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**The Death Penalty Constitutes Torture:
The Need for Moratoriums on Sentencing**

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I. INTRODUCTION

The world is evolving its view on use of the death penalty, and countries are changing and abolishing their use of capital punishment. As of May 2013, there are 140 countries that have abolished executions by law or practice compared to 1977 when there were only 16 countries that had abolished the death penalty. The international community is quickly deciding use of the death penalty violates prohibitions against torture, and is moving towards abolition.¹

Use of the death penalty constitutes torture, cruel, inhumane and degrading treatment in at least two specific ways, one because of the death row phenomena suffered by those sentenced with the death penalty, and two because of the forms of execution used to carry out the sentences. This report will discuss that the torture, cruel, inhumane and degrading treatment caused by both of these aspects of the death penalty are clearly prohibited by Article 7 of the International Covenant on Civil and Political Rights (ICCPR).²

Prohibitions of torture are found in numerous international treaties, such as the European Convention on Human Rights,³ the African Charter on Human and Peoples Rights,⁴ and the Convention Against Torture (CAT). Prohibition of torture has truly become a preemptory norm. The Special Rapporteur on Torture (Special Rapporteur) has acknowledged an evolving international norm that use of the death penalty is a per se violation of the prohibition against

¹ Amnesty International, *Death Penalty Facts and Trends*, found at: <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penalty-trends>.

² International Covenant on Civil and Political Rights, Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

³ European Convention on Human Rights, Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

⁴ African Charter on Human and People's Rights, Article 5: "...torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

torture and other cruel, inhuman or degrading treatment, and that the death row phenomenon itself violates Article 7 of the ICCPR.⁵

Ground has been made in the movement against use of the death penalty with moratoriums on executions being called for in past General Assembly resolutions.⁶ However, because of the death row phenomenon, moratoriums on executions only exacerbate the torture suffered by those still sentenced. Therefore, the next step is a call for moratoriums on sentencing, which is the only way to stop further exacerbation of the torture caused by the death row phenomenon.

II. THE DEATH ROW PHENOMENON

A. Definition

The death row phenomenon has essentially three components: (1) a temporal component consisting of the time between sentencing and execution, (2) a physical component based on the physical conditions suffered by the prisoner, and (3) an experiential component based on the meaning of living under the sentence of death.⁷ The Special Rapporteur on torture identifies the circumstances to create the death row phenomenon as to "include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held."⁸

A key to understanding the significance of the death row phenomenon, and why it violates prohibitions on torture, is to understand that torture is not limited to physical acts or physical pain and suffering only. Those who experience the death row phenomenon suffer physically and

⁵ Report to General Assembly, *Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, August 9, 2012, *A/67/279, found at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement>. (*Interim Report*).

⁶ 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); GA/11331 (20 December 2012).

⁷ 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); see also Death Penalty Information Center, *Time on Death Row*, found at <http://www.deathpenaltyinfo.org/time-death-row>.

⁸ *Supra* note 5.

mentally from intense, prolonged stress and anxiety. The Convention Against Torture specifically defines torture to consist of severe pain or suffering, whether physical *or* mental.⁹

B. International Recognition of the Death Row Phenomenon

The death row phenomenon has become firmly accepted in international jurisprudence, and produces severe mental trauma and physical deterioration in prisoners under sentence of death.¹⁰ In the seminal case *Soering v. United Kingdom*,¹¹ the European Court of Human Rights ruled that extraditing the applicant back to the U.S., where he would face the death penalty, amounted to inhuman and degrading punishment because of the death row phenomenon he would suffer, in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The court analyzed the psychological harm that his extradition would bring upon him, including the likelihood of extreme physical violence, fear of rape, homosexual abuse from other inmates, and all these fears resulting in the applicant being suicidal.¹² *Soering* shows that the psychological effects of the death row phenomenon and the personal circumstances of the person are critical to ascertaining if the death penalty constitutes torture, inhuman or degrading punishment.

