March 24, 2010

Waiting to Die, Dying to Live

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Waiting to Die
Dying to Live

(An account of the Death Row Phenomenon from a legal and ethical viewpoint)

It’s a cemetery that continues to grow every year with those that are not quite dead, but surely not alive.

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“Despair is not greater than you find it on death row. You have been abandoned by even the most loyal of souls. And on and on it goes, As you rot Surely from within, And you know that your crime Was committed in a better time, For no man Bears well, the rigors of death row”¹

INTRODUCTION

Far from the view of the public are the “cages”² that house the nation’s inmates on death row.

The topic of beheadings, electrocutions, hangings, lethal injections, shootings, and stonings sound much like a history lecture regarding something of the past. However, these horrific events are still happening, even during the twenty first century. Unfortunately, this type of carnage occurs around the world under the guise of capital punishment (“the death penalty”). The use of death as a punishment or penalty for a crime an individual has committed continues to be used in fully developed countries with modern day societies. More than two-thirds of the countries in the world have abolished the death penalty.³ However, the laws of fifty-nine countries allow for this form of punishment, but only twenty-

five are actively executing detainees.\(^4\) In 2008, 2,390 executions were performed.\(^5\)
In the same year, 8,864 individuals were sentenced to death around the world.\(^6\)
During this year, the highest number of executions occurred in China, who executed 1,718+ individuals and sentenced 7,003+ to death.\(^7\) Following not far behind China, was the Middle East. In Iran, where stoning and hanging are the preferred forms of capital punishment 346 were subjected to this type of “punishment.”\(^8\) In Saudi Arabia, where the method of death is public beheading and crucifixion, 102 lives were ended in this manner.\(^9\) In the United States (“U.S.”), where lethal injection and electrocution are the means of death, thirty-seven were executed among nine states.\(^10\) In the same year, 111 were newly sentenced to die, and 4 were released for innocence.\(^11\) The majority of executions in 2008 occurred within five countries: China, Iran, Saudi Arabia, Pakistan and the United States of America. These five states accounted for ninety-three percent of all executions that year.\(^12\)

The United States is the only country left in the Americas that is regularly committing executions.\(^13\) The most recent execution was October 27, 2009 in

\(^4\) Id.
\(^5\) Id. at 8
\(^6\) Id.
\(^7\) Id.
\(^8\) Id.
\(^9\) Id.
\(^11\) Id.
\(^13\) Id.
Texas.14 Texas alone has executed nineteen individuals this year.15 The United States purportedly protects individuals from “cruel and unusual punishments,”16 yet remains as one of the top five countries executing inmates. Currently, the United States has eight executions scheduled for the month of November among three states, three more deaths in December among two states, and there are executions scheduled to occur throughout the months until May 2010.17 The only explanation for such a civilized country to continue this barbaric practice is that the citizens of the United States seem to gain some type of illusion of finality and justice from the imposition of this drastic penalty. It appears that the people of the United States have been mislead into believing either that those inmates on death row deserve the harm that they suffer as a payment for their wrongs or that inmates do not suffer as they await their execution.18 Further, it appears that despite the rest of the world’s efforts, the United States holds fast to the ethical relativist view that the death penalty is correct in the U.S. even though it may not be internationally. When an individual is sentenced to death, they are sentenced to exactly that, death; not to be tortured while they await their execution. However, what most citizens fail to recognize is that death row is not the punishment; the loss of the inmate’s life is the punishment. “The one consideration that must not
be forgotten in all of this is that prisoners are human beings. They have to be regarded as subjects not objects.”

Inmates are still humans, entitled to respect, no matter what crime they may be accused or convicted of they remain persons.

In efforts to understand the circumstances of death row’s inmates’ confinement, including the mental and physical experience, the terms “death row phenomenon” and “death row syndrome” have been adopted. These terms describe the harsh conditions of confinement (the death row phenomenon) and the psychological harms that result (the death row syndrome). This paper explores the definitions of both the death row phenomenon and the death row syndrome and the effects that they have on United States and International Human Rights Law.

I. THE DEATH ROW PHENOMENON

“Our punishment is the loss of our lives, the execution, not the process.”

a. Death Row Phenomenon Defined

The term “death row phenomenon” has been used to define the circumstances that are found on death row and the physical deterioration in prisoners who are serving death sentences and awaiting their execution. The death row phenomenon is commonly analyzed by looking at two components; a temporal one (the length of time that an inmate spends on death row) and a

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19 Institut International des Droits de l’Homme, Conferences introductive et cours thematique: Education et droit international des droits de l’homme, 40th Session annuelle d’enseignement Vol. 1, 93, 94 (6-31 Julliet 2009)
21 Elisabeth Hanowsky, Frank C. Newman, Comment, The Death Row Phenomenon is a Violation of the Limitations Placed on Capital Punishment Under International Human Rights Law, International Human Rights Clinic, 3
physical one (the harsh conditions that an inmate is subjected to on death row). This phenomenon is a direct result of the ruthless and cruel conditions that an inmate will experience while on death row accompanied by the length of time that such conditions are experienced, and finally the anxiety of awaiting one’s own execution.

The concept of the death row phenomenon is frequently used internationally to prevent extradition of individuals who are facing the death penalty to the United States. The term was first introduced to the international realm in the court case of Soering v. United Kingdom. In the case of Soering, the court was posed with the issue of whether an extradition to a country (in particular the United States) who still utilized the death penalty would be a violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”). The major difficulty posed was that Article 3 provides that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Under the laws protecting international human rights, the death penalty itself might not be a direct violation of Article 3 of the ECHR, but the question of “whether its administration constituted ‘inhuman or degrading

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23 Id.
treatment of punishment’” was left for the court to decide. The Soering court held that “the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death,” and this extradition would be a violation against the protections afforded under Article 3.

The death row phenomenon was later expanded in 1993 with the case of Pratt v. Jamaica by Great Britain’s Judicial Privy Council. The Pratt court dealt with prisoners who were deteriorating for sixteen years on Jamaica’s death row in terrible conditions. The court held that “there is an instinctive revulsion against the prospect of hanging a man after he has been under sentence of death for many years. What gives rise to this instinctive revulsion? The answer can only be our humanity; we regard it as an inhuman act to keep a man facing the agony of execution over a long extended period of time.” This concept that an extreme length of time can constitute a cruel and unusual punishment, has not gained the sympathy of Americans, since in the United States an inmate’s appeal may take several years, if not a decade. Yet, this concept has gained great understanding in the international courts and plays an integral part of the international pressure against the United States maintaining the death penalty.

