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DEATH ROW PHENOMENON VIOLATES HUMAN RIGHTS

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I. Introduction

Human Rights Advocates (HRA) commends the progress towards global abolition of the death penalty. This international movement has grown steadily over the past 60 years.¹ By the end of 2010, 96 countries had abolished the death penalty for all crimes, and two thirds of all nations were considered abolitionist either in law or in practice. Gabon, the Philippines, Cyprus and Argentina are among the 57 countries that have abolished the death penalty since 1990.²

Despite this progress, staggering death penalty figures are reminders of the remaining work ahead. Conservative 2010 estimates reflect 527 executions across 23 countries. Of the 17,833 individuals currently languishing on death rows worldwide, 2,024 individuals were newly sentenced to death in 2010.³

Conditions surrounding the death penalty and its application necessitate examination and recognition of the tortuous experience endured by death row inmates, as it culminates in the onset of the death row phenomenon. This report highlights HRA concerns regarding the International Covenant on Civil and Political Rights (ICCPR) and Convention Against Torture (CAT) violations related to the death row phenomenon. It follows with (1) discussion of the death row phenomenon's emergence in international jurisprudence and the resulting legal standards, (2) definition of the death row phenomenon, and (3) elaboration on the death row

¹ International Bar Association, *The Death Penalty Under International Law*, May 2008, available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CEQQFjAC&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3D5482860b-b9bc-4671-a60f-7b236ab9a1a0&ei=rJsFT_iLA-SW2gWGx-GXDW&usg=AFQjCNE6M01lrqGOE9AvarddPtKpSO_Tmw&sig2=h4ZFqi7LjokjullWmw_fdw.

² Amnesty International, *Figures on Death Penalty*, available at: <http://www.amnesty.org/en/death-penalty/numbers>.

³ Amnesty International, *Death sentences and executions in 2010*, 28 March 2011, ACT 50/001/2011, available at: <http://www.unhcr.org/refworld/docid/4d9026932.html>.

phenomenon related human rights violations. HRA recommendations addressing death row phenomenon concerns conclude the report.

II. Death Row Phenomenon Emergence in International Jurisprudence

The term “death row phenomenon” grew in recognition following the European Court of Human Rights (ECHR) decision on the extradition case of Jens Soering from the United Kingdom (UK) to the United States (US).⁴ In *Soering v. United Kingdom*, Jens Soering, a German citizen, faced charges in the US for the 1985 double murder of his girlfriend’s parents.⁵ After a 1985 arrest in the UK for unrelated charges, the US requested Soering’s extradition to stand trial in 1986. When the extradition was authorized, Soering appealed to the European Commission of Human Rights and, eventually, to the ECHR.

Soering claimed that UK extradition to the US would expose him to the death row phenomenon, because of the likelihood that the death penalty would be applied in his case. He argued that the extradition was a violation of Article 3 of the European Convention on Human Rights (“European Convention”), which addresses the prohibition of torture.⁶ Article 3 provides that: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”⁷ Soering drew particular attention to “delays in the [US] appeal system, the fact that his age and mental condition might not be taken into account in determining the sentence, the death row conditions of the Mecklenburge Correctional Center, the execution procedure, and his possible extradition to Germany.”⁸ In the *Soering* decision, the ECHR recognized the death row

⁴ David Wallece-Wells, *What is the Death Row Syndrome? And who came up with it?*, Slate.com, 1 February 2005, available at:

http://www.slate.com/articles/news_and_politics/explainer/2005/02/what_is_death_row_syndrome.html.

⁵ *Soering v. United Kingdom*, 11 Eur. Hum. Rts. Rep. 439 (1989).

