



# Human Rights Advocates

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**Violations of the Prohibition of Torture:  
The Death Row Phenomenon  
Report to the 13th Session of the Human Rights Council  
March 2010**

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## **I. Introduction**

A majority of the world's nations have abolished the death penalty. Yet in 2008, *at least* 2,390 people were executed in 25 countries and another 8,864 people were sentenced to death in 52 countries. As in previous years, the vast majority (93 percent) of executions took place in only a few countries: China, Iran, Saudi Arabia, Pakistan and the United States.<sup>1</sup> Some of the methods used to execute people included beheading, electrocution, hanging, lethal injection, firing squad and stoning.<sup>2</sup> Certain countries, continue to impose the death penalty for crimes not considered the "most serious," including adultery and apostasy.<sup>3</sup> HRA is deeply concerned that practices that certain countries use to impose the penalty constitute violations of the prohibition of torture under Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

Though capital punishment is not yet prohibited by international law, the United Nations has called on all states to implement a moratorium.<sup>4</sup> In 2008, 89 states co-sponsored a moratorium resolution. There were 106 votes in favor, 46 against and 34 abstentions, a significant improvement in favorable votes from a 2007 resolution.<sup>5</sup> The UN General Assembly will debate a new moratorium resolution in October 2010.<sup>6</sup> Notwithstanding votes against the 2008 moratorium, states parties to the ICCPR that retain the death penalty must respect international standards guaranteeing the human rights of the condemned.

This report specifically addresses violations of the ban on torture related to the "death

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<sup>1</sup> Amnesty International, Figures on the Death Penalty, <http://www.amnesty.org/en/death-penalty/numbers>.

<sup>2</sup> Id.

<sup>3</sup> The Global Campaign to Stop Killing and Stoning Women, Cases of Stoning, <http://www.stop-stoning.org/cases/stoning>. Amnesty International, Saudi Arabia: Sentenced to Death for "Sorcery" (Dec. 8, 2009), <http://www.amnesty.org/library/asset/MDE23/036/2009/en/1d5d1a53-f4ad-461a-86f2-d1177ef70c05/mde230362009en.html>; Amnesty International, Iran: Death by Stoning, a Grotesque and Unacceptable Penalty (Jan. 15, 2008), <http://www.amnesty.org/for-media/press-releases/iran-death-stoning-grotesque-and-unacceptable-penalty-20080115>.

<sup>4</sup> U.N. General Assembly resolution, *Moratorium on the use of the death penalty* A/RES/62/149 (26 February 2008).

<sup>5</sup> U.N. General Assembly resolution, *Moratorium on the use of the death penalty* A/RES/63/168 (13 February 2007).

<sup>6</sup> Amnesty International, *Death Sentences and Executions in 2008* p. 11 (March 2009), <http://www.amnesty.org/library/info/ACT50/003/2009/en>.

row phenomenon” – a syndrome which can result when a death row prisoner is subjected to certain circumstances over long periods of time.

HRA has attempted to document instances of these practices, but notes that despite growing recognition of the death row phenomenon, it remains difficult to acquire evidence and studies on the occurrence. HRA therefore urges the Human Rights Council to examine the death row phenomenon to determine whether circumstances that produce it constitute torture.

## **II. The Death Row Phenomenon**

### **A. Defined**

A combination of circumstances produces the death row phenomenon, or death row syndrome, which is characterized by severe psychological and physical deterioration in prisoners. The circumstances include (1) prolonged periods of incarceration awaiting execution, (2) extremely harsh conditions of imprisonment on death row and (3) the acute anxiety of anticipating one’s own execution and. These circumstances can produce panic, rage, self-mutilations, paranoia, and suicidal ideation.<sup>7</sup> Some prisoners are entirely delusional by the time they are executed. When decades of incarceration precede execution, *prisoners in effect serve two sentences*: a life sentence marked by prolonged psychological torture and a death sentence.

Countries which hold death row prisoners for prolonged periods before execution frequently allege that due process procedures cause the delays which risk violating the ban on torture. HRA in no way advocates that due process procedures be eliminated, suspended or abridged. The delays are generally not the fault of the prisoners themselves, but rather the fault

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<sup>7</sup> Michael B. Mushlin, *Restrictive Confinement: Punitive Segregation, Solitary Confinement and "Supermax" Units*, RIGHTS OF PRISONERS (Database updated December 2009); Barbara A. Ward, *Competency for Execution: Problems in Law and Psychiatry*, 14 FLA. ST. U. L. REV. 35, 37-39 (1986) (citing authorities); *The Death Penalty Cases*, 56 CAL. L. REV. 1268, 1342 (1968); Cunningham and Vigen, “Death Row Inmate Characteristics, Adjustment, and Confinement: A Critical Review of the Literature,” 20 BEHAVIORAL SCIENCES AND THE LAW 191, 204 (Jan-Mar 2002), citing Johnson, “Under Sentence of Death: The Psychology of Death Row Confinement,” 5 LAW AND PSYCHOLOGY 141-192 (1979).

of the state.<sup>8</sup> A prisoner's due process rights to appeals of his death sentence, *habeas corpus* or other collateral petitions must be strictly observed. Observation of these rights, however, requires they be conducted within reasonable periods of time. Where such procedures are not possible without delays of many years, prisoners should be given immediate legal redress.

