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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Human Rights Advocates, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 February 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Violations of the Prohibition of Torture: The Death Row Phenomenon & Denying Notice of Execution

Introduction

Human Rights Advocates (HRA) supports the work of the United Nations Human Rights Council to prevent violations of the prohibition of torture in the use of the death penalty. Though capital punishment is not a violation of international law, the United Nations has urged retentionist countries to abolish the penalty and has called on all states to implement a moratorium.¹ Those that retain it, must respect international standards guaranteeing the human rights of the condemned.

HRA is deeply concerned that the rights guaranteed by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) are being violated by retentionist countries that maintain circumstances producing the “death row phenomenon,” as well as those which fail to notify prisoners or their families of the time and date of execution. HRA has attempted to document instances of these practices, but notes that despite emerging recognition of the death row phenomenon, it remains difficult to acquire evidence or studies on the occurrence. It is particularly for this reason that HRA urges the Council to examine the death row phenomenon and the related practice of failing to notify prisoners of their execution date in order to determine if violations of Article 7 exist.

A majority of the world’s nations have abolished the death penalty. In 2008, however, *at least* 2,390 people were executed and another 8,864 people were sentenced to death. As in previous years, the vast majority of executions took place in a few countries: China, Iran, Saudi Arabia, Pakistan and the United States.² Executions in China surpassed any other state by more than four times.³ Some of the methods used to execute people included beheading, electrocution, hanging, lethal injection, shooting and stoning.⁴ HRA strongly urges the Council to examine whether the practices countries use to impose the penalty constitute violations of the prohibition of torture.

The Death Row Phenomenon

A combination of circumstances produces the death row phenomenon, which is characterized by severe mental and physical deterioration in prisoners. The circumstances include (1) extremely harsh conditions of imprisonment on death row, (2) long periods of time spent awaiting execution and (3) the acute anxiety of anticipating one’s own execution. These circumstances can produce panic, rage, appetite and sleep disturbances,

¹ Eighty-nine states co-sponsored the 2008 resolution. There were 106 votes in favor, 46 against and 34 abstentions. U.N. General Assembly resolution, *Moratorium on the use of the death penalty* A/RES/62/149 (26 February 2008).

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

³ China executed at least 1,718 prisoners in 2008. By comparison, Iran executed at least 346 prisoners, Saudi Arabia at least 102, the United States 37, and Pakistan at least 36. Amnesty International, *The Death Penalty in Numbers*, *see* <http://www.amnesty.org/en/death-penalty/numbers>.

⁴ Amnesty International, *Death Sentences and Executions in 2008* (March 24, 2009), <http://www.amnesty.org/en/library/info/ACT50/003/2009/en>.

self-mutilations, paranoia, and suicidal impulses.⁵ When decades of incarceration precede execution, prisoners in effect serve two sentences: a life sentence marked by prolonged psychological torture and a death sentence.

The European Court of Human Rights has found that the death row phenomenon violates Article III of the European Convention on Human Rights.⁶ The Judicial Committee of the Privy Council⁷ and high Courts in Canada,⁸ Zimbabwe⁹ and India¹⁰ have recognized that circumstances producing the death row phenomenon violate human rights. The United States Supreme Court has rejected two appeals alleging prolonged periods of detention on death row violate the prohibition on cruel and unusual punishment, though Justices who believed the claims merited consideration filed statements recognizing the delays as violations.¹¹ The Human Rights Committee has also recognized the existence of the death row phenomenon, finding violations where long delays were combined with other circumstances.¹² An examination by the Council would give the Committee and other judicial bodies firmer footing on which to address the issue.

Those awaiting execution are exposed to harsh physical conditions. In Japan, death-row inmates are kept in solitary confinement and are not allowed to speak to other prisoners. Apart from an hour of exercise per week, they must remain seated in their cells.¹³ In the United States, many death row inmates await execution in solitary confinement for decades, with only brief periods of time out of their cells. They are subjected to arbitrary rules, unsanitary conditions, insect infestations, high temperatures and exposure to deafening volumes of noise.¹⁴ Pakistan, with the largest death row in the world (around 7,500), faces prison overcrowding by 200 to 300 percent.¹⁵ Prisoners are routinely restrained with tight,

⁵ 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).

⁶ *Soering v. United Kingdom*, 11 Eur. Hum. Rts. Rep. 439 (1989).

⁷ *Pratt and Morgan v. Jamaica Redux*, (1993) 4 All E.R. 769.

⁸ *Kindler v. Canada (Minister of Justice)*, (1991) 2 S.C.R. 779;

⁹ *Catholic Commission v. Attorney General (Zimbabwe)*, (1993) 2 Z.L.R. 306.

¹⁰ *Rahendra Prasad v. State of Uttar Pradesh*, (1979) 3 SCR 78.

¹¹ *Lackey v. Texas*, 514 U.S. 1045 (1995), *Johnson v. Bredesen*, 130 S. Ct. 541 (2009).

¹² *Pratt and Morgan v. Jamaica* nos 210/1986 and 225/1987, UN doc A/44/40/ 222 (1989) [declined to find a violation but noted that under an individualized determination of each case, the result could be different]; *Kindler v. Canada Redux* (No. 470/1991) UN Doc. CCPR/C/48/D/470/1991 (1992) [recognized the death row phenomenon and declined to find a violation on grounds of delay but also noted that under an individualized determination of each case, the result could be different]; *Francis v. Jamaica* (No. 606/1994). UN Doc. CCPR/C/54/D/606/1995 (1995) [violation found based on delay of 13 years combined with other factors].

¹³ Amnesty International, *Hanging by a Thread: Mental Health and the Death Penalty in Japan* at 5 (Sept. 10, 2009), <http://www.amnesty.org/en/library/asset/ASA22/006/2009/en/cc688c76-0a12-4fdc-ab09-cc641cd1e4b4/asa220062009en.pdf>.