The Judicial Committee of the Privy Council, in *Pratt v. Jamaica*,¹³ found that prolonged detention on death row was inhumane, and violated section 17 of the Jamaican Constitution. The *Pratt* court acknowledged the existence of the death row phenomenon, and focused on the length of time spent by the prisoner on death row. The court found that if someone was on death row for five years there would be strong grounds to believe that the delay in execution constituted inhuman or degrading treatment, and

⁹ Convention Against Torture and other Cruel and Inhuman and Degrading Treatment or Punishment (CAT), Article 1, para. 1 (emphasis added).

¹⁰ Patrick Hudson, "Does the death row phenomenon violate a prisoner's rights under international law?", *European Journal of International Law*, vol. 11, No. 4 (2000), pp. 834-837.

¹¹ *Soering v. The United Kingdom*, 1/1989/161/217, Council of Europe: European Court of Human Rights, 7 July 1989, found at: <http://www.unhcr.org/refworld/docid/3ae6b6fec.html>.

¹² *Id.* at para.64.

¹³ *Pratt and Morgan v. The Attorney General of Jamaica*, 3 SLR 995, 2 AC 1, 4 All ER 769 (Privy Council 1993) (en banc), found at: <http://www.eji.org/files/Pratt%20and%20Morgan%20v.%20Jamaica.pdf>.

created a presumption that five or more years on death row violated the Jamaican Constitution. The court further stated that a condemned person taking advantage of the appellate system is not to be blamed for exercising his/her right to appeal, but that the system itself needs to be blamed for any unnecessary delays that are caused. The *Pratt* court stated "the death row phenomenon must not become established as a part of our jurisprudence."¹⁴

The Inter-American Commission on Human Rights has found that conditions on death row violate the American Convention on Human Rights because they violated the physical, moral and psychological dignity and integrity of the inmates¹⁵ In *Aitkin v. Jamaica*¹⁶ the Inter-American Commission found that the conditions petitioner suffered during four years on death row failed to respect his physical, mental, and moral integrity and constituted inhumane treatment in violation of the American Convention. In *Aitken*, the conditions violating the prohibition against torture, inhuman, and degrading treatment included, but were not limited to, "solitary confinement for up to 23 hours a day in small, cramped airless cells, often under extreme temperatures; inadequate nutrition and sanitation arrangements."¹⁷

In *Hilaire v. Trinidad and Tobago*,¹⁸ the Inter-American Court acknowledged that the death row phenomenon was cruel, inhuman, and degrading treatment, characterized by a prolonged period of detention while awaiting execution. In *Hilaire* there were 32 prisoners, most of which had only spent four to six years on death row. The prisoners were under constant fear of being taken at any moment and being hanged, which caused them to suffer from nightmares and eat

¹⁴ *Id.*

¹⁵ *Paul Lallion v. Grenada*, Case 11.765, Report No. 55/02, Inter-Am. C. H.R., Doc. 5 rev. 1, October 21, 2002, found at: <http://www1.umn.edu/humanrts/cases/55-02.html>.

¹⁶ *Aitken v. Jamaica*, Case 12.275, Report No. 58/02, Inter-Am. C.H.R., Doc. 5. Rev. 1 at 763 October 21, 2002, found at: <http://www1.umn.edu/humanrts/cases/58-02.html>.

¹⁷ *Supra*. Note 5, para. 42 and 44.

¹⁸ *Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago*, June, 21, 2002, Series C, No. 94, found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_94_ing.pdf.

less.¹⁹ The Inter-American Court found that Trinidad and Tobago's detention conditions were "completely unacceptable in a civilized society" and that the circumstances impinged on the prisoners' physical and psychological integrity, and constituted cruel, inhuman, and degrading treatment.²⁰

In *Cox v. Canada*,²¹ the Human Rights Committee heard a case involving a man who claimed that extradition to the U.S. from Canada would be a violation of the prohibition against torture in Article 7, of the ICCPR because he would suffer from the death row phenomenon for a prolonged period in Pennsylvania. The Human Rights Committee did not find that this specific case amounted to a violation of Article 7 because defendant could not show there would be unreasonable delays in Pennsylvania's court system, or that he would for certain face a death sentence after being extradited because his co-conspirators received life sentences. However, the Committee acknowledged that "prolonged imprisonment under sentence of death could raise an issue under article 7 of the Covenant."²² In a partly concurring and partly dissenting opinion, Human Rights Committee member, Mr. Tamar Ban, said greater attention needs to be given to the psychological effects that occur during a lengthy period of time on death row, he stated:

Although I accept the notion that physical conditions play an important role when assessing the overall situation of prison inmates on death row, my conviction is that the decisive factor is rather *psychological* than physical; a long period spent in awaiting execution or the granting of pardon or clemency necessarily entails a permanent stress, an ever increasing fear which gradually fills the mind of the sentenced individual, and which by the very nature of this situation, amount - depending on the length of time spent on death row - to cruel, inhuman and degrading treatment, in spite of every measure taken to improve the physical conditions of the confinement.²³

¹⁹ Id. at para. 167 and 168.

²⁰ Id. at para. 161 and 169.

²¹ *Cox v. Canada*, Communication No. 539/1993, U.N. Doc. CCPR/C/52/D/539/19930. December 9, 1994, found at: <http://www1.umn.edu/humanrts/undocs/html/vws539.htm>.

²² Id.

²³ Id., Individual opinion by Mr. Tamar Ban (Partly Concurring, Partly Dissenting), Individual Opinions Appended to the Committee's Views (emphasis added).

In *Francais v. Jamaica*²⁴ the Human Rights Committee found that nearly 12 years on death row had caused mental suffering to the prisoner and was cruel, inhuman, and degrading treatment in violation of Article 7 of the ICCPR. The Committee stated that prolonged delays on death row do not per se violate the ICCPR, but that 12 years suffering from the death row phenomenon in this case was a violation. The Committee stated that the psychological impact on the person concerned is an important factor to determine if there is a violation, along with the physical conditions of the prison.²⁵

The Special Rapporteur notes that solitary confinement is the prevailing norm for death row inmates, and that "[s]olitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or even torture."²⁶ He has also noted that 15 days in solitary confinement is considered prolonged. Because of the severe mental pain and suffering caused from solitary confinement, the Special Rapporteur has stated that solitary confinement, as a punishment, is never justified for any reason²⁷ and that "[n]o prisoner, including . . . prisoners on death row, shall be held in solitary confinement merely for the gravity of the crime."²⁸

Egregious examples of prolonged death row sentences include N.I. Sequoya, a U.S. inmate at San Quentin State Prison in California. Sentenced to death in March of 1992, he has now spent over 22 years on death row without even having his first appeal heard. It took California five years just to appoint counsel for Mr. Sequoya, and another ten years to reconstruct lost transcripts of his

²⁴ *Francis v. Jamaica*, Communication No. 606/1994, U.N. Doc. CCPR/C/54/D/606/1994, August 3, 1994, found at: <http://www1.umn.edu/humanrts/undocs/html/vws606.htm>.

²⁵ *Id.*, para. 9.1.

²⁶ *Supra* note 5.

²⁷ Report to General Assembly, *Report on Solitary Confinement*, Juan E. Méndez, August 5, 2011, A/66/268, para. 72.

²⁸ U.N. General Assembly, *Review of the Standard Minimum Rules for the Treatment of Prisoners*, Juan E. Méndez, August 2013, A/68/295, para. 61, found at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/422/85/PDF/N1342285.pdf?OpenElement>.

trial. These facts and delays caused by the state of California were acknowledged by the Inter-American Commission on Human Rights in an admissibility decision on March 2012.²⁹ Over 22 years on death row has caused N.I. Sequoyah to suffer both physically and mentally.

In Japan, Okunishi Masaru, has spent more than 44 years on death row facing execution and recently had his seventh request for a retrial denied. The octogenarian was convicted in 1969 and confessed only after hours of police interrogation spread over five days and without counsel present.³⁰ Japan also has the longest serving death row inmate in the world, Hakamada Iwao, who was convicted in 1968 after being held by police for 20 days and allegedly being beaten into a "confession". It has been reported that recent DNA testing has found no match between Mr. Hakamada and the samples taken from the crime scene. He has suffered severe mental illness from being held in mostly solitary confinement on death row for over 45 years.³¹ The psychological damage suffered by Japanese death row inmates is especially intense because they are not notified of their execution date in advance, and are simply told the morning of the execution that it is their day to die. One can only imagine the mental suffering of waking up every day for 40 years wondering if it was their last day to live.³²

III. FORMS OF EXECUTION

In addition to the death row phenomenon, the executions themselves constitute torture. Anticipation of the future pain caused by execution methods can create more suffering to those on

²⁹ N.I. Sequoyah, Report No. 42/10, Inter-Am. Commission of H.R., found at: www.cidh.org/annualrep/2010eng/USAD120-07EN.doc.

