

## LIVING CONDITIONS ON DEATH ROW

### DETAILED FACTSHEET

#### 16<sup>th</sup> World Day against the Death Penalty

On 10 October, 2018 the World Coalition Against the Death Penalty and abolitionists around the world will celebrate the 16th World Day Against the Death Penalty. This year, the World Day will focus on the living conditions of those sentenced to death. The World Coalition is addressing the issue because it is aware that regardless of the prospect of execution, the imprisonment of those sentenced to death in itself inflicts considerable physical and psychological harm, which can, in some cases, amount to torture.

**Striving for the complete abolition of the death penalty also means we cannot ignore the daily treatment imposed by retentionist countries on prisoners sentenced to death.**



### Introduction

According to Amnesty International's 2017 annual report<sup>1</sup>, at least 21,919 people were known to be under a sentence of death worldwide at the end of 2017. The Cornell Center on the Death Penalty Worldwide estimates the number of people sentenced to death around the world to be slightly less than 40 000. Although people on death row are entitled to the same basic rights and treatment conditions as other categories of prisoners, as set out in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela rules), many testimonies document the inhumane living conditions that people sentenced to death endure.

This detailed factsheet aims to shine a light on prison conditions suffered by many people sentenced to death worldwide. These people—wherever located— are often victims of human rights violation. And in many cases, these violations receive little, to no, exposure because of the lack of visibility that remains on death row, as access is often very limited. Unlike many flagrant violations in other arenas, where technology makes it ever easier to capture heinous acts on video, death row cells remain in the shadows, known only to those who experience it or to those who travel to the prisons to see it firsthand.

In order to give visibility to this issue, the following information is divided into three sections. The first looks to provide a summary of what people on death row goes through and highlights the associated issues—both physical and mental. The second section provides an overview of the currently applicable international standards with regard to the conditions of detention of persons sentenced to death. The third then examines what impact these conditions may have on family, friends and lawyers.


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<sup>1</sup> Amnesty International's 2017 annual report available here:  
<https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF>



## World map of countries where people are currently sentenced to death



-  Countries where at least **1 000 people** are sentenced to death
-  Countries where at least **100 people** are sentenced to death
-  Countries where at least **1 person** is sentenced to death
-  Countries where at least **one person was executed in 2017**



## Methodology

This note was prepared in partnership with the NGO “The Advocates for Human Rights”, with the assistance of the law firm Fredrikson and Byron, P. A., by the World Coalition Against the Death Penalty. The database on the death penalty worldwide by Cornell Center on the Death Penalty Worldwide and Amnesty International reports, among others, were used.

The World Coalition also acknowledges students participating in the research programme of the Faculty of Law, University of Cambridge, for their preparatory research work.

This detailed factsheet would not exist without all the stories gathered and shared by the member organisations of the World Coalition.



## Background: What is death row?

“Death row” refers to the section of a prison where people sentenced to death are detained. Prisoners are considered to be ‘on death row’ from the moment they have been sentenced to death for a capital crime in the first instance, until their execution, commutation or release if they have been acquitted, including during the appeal period.

“Death row” is a general term applicable even in countries where there is no specific prison section for people awaiting capital punishment. Indeed, in some countries there are no specialized sections for persons sentenced to death outside the general prison population. However, the status of prisoners sentenced to death remains different from that of other prisoners. The Cornell Center on the Death Penalty Worldwide reports that people sentenced to death are usually exposed to the same environment as the general prison population, but their conditions of detention are often worse.<sup>2</sup>

### 1. Living conditions on death row

Conditions of detention for people sentenced to death vary from one country to another. However, certain conditions are systematically found in each country.

For example, in many countries, people sentenced to death are detained in solitary confinement, and can spend almost all day in their cells without permission to leave.



In the **UNITED STATES**, in some states, such as California or Texas, solitary confinement is complete, and prisoners remain locked in their cells all day long, 22 hours a day<sup>3</sup>. They are kept in isolation and thus endure extreme confinement<sup>4</sup>.

In **JAPAN**, prisoners are not allowed to move about in their cell as they are required to remain squatted. No exercise is allowed inside the cell<sup>5</sup>.