⁶ *Id.*

⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 221

⁸ Florecio J. Yuzon, *Conditions and Circumstances of Living on Death Row – Violative of Individual Rights and Fundamental Freedoms?: Divergent Trends of Judicial Review in Evaluating the “Death Row Phenomenon,”* 30 Geo. Wash. J. Int’l L. & Econ. 39 (1996).

phenomenon, and held that the possibility of enduring death row conditions coupled with the “anguish and mounting tension of living in the ever-present shadow of death” was a violation of the prohibition of torture.⁹ The court found a breach of Article 3, stating that Soering’s “extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3.”¹⁰

International jurisprudence on the death row phenomenon was further developed in *Pratt et al v. Attorney-General for Jamaica et al.*¹¹ The Judicial Committee of the Privy Council, in *Pratt*, recognized the death row phenomenon as a violation of the Jamaican Constitution. The *Pratt* court ruled that the execution of Earl Pratt and Ivan Morgan, who were on death row for over 15 years, violated the Jamaican Constitution. Pratt and Morgan faced several inexplicable delays while exercising rights for appeal under the domestic laws and individual complaint procedures under the ICCPR Optional Protocol and the Inter-American Commission on Human Rights. The *Pratt* court found an “instinctive revulsion against” the possibility of execution following the prolonged “agony of suspense for so many years” on death row was a breach of the Jamaican Constitution as inhuman treatment.¹² The court further noted that an execution following an over 5 year delay, with fault not attributable to the accused, would be strong grounds for a violation of the Jamaican Constitution.

In accordance with the ICCPR and its Optional Protocol, the United Nations Human Rights Committee (HRC) has also addressed the death row phenomenon in a large number of cases.¹³ Death row phenomenon cases typically arise as violations of ICCPR Articles 7 and 10.

⁹ See Note 5.

¹⁰ *Id.*

¹¹ *Pratt et al v. Attorney-General for Jamaica et al*, 4 ALL ER 769 (1993).

¹² *Id.*

¹³ Patrick Hudson, *Does the Death Row Phenomenon Violate a Prisoner’s Human Rights under International Law?*, EJIL (2000), Vol. 11No. 4, 833-856.

Article 7 of the ICCPR provides that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In General Comment 20 concerning Article 7 of the ICCPR, the Office of the High Commissioner for Human Rights noted that the aim of the Article 7 provisions extends “to protect both the dignity and the physical and mental integrity of the individual.”¹⁴ The comment further noted that the prohibition of Article 7 is “complimented by the positive requirements of Article 10, Paragraph 1 of the Covenant,” which stipulates that: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁵

The HRC has held that prolonged delays alone do not constitute *per se* cruel, inhuman or degrading treatment.¹⁶ However, in *Francis v. Jamaica*, the HRC heavily weighed the almost 12 year delay faced by Clement Francis when combined with other factors he faced while on death row.¹⁷ The Human Right Committee considered (1) the state’s role in the delay, (2) the conditions endured on death row and (3) the mental deterioration suffered on death row.¹⁸ In view of these factors working in concert, the HRC found violations of ICCPR Articles 7 and 10,¹⁹ “accepting the ‘death row phenomenon’ as cruel and inhuman punishment under international law.”²⁰ While the threshold for HRC acceptance of the death row phenomenon

¹⁴ Office of the High Commissioner for Human Rights, *General Comment No. 20*, 10 March 1992, HRI/GEN/1/Rev.9 (Vol.I), available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument) [last accessed 25 January 2012].

¹⁵ *Id.*

¹⁶ Eva Reiter, *ICCPR Case Law on Detention, the Prohibition of Cruel Treatment and Come Issues Pertaining to the Death Row Phenomenon*, 2002 J. Inst. Just. Int’l Stud. 83, 96 (2002).

¹⁷ *Francis v. Jamaica* (No. 606/1994, UN Doc. CCPR/C/54/D/606/1994 (1995).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Note 13.

remains high, it continues to state that “it would be willing to accept the doctrine under the proper set of facts.”²¹

III. Death Row Phenomenon Defined

At its basic level, the death row phenomenon raises the legitimacy of capital punishment by establishing that “execution after prolonged delay under the harsh conditions of death row constitutes cruel and inhuman punishment.”²² It confronts the implications of a death sentence following a “tortuous period of delay.”²³

The death row phenomenon results from compounded conditions endured while under a death sentence. Despite variances in perceived detention facility quality worldwide, death row conditions are generally characterized as bleak, with “rigid security, isolation, limited movement, and austere conditions.”²⁴ As noted in *Soering v. United Kingdom*, circumstances such as extremely harsh death row conditions, prolonged execution waiting times and pervading anguish from execution anticipation work in concert to produce the death row phenomenon.²⁵

The severe isolation and dread inherent in a life on death row inevitably produces mental and physical deterioration. Academic discussions of the death row phenomenon generally identify at least two components: temporal and physical.²⁶ Recent considerations of the death row phenomenon have included a third component, experiential, which isolates the psychological repercussions of living a life under the shadow of a death sentence.²⁷

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Center for Constitutional Rights, *An Examination of the Death Row Experience from a Human Rights Perspective*, 10 October 2011, available at http://ccrjustice.org/files/deathrow_torture_postition_paper.pdf.