31 Id.
32 Id.
b. Death Row Phenomenon and the Implications for Capital Punishment within the United States.

There is a strong debate amongst scholars on whether the concept of death row phenomenon has any implications on capital punishment within the United States, in particular with reference to constitutional issues.\(^{33}\) One of the major difficulties in applying the death row phenomenon concept as internationally developed to cases that occur in the United States is that the \textit{Soering} case “failed to specify which circumstances in the case constituted ‘death row phenomenon’ and which were anomalous to Jans Soering himself.”\(^{34}\)

The American courts to date have still refused to adopt the theory of death row phenomenon. The closest that the courts have come was the abolition of the death penalty in California in 1972.\(^{35}\) In the case of \textit{People v. Anderson}, the court held that “the cruelty of capital punishment lies not only in the execution itself and the pain incident thereto, but also in the dehumanizing effects of the lengthy imprisonment prior to execution during which the judicial and administrative procedures essential to due process of law are carried out.”\(^{36}\) Further, the court supported its argument by stating that, “penologists and medical experts agree that the process of carrying out a verdict of death is often so degrading and brutalizing to the human spirit as to constitute psychological torture.”\(^{37}\) In recent years,


\(^{34}\) Id. at 894-95.


\(^{36}\) Id. at 894-95.

\(^{37}\) Id.
Supreme Court Justices Breyer and Stevens have held fast to the possibility of the phenomenon in several opinions. In the dissenting opinion of *Foster v. Florida*, Justice Breyer stated that “the combination of uncertainty of execution and long delays is arguably cruel.” Further, Justice Breyer referenced the 1890 decision of *In Re Medley*, in which the court held that long delays “inflict horrible feelings” and “in immense mental anxiety amounting to a great increase of the offender’s punishment.” In effect, Breyer argued that the prisoner is facing two punishments: “punishment by death and also by more than a generation spent in death row’s twilight.” Justice Stevens pushed lower courts to inquire into the idea that there was a possibility that the growing delay between sentencing and execution of inmates is a violation of the cruel and unusual punishment clause of the Eighth Amendment. Dissenting in *Knight v. Florida*, Justice Breyer wrote about the “delays in administration of the death penalty in the United States,” and how he believed it was “difficult to deny the suffering inherent in a prolonged wait for execution.” Even further, in their dissent Justice Breyer and Justice Marshall stated that “the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments.”

The concept of the death row phenomenon has at least been brought to the attention of the United States courts, but has still failed to receive the type of

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39 Id. (quoting *In Re Medley*, 134 U.S. 160, 172 (1890)).
43 Id. at 462
44 Id.
recognition the international realm has given it. It is important to note however, that there is one major difference between the American cases and that of Soering. In the Soering court, the decision was “based on the potential for harm to an individual in the future (a breach of international law by reason of its foreseeable consequences).” An American court would require specific proof of harm in order to make the determination that there was an Eighth Amendment violation. In the American system, to simply state the horrors that occur on death row leading to the death row phenomenon is not enough; there must be “a persuasive constitutional claim,” showing evidence that the inmate has experienced some particular harmful consequence of the death row phenomenon.

II. THE DEATH ROW SYNDROME

a. Death Row Syndrome Defined

The concept of the death row phenomenon explores the effects of the physical experience of confinement as well as the harsh conditions in which inmates are housed on death row. The current analysis of the death row phenomenon has moved towards the psychological effects that an inmate experiences while on death row. The term “death row syndrome” has been analogized to the resulting psychological harms that arise from such an experience. Professor Atul Gawande of the Harvard Medical School points out that “holding prisoners in long-term solitary confinement is a mechanism of

46 Id.
47 Id.
torture. ‘It wasn’t always like this; the wide-scale use of isolation is, almost exclusively, a phenomenon of the past twenty years…’ American now holds at least twenty-five thousand inmates in isolation in supermax prisons.’”

b. Death Row Syndrome Appears in the United States

The concept of death row syndrome first appeared in a 1986 article by Dr. Stuart Grassian, in which he depicted the lives of fourteen inmates who were in solitary confinement. These fourteen inmates were living in a six by nine foot cell with no windows and a single 60-watt light bulb. There was a single steel bed, steel table and stool and a steel open toilet in the cell. These inmates had no televisions, radios or books, except for the Bible. There was a solid steel door locking these inmates into this solitary confinement, which was unbroken for 23 hours of the day. In his article, Dr. Grassian describes the drastic psychological and psychiatric reactions that inmates have experienced from being held in such conditions, which in the legal sphere has become known as death row syndrome.

Despite its lack of scientific support and evidence to authenticate its existence, death row syndrome gained dramatic awareness in America in February

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50 Id.
2005 with the postponed Connecticut execution of Michael Ross.\textsuperscript{51} Ross was a sadistic serial killer and rapist housed on Connecticut’s death row for eighteen years before being executed.\textsuperscript{52} Allegedly, Ross attempted suicide three times before deciding to abstain from further state and federally mandated appeals and “volunteered” for his execution.\textsuperscript{53} The Judge in the case advised counsel to investigate the competency of this voluntary decision, stating that it must be given “voluntary, knowingly and intelligently.”\textsuperscript{54} Ross’s attorneys argued that Ross’s voluntary execution was not valid because he was suffering from death row syndrome or at the very minimum a negative psychological response to long-term incarceration on death row under difficult conditions, in combination with the psychological uncertainty of living under a sentence of death.”\textsuperscript{55} In the end, counsel’s argument failed and “the much anticipated death row syndrome or segregated housing unit syndrome never materialized in this case,” and Ross was found competent and executed.\textsuperscript{56}

The attempt to shift the terminology from death row phenomenon to death row syndrome is an attempt at changing social policy through the use of a

\textsuperscript{54} \textit{Miller v. Stewart}, 231 F.3d 1248 (9\textsuperscript{th} Cir. 2000) (Fisher, J., concurring)
psychiatric disorder. The use of the term “syndrome” implies a medical diagnosis with a set recognizable signs or symptoms, whereas the word “phenomenon” simply implies an experience of an incident. Despite the differing meanings some scholars use the terms interchangeably. However, if this death row condition becomes labeled as a mental illness and the use of that illness is to reach a finding of incompetence, what is really being procured is the change of social policy—the abolition of the death penalty—on the basis of psychiatry.  

