



Human Rights Advocates

P.O. Box 5675, Berkeley, CA 94705 USA

Death Penalty and the Prohibition Against Torture and Cruel, Inhuman and Degrading Treatment and Punishment

Contact Information:

**Minh Le, Frank C. Newman Intern
Representing Human Rights Advocates through
University of San Francisco School of Law's
International Human Rights Clinic**

Tel: 415-422-6961

Mtle5@usfca.edu

Professor Connie de la Vega

delavega@usfca.edu

I. Introduction

The Human Rights Advocates welcomes the 2015 Human Rights Council Resolution 30/5, which urges all States to protect the rights of persons facing death penalty. Certain issues, however, raise questions about the ability of retentionist States to continue imposing capital punishment without violating the prohibition against torture and cruel, inhuman, and degrading treatment. Such practices are increasingly limited as norms emerge within the international community towards complete abolition.

International Covenant on Civil and Political rights (“ICCPR”) Article 6 guarantees the Right to Life.¹ That is, every human being has the inherent right to life. This right shall be protected by law and no one shall be arbitrarily deprived of life. In countries that have not abolished the death penalty, sentences of death may be narrowly imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

The Convention Against Torture and Other Cruel, Inhuman or Degrading treatment or punishment (“CAT”) defines torture as any act by which severe pain or suffering whether physical or mental is intentionally inflicted upon a person by or through the instigation or consent of a public official acting in his official capacity to intimidate, punish or obtain info, among other motives.² CAT further prohibits use of torture or cruel, inhuman, or degrading punishment or treatment committed by officials or under authorization and consent as well.

¹ International Covenant on Civil & Political Rights, (Dec. 16, 1966), 999 U.N.T.S. 171, Article 6, *available at* <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

² Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (Dec. 10, 1984), 1465 U.N.T.S. 85, Article 1, *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

Although there is no complete bar against capital punishment, executions today constitute a violation against international standards and the universal prohibition against torture due to the death row phenomenon experienced by the inmates, the method of execution applied involving unnecessary suffering and indignity, and the fact that certain crimes do not meet the “most serious crimes” standard. This report will cover those three central aspects of death penalty.

II. Death Row Phenomenon

A. Definition

The death row phenomenon constitutes torture under CAT’s definition because it’s a condition in which those who await execution suffer from severe mental trauma and physical deterioration while incarcerated. Article 1 of the CAT does not limit torture to physical acts or physical pain and suffering only. The article embraces the idea that torture may be inflicted through mental pain and suffering.³ 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.”⁴ This phenomenon has become commonplace in international jurisprudence. Regional courts have also found for holding these executions to be invalid.⁵

³ *Supra* note 2, Article 1.

⁴ Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN doc. A/67/279, para. 42, (Aug. 9, 2012), *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement>.

⁵ *See* Soering v. The United Kingdom, 1/1989/161/217, European Court of Human Rights, (July 7, 1989); Pratt and Morgan v. Jamaica, (1993) 4 All E.R. 769; Paul Lallion v. Grenada, Case 11.765, Report No. 55/02, Inter-Am. C. H.R., Doc. 5 rev. 1, (Oct. 21, 2002).

B. International Recognition

In the United States the conditions of death row phenomenon are amplified due to the combination of circumstances in the American system that produces severe mental trauma, physical suffering, solitary confinement, horrible prison conditions, lack of exposure to the outside. Arguably, the inmates themselves are consequently serving more than just their sentence. It's a death sentence plus life without parole due to the grossly long time served on death row. A U.S. national who was sentenced to death in 1992 has now spent 24 years on death row without even having his first appeal. It took 5 years for the California to appoint counsel, and another 10 years to reconstruct lost transcripts. The Inter-American Commission on Human Rights acknowledged these facts in an admissibility decision in March 2012.⁶ Inmate Bobby Moore currently awaits his appeal in a case pending writ of certiorari in the United States Supreme Court. Moore was sentenced to death in 1980 at the age of 20. He has spent over 35 years on death row, fifteen of which were in solitary confinement.⁷

The European Court of Human Rights in *Soering v. United Kingdom* was one of the first courts to have identified and acknowledge the psychological effects that death row inmates suffers through, physically and mentally had the court approved extradition of Jens Soering back to the United States.⁸ Granting extradition would amount to a violation of Article 3 of the European Convention on Human Rights (which addressed the

⁶ N.I. Sequoyah, Admissibility Report No. 42/10, Inter-Am. Commission of H.R., *available at* www.cidh.org/annualrep/2010eng/USAD120-07EN.doc.

