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**Violations of the Prohibition Against Torture:
The Death Row Phenomenon
Report to the 16th Session of the Human Rights Council
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I. INTRODUCTION

Human Rights Advocates (HRA) acknowledges and supports the United Nations' efforts to prevent violations of the prohibition against torture in the implementation of the death penalty and to encourage retentionist countries to abolish the death penalty. The General Assembly called for a moratorium on executions with a view to abolishing the death penalty in 2007, and has twice reaffirmed this resolution.¹ The most recent resolution was approved by a vote of 103 in favor, 41 against and 35 abstentions.² HRA commends the 139 countries that are currently abolitionist in law or in practice.³

HRA also acknowledges progress made by retentionist countries. In July 2010, Iran announced that it would commute the stoning verdict of a woman convicted of adultery.⁴ Japan recently allowed media representatives into an execution chamber for the first time.⁵ It has also been reported that Japan is initiating discussions about whether to abolish the death penalty.⁶

Despite this progress, violations continue to occur and executions continue to take place. Worldwide at least 714 people were executed in 2009, and this does not include figures from China, which is in the thousands.⁷ Methods of execution included beheading, stoning, hanging,

¹ U.N. General Assembly Resolution, *Moratorium on the use of the death penalty* A/RES/62/149 (18 December 2007); A/RES/63/168 (18 December 2008); GA/11041 (21 December 2010).

² U.N. General Assembly Resolution, *Moratorium on the use of the death penalty* GA/11041 (21 December 2010).

³ Amnesty International, *Abolitionist and Retentionist Countries*, <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>, (last accessed 21 February 2011).

⁴ Time Magazine, *Death By Stoning: Iran's Internal Debate* (8 July 2010), <http://www.time.com/time/world/article/0,8599,2002545,00.html>.

⁵ BBC News, *Japanese Media Get Tour of Death Chamber* (27 August 2010), <http://www.bbc.co.uk/news/world-asia-pacific-11107790>.

⁶ Financial Times, *Japan to Consider Abolishing Death Penalty* (21 January 2011), <http://www.ft.com/cms/s/0/d6aa312e-2577-11e0-93ae-00144feab49a.html#axzz1CT0YjayM>.

⁷ Amnesty International, *Death Sentences and Executions in 2009*, at pages 2-3 (30 March 2010), <http://www.amnesty.org/en/library/asset/ACT50/001/2010/en/17348b70-3fc7-40b2-a258-af92778c73e5/act500012010en.pdf>.

electrocution, shooting, and lethal injection.⁸ At least 2000 people were sentenced to death in 2009, and by 2010 at least 17,118 prisoners were on death row.⁹

The purpose of this report is to highlight HRA's concern that rights guaranteed by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) are being violated by retentionist countries that maintain circumstances producing the "death row phenomenon"—a syndrome that can result when death row inmates are subjected to certain conditions over long periods of time. HRA urges the Council to request that the Special Rapporteur on Torture examine the death row phenomenon and the circumstances that produce it, and make an assessment regarding when the circumstances rise to the level of torture or cruel, inhuman or degrading punishment.

HRA also urges the Council to reconsider the effects of moratoriums that are indefinite and that only contain a prohibition on executions, not new death sentences. Moratoriums without deadlines for abolition prolong and exacerbate the circumstances that produce the death row phenomenon. If moratoriums are going to be declared, they should prohibit executions *and* new death sentences, and they should contain a clear deadline for abolition.

II. DEATH ROW PHENOMENON

A. Defined

The death row phenomenon is produced by a combination of circumstances that lead to severe mental and physical deterioration in prisoners. These circumstances include: extremely harsh conditions of imprisonment on death row, long periods of time spent awaiting execution, and the ever present anguish of anticipating one's own execution.¹⁰ These circumstances can

⁸ *Id.* at 3.

⁹ *Id.* at 6-7.

¹⁰ *Soering v. United Kingdom*, 11 Eur. Hum. Rts. Rep. 439 (1989).

cause inmates to become delusional, insane, and suicidal.¹¹ When years of incarceration precede execution, prisoners in effect serve two sentences: (1) a life sentence marked by prolonged physical and psychological torture, and (2) a death sentence.