²⁵ See Note 5.

²⁶ Amy Smith, *Not “Waiving” but Drowning: the Anatomy of Death Row Syndrome and Volunteering for Execution*, 17 B.U. Pub. Int. L.J. 237, 240 (2008).

²⁷ Dr. Karen Harrison and Anoush Tamony, *Death Row Phenomenon, Death Row Syndrome and Their Affect on Capital Cases in the US*, Internet Journal of Criminology, available at:

The temporal component addresses the extreme delay subjected upon death row inmates while awaiting appeal, resolution or execution. Factors that affect the length of delay are predominantly diminished public support for the death penalty, the appeals processes and laws related to protection of prisoners' rights, and instinctual acceptance of "otherwise intolerable delays" stemming from an individual's instinctual will to survive.²⁸ However, present studies on death row inmates are insufficient to predict or understand the psychological effect of the death row phenomenon's temporal component. Although some research reflects improvement in death row inmate "adaptation to conditions," the data is offset by documentation of negative changes which suggest that death row inmates develop a form of "learned helplessness," which exhibits itself as depression, loneliness, and physical illness.²⁹ This disparity in responses and the general lack of conclusive predictability is indicative of the need for additional research on the temporal component death row phenomenon.

Discussions regarding the increased periods of time spent by inmates on death row draw debate on the significance of attribution of delays.³⁰ To a certain extent, the period of delay is mandated by protective measures to safeguard an individual's right to appeal to "ensure that the innocent are not mistakenly executed because of a judicial, administrative, or human error."³¹ Courts have acknowledged the natural human instinct to save one's own life by availing of the appellate procedures. However, in *Pratt*, the Privy Council attributes fault to the appellate system for making prolonged delays permissible, where the "appellate procedure enables the prisoner to

http://www.internetjournalofcriminology.com/Harrison_Tamony_%20Death_Row_Syndrome%20IJC_Nov_2010.pdf.

²⁸ See Note 13.

²⁹ See Note 26 at 249.

³⁰ David A. Sadoff, *International Law and the Mortal Precipice: A Legal Policy Critique of the Death Row Phenomenon*, 17 Tul. J. Int'l & Comp. L. 77, 101 (Winter 2008).

³¹ *Id.* at 103.

prolong the appellate hearings over a period of years.”³² Additionally, the inmates, themselves, are often not the cause for delay and there is no interference with undue haste prohibition where there are extreme delays.³³ In California, which houses the largest death row inmate population in the US,³⁴ a death row inmate has been waiting for his first direct appeal for over 20 years through no fault of his own.³⁵

Further, it is important to note, not all death row delays necessarily set forth the death row phenomenon, as the solution does not lie in hasty expedient executions.³⁶ Rather, the death row phenomenon focuses on extreme delays. It is disconcerting that over time extreme delays are no longer the exception. Instead, extreme delay is tragically becoming the norm.³⁷ As a result, death row inmates effectively suffer a dual sentence of time in death row, followed by execution.

The physical component encompasses harsh death row, detention cell or facility conditions, inclusive of solitary confinement and limitation of resources.³⁸ The psychological effect of prison conditions has been examined in a number of studies.³⁹ Data compiled by environmental psychologists show that prison “conditions such as overcrowding, architectural design, and isolation impact inmate psychological well-being and behavior in negative ways.”⁴⁰

³² See Note 11.

³³ Caycie D. Bradford, *Waiting to Die, Dying to Live: An Account of the Death Row Phenomenon from a Legal Viewpoint*, 5 *Interdisc. J. Hum. Rts. L.* 77, 85, 86 (2011).

³⁴ United States Bureau of Justice, *Statistics Bulletin Capital Punishment, 2010* published Dec. 2011 available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cp10st.pdf>.