While the term alone indicates that there is a medically recognizable syndrome, neither the concept of death row phenomenon or of death row syndrome is accepted in the medical health field. Currently, neither term is accepted by the American Psychiatric Association or the American Psychological Association. Further, neither term appears in the *Diagnostic and Statistical Manual of Mental Disorders-IV* (DSM-IV). It appears that the use of terms have gained quicker recognition in the legal realm than in the psychological world due to the lack of scientific research on the topic. Even though they are relevant in the legal world, the terms are not even defined in Blacks Law Dictionary. The definitions come out of case law and reference articles mainly from an

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59 Id. at 242


international perspective. In spite of the lack of psychological support, there is still some casual link between the long delays, harsh conditions, and psychological effects that death row inmates experience but scientific data would aid in the confirmation of the concept of death row syndrome.\textsuperscript{62}

III. THE LONG DELAYS

“The wait times amount to prisoners getting two distinct punishments: the death sentence and the years in solitary confinement.”\textsuperscript{63}

a. The Temporal Component (Inmates Spend Extreme Lengths of Time on Death Row)

In some countries death row inmates are waiting to be executed for more than a decade. A century ago, death row inmates could expect to wait only days or possibly weeks between sentencing and execution.\textsuperscript{64} However waiting merely days is a thing of the past. The length of time that prisoners spend on death row in the United States has nearly doubled over the last two decades.\textsuperscript{65} In 2006, the average wait time rose to twelve years from the 1986 average wait of seven years.\textsuperscript{66} In California, the wait time is approximately twenty years between sentencing and execution.\textsuperscript{67} However, these long waits are not a characteristic of


\textsuperscript{66} Id.

only the death row inmates in the United States. Nigerian death row prisoners have an average wait of twenty years on death row.\textsuperscript{68} Japanese inmates will spend more than ten years awaiting execution, and in one reported case, a prisoner had spent more than 38 years” waiting for execution.\textsuperscript{69} A prisoner in Yemen was sentenced in 1996 to death and in 2005 was still awaiting execution.\textsuperscript{70} Clearly, the length in the time that a death row inmate will wait for execution has changed over the past several decades, making the temporal nature of the death sentence process much different than that of even a decade ago. Essentially, waiting only a short period of time for execution is a thing of the past. Long delays, often decades long, are the customary practice on death rows across the world.

i. \textit{Delays Alone Enough To Support A Finding Of Death Row Phenomenon}

The argument has been posed that this extreme delay in time irrespective of prison conditions and anxiety over the sentence is enough to be the source of the death row phenomenon. Proponents of this argument claim that this delay in execution alone is enough to violate the prohibition on torture, cruel, inhuman or degrading punishment.\textsuperscript{71} The Judicial Committee of the Privy Council in the case of \textit{Pratt v. Jamaica}, held that “the delay alone in the implementation of a death sentence can warrant a finding of the death row phenomenon – and that a delay of

\textsuperscript{68} Elisabeth Hanowsky, Frank C. Newman,\textit{Comment, The Death Row Phenomenon is a Violation of the Limitations Placed on Capital Punishment Under International Human Rights Law}, International Human Rights Clinic, 7


fourteen years was enough alone to constitute a violation of cruel punishment.”

Further, the Privy Council found the death row phenomenon to be present under a delay of four years and ten months because the delay is outside of the prisoner’s control.

Although legal scholars emphasize the importance of this component in procuring the death row phenomenon, there is a “lack of understanding regarding the psychological effects of the amount of time spent on death row.” Further, the Human Rights Committee (“Committee”) has declined to accept that the delay alone is enough to affirm a finding of the death row phenomenon and a violation based on torture or cruel punishment.

ii. The Delays Are Not The Fault Of The Prisoners

Despite the fact that the Committee has found that a prisoner who has spent seven years on death row is a cause for concern, there is still no violation of Article 7 of the International Covenant on Civil and Political Rights (“ICCPR”). The Committee has expressed concern that these cases are delayed in part because of the prisoners’ themselves. However, the Committee believes “that these concerns are inapplicable in cases of extreme delay as the prisoners are often not at fault for the delay and cases of extreme delay do not interfere with prohibitions

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73 Id.
against undue haste.”77 Further, “a prisoner should not be faulted for taking advantage of the legitimate appeals process offered by the state when the prisoner is fighting to save his or her own life.”78 An inmate might be pushing the appeal process to its limits in this fight, but such a struggle to remain alive is an essential part of human nature. Any country that makes this struggle delayed must be held accountable for their actions.79 The European Court of Human Rights (“ECHR”) took the position that “even if the delay was the result of the inmate’s actions they were not to be blamed for pursuing life as the fact remained that they were pursuing life under death row conditions with mounting tensions over their own death.”80

The delays in execution are not the fault of the prisoners but fall on the hands of the state. Internationally, the Privy Council has stated that the delays that prisoners experience are not due to their own causing, but are a result of the failure of the judicial system.81 Various judicial systems across the globe prolong death penalty proceedings for indeterminable periods of time. In the United States a judge critiqued the delays caused by the appeals process by stating that “the process has become unacceptably cruel to defendants…who spend long years under the sentence of death while the judicial system conducts seemingly

77 Elisabeth Hanowsky, Frank C. Newman, Comment, The Death Row Phenomenon is a Violation of the Limitations Placed on Capital Punishment Under International Human Rights Law, International Human Rights Clinic, 8
78 Elisabeth Hanowsky, Frank C. Newman, Comment, The Death Row Phenomenon is a Violation of the Limitations Placed on Capital Punishment Under International Human Rights Law, International Human Rights Clinic, 9
79 Id.
interminable proceedings which remind many observers of a cruelly whimsical cat toying with a mouse.”  

As a result, death row inmates are waiving their rights to appeals and choosing to volunteer for execution to avoid these long delays. Between 1976 and 2003, ten percent of those executed in the United States were volunteers. 