In **PAKISTAN**, those sentenced to death can walk outside for only about an hour a day, while they are often given designated areas known as ‘death cells’ where “eight prisoners will be forced to share an eight-by-ten ft cell”.<sup>6</sup>

In **VIETNAM**, the living conditions of people sentenced to death are particularly harsh: prisoners deemed dangerous are detached from their chains for only 15 minutes a day to wash themselves.<sup>7</sup>

Other general conditions have been listed, such as:

#### - Prison overcrowding



In **MALAWI**, prisoners sleep in shifts and lie on their sides, head to foot, because of the lack of space. Between 4 pm and 6 am the cells are locked; during that time 200 men share a 8 by 6-foot cell designed to fit 2 or 3 men<sup>8</sup>.

In **GHANA**, prison Services officials reported that in one prison in Ghana 104 death row prisoners were held in a cell designed to hold only 24 prisoners<sup>9</sup>.

<sup>2</sup> Death Row Conditions, *The Cornell Center on the Death Penalty Worldwide*, available here: <http://www.deathpenaltyworldwide.org/death-row-conditions.cfm>

<sup>3</sup>Anthony Graves, An Innocent Man’s Tortured Days on Texas’s Death Row, ACLU Blog of Rights, available here: <http://www.aclu.org/blog/prisoners-rights-capital-punishment/innocent-mans-tortured-days-texas-death-row>

<sup>4</sup>Death Row Conditions, *The Cornell Center on the Death Penalty Worldwide*, available here: <http://www.deathpenaltyworldwide.org/death-row-conditions.cfm>

<sup>5</sup>A Secret theatre: *Inside Japan’s Capital Punishment System*, C. Lane.

<sup>6</sup><https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Pakistan>

<sup>7</sup>Challenges [https://www.challenges.fr/societe/au-vietnam-de-l-art-dans-les-couloirs-de-la-mort\\_590266](https://www.challenges.fr/societe/au-vietnam-de-l-art-dans-les-couloirs-de-la-mort_590266)

<sup>8</sup>Joint Stakeholder Report on the Death Penalty in Malawi’ (2014)

<sup>9</sup>Death Row Conditions, *The Cornell Center on the Death Penalty Worldwide*, available here: <http://www.deathpenaltyworldwide.org/death-row-conditions.cfm>

- **Insufficient food and drinking water**



In **MOROCCO**, a man testifies: "I became a living dead. Prison is about deprivation. I forgot the flavour of fruits. I spent eighteen years without eating them even once"<sup>10</sup>.

In **INDONESIA**, food provided by prisons is insufficient, and guards often seek bribes to allow family members to supplement their relatives' diets<sup>11</sup>.

- **Lack of medical care**



In **BELARUS**, a prisoner sentenced to death describes the lack of medical care: "The doctor stopped by and asked if anyone needed medical care. The newcomers, like me, who were there for the first time, answered that they needed medical help to what the doctor replied, "See my doctor's white uniform? You won't see it again." And we didn't."<sup>12</sup>

In **UGANDA**'s Jinja Prison, doctors visit only twice a month. When people on death row fall sick the prison's medical team is hesitant to treat them since "they have been sentenced to die anyway"<sup>13</sup>.

The lack of medical care is particularly acute for mentally ill prisoners.



In **PAKISTAN**, mentally ill prisoners are often kept together in one cell. By way of example, at one Punjab prison, forty mentally ill prisoners were once chained to a wall in the same cell where incompetent doctors subjected prisoners to substandard medical care.<sup>14</sup>

- **Lack of personnel and infrastructure,**



In **ERITREA**'s prisons, overcrowding is so severe that some prisoners are reportedly held in shipping containers, underground bunkers, and other similar places with limited light or ventilation.<sup>15</sup>

- **Deplorable sanitary conditions**



Hanut, a prisoner sentenced to death in **INDIA** revealed that "until 2010, there were no toilets in the prison. The prisoners were provided a steel tube inside their cells for daily toiletry needs. Hanut recalled the horror of the days on which the tub was not cleaned. The entire cell would be filled with an unbearable stench and even the thought of consuming tea within the same cell was repulsive".<sup>16</sup>

- **Physical violence**

In some countries, there are even more extreme conditions faced by those sentenced to death. For example, in some countries, such as, **Barbados, Belarus, Japan, Nigeria, and Zimbabwe**, death row prisoners are often kept in cages, confined to dark rooms, kept next to the gallows where they can hear executions.<sup>17</sup>



<sup>10</sup> Sentenced to die. OMDH and ECPM

<sup>11</sup> *The Cornell Center on the Death Penalty Worldwide*, available here: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Indonesia>

<sup>12</sup> Report on Belarus, FIDH and VIASNA, available here:

[https://www.fidh.org/IMG/pdf/death\\_penalty\\_in\\_belarus\\_murder\\_on\\_un\\_lawful\\_grounds\\_en\\_web.pdf](https://www.fidh.org/IMG/pdf/death_penalty_in_belarus_murder_on_un_lawful_grounds_en_web.pdf)

<sup>13</sup> Death Row Conditions, *The Cornell Center on the Death Penalty Worldwide*, available here:

<http://www.deathpenaltyworldwide.org/death-row-conditions.cfm>

<sup>14</sup> Amnesty International annual report 2008

<sup>15</sup> Death Row Conditions, *The Cornell Center on the Death Penalty Worldwide*, available here :

<http://www.deathpenaltyworldwide.org/death-row-conditions.cfm>

<sup>16</sup> Death Penalty India Report, National Law University, Delhi, 2016. P82

<sup>17</sup> Death Row Conditions, *The Cornell Center on the Death Penalty Worldwide*, available here:

<http://www.deathpenaltyworldwide.org/death-row-conditions.cfm>




Former staff of the Pretrial Detention Centre No. 1 in **BELARUS** testifies: “From the very beginning, they [prisoners] face maximum security restrictions. It’s nowhere written down, but it’s a fact. The rules prohibit them to lie or sit on the plank beds from 6 am to 10 pm. [...] Death convicts are never taken out for a walk. It is prohibited by the law although there is a small yard in the new building. The death convicts are usually brought there after lunch during frequent inspections of cells [...]. Sometimes they can be locked in the shower, but most often they are kept in the yard”<sup>18</sup>.

People sentenced to death in **China, Saint Lucia, South Sudan, Taiwan, Thailand, and Vietnam** are often shackled to the wall for their entire detention or for prolonged periods of time<sup>19</sup>.

#### - **Waiting on death row**

But people sentenced to death do not “only” face these bad physical conditions; they awake each day and must face their fates that surround life on death row again and again. This constant exposure to death is unfathomably unbearable—especially when the time period between sentencing and death continues to increase.

 In the **UNITED STATES**, at least 40% of prisoners sentenced to death have spent more than 20 years on death row. With an increase of 171.62% since 1984, a prisoner on death row can wait 190 months on average before being executed.<sup>20</sup> Some people have been on death row for so many years that they need wheelchairs or a walker<sup>21</sup>.


In **INDIA**, death row prisoners spend a very long time in prison. While the median time on death row is 10 years and 5 months, some prisoners have spent more than 25 years locked in a cell.<sup>22</sup>

Navinder Sing spent more than 25 years on death row, only to see his pardon application rejected by the Indian Supreme Court after 10 years of trial<sup>23</sup>.

In **CHINA** the time between sentencing and execution is unpredictable. An average “death row” prisoner can expect to wait roughly two months from the time the court approves their death sentence to the time of execution. But this period can vary considerably, with a small handful of people waiting more than 200 days and others waiting less than a week.<sup>24</sup>

#### - **Death on death row**

More and more people die on death row due to aging and the time spent on death row, but also due to lack of medical treatment and neglect.

 A former prisoner sentenced to death in North Kivu in **DRC** testifies on the conditions of detention in the Muzenze prison in Goma, which today houses 3,021 prisoners, whereas its initial capacity was 150 people.

“During this first quarter of 2018 in Munzenze prison in Goma, there were 7 deaths related to difficult detention conditions [...] Prisoners are becoming increasingly aggressive in order to survive in prisons. For most death row inmates, their life expectancy in prison is 5 years. But many of them die before 5 years as a result of difficult living conditions.”<sup>25</sup>

<sup>18</sup>FIDH report, Belarus available here:

[https://www.fidh.org/IMG/pdf/death\\_penalty\\_in\\_belarus\\_murder\\_on\\_un\\_lawful\\_grounds\\_en\\_web.pdf](https://www.fidh.org/IMG/pdf/death_penalty_in_belarus_murder_on_un_lawful_grounds_en_web.pdf)

<sup>19</sup> Death Row Conditions, *The Cornell Center on the Death Penalty Worldwide*, available here:

<http://www.deathpenaltyworldwide.org/death-row-conditions.cfm>

<sup>20</sup> DPIC, Time on Death Row, available here: <https://deathpenaltyinfo.org/time-death-row>

<sup>21</sup> Death Penalty Information Center; <https://deathpenaltyinfo.org/time-death-row>

<sup>22</sup> National Law University Delhi (NLU), *Death Penalty India Report*, Summary, p. 12 (2016).