³⁵ See, Inter-American Commission on Human Rights, *Report No. 42/10, Admissibility Petition 120-07, N.I. Sequoyah*, 17 March 2010, available at: <http://www.oas.org/en/iachr/decisions/admissibilities.asp#tab2010>, finding in an admissibility opinion that the 15 year wait to have his appeal heard at the time of the filing of the petition in 2007 was not the fault of the petitioner. As of 2012, 20 years after his conviction the petitioner has yet to have his first appeal heard .

³⁶ See Note 33.

³⁷ *Id.*

³⁸ See Note 13.

³⁹ See Note 26 at 250.

⁴⁰ *Id.*

Death rows have been characterized as “a prison within a prison,” subject to the most rigid of security regimes, affording minimal freedoms.⁴¹ It is a “graveyard behind high walls far from the eye of the public.”⁴² In death row, prisoners may expect 24 hour light, “temperature extremes, inadequate nutrition and sanitation, lack of exercise [and] loss of contact with the outside world.”⁴³ Most notably, in countries where prison overcrowding is not an issue, death row inmates are subject to prolonged solitary confinement. The “grave psychological harm” resulting from the conditions of solitary confinement has been “known for some time.”⁴⁴ The sensory and social deprivation imposed on prisoners held in solitary confinement has been speculated to cause “confinement psychosis,” manifesting in hallucinations and delusions.⁴⁵

The experiential component encompasses the psychological implications of living with impending execution and the impacts of extended death row detention.⁴⁶ The temporal and physical components of the death row phenomenon reinforce one another.⁴⁷ One commentator has noted that the two components, taken individually, are “insufficient to give rise to the death row phenomenon.”⁴⁸ Certain facets of the first two components may be experienced by prisoners not facing a death sentence, such as appeal delays and solitary confinement.⁴⁹ The experiential component, enduring the gravity of a life awaiting a death sentence, sets death row inmates apart from other prisoners who may face variant degrees of temporal delays in the appeals process or dreary prison conditions. The presence of a “genuine risk that the death penalty will be implemented” works in concert with the torment created by the first two elements, delay and

⁴¹ See Note 13 at 835.

⁴² See Note 33 at 87.

⁴³ *Id.*

⁴⁴ See Note 27 at 3.

⁴⁵ *Id.* at 4.

⁴⁶ See Note 26.

⁴⁷ David A. Sadoff, *International Law and the Mortal Precipice: A Legal Policy Critique of the Death Row Phenomenon*, 17 Tul. J. Int'l & Comp. L. 77, 82 (Winter 2008).

⁴⁸ See Note 27 at 3.

⁴⁹ *Id.*

prison conditions, amounting to the death row phenomenon.⁵⁰ “Awareness of death and mortality creates anxiety for individuals,” and humans are “motivated by a desire to decrease that anxiety.”⁵¹ The fear and anxiety imbued by a death penalty sentence is an “exquisite psychological torture that creates severe emotional, mental and also physical suffering.”⁵²

Psychological dimensions such as powerlessness, fear and “emotional emptiness” identified in U.S. death row inmates are consistent with the experience of South African death row inmates.⁵³ Individuals awaiting execution exhibit patterns of “suicidal fantasies, Post Traumatic Stress Disorder symptoms, guilt and anxiety, and a ‘psychic numbing’ experienced as emotional numbing and social detachment.”⁵⁴ However studies have been too narrowly focused on the flaws or the presence of psychological pathologies of inmates. Little attention was given to the effects of external circumstances or situational experiences of the inmates.⁵⁵

The relationship between the temporal, physical and experiential components of the death row phenomenon is inextricably complicated and intertwined. Increased study and documentation of the death row phenomenon is needed to better understand its implications.

IV. Death Row Phenomenon as a Violation of Human Rights

The January 14, 2009 report of then Special Rapporteur on Torture, Manfred Nowak, to the United Nations (UN) Council, recognized the death row phenomenon and its treatment by international human rights monitoring bodies and domestic courts. The Special Rapporteur noted international rulings which found cruel, inhuman and degrading treatment where death row inmates were “compelled to live under circumstances that impinge on their physical and

⁵⁰ See Note 47.

⁵¹ See Note 26.

⁵² Joachim Hermann, *The Death Penalty in Japan: An “Absurd” Punishment*, 67 Brook. L. Rev. 827, 848 (2002).