B. International Law Recognizing the Death Row Phenomenon

The death row phenomenon has been recognized by multiple courts as well as the Human Rights Committee. In *Soering v. United Kingdom*,¹² the European Court of Human Rights refused to extradite a German national to the United States where he would likely face the death penalty. The Court felt that the combination of circumstances to which the defendant would be exposed if he were sentenced to death in the state of Virginia could violate Article 3 of the European Convention on Human rights.¹³ These circumstances included: the very long period of time spent on death row (the Court noted that in Virginia this would be 6-8 years), the extreme conditions of imprisonment, and the “ever present and mounting anguish of awaiting execution of the death penalty.”¹⁴

The Supreme Court of Canada had similar concerns about extraditing a death penalty defendant to the United States in the 2001 case *United States v. Burns*.¹⁵ Though not the controlling factor in the case, the Court acknowledged the death row phenomenon as a concern under Section 7 of the Canadian Charter of Rights and Freedoms,¹⁶ citing language from other courts that have discussed this issue, including the European Court of Human Rights in *Soering*.¹⁷ The Court cited to statistics showing state and federal review of death penalty cases

¹¹ Barbara A. Ward, *Competency for Execution: Problems in Law and Psychiatry*, 14 FLA. ST. U. L. REV. 35 (1986); Robert Johnson, *DEATH WORK: A STUDY OF THE MODERN EXECUTION PROCESS* (1990).

¹² *Soering v. United Kingdom*, 11 Eur. Hum. Rts. Rep. 439 (1989).

¹³ Article 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

¹⁴ *Soering*, *supra* note 12.

¹⁵ *United States v. Burns*, (2001) 1 S.C.R. 283.

¹⁶ Section 7 of the Canadian Charter of Rights and Freedoms: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

¹⁷ *Burns*, *supra* note 15.

in the United States was taking on average 11.2 years in 2001.¹⁸ The Court recognized a widening acceptance among retentionist states that the finality of the death penalty, combined with efforts to exhaust all appeals procedures, “seems inevitably to provide lengthy delays, and the associated psychological trauma.”¹⁹ The Court also quoted language from a dissent by U.S. Supreme Court Justice Felix Frankfurter that the “onset of insanity while awaiting execution of a death sentence is not a rare phenomenon.”²⁰ Due to multiple factors, the Court concluded that ordering extradition without obtaining assurances that the death penalty will not be imposed would violate the principles of fundamental justice.²¹

In *Pratt and Morgan v. Jamaica*,²² the Judicial Committee of the Privy Council—the highest court of appeal for many Commonwealth countries—commuted the death sentences of two defendants who had been on death row for 14 years. The Court found this delay to be “shocking” and in violation of §17(1) of the Jamaican Constitution,²³ noting “we regard it as an inhuman act to keep a man facing the agony of execution over a long extended period of time.”²⁴ The Court also made general observations about this issue for future cases, explaining that where execution is to take place more than 5 years after sentence, “there will be strong grounds for believing that the delay is such as to constitute inhuman or degrading punishment or other treatment.”²⁵

The Supreme Court of Zimbabwe commuted to life the death sentences of four defendants who had been on death row for between 4.3 and 6 years.²⁶ The Court ruled that

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Pratt and Morgan v. Jamaica*, (1993) 4 All E.R. 769.

²³ §17(1): “No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.”

²⁴ *Pratt*, *supra* note 22.

²⁵ *Id.*

²⁶ *Catholic Commission v. Attorney General*, (1993) 1 Z.L.R. 242.

unduly long delays, demeaning conditions of confinement, and the mental agony of awaiting execution violated §15(1) of the Zimbabwe Constitution, which prohibits inhuman or degrading punishment or treatment.²⁷ The Court noted that death row inmates are essentially “the living dead,” and from the moment the condemned is sentenced to death “he begins to suffer what is termed the ‘death row phenomenon.’”²⁸ The Supreme Court of India made a similar ruling in *Rajendra Prasad v. State of Uttar Pradesh*,²⁹ commuting the sentence of a prisoner who had been held mostly in isolation on death row for 6 years. According to the Court, the defendant “must, by now, be more a vegetable than a person and hanging a vegetable is not death penalty.”³⁰

