



THE UPR PROJECT AT BCU

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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. Philippines is party to eight of the nine core international human rights treaties for which it should be commended.¹ This includes the International Covenant on Civil and Political Rights (ICCPR) and its Second Optional Protocol Aiming to the Abolition of the Death Penalty (ICCPR-OP2). In line with the Covenant's protection of the right to life and the prohibition against inhuman punishment, this Stakeholder Report focuses upon capital punishment.
2. We make recommendations to the Government of Philippines on this key issue, implementation of which would also see Philippines 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 and maintain its abolition of the death penalty and refrain from reintroducing the punishment.

CAPITAL PUNISHMENT

A. Philippines and International Law on the Death Penalty

4. The death penalty in Philippines can be traced back to the Spanish colonial rule (1564-1946) where common methods of execution were death by firing squad, garotte and hanging. After gaining independence in 1947, the punishment continued to be imposed for the next four decades.²
5. The Philippines became the first Asian nation to abolish the death penalty by virtue of the 1987 Constitution. Article III, section 19 of the Constitution prohibited the punishment but allowed for its Congressional reinstatement. President Fidel Ramos reintroduced the death penalty in 1993 through the new Republic Act 7659 and, in 1996, lethal injection was prescribed as the sole method of execution.³
6. The punishment was once again abolished in 2006 by President Gloria Macapagal Arroyo who was a vocal opponent of the death penalty. Arroyo initiated a moratorium on the punishment and abolition became law when the Congress passed Republic Act 9346.
7. The following year, the Philippines became a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights regarding the abolition of the death penalty.

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,⁴ its Second Optional Protocol,⁵ the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,⁶ the Secretary General's quinquennial reporting,⁷ the Secretary General's Question on the Death Penalty,⁸ and the Human Rights Committee decisions.⁹ Other relevant treaties include the Convention Against Torture and Other Cruel, Inhuman and Degrading

Treatment or Punishment¹⁰ and the Convention on the Rights of the Child.¹¹

9. The Human Rights Committee in its General Comment on the Right to Life¹² provides an interpretive lens on the death penalty. 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 endorses 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.¹³

10. The binding nature of abolition has been discussed by the Committee, and reaffirmed in the Secretary-General’s report on the question of the death penalty¹⁴, in that:

States parties to the Covenant that have abolished the death penalty, through amending their domestic laws, becoming parties to the Second Optional Protocol to the Covenant or adopting another international instrument obligating them to abolish the death penalty, are barred from reintroducing it. Like the Covenant, the Second Optional Protocol does not contain termination provisions and States parties cannot denounce it. Abolition of the death penalty is therefore legally irrevocable.¹⁵

11. 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 of the resolution was passed on 16 December 2020. A total of 123 votes were recorded in favour with 38 votes against and 24 abstentions. Philippines has voted in favour in six of these resolutions, including the latest one, and abstained in the 2016 and 2018 resolutions.¹⁶

12. Philippines’s voting record is also reflected in its absence 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.¹⁷ Both its favour of a global moratorium and absence from the *note verbale* signal its anti-death penalty position for which it should be commended. However, this does not seem to mirror what is happening on the ground as seen from the outcome of its third UPR and beyond.

B. Implementation of Recommendations from Cycle Three in 2017

13. Philippines received 257 recommendations in the Third Cycle of which 103 were accepted and 154 were noted.¹⁸ A total of 23 recommendations focused on the death and all were noted.¹⁹