⁵³ See Note 26.

⁵⁴ *Id.*

⁵⁵ *Id.*

psychological integrity.”⁵⁶ In his conclusions, the Special Rapporteur highlighted the significance of “dynamic interpretation” of human rights treaty law in relation to death penalty issues and the “universal trend towards the abolition of capital punishment.”⁵⁷

a. Effects of the Death Penalty Moratorium

Present-day conditions reflect great support for a global death penalty moratorium. Through laudable Italian⁵⁸ and Chilean⁵⁹ leadership, aided by support from several countries and non-governmental organizations, the General Assembly (GA) has affirmed the “moratorium on the use of the death penalty” three times since 2007.⁶⁰ This move was recognized as evidence of the trend towards the ultimate abolition of the death penalty, and was applauded by the United Nations Secretary General as a “bold step by the international community.”⁶¹ However, execution moratoriums exacerbate the death row phenomenon where no abolition transition deadlines are imposed.

Despite Morocco’s de facto execution moratorium since 1992, death penalty sentencing persists.⁶² On average, 10 people per year receive death penalty sentences in Morocco.⁶³ These newly sentenced inmates join the estimated 150 prisoners currently on sitting on death row.⁶⁴

⁵⁶ U.N. Human Rights Council, *UN Human Rights Council: Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 14 January 2009, A/HRC/10/44.

⁵⁷ *Id.*

⁵⁸ UN News Centre, *Italy Urges UN Member States to support global moratorium on death penalty*, 25 September 2007, available at: <http://www.un.org/apps/news/story.asp?NewsID=23972&Cr=general&Cr1=debate>

⁵⁹ General Assembly, *General Assembly Will Call for All States to Establish a Moratorium on Executions with View to Abolishing Death Penalty, Under Text Approved by Third Committee*, GA/SHC/3996.

⁶⁰ U.N. General Assembly Resolution, *Moratorium on the Use of the Death Penalty*, 18 December 2007, A/RES/62/149; 18 December 2008, A/RES/63/168; 21 December 2010, A/RES/65/206.

⁶¹ United Nations News Centre, *Secretary-General welcomes Assembly’s call for death penalty moratorium*, 18 December 2007, available at: <http://www.un.org/apps/news/story.asp?NewsID=25116>.

⁶² Reuters Africa, *Moroccan Court Sentences Drug Kingpin to Death*, 13 January 2012, available at: <http://af.reuters.com/article/moroccoNews/idAFL6E8CD2MD20120113>.

⁶³ The Advocates for Human Rights, *Morocco: Treatment and Living Conditions on Death Row are Cruel, Inhuman and Degrading Treatment*, Committee against Torture review of Morocco 47th Session, available at: http://www.theadvocatesforhumanrights.org/uploads/morocco_dp_one-pager_final.pdf.

⁶⁴ *Id.*

Sri Lanka has not executed a prisoner since 1976.⁶⁵ Regardless, between 357⁶⁶ to over 800⁶⁷ inmates reportedly remain on Sri Lankan death rows. These death row inmates face an uncertain future, as recent changes in the political climate have shifted away from former practices “whereby sentences used to be regularly commuted” to a full reinstatement of the death penalty.⁶⁸ Some Sri Lankan death row inmates have been on death row for over 15 years.⁶⁹

In 2009, Pakistan instituted an execution moratorium in line with the GA resolutions.⁷⁰ Prior to the moratorium, executions in 2007 and 2008 alone totaled 171.⁷¹ Moratorium adoption was a response to concerns over conviction reliability. However, the execution moratorium has not stopped the addition of new inmates to the thousands of inmates that remain on Pakistan’s death row. Since 2009, Pakistan has sentenced 641 individuals to death.⁷²

After the December 2007 passage of the General Assembly death penalty moratorium resolution, Italian Foreign Minister Massimo D’Alema recognized moratoriums as the start towards abolition of the death penalty.⁷³ This is in line the recommendations of the United Nations Human Rights chief, Navi Pillay, who promotes the installation of formal moratoriums

⁶⁵ Amnesty International, *Countries Abolitionist in Practice*, available at: <http://www.amnesty.org/en/death-penalty/countries-abolitionist-in-practice>.