¹⁴ Melissa Piasecki, *Death Row Inmates and Mental Health*, *The Journal of the American Academy of Psychiatry and the Law* 406, <http://www.jaapl.org/cgi/reprint/33/3/406.pdf>.

¹⁵ Human Rights Commission of Pakistan, *State of Human Rights in 2008*, <http://www.hrcp-web.org/pdf/ar2008.pdf>

heavy and painful shackles that have led to gangrene and amputation in several cases.¹⁶ In China, condemned prisoners are also manacled and shackled during the day and have been forced to work with toxic chemicals in their cells that cause breathing difficulties.¹⁷

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.¹⁸ In the United States, the average time spent on death row is about 12 years and increases every year.¹⁹ In California, nearly 150 prisoners have been on death row for more than 20 years.²⁰ In December 2009, the Supreme Court declined to consider Cecil Johnson's appeal, which claimed that 29 years of solitary confinement on Tennessee's death row was cruel and unusual punishment. Even in countries that have taken steps towards abolition, violations can still occur. In Morocco, for example, courts continue to issue death sentences though no executions have taken place since 1993.²¹

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, where prisoners may be informed of their execution just hours beforehand, said all four suffered from mental illness and delusions.²² 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.²³ Danielle Simpson, a death-row inmate in Texas asked to be put to death because, he said, life on death row was unbearable.²⁴ A court granted his request by expediting the execution date, even though his lawyers said he suffered from a "debilitating mental illness."²⁵ 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

¹⁶ 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>.

¹⁷ 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>

¹⁸ 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>.

¹⁹ U.S. Bureau of Justice Statistics, Capital Punishment 2005 (Dec. 2006), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cp05.pdf>

²⁰ Arthur L. Alarcon, *Remedies for California's Death Row Deadlock*, 80 S. CAL. L. REV. 697, 707-08 (2007).

²¹ Lula Ahrens, Moroccan prisoners on death row face "life-threatening" conditions (Aug. 20, 2008), Radio Nederland Wereldomroep, <http://static.rnw.nl/migratie/www.rnw.nl/internationaljustice/specials/HumanRights/080820-morocco-amnesty-redirection>

²² 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>.

²³ 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>.

²⁴ 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>

²⁵ Paul Stone, Board denies Simpson request, *Palestine Herald Press* (Nov. 17, 2009), http://www.palestineherald.com/breakingnews/local_story_321193918.html.

psychological state, including a persistent skin condition which he picks at constantly, creating visible infections.²⁶

Failure to Notify Prisoners of Their Execution Date

Though linked to the death row phenomenon, the failure to notify individuals and their families of the execution date constitutes a separate and distinct violation of Article 7. Prisoners who face execution without notice live in constant fear that their death is imminent. 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.²⁷ In *Pratt and Morgan v. Jamaica*, the Committee found a delay of 20 hours before authorities communicated a reprieve to the accused 45 minutes before his scheduled execution constituted cruel and inhuman treatment.²⁸

Human rights organizations report that several countries, including Belarus, Iran, Japan, Morocco and Saudi Arabia, fail to notify prisoners or their families of the date of their execution. In Morocco, though no executions have taken place in more than a decade, death row prisoners are known to wedge pieces of wood behind their cell doors while they sleep so they will wake if a guard enters.²⁹ 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. Saudi Arabia also fails to inform embassies or family members before or after the execution.³⁰ 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.³¹

Recommendations

In light of growing concerns in the international community that the methods and practices used to impose the death penalty violate the prohibition of torture or cruel, inhuman or degrading punishment, HRA urges the Human Rights Council:

- To request the Special Rapporteur on Torture to examine the death row phenomenon and the circumstances which produce it and to make an assessment regarding when circumstances producing the death row phenomenon rise to the level of torture or cruel, inhuman or degrading punishment; and

²⁶ Petition to the Inter-American Commission on Human Rights, Alleging Violations of the Human Rights of [a California Death Row Inmate], submitted 2007.

²⁷ Human Rights Committee, Communication No 887/1999, 77th Session (24 April 2003) CCPR/C/77/D/887/1999.

²⁸ *Pratt and Morgan v. Jamaica*, Human Rights Committee, thirty-fifth session, para. 13.7, CCPR/C/35/D/210/1986, 7 April 1989.

²⁹ Abderrahim El Ouali, Death Penalty-Morocco: Abolitionists Resigned To Long Wait, Inter Press Service (March 17, 2008), <http://ipsnews.net/news.asp?idnews=41621>

³⁰ 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>.

³¹ 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 (Aug. 14, 2009), [Haddadihttp://www.amnesty.org/en/library/info/MDE13/086/2009/en](http://www.amnesty.org/en/library/info/MDE13/086/2009/en).

- To condemn the practice of denying prisoners and their families notice of the date of execution, and in the case of families, the whereabouts of the human remains of the executed.

HRA commends the 139 countries that have abolished the death penalty in law or in practice, including most recently Uzbekistan and Argentina (abolished for all crimes in 2008), and urges those who have initiated the process to do so to move quickly towards abolition such as Burundi, Mali and Togo (reforms underway), Algeria and Lebanon (draft law proposing abolition),³² and Mongolia (moratorium announced by the president in 2009).³³

³² <http://www.amnesty.org/en/library/asset/ACT50/003/2009/en/0b789cb1-baa8-4c1b-bc35-58b606309836/act500032009en.pdf>

³³ http://www.lemonde.fr/asia-pacifique/article/2010/01/14/le-president-mongol-veut-abolir-la-peine-de-mort_1291441_3216.html and <http://asiadeathpenalty.blogspot.com/>