Recommendations concerning Philippines's Adoption of International Law

14. **Haiti** (para 133.76), **Mozambique** (para 133.77), **Luxembourg** (para 133.78), **Slovakia** (para 133.79), **Lichtenstein** (para 133.8), **Bulgaria** (para 133.98) and **Canada** (para 133.97) recommended Philippines to refrain from reintroducing the death penalty.
15. Whilst such recommendations are welcomed, 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
16. **Moldova** (para 133.87), **Portugal** (133.85), **France** (para 133.94) and **Italy** (para 133.95) expanded on their recommendations by making reference to Philippines' international obligations but failed to specify what these were. For example, Portugal recommended the State under Review to "uphold its international obligations and not reinstate the capital punishment" whilst France urged it to "abandon the plan to reintroduce the death penalty, which would be against the international commitments of the country."
17. It would prove more beneficial if recommending States make reference to the review criteria, which includes "human rights instruments to which a State is party".²² For example, citing Article 6 ICCPR and Article 1 ICCPR-OP2, instruments which the Philippines has ratified, would strengthen the recommendations concerned. These Articles explicitly indicate to the abolition of the death penalty and imply that states that have abolished the punishment may not reintroduce it.
18. A number of States did make reference to Philippines' obligations under the ICCPR-OP2 which is a positive step. This included **Switzerland** (para 133.82), **Romania** (para 133.83), **Norway** (para 133.84), **Ireland** (para 133.86), **Belgium** (para 133.87), **Lithuania** (para 133.88), **New Zealand** (para 133.89), **Czechia** (para 133.9), **Uruguay** (para 133.91), **Brazil** (para 133.92), **Ukraine** (para 133.93), and **Australia** (para 133.96).
19. Philippines provided a non-committal response to the Working Group in that "recommendations relating to the death penalty would be discussed with the leaders of Congress. The Government was committed to ending killings and suppressing, to the extent possible, crime caused by the consumption of illegal drugs, corruption and poverty."²³
20. Deterrence is one of the most repeated justifications that is advanced for the imposition of the death penalty. It is extremely difficult, if not impossible, to find empirical data on the deterrent effects of capital punishment. The studies do not provide definitive evidence on the impact of capital punishment when used on an extensive scale and/or for certain crimes such as drugs or economic crimes.²⁴ Therefore, the Philippines should not rely on the deterrence argument to inform its position on the death penalty.
21. Furthermore, Commissioner Gomez-Dumpit of the National Human Rights Commission has stressed that there is no evidence to suggest that the death penalty reduces crime rates in any way. Rather, it exacerbates concerns among the impoverished, disadvantaged, and vulnerable sections of society.

22. Since its last UPR, the State has continued to signal its support to reinstate the death penalty which is a clear breach of its international obligations under the ICCPR and ICCPR-OP2.
23. It is deeply concerning to note that President Duterte renewed his call for the reimposition of the death penalty during his 2019 and 2020 State of the Nation Address where he requested Congress to “reinstate the death penalty for heinous crimes related to drugs, as well as plunder”²⁵ and used the platform to reiterate “the swift passage of a law reviving the death penalty by lethal injection for crimes specified under the Comprehensive Dangerous [Drugs] Act of 2002”.²⁶
24. In 2019, among the senators who filed bills seeking to impose the death penalty in the country were Senator Panfilo Lacson, filing Senate Bill 27, Senator Emmanuel Pacquiao, filing Senate Bill 189, and Senator Bong Go, filing Senate Bill 207.²⁷
25. We welcome the news that Senator Panfilo Lacson has withdrawn his Senate Bill 27 this year over concerns of wrongful convictions. On November 8 2021, Lacson wrote to the Senate Secretary, Myra Villarica, requesting that the bill no longer be considered for deliberation by the Senate Committees on Justice and Human Rights and the Constitutional Amendments and Revision of Codes.²⁸ Senator Pacquiao has also withdrawn his support for the punishment, albeit temporarily, arguing that innocent people may be put to death so the focus needs to be on “fix[ing] first our judicial system in this country”.²⁹
26. As a result of the President’s call to reinstate the death penalty, the House of Representatives consolidated 11 pending bills into House Bill No. 7814. On 2 March 2021, Congress passed Bill 7814, amending provisions of the Dangerous Drugs Act of 2002 and reimposing the penalty of life imprisonment to death for specific-drug related offenses.³⁰
27. It is disappointing to note there are still nine pending bills aimed at the reintroduction of the death penalty and we urge the Senate to not consider these for deliberation as they are in clear violation of Philippine’s international law obligations.
28. Furthermore, the timeliness and appropriateness of such bills, including Bill 7814, must be questioned especially in the midst of the coronavirus pandemic where the virus has already infected over 3.6 million Filipinos and caused the death of 57,218 as of 12 March 2022.³¹