The Human Rights Committee has also acknowledged the death row phenomenon, and has found Article 7 violations in certain situations. In the 1995 decision *Francis v. Jamaica*,³¹ the Committee found Jamaica to be in violation of Article 7 for the treatment of a man who had been on death row for nearly 12 years. In coming to this conclusion, the Committee relied on: defendant’s prolonged detention on death row, harsh conditions of imprisonment (including a rat and cockroach infested cell, excessive noise, and beatings), and evidence that defendant’s mental health had seriously deteriorated during his incarceration.³²

The United States Supreme Court has not yet accepted review of a case alleging cruel and unusual punishment due to the death row phenomenon, however two appeals that were denied review by the Court resulted in strongly worded language from Justice Stevens, who was joined by Justice Breyer. In 2009, the Court refused to hear the final appeal of Cecil Johnson, who had

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Rajendra Prasad v. State of Uttar Pradesh*, (1979) 3 SCR 78.

³⁰ *Id.*

³¹ *Francis v. Jamaica* (No. 606/1994) UN Doc. CCPR/C/54/D/606/1994.

³² *Id.*

been held in solitary confinement on Tennessee's death row for 29 years. Justice Stevens disagreed with the denial, stating that he would grant the petition because of his steadfast view "that executing defendants after such delays is unacceptably cruel."³³

C. Violations

1. Prolonged Detention

Long delays between conviction and execution exacerbate the stress of harsh physical and mental conditions. In the United States, the average elapsed time from sentence to execution for inmates who were executed in 2009 was 14 years,³⁴ and in many cases the wait is much longer. Through no fault of his own, one man in California has been on death row for 19 years without his first appeal being heard.³⁵ This is the result of: (1) a 3.6-year delay in the appointment of appeal counsel, (2) the loss of records and improper care of documentation from his trial, (3) the illness and death of his counsel, and (4) the incredible backlog of death penalty cases before the California Supreme Court.³⁶ At the rate things are going, this inmate will have been on death row for 24 years before his first appeal will have been heard by the California Supreme Court. If the death sentence is affirmed, years of appeals and habeas proceedings will follow.

Sadly, this delay is not unusual for California. It has been reported by some that the lapse of time from sentence of death to execution averages over 20 years.³⁷ Delays in reviewing cases in federal courts do not fair much better, and a recent decision by the Obama administration to

³³ Johnson v. Bredesen, 130 S. Ct. 541, 542 (2009). See also Lackey v. Texas, 514 U.S. 1045 (1995).

³⁴ U.S. Bureau of Justice Statistics, Capital Punishment 2009, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cp09st.pdf>.

³⁵ Petitioners' Brief on the Merits in the Case of [a California Death Row Inmate] As Stated in the Petition No. 120-07 to the IACHR Alleging Violations of His Human Rights, submitted 2010.

³⁶ *Id.*

³⁷ California Commission on the Fair Administration of Justice, Report and Recommendations on the Administration of the Death Penalty in California, at page 6 (30 June 2008), <http://www.ccfaj.org/documents/reports/dp/official/FINAL%20REPORT%20DEATH%20PENALTY.pdf>

withdraw rules to fast track death penalty cases in federal court will prolong the process even further.³⁸

Delays in Pakistan and Japan are similarly lengthy: it takes 10-15 years for prisoners to exhaust their appeals in Pakistan,³⁹ and in Japan prisoners can be on death row for over 30 years.⁴⁰

2. Harsh Conditions

Death row inmates can face awful physical conditions. In the United States, insect infestations, malfunctioning plumbing, extreme temperatures, isolation, and deafening noise can characterize life on death row.⁴¹ In one facility, cells contained peeling paint and dried fecal matter and food encrusted on the walls, ceilings, and bars.⁴² In a Texas prison, inmates spend almost 24 hours a day in a 60-square-foot cement cell.⁴³ They are released from their cells just 10 hours each week—two hours a day for five of seven days—where they are shuttled into a small, caged recreation area.⁴⁴ Each inmate must exercise individually in his caged unit. Even visits with family are isolating; contact visits are never allowed.⁴⁵

In Japan, death row inmates are kept in isolation and prohibited from talking to other prisoners.⁴⁶ Apart from 2-3 thirty-minute exercise sessions each week and toilet visits, prisoners

³⁸ S.F. Chronicle, *Feds Pull Rules to Fast-Track Death Penalty Cases* (26 December 2010), http://articles.sfgate.com/2010-12-26/bay-area/26286986_1_federal-courts-death-sentences-capital-cases.