³⁰ Amnesty International, *Japan: Death row inmate's retrial rejection is "travesty of justice"*, found at: <http://www.amnestyusa.org/news/news-item/japan-death-row-inmate-s-retrial-rejection-is-travesty-of-justice>.

³¹ *Id.*

³² The Guardian, *Japan condemned for "secret" executions*, found at: <http://www.theguardian.com/world/2013/dec/12/japan-condemned-secret-executions>.

death row. There is no method of execution that comports with international standards of humanity and dignity. The European Court of Human Rights found in *Al-Saadon & Mufdhi v. United Kingdom*³³ that any form of execution amounts to torture because all executions involve physical pain, in addition to intense psychological suffering awaiting death. The Human Rights Committee found that "public executions are ... incompatible with human dignity."³⁴ Conversely, secret executions violate the rights of the convict and his/her family to prepare for death.³⁵ Problems related to the forms of execution will be discussed in this section.

A. Lethal Injection

Many countries retaining the death penalty believe lethal injection is the most humane form of execution, and there is a myth that the convict feels no pain and simply goes to sleep. The truth is that some executions last from 20 minutes to an hour as the convict struggles, grimaces in pain, and gasps for air. Autopsy reports have shown foot long chemical burns to the skin and found needles in soft tissue.³⁶ Nothing is humane about having medical professionals involved in administering poison to kill people, which is an obvious violation of their professional and ethical code.

The traditional method for lethal injection involves a three drug "cocktail" which in theory numbs the victim from pain. However, recent research suggests that in fact the person is simply paralyzed, yet still able to feel excruciating pain while slowly dying. This new research revealing that lethal injection is not painless, has resulted in many U.S. states to suspend executions.³⁷

³³ Judgment 2 March 2010 in *Al-Saadoon & Mufdhi v. United Kingdom*, application No. 61498/08, para. 99.

³⁴ International Bar Association, *The Death Penalty under International Law: A background paper on the IBAHRI Resolution on the Abolition of the Death Penalty*, May 2008.

³⁵ *Supra* note 5, para. 40.

³⁶ Amnesty International, *Anything But Humane*, found at: <http://www.amnestyusa.org/our-work/issues/death-penalty/lethal-injection>.

³⁷ Suzanne Goldenberg, *America Turns its back on Death Penalty after botched lethal injection of killer*, January 9, 2007, found at: <http://www.guardian.co.uk/world/2007/jan/10/usa.suzannegoldenberg>.

Recently on February 11, 2014, Washington's governor issued a moratorium on executions while he is in office, and last year Maryland became the 18th U.S. state to entirely abolish death penalty sentencing.³⁸ However, the Supreme Court of the United States has previously held that use of the three drug cocktail is constitutional and does not amount to cruel and unusual punishment, despite hearing a case where a man took 34 minutes to die after two doses of the poison cocktail.³⁹

Notably the European Union and some private companies have refused to supply the U.S. with the drugs used in traditional lethal injection methods because they believe using the death penalty is inhumane. Unfortunately, as a result, some U.S. states have begun experimenting on inmates with new untested drugs, and currently four different states are trying four different drugs for the year 2014. As recently as January 16, 2014, an experiment resulted in Dennis McGuire struggling physically for breath, gasping loudly, and choking during an execution which lasted 15 minutes.⁴⁰

On January 23, 2014, Home Minister Umar Naseer ordered the country's prisons to start making all necessary arrangements for implementation of all death sentences through lethal injection.⁴¹ This order puts Maldives on a downward course that would end a 60 year moratorium on executions, which would be a huge retrograde step. Two of the 19 death row inmates in Maldives were sentenced for crimes committed under the age of 18. By ordering preparations to resume executions, the Home Minister is condoning use of the death penalty against juvenile

³⁸ BBC News, *Washington governor suspends death penalty*, February 14, 2014, found at: <http://www.bbc.co.uk/news/world-us-canada-26147690>.