<sup>23</sup> *Death Penalty India Report*, National Law University, Delhi, 2016. P60

<sup>24</sup> <https://www.duihuaresearch.org/2016/04/chinas-average-death-row-prisoner-waits.html>

<sup>25</sup> Testimony gathered by CODHAS in 2018



In some cases, death row prisoners commit suicide out of despair. Also in some prisons in the USA like the U.C.I. and F.S.P. Florida more and more unsolved prisoners deaths are under investigation due to excessive force and abuse of physical violence by prison staff.


 For months after death row prisoner Frank Valdes died at the **Florida** State Prison on July 17, 1999, FDOC officials maintained that he committed suicide by diving head-first off his bunk, striking the bars in his cell. An autopsy, however, clearly indicated that bootprints were found on his body and that he had been savagely beaten by guards. Valdes' family received a \$750,000 settlement, though the guards charged with killing him were eventually acquitted at trial<sup>26</sup>.

#### - What dignity in the midst of a scheduled death?

For people sentenced to death, once all remedies have been exhausted, they can be executed. This can happen without any notification from the authorities or with the announcement of the date of execution in advance.

In both cases, the psychological effects are significant. On the one hand, not knowing and telling oneself that every day can be the day of its execution and on the other hand, knowing the date of its scheduled death.

When prisoners sentenced to death are not notified of their execution date, (in countries such as **Barbados, Belarus, Japan, Nigeria, Pakistan, Saint Kitts and Nevis, Uganda and Zimbabwe**)<sup>27</sup>, it causes extreme psychological anguish.

 A lawyer from **NIGERIA** explained: "If they plan to execute a prisoner, the hangman will come to the prison the day before, to wash the gallows. The inmates will get the information. They know there will be an execution the day after."<sup>28</sup>


Arthur Angel sentenced to death in **NIGERIA** in 1984 and released in 2000 confirmed that they tried to find out who would be next. He remembered: "We would ask the wardens, from which state is the person, what is the crime, how long ago. They would tell us little by little and so we could find out."<sup>29</sup>

One former death row prisoner who spent 11 years on death row said: "I've dreamt I was hanged, that I was killed." Another who is still on death row: "I have fear. I don't even take my today's breakfast because of that fear."<sup>30</sup>

In **PAKISTAN**, people sentenced to death do not know the date of their execution; they are constantly waiting. Sohail Yafat was wrongfully charged with murder in 2001. He spent 10 years in prison before he was exonerated.

"Prisons become silent when prisoners learn that an execution warrant has been issued. I barely slept at night when I was a prisoner there for ten years. The sounds of men snoring, crying and sometimes screaming in their sleep will keep you awake. The exception was when we knew that one of us was heading to the gallows. We would get silence, but we would lose our sleep. Even those of us who were not on death row would tense up. Held like animals in a pen, we would turn to the one thing that we could do: pray<sup>31</sup>."

In other cases, detainees are informed and therefore prepare themselves for their scheduled death.

 In April 2015, the **INDONESIAN** authorities had scheduled the execution of several persons on death row, including eight foreigners and one Indonesian, all accused of drug trafficking.

They were informed of their execution 72 hours before and from that moment their long march towards death begun: they were prepared by the authorities and transported to Nusakambangan Island, also known as "death

<sup>26</sup> "[Florida's Department of Corrections: A Culture of Corruption, Abuse and Deaths](#)", Prison Legal News, February 2, 2016;

<sup>27</sup> Death Row Conditions, *The Cornell Center on the Death Penalty Worldwide*, available here:

<http://www.deathpenaltyworldwide.org/death-row-conditions.cfm>

<sup>28</sup> Amnesty International report, waiting for the hangman

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Testimony by Sohail Yafat, gathered by Justice Project Pakistan, available here: <https://www.dawn.com/news/1362725/i-will-never-forget-the-sound-of-a-body-being-dropped-into-the-pit-when-a-man-was-hanged>



island", where they would be executed. The day before, as a last meal, they all ate fried chicken, while the 9 ambulances with the coffins of each of them were ready to transport the remains the next day.<sup>32</sup> One of the people on the list, Mary Jane Veloso, Filipino, had her execution suspended at the last minute. Although this is an obvious relief, the psychological torture of having been prepared for one's own execution is a real trauma.