³⁹ Human Rights Commission of Pakistan, *Slow March to the Gallows: Death Penalty in Pakistan* (2 January 2007), <http://www.fidh.org/IMG/pdf/Pakistan464angconjointpdm.pdf>.

⁴⁰ Amnesty International, *Hanging by a Thread: Mental Health and the Death Penalty in Japan* (9 September 2009), <http://www.amnesty.org/en/library/asset/ASA22/005/2009/en/acc1c64b-e5ed-425f-bb93-36be3ec25f59/asa220052009eng.pdf>.

⁴¹ *Gates v. Cook*, 376 F.3d 323 (5th Cir. 2004) [Mississippi].

⁴² *Id.*

⁴³ Texas Observer, *Solitary Men* (10 November 2010), <http://www.texasobserver.org/cover-story/solitary-men?tmpl=component&print=1>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Hanging by a Thread*, *supra* note 40.

must remain seated in their cells.⁴⁷ Contact with the outside world is limited to infrequent and supervised visits with family or lawyers that last from five to 30 minutes.⁴⁸

Conditions in Pakistan are similarly difficult. The country faces prison overcrowding of roughly 250%.⁴⁹ In 2006, it was found that 7-8 inmates were being held per death cell, which averaged just 6 x 8 ft.⁵⁰ Pakistan's death row inmates are also subject to abuse by prison staff because there is tacit tolerance of their torture.⁵¹ In 2010, three prisoners were allegedly beaten severely, and then with their penises taped so they could not urinate, were forced to drink 3-4 liters of water and administered injections that caused them to vomit and gave them the urge to urinate. All prisoners developed renal ailments. Other reported torture methods by jail staff include foot whipping with a cane or rod, prying out fingernails, rubbing chili into eyes, and beatings with the victim stripped and hung upside down.⁵²

3. Mental Torment

For many death row inmates, it is the mental anguish of awaiting your own execution that is most unbearable. According to one American inmate, "to live on death row is to live every day in fear."⁵³ This fear is even more pronounced for inmates in countries that withhold information about an accused's execution date. In Japan, prisoners are informed of their execution only hours beforehand, even if they have been on death row for several decades.⁵⁴

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ U.S. Dept. of State, 2009 Human Rights Report: Pakistan, <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136092.htm>.

⁵⁰ *Slow March to the Gallows*, *supra* note 39.

⁵¹ Inter Press Service, *Death Row Convicts Bear Brunt of Torture* (30 October 2010), <http://ipsnews.net/news.asp?idnews=53406>.

⁵² *Id.*; Human Rights Commission of Pakistan, *HRCPC Appalled by Brutal Torture on Prisoners* (11 October 2010), <http://www.hrcp-web.org/shoprel.asp?id=174>.

⁵³ *Solitary Men*, *supra* note 43.

⁵⁴ *Hanging by a Thread*, *supra* note 40.

Every day they must question whether it will be their last.⁵⁵ In Saudi Arabia, migrant workers, who human rights organizations maintain are disproportionately targeted by the authorities, are often ignorant they have even been sentenced to death until they are taken from their cells to be executed.⁵⁶

This mental torment, coupled with prolonged delays and harsh conditions, can produce devastating physical and psychological symptoms for inmates. Case studies of prisoners held in some of the highest security facilities in the United States reported the following characteristics among inmates: insomnia, anxiety, panic, hypersensitivity, cognitive dysfunction, hallucinations, loss of control, aggression, rage, paranoia, depression, self-mutilation, and suicidal impulses.⁵⁷ The mental health of an inmate in California has greatly worsened during the past 19 years he has spent on death row.⁵⁸ He is panicky and nervous, cannot sit still, is unable to make eye contact, becomes easily upset and agitated, and picks at his skin.⁵⁹ He has also become increasingly focused on the notion that he is the victim of various conspiracies.⁶⁰

For many inmates, suicide is more appealing than remaining on death row. In August 2010, George Smithey hanged himself with a noose made of bed sheets after being on death row in California for 22 years.⁶¹ On the morning of his scheduled execution in Georgia, Brandon

⁵⁵ *Id.*

⁵⁶ Amnesty International, *Saudi Arabia Executions Disproportionately Target Foreign Nationals* (13 October 2008), <http://www.amnesty.org/en/library/asset/MDE23/027/2008/en/dc425c41-8bb9-11dd-8e5e-43ea85d15a69/mde230272008en.pdf>.