⁷ Center for Constitutional Rights, *available at* <https://ccrjustice.org/home/blog/2016/01/20/death-penalty-horrific-here-s-something-makes-it-even-worse>

⁸ *Supra* note 5.

prohibition of torture), as Soering would be exposed to a real risk of treatment on death row that goes beyond the threshold set by the European Convention.⁹

The Judicial Committee of the Privy Counsel in *Pratt v. Jamaica* recognized that the death row phenomenon was a violation of the Jamaica Constitution, ruling that the execution of Earl Pratt and Ivan Morgan who have been on death row for over 15 years would violate the spirit and letter of Jamaica Constitution.¹⁰ The court held that there was an instinctive revulsion against the possibility of execution for anyone who has already suffered prolonged “agony of suspense for so many years” on death row and that executions following 5 or more years of delay are strong grounds for violation of the Constitution.¹¹ The Court was concerned with the issues regarding condemning a person for exercising their rights to an appeal and taking advantage of the appellate system. In such circumstances, the individual is not to be blamed, but rather, the system itself needs blaming for any unnecessary delays.

Further, the Inter-American Commission on Human Rights has found that conditions on death row amount to a violation of American Convention on Human Rights, impeding on the physical, moral and psychological dignity and integrity of individuals.¹² In *Aitkin v. Jamaica*, an inmate suffered from four years on death row and exposed to solitary confinement for up to 23 hours a day in small, cramped, airless cells, often under extreme temperatures with inadequate nutrition and sanitation arrangements.¹³ Here, the Commission found that these conditions failed to respect his

⁹ *Id.*

¹⁰ *Pratt et al v. Attorney-General for Jamaica et al*, 4 All ER 769 (1993).

¹¹ *Id.*

¹² *Supra* note 5.

¹³ *Aitken v. Jamaica*, Case 12.275, Report No. 58/02, Inter-Am. C.H.R., Doc. 5. Rev. 1 at 763, (Oct. 21, 2002), available at <http://www1.umn.edu/humanrts/cases/58-02.html>.

physical, mental, and moral integrity and thus constituted inhuman treatment in violation of the American Convention.¹⁴

The Inter-American Court has also acknowledged the prolonged conditions that inmates suffer through on death row as a cruel, inhuman, and degrading treatment. In *Hilaire v. Trinidad and Tobago* 32 prisoners had already served four to six years on death row. During their incarceration, they were placed under constant fear of random lynching that manifests into physical and psychological trauma.¹⁵ The Court held that the conditions in which the prisoners were exposed to were “completely unacceptable in a civilized society” that constituted cruel, inhuman, and degrading treatment.

The Human Rights Committee has also expressed concerns about the death row phenomenon in two seminal cases. *Cox v. Canada* involved an individual who claimed that extradition from Canada to the U.S.¹⁶ should be denied because the conditions of his imprisonment on death row would amount to a violation of the ICCPR Article 7 prohibition against torture.¹⁷ The Committee ultimately denied his request and granted extradition since the specific facts of the case did not rise to the level of violation.¹⁸ The Committee, however, did acknowledge that prolonged imprisonment under death sentence could raise an issue under Article 7.¹⁹ What’s important to note from the case is Human Rights Committee member Tamar Ban’s concurring opinion in the matter:

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

¹⁴ *Id.*

¹⁵ *Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago*, (June 21, 2002), Series C, No. 94, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_94_ing.pdf.