C. Further Points for Philippines to Consider

Utilising Diverse Drug-Rehabilitation Approaches to Counter the ‘War on Drugs’

29. As a result of increased policing and arrests of suspected drug users, there is a severe problem of overcrowded prisons in Philippines making it one of the most congested penal systems in the world. According to the Bureau of Jail Management and Penology, 467 jails nationwide were at 534 percent capacity by March 2020.³² By May 2021, it had a total jail population of more than 165,000, occupying space intended for a maximum capacity of 40,000.³³

30. Given the severely overcrowded jail and prisons, there needs to be a greater utilization of Philippine drug treatment facilities. The government could implement a three-pronged approach which would involve undertaking a comprehensive review of the State's approach to its illegal drug problem; allocating a larger proportion of the national budget for health to specifically focus on drug rehabilitation; and funding sociological research that assesses the effectiveness of local programs given the specific challenges drug users face in the Philippines.³⁴ The drug problem should be viewed from "a public health perspective and not viewed solely as a law enforcement problem to address a policy of criminalization and punishment".³⁵

The Role of the National Human Rights Institution

31. The Commission on Human Rights (CHR) is an independent National Human Rights Institution (NHRI) created under the 1987 Philippine Constitution, established on 05 May 1987.³⁶ Building upon its extensive and much-needed work to date on the right to life in Philippines, the CHR could advise the government on its international law commitments to maintain abolition, 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 CHR with a mandate to consider the question of the abolition of the death penalty.

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

32. 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,"³⁷ and the ICESCR article 15 (1)(b) recognises the right of everyone, "[t]o enjoy the benefits of scientific progress and its applications."
33. 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.³⁸

34. Social science investigations now demonstrate that reflecting appropriate government means that whilst capital punishment could be created within a legitimate parliamentary process,³⁹ it is now clear that the application of the death penalty renders an illegitimate and inhumane outcome.⁴⁰ Abolition in Philippines enables the people of the country to benefit from the advancement of the leading social scientific research on punishment policies and reintroduction of the death penalty would prove antithetical to this.

The Universal Periodic Review Recommendations and the Contribution to the Sustainable Development Goals

35. Philippines should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government's commitment to promoting the Sustainable Development Goals.⁴¹ The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.⁴²
36. 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.
37. 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.⁴³ The death penalty is contrary to strong institutional processes for the fostering of the human dignity of the people of Philippines.

D. Recommendations

We recommend the government of Philippines to:

- i. Remove all bills aimed at reintroducing the death penalty from the Senate's consideration.
- ii. Refrain from reintroducing the death penalty contrary to Article 6 ICCPR and ICCPR-OP2.
- iii. Invest in drug treatment facilities to counter the 'war on drugs' using a three-pronged approach:
 - a. undertake a comprehensive review of the State's approach to its illegal drug problem;
 - b. allocate a larger proportion of the national budget for health to specifically focus on drug rehabilitation;
 - c. fund sociological research that assesses the effectiveness of local programs given the specific challenges drug users face in the Philippines.
- 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. Enhance its support for the Asia Pacific Forum of National Human Rights Institutions in their important contribution to the regional abolition of the death penalty.

¹ See <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN>.

² Amnesty International, *The Death Penalty: Criminality, Justice and Human Rights* (1 October 1997) ASA/35/09/97; Arlie Tagayuna, 'Capital Punishment in the Philippines' (2004) 5(1) *Explorations in Southeast Asian Studies* 1-26.

³ *ibid.*

⁴ 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).

⁵ 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.

⁶ 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.

⁷ 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).

⁸ See eg, Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.

⁹ For example, *Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).

¹⁰ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 10 December 1984.