⁵⁷ Mushlin, Michael B., *Dying Twice: Incarceration on Death Row* (2003) at page 867. Pace Law Faculty Publications. Paper 463. <http://digitalcommons.pace.edu/lawfaculty/463>.

⁵⁸ Petitioners' Brief on the Merits in the Case of [a California Death Row Inmate] As Stated in the Petition No. 120-07 to the IACHR Alleging Violations of His Human Rights, submitted 2010.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ S.F. Chronicle, *Death Row Inmate Wins Ruling, Then Hangs Self* (31 August 2010), http://articles.sfgate.com/2010-08-31/bay-area/23609267_1_death-row-inmate-mental-retardation-death-sentence.

Rhodes attempted to commit suicide by slashing his arms and neck with a razor.⁶² He was revived, stitched up, and 6 days later put to death by lethal injection.⁶³

III. METHODS OF EXECUTION

Retentionist countries continue to use cruel, inhuman, and degrading methods of execution. Saudi Arabia continues to practice beheading, and beheaded and crucified a 22-year-old man in 2009.⁶⁴ In Iran, despite a 2002 judicial directive imposing a moratorium on executions by stoning, at least six people have been stoned to death since 2002.⁶⁵ Vali Azad was stoned to death in secret in March 2009.⁶⁶ HRA is also concerned about the fate of Sakineh Mohammadi Ashtiani, who was sentenced to death by stoning in 2006. There are reports that Ms. Ashtiani's sentence has been commuted,⁶⁷ however confirmation of the commutation would be appreciated.

In the United States, Romell Broom, an inmate from Ohio, was stuck with lethal injection needles at least 18 times as the execution team tried for two hours to find a suitable vein.⁶⁸ Broom survived the execution attempt and remains on death row.⁶⁹ He described the experience as so painful that at times he cried and screamed.⁷⁰

In 2006, a Federal judge in California imposed a moratorium on executions out of concern that lethal injections were being conducted in such a way as to violate the Eighth

⁶² Amnesty International, *Man Executed Six Days After Suicide Attempt* (28 September 2010), <http://www.amnesty.org/en/library/asset/AMR51/092/2010/en/35583831-5c55-4df9-a5c3-74cae163c0b3/amr510922010en.html>.

⁶³ *Id.*

⁶⁴ Amnesty International, *Death Sentences and Executions in 2009* (30 March 2010), <http://www.amnesty.org/en/library/asset/ACT50/001/2010/en/17348b70-3fc7-40b2-a258-af92778c73e5/act500012010en.pdf>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Time Magazine, *Death By Stoning: Iran's Internal Debate* (8 July 2010), <http://www.time.com/time/world/article/0,8599,2002545,00.html>.

⁶⁸ S.F. Chronicle, *News of the Day: Execution Survivor* (3 December 2010), at A13.

⁶⁹ *Id.*

⁷⁰ M24digital, *Romell Broom Describes His Dramatic Experience with Failed Lethal Injection* (17 September 2009), <http://m24digital.com/en/2009/10/11/romell-broom-describes-his-dramatic-experience-with-failed-lethal-injection/>.

Amendment's prohibition of cruel and unusual punishment.⁷¹ The judge worried that lethal injections were being conducted haphazardly and poorly by untrained staff, under inadequate conditions, and posed an unacceptable risk of a botched execution that could leave the inmate conscious and in excruciating pain as a final dose of chemicals stopped his heart.⁷²

IV. MORATORIUMS ON EXECUTIONS ARE NOT THE SOLUTION

Moratoriums without a deadline for abolition and without a prohibition on new death sentences are not the best solution for preventing violations of the prohibition against torture because they prolong and exacerbate the circumstances that produce the death row phenomenon. Morocco has operated a moratorium since 1993, yet it continues to issue death sentences and has not abolished the death penalty in law.⁷³ Pakistan has had an informal moratorium since November 2008, but it too has not abolished the death penalty in law and continues to sentence people to death at the pre-moratorium rate.⁷⁴ California has had a judicially established moratorium since 2006, but sentenced roughly 100 people to death during this time.⁷⁵ Over 700 people are awaiting execution in California, the highest number in the country.⁷⁶

The death row phenomenon is brought on by conditions of death row *imprisonment*. If countries continue to issue new death sentences and keep people on death row, those prisoners will be at a high risk of developing the death row phenomenon, regardless of whether or not there is a current moratorium on executions.