⁶⁶ Hands Off Cain, *Sri Lanka: 357 Prisoners on Death Row*, 11 September 2011, available at: <http://www.handsoffcain.info/news/index.php?iddocumento=15311408>.

⁶⁷ Ranga Sirilal, Shihar Aneez, and Daniel Magnowski, *Sri Lanka hiring hangmen as 800 sit on death row*, Reuters, available by: <http://in.reuters.com/article/2011/10/05/idINIndia-59725220111005>.

⁶⁸ Charles Haviland, *Sri Lankan death row prisoners go on hunger strike*, BBC News, 23 May 2011, available at <http://www.bbc.co.uk/news/world-south-asia-13501998>.

⁶⁹ See Note 66.

⁷⁰ Christian Science Monitor, *Execution Freeze Leaves Pakistan’s Hangmen Idle*, available at: <http://www.csmonitor.com/World/2011/0818/Execution-freeze-leaves-Pakistan-s-hangmen-idle>.

⁷¹ Christian Science Monitor, *Death Penalty: Top 5 Countries to Execute the Most People*, available at <http://www.csmonitor.com/World/Global-Issues/2011/0918/Death-penalty-Top-5-countries-to-execute-the-most-people/Pakistan>.

⁷² *Id.*

⁷³ La Repubblica. *Death Penalty Moratorium Proposal by Italy Passed*, 18 December 2007, available at: <http://www.repubblica.it/2007/09/sezioni/esteri/pena-di-morte2/voto-moratoria/voto-moratoria.html>.

“with a view to ultimately scrap the punishment altogether everywhere.”⁷⁴ Although HRA congratulates nations for taking positive steps through institution of execution moratoriums, measures to ensure attainment of the abolition aims are imperative. Installation of death penalty moratoriums absent an abolition transition plan aggravate the death row phenomenon by prolonging the time spent by inmates on death row.

Death row inmates suffer an interminable limbo during the waiting time between sentencing, through appeals and the eventual execution. The temporal component of the death row phenomenon is exacerbated by delays inherent in systems that impose the death penalty. According to the *Pratt* court, “a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after the sentence, allowing reasonable time for appeal and consideration of reprieve.”⁷⁵ Death penalty sentencing subsequent to the enactment of a moratorium is directly contrary to that notion. Post moratorium sentencing effectively feeds death row inmates into a permanent holding pattern of torture. Despite the moratorium, death row inmates are subjected to the rigors of living on death row with an undetermined fate. Because the spirit behind enactment of death penalty moratoriums is the abolition of the death penalty and moratoriums result in the aggravation of the death row phenomenon, HRA urges nations to extend moratoriums to both executions and death penalty sentencing.

b. Death Row Conditions: Solitary Confinement & Failed Notice

Despite global progress toward abolition, death row inmates continue to suffer a range of deplorable prison conditions that provoke the death row phenomenon. Most prevalent among the

⁷⁴ United Nations Human Rights Office of High Commissioner for Human Rights News and Events, *Working towards a world without the death penalty*, 10 October 2011, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/AbolitionDeathPenalty.aspx>.

⁷⁵ See Note 11.

conditions faced by death row inmates is solitary confinement. Death row inmates typically suffer solitary confinement for prolonged periods, exacerbating anxiety and nervousness.⁷⁶ In the US, the average waiting period for the 46 inmates executed in 2010 was 14 years and 10 months.⁷⁷ It is reported that the majority of US death row inmates serve their sentences in solitary confinement with sensory deprivation for at least 23 hours a day.⁷⁸

Similar conditions of isolation are also found in Japan.⁷⁹ Death row prisoners in Japan are held in solitary confinement, and are prohibited from communicating with other inmates.⁸⁰ Additionally, in countries such as Belarus, Botswana, and Egypt and Japan, forthcoming executions are veiled from the condemned inmates, building a heightened sense of dread and daily insecurity.⁸¹ Such anxiety exacerbates the death row phenomenon and creates an overwhelming sense of isolation that mirrors and worsens the sense of isolation on death row.