Lastly, with the recent hasty execution of Saddam Hussein it must be noted that hasty executions are not a solution to the delays. The death row phenomenon only encompasses those delays that are extreme in length, not all delays that occur. Reasonable amounts of time are predictable however prisoners are waiting decades, even lifetimes to be executed. These extreme delays have become the average wait time and are no longer the exceptional cases. The temporal component of long delays in awaiting one’s execution alone may not be sufficient to warrant a finding of the death row phenomenon but it is certainly a key component. The psychological effects a death row inmate experiences is not the punishment that these individuals were sentenced to; they were sentenced to be executed.

b. **The Physical Component of the Long Delays**

Inmates not only spend vast amounts of time waiting for their executions to be carried out, they do so in unacceptable conditions. Inmates on death row have

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82 Elisabeth Hanowsky, Frank C. Newman, Comment, *The Death Row Phenomenon is a Violation of the Limitations Placed on Capital Punishment Under International Human Rights Law*, International Human Rights Clinic, 8

depicted the conditions as a living hell; a graveyard behind high walls far from the eye of the public. Under these deplorable conditions, the physical state of inmates deteriorates rapidly. According to Amnesty International’s (“AI”) annual report, generally, prisoners are denied the basic human comforts.\footnote{See generally Amnesty International Annual Report 2005 at http://www.amnesty.org/report2005/index-eng; Amnesty International Report 2006 at http://web.amnesty.org/report2006/index-eng.} Inmates in these “supermax” facilities spend twenty-three out of twenty-four hours of the day confined in small cells.\footnote{Jesenia Pizarro, and M.K. Vanja Stenius, "Supermax Prisons: Their Rise, Current Practices, and Effects on Inmates," 84 The Prison Journal 248 at http://www.encyclopedia.com/doc/1P3-805249241.html (last visited November 12, 2009).} Death row circumstances around the world include: inmates being denied hobbies or meaningful way to entertain themselves, lights that are left on at all times—including during sleep, temperature extremes, inadequate nutrition and sanitation, lack of exercise, loss of contact with the outside world and sometimes cells are so constricting that inmates cannot even stand in them. Two different scientific studies have shown that after being subjected to a few hours of solitary confinement, prisoners’ brain waves shift to a pattern of “stupor and delirium,” and that complete sensory deprivation causes hallucinations in as little as forty-eight hours.\footnote{Jeffrey Kluger, Are Prisons Driving Prisoners Mad, Time Magazine, Jan. 26, 2007 at http://www.time.com/time/magazine/article/0,9171,1582304,00.html (last visited October 13, 2009).} This type of confinement has even been characterized as “no-touch torture” by one scholar.\footnote{Alfred W. McCoy, A Question of Torture: CIA Interrogation From the Cold War to the War on Terror, (American Empire Project ed., Metropolitan Books) (2006).}
prisoners are subjected to solitary confinement for months, and years prior to their execution dates.\(^{88}\)

These physical conditions are found in death rows across the globe. In Japan, death row inmates are subjected to severe physical conditions while awaiting their executions: they are prohibited from speaking to other prisoners, allowed only infrequent and supervised visits from their families and attorneys, prohibited from having hobbies, prohibited from having televisions, subjected to sleeping with a bright light on without the ability to cover their faces, subjected to extreme temperatures, and receive inadequate nutrition.\(^{89}\) In Uzbekistan, death row inmates are “regularly beaten and denied outdoor exercise.”\(^{90}\) Death row inmates in China are subjected to physical beatings, kept in chains from the moment of arrest until their execution, and are subjected to sleep and food deprivation.\(^{91}\) In Mongolia, prisoners are subjected to overcrowding, temperature extremes, inadequate nutrition and isolation.\(^{92}\) In the Komotini prison in Greece solitary confinement prisoners are subjected to cells with a putrid smell, poor

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\(^{90}\) HRA Commends the action of Uzbekistan, by Presidential Decree, to abolish the death penalty starting January 1, 2008.


ventilation, no bed, no wash basin and minimal access to natural light.\textsuperscript{93} Solitary confinement inmates in Serbia are forced to sleep on a wooden platform, receive a wooden box for personal belongings and access to artificial and natural light was at best mediocre.\textsuperscript{94} In Iran, solitary confinement prisoners are placed in basement cells measuring about one meter by two meters with a ceiling of four meters with a light on twenty-four hours a day; some inmates are allowed outside for twenty minutes while others never see the open air.\textsuperscript{95} In drastic contrast are the conditions in which prisoners in Europe are treated. While there is no death row currently in Europe the existing death row countries could learn from the conditions in which these inmates are housed.

The United Nations Minimum Standard Rules (“MSR”) and the European Prison Rules (“EPR”) establish a standard in which European prisoners should be treated. Such standards include: proper cell size and accommodations within the cell, no use of all dark cells as well as no use of permanently lit cells,\textsuperscript{96} sanitary conditions sufficient to health standards, good ventilation, low noise levels, privacy and an alarm button. In addition, under these standards prisoners are allowed access to outside exercise for at least an hour out of the day,\textsuperscript{97} and access

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\textsuperscript{93}Sharon Shalev, \textit{Sourcebook on Solitary Confinement}, 39, 41-44 (2008) at \\
http://www.solitaryconfinement.org/sourcebook (last visited November 12, 2009).
\textsuperscript{94} Id.
\textsuperscript{95} Id.
\textsuperscript{96} Inmates are to have the ability to control the artificial light within their cell. In no case should the cells be lighted at all times of the day. Further, there shall be no lighting situation in which to cause harm to an inmate’s eyesight.
\textsuperscript{97} Sharon Shalev, \textit{Sourcebook on Solitary Confinement}, 39, 41-44 (2008) at \\
http://www.solitaryconfinement.org/sourcebook (last visited November 12, 2009).
\end{flushleft}
to hobbies and activities.\textsuperscript{98} Prisoners are given access to written and broadcast media.\textsuperscript{99} Further, prisoners are allowed contact with the outside world; this has held to be “crucial” to inmates, especially those detained for long periods of time.\textsuperscript{100} Prisoners lose their right to free movement and retain other rights as a human being.\textsuperscript{101} One right in particular is the right to contact with their families and prison authorities have a duty to assist them in this.\textsuperscript{102}

These harsh physical conditions that death row inmates are being subjected to worldwide are a violation of international law (discussed below) and the United Nations (“UN”) Human Rights Committee (“HRC”) has expressed concern over the “living conditions of inmates on death row in terms of visits and correspondence, cell size, food, exercise, extreme temperatures, lack of ventilation, insects, and lack of time outside of cells.”\textsuperscript{103} The physical conditions that a death row inmate faces for an indefinite period of time are a factor that plays into the death row phenomenon. The conditions on death rows worldwide are so

\textsuperscript{98} The Close Supervision Centre (CSC) at Whitemoor prison (UK) has a communal area with tabletennis and pool tables, a classroom equipped with a computer, a trolley of books and a stock of board games, and a workshop. It also has a well equipped fitness suite with free weights and an outside exercise yard which contained a greenhouse and a secure garden.