⁷¹ *Morales v. Tilton*, 465 F.Supp.2d 972 (N.D. Cal. 2006).

⁷² *Id.*; S.F. Chronicle, *Judge Wants More Time to Study New Injection Procedure For Inmates* (15 September 2007), http://articles.sfgate.com/2007-09-15/bay-area/17260143_1_state-s-new-lethal-injection-new-death-chamber-execution.

⁷³ Inter Press Service, *Abolitionists Resigned to Long Wait* (17 March 2008), <http://ipsnews.net/news.asp?idnews=41621>.

⁷⁴ Human Rights Commission of Pakistan, *HRCU Urges Abolition of Death Penalty* (9 October 2010), <http://www.hrcp-web.org/showprel.asp?id=173>.

⁷⁵ California Department of Corrections and Rehabilitation (11 January 2011), http://www.cdcr.ca.gov/Capital_Punishment/docs/CondemnedInmateSummary.pdf.

⁷⁶ *Id.*

HRA in no way advocates that due process procedures be eliminated, suspended, or abridged in order to reduce the number of years spent on death row. However, observation of due process rights must be conducted within reasonable periods of time in order to avoid the torture of the condemned person. For example, five years to appoint appellate counsel in California is the first in a potential series of lengthy delays. Where due process procedures are not possible without long delays, the death penalty should not be allowed. The Judicial Committee of the Privy Council recognized this same argument in *Pratt v. Jamaica* (1993):

“In their Lordships’ view a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve.... If the appellate procedure enables the prisoner to prolong the appellate hearings over a period of years, the fault is to be attributed to the appellate system that permits such delay and not to the prisoner who takes advantage of it. Appellate procedures that echo down the years are not compatible with capital punishment. The death row phenomenon must not become established as a part of our jurisprudence.”⁷⁷

If States wish to impose the death penalty for crimes, it is their responsibility to make sure it is done so with regard for international law. It is unacceptable for prisoners to languish on death row for multiple years, subjecting them to the torture of the death row phenomenon.

V. CONCLUSION AND RECOMMENDATIONS

The death row phenomenon is an issue of increasing concern that has been recognized by courts throughout the world for the past twenty years. Despite these rulings, violations continue to occur. Therefore, HRA urges the Council to:

- Request that the General Assembly adopt a moratorium on *new death sentences*, as well as executions.
- Request that all moratoriums contain a clear deadline for abolition.
- Request that the Special Rapporteur on Torture examine the death row phenomenon and the circumstances that produce it, and make an assessment regarding when the circumstances rise to the level of torture or cruel, inhuman or degrading punishment.

⁷⁷ *Pratt and Morgan v. Jamaica*, (1993) 4 All E.R. 769.

ADDENDUM: Death Penalty Use in the United States

In light of the United States' upcoming review under the UPR, HRA is including this addendum to address specifically death penalty use in the United States. The death penalty is not yet illegal under international law, and the U.S. continues to use it as a form of punishment. However, as a retentionist country, the U.S. must provide safeguards to protect against the death row phenomenon and prevent violations of the prohibition against torture.

I. DATA

Fifteen states⁷⁸ plus the District of Columbia have joined the majority of the international community and abolished the death penalty.⁷⁹ Illinois is set to become the 16th state.⁸⁰ There are also current efforts in Ohio to abolish the practice. It was reported that ten Catholic Church leaders in Ohio have signed a statement urging the state to stop using the death penalty.⁸¹ By 2010, 3,118 people were under a death sentence in states throughout the U.S.⁸² Over 700 people are awaiting execution in California,⁸³ 393 inmates are on death row in Florida,⁸⁴ and 315 inmates are on death row in Texas.⁸⁵ There were 52 executions in 2009, 24 of which were

⁷⁸ Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.

⁷⁹ Death Penalty Information Center, *Facts About the Death Penalty* (17 February 2011), <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>.

⁸⁰ Reuters, *Illinois Poised to Abolish Death Penalty* (11 January 2011), <http://www.reuters.com/article/2011/01/11/us-executions-illinois-idUSTRE70A6G920110111>.