Japan, the United States and Pakistan are all countries that detain prisoners under sentence of death for extremely long periods of time. Both Japan and the U.S. have held many death row prisoners for more than 30 years. While other countries may not hold prisoners on death row for such grotesquely long periods, a risk of the death row phenomenon exists wherever long delays are found. Though delay is not the only factor contributing to the death row phenomenon, it is central to the rationale of courts and other judicial bodies that have found violations.

## **B. International and National Law Recognizing the Death Row Phenomenon**

Many national and international courts and judicial bodies have recognized the death row phenomenon in the past 20 years. In the seminal case of *Soering v. United Kingdom*, the European Court of Human Rights unanimously declined to extradite a prisoner to the United States where he would face a death sentence. The Court found that the combined factors of the conditions on death row, the length of time spent there, and the psychological effects of the death sentence on an individual constitute "inhuman or degrading treatment or punishment" under Article III of the Convention. The court's estimate that Mr. Soering would have had to spend six

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<sup>8</sup> In California, for example, nearly 150 prisoners have been on death row for more than 20 years litigating appeals, due to the Supreme Court's immense backlog. One prisoner has been there for 18 years pending his first appeal. (Petition to the Inter-American Commission on Human Rights, *Alleging Violations of the Human Rights of [a California Death Row Inmate]*, submitted 2007). In Pakistan, it takes 10 to 15 years for prisoners to exhaust their appeals because the courts are so overburdened. (International Federation of Human Rights & Human Rights Commission of Pakistan, *Report: Slow march to the gallows – Death penalty in Pakistan* at 55-56 (Jan. 2, 2007), <http://www.fidh.org/Slow-march-to-the-gallows-Death-penalty-in>).

to eight years on death row in Virginia (U.S.) before execution was central to its decision.<sup>9</sup>

In *Pratt and Morgan v. Attorney-General*,<sup>10</sup> the Judicial Committee of the Privy Council, the highest court of appeals for many Commonwealth countries, found a 14-year delay “shocking” and commuted to life in prison the sentences of the death row inmates. The Privy Council wrote that “in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute ‘inhuman or degrading punishment....’”<sup>11</sup>

In an appeal brought by four death row inmates, the Supreme Court of Zimbabwe found death row detentions of four and one-third to six years were excessive delays that violated the country’s constitutional prohibition of torture. The Court “[accepted] that fear, despair and mental torment are the inevitable concomitant of sentence of death.”<sup>12</sup> The Supreme Court of India wrote, in a landmark ruling commuting the sentence of a prisoner who had been held in solitary confinement on death row for six years, that he “must, by now, be more a vegetable than a person and hanging a vegetable is not the death penalty.”<sup>13</sup>

The United States Supreme Court has not yet accepted review of a case alleging cruel and unusual punishment due to long delays on death row, though two appeals have resulted in strongly worded statements filed by several justices. Cecil Johnson was held in solitary confinement on Tennessee’s death row for 29 years before he was executed. The Supreme Court refused to hear his final appeal, but Justice Stevens wrote, it is his “strongly held view that state-

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<sup>9</sup> *Soering v. United Kingdom*, 11 Eur. Hum. Rts. Rep. 439 (1989).

<sup>10</sup> *Pratt and Morgan v. Jamaica Redux*, (1993) 4 All E.R. 769.

<sup>11</sup> Id. at 788-89. The Human Rights Committee, had heard the same case four years earlier, finding that delays like those endured by the prisoners combined with other circumstances might constitute violations of Article 7. *Pratt and Morgan v Jamaica* nos 210/1986 and 225/1987, UN doc A/44/40/ 222 (1989).

<sup>12</sup> *Catholic Commission v. Attorney General (Zimbabwe)*, 2 Z.L.R. 306, (1993).