¹⁶ *Cox v. Canada*, Communication No. 539/1993, U.N. Doc. CCPR/C/52/D/539/19930, (Dec. 9, 1994), available at <http://www1.umn.edu/humanrts/undocs/html/vws539.htm>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

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.²⁰

In *Francis v. Jamaica* the Committee found that incarceration of an individual sitting on death row for over 12 years causing him mental and physical suffering would amount to a cruel, inhuman, and degrading treatment in violation of Article 7 of the ICCPR.²¹ Here, the committee focused specifically on the psychological impact on the individual as an important factor in determining whether there was a violation.²²

III. Methods of Execution

In addition to the physiological and physical strains caused by the death row phenomenon, the executions themselves constitute torture. Most methods of execution have been explicitly deemed as violations of the prohibition against torture, while others are arguably on par with this conflict against international human rights. However, there are no methods of execution that comes close to comporting with international standards of humanity and dignity. By its very act, any form of execution is a violation on the prohibition against torture and cruel, inhuman, degrading treatment and punishments since all executions inflict physical pain and psychological suffering to prisoners awaiting death.²³ Further, the Human Rights Committee found that any forms of public

²⁰ *Id.*, Individual opinion Tamar Ban (Partly Concurring, Partly Dissenting), Individual Opinions Appended to the Committee's Views.

²¹ *Francis v. Jamaica*, Communication No. 606/1994, U.N. Doc. CCPR/C/54/D/606/1994, (Aug. 3, 1994), available at <http://www1.umn.edu/humanrts/undocs/html/vws606.htm>.

²² *Id.*

²³ 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), available at www.ibanet.org/Human_Rights_Institute/About_the_HRI/HRI_Activities/death_penalty_resolution.aspx.

executions are “incompatible with human dignity” as they often expose convicts to undignified and shameful displays of contempt and hatred.²⁴ On the other hand, executions done in secret violate the rights of the convicted and their families as well.²⁵ Regional bodies have acknowledged this as well. In *Al-Saadon & Mufdhi v. United Kingdom*, the European Court of Human Rights denied extradition to the U.S. and held that because all executions involve physical pain, any forms of execution amounts to torture.²⁶

Among the methods of execution, the common forms include: public hanging, shooting by firing squad, shooting, beheading, lethal injection, stoning, gas chamber, and electrocution. These are examples of execution methods that may constitute torture.

A. Hangings

Despite proof that public hanging is unnecessarily painful and violates human dignity, it is still the most common method of execution used today. The United Nations High Commissioner for human Rights has suggested that hanging, as a matter of law, is contrary to the prohibition of torture under the ICCPR.²⁷ The High Court of the United Republic of Tanzania reiterates this assertion in 1994 when the Court found that a death penalty sentencing was unconstitutional on the ground that execution by hanging would violate the right to dignity of a person and also constituted cruel, inhuman and degrading treatment of the individual.²⁸ While the majority upheld the decision the dissent by

²⁴ *Supra* note 1.

²⁵ *Id.* at para. 40.

²⁶ *Al-Saadon and Mufdhi v. United Kingdom*, Application no. 61498/08, European Court of Human Rights, para. 99, (June 30, 2009), *available at* <http://www.refworld.org/docid/4a536060.html>.

²⁷ *Supra* note 4 at para. 33.

²⁸ *Republic v. Mbushuu alias Dominic Mnyaroge and Kalai Sangula*, High Court of the United Republic of Tanzania, (June 22, 1994).

Justice Egonda-Ntende of the Supreme Court of Uganda in *Attorney General v. Susan Kigula* pointed to affidavits showing how hanging was cruel and inhuman.²⁹ Despite the facts, countries such as Iran, Afghanistan, Bangladesh, Iraq, Japan, Sudan, South Sudan, Palestine, and Malaysia still authorize in the use of such method for execution.³⁰

B. Stoning

Without a doubt, death by stoning has been found to constitute torture and thus a violation on the prohibition against cruel, inhuman and degrading treatment. In 2005 the Commission on Human Rights identified stoning as a particularly cruel and inhuman form of execution that must be stopped immediately.³¹

Countries like Indonesia, Iran, Mauritania, Nigeria, and Saudi Arabia still authorize by law the practice of stoning as punishment. Many of these countries, however, qualify the use of such executions for acts not meeting the international standards of “most serious crimes”.³² For example, in Mauritania, stoning is served as a sentence only for adultery and homosexual relations.³³ In Nigeria, stoning is authorized only for acts of adultery, rape, incest, and homosexual sodomy.³⁴

C. Lethal injections

²⁹ *Attorney General v. Susan Kigula and 417 Others*, No. 03 of 2006, Uganda: Supreme Court, (Jan. 21, 2009), available at <http://www.refworld.org/docid/499aa02c2.html>.