⁸¹ Associated Press, *Ohio Catholic Bishops Seek to End Death Penalty* (5 February 2011), http://www.google.com/hostednews/ap/article/ALeqM5jXwWvyhroQTbhLphZ5_OYcoHtPzg?docId=2914014a2d6e42638fa1a7823001508d.

⁸² U.S. Bureau of Justice Statistics, *Capital Punishment 2009*, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cp09st.pdf>.

⁸³ California Department of Corrections and Rehabilitation (11 January 2011), http://www.cdcr.ca.gov/Capital_Punishment/docs/CondemnedInmateSummary.pdf.

⁸⁴ Florida Department of Corrections (21 February 2011), <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp>.

⁸⁵ Texas Department of Criminal Justice (21 February 2011), <http://www.tdcj.state.tx.us/stat/offendersondrow.htm>.

carried out in Texas.⁸⁶ Of the 52 inmates executed, the average time between sentencing and execution was 14 years.⁸⁷

The Federal Government continues to retain the death penalty, and by 2010 fifty-five people were under a Federal death sentence.⁸⁸ Between 1977 and 2009 three people were executed, all by lethal injection.⁸⁹ The average amount of time spent under a Federal death sentence in 2009 was six years.⁹⁰ This may be due to the relatively small number of people under a Federal death sentence as compared to the high numbers of people under death sentences in various states. The large numbers in some states raise concerns about violations of Article 6 of the ICCPR, which provides that the sentence of death may be imposed only for the most serious crimes.

II. FEDERALISM CONCERNS

The U.S. Government often raises Federalism as a reason for why it cannot put an end to violations in the states. However, there are multiple steps the U.S. Government can take to help prevent the death row phenomenon—and the subsequent torture of death row inmates—under Federalism.

A. Educate the States

The U.S. Government can make sure that the Attorney General of each state is aware of the international community's growing rejection of the death penalty. Currently, 139 countries are abolitionist in law or in practice.⁹¹ States should be aware of the many international courts

⁸⁶ Amnesty International, *Death Sentences and Executions in 2009* (30 March 2010), <http://www.amnesty.org/en/library/asset/ACT50/001/2010/en/17348b70-3fc7-40b2-a258-af92778c73e5/act500012010en.pdf>.

⁸⁷ U.S. Bureau of Justice Statistics, *Capital Punishment 2009*, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cp09st.pdf>.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Amnesty International, *Abolitionist and Retentionist Countries*, <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>.

that have recognized the death row phenomenon and found it to violate human rights. These include: The European Court of Human Rights,⁹² the Judicial Committee of the Privy Council,⁹³ the Supreme Court of Zimbabwe,⁹⁴ the Supreme Court of India,⁹⁵ and the Supreme Court of Canada.⁹⁶

B. Utilize Taxing and Spending Powers

As part of Congress' general taxing and spending powers, it has the ability to tax or spend with conditions. For example, in South Dakota v. Dole,⁹⁷ the U.S. Supreme Court held that it is lawful for Congress to condition 5% of federal highway funds on the requirement that states maintain 21 as the legal drinking age. Congress could similarly condition prison funding (or other related funding) on the state's ability to prevent long delays in the fulfillment of due process procedures for death row inmates. So long as the condition is clear and unambiguous, germane to the spending program's purpose, and does not violate another constitutional provision, it can be used to urge the states to change their practices.

III. CONCLUSION

The U.S. Government needs to address the horrible conditions faced by death row inmates. It behooves the U.S. to take steps to address this human rights violation at the Federal and state level. By allowing its citizens to be subjected to the death row phenomenon, the U.S. is permitting torture. Addressing this issue should in no way place any limitations on due process and other constitutional protections. However, constitutional protections must be provided for in a way that does not violate the prohibition against torture.

⁹² Soering v. United Kingdom, 11 Eur. Hum. Rts. Rep. 439 (1989).

⁹³ Pratt and Morgan v. Jamaica, (1993) 4 All E.R. 769.

⁹⁴ Catholic Commission v. Attorney General, (1993) 1 Z.L.R. 242.

⁹⁵ Rahendra Prasad v. State of Uttar Pradesh, (1979) 3 SCR 78.

⁹⁶ United States v. Burns, (2001) 1 S.C.R. 283.

⁹⁷ South Dakota v. Dole, 483 U.S. 203 (1987).