³⁹ *Baze et al. v. Rees, Commissioner, Kentucky Department of Corrections et al.*, April 16, 2008, 128 S.Ct. 1520 case No. 07-5439.

⁴⁰ Death Penalty Information Center, *Problems Arise as Ohio Tries New Execution Procedure*, found at: <http://deathpenaltyinfo.org/problems-arise-ohio-tries-new-execution-procedure>.

⁴¹ Amnesty International, *Maldives: Halt "retrograde" move to resume executions*, January 24, 2014, found at: <http://www.amnesty.org/en/for-media/press-releases/maldives-halt-retrograde-move-resume-executions-2014-01-24>.

offenders. This is a clear violation of international law which forbids use of capital punishment for crimes committed by persons under the age of 18.⁴²

B. Hanging

The United Nations High Commissioner for Human Rights has suggested that hanging, as a matter of law, is contrary to the ICCPR.⁴³ Despite proof that hanging is unnecessarily painful and violates human dignity by masking and constraining the individual's hands and feet, it is still the most common method of execution used today.⁴⁴ In Japan, eight men have been executed by hanging since February 2013. All of these executions were done in secret, with the inmates not knowing until the morning of that they would be executed, and their families notified only after the fact.⁴⁵ This is a huge step backward for Japan who just a few years ago seemed to be moving toward abolition by allowing media into the execution chamber and opening a national dialogue regarding use of the death penalty.⁴⁶

In November 2012, India ended its eight year unofficial moratorium on executions when it hanged Mohammed Ajmal Kasab and again on February 9, 2013 when it hanged Mohammed Afzal Guru.⁴⁷ On January 21, 2014, the Indian Supreme Court recently commuted the death sentences of 15 individuals to life imprisonment, and established guidelines to ensure better conditions on death row.⁴⁸ The court's decision shows awareness that use of the death penalty and conditions

⁴² Amnesty International, *Maldives must commute death sentences for two juvenile offenders convicted of murder*, May 3, 2013, found at: <http://www.amnesty.org/en/news/maldives-must-commute-death-sentences-two-juvenile-offenders-convicted-murder-2013-05-03>.

⁴³ Supra note 5.

⁴⁴ Death Penalty Worldwide, *Methods of Execution*, found at: <http://www.deathpenaltyworldwide.org/methods-of-execution.cfm>.

⁴⁵ Supra note 27.

⁴⁶ BBC News, *Japanese Media get Tour of Death Chamber*, August 27, 2010, found at: <http://www.bbc.co.uk/news/world-asia-pacific-11107790>.

⁴⁷ Human Rights Watch, *India: Stop Executions*, August 21, 2013, found at: <http://www.hrw.org/news/2013/08/21/india-stop-executions>.

⁴⁸ Office of the High Commissioner for Human Rights, *India death penalty: UN human rights experts welcome Supreme Court ruling*, January 30, 2014, found at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14205&LangID=E>.

on death row can amount to torture, and hopefully the decision can begin to steer the country back toward abolition. The Special Rapporteur welcomed the court's decision, but highlighted that "[t]he fact of being on death row itself and the methods of execution employed may render capital punishment tantamount to torture."⁴⁹

Pakistan also ended a moratorium on execution which begun in 2008 when it hanged Muhammad Hussein, in November 2012. This is a scary retrograde step considering Pakistan has over 7,000 individuals on death row, one of the largest death row populations in the world.⁵⁰ At least eight men were scheduled to be executed in Pakistan during August of 2013, but a temporary halt has been ordered until the Pakistani President and Prime Minister consult regarding continued use of the death penalty.⁵¹ Iran has one of the worst records for use of the death penalty and primarily employs hanging as its method of execution. It was reported that over 60 people have been executed by hanging within one month's time during 2013 in Iran.⁵²

C. Beheading

Beheading, or decapitation, is the intentional severance of one's head from the body. Saudi Arabia uses beheading as its primary method of execution, and even those who have drug related charges have been given the death penalty and executed by beheading. In January 2013, Rizana Nafeek, a Sri-Lankan citizen, was beheaded for a crime she committed when she was 17, which is a clear violation of international law that forbids capital punishment for crimes committed by persons less than 18 years of age. While babysitting Rizana allegedly strangled a baby to death,

⁴⁹ Id.

