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## Human Rights Council

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Agenda item 3

**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.

[10 February 2011]

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

## **Violating the prohibition of torture: the death row phenomenon and methods of execution**

### **Introduction**

1. Human Rights Advocates (HRA) acknowledges and supports the United Nations' efforts to prevent violations of the prohibition of torture in the implementation of the death penalty and to encourage retentionist countries to abolish the death penalty. The General Assembly called for a moratorium on executions with a view to abolishing the death penalty in 2007, and has twice reaffirmed this resolution.<sup>1</sup> HRA commends the 139 countries that are currently abolitionist in law or in practice,<sup>2</sup> including most recently Burundi and Togo (2009).
2. HRA also acknowledges progress made by retentionist countries. In July 2010, Iran announced that it would commute the stoning verdict of a woman convicted of adultery.<sup>3</sup> Japan recently allowed media representatives into an execution chamber for the first time.<sup>4</sup> It has also been reported that Japan is initiating discussions about whether to abolish the death penalty.<sup>5</sup>
3. Despite this progress, violations continue to occur and executions continue to take place. HRA is concerned that 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" and use cruel and inhuman methods of execution.
4. At least 714 people were executed in 2009, and this does not include figures from China, which is in the thousands. Methods of execution included beheading, stoning, hanging, electrocution, shooting, and lethal injection. At least 2000 people were sentenced to death in 2009, and by 2010 at least 17,118 prisoners were on death row.<sup>6</sup> HRA urges the Council to examine whether practices used to impose the death penalty violate the prohibition of torture.

### **Death Row Phenomenon**

5. The death row phenomenon is produced by a combination of circumstances that lead to severe mental and physical deterioration in prisoners. These circumstances include: extremely harsh conditions of imprisonment on death row, long periods of time spent awaiting execution, and the ever present anguish of anticipating one's own execution.<sup>7</sup>

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<sup>1</sup> 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/SHC/3996 (11 November 2010).

<sup>2</sup> Amnesty International, Abolitionist and Retentionist Countries, <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>.

<sup>3</sup> Time Magazine, Death By Stoning: Iran's Internal Debate (8 July 2010), <http://www.time.com/time/world/article/0,8599,2002545,00.html>.

<sup>4</sup> BBC News, Japanese Media Get Tour of Death Chamber (27 August 2010), <http://www.bbc.co.uk/news/world-asia-pacific-11107790>.

<sup>5</sup> Financial Times, Japan to Consider Abolishing Death Penalty (21 January 2011), <http://www.ft.com/cms/s/0/d6aa312e-2577-11e0-93ae-00144feab49a.html#axzz1CT0YjayM>.

<sup>6</sup> Amnesty International, *supra* note 2.

<sup>7</sup> Soering v. United Kingdom, 11 Eur. Hum. Rts. Rep. 439 (1989).

These circumstances can cause inmates to become delusional, insane, and suicidal.<sup>8</sup> When years of incarceration precede execution, prisoners serve two sentences: a life sentence marked by prolonged psychological torture and a death sentence.

6. Multiple courts have found that circumstances producing the death row phenomenon can violate human rights, including: The European Court of Human Rights,<sup>9</sup> the Judicial Committee of the Privy Council,<sup>10</sup> the Zimbabwe Supreme Court,<sup>11</sup> the Supreme Court of India<sup>12</sup> and the Supreme Court of Canada.<sup>13</sup> Impermissible lengths of delay (coupled with circumstances such as difficult conditions and mental torment) ranged from 4.3 to 14 years. The Human Rights Committee has also acknowledged the death row phenomenon, finding violations of Article 7 where prolonged delays are combined with other circumstances.<sup>14</sup>

7. Death row inmates face awful physical conditions. In the United States, insect infestations, malfunctioning plumbing, extreme temperatures, isolation, and deafening noise can characterize life on death row. In one facility, cells contained peeling paint and dried fecal matter and food encrusted on the walls, ceilings, and bars.<sup>15</sup> In a Texas prison, inmates spend all but 10 hours per week isolated in their small cells. Contact visits with family are never allowed.<sup>16</sup> In Japan, death row inmates are kept in isolation and prohibited from talking to other prisoners. Apart from 2-3 thirty-minute exercise sessions each week and toilet visits, prisoners must remain seated in their cells.<sup>17</sup>

8. Pakistan's death row inmates are subject to abuse by prison staff because there is tacit tolerance of their torture. In 2010, three prisoners were allegedly beaten severely, and then with their penises taped so they could not urinate, were forced to drink 3-4 liters of water and administered injections that caused them to vomit and gave them the urge to urinate. All prisoners developed renal ailments. Other torture methods by jail staff include foot whipping with a cane or rod, prying out fingernails, rubbing chili into eyes, and beatings with the victim stripped and hung upside down.<sup>18</sup>

9. Long delays between conviction and execution exacerbate the stress of harsh conditions. In the United States, the average time spent on death row is 14 years,<sup>19</sup> however in many cases the wait is much longer. Death penalty appeals in California typically take

<sup>8</sup> Barbara A. Ward, *Competency for Execution: Problems in Law and Psychiatry*, 14 Fla. St. U. L. Rev. 35, (1986); Robert Johnson, *Death Work: A Study of the Modern Execution Process* (1990).

<sup>9</sup> Soering, *supra* note 7.

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

<sup>11</sup> *Catholic Commission v. Attorney General*, (1993) 1 Z.L.R. 242.

