

THE UPR PROJECT AT BCU

Submitted by:

The UPR Project at BCU
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Submitted to:

Democratic People's Republic of Korea's Universal Periodic Review
Fourth Cycle
47th Session of the UPR Working Group
Oct - Nov 2024

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. The Democratic People's Republic of Korea [hereinafter DPRK] is party to five of the nine core international human rights treaties.¹ This includes the International Covenant on Civil and Political Rights (ICCPR) and, 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 DPRK on this key issue, implementation of which would also see DPRK moving towards achieving Sustainable Development Goal 16 which aims for peaceful and inclusive societies, access to justice for all and effective, accountable and inclusive institutions at all levels.
3. We urge the State to make practical commitments in the fourth cycle of the UPR for the abolition of the punishment. As an initial step, we call for the suspension of the capital judicial process through the initiation of an official moratorium on the death penalty. This will enable the government to make a positive commitment towards domestic *de jure* abolition.
4. In this submission, we encourage DPRK to commit to improving its human rights protection and promotion by engaging meaningfully with the UPR. This includes giving full and practical consideration to all recommendations made by Member States, effectively implementing the recommendations DPRK accepts, and actively engaging with civil society throughout the process.

CAPITAL PUNISHMENT

A. DPRK and International Law on the Death Penalty

5. The death penalty has a longstanding history in DPRK which has been implemented since the establishment of the state. DPRK's current constitution (2019) does not guarantee the right to life or make direct reference to the use of the death penalty. The closest reference to the right to life can be found in Article 64: "The State shall effectively guarantee the genuine democratic rights and freedoms as well as the material and cultural well-being of all its citizens", and Article 79: "Citizens are guaranteed inviolability of the person and the home, and privacy of correspondence".²
6. Following significant revisions to its Criminal Code in 1987, the number of capital crimes was reduced from 33 to five. Four of these crimes are political offences formulated in such broad terms that they risk the application of the death penalty as subjective and arbitrary.³ The Criminal Code has been revised several times since 1987 and, in April 2009, DPRK

made another amendment which expanded the list of capital crimes from five to six with the addition of “treacherous (disloyal) destruction” under Article 64.⁴

7. An ‘Addendum to the Criminal Code for Ordinary Crimes’ was adopted on 19 December 2007 which further expanded the list of capital crimes to include offences such as theft, destruction of military facilities or national assets, fraud, kidnapping, smuggling, and trafficking. The addendum comprises a total of 23 articles of which 16 legislate the death penalty for a number of crimes and it also permits the use of the punishment as long as the authorities are able to determine that the crime in question was “extremely serious”.⁵
8. The total number of capital crimes in DPRK is at least 24 of which nine carry the mandatory death sentence requirement.⁶ As noted by UN the Secretary General, a mandatory death sentence fails to take into account any mitigating circumstances which might otherwise show the crime in question to be less serious.⁷ Moreover, the addendum contains vague expressions which risks arbitrary decision-making by the authorities.
9. Since its last UPR, DRK has continued to hand down death sentences at a sustained rate, believed to be in their thousands, but are impossible to verify due to the secrecy and restrictive state practices as discussed in Section B below.

International Law Promoting the Restriction and Abolition of the Death Penalty

10. 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,⁸ its Second Optional Protocol,⁹ the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,¹⁰ the Secretary General’s quinquennial reporting,¹¹ the Secretary General’s Question on the Death Penalty,¹² and the Human Rights Committee decisions.¹³ Other relevant treaties include the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment¹⁴ and the Convention on the Rights of the Child.¹⁵
11. The General Comment on the Right to Life¹⁶ 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.¹⁷
12. 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 ninth and most recent iteration of the resolution was passed on 15 December 2022. A total of 125 votes were recorded in favour with 37 votes against and 22 abstentions. DPRK has voted against all such resolutions.¹⁸

13. DPRK's pro death penalty stance is solidified in its presence as a signatory to the Joint Permanent Missions' most recent *note verbale* of dissociation, which records a formal objection to the Secretary General of the United Nations on the attempt to create a global moratorium on the death penalty.¹⁹ In fact, DPRK has been a signatory to all such *note verbales* to date.

B. Implementation of Recommendations from Cycle Three in 2019

14. DPRK received 262 recommendations in the Third Cycle of which 132 were accepted and 130 were noted.²⁰ A total of 17 recommendations focused on the death penalty none of which enjoyed State support.²¹

Recommendations concerning Adoption of International Law

15. **Latvia** (para 126.9), **Portugal** (para 126.10), and **Togo** (para 126.32) recommended DPRK ratify the Second Optional Protocol to the ICCPR. DPRK noted these recommendations and has not shown any commitment to ratify the treaty.