⁵⁰ Human Rights Watch, *Pakistan: Don't Resume Executions*, August 16, 2013, found at: <http://www.hrw.org/news/2013/08/16/pakistan-don-t-resume-executions>.

⁵¹ Amnesty International, *Further Information: Executions Temporarily Halted in Pakistan*, August 20, 2013, found at <http://www.amnesty.org/en/library/asset/ASA33/011/2013/en/6e24f960-6dc8-452a-a4d9-9a744928abe2/asa330112013en.html>.

⁵² Human Rights Activists News Agency, *A Prisoner is Hanged in Gachsaran*, found at: <http://hra-news.org/en/prisoner-hanged-gachsaran>.

although she claimed it was an accident.⁵³ Saudi Arabia had at least 76 executions in 2012, and one reason this number is so high is because the death penalty is used for a variety of crimes, including drug offenses, practicing sorcery, witchcraft, and apostasy.⁵⁴

D. Stoning

Execution by stoning is heavily criticized as being cruel, inhuman, and degrading treatment as it prolongs the death process and is highly torturous. The Commission on Human Rights condemned stoning as a cruel, inhuman, and degrading treatment and called for its immediate stop in 2005.⁵⁵ Popular as a method of execution under Sharia law, traditional stoning involves picking the size of the stones so that they are not too big to immediately kill, nor too small to be harmless. The prisoner is buried up to the waist (for males) and up to the neck (for females) and then stoned until the person is dead.⁵⁶

In August 2012, it was reported that radical Islamists belonging to al Qaeda, which controls northern Mali, forced a man and a woman into two holes and stoned them to death for committing adultery. The execution was public, and the witnesses who watched the victims slowly die didn't know how many stones were used to kill the victims, implying a number that wasn't easily countable.⁵⁷

Despite the gross violations against the prohibition of torture caused by public stoning, Afghanistan has proposed re-instating to their penal code, by amendment, the use of public stoning

⁵³ Amnesty International, *Saudi Arabia beheading nearly two people per week this year*, February 8, 2013, found at: <https://www.amnesty.org/en/news/saudi-arabia-beheading-nearly-two-people-week-year-2013-02-08>.

⁵⁴ *Id.*

⁵⁵ UN Commission on Human Rights, Human Rights Resolution 2005/59: The Question of the Death Penalty, April 20, 2005, E/CN.4/RES/2005/59, found at: <http://www.unhcr.org/refworld/docid/45377c730.html>.

⁵⁶ Women Living Under Muslim Laws, *Iran: Code of Punishment for Adultery in Iran*, The Islamic Penal Code, Article 104, Code of Punishment for Adultery, found at: <http://www.wluml.org/node/3908>.

⁵⁷ CNN, *Islamists: Two stoned to death for committing adultery in Mali*, August 2, 2012, found at: <http://www.cnn.com/2012/08/02/world/africa/mali-couple-stoned/>.

as an acceptable form of execution. This would be a huge retrograde step considering stoning has been abolished in Afghanistan since 2002, when the Taliban was removed from power.⁵⁸

E. Shooting

The second most common form of execution worldwide is shooting, which sometimes consists of one person shooting the convict in the back of the head, or shooting by a firing squad.⁵⁹ The Special Rapporteur has noted that shooting by firing squad has been considered one of the quickest and least painful methods of execution. However, public firing squads subject the victim to undignified displays of hatred and contempt.⁶⁰

In the U.S., only two states, Utah and Oklahoma, still have use of firing squad under certain circumstances. In Utah inmates can have execution by firing squad if they elected to do so before May 3, 2004, when a non-retroactive law took effect and eliminated use of the firing squad in Utah. Oklahoma inmates will be executed by firing squad only if lethal injection and electrocution are found unconstitutional.⁶¹ Since the U.S. re-introduced the death penalty in 1976, three people have been executed by firing squad, and all have been in Utah. The most recent of these was Ronnie Lee Gardner, who spent nearly 25 years on death row, then had a bag placed over his head, a target placed on his chest, and was shot by a five-man firing squad consisting of anonymous officers. Witnesses were disturbed when they noticed that Gardner moved for a time after the shots had hit their mark.⁶²