<sup>13</sup> *Rahendra Prasad v. State of Uttar Pradesh*, (1979) 3 SCR 78.

caused delay[s] in state-sponsored killings can be unacceptably cruel.”<sup>14</sup>

In an appeal brought by 417 death row prisoners, the Supreme Court of Uganda explicitly recognized the “death row syndrome” and ruled that more than three years on death row constitutes cruel, inhuman and degrading treatment. The court specified, however, that the three years would toll only *after* the prisoner’s final appeal.<sup>15</sup> Reports on the number of sentences that were commuted to life in prison as a result of the ruling vary widely, as do reports on the procedural facts of the appeal. It is therefore unclear how many of the 417 prisoners had their sentence commuted to life or how the ruling will effect the approximately 650 inmates on death row in Uganda.<sup>16</sup>

## C. Violations

### 1. Delays and Prolonged Incarceration on Death Row

In retentionist countries, long delays between conviction and execution compound the stress of harsh physical conditions. In Japan, Iwao Hakamada has been on death row for 41 years, and suffers from severe mental illness. Others have been on Japan’s death row for over 30 years.<sup>17</sup> In the United States, the average time spent on death row is about 12 years and

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<sup>14</sup> *Johnson v. Bredesen*, 558 U.S. \_\_\_\_ (2009). See also *Lackey v. Texas*, 514 U.S. 1045 (1995).

<sup>15</sup> *Kigula and 417 others v. The Attorney General*, Const. Appeal No. 3 of 2006 in the Supreme Court of Uganda (Jan. 21, 2009). On its face, it appears such a provision would drain the three-year rule of any force, since delays are frequently the fault of overburdened courts that cannot hear the appeals in a timely manner. In the United States, for example, many prisoners spend more than 30 years in post-conviction litigation, only to be executed within the year following their final appeal.

<sup>16</sup> According to The Death Penalty Project, all prisoners sentenced to death prior to 1989 “will be immediately released” (see, [http://www.deathpenaltyproject.org/content\\_pages/31](http://www.deathpenaltyproject.org/content_pages/31)); Amnesty International reported that “the vast majority of more than 400 appellants in [the] case should be commuted to life imprisonment” (see, <http://www.amnesty.org/news-and-updates/good-news/mandatory-death-penalties-ruled-unconstitutional-uganda-20090122>); A Ugandan news website reported that only 35 condemned prisoners “could escape the gallows” (see, <http://www.newvision.co.ug/D/8/12/677204/susan%20Kigula>); and in February 2010, AllAfrica.com reported that only one man has had his death sentence commuted to life following the ruling (see, <http://allafrica.com/stories/201002150646.html>).

<sup>17</sup> Amnesty International, *Hanging by a Thread: Mental Health and the Death Penalty in Japan* at 1 (Sept. 10, 2009), <http://www.amnesty.org/en/library/asset/ASA22/006/2009/en/cc688c76-0a12-4fdc-ab09-cc641cd1e4b4/asa220062009en.pdf>.

increases every year.<sup>18</sup> In many states prisoners have awaited their execution for more than 30 years. A human rights investigation of the death penalty in Pakistan discovered that many death row prisoners had been held for 10 to 15 years or longer.<sup>19</sup> One Indian man who had been sentenced to death in 1973 was “lost” on Pakistan’s death row, shuffled from prison to prison. In 2008, 35 years later, Kashmir Singh was granted a presidential pardon. Officials said he had been held in a cell for condemned prisoners for most of the time since his conviction and had become mentally ill.<sup>20</sup> Even in those countries that have taken steps towards abolition, violations can still occur. In Morocco, with about 130 people on death row,<sup>21</sup> courts continue to issue death sentences though a de facto moratorium has been in place since 1993.<sup>22</sup>

## 2. Conditions on Death Row

The conditions on death row in Japan are so severe that despite the relatively small number of inmates (102), the country is frequently cited as a main violator of condemned prisoners’ human rights.<sup>23</sup> In Japan, death-row inmates are kept in solitary confinement and are not allowed to speak to other prisoners, watch television or pursue any hobbies. Visits with lawyers and family are restricted to between five and 30 minutes and other than one hour of exercise per week they must remain seated in their cells.<sup>24</sup>

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<sup>18</sup> U.S. Bureau of Justice Statistics, Capital Punishment 2005 (Dec. 2006), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cp05.pdf>

<sup>19</sup> *Slow march to the gallows – Death penalty in Pakistan*, at 26-29, 55.

<sup>20</sup> *Indian freed after 35 years' jail*, BBC NEWS (March 3, 2008), [http://news.bbc.co.uk/2/hi/south\\_asia/7275351.stm](http://news.bbc.co.uk/2/hi/south_asia/7275351.stm). See also, Zofeen Ebrahim, *Condemned Indian 'Discovered' After 35 Years*, INTER PRESS SERVICE NEWS AGENCY (Feb. 29, 2008), <http://ipsnews.net/news.asp?idnews=41417>.