Recommendations concerning Abolition

16. **Ukraine** (para 126.118), **Greece** (para 126.121), **Iceland** (para 126.122), **Mozambique** (para 126.123), **Namibia** (para 126.124), and **New Zealand** (para 126.125) issued recommendations to DPRK to “abolish the death penalty” with **Italy** (para 126.115) and **France** (para 126.119) also recommending the state reduce the number of capital crimes. Similarly, **Belgium** (para 126.116), **France** (para 126.119), **Georgia** (para 126.120), **Namibia** (para 126.124), **Spain** (para 126.126), and **Timor-Leste** (para 126.127) recommended DPRK introduce a moratorium on the death penalty with a view to abolition. These were all noted and DPRK has not indicated any change to its position.
17. It is also important to note that whilst recommendations to “abolish the death penalty” or “establish a moratorium on the death penalty” are welcome, it is crucial that they remain specific and measurable in order to assess the level of implementation. Broad recommendations, whilst easy to accept, lack any impetus to bring about real change.²² It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.²³ This would help DPRK initiate an incremental approach to reducing the scope of the punishment and map out the process for abolition.

Recommendations concerning Secrecy of Capital Punishment in DPRK

18. **Italy** (para 126.115), **Belgium** (para 126.117), **Czechia** (para 126.124), and **Spain** (para 126.126) highlighted the lack of publicly available data on the use of the death penalty and recommended DPRK “provide official figures regarding death sentences and executions”²⁴ and “publish data on recent executions as well as on the number of people on death row”.²⁵
19. DPRK’s lack of transparency regarding its use of the death penalty continues to impede an accurate assessment of the use of the punishment. The state continues to hide the full extent of its use of the death penalty by restricting access to death penalty-related information including lack of access to independent media and sources in the country. Hence, secretive state practices make it impossible to verify reports and assess the true extent of state sanctioned killings in the country.²⁶ Given the absence of official statistics on capital punishment, it is very likely that executions and death sentences are being imposed at a sustained rate in DPRK, and are believed to be in the thousands.
20. Transparency is a prerequisite for assessing whether the death penalty is being applied in compliance with international human rights law. We are therefore concerned that the punishment is being imposed for crimes that fail to meet the threshold of “most serious crimes” which has been consistently interpreted as involving intentional killing. The UN Secretary General’s 2021 Report on the Question of the Death Penalty also underlined the importance of transparency within capital punishment.²⁷

C. Further Points for DPRK to Consider

Creation of an Independent National Human Rights Institution

21. No NHRI currently exists in DPRK. **Ukraine** (para 126.88), **Costa Rica** (para 126.88), **Iraq** (para 126.89), and **Senegal** (para 126.90) recommended DPRK “establish an independent national human rights institution in accordance with the Paris Principles”. These were all noted.
22. In the context of capital punishment, a future NHRI could undertake important work on pushing for the abolition of the death penalty from the country’s legal system, starting by limiting the types of crimes that attract the punishment. The NHRI could advise the government on the abolition process, provide public education on how capital punishment renders harmful effects upon society, and demonstrate its ineffectiveness as a penological policy on deterrence.
23. We call upon the government to establish the Human Rights Commission, before the next cycle of review, and ensure it complies with the Paris Principles and to provide it with a mandate to advise on legislative amendment for abolition.

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

24. 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,”²⁸ 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.²⁹

26. Social science investigations now demonstrate that reflecting appropriate government means that whilst capital punishment could be created within a legitimate parliamentary process,³⁰ it is now clear that the application of the death penalty renders an illegitimate and inhumane outcome.³¹ Abolition in DPRK would enable the people of the country to benefit from the advancement of the leading social scientific research on punishment policies.

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

27. DPRK should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government’s commitment to promoting the Sustainable Development Goals.³² The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.³³

28. SDG 16 provides for “Peace, Justice and Strong Institutions” but the application of the death penalty is inconsistent with this goal. Specifically, SDG 16.1 aims to reduce death rates, promote equal access to justice, and “protect fundamental freedoms,” and to further this, SDG 16.A.1 identifies the importance of relevant national institutions, for building capacity at all levels, to prevent violence and combat terrorism and crime.