IV. CONCLUSION: THE NEED FOR A NEW APPROACH

⁵⁸ Amnesty International, *Afghanistan: Reject stoning, flogging, amputation and other Taliban-era punishments*, November 26, 2013, found at: <https://www.amnesty.org/en/news/afghanistan-reject-stoning-flogging-amputation-and-other-taliban-era-punishments-2013-11-26>.

⁵⁹ *Supra* note 39.

⁶⁰ *Supra* note 5, para. 40.

⁶¹ Death Penalty Information Center, *Authorized Methods*, found at: <http://www.deathpenaltyinfo.org/methods-execution>.

⁶² CNN, *Killer executed by Utah firing squad*, June 18, 2010, found at: <http://www.cnn.com/2010/CRIME/06/18/utah.firing.squad/>.

The General Assembly has called for moratoriums on executions in previous resolutions with a view to abolish the death penalty,⁶³ but the time has come for moratoriums on issuing death penalty sentences. Allowing inmates to sit longer with death sentences, not knowing if or when they will be executed, only exacerbates the torture caused by the death row phenomenon. States that were abolitionist by practice may revert back to executing people already given death sentences, as India⁶⁴ and Pakistan⁶⁵ have both recently done. States like Morocco have continued to sentence people to death despite having a moratorium on executions since 1993. It now has at least 104 death row inmates living in fear of executions resuming at the government's discretion.⁶⁶ Within the past year, Zimbabwe has hired a new hangman, which threatens to end the country's nine year moratorium on executions.⁶⁷

Although the death row phenomenon is exacerbated by prolonged detention, speeding up executions is not the answer because doing so would violate the prisoner's rights to due process. States have an obligation to ensure that international humane standards are being followed. Blaming the death row phenomenon on a prisoner's right to due process is irresponsible and if States continue to use the death penalty they have the responsibility to prevent the death row phenomenon without infringing due process.⁶⁸

V. RECOMMENDATIONS

⁶³ U.N. General Assembly Resolution, *Moratorium on the use of the death penalty*, A/RES/62/149 (18 December 2007); A/RES/63⁶³/168 (18 December 2008); GA/11041 (21 December 2010); GA/11331 (20 December 2012).

⁶⁴ Human Rights Watch, *India: Secret Hanging a major step back*, February 9, 2013, found at: <http://www.hrw.org/news/2013/02/09/india-secret-hanging-major-step-back>.

⁶⁵ Human Rights Watch, *Pakistan: Execution ends Moratorium on Death Penalty*, November 21, 2012, found at: <http://www.hrw.org/news/2012/11/20/pakistan-execution-ends-moratorium-death-penalty>.

⁶⁶ Death Penalty Worldwide, *Kingdom of Morocco*, found at: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Morocco>.

⁶⁷ Amnesty International, *Zimbabwe: Appointment of New Hangman Raises Spectre of Imminent Executions*, February 8, 2013, found at: <http://www.amnesty.org/en/news/zimbabwe-appointment-newhangman-raises-spectre-imminent-executions-2013-02-08>

⁶⁸ Earl Pratt and Ivan Morgan v. Jamaica , Communication No. 210/1986 and 225/1987, U.N. Doc. Supp. No. 40 (A/44/40) at 222, April 6, 1989, found at: <http://www1.umn.edu/humanrts/undocs/session44/210-1986.htm>.

Additional steps beyond moratoriums on executions are required to eliminate the many human rights violations, such as torture, that stem from use of the death penalty.

HRA urges the Human Rights Council to urge States to:

- Enact moratoriums on death penalty sentences.
- Begin a dialogue about the death penalty within their individual countries.
- Adhere to international human rights standards of human dignity by instituting alternative methods of punishment.
- Be more transparent concerning their use of the death penalty and methods of executions.
- Prevent torture caused by the death row phenomenon.