<sup>21</sup> In 2006, 129 prisoners were reported to be on death row. That number is likely to have increased since death sentences have spiked due to the implementation of new terrorism laws that permit death sentences. Ensemble Contre La Peine de Mort, Fourth World Congress Against the Death Penalty, Morocco, <http://www.abolition.fr/ecpm/french/fiche-pays.php?pays=MAR>.

<sup>22</sup> Lula Ahrens, *Moroccan prisoners on death row face "life-threatening" conditions* (Aug. 20, 2008), Radio NEDERLANDWERELDOMROPE, <http://static.rnw.nl/migratie/www.rnw.nl/internationaljustice/specials/HumanRights/080820-morocco-amnesty-redirected>.

<sup>23</sup> *Hanging by a Thread: Mental Health and the Death Penalty in Japan*, *supra* note 8 at 5.

<sup>24</sup> *Id.* at 5.

In the United States, where 3,207 people are on death row,<sup>25</sup> inmates are also only allowed brief periods of time out of their cells, usually one hour per day. They are subjected to arbitrary rules, unsanitary conditions, insect and rodent infestations, extreme temperatures and exposure to deafening volumes of noise, including the screams of mentally insane inmates who are not separated from other death row inmates.<sup>26</sup> They are also isolated, deprived of adequate mental and medical health care treatment and their participation in programs and work is either severely restricted or prohibited all together.<sup>27</sup>

Pakistan, with approximately 7,500 condemned prisoners, has the largest death row in the world. Prison conditions are notoriously deplorable and overcrowding frequently reaches 200 to 300 percent capacity.<sup>28</sup> An average of seven to eight prisoners are held in death row cells, which measure approximately 6 x 8 feet (1,8 x 2,4 m). As in Japan and the United States, Pakistan death row prisoners' time outside their cells and interactions with the outside world are severely restricted.<sup>29</sup> Reports of abuse and torture are legion and prisoners are routinely restrained with heavy and painful shackles that have led to gangrene and amputation in several cases.<sup>30</sup> One death row inmate said he was kept chained with iron shackles for three consecutive days until he

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<sup>25</sup> United States Bureau of Justice Statistics, Capital Punishment 2008, <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=18>.

<sup>26</sup> Amnesty International, International Standards on the Death Penalty p.16 (Jan. 2006), <http://www.amnesty.org/library/asset/ACT50/001/2006/en/61251e61-d469-11dd-8743-d305bea2b2c7/act500012006en.pdf>. See, Bob Egelko, Judge signs off on San Quentin Improvements, San Francisco Chronicle (April 17, 2009), <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/04/16/BAII1738EO.DTL>. See also, Terry A. Kupers, M.D., Supplemental Report on Conditions of Mississippi Death Row in the Case of *Russell, et al. v. Johnson, et al.*, 2003, [http://www.aclu.org/capital-punishment\\_prisoners-rights/court-finds-no-excuse-deplorable-conditions-mississippi-death-r](http://www.aclu.org/capital-punishment_prisoners-rights/court-finds-no-excuse-deplorable-conditions-mississippi-death-r). Melissa Piasecki, *Death Row Inmates and Mental Health*, THE JOURNAL OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW 406 (2005), <http://www.jaapl.org/cgi/reprint/33/3/406.pdf>.

<sup>27</sup> *Coleman v. Wilson*, 912 F.Supp. 1282 (E. D. Cal. 1995); *Plata v. Davis*, 329 F.3d 1101 (9th Cir. 2003).

<sup>28</sup> Human Rights Commission of Pakistan, State of Human Rights in 2008, <http://www.hrcp-web.org/pdf/ar2008.pdf>.

<sup>29</sup> International Federation of Human Rights & Human Rights Commission of Pakistan, *Report: Slow march to the gallows – Death penalty in Pakistan* at 55-56 (Jan. 2, 2007), <http://www.unhcr.org/refworld/country,,IFHR,COUNTRYREP,PAK,,46f1469f0.0.html>.

