



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

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## **INTRODUCTION**

1. Japan is party to eight of the nine core international human rights treaties, for which it should be commended.<sup>1</sup> This includes the International Covenant on Civil and Political Rights (ICCPR) and, in line with the ICCPR'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 Japan on this key issue, implementation of which would also see Japan 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 Japan to make practical commitments in the fourth cycle of the UPR for the abolition of this punishment. As an initial step, we call for the suspension of the capital judicial process through the initiation of an official moratorium on the death penalty. This will enable the government to make a positive commitment towards domestic *de jure* abolition.

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

4. Whilst the Japanese Constitution does not explicitly provide for capital punishment, Article 31 says that “[n]o person shall be deprived of life or liberty...except according to procedure established by law.”<sup>2</sup> The Penal Code of Japan<sup>3</sup> states that a death sentence can be handed down for multiple offences, including conduct which contravenes the evolving jurisprudence on the ‘most serious crimes’ under international law.<sup>4</sup> This includes capital offences that do not result in death, including arson, causing a flood leading to damage, and detonating an explosive.<sup>5</sup>
5. In practice, the punishment is reserved for cases of murder,<sup>6</sup> with the Supreme Court of Japan confirming in its landmark *Nagayama* ruling that the death penalty should be used in “extremely heinous cases.”<sup>7</sup> Executions are carried out by hanging.<sup>8</sup> Japan does not use the mandatory death penalty, which is a positive step towards the restriction and ultimate abolition of capital punishment.
6. In December 2021, Japan resumed executions after a two-year hiatus, executing three people by hanging.<sup>9</sup> It was estimated that, as of 2021, there were 117 people on Japan's death row,<sup>10</sup> with three people sentenced to death in 2021.<sup>11</sup> Up to date figures for 2022 are yet to be released at the time of submission.

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

7. The United Nations' framework for regulating the application of the death penalty comprises a corpus of international human rights law and jurisprudence. Of particular relevance are Articles 6, 7, and 14 ICCPR,<sup>12</sup> its Second Optional Protocol,<sup>13</sup> the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (ECOSOC Safeguards),<sup>14</sup> the Secretary General's quinquennial reporting,<sup>15</sup> the Secretary General's Question on the Death Penalty,<sup>16</sup> and the Human Rights Committee's decisions.<sup>17</sup> Other relevant treaties include the Convention Against Torture

and Other Cruel, Inhuman and Degrading Treatment or Punishment<sup>18</sup> and the Convention on the Rights of the Child.<sup>19</sup> Article 19 of the Constitution of Japan provides that “treaties concluded by Japan and established laws of nations shall be faithfully observed.”<sup>20</sup>

8. The General Comment on the Right to Life<sup>21</sup> provides an interpretive lens on the death penalty and concerning ICCPR Article 6(6), which states, ‘[n]othing in this article shall be invoked to delay or to prevent the abolition of capital punishment,’ it:

reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable [...] and necessary for the enhancement of human dignity and progressive development of human rights.<sup>22</sup>

9. Furthermore, there has been a consistent increase in state signatures solidifying a global position against this punishment as seen in the UN General Assembly’s biennial resolution to impose a global moratorium on the use of the death penalty. The eighth and most recent iteration, passed on 16 December 2020, had a total of 123 votes in favour with 38 votes against and 24 abstentions. Japan has voted against all such resolutions to date.<sup>23</sup>
10. Conversely, Japan’s voting record is 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.<sup>24</sup> The absence from the note verbale provides the platform for Japan to signal its support for a global moratorium in the forthcoming resolution.

## **B. Implementation of Recommendations from Cycle Three in 2017**

11. Japan received 217 recommendations in the Third Cycle of which 145 were accepted and 72 were noted.<sup>25</sup> A total of 23 recommendations focused on the death penalty, with another 5 focusing on prison conditions generally, yet **none of these recommendations were accepted.**<sup>26</sup> This is disappointing and we strongly urge the Government of Japan to consider accepting or partially accepting the capital punishment recommendations it receives in Cycle Four.

### *Recommendations concerning Japan’s Adoption of International Law*

12. **Slovenia** (para 161.3), **Argentina** (para 161.4), **Montenegro, Spain, Sweden, Togo** (para 161.5), **Croatia, Germany** (para 161.6), **Mongolia** (para 161.7), **Uruguay** (para 161.8), and **Guatemala** (para 161.9) recommended that Japan should ratify the Second Optional Protocol to the ICCPR. These were all noted, with the government stating that “each sovereign country should be allowed to make decisions on the issue of the death

penalty independently.”<sup>27</sup> Japan has not indicated any change to its position.