¹¹ Article 37(a) Convention on the Rights of the Child, G.A. Res 44/25, 20 November 1989.

¹² 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.

¹³ *ibid* para 50.

¹⁴ In the Secretary-General's recent report on the question of the death penalty, he noted "States parties to the International Covenant on Civil and Political Rights that have abolished the death penalty, including by becoming parties to the Second Optional Protocol, have an obligation not to reintroduce it." (13 August 2020, UN Doc A/HRC/45/20, para 59)

¹⁵ UN Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, para 34.

¹⁶ 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*.

¹⁷ 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.

¹⁸ UNHRC, 'Report of the Working Group on the Universal Periodic Review: Philippines Addendum' (19 September 2017) UN Doc A/HRC/36/12/Add.1, paras 3-4.

¹⁹ *ibid*.

²⁰ Amna Nazir, 'The Universal Periodic Review and the Death Penalty: A Case Study of Pakistan' (2020) 4(1) RSIL Law Review 126, 153.

²¹ See UPRinfo, 'For impact on the ground the UPR needs SMART recommendations' <<https://www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations>> (21 October 2015).

²² UNHRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1, para 1(c).

²³ UNHRC, 'Report of the Working Group on the Universal Periodic Review: Philippines' (18 July 2017) UN Doc A/HRC/36/12, para 131.

²⁴ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 294, 393.

²⁵ Azer Parrocha, 'Duterte asks Congress to restore death penalty for drugs, plunder' (*Philippine News Agency*, 23 July 2019) <www.pna.gov.ph/articles/1075720>.

²⁶ Kristel Limpot, 'Duterte calls for revival of death penalty by lethal injection for drug-related crimes' (*CNN Philippines*, 27 July 2020) <www.cnnphilippines.com/news/2020/7/27/Duterte-death-penalty-revival-fifth-SONA.html>.

²⁷ Patricia Lourdes Viray, 'Pacquiao, Go file bills to revive death penalty' (*Philstar*, 3 July 2019)

<www.philstar.com/headlines/2019/07/03/1931680/pacquiao-go-file-bills-revive-death-penalty>.

²⁸ Bernadette E Tamayo, 'Lacson withdraws death penalty bill for heinous crimes' (*Manila Times*, 9 November 2021) <www.manilatimes.net/2021/11/09/latest-stories/lacson-withdraws-death-penalty-bill-for-heinous-crimes/1821540>.

²⁹ 'Manny Pacquiao backtracks on death penalty, stands firm on 'same-sex marriage'' (*Licas News*, 9 November 2021) <<https://philippines.licas.news/2021/11/09/manny-pacquiao-backtracks-on-death-penalty-stands-firm-on-same-sex-marriage/>>.

³⁰ Jose M Jose and Maria Corazon A De Ungria, 'Death in the Time of Covid-19: Efforts to Restore the Death Penalty in the Philippines' (2021) 2 *Forensic Science International: Mind and Law*, 1.

³¹ See WHO Coronavirus (COVID 19) Dashboard, 'Philippines': <<https://covid19.who.int/region/wpro/country/ph>>.

³² 'COVID-19: Lessons from Philippines jails show how to fight infectious coronavirus disease' (*ICRC*, 24 March 2020) <www.icrc.org/en/document/philippines-amidst-covid-19-outbreak-icrc-focuses-one-most-vulnerable-places-prisons>.

³³ For up-to-date country data, see <www.prisonstudies.org/country/philippines>.

³⁴ Jose and De Ungria (n 30) 2.

³⁵ *ibid.* See also Nymia Simbulan et al, 'The Manila Declaration on the Drug Problem in the Philippines' (2019) 85(1) *Annals of Global Health* 26.

³⁶ For the NHRI's work see <<https://chr.gov.ph/tag/nhri/>>.

³⁷ 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.

³⁸ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 7-8.

³⁹ 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.

⁴⁰ 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.

⁴¹ See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>.

⁴² 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.

⁴³ 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.