<sup>30</sup> U.S. Bureau of Democracy, Human Rights, and Labor, Department of State, Pakistan (2006) <http://www.state.gov/g/drl/rls/hrrpt/2005/61710.htm>.



went on a hunger strike.<sup>31</sup>

China does not release figures on its death row inmates or executions, but Amnesty International reported that in 2008, the country is known to have executed 1,718 people.<sup>32</sup> A prisoner released from death row in 2008, reported that condemned prisoners in China are manacled and shackled during the day and are sometimes forced to work with toxic chemicals in their cells that cause breathing difficulties.<sup>33</sup> In Morocco, where a de facto moratorium has been in place since 1993, death row prisoners are subjected to under nourishment, extreme temperatures and severe overcrowding.<sup>34</sup>

### **3. Psychological Pressures of Anticipating Execution**

The conditions of confinement and long delays combined with the anxiety of awaiting execution produce devastating effects that manifest physically and psychologically. A recent report tracking four death-row inmates in Japan, said all four suffered from mental illness and delusions.<sup>35</sup> In the United States, because of the appeals process, prisoners may face several execution dates. Many prisoners have come within hours and even minutes of their execution before a stay was issued. This experience, along with the harshness of life on death row, is so traumatic that many have waived their appeals.<sup>36</sup>

Danielle Simpson, a death-row inmate in Texas asked to be put to death because, he said,

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<sup>31</sup> *Slow march to the gallows – Death penalty in Pakistan*, supra note 8 at 56.

<sup>32</sup> This is more than double the sum of all other known executions in the world in 2008. See supra note 7.

<sup>33</sup> Yang Jianli, *Five Years on China's Death Row*, GUARDIAN WEEKLY (May 5, 2008), <http://www.guardianweekly.co.uk/?page=editorial&id=576&catID=6>

<sup>34</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Morocco (Feb. 28, 2005), <http://www.state.gov/g/drl/rls/hrrpt/2004/41728.htm>. See also, Abderrahim El Ouali, *Rights-Morocco: Firing Squads Silent – But Death Hovers*, InterPress Service News Agency (Aug. 19, 2008), <http://ipsnews.net/news.asp?idnews=43598>; and *Moroccan Prisoners on Death Row Face “Life-Threatening” Conditions*, Radio Netherlands Worldwide (Aug. 20, 2008), <http://www.rnw.nl/international-justice/article/moroccan-prisoners-death-row-face-life-threatening-conditions>.

<sup>35</sup> Amnesty International, *Japan: Hanging by a Thread – Mental Health and the Death Penalty in Japan* (Sept. 10, 2009), <http://www.amnesty.org/en/news-and-updates/report/japan-continues-execute-mentally-ill-prisoners-20090910>.

<sup>36</sup> *Competence to Waive Death Penalty Appeals*, THE JOURNAL OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW 408, <http://www.jaapl.org/cgi/reprint/33/3/406.pdf>.

life on death row was unbearable.<sup>37</sup> A court granted his request by expediting the execution date, even though his lawyers said he suffered from a “debilitating mental illness.”<sup>38</sup> Another inmate in California who has been on death row for 18 years, no longer understands the passage of time, is severely paranoid and delusional and has physical ailments that appear linked to his psychological state, including a persistent skin condition that he picks at constantly, creating visible infections.<sup>39</sup>

The failure to notify prisoners of their execution date is a violation illustrative of the severe psychological pressures that come to bear for those anticipating their own execution.

Human rights organizations report that several countries, including Belarus, China, Iran, Japan and Saudi Arabia, fail to notify prisoners or their families of the date of their execution. Prisoners who face execution without notice live in constant fear that their death is imminent.

International rulings have tended to focus on the anguish of family members when countries fail to notify them of the execution date. It is self-evident that no one suffers more than the condemned prisoner, who literally lives every moment as if it were the last. The Human Rights Committee found that the failure of Belarus to inform a mother of her son’s execution date or the location of his remains caused mental suffering in violation of the prohibition of inhuman treatment.<sup>40</sup> In *Pratt and Morgan v. Jamaica*, the Committee found a delay of 20 hours before authorities communicated a reprieve to the accused, who believed he was to be executed 45 minutes later, constituted cruel and inhuman treatment.<sup>41</sup> The Human Rights Committee

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<sup>37</sup> Chris McGreal, *Texas executes inmate who claimed time on death row was torture*, GUARDIAN U.K. (Nov. 19, 2009), <http://www.guardian.co.uk/world/2009/nov/19/danielle-simpson-texas-death-row>

<sup>38</sup> Paul Stone, *Board denies Simpson request*, PALESTINE HERALD PRESS (Nov. 17, 2009), [http://www.palestineherald.com/breakingnews/local\\_story\\_321193918.html](http://www.palestineherald.com/breakingnews/local_story_321193918.html).

<sup>39</sup> Petition to the Inter-American Commission on Human Rights, *Alleging Violations of the Human Rights of [a California Death Row Inmate]*, submitted 2007.

<sup>40</sup> Human Rights Committee, *Communication No 887/1999*, 77<sup>th</sup> Session (24 April 2003) CCPR/C/77/D/887/1999.