#### *Recommendations concerning Abolition*

13. A number of States recommended a moratorium on the death penalty with a view to abolition. This included **Cyprus, Italy** (para 161.95), **Republic of Moldova** (para 161.96), **Norway, Rwanda** (para 161.97), **Bolivian Republic of Venezuela** (para 161.98), **New Zealand, France, Mexico** (para 161.99), **Iceland, Belgium, Sweden, Finland, Spain, Brazil, Netherlands, Denmark, Australia** (para 161.100), and **United Kingdom** (para 161.101). **Timor-Leste** (para 161.102), **Liechtenstein** (para 161.103), **Colombia** (para 161.104), **Paraguay, Portugal** (para 161.105) and **Panama** (para 161.106) recommended the abolition of the death penalty. Japan noted all of these recommendations and continues to support the retention of capital punishment.
14. 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.<sup>28</sup> It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.<sup>29</sup> This would help Japan to initiate an incremental approach to reducing the scope of the punishment and map out the process for abolition.

#### *Recommendations concerning Specific Aspects of Japan’s Death Penalty*

15. Other recommendations were more specific, focusing on distinct issues related to Japan’s capital system. **Switzerland** (para 161.107) asked Japan to “[i]ntroduce a system of mandatory appeal” in death penalty cases, and **France** (161.108) suggested that, in order to protect the rights of those sentenced to death, Japan should guarantee the right to an appeal and suspend death sentences for those appealing for a retrial. Japan noted both recommendations, stating that “a defendant has the right to appeal and the death penalty would not be carried out until the sentence becomes final and binding,” but that it would be “inappropriate” to suspend death sentences based upon appeals for a retrial.<sup>30</sup> Japan continues to take this approach, as two of the three men executed in 2019 had pending petitions for a retrial at the time of their executions.<sup>31</sup> This is a clear violation of international norms, in particular the ECOSOC Safeguards,<sup>32</sup> and is something that should be raised by Member States in Cycle Four.
16. **Austria** (161.109) recommended that Japan should “[d]esignate an official body for a comprehensive review...to promote an informed debate on the death penalty.” Similarly, **Canada** (para 161.110) asked Japan to “engage in public debate about the future use of the death penalty.” Both recommendations were noted, with the government stating that “[t]he majority of Japanese people consider the death penalty to be unavoidable in the case of extremely heinous crimes.”<sup>33</sup> Whilst a 2020 poll carried out by the Japanese government found that over 80% of the 3000 people polled supported capital punishment,<sup>34</sup> the results of Andreescu’s & Hughes’ study “suggest that the public support for capital punishment in Japan is not as extensive as government-sponsored public opinion polls tend to show.”<sup>35</sup> Moreover, Muramatsu et. al.’s study confirmed that “neither death sentences nor executions deter homicide or robbery-homicide” in Japan.<sup>36</sup> As such, opening up a wider public debate on the future of the death penalty in Japan would be beneficial, allowing a wider group of Japanese citizens to provide their opinions.

### *Recommendations on Prison Conditions and Solitary Confinement*

17. Whilst not solely focused on the death penalty, numerous countries recommended that Japan should improve prison conditions, which includes death row. **Spain** (161.111), **Zambia** (161.113) and **Denmark** (161.115) recommended that prison conditions must be improved in line with international standards, including the United Nations' Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).<sup>37</sup> **Sweden** (para 161.112) and **Canada** (para 161.114) made specific points about what must be improved, with both noting the requirement for improved medical and dental care, appropriate provisions for both winter and summer temperatures, and improved nutrition.
18. Japan noted all recommendations related to prison conditions, pointing to its statement during the interactive dialogue that Japan has made “progress in improving prison conditions, including medical care and heating and cooling, and indicated that inmates sentenced to death were treated in appropriate conditions.”<sup>38</sup> Information reported about death rows across Japan discredits this, instead suggesting that the conditions on death row constitute cruel, inhuman and degrading treatment, contrary to Article 7 ICCPR and the Nelson Mandela Rules.
19. The Cornell Center on the Death Penalty Worldwide reports that those on death row in Japan are housed in “cells of about 8 square meters...[and a]ttorneys and relatives are virtually the only people who can visit or correspond” with them.<sup>39</sup> They are not allowed to watch television or listen to the radio, and their “reading material is controlled.”<sup>40</sup> People on death row in Japan are also kept in solitary confinement, and “[f]rom waking to the evening inspection, they may not speak, make any noise, walk around their cell or look around.”<sup>41</sup> **Panama**'s (para 161.106) recommendation to abolish the death penalty also asked Japan to “modify the penitentiary regulations to strictly limit solitary confinement.” This is in line with the UN Human Rights Committee's recommendation to Japan in 2014, to avoid “imposing solitary confinement on death row prisoners except in the most exceptional circumstances and for strictly limited periods.”<sup>42</sup>