\textsuperscript{100} Id.

\textsuperscript{101} Andrew Coyle, \textit{Minimum International Standards for the Treatment of Prisoners}, Institut International des Droits de l’Homme 93, 94 (July 2009); Notes from Lecturer’s presentation

\textsuperscript{102} This is not just what is right for the prisoner but also what is right for the families. This right is protected under Article 17 of the ICCPR: “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence…” The right to family life is also protected by Article 11 of the American Convention on Human Rights and Article 8 of the European Convention on Human Rights.

unfortunate that no individual could expect to physically survive. In June 2005, the UN Special Rapporteur on torture even declared the conditions on Mongolia’s death row to be so poor that the conditions alone may amount to torture.\textsuperscript{104}

c. The Experimental Component of the Long Delays

In “Reflections on the Guillotine,” Albert Camus’ writes “as a general rule, a man is undone by waiting for capital punishment well before he dies. Two deaths are inflicted on him, the first being worse than the second.”\textsuperscript{105}

Supplementing the long extenuating periods of time and deplorable conditions, inmates must also face the unimaginable anxiety over their own imminent death. There are three subcategories that arise from the anxiety created while an inmate awaits his/her own death: the lack of notice as to the date and time of the execution, public executions, and mistakes in administering the penalty. These conditions all factor into the mental trauma that death row inmates’ face since they create further confusion, humiliation and fear in the inmates.

i. Lack of Notice as to the Date and Time of Execution

In some countries, death row inmates, their families and their attorneys are denied advance notice of the date and time of the execution. This is a violation of a basic human right resulting in an inhuman and degrading treatment under the procedural safeguards surrounding the right to life.\textsuperscript{106} In Japan,\textsuperscript{107} Uzbekistan\textsuperscript{108}

and Iran\textsuperscript{109} inmates and their families are deprived of advance notice of the time and place of the execution. In Thailand, death row inmates are given sixty minutes notice before their executions are carried out.\textsuperscript{110} Inmates in Saudi Arabia are not only denied advance notice but some inmates are unaware that they are even subject to the execution.\textsuperscript{111} In extreme cases such as Thailand, the inmates find out about their execution only moments prior to the ending of their life. Inmates on death row as a result wait in constant, unrelenting fear of not knowing when their day to die has come.

\textit{ii. Public Executions}

Public executions also disgrace prisoners and are “incompatible with human dignity.”\textsuperscript{112} China, Japan, the Democratic People’s Republic of Korea (“North Korea”), Uzbekistan, and Saudi Arabia still hold public executions when utilizing the death penalty.\textsuperscript{113} In a report done by Amnesty International in 2004 regarding China’s death row inmates it was reported that prisoners are placed in an open truck and paraded through the busy streets to the execution site with a

\begin{itemize}
\item[\textsuperscript{112}] Concluding Observations of the Human Rights Committee: Democratic People’s Republic of Korea, UN Doc. CCPR/CO/72/PRK, Aug. 27, 2001.
\end{itemize}
placard strung around their neck with their name crossed out in red.\textsuperscript{114} The use of public executions in the administration of the death penalty is a form of humiliation that is inconsistent with the basic fundamental human rights and human dignity a society should have and promote.

\textit{iii. Errors in the Administration of the Execution}

The administration of the execution itself can increase the anxiety of an inmate. Again, the punishment is death, not the pain that they should suffer while being executed. An improperly administered execution constitutes a violation of the cruel and inhumane provisions of both the U.S. Constitution and international treaties. In a 2006 trial, Dr Mark Heath, of Columbia University, stated the belief that at least two California inmates may have been conscious when executed: Robert Massie\textsuperscript{115} and Stanley Williams.\textsuperscript{116} Further, Dr. Heath stated that the medical logs of San Quentin State Prison indicate that there were mistakes in the mixtures of the drugs leading some inmates to “be conscious longer than supposed” during their executions.\textsuperscript{117} The United States District Judge Fogel believed that there was “substantial evidence in past medical logs to suggest that as many as the last six men executed in San Quentin State Prison might have been conscious because they were still breathing after the paralyzing agent was


\textsuperscript{115} Executed in 2001, \url{http://www.ojp.usdoj.gov/bjs/cp.htm} (last visited November 11, 2009)

\textsuperscript{116} Executed in 2005, \url{http://www.ojp.usdoj.gov/bjs/cp.htm} (last visited November 11, 2009)

\textsuperscript{117} David Kravets, \textit{Logs Show Some Inmates May Have Been Conscious During Executions}, (Sept. 28, 2006) at \url{http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2006/09/27/state/n162151D44.DTL} (last visited November 12, 2009).
In another United States execution, allegedly improperly done, an inmate continued to move and retain consciousness for more than twenty-four minutes. Most executions are completed within fifteen minutes with the inmate losing consciousness in approximately three minutes. In attempting to execute Romell Broom, the inmate was pricked by a needle eighteen times in an effort to find a vein before being returned to Ohio’s death row. In an Alabama execution administered by electrocution, flames erupted from the electrode attached to a prisoner’s leg and even after his flesh burned doctors found a heartbeat. The process of administering the execution is not always a smooth process without harmful or drastic errors. The punishment is not the pain, but death itself and the knowledge that this type of pain can be endured increases an inmate’s anxiety.

