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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.

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

The death row phenomena as torture: The need for moratoriums on death penalty sentences

In the last few decades, many countries have shifted, changed, and evolved their policies and practices of capital punishment. In late 1970's, only 16 countries in the world had abolished the death penalty for all crimes. Gradually, more countries joined this movement towards a death-penalty-free world and by 2012, this number added up to 141 countries, which are abolitionist by law or practice.¹

Consistent and steady advance towards the recognition that capital punishment is cruel and degrading has been made in the international community, but there are still significant obstacles that need to be overcome. This report will establish that the death penalty, mainly because of the death row phenomenon and forms of executions used today, constitutes torture, cruel, inhuman and degrading treatment, prohibited by Article 7 of International Covenant of Civil and Political Rights. Other treaties with similar prohibitions include the European Convention on Human Rights,² the African Charter on Human and Peoples Rights,³ the Convention Against Torture and other Cruel and Inhuman and Degrading Treatment or Punishment. The interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment acknowledges the death row phenomena.⁴

Because of the death row phenomena, moratoriums on executions only exacerbate the prohibitions against torture in countries where death sentences are permitted. The General Assembly has previously called on moratoriums to be imposed on executions, with a view of abolishing the death penalty.⁵ However, the next step must be to impose moratoriums on sentencing, as this is the only way to prevent further exacerbation of the death row phenomenon.

The death row phenomenon

The death row phenomenon occurs when people are held on death row for many years in poor and dehumanizing conditions, leading to different psychological, physical and emotional harm.⁶ The Special Rapporteur on torture's August 2012 report notes: "Those circumstances 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."⁷ As is noted in his report, the Inter-American Court of Human Rights has stated that "the death row phenomenon was a cruel, inhuman and degrading

¹ Amnesty International, Death Penalty Facts and Trends, <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penalty-trends>, (last accessed January 30, 2013).

² European Convention on Human Rights, Article 3: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

³ African Charter on Human and People's Rights, Article 5: "...torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

⁴ Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279.

⁵ U.N. General Assembly Resolution, Moratorium on the use of the death penalty A/RES/62/149 (18 December 2007); A/RES/63/168 (18 December 2008); GA/11041 (21 December 2010); GA/11331 (20 December 2012).

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

⁷ Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, at ¶43.

treatment, and was characterized by a prolonged period of detention ... detention conditions while awaiting execution; delays in the appeal process, ... the fact that the judge did not take into consideration the age or mental state of the condemned person....”⁸

An egregious example is that of N.I. Sequoyah, an inmate at San Quentin State Prison, in California, USA. He was convicted on November 18, 1991, and sentenced to death on March 2, 1992. Since then, it took the state 5 years to appoint counsel, and another 10 years to put in order transcripts of his initial trial due to the fact that the trial court had lost many of the transcripts of his trial. These facts have been acknowledged in an admissibility decision by the Inter-American Commission on Human Rights (IACHR) on March 2012 to his petition before that body.⁹ This will allow the IACHR to address whether the lengthy stay on death row is a violation of his rights under the American Declaration of the Rights and Duties of Man. Spending more than 20 years on death row has led N.I. Sequoyah to suffer both physical and mental anguish.

Several courts have identified the death row phenomenon. In *Soering v. United Kingdom*, the European Court of Human Rights decided that extraditing the applicant would amount inhuman and degrading punishment, since upon his return to the U.S. he would face the death penalty, and be subjected to the death row phenomenon. The Court also took into account the psychological effects that his extradition (leading to the death row phenomenon) would bring upon him, including the likelihood of extreme physical violence, fear of rape, homosexual abuse from other inmates, which had resulted in the applicant becoming suicidal.¹⁰ The IACHR has found that conditions on death row violate Article 5, paragraph 1 of the American Convention on Human Rights, as they violated the physical, moral and psychological dignity and integrity of the inmates.¹¹ The IACHR reached a similar conclusion in *Aitken v. Jamaica*, when the inmate was held cruel and torturous conditions for 4 years on death row. The court concluded that this was not a humane treatment and therefore found a violation of the Convention.¹² Prison conditions of inhumane living standards include, but are not limited to, “solitary confinement for up to 23 hours a day in small, cramped, airless cells, often under extreme temperatures; inadequate nutrition and sanitation arrangements.”¹³ These conditions further exacerbate the death row phenomena when those sentenced are held for long periods of time.