<sup>12</sup> *Rahendra Prasad v. State of Uttar Pradesh*, (1979) 3 SCR 78.

<sup>13</sup> *United States v. Burns*, (2001) 1 S.C.R. 283.

<sup>14</sup> *Francis v. Jamaica* (No. 606/1994) UN Doc. CCPR/C/54/D/606/1994; *Williams v. Jamaica* (No. 609/1995) UN Doc. CCPR/C/61/D/609/1995.

<sup>15</sup> *Gates v. Cook*, 376 F.3d 323 (5th Cir. 2004).

<sup>16</sup> *Texas Observer, Solitary Men* (10 November 2010), <http://www.texasobserver.org/cover-story/solitary-men?tmpl=component&print=1>.

<sup>17</sup> Amnesty International, *Hanging by a Thread: Mental Health and the Death Penalty in Japan* (9 September 2009), <http://www.amnesty.org/en/library/asset/ASA22/005/2009/en/acc1c64b-e5ed-425f-bb93-36be3ec25f59/asa220052009eng.pdf>.

<sup>18</sup> *Inter Press Service, Death Row Convicts Bear Brunt of Torture* (30 October 2010), <http://ipsnews.net/news.asp?idnews=53406>; Human Rights Commission of Pakistan, *HRCPP Appalled by Brutal Torture on Prisoners* (11 October 2010), <http://www.hrcp-web.org/shoprel.asp?id=174>.

<sup>19</sup> U.S. Bureau of Justice Statistics, *Capital Punishment 2009*, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cp09st.pdf>.

20-25 years to resolve.<sup>20</sup> Delays in Pakistan and Japan are similarly bad: it takes 10-15 years for prisoners to exhaust their appeals in Pakistan,<sup>21</sup> and in Japan prisoners can be on death row for over 30 years.<sup>22</sup>

## Methods of Execution

10. Retentionist countries continue to use cruel, inhuman, and degrading methods of execution. In the United States, an inmate from Ohio was stuck with lethal injection needles at least 18 times as the execution team tried for two hours to find a suitable vein. The inmate survived the execution attempt and remains on death row.<sup>23</sup> In 2006, a Federal judge in California imposed a moratorium on executions out of concern that lethal injections were being conducted in such a way as to violate the Eighth Amendment's prohibition of cruel and unusual punishment. The judge explained that lethal injections were being conducted haphazardly and poorly by untrained staff, under inadequate conditions, and posed an unacceptable risk of a botched execution that could leave the inmate conscious and in excruciating pain as a final dose of chemicals stopped his heart.<sup>24</sup>

11. Saudi Arabia continues to practice beheading. In Iran, despite a 2002 moratorium on executions by stoning, at least six people have been stoned to death since 2002. Vali Azad was stoned to death in secret in March 2009.<sup>25</sup>

## Moratoriums Are Not the Best Solution

12. Moratoriums without a deadline for abolition are not the best solution for preventing violations of the prohibition of torture because they prolong and exacerbate the circumstances that produce the death row phenomenon. Morocco has operated a moratorium since 1993, yet it continues to issue death sentences and has not abolished the death penalty in law.<sup>26</sup> California has had a judicially established moratorium since 2006, but continued to sentence roughly 100 people to death during this time. Over 700 people are awaiting execution in California, the highest number in the country.<sup>27</sup>

13. HRA in no way advocates that due process procedures be eliminated, suspended, or abridged in order to reduce the number of years spent on death row. However, observation of due process rights must be conducted within reasonable periods of time in order to avoid the torture of the condemned person. For example, five-year delays to appoint appellate counsel in California are not acceptable. Where due process procedures are not possible without long delays, the death penalty should not be allowed.

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<sup>20</sup> S.F. Chronicle, *Feds Pull Rules to Fast-Track Death Penalty Cases* (26 December 2010), [http://articles.sfgate.com/2010-12-26/bay-area/26286986\\_1\\_federal-courts-death-sentences-capital-cases](http://articles.sfgate.com/2010-12-26/bay-area/26286986_1_federal-courts-death-sentences-capital-cases).

<sup>21</sup> Human Rights Commission of Pakistan, *Slow March to the Gallows: Death Penalty in Pakistan* (2 January 2007), <http://www.fidh.org/IMG/pdf/Pakistan464angconjointpdm.pdf>.

<sup>22</sup> Amnesty International, *supra* note 17.

<sup>23</sup> S.F. Chronicle, *News of the Day: Execution Survivor* (3 December 2010), at A13.

<sup>24</sup> *Morales v. Tilton*, 465 F.Supp.2d 972 (N.D. Cal. 2006).

<sup>25</sup> Amnesty International, *supra* note 2.

<sup>26</sup> Inter Press Service, *Abolitionists Resigned to Long Wait* (17 March 2008), <http://ipsnews.net/news.asp?idnews=41621>.

<sup>27</sup> California Department of Corrections and Rehabilitation (11 January 2011), [http://www.cdcr.ca.gov/Capital\\_Punishment/docs/CondemnedInmateSummary.pdf](http://www.cdcr.ca.gov/Capital_Punishment/docs/CondemnedInmateSummary.pdf).

**Recommendations**

14. HRA urges the Council to request that the Special Rapporteur on Torture examine the death row phenomenon and the circumstances that produce it, and to make an assessment regarding when the circumstances rise to the level of torture or cruel, inhuman or degrading punishment.

15. HRA urges that if moratoriums are going to be declared, they should be followed by a clear deadline for abolition.

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