In sum, the lack of notice, administration of public executions and the faulty process of the execution itself increase the already enormous anxiety of death an inmate faces on death row. This anxiety leads to the development of the death row phenomenon.

d. The Long Delays are a Violation of International Law

In addition to the three components, the long delays in both sentencing and execution that inmates face are a violation of international law. Under Article 118 Id.
119 The execution took place in Florida and the inmate required two injections of the lethal serum before the execution was completed.
122 Id.
14(3) (c) of the International Covenant on Civil and Political Rights ("ICCPR") it is required that "in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (c) to be tried without undue delay." 123 States that impose the death penalty and death sentences must strictly adhere to the procedural requirements of Article 14. 124 The length of time that individuals are spending on death row is anywhere from ten years to twenty years or more. 125 In interpreting the phrase "without undue delay," the UN HRC determined that a violation of the right to be tried without undue delay was present where there was a forty-five month delay while waiting for an appeal on a death sentence. 126 Further, the HRC found that Article 14(5) which requires that "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law," 127 must be read in conjunction with 14(3) (c), "so that the right to review of conviction and sentence must be made available without undue delay." 128 Therefore, the imposition of death sentences that are excessive in duration are a violation of an individual’s right to be tried without undue delay.

125 California Department of Corrections and Rehabilitation Division of Adult Operations, Death Row Tracking System at: http://www.cdrr.ca.gov (last visited November 11, 2009) and Texas Department of Corrections at http://www.tdcj.state.tx.us/stat/deathrow.htm (last visited November 11, 2009).
IV.   DEATH ROW PHENOMENON IS A VIOLATION OF INTERNATIONAL LAW

The concept of the death row phenomenon and of death row syndrome depicts a brutal picture of suffering; both psychological and physical. It is argued that this suffering is a form of torture under international standards. This excessive torture is a violation of the ICCPR—articles 6, 7, and 10. Further, the Convention Against Torture, Cruel or Other Inhuman or Degrading Treatment or Punishment (“CAT”) is violated by this phenomenon. Lastly, this form of torture violates other safeguards—such as the disallowance of the execution of any person suffering from a mental disorder, and the prohibition on excessive suffering—provided and affirmed by the HRC.

a. Death Row Phenomenon Is A Violation Of The Right To Life

Article 6 of the Covenant “transformed the laconic ‘right to life’ provision found in Article 3 of the Universal Declaration of Human Rights (“UDHR”). Under Article 6 of the ICCPR, “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of life.”\textsuperscript{129} While Article 6 does not explicitly require the abolition of the death penalty, it highly favors such a result.\textsuperscript{130} Article 6 takes the protection of the


\textsuperscript{130} It was not until the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty was put into force that the death penalty was abolished under international law. Currently, the United States has not signed or ratified this optional protocol requiring, “that article 6 of the International Covenant on Civil and Political Rights refers to the abolition of the death penalty in terms that strongly suggest that abolition is desirable, convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life.” ICCPR, Optional Protocol General Assembly resolution 44/128 December 1989.
fundamental right to life a step further by limiting the circumstances in which the
death penalty may be employed; (1) it disallows the arbitrary deprivation of life,
(2) disallows the execution of juveniles, and (3) the death penalty may only be
imposed “for the most serious crimes.”131 Three regional conventions have
enacted similar provisions recognizing the right to life: the European Convention
on Human Rights (“ECHR”), the American Convention on Human Rights
(“ACHR”), and the African Charter of Human and Peoples’ Rights (“ACHPR”).132

The HRC stated, “The right to life is the supreme right, because without it,
no other rights can be enjoyed”.133 Further, “scrupulous” attention must be given
to the principles affected by the death penalty when applied to the right to life.134
The unjustified placing of an individual on death row for an unknown period of
time is crucial in determining the death penalty regarding one’s right to life.

“Because death row inmates are subjected to severe mental torture [of not
knowing when their sentence will be fulfilled] their right to life has been
violated.”135 The right to life under Article 6 is interpreted broadly, and “it must
be construed to prevent the imposition of extreme psychological torture while

133 Report of the Special Rappaport on Extraudicial, Summary, or Arbitrary Executions of 22 Jan. 1998 at
135 Elisabeth Hanowsky, Frank C. Newman, Comment, The Death Row Phenomenon is a Violation of the
Limitations Placed on Capital Punishment Under International Human Rights Law, International Human
Rights Clinic, 14
This psychological torture violates an individual’s guaranteed right to life under Article 6. While Article 6 does allow for the death penalty under narrow circumstances, it does not allow for the psychological implications of the death row phenomenon. It is these psychological effects that are affecting the inmates’ right to life. A person’s right to life is not taken away until the last decision is handed down and therefore the conditions of death row are a violation of the individual’s right to life.

b. **Death Row Phenomenon Is A Violation Of The Prohibition Against Torture**

Article 7 of the ICCPR provides that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The HRC has stated that the imposition of the death penalty must be conducted “in such a way as to cause the least possible physical and mental suffering.” The HRC determined in its decision of *Ng v. Canada*, that “execution by gas asphyxiation…constitutes cruel and inhuman treatment in violation of Article 7.” The Committee however, has found that execution by lethal injection (when properly

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137 The second optional protocol to the ICCPR completely outlawed the death penalty but the United States is not a signatory.


139 Id.

administered) is not a breach of Article 7, because lethal injection does not amount to the type of torture required.\textsuperscript{141}

Further, CAT defines torture to mean “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.”\textsuperscript{142} Torture does not have to come in the form of only physical punishment, but can also amount from the effects of psychological punishment. The United States ratified this definition with the reservation that “the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from (1) the intentional infliction or threatened infliction of severe physical pain or suffering…”\textsuperscript{143} The sentencing of individuals to long drawn-out incarcerations under the conditions of death row has been shown to have drastic and disturbing psychological effects on the inmates. Accordingly, those that are sentenced to unending death sentences are being tortured under both definitions. These actions are a violation of the provision set forth in Article 7 of the ICCPR and the provisions of CAT.

c. **Death Row Phenomenon Is A Violation Of Humane Treatment While In Custody**

Article 10 of the ICCPR requires that all prisoners are treated humanely while in custody. Article 10(1) provides that “all persons deprived of their liberty