³⁰ Death penalty Worldwide, Methods of Execution, available at <http://www.deathpenaltyworldwide.org/methods-of-execution.cfm>; see also <http://www.theatlantic.com/magazine/archive/2015/06/execution-clayton-lockett/392069/>.

³¹ UN Commission on Human Rights, Human Rights Resolution 2005/59: The Question of the Death Penalty, (Apr. 20, 2005), E/CN.4/RES/2005/59, available at <http://www.unhcr.org/refworld/docid/45377c730.html>

³² *Infra* note 46.

³³ *Supra* note 30.

³⁴ *Id.*

Most countries retaining the death penalty believe lethal injection is the most humane form of execution, however, the truth is that some executions last from 20 minutes to an hour as the convict struggles in pain, while gasping for air.³⁵ The U.S., People’s Republic of China, Republic of China, Guatemala, Thailand and Vietnam are countries that authorize this form of execution.

In the U.S., the use of lethal injection has gone under scrutiny as numerous instances of botched executions occurred throughout the states. In the case of Clayton Lockett, sentenced to death in Oklahoma, it took over 43 minutes for Lockett to die. The injection of the first sedative had proven problematic, leaving Lockett paralyzed although still awake, “effectively locked in his own body, suffocating for several minutes before his heart finally stopped.”³⁶ The UN High Commissioner for Human Rights commented that Lockett’s suffering during execution potentially amounted to cruel, inhuman and degrading treatment according to international standards.³⁷ Even when administered correctly, studies have indicated that those executed under this method may still suffer from asphyxiation.³⁸

D. Electrocutation

Electrocutation once served as a humane method of execution is now only practiced within a few states in the U.S. The killing is carried out by discharging strong electrical

³⁵ Amnesty International, Lethal Injection: Anything But Humane, *available at* <http://www.amnestyusa.org/our-work/issues/death-penalty/lethal-injection>

³⁶ Aljazeera America, The Death penalty: How We Kill, (June 29, 2015), *available at* <http://america.aljazeera.com/multimedia/2015/6/the-death-penalty-how-we-kill.html>.

³⁷ UN News Centre, UN rights office calls on US to impose death penalty moratorium after botched execution, (May 2, 2014), *available at* <http://www.un.org/apps/news/story.asp?NewsID=47706#.Vs-DR0wrJKN>.

³⁸ For example, Teresa A. Zimmers and others, “Lethal injection for execution: chemical asphyxiation?”, *PLOS Medicine*, vol. 4, No. 4 (Apr. 24, 2007). *available at* <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.0040156>.

currents from the head to the leg of a prisoner as they are mounted to a chair.³⁹ The current runs through the body, causing the heart to quiver and stop pumping blood to the brain. The individual is left unconscious within thirty seconds and may be declared dead within three to five minutes.⁴⁰ This result is not always achieved on the first try. Since the electric current may not always pass through the heart, additional jolts are discharged and the process continues until the individual is dead.⁴¹ Exposure to additional shocks have lead to additional cruel and gruesome results, including combustion, cooked organs, and ruptures on the skin due to the extremely high temperature.⁴²

This form of execution was the sole method used in Nebraska until 2008 when the Nebraska Supreme Court declaring such practice unconstitutional and constituting cruel and unusual punishment.⁴³ There the Court stated, “condemned prisoners must not be tortured to death, regardless of their crimes.”⁴⁴ Currently, only seven U.S. states maintain the practice.⁴⁵

IV. Death Sentence for non-violent crimes

The legal basis for judicial executions under international law is found in Article 6 of the ICCPR. It states “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime.” Arguably, Article 6 and the concept of “most serious crimes” is not meant to create an exception, but rather, it sets a

³⁹ *Supra* note 36.

⁴⁰ *Id.*

⁴¹ Death Penalty Information Center, Descriptions of Execution Methods, *available at* <http://www.deathpenaltyinfo.org/descriptions-execution-methods>.

⁴² *Supra* note 36.

⁴³ *State v. Mata*, 275 Neb. 1 N.W.2d 229 (2008).