<sup>41</sup> *Pratt and Morgan v. Jamaica*, Human Rights Committee, thirty-fifth session, para. 13.7, CCPR/C/35/D/210/1986, 7 April 1989.

wrote in concluding observations to Japan that it is seriously concerned that failure to notify the family and lawyers of the prisoners on death row of their execution are incompatible with the Covenant.<sup>42</sup>

In Saudi Arabia, migrant workers, who human rights organizations say are disproportionately targeted by the authorities, are often ignorant they have even been sentenced to death up until they are taken from their cells to be executed.<sup>43</sup> Saudi Arabia also fails to inform embassies or family members before or after the execution.<sup>44</sup> Iran also fails to inform family members and lawyers of execution dates. Mohammad Reza Haddadi's family was alerted of his execution date only when another prisoner phoned to inform them.<sup>45</sup>

In a widely publicized case, China executed Akmal Shaik, a citizen of the United Kingdom in December 2009, with only 24 hours notice to Mr. Shaik, his family and his embassy. Mr. Shaik had been previously diagnosed as mentally ill and delusional.<sup>46</sup>

In Japan, condemned prisoners are only informed the morning of their execution, even if they have been on death row for several decades.<sup>47</sup> Because the length of time on death row does not appear to have any bearing on who is next in line for execution,<sup>48</sup> there is no way for prisoners or others to deduce when they will be executed and they too must fear execution at any moment.

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<sup>42</sup> Concluding observations of the Human Rights Committee: Japan, UN document CCPR/CO/79/Add.102, 19 November 1998, para. 21.

<sup>43</sup> Amnesty International, Saudi Arabia Executions Disproportionately Target Foreign Nationals (Oct. 14, 2008), <http://www.amnesty.org/en/news-and-updates/report/saudi-arabia-executions-target-foreign-nationals-20081014>.

<sup>44</sup> Id.

<sup>45</sup> This was the fourth execution date schedule by authorities for Mr. Haddadi, who was sentenced to death as a juvenile. Amnesty International, Execution Postponed Again: Mohammad Reza Haddadi (Aug. 14, 2009), <http://www.amnesty.org/en/library/info/MDE13/086/2009/en>.

<sup>46</sup> Jonothan Watts, *Akmal Shaikh's final hours*, GUARDIAN UK (Dec. 29, 2009), <http://www.guardian.co.uk/world/2009/dec/29/akmal-shaikh-final-hours-china>. See also, Reprieve, Death Rows Worldwide, Akmal Shaik, <http://www.reprieve.org.uk/akmalshaikh>.

<sup>47</sup> Amnesty International, Japan: Hanging by a Thread – Mental Health and the Death Penalty in Japan (Sept. 10, 2009), <http://www.amnesty.org/en/news-and-updates/report/japan-continues-execute-mentally-ill-prisoners-20090910>.

<sup>48</sup> *Hanging by a Thread: Mental Health and the Death Penalty in Japan*, see *supra*, note 18.

In Morocco, though no executions have taken place for 17 years, death row prisoners, nevertheless fearing execution may be imminent, are reported to wedge pieces of wood behind their cell doors while they sleep so they will wake if a guard enters.<sup>49</sup>

Unfortunately, the difficult task of researching the psychological consequences of being under a sentence of death for prolonged periods has resulted in little evidence or reporting on the death row phenomenon in recent years.

### **III. Positive and Negative Trends**

#### **A. Positive Trends**

Despite the violations reported in this paper, global trends point encouragingly towards eventual abolition of the death penalty around the world. As noted above, more states parties voted in favor of a moratorium in 2008 than only one year earlier and the number of countries which have either abolished the death penalty or observing moratoria has increased to 139.<sup>50</sup> Additionally, eight members of the League of Arab States abstained from voting for the moratorium resolution rather than voting against it. Algeria cosponsored and voted for the resolution. Somalia also voted in favor. Additionally, all proposed amendments to weaken the resolution were defeated.<sup>51</sup>

Other than the country of Belarus, Europe is a death-penalty-free zone. The central Asian countries, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, have all abolished the death penalty.<sup>52</sup> Whereas certain Islamic countries maintain some of the worst practices

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<sup>49</sup> Abderrahim El Ouali, *Death Penalty-Morocco: Abolitionists Resigned To Long Wait*, INTER PRESS SERVICE (March 17, 2008), <http://ipsnews.net/news.asp?idnews=41621>

<sup>50</sup> Amnesty International, *Abolitionist and Retentionist Countries* (2008), <http://www.amnesty.org/death-penalty/abolitionist-and-retentionist-countries>.

<sup>51</sup> Amnesty International, *Death Sentences and Executions in 2008* p. 11 (March 2009), <http://www.amnesty.org/library/info/ACT50/003/2009/en>.