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

#### *Secrecy of Capital Punishment in Japan*

20. People on death row in Japan are not advised of their execution date until the morning of their execution. This is a violation of the Convention Against Torture and the prohibition of cruel, inhuman or degrading treatment as set out in Article 7 ICCPR. The secrecy surrounding the execution date also extends to the person's family, as “[t]heir families are usually notified about the execution only after it has taken place.”<sup>43</sup> The Committee on Torture has confirmed that “refusing to provide convicted persons and family members advance notice of the date and time of the execution is a clear human rights violation,”<sup>44</sup> and the UN Secretary General's 2021 Report on the Question of the Death Penalty made clear that transparency within capital punishment is essential.<sup>45</sup>
21. Multiple UN bodies have asked Japan to prohibit this practice, for example, in 2014, the UN Human Rights Committee recommended that Japan should “[e]nsure that the death row regime does not amount to cruel, inhuman or degrading treatment or punishment by giving reasonable advance notice of the scheduled date and time of execution to death

row inmates and their families.”<sup>46</sup> Such recommendations have not been implemented and, in November 2021, two of the three men facing execution sued the government, stating that this practice was “illegal” and “inhumane.”<sup>47</sup> However, both men were executed the following month without timely notice of their execution date.

22. Japan’s reasoning for continuing this practice is that, if they found out about their execution date in advance, it “would impair the emotional stability of the inmate who will be executed.”<sup>48</sup> However, findings from “[a] survey conducted among death row inmates in December 2012 reported that a majority of prisoners wanted to be notified of their execution in advance.”<sup>49</sup> Whilst Japan retains the death penalty, this practice must be halted and people on death row, as well as their families and legal teams, must be provided with timely notice of an execution date.

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

23. The right to benefit from scientific advancement should also apply to the progress in social science research on the death penalty. The Universal Declaration of Human Rights, Article 27, states, “[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits,”<sup>50</sup> and the ICESCR article 15 (1)(b) recognises the right of everyone, “[t]o enjoy the benefits of scientific progress and its applications.”
24. 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>51</sup>

25. Social science investigations now demonstrate that reflecting appropriate government means that whilst capital punishment could be created within a legitimate parliamentary process,<sup>52</sup> it is now clear that the application of the death penalty renders an illegitimate and inhumane outcome.<sup>53</sup> Abolition in Japan 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*

26. Japan should consider accepting and implementing the UPR recommendations as an expression of mutual reinforcement of the government’s commitment to promoting the Sustainable Development Goals.<sup>54</sup> The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.<sup>55</sup>
27. 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.

28. 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. The death penalty is antithetical to strong institutional processes for the fostering of the human dignity of the people of Japan.

#### **D. Recommendations**

We recommend the Government of Japan to:

- 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 the death penalty continues to be retained by Japan, ensure it complies with the ‘most serious crimes’ principle, under Article 6 ICCPR, restricting punishment to crimes of intentional killing only.
- iii. Ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
- iv. Put in place a de facto moratorium, with a view to abolition, within the next three years.
- v. 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.
- vi. Whilst retaining the death penalty, do not execute any person who has appeals pending, including appeals for retrials, in line with ECOSOC Safeguard Number 8.
- vii. Provide the platform for a comprehensive and inclusive public debate on the future of the death penalty in Japan, allowing a group of people that is representative of all Japanese citizens to share their opinions.
- viii. Prohibit the practice of informing people on death row of their execution date on the morning of their execution. Provide those on death row, their families, and their legal teams with sufficient notice of the execution date, in line with international human rights protections, allowing appropriate appeals to be filed and adjudicated upon.

