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## Human Rights Council

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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, Inc., 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.

[9 February 2012]

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

## Death row phenomenon violates human rights

### Introduction

The Human Rights Advocates (HRA) commends the progress towards global abolition of the death penalty. This international movement has grown steadily over the past 60 years.<sup>1</sup> By the end of 2010, 96 countries had abolished the death penalty for all crimes, and two thirds of all nations were considered abolitionist either in law or in practice. Gabon, the Philippines, Cyprus and Argentina are among the 57 countries that have abolished the death penalty since 1990.<sup>2</sup>

Despite this progress, staggering death penalty figures are reminders of the remaining work ahead. Conservative 2010 estimates reflect 527 executions across 23 countries. Of the 17,833 individuals languishing on death rows worldwide, 2,024 individuals were newly sentenced to death in 2010.<sup>3</sup>

Conditions surrounding the death penalty and its application necessitate examination and recognition of the tortuous experience endured by death row inmates, culminating in the onset of the death row phenomenon. This report highlights HRA concerns regarding violations of International Covenant on Civil and Political Rights (ICCPR) Articles 7 and 10. Violations occur as deplorable death row conditions elevate to cruel, inhuman, degrading or tortuous punishment through the death row phenomenon.

### Death row phenomenon defined

The death row phenomenon results from compounded conditions endured while under a death sentence. Despite variances in perceived detention facility quality worldwide, death row conditions are generally characterized as bleak, with “rigid security, isolation, limited movement, and austere conditions.”<sup>4</sup> As noted in the landmark case, *Soering v. United Kingdom*, circumstances such as extremely harsh death row conditions, prolonged execution waiting times and pervading anguish from execution anticipation work in concert to produce the death row phenomenon.<sup>5</sup>

The severe isolation and dread inherent in a life on death row inevitably produces mental and physical deterioration. The phenomenon has 3 components: temporal, physical and experiential. The temporal component addresses the waiting period between sentencing and execution. The physical component encompasses detention cell or facility conditions, inclusive of solitary confinement and limitation of resources. The experiential component

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<sup>1</sup> International Bar Association, *The Death Penalty Under International Law*, May 2008, available at: [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CEQQFjAC&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUId%3D5482860b-b9bc-4671-a60f-7b236ab9a1a0&ei=rJsFT\\_iLA-SW2gWGx-GXDw&usq=AFQjCNE6M0l1rqGOE9AvarddPtKpSO\\_Tmw&sig2=h4ZFqi7LjokjuIlWmw\\_fdw](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CEQQFjAC&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUId%3D5482860b-b9bc-4671-a60f-7b236ab9a1a0&ei=rJsFT_iLA-SW2gWGx-GXDw&usq=AFQjCNE6M0l1rqGOE9AvarddPtKpSO_Tmw&sig2=h4ZFqi7LjokjuIlWmw_fdw).

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

<sup>3</sup> Amnesty International, *Death sentences and executions in 2010*, 28 March 2011, ACT 50/001/2011, available at: <http://www.unhcr.org/refworld/docid/4d9026932.html>.

<sup>4</sup> Center for Constitutional Rights, *An Examination of the Death Row Experience from a Human Rights Perspective*, 10 October 2011, available at [http://ccrjustice.org/files/deathrow\\_torture\\_postition\\_paper.pdf](http://ccrjustice.org/files/deathrow_torture_postition_paper.pdf).

<sup>5</sup> *Soering v. United Kingdom*, 11 Eur. Hum. Rts. Rep. 439 (1989).

speaks to the psychological implications of living with definite impending death and the impacts of extended death row detention, termed the “death row syndrome.”<sup>6</sup>

## ICCPR violations through the death row phenomenon

Article 7 of the ICCPR provides that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The aims of Article 7 extend to protection of individual dignity and physical and mental integrity. It is further complimented by the positive requirements of ICCPR Article 10, Paragraph 1, which stipulates that: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>7</sup>

The January 14, 2009 report of then Special Rapporteur on Torture, Manfred Nowak, to the United Nations (UN) Council, recognized the death row phenomenon and its treatment by international human rights monitoring bodies and domestic courts. The Special Rapporteur noted international rulings which found cruel, inhuman and degrading treatment where death row inmates were “compelled to live under circumstances that impinge on their physical and psychological integrity.”<sup>8</sup> In his conclusions, the Special Rapporteur highlighted the significance of “dynamic interpretation” of human rights treaty law in relation to death penalty issues and the “universal trend towards the abolition of capital punishment.”<sup>9</sup>

### a. Effects of the death penalty moratorium

Present-day conditions reflect great support for a global death penalty moratorium. Through laudable Italian and Chilean leadership, aided by support from several countries and non-governmental organizations, death penalty moratorium resolutions were passed in the General Assembly (GA). The death penalty moratorium was affirmed twice in 2007, once in 2008 and again in 2010.<sup>10</sup> However, execution moratoriums exacerbate the death row phenomenon where no abolition transition deadlines are imposed.

Despite Morocco’s de facto execution moratorium since 1992, death penalty sentencing persists.<sup>11</sup> In 2009, Pakistan instituted an execution moratorium in line with the GA resolutions.<sup>12</sup> Prior to the moratorium, executions in 2007 and 2008 alone totaled 171.<sup>13</sup> Moratorium adoption was a response to concerns over conviction reliability. However, the

<sup>6</sup> 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).

<sup>7</sup> Office of the High Commissioner for Human Rights, General Comment No. 20, 10 March 1992, HRI/GEN/1/Rev.9 (Vol.I).

<sup>8</sup> U.N. Human Rights Council, UN Human Rights Council: Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 14 January 2009, A/HRC/10/44.