\textsuperscript{142} Convention Against Torture, Cruel or Inhuman or Other Degrading Treatment or Punishment Art. 1.1, Dec. 9, 1975, 999 U.N.T.S. 171, 6 I.L.M. 368.
\textsuperscript{143} Convention Against Torture, Cruel or Inhuman or Other Degrading Treatment or Punishment, U.S. Reservations, Dec. 9, 1975, 999 U.N.T.S. 171, 6 I.L.M. 368.
shall be treated with humanity and with respect for the inherent dignity of the
human person.”144 Under the basic principles for the treatment of prisoners,
adopted and proclaimed by the General Assembly it is proclaimed that “all
prisoners shall be treated with the respect due to their inherent dignity and value as
human beings.”145 The individuals that are being housed under the conditions of
this phenomenon are not being treated humanely. The long delays in the process,
the conditions of confinement and the anxiety of awaiting one's death, make the
confinement and treatment of the prisoners inhumane.

   d. Death Row Phenomenon Is A Violation Of Other United Nations
   Safeguards

The death row phenomenon is a violation of an international prohibition
against excessive suffering. The international realm has provided for safeguards
guaranteeing the protection of the rights of those facing the death penalty.146
Under resolution 2004/67, “where capital punishment occurs, it shall be carried
out so as to inflict the minimum possible suffering.”147 The United Nations has
asked under this resolution for the protections to be afforded to those individuals
that are facing the death penalty in the countries that have not abolished the death

146 Id. at 80
penalty. The United Nation’s Economic and Social Council has advocated that states keep the suffering of death row prisoners to a minimum and to avoid exacerbating the suffering. This resolution is another example of how the death row phenomenon is a violation of international law and standards. Death row inmates that are subjected to these long delays, appalling and inhumane conditions, along with other circumstances surrounding executions, are being subjected to severe psychological and physical trauma. This trauma increases the suffering of the inmate on death row and is a violation of the requirement that the sentence be carried out with as little suffering as possible.

In addition, international law does not provide for the execution of an individual with a diminished mental capacity. The United Nations requests that all states which still maintain and impose the death penalty “not to impose the death penalty on a person suffering from any form of mental disorder or to execute such person.” Under resolution 1989/64 of the Economic and Social Council, states are called to “eliminate the death penalty for persons suffering from mental handicap or extremely limited mental capacity.” These safeguards further impose the duty on states not to execute individuals who have become insane.

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148 Institut International des Droits de l’Homme, Conferences introductive et cours thematique: Education et droit international des droits de l’homme, 40th Session annuelle d’enseignement Vol. 1, 80 (6-31 Julliet 2009)
The conditions of death row and of being sentenced to death greatly affect the psychological functioning of an individual. Further, these circumstances can even lead to insanity and a diminished mental capacity. Under the international resolutions, an individual who has become a victim of the factors that cause the death row phenomenon should not be executed. This execution violates this prohibition against the execution of one suffering from a mental disorder.

V. UNITED STATES COURTS DISREGARD THE PHENOMENON

“The United States now stands in nearly complete isolation in advocating state executions; the few countries that concur with the practice are among the worst violators of human rights in the international community.”

a. United States Ratification of the ICCPR

The United States government regularly condemns the human rights abuses around the world but has failed to implement international human rights law into the domestic law of the United States. The United States ratified the ICCPR in 1992 with five reservations, five understandings and four declarations; stating that Articles 1-27 of the covenant are not self-executing.\(^{153}\) Where a treaty or covenant is not self-executing and where Congress has not acted to implement the agreement with legislation, no private right of action is created by ratification.\(^ {154}\) Therefore, as a matter of international law the ICCPR is binding upon the United States but the ICCPR does not form part of the domestic law of the nation. So while the above discussion explains how the death row phenomenon and death


\(^{154}\) See Fujii v. State 38 Cal.2d 718, 242 P.2d 617 (1952); also see Buell v. Mitchell 274 F.3d 337 (6th Cir., 2001) (discussing ICCPR's relationship to death penalty cases, citing to other ICCPR cases).
row syndrome are violations of the ICCPR the United States is not bound by this law domestically. However, it is urged by the HRC that the US begin to implement these standards into the US’s domestic law when dealing with death row inmates.

b. The United States Courts and the Death Row Phenomenon

The U.S. court system has failed to hear arguments on a right to life basis due to the fact that under international law, which the U.S. is a part to, the death penalty is not outlawed. Currently, proponents of the death row phenomenon/syndrome argue that it is a violation of the cruel and unusual punishment provisions. So far, arguments brought to the courts on the grounds of the death row phenomenon have been unsuccessful. Recently, in April of 2009, the U.S. Supreme Court refused to hear the appeal of death row inmate and political prisoner\textsuperscript{155} Mumia Abu-Jamal on a death row phenomenon basis.\textsuperscript{156} Human rights advocates are hopeful that the United States will live up to the fight against human rights abuses as promised.

\textsuperscript{155} A political prisoner is a person who has been imprisoned for holding or advocating dissenting political views.

VI. PRISONS DIFFER, BUT ALL PRISONERS ARE STILL HUMAN BEINGS

“You can only judge a culture from being within that community itself.”157

There is a strong argument made by many philosophers such as, Wittgenstein and Kuhn, that two distinct cultures cannot be compared because their ethics and value are inherently different. Some will argue that the United States and others who support the inhumane conditions of confinement cannot be compared to that of the European and UN member nations because simply they are different communities.

a. Ethical Relativism: Who’s to Judge What is Right and What is Wrong

“In a world of contingency one cannot prove that a particular attitude is the correct one to take.”158

“Ethical relativism is the doctrine that the moral rightness and wrongness of actions varies from society to society and that there are no absolute universal moral standards binding on all men at all times. Accordingly it holds that whether or not it is right for an individual to act in a certain way depends on, or is relative to the society, which he belongs.”159 Essentially ethical relativism holds that whether or not it is right or wrong for a person to commit a certain act depends on, or is relative to, the society in which they belong.

157 Craig Hawkins, Professor Trinity International University, Christian Ethics, Santa Ana, CA, (April 21, 2009).
158 The Internet Encyclopedia of Philosophy, accessed at http://www.iep.utm.edu/w/wittgens.htm
i. Conventional Ethical Relativism

“Conventional ethical relativism, the view that there are no objective moral
principles but that all valid moral principles are justified (or are made true) by
virtue of their cultural acceptance, recognizes the social nature of morality.”

Ethical relativism believes that there must be tolerance of other cultures. Cultural
relativism is often associated with sociology because the argument is made that
different societies do in fact have different views on ethical judgments.

