72 of 1965).

<sup>9</sup> Criminal Code Act 1974 (Act No. 28 of 1974). This substituting of the death penalty for life imprisonment was further provided for in a post-independence amendment of the Criminal Code in Act No. 2 of 1976.

<sup>10</sup> Criminal Code Amendment Act 1991 (Act No. 25 of 1991).

<sup>11</sup> *Ume v The State*, [2006] PGSC 9; SC836 (19 May 2006), para. 51. In *State v. Javopa* [2014] PGNC 49; (17 April 2014), ‘The death penalty is not mandatory for while Parliament legislated for the ultimate penalty, it did not remove the sentencing court’s discretion under section 19(1)(aa) of the [Criminal Code Act, Chapter 262] to impose a life sentence or a term of years depending on the circumstances of each case. Hence the death penalty remains merely the maximum, para 7 (citing *Ume v. The State*, *ibid*).

<sup>12</sup> *Ume v. The State*, [2006] PGSC 9; SC836 (19 May 2006), para. 67, (that in the absence of legislation):

we would suggest the death penalty may be considered appropriate in the following cases:

1. The killing of a child, a young or old person, or a person under some disability needing protection;

2. The killing of a person in authority or responsibility in the community providing invaluable community service, whether for free or for a fee who are killed in the course of carrying out their duties or for reasons to do with the performance of their duties, e.g., policeman, correctional officer, government officer, school teacher, church worker, company director or manager.
3. Killing of a leader in government or the community, for political reasons.
4. Killing of a person in the course of committing other crimes perpetrated on the victim or other persons such as rape, robbery, theft, etc.
5. Killing for hire.
6. Killing of two or more persons in the single act or series of acts.
7. Offence is committed by a prisoner in detention or custody serving sentence for another serious offence of violence.
8. The prisoner has prior conviction(s) for murder offences.

<sup>13</sup> This repealed the Sorcery Act 1971.

<sup>14</sup> Supra, footnote iv.

<sup>15</sup> Isaac Nicholas, Death Penalty Under Review, Post-Courier, 24 February 2020, <https://postcourier.com.pg/death-penalty-under-review/>. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/19/61/Add.3, 1 March 2012, para 109:

the Special Rapporteur notes with regret that in 2011, five men were reportedly sentenced to death by hanging by the Kokopo National Court despite the assurances of the Government that Papua New Guinea has never enforced the law on death penalty since its enactment. The Special Rapporteur believes that, under the conditions of its imposition and execution in Papua New Guinea, capital punishment inevitably results in cruel, inhuman or degrading treatment or even torture. He strongly urges the Government to take steps to abolish the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition.

See also, Rupert Colville, spokesperson for the UN High Commissioner for Human Rights (OHCHR), UN human rights office regrets Papua New Guinea's decision to resume death penalty, <https://news.un.org/en/story/2013/05/441052#.VT8Cu87E-Iw>

<sup>16</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>17</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>18</sup> See, 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>19</sup> For example, see the UNGA Resolution on the moratorium on the use of the death penalty, UNGA Res A/RES/73/170 (17 December 2018).

<sup>20</sup> For example, the Independent Expert on the human rights situation in Sudan <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/SDIndex.aspx>.

<sup>21</sup> For example, the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, <http://www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx>, and the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>.

<sup>22</sup> 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>23</sup> Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.

<sup>24</sup> For example, *Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).

<sup>25</sup> UPR Info, Database: Death Penalty <https://www.upr-info.org/database/>.

<sup>26</sup> High-level panel discussion on the question of the death penalty, Report of the United Nations High Commissioner for Human Rights, UNGA, A/HRC/30/21 (16 July 2015) p. 2

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid., p. 12.

<sup>31</sup> High-level panel discussion on the question of the death penalty, A/HRC/42/25, p. 10.

<sup>32</sup> 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>33</sup> Ibid., para. 50, p. 12.

<sup>34</sup> Amnesty International, stated, that at the end of 2018, more than two-thirds of the world's nations had "abolished the death penalty in law or practice," in, *Death Penalty in 2018: Facts and Figures*, (10 April 2019) <[www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/](http://www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/)>.

<sup>35</sup> Resolution 42/24 The question of the death penalty, A/HRC/RES/42/24, 8 October 2019.

<sup>36</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*.

<sup>37</sup> 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*

<sup>38</sup> 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*.

<sup>39</sup> 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*.

<sup>40</sup> 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*.

UNGA Res. 63/168 18 December 2008, *adopted by 106 votes to 46, with 34 abstentions*

<sup>41</sup> 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*.