The August 2011 General Assembly report of Special Rapporteur on Torture, Juan Méndez, specifically address the detrimental and tortuous effects of solitary confinement.⁸² The report examined the physical conditions, prison regime and social isolation faced by inmates held in solitary confinement. Further, it explored the resulting psychological and physiological effects on inmates. The Special Rapporteur highlighted studies that identify three common elements “inherently present” in solitary confinement: “social isolation, minimal environmental

⁷⁶ Sharon Shalev, *A Sourcebook on Solitary Confinement*, October 2008, available at: http://solitaryconfinement.org/uploads/sourcebook_web.pdf.

⁷⁷ U.S. Dept. of Justice, *Capital Punishment, 2010 – Statistical Tables*. December 2011, available at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/cp10st.pdf>.

⁷⁸ Rachel Meeropol, *Death Row: America's Torture Chamber*, 10 October 2011, available at: <http://www.guardian.co.uk/commentisfree/cifamerica/2011/oct/10/death-row-torture-chamber>.

⁷⁹ CNN, *Report: Death row inmates pushed to insanity in Japan*, 10 September 2009, available at: <http://edition.cnn.com/2009/WORLD/asiapcf/09/10/japan.executions/>

⁸⁰ Justine Currt, *Death row, Japanese-style: “Cruel, inhuman and degrading,”* Global Post, 23 September 2009, available at: <http://www.globalpost.com/dispatch/japan/090922/death-row-japanese-style>.

⁸¹ Amnesty International, *Death sentences and executions in 2010*, 28 March 2011, ACT 50/001/2011, available at: <http://www.unhcr.org/refworld/docid/4d9026932.html>.

⁸² U.N. General Assembly, *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 5 August 2011, A/66/268.

stimulation and ‘minimal opportunity for social interaction.’”⁸³ Inmates were found to suffer from “anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis and self-harm.”⁸⁴ He stressed the “serious psychological and physiological adverse effects” solitary confinement has on individuals.⁸⁵ The report echoed the stance of the Committee Against Torture by finding that “prolonged solitary confinement amounts to acts prohibited by article 7 of the [ICCPR], and consequently to an act as defined in article 1 or article 16 of the [CAT].”⁸⁶ The Special Rapporteur further concluded that:

“Where the physical conditions and the prison regime of solitary confinement fail to respect the inherent dignity of the human person and cause severe mental and physical pain or suffering, it amounts to cruel, inhuman or degrading treatment or punishment.”⁸⁷

Because of the physical and psychologically isolating effects of a life on death row, solitary confinement and death row phenomenon are intricately related.

c. Transparency & Accurate Reporting

Death penalty statistic gathering is unnecessarily challenging due to a lack of cooperation and transparency. For example, China is presumed to have the highest execution rate, estimated in the thousands in 2010. However, exact figures cannot be determined, because China shields death penalty information through “state secret” classification.⁸⁸ Transparency and accurate reporting is of paramount importance to gain better understanding of the problem’s scale.

V. Recommendations

In light of increased death row phenomenon acknowledgement in international jurisprudence, the significant torturous implications of solitary confinement within the death

⁸³ *Id.*; Stuart Grassian, *Psychiatric Effects of Solitary Confinement* 1993, available at: http://freedetainees.org/wp-content/uploads/2011/09/grassian_stuart_long1.pdf.

⁸⁴ *See* Note 82.

⁸⁵ *Id.* at 22.

⁸⁶ *Id.* at 21.

⁸⁷ *Id.* at 22.

⁸⁸ *See* Note 3.

penalty context, and the Special Rapporteurs' previous recognition that factors present in death row detention that may entail a violation of the ICCPR,⁸⁹ HRA urges the Council to:

- Request the Special Rapporteur on Torture conduct a comprehensive study on the death row phenomenon, specifically examining factors that elevate the death row experience to the level of torture or cruel, inhuman or degrading punishment, such as solitary confinement aggravated by a death sentence.
- Request the General Assembly to expand death penalty moratoriums to (1) to encompass both executions and death penalty sentencing and (2) include concrete deadlines for death penalty following moratorium installation.
- Stress the need for greater transparency and accurate data reporting with regards to death penalty.

⁸⁹ United Nations Voluntary Fund for the Victims of Torture, *Interpretation of Torture in Light of the Practice of and Jurisprudence of International Bodies*, 3 March 2011, available at: http://www.ohchr.org/Documents/Issues/Interpretation_torture_2011_EN.pdf.