• If morality is relative to its culture, then there is no
  independent basis for criticizing the morality of any other
culture but it’s own.
• If there is no independent way of criticizing any other culture,
than we ought to be tolerant of the moralities of other
cultures.
• Morality is relative to its culture
• Therefore, we ought to be tolerant of the moralities of other
cultures.

To apply this ethical theory to the subject of this article would be to assume
that since the countries that deny the death row phenomenon are of a different
society, outsiders (in this situation the European nations) are truly in no place to
judge them. Since the morality of the non death row phenomenon believers is
relative only to that culture there is no independent basis for any outsider to judge
their actions. Therefore, outsiders must just be tolerant. This thought is best
explained by the Wittgensteinian idea of a language game.

160 Id at 31
Followers of the Wittgensteinian school of thought believe that people of different cultures are simply playing a language game. “Words, gestures, expressions come alive, as it were, only within a language game, a culture, a form of life.”\textsuperscript{163} Essentially individuals of one culture cannot judge individuals of another culture because the tools of each culture are different, and they are not clear to each other until they are placed within the correct culture. To some the conditions creating the death row phenomenon are a suiting punishment for the crimes inmates have committed. To a victim’s family these conditions might mean justice in their eyes. To human rights supporters and believers these conditions of confinement are inhumane and degrading. All three of these thoughts are different because the individual meanings are not objective to the conditions of confinement, but are relative to the culture that is viewing the site.

Proponents of this school of thought would argue that the reason that there are differing opinions in regards to the creation of a death row phenomenon is because the differing cultures are essentially playing two different games in life. The members of the non death row phenomenon are playing clue while the rest of the world is playing risk, and therefore the two will never be compatible. This is where the idea of tolerance comes into play; since the two can never be compared the two cultures must simply be tolerant of one another. A judgment cannot be made on one culture with another culture’s values and ethics. This argument and situation is comparable to the argument of Female Genital Mutilation (“FGM”) in

\textsuperscript{163} Id.
Africa. An ethical relativist would believe that the United States has no position for condemning this practice in Northern Africa. “Judging other cultures irrationally supposes that we know better than the people of that culture do what is right or wrong.”\textsuperscript{164}

\textit{i. Metaethical Relativism}

Metaethical relativism believes that there is no such property as rightness. “Rightness is a relation between an act and a society.”\textsuperscript{165} Metaethical relativism rules out the “possibility of two societies ever having a moral difference.”\textsuperscript{166} For this theory, there is no dispute both cultures are correct. Proponents of this theory would argue that the reason that the countries refuse to believe in a death row phenomenon is because they are from an entirely different culture than those who believe in the death row phenomenon. Further the metaethical relativist’s argument is that there is no way to prove that the way of one culture is in fact the correct way for the entire world.

The argument made by ethical relativist is that countries creating these conditions of confinement are not wrong in their actions because their society defines their actions as right. The rest of society cannot judge them because their ethics and the way in which they conduct themselves are based on an entirely different set of ethics than the rest of society’s. Essentially what is right for society A and wrong for B doesn’t matter because it is only relative to the culture.

\textsuperscript{164} Id.
\textsuperscript{165} David K. Clark and Robert V. Rakestraw, Readings In Christian Ethics 27 (1994).
\textsuperscript{166} Id.
b. Prisons Differ From Culture To Culture: Where is the Place For Universal Human Rights

Prisons reflect some of the values of the society in which they exist. The use of imprisonment around the world reflects the differing cultures around the world. Prisons are prisons, but they differ from culture to culture. While the details of prisons may vary from country to country because they are sensitive to local culture and circumstances, the inmates in these prisons are all still human beings. Even with the differing prison systems, the need to operate on an ethical level is universal. The Universal Declaration of Human Rights provides that “whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”¹⁶⁷ Human rights are universal and blind to cultures, just because someone becomes imprisoned does not mean that they cease to be a human being, losing fundamental human rights.

With respect to individual cultures and customs there needs to be a universal ethical context in which to review issues such as the death row phenomenon. To simply state that it exists under European law but not in the United States or Middle East is nothing more than an ethical fumble. To determine this universal ethic the international standards which have been agreed

upon by the community of nations must be applied. The ethics cannot be drawn from any one culture or community nor from a specified model of imprisonment. There must be an internationally accepted set of principles which have been enshrined in human rights conventions and treaties. “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” In order to understand the death row phenomenon all individuals must be understood, all conditions of confinement must be examined, not just a few countries; all humans, all inmates. Human Rights Advocates believe that the Special Rapporteurs should recognize the violations of international law and begin looking into the existence of the “death row phenomenon” as being a limitation to the implementation of capital punishment.

VII. IN THE END PRISONERS ARE STILL HUMAN BEINGS WITH THE BASIC RIGHTS TO HUMAN LIFE

“Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody”

No matter the culture or society humans are humans, even if they come in the form of a prisoner in an orange jumpsuit. Extreme delays in the imposition of death sentences, the deplorable conditions on death row and the anxiety created by the threat of one’s own imminent death are inflicting a great psychological...
pressure and trauma on death row inmates.\textsuperscript{171} Death row inmates are no longer sentenced to just death, they are subjected to two sentences—one of death and one of torture. The three components making up the death row phenomenon/syndrome result in a psychological breakdown of death row inmates which results in violation of international law. The concept of death row phenomenon/syndrome is a violation against the prohibitions of torture and protections for humane treatment, a violation of the right to life, a violation of executing those with mental incapacity, and a violation of limiting the suffering of prisoners in custody.

In order to find a universal ethical context in which to view the rights of all humans, countries will need to comply a body of international law and no longer live under the guise of ethical relativism. What is right for one human being is right for all no matter the circumstances. The conditions and trauma of death row phenomenon/syndrome should be applied equally to all humans. The international world needs to recognize that a delay in execution coupled with the physical conditions and anxiety may constitute the existence of the death row phenomenon and a violation of ICCPR Articles 6, 7 and 10 in addition to the Convention Against Torture.

\textsuperscript{171} Elisabeth Hanowsky, Frank C. Newman, Comment, \textit{The Death Row Phenomenon is a Violation of the Limitations Placed on Capital Punishment Under International Human Rights Law}, International Human Rights Clinic, 16