Methods of execution

Countries that still have the death penalty have determined that the most humane form of execution is the three-drug cocktail that makes up the lethal injection. This is currently the most popular method of execution, as beheading, bludgeoning, stoning, and gas asphyxiation have all been considered inhumane forms of execution. The most humane form of execution for the inmate is firing squad, but that has also been rejected as not respecting the rights of the family members, as well as bringing unnecessary public humiliation both to the family, and to the inmate.¹⁴

⁸ Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, at ¶44.

⁹ N.I. Sequoyah, Report No. 42/10, Inter-Am. C.H.R.

¹⁰ *Soering v. United Kingdom*, 11 Eur. Hum. Rts. Rep. 439 (1989).

¹¹ *Paul Lallion v. Grenada*, Case 11.765, Report No. 55/02, Inter-Am. C.H.R., Doc. 5 rev. 1 (2002).

¹² *Aitken v. Jamaica*, Report No 58/02, Inter-Am. C.H.R.

¹³ Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, at ¶42.

¹⁴ *Id.*, at ¶40.

New evidence suggests that lethal injection is neither as safe nor humane. As numbers of executions gone wrong are steadily increasing, and more research is being done on the field, some horrific events have come to light. Angel Nieves Diaz, inmate in Florida, USA, was a victim of such inhumane treatment, as it took him 34 minutes to die after the lethal dose had been injected into his veins. “His eyes widened. His dead rolled. He appeared to speak.... ‘[h]is face was contorted, and he grimaced on several occasions... his jaw was clenched’ ”.¹⁵ Angel Diaz is one of many who suffered similar fate. Bill Leroy, Missouri, USA, his reactions include coughing, gasping for air as if he was being asphyxiated, and witnesses testified that Leroy died a ‘violent and agonizing death’.¹⁶ The three-drug cocktail has now been shown to only paralyze the person, not eliminating the excruciating pain they suffer, as a significant number of them die a slow death.¹⁷

Recommendations

While HRA commends the General Assembly’s call for a moratorium on executions with a view to eliminating the death penalty,¹⁸ additional steps are needed to prevent other on-going violations that result from death penalty sentences. With that goal in mind, HRA urges:

- The Council to call for moratoriums on sentencing as well as on executions, with a view to abolish the death penalty.
- States to:
 - Begin a dialogue about death row conditions within individual countries. For example, in 2010, Japan allowed the media to enter the execution chambers for the first time and do a report on it, with the hopes of initiating a national discussion of the realities of death row.¹⁹
 - Pledge to abolish the death penalty within a reasonable period of time.
 - Adhere to international human rights standards of human dignity and self-integrity by instituting alternative methods of punishment.

¹⁵ Suzanne Goldenberg, *America Turns its back on Death Penalty after botched lethal injection of killer*, (January 2007), found at: <http://www.guardian.co.uk/world/2007/jan/10/usa.suzannegoldenberg>, (last accessed January 30, 2013).

¹⁶ Death Penalty Information Center, *Examples of Post-Furman Botched Executions*, (October 2010), found at: <http://www.deathpenaltyinfo.org/some-examples-post-furman-botched-executions>, (last accessed January 30, 2013).

¹⁷ Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, at ¶37.

¹⁸ GA/11331 (20 December, 2012).

¹⁹ BBC News, *Japanese Media get Tour of Death Chamber*, (August 2010), found at: <http://www.bbc.co.uk/news/world-asia-pacific-11107790>, (last accessed on January 30, 2013).