<sup>52</sup> *Id.* at p.5.

surrounding the death penalty, this central Asian group has become a leader in the Muslim world for human rights in the context of capital punishment. They are joined by Azerbaijan, Albania and Djibouti, the only other predominantly Muslim abolitionist countries.<sup>53</sup>

In the Americas, the United States became the last country to retain the death penalty after Argentina formally abolished it in 2008. Even in the United States, however, there have been some positive trends. Annual death sentences in the U.S. have dropped dramatically since the year 2000. In the last four years the number of death sentences has been lower than any time since reinstatement of the death penalty in 1976.<sup>54</sup> In 2008, 111 people were sentenced to death in the U.S. Executions have declined as well, from a high of 98 in 1999, to 52 executions in 2009.<sup>55</sup>

Abolitionist bills have been introduced in a number of states. Though they have not always been successful, New Mexico did abolish the death penalty in 2009.<sup>56</sup> Meanwhile, Texas continues to execute more people than any other state in the country.<sup>57</sup> A number of death sentences nationwide have been commuted to life imprisonment in recent years, including in the case of a prisoner with a long history of mental illness.<sup>58</sup>

The turn away from the death penalty is not without pitfalls. In California, where a de facto moratorium has been in place since 2006, prisoners continue to be sentenced to death as the average length of time on death row constantly increases. Of the 698 prisoners on California's

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<sup>53</sup> Ensemble Contre La Peine de Mort, Fourth World Congress Against the Death Penalty, Death Penalty by Country, <http://www.abolition.fr/fr/sinformer>.

<sup>54</sup> Amnesty International USA, Death Penalty Trends, <http://www.amnestyusa.org/death-penalty/death-penalty-facts/death-penalty-trends/page.do?id=1011572>.

<sup>55</sup> Id.

<sup>56</sup> *Death Penalty Is Repealed in New Mexico*, New York Times (March 18, 2009), <http://www.nytimes.com/2009/03/19/us/19execute.html>.

<sup>57</sup> Texas executed 24 people in 2009. By comparison, the second highest number of executions was six, in Alabama. See, Death Penalty Information Center, Number of Executions by State and Region Since 1976, <http://www.deathpenaltyinfo.org/number-executions-state-and-region-1976>.

<sup>58</sup> Amnesty International, Death Sentences and Executions in 2008 p. 17 (March 2009).

death row,<sup>59</sup> approximately 150 of them have been there for more than 20 years.<sup>60</sup>

Though death penalty statistics in Pakistan are some of the highest in the world, there was nevertheless a marked reduction in numbers from 2007, when 135 people were executed and 307 sentenced to death. In 2008, by comparison, 36 people were executed and 236 sentenced to death in 2008.<sup>61</sup>

In Africa, Burundi and Togo abolished the death penalty in 2009. In Mali, reforms have been underway for several years, but have not yet resulted in abolition. In Algeria, a group of opposition leaders submitted a draft proposal to abolish the death penalty on the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights.<sup>62</sup> Despite a de facto moratorium in Algeria since 1993, however hundreds of people were sentenced to death in 2009, mostly on terrorism-related charges.<sup>63</sup>

## **B. Negative Trends and Violative Practices**

Executions by stoning, beheadings, hanging and the practice of public executions continue in several countries. In 2008, Iran executed at least 346 people by means including stoning and hanging. The number of public hangings in Iran did decrease in 2008 after the Chief Justice issued a decree banning them. Iran's penal code retains a provision for stoning to death individuals convicted of adultery.<sup>64</sup> The provision requires a man be buried up to his waist and a woman up to her neck<sup>65</sup> and that the stones used to execute the individual be large enough to

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<sup>59</sup> California Department of Corrections and Rehabilitation, Capital Punishment: Condemned inmate summary (Feb. 3, 2010).

<sup>60</sup> Arthur L. Alarcon, *Remedies for California's Death Row Deadlock*, 80 S. Cal. L. Rev. 697, 707-08 (2007), <http://www.ccfaj.org/documents/reports/dp/expert/Alarcon%20Article.pdf>. Mr. Alarcon is a Senior Judge on the U.S. 9<sup>th</sup> Cir. Court of Appeals, covering the largest appellate district in the United States.

<sup>61</sup> Amnesty International, *Death Sentences and Executions in 2008* p. 14 (March 2009), <http://www.amnesty.org/library/info/ACT50/003/2009/en>.

<sup>62</sup> *Id.* at p.9.

<sup>63</sup> Amnesty International, *State of the World's Human Rights 2009, Algeria*, <http://thereport.amnesty.org/en/regions/middle-east-north-africa/algeria#death-penalty>.