⁴⁴ *Id.*

⁴⁵ *Supra* note 36.

direction towards abolition of the practice altogether by establishing state obligations to progressively restrict its use.⁴⁶ ECOSOC Resolution 1984/50 narrowed the scope of death penalty to not exceeding “international crimes with lethal or other extremely grave consequences.”⁴⁷ The UN Secretary-General’s 6th Quinquennial report stated, “offenses should be life threatening, in the sense that this is a very likely consequence of the action.”⁴⁸ The UN Special Rapporteur on extrajudicial, summary or arbitration executions further defined “most serious crimes” as “cases where it can be shown that there was an intention to kill, which resulted in the loss of life.”⁴⁹

A. Economic Crimes

Economic crimes such as bribery, extortion, embezzlement & counterfeiting fall far from the threshold for “most serious crimes.” These offenses, although many in number, rarely result in harm or bodily injury to other persons. There is a clear disproportion between the acts involved and the punishment.

Vietnam serves as an example of a country that continues to revise its penal code to further narrow the scopes of its death sentences. In 1999 the country reduced the number of capital crimes from 44 to 29. In 2009 the penal code was again amended, reducing that number to 22.⁵⁰ This past November, the country again went through major revisions of their codes, under constant pressure from the international community.

⁴⁶ International Commission against the Death Penalty, *The Death Penalty and the “Most Serious Crimes,”* A country-by-country overview of the death penalty in law and in practice in retentionist states, (Jan. 2013), available at http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes_final_6Feb2013.pdf.

⁴⁷ The Economic and Social Council, ECOSOC Resolution 1984/50 *Safeguards guaranteeing protection of the rights of those facing the death penalty*, (May 1984), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>.

⁴⁸ *Supra* note 5.

⁴⁹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/4/20, (Jan. 2007).

⁵⁰ *Supra* note 46.

Among the changes was a provision that death sentencing imposed on corrupt Vietnamese officials will now be commuted to life imprisonment if those officials are able to pay back at least 75 percent of the unlawful gains. These new laws are to enter into effect on July 2016.⁵¹

B. Drug Crimes

Drug-Related crimes for which death penalty can be imposed upon include possession, production, trafficking or use of illicit narcotics. Generally, the type and quantity of drugs involved determines whether the individual will be sentenced to death. Some countries go even further and punish individuals who possess a small amount of illegal substance. For example, in Thailand, possession of more than 20 grams of illegal substance is punishable by death. Even fewer countries have determined that any amount of drug possessed is per se not a capital offence but may be construed as drug trafficking and hence subject to capital punishment.⁵² On the other hand, Vietnam's recent revision of its penal code has removed drug possession and appropriation from the list of crimes punishable by death.⁵³

C. Crimes of Status

There has been pushbacks by minority of states to the restrictive interpretation of "most serious crimes" when it comes to executions for offenses such as homosexuality and lesbianism. Nigeria has challenged the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, arguing that the notion of executing individuals for

⁵¹ Vietnam passes amended penal code, removing death penalty for 7 crimes, Xinhuanet: Asia & Pacific Edition, (Nov. 27, 2015), available at http://news.xinhuanet.com/english/2015-11/27/c_134862778.htm.

⁵² *Supra* note 46.

⁵³ *Supra* note 51.

status offenses are excessive is a judgmental rather than objective call.⁵⁴ Regardless of the argument, it is clear that punishing individuals based on their identification fails to meet the “most serious crime” standard as well as other nondiscriminatory provisions of international law.

Countries such as Afghanistan, Iran, Saudi Arabia all maintain capital punishment for individuals who are identified as homosexuals or engage in homosexual relations. In Sudan, homosexual relations upon the third offence are subject to capital punishment.⁵⁵

V. Emerging Global Trend

To date, 98 States have abolished the use of death penalty as a sentencing scheme for any and all crimes. Further, 35 States which retained death penalty sentencing for ordinary crimes are considered abolitionist in practice since there have not been any executions within the past 10 years and are believed to have policies or established practice of not carrying out executions. Fifty-eight States still retain the death penalty sentencing for ordinary crimes and do, in fact, carry out such sentencing and execution.⁵⁶

At the moment abolition of death sentencing and execution is not required, however, regional groups have taken steps to move towards abolition. For example, entry into the European Union requires that State themselves formally abolish such sentences.⁵⁷ The Union has a “strong and unequivocal opposition to the use of death penalty in all

⁵⁴ *Supra* note 46.