<sup>9</sup> Id.

<sup>10</sup> U.N. General Assembly Resolution, Moratorium on the Use of the Death Penalty, 18 December 2007, A/RES/62/149; 18 December 2008, A/RES/63/168; 21 December 2010, GA/11041.

<sup>11</sup> Reuters Africa, Moroccan Court Sentences Drug Kingpin to Death, 13 January 2012, available at: <http://af.reuters.com/article/moroccoNews/idAFL6E8CD2MD20120113>.

<sup>12</sup> Christian Science Monitor, Execution Freeze Leaves Pakistan’s Hangmen Idle, available at: <http://www.csmonitor.com/World/2011/0818/Execution-freeze-leaves-Pakistan-s-hangmen-idle>.

<sup>13</sup> Christian Science Monitor, Death Penalty: Top 5 Countries to Execute the Most People, available at <http://www.csmonitor.com/World/Global-Issues/2011/0918/Death-penalty-Top-5-countries-to-execute-the-most-people/Pakistan>.

execution moratorium has added to the thousands of inmates that remain on Pakistan's death row. Since 2009, Pakistan has sentenced 641 individuals to death.<sup>14</sup>

After the December 2007 passage of A/RES/62/149, Italian Foreign Minister Massimo D'Alema recognized moratoriums as the start towards abolition of the death penalty.<sup>15</sup> Although HRA congratulates nations for taking positive steps though institution of execution moratoriums, measures to ensure attainment of the abolition aims are imperative. Installation of death penalty moratoriums absent an abolition transition plan aggravate the death row phenomenon by prolonging the time spent by inmates on death row. Death penalty sentencing after moratorium enactment effectively feed death row inmates into a permanent holding pattern.

**b. Death row conditions: solitary confinement & failed notice**

Despite global progress toward abolition, death row inmates continue to suffer a range of deplorable conditions, provoking the death row phenomenon. Death row inmates typically suffer solitary confinement for prolonged periods, exacerbating anxiety and nervousness.<sup>16</sup> In the United States (US), the average waiting period for the 46 inmates executed in 2010 was 14 years and 10 months.<sup>17</sup> The majority of US death row inmates serve their sentences in solitary confinement with prevalent sensory deprivation for at least 23 hours a day.<sup>18</sup>

The August 2011 General Assembly report of Special Rapporteur on Torture, Jean Mendez, noted that the "minimal stimulation experienced during solitary confinement can lead to a decline in brain activity after 7 days."<sup>19</sup> Due to the severe health effects, "the use of solitary confinement itself can amount to acts prohibited by Article 7" of the ICCPR.<sup>20</sup>

In countries such as Belarus, Botswana, Egypt and Japan, forthcoming executions are veiled from the condemned inmates, building a heightened sense of dread and daily insecurity.<sup>21</sup> Such anxiety exacerbates the death row phenomenon.

**c. Transparency & accurate reporting**

Death penalty statistic gathering is unnecessarily challenging due to a lack of cooperation and transparency. For example, China is presumed to have the highest execution rate, estimated in the thousands in 2010. However, exact figures cannot be determined, because China shields death penalty information through "state secret" classification.<sup>22</sup> Transparency and accurate reporting is of paramount importance to gain better understanding of the problem's scale.

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<sup>14</sup> Id.

<sup>15</sup> La Repubblica. Death Penalty Moratorium Proposal by Italy Passed, 18 December 2007, available at: <http://www.repubblica.it/2007/09/sezioni/esteri/pena-di-morte2/voto-moratoria/voto-moratoria.html>.

<sup>16</sup> Sharon Shalev, A Sourcebook on Solitary Confinement, October 2008, available at: [http://solitaryconfinement.org/uploads/sourcebook\\_web.pdf](http://solitaryconfinement.org/uploads/sourcebook_web.pdf).

<sup>17</sup> U.S. Dept. of Justice, Capital Punishment, 2010 – Statistical Tables. December 2011, available at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/cp10st.pdf>.

<sup>18</sup> Rachel Meeropol, Death Row: America's Torture Chamber, 10 October 2011, available at: <http://www.guardian.co.uk/commentisfree/cifamerica/2011/oct/10/death-row-torture-chamber>.

<sup>19</sup> U.N. General Assembly, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 5 August 2011, A/66/268,

<sup>20</sup> Id.

<sup>21</sup> Amnesty International, Death sentences and executions in 2010, 28 March 2011, ACT 50/001/2011, available at: <http://www.unhcr.org/refworld/docid/4d9026932.html>.

<sup>22</sup> See Note 3.

## Recommendations

In light of increased death row phenomenon acknowledgement in international jurisprudence, the significant torturous implications of solitary confinement within the death penalty context, and the Special Rapporteurs' previous recognition that factors present in death row detention that may entail a violation of the ICCPR,<sup>23</sup> HRA urges the Council to:

- Request the Special Rapporteur on Torture conduct a comprehensive study on the death row phenomenon, specifically examining factors that elevate the death row experience to the level of torture or cruel, inhuman or degrading punishment, such as solitary confinement aggravated by a death sentence.
  - Request the General Assembly to expand death penalty moratoriums to (1) to encompass both executions and death penalty sentencing and (2) include concrete deadlines for death penalty following moratorium installation.
  - Stress the need for greater transparency and accurate data reporting with regards to death penalty.
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<sup>23</sup> United Nations Voluntary Fund for the Victims of Torture, Interpretation of Torture in Light of the Practice of and Jurisprudence of International Bodies, 3 March 2011, available at: [http://www.ohchr.org/Documents/Issues/Interpretation\\_torture\\_2011\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Interpretation_torture_2011_EN.pdf).