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<sup>1</sup> See <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN)>.

<sup>2</sup> The Constitution of Japan, Nov. 3, 1946, Article 31.

<sup>3</sup> Penal Code of Japan, Act No. 45 of 1907, as last amended by Act No. 54 of 2007, Apr. 24, 1907.

<sup>4</sup> International Covenant on Civil and Political Rights (1976) 999 UNTS 171, Article 6(2).

<sup>5</sup> See, Penal Code of Japan (n 3) Articles 108, 119, 117.

<sup>6</sup> *ibid* Article 199.

<sup>7</sup> Judgment on Standards for Selection of the Death Penalty, Case 1981(A) No. 1505, Keishu Reporter vol. 37, no. 6, p. 609, para. 3, Supreme Court of Japan, 1983.

<sup>8</sup> Penal Code of Japan (n 5) art. 11(1).

<sup>9</sup> Mari Yamaguchi, ‘Japan Hangs 3 in First Use of Capital Punishment in Two Years’ ABC News (21 December 2021) <<https://abcnews.go.com/International/wireStory/japan-hangs-capital-punishment-years-81872245>>.

<sup>10</sup> Amnesty International, ‘Death Sentences and Executions 2021’ (2022) <[www.amnesty.org/en/wp-content/uploads/2022/05/ACT5054182022ENGLISH.pdf](http://www.amnesty.org/en/wp-content/uploads/2022/05/ACT5054182022ENGLISH.pdf)> 26.

<sup>11</sup> *ibid* 12.

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<sup>12</sup> ICCPR (n 4), 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>13</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>14</sup> Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council Resolution, 1984/50; Additions to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty as Agreed by the Economic and Social Council Resolution 1989/64; and the Strengthening of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty as Agreed by the Economic Council Resolution 1996/15.

<sup>15</sup> See eg, ECOSOC Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty Report of the Secretary-General UN Doc E/2015/49 (13 April 2015).

<sup>16</sup> See eg, Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.

<sup>17</sup> For example, *Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).

<sup>18</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 10 December 1984.

<sup>19</sup> Article 37(a) Convention on the Rights of the Child, G.A. Res 44/25, 20 November 1989.

<sup>20</sup> The Constitution of Japan (n 2), art. 98, Nov. 3, 1946.

<sup>21</sup> UN Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018.

<sup>22</sup> *ibid* para 50.

<sup>23</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*; 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*.

<sup>24</sup> UNGA, ‘Note verbale dated 13 September 2019 from the Permanent Mission of Egypt to the United Nations addressed to the Secretary-General’ (16 September 2019) UN Doc A/73/1004.

<sup>25</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review Addendum – Japan’ (1 March 2018) UN Doc A/HRC/37/15/Add.1, 2.

<sup>26</sup> See UNHRC, ‘Report of the Working Group on the Universal Periodic Review – Japan’ (4 January 2018) UN Doc A/HRC/37/15. Recommendations that referred to points other than the death penalty were partially accepted, with the Government of Japan clarifying that it did not accept the part of the recommendation relating to capital punishment.

<sup>27</sup> *ibid* para 147; UNHRC, ‘Report of the Working Group on the Universal Periodic Review Addendum’ (n 25) 2.

<sup>28</sup> Amna Nazir, ‘The Universal Periodic Review and the Death Penalty: A Case Study of Pakistan’ (2020) 4(1) *RSIL Law Review* 126, 153; Alice Storey, ‘Challenges and Opportunities for the UN Universal Periodic Review: A Case Study on Capital Punishment in the USA’ (2021) 90 *UMKC L Rev* 129, 148-49.

<sup>29</sup> See UPRinfo, ‘For impact on the ground the UPR needs SMART recommendations’ <[www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations](http://www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations)> (21 October 2015).

<sup>30</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review Addendum’ (n 25) 5.

<sup>31</sup> Amnesty International (n 10) 31.

<sup>32</sup> ECOSOC ‘Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty’ ECOSOC Res 1984/50 (25 May 1984) Safeguard 8 says: “Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.”

<sup>33</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review Addendum’ (n 25) 5.