## 2. Legal frameworks and international standards

Although Article 6 of the International Covenant on Civil and Political Rights (ICCPR) acknowledges the use of the death penalty, the actual practice of the capital punishment is not left to the unfettered discretion of the State<sup>33</sup>. "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court." Furthermore, in its General Comment n°6 on the right to life, the UN Human Rights Committee stated that "the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure."<sup>34</sup>

Indeed, States must comply with various safeguards such as the prohibition against torture and cruel and inhuman or degrading treatment, set out in Article 7 of the International Covenant on Civil and Political Rights ("ICCPR"): "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

### Other Treaties which set out this prohibition in a similar way:

- European Convention on Human Rights (Article 3);
- American Convention on Human Rights (Article 5);
- African Charter on Human and Peoples' Rights (Article 5); and
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 16).

While the death penalty does not constitute a violation of the prohibition of torture and cruel, inhuman or degrading treatment or punishment *per se*, **the conditions of detention of persons sentenced to death may constitute a violation of the prohibition of cruel, inhuman or degrading treatment or punishment.**

Furthermore, the **Standard Minimum Rules for the Treatment of Prisoners** (Nelson Mandela Rules) are, to date, the most robust set of standards in the area of prison conditions. Adopted by the UN General Assembly in resolution 70/175 on 17 December 2015, they provide model international human rights standards regarding the basic rights of prisoners<sup>35</sup>. Their stated goal is to "set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management"<sup>36</sup>.

Although these rules do not specifically mention persons sentenced to death, **they apply to all categories of prisoners.**

The **Nelson Mandela Rules** then go on to focus on basic principles for the treatment of prisoners, including, but not limited to: personal hygiene; clothing and bedding; food; exercise and sport; health care; and contact with the outside world.

<sup>32</sup> *Last Hours on Death Island; Bali Nine's final moments before firing squad* available on: <https://www.news.com.au/world/asia/last-hours-on-death-island-bali-nines-final-moments-before-firing-squad/news-story/51f777e9ea09efa27024fa35cc6753d0>

<sup>33</sup> United Nations General Assembly, International Covenant on Civil and Political Rights, Res. 2200A (XXI), Art.6 (Mar. 23, 1976).

<sup>34</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April 1982.

<sup>35</sup> U.N. Standard Minimum Rules for the Treatment of Prisoners, U.N.G.A. Res. 70/175 (Dec. 17, 2015)

<https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/F-book.pdf>

<sup>36</sup> The Nelson Mandela Rules are available here: [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)

## Some of the “Basic Rights” of Prisoners Under International Law

1. **Freedom from torture** or other cruel, inhuman or degrading treatment;
2. **Respect for prisoners’ dignity** and value as human beings;
3. **Necessary medical care**, including treatment for mental health issues;
4. **Food of proper nutritional value** and drinking water;
5. **Clean and adequate living conditions**, including sleeping and bathroom accommodations;
6. **Access to open air** and physical exercise;
7. **Adequate personal space**;
8. **Access to educational** and vocational activities;
9. **Regular contact with friends and family**;
10. **Access to legal counsel**.

### - **Death row phenomenon**

Life on death row can lead to several mental trauma and physical deterioration of death row prisoners. The effects of prolonged delay under difficult death row conditions have been internationally recognized as the death row phenomenon. Although there is no universal definition, the death row phenomenon can be defined as “a prolonged delay under the harsh conditions of death row”.<sup>37</sup> Thus, **the death row phenomenon** is not due to delay alone. Nor is it a product of harsh conditions in and of themselves. Rather, **it is the deadly combination of the two**.

Harrison and Tamony define the Death Row Phenomenon as “the harmful effects of death row conditions, including exposure to extended periods of solitary confinement and the mental anxiety that prisoners experience whilst waiting for their death.”<sup>38</sup> In other words, the Death Row Phenomenon equals the time a person sentenced to death spends stuck between sentencing and “imminent<sup>39</sup>” death plus conditions experienced during that time.

As a result of this phenomenon, life on death row can lead to several psychological traumas as well as physical and mental deterioration of people sentenced to death.



A former prisoner on death row in Texas, **USA** testifies:

“I saw guys who dropped their appeals because of the intolerable conditions. Before his execution, one inmate told me he would rather die than continue existing under these inhumane conditions. I saw guys come to prison sane, and leave this world insane, talking nonsense on the execution gurney. One guy suffered some of his last days smearing feces, lying naked in the recreation yard, and urinating on himself.”<sup>40</sup>

### - **Death row syndrome**

Death row syndrome is often used to describe the consequential psychological illness that occurs as a result of the death row phenomenon.<sup>41</sup> Here is where death row’s relationship with solitary confinement becomes most acute. Often, death row and solitary confinement walk hand in hand (as many sentenced to death are

<sup>37</sup> Patrick Hudson, Does the Death Row Phenomenon Violate a Prisoner’s Human Rights under International Law? 11 EJIL No. 4, 833-856, p. 836 (2000).