<sup>64</sup> Iran Penal Code, Article 83.

<sup>65</sup> Iran Penal Code, Article 102.

cause pain but not so large that they kill the person quickly.<sup>66</sup> Despite a 2002 moratorium placed on execution by stoning, several cases have been documented in recent years. In January 2010, Sarymeh Ebadi and BoAli Johnfeshani were sentenced to death by stoning in Iran.<sup>67</sup> Sudan's penal code also calls for execution by stoning for the offense of adultery when the offender is married.<sup>68</sup> The case of Sadia Idries Fadul is currently pending there.<sup>69</sup>

In Saudi Arabia, execution by beheading, generally in public, is common. In some cases, the body is crucified following execution. A sharp increase in executions in Saudi Arabia began in 2007. Between 2007 and 2008, there were at least 102 executions – an average rate of two executions every week. Almost half of those executed were foreign nationals from poor countries.<sup>70</sup>

In China, many executions take place after sentencing rallies in front of massive crowds in sports stadiums and public squares. Prisoners are also paraded through the streets past thousands of people on the way to execution by firing squad in nearby fields or courtyards.<sup>71</sup> China is phasing out public executions in favor of lethal injection, but still executes many people in public.<sup>72</sup> Japan carried out 15 executions in 2009, more than any year since 1975. The executions by hanging are usually carried out in secret, with families notified only following

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<sup>66</sup> Iran Penal Code, Article 104.

<sup>67</sup> Women's Forum Against Fundamentalism in Iran, Press Release, *More women are facing execution and stoning in Iran* (Jan. 21, 2010), <http://www.wfafi.org/wfafistatement51.htm>. See also, *Urge Iranian Authorities: immediately halt execution of Sarymeh Ebadi and BoAli Johnfeshani*, Street Journalist (Jan. 18, 2010), <http://www.astreetjournalist.com/2010/01/18/urge-iranian-authorities-immediately-halt-execution-of-sarymeh-ebadi-boali-johnfeshani-by-stoning/>.

<sup>68</sup> Sudan Penal Code, Article 146(a).

<sup>69</sup> Ms. Fadul was charged on February 13, 2007 by the criminal court of Al-Azazi, Managil province, Gazeera state. See <http://www.stop-stoning.org/node/248>.

<sup>70</sup> Amnesty International, *Man Beheaded and Crucified in Saudi Arabia* (June 1, 2009), <http://www.amnesty.org/en/news-and-updates/news/man-beheaded-and-crucified-saudi-arabia-20090601>.

<sup>71</sup> *China 'outstrips world' on executions*, BBC News (July 6, 2001), <http://news.bbc.co.uk/2/hi/asia-pacific/1425570.stm>.

<sup>72</sup> Ensemble Contre La Peine de Mort, *Fourth World Congress Against the Death Penalty, Death Penalty by Country, China*, <http://www.abolition.fr/fr/sinformer>.

execution.<sup>73</sup> The only country to reinstate the death penalty in recent years is Liberia, which did so in 2008.<sup>74</sup>

#### **IV. Conclusions and Recommendations**

The Supreme Court of Uganda wrote in *Kigula and 417 others v. Attorney General*, that the due process rights of those sentenced to death and their right to be free from unreasonable delays amounting to torture or cruel, inhuman or degrading punishment “calls for a balance so that while a person exercises his rights ... to exhaust all avenues under the law before he is executed, he at the same time is not unduly kept in prison serving a sentence that he was not sentenced to.”<sup>75</sup>

Scholars have studied and reported on the death row phenomenon since the early 1960’s. In recent years, however, there has been insufficient focus on the issue – even as death sentences become more and more prolonged in places like Japan and the United States. A comprehensive study of the death row phenomenon would add greatly to the discourse and the law that defines the nature of the violations. Unfettered access for investigators to death rows of countries where under investigation is desirable – particularly where immediate relief is critical, as in the case of Iwao Hakamada in Japan..

Though a significant body of law regarding the death row phenomenon, decided by the highest international and national courts and judicial bodies, has been developing for the past 20 years, violations persist around the world. HRA believes an examination by the Human Rights Council or the Special Rapporteur on Torture would give the Committee and other judicial bodies firmer footing on which to address the violations that result in the death row phenomenon.

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<sup>73</sup> Amnesty International, *Death Sentences and Executions in 2008*, *supra* note 57 p. 14.

<sup>74</sup> *Id.*

<sup>75</sup> *Kigula and 417 others v. Attorney General*, Const. Appeal No. 3 of 2006 in the Supreme Court of Uganda (Jan. 21, 2009).