⁵⁵ *Id.*

⁵⁶ Death Penalty Information Center, Abolitionist and Retentionist Countries, (Dec. 31, 2014), *available at* <http://www.deathpenaltyinfo.org/abolitionist-and-retentionist-countries>.

⁵⁷ European Union External Action, EU Policy on Death Penalty, *available at* http://eeas.europa.eu/human_rights/adp/index_en.htm.

times and in all circumstances.”⁵⁸ Their objective is to work towards universal abolition of the death penalty as a “strongly held policy agreed by all EU member States.”⁵⁹

Within the Inter-American region states, a majority of countries have abolished capital punishment. There has been a long tradition of abolishing death penalty within the Americas, starting with Venezuela back in 1863.⁶⁰ Twenty-five years ago, The General Assembly of the Organizations of American States adopted a protocol to abolish the death penalty.⁶¹ While the majority of Organization of American States has abolished the death penalty as a form of sentencing for all crimes, the United States is currently the only country in the Americas that continues to carry out executions of individuals sentenced to death.⁶² Jamaica has not executed anyone in the last 10 years or so, which meets UN standards as an abolitionist country in practice.⁶³

Even within Nations that still retain the practice of capital punishment, like the U.S., many individual states themselves have abolished capital sentencing and execution. To date, there are nineteen States along with the District of Columbia that have abolished the practice.⁶⁴ Of the thirty-one retentionist states, however, only seven had carried out

⁵⁸ European Union External Action, Human Rights Guidelines - Death Penalty, *available at* http://eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_st08416_en.pdf

⁵⁹ *Id.*

⁶⁰ Organization of American States, 25 Years after the Adoption of the Protocol, the IACHR Urges States to Abolish the Death Penalty or Take Steps toward its Abolition (June 8, 2015), *available at* http://www.oas.org/en/iachr/media_center/PReleases/2015/062.asp.

⁶¹ Organization of American States (OAS), Protocol to the American Convention on Human Rights to Abolish the Death Penalty, (June 8, 1990), OAS Treaty Series, N^o.73, *available at* <http://www.oas.org/juridico/english/treaties/a-53.html>.

⁶² *Supra* note 60.

⁶³ Jamaica Observer, Reflections on Death Penalty, (Sept. 6, 2015), *available at* http://www.jamaicaobserver.com/news/Reflections-on-the---death-penalty_19227461; (while Jamaica has not carried out an execution for over 27 years, continued sentencing may give rise to issues concerning death row phenomenon).

⁶⁴ Death Penalty Information Center, States With and Without the Death Penalty, (July 1, 2015), *available at* <http://www.deathpenaltyinfo.org/states-and-without-death-penalty>.

executions in 2014.⁶⁵ Seven other states, along with the U.S. Federal Government and the U.S. Military are de facto abolitionist by U.N. standards for not carrying out executions in the past ten years.⁶⁶

VI. Recommendations:

While a majority of States have moved towards abolishing death sentencing, additional steps must be taken to narrow the use of capital punishment by retentionist States so as to avoid further human rights violation that result from such practices. With that goal in mind, the Human Rights Advocates urges the Human Rights Council to:

- Adopt the Special Rapporteur's definition of the death row phenomenon.
- Request that States which have not yet abolished the death penalty but do not engage in the practice to ratify the Second Optional Protocol to the ICCPR that aims towards abolishing capital punishment.
- Request that States which still actively practice capital sentencing and execution to impose a moratorium on sentencing while moving to ensure that sentences are not made arbitrarily, reserved for the most serious crime, with procedures set in place to avoid further violations on the prohibition against torture.
- Urge that all countries party to the ICCPR abide by its provisions, more specifically Articles 6 and 7 to protect the right to life and continue to adhere to the universal prohibition against torture and cruel, inhuman, and degrading treatment as a form of punishment.

⁶⁵ Death Penalty Information Center, The Death Penalty in 2014, (Dec. 2014): Year End Report, *available at* <http://deathpenaltyinfo.org/documents/2014YrEnd.pdf>.

⁶⁶ Death Penalty Information Center, Jurisdictions with no recent executions, (Jan. 19, 2016), *available at* <http://www.deathpenaltyinfo.org/jurisdictions-no-recent-executions>.