<sup>42</sup> 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*

<sup>43</sup> 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*

<sup>44</sup> Note verbale dated 11 January 2008 from the Permanent Missions to the United Nations of Afghanistan and fifty-seven others, addressed to the Secretary general, A/62/658, 2 February 2008.

<sup>45</sup> Note verbale dated 12 February 2009 from the Permanent Missions to the United Nations of Egypt, addressed to the Secretary general, A/63/716, 12 February 2009.

<sup>46</sup> Note verbale dated 11 March 2011 from the Permanent Missions to the United Nations of Egypt, addressed to the Secretary general, A/65/779, 11 March 2011.

<sup>47</sup> Note verbale date 16 April 2013 from the Permanent Missions to the United Nations of Egypt, addressed to the Secretary general, A/67/841, 16 April 2013.

<sup>48</sup> Note verbale dated 28 July 2015 from the Permanent Missions to the United Nations of Egypt, addressed to the Secretary general, A/69/993, 28 July 2015.

<sup>49</sup> Note verbale dated 17 September 2017 from the Permanent Missions to the United Nations of Egypt addressed to the Secretary general, A/71/1047, 17 September 2017.

<sup>50</sup> Note verbale dated 16 September 2019 from the Permanent Missions to the United Nations of Egypt addressed to the Secretary general, A/71/1047, 16 September 2019.

<sup>51</sup> See *supra*, notes iv and v.

<sup>52</sup> Papua New Guinea, National Report submitted to the Working Group on the Universal Periodic Review, Human Rights Council, A/HRC/WG.6/11/PNG/1, 9 May 2011, para. 51.

<sup>53</sup> *Ibid.*, para 32.

<sup>54</sup> *Ibid.*, para 104.

<sup>55</sup> Papua New Guinea, National Report submitted to the Working Group on the Universal Periodic Review, A/HRC/WG.6.25/PNG/1, 3 May 2016, para. 157. It should also be noted that the Special Rapporteur on extrajudicial, summary or arbitrary executions stated, "OHCHR should strengthen its presence in the country by establishing a country office in Papua New Guinea, and provide it with adequate resources to carry out the mandate of human rights monitoring and technical assistance," 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. 120.

<sup>56</sup> Report of the Working Group on the Universal Periodic Review, Myanmar, Addendum, Human Rights Council, A/HRC/31/13/Add.1, 10 March 2016, para 3. Myanmar also considered a further 88 recommendations of which 11 were accepted, 30 in principle, 1 in part, and 42 were generally accepted, *ibid.*, para 4.

<sup>57</sup> Report of the Working Group on the Universal Periodic Review, Papua New Guinea, A/HRC/33/10, 13 July 2016, para. 45.

<sup>58</sup> Report of the Working Group on the Universal periodic Review, Papua New Guinea, Addendum, A/HRC/33/10/Add.1, 22 September 2016, note 3, page 5.

<sup>59</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>60</sup> See, Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, 5<sup>th</sup> ed, (Oxford University Press, 2015), p. 7-8.

<sup>61</sup> *The State v. Damaniin (No. 2)* [2002] PGNC 210; N8420 (14 July 2020), para. 78.

<sup>62</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. 88.

<sup>63</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), p. 21.

<sup>64</sup> Rob Taylor, Papua New Guinea May Review Death Penalty, Prime Minister Says, Wall Street Journal, 10 March 2015, <https://www.wsj.com/articles/papua-new-guinea-may-review-death-penalty-prime-minister-says-1425954144>

<sup>65</sup> Isaac Nicholas, Death Penalty Under Review, Post-Courier, 24 February 2020, <https://postcourier.com.pg/death-penalty-under-review/>

<sup>66</sup> The question of the death penalty, E/CN.4/2003/L.93 17 April 2003,

3. Calls upon all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

...

5. Calls upon all States that still maintain the death penalty:

(a) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply;

(b) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions

<sup>67</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. 91.

<sup>68</sup> ICCPR article 14, *supra* note xvi.

<sup>69</sup> Safeguards, *supra* note xviii.

<sup>70</sup> Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Para. 12, and, "respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system."

<sup>71</sup> Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>72</sup> *Ibid.*

<sup>73</sup> See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>

<sup>74</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 SDGs, p. 2

<sup>75</sup> Sustainable Development Goal 16, "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels," <https://sustainabledevelopment.un.org/sdg16> 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all, and 16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

<sup>76</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 in Papua New Guinea, 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."