<sup>34</sup> Nippon, ‘Poll Reveals More Than 80% Support Death Penalty in Japan’ (4 February 2020) <[www.nippon.com/en/japan-data/h00640/poll-reveals-more-than-80-support-death-penalty-in-japan.html](http://www.nippon.com/en/japan-data/h00640/poll-reveals-more-than-80-support-death-penalty-in-japan.html)>.

<sup>35</sup> Viviana Andreescu & Tom “Tad” Hughes, ‘Public Opinion and the Death Penalty in Japan’ (2020) Volume: 22 issue: 5, page(s): 573-595.

<sup>36</sup> Kanji Muramatsu, David T Johnson, and Koiti Yano ‘The death penalty and homicide deterrence in Japan’ (2017) Volume: 20 issue: 4, page(s): 432-457.

<sup>37</sup> UNGA Res 70/175, ‘Resolution adopted by the General Assembly on 17 December 2015: United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)’ (8 January 2016) UN Doc A/RES/70/175.



- <sup>38</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review Addendum’ (n 25) 6; UNHRC, ‘Report of the Working Group on the Universal Periodic Review’ (n 26) para 148.
- <sup>39</sup> Cornell Center on the Death Penalty Worldwide, ‘Japan’ <<https://deathpenaltyworldwide.org/database/#/results/country?id=36>> accessed 16 June 2022.
- <sup>40</sup> *ibid.*
- <sup>41</sup> Prison Insider, ‘Japan: Detention Conditions of People Sentenced to Death’ (18 January 2022) <[www.prison-insider.com/en/articles/japon-conditions-de-detention-des-condamnes-a-mort](http://www.prison-insider.com/en/articles/japon-conditions-de-detention-des-condamnes-a-mort)>.
- <sup>42</sup> UN Human Rights Committee, ‘Concluding Observations on the Sixth Periodic Report of Japan’ (20 August 2014) CCPR/C/JPN/CO/6 para 13(b).
- <sup>43</sup> Amnesty International, ‘Japan: Abhorrent Executions Crush Hopes of Progress under New Prime Minister’ (21 December 2021) <[www.amnesty.org/en/latest/news/2021/12/japan-abhorrent-executions-crush-hopes-of-progress-under-new-prime-minister](http://www.amnesty.org/en/latest/news/2021/12/japan-abhorrent-executions-crush-hopes-of-progress-under-new-prime-minister)>.
- <sup>44</sup> UN Committee Against Torture, ‘Concluding Observations on the Second Periodic Report of Japan’ (28 June 2013) CAT/C/JPN/CO/2.
- <sup>45</sup> Report of the Secretary General, Question of the Death Penalty (15 September 2021) A/HRC/48/29. The report itself was focused upon the requirement for transparency within the death penalty.
- <sup>46</sup> UN Human Rights Committee (n 42) para 13(b).
- <sup>47</sup> Justin McCurry, ‘Death Row Inmates Sue over Japan’s Brief Notice of Execution’ *The Guardian* (5 November 2021) <[www.theguardian.com/world/2021/nov/05/japan-death-row-inmates-sue-over-same-day-notification-of-execution-report](http://www.theguardian.com/world/2021/nov/05/japan-death-row-inmates-sue-over-same-day-notification-of-execution-report)>.
- <sup>48</sup> The Mainichi, ‘Inmates’ Suit over 11<sup>th</sup>-hour Execution Notices a Change Japan Judicial System Debate’ (7 February 2022) <<https://mainichi.jp/english/articles/20220205/p2a/00m/0na/022000c>>.
- <sup>49</sup> Cornell Center on the Death Penalty Worldwide (n 39).
- <sup>50</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>51</sup> Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 7-8.
- <sup>52</sup> John Rawls stated, “[a]t some point, the injustice of the outcomes of a legitimate democratic procedure corrupts its legitimacy,” in, *Political Liberalism* (Columbia University Press 2005) 248.
- <sup>53</sup> Austin Sarat stated, “law cannot work its lethal will and ally itself with the killing state while remaining aloof and unstained by the deeds themselves,” in, *When the State Kills: Capital Punishment and the American Condition* (Princeton University Press 2001) 21.
- <sup>54</sup> See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>.
- <sup>55</sup> The first two cycles of the UPR were reviewed under a data mining procedure and of the circa. 50,000 recommendations, it was possible to link more than 50% of those to SDG targets, see, The Danish Institute for Human Rights, Linking the Universal Periodic Review to the SGGs, p. 2.