29. 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.³⁴ The death penalty is antithetical to strong institutional processes for the fostering of the human dignity of the people of DPRK.

D. Recommendations

We recommend that, before the next cycle of review, the government of DPRK should:

- i. Adopt an implementation matrix for recommendations received during the fourth cycle of the UPR and effectively implement it.
- ii. Uphold and enforce its international obligations to safeguard the right to life, pursuant to Articles 6, 7 and 14 of the ICCPR.
- iii. Whilst it retains the death penalty, ensure it complies with the ‘most serious crimes’ principle under Article 6 ICCPR, restricting punishment to crimes of intentional killing only.
- iv. Ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
- v. Develop, in consultation with civil society and relevant regional bodies, a comprehensive action plan to work towards a moratorium, with a view to abolition, within the next four years.
- vi. Annually publish data on the use of the death penalty. This should include the number of death sentences and executions, the nature of the offences and the reasoning behind convictions, identity of executed prisoners, and the number of death sentences commuted and pardoned.
- vii. 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.
- viii. Accept UPR recommendations on the abolition of the death penalty, as also signalling DPRK’s affirmation of commitments to SDG 16 on strong institutions.
- ix. Establish an independent National Human Rights Institution, in line with the Paris Principles, fully independent from the government.

¹ See <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=47&Lang=EN>.

² DPRK Constitution (2019) available at <www.ncnk.org/resources/publications/dprk-constitution-2019.pdf/file_view>.

³ FIDH, *The Death Penalty in North Korea: In the Machinery of a Totalitarian State* (2013) 18.

⁴ *ibid.*

⁵ *ibid* 18-19.

⁶ *ibid* 19.

⁷ UNGA, ‘Extrajudicial, summary or arbitrary executions: note by the Secretary General’ (9 August 2012) UN Doc A/67/275, para 61.

⁸ 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).

⁹ 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.

¹⁰ 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.

¹¹ 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).

¹² See eg, Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.

¹³ For example, *Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).

¹⁴ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 10 December 1984.

¹⁵ Article 37(a) Convention on the Rights of the Child, G.A. Res 44/25, 20 November 1989.

¹⁶ 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.

¹⁷ *ibid* para 50.

¹⁸ Resolution on the Moratorium on the use of the death penalty, UNGA Res. 62/149, 18 December 2007 *adopted by 104 votes to 54, with 29 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 63/168 18 December 2008, *adopted by 106 votes to 46, with 34 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 65/206 21 December 2010 *adopted by 109 votes to 41, with 35 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 67/176 20 December 2012, *adopted by 111 votes to 41, with 34 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 69/186 18 December 2014 *adopted by 117 votes to 37, with 34 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 71/187, 19 December 2016 *adopted by 117 votes to 40, with 31 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 73/175, 17 December 2018 *adopted by 121 votes to 35, with 32 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 75/183, 16 December 2020 *adopted by 123 votes to 38, with 24 abstentions*; Resolution on the Moratorium on the use of the death penalty, UNGA Res. 77/222, 15 December 2022 *adopted by 125 votes to 37, with 22 abstentions*.

¹⁹ 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.

²⁰ UNHRC, 'Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea - Addendum' (28 August 2019) UN Doc A/HRC/42/10/Add.1, paras 3-7.

²¹ See UNHRC, 'Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea' (25 June 2019) UN Doc A/HRC/42/10.

²² Amna Nazir, 'A UPR Perspective on Capital Punishment and the Kingdom of Saudi Arabia' (2022) 19 Muslim World Journal of Human Rights 77-94.

²³ See UPRinfo, 'For impact on the ground the UPR needs SMART recommendations' <www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations> (21 October 2015).

²⁴ Recommendation 126.115: Reduce the offences punishable by the death penalty and provide official figures regarding death sentences and executions, and consider introducing a moratorium on the death penalty (Italy).

²⁵ Recommendation 126.126: Adopt an immediate moratorium on the application of the death penalty as a step towards its full abolition and publish data on recent executions as well as on the number of people on death row (Spain).

²⁶ Amnesty International, *Global Report: Death Sentences and Executions 2022* (2023) 24.

²⁷ Report of the Secretary General, Question of the Death Penalty (15 September 2021) UN Doc A/HRC/48/29. The report itself was focused upon the requirement for transparency within the death penalty.

²⁸ 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.

²⁹ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 7-8.

³⁰ 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.

³¹ 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.

³² See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>.

³³ 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.

³⁴ 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.