<sup>38</sup> Dr. Karen Harrison and Anouska Tamony, *Death Row Phenomenon, Death Row Syndrome and Their Affect on Capital Cases in the US*, Int. J. Criminology (2010).

<sup>39</sup> In the United States, a prisoner will spend on average more than 13 years waiting for execution.

<sup>40</sup> Death Penalty Information Center (DPIC), Death Row: Former Texas Death Row Inmate Testifies at Congressional Hearings on Solitary Confinement.

<sup>41</sup> Harrison and Tamony, *supra* note





sent right to solitary)<sup>42</sup>. The nightmares of the Death Row Phenomenon are magnified by the ravaging dehumanization that prolonged isolation inflicts within the confines of solitary confinement.

One **INDIAN** judge has noted as much about prisoners subject to solitary while awaiting death: “[the prisoner] must, by now, be more a vegetable than a person and hanging a vegetable is not [the] death penalty.”<sup>43</sup>

At present day, the psychological studies only confirm that solitary confinement, similar to what is faced by many prisoners on death row, **drives people mad**. Indeed, clinical studies have shown that the existence of "death row syndrome" is partly due to four mental disorders: feelings of helplessness and defeat, feelings of diffuse danger, emotional emptiness and loneliness, and declining mental and physical acuity.

For example, expert psychiatrist, **Dr. Stuart Grassian**, has done a considerable amount of work on the psychological damnation that trails solitary: “In solitary confinement, ordinary stimuli become maddening. Individuals in such confinement brood on normally unimportant stimuli, and minor irritations become the focus of increasing agitation and paranoia. I have examined countless individuals in solitary confinement who have become obsessively preoccupied with some minor, almost imperceptible bodily sensation, a sensation that grows over time into a worry, and finally into an all-consuming, life-threatening illness.”<sup>44</sup>

**Dr. Terry Kupers** explains how since people on death row have been sent to solitary confinement there has been an increase in mental illness on death row, convicts often complain of "anxiety, schizophrenia, paranoia and despair"<sup>45</sup>.

- **Living conditions on death row: a violation of the prohibition of torture and cruel, inhuman or degrading treatment**

Several international and regional Courts have provided abundant landmark cases in this area denouncing conditions of detention when it relates either to torture or to cruel, inhuman or degrading treatment.

**In Pratt and Morgan v. Jamaica**, the UN Human Rights Committee had to determine whether the excessive delays in judicial proceedings constituted a cruel, inhuman and degrading treatment.<sup>46</sup>

In its ruling, the Committee stated that “in principle, prolonged judicial proceedings do not per se constitute cruel, inhuman or degrading treatment [...] however, the situation could be otherwise in cases involving capital punishment.”<sup>47</sup> Even though the delay and the surrounding circumstances did not meet the necessary threshold, an incident related to the issue of warrants for execution gave the Committee a basis for granting a relief under Article 7.<sup>48</sup>

**The Committee also relied on Article 10 of the ICCPR to condemn the deplorable conditions on death row, particularly with regard to lack of medical care.**<sup>49</sup>

In **JAMAICA**'s prisons, medical care is virtually non-existent, with only three doctors, one psychiatrist and a single full-time nurse servicing approximately 5,000 prisoners spread throughout 12 facilities. Consequently, prisoners have died as a result of minor injuries<sup>50</sup>.

<sup>42</sup> Nathalie Baptiste, *All Death Row Inmates in Pennsylvania Are Put in Solitary Confinement. Now the State is Getting Sued*, Mother Jones, January 25, 2018.

<sup>43</sup> W. Schabas, *The Death Penalty as Cruel Treatment and Torture* (1996).

<sup>44</sup> Stuart Grassian, *Psychiatric Effects of Solitary Confinement* in VOICES FROM SOLITARY, *supra* note 15 at 159.

<sup>45</sup> Dr Terry Kupers, Solitary confinement on death row is mental torture: psychiatrist, World Coalition Against the Death Penalty, available here: <http://www.worldcoalition.org/video-terry-kupers-solitary-confinement-death-row-torture-penalty.html>

<sup>46</sup> Pratt and Morgan v. Jamaica (Nos 210/1986 and 225/1987), UN Doc. A/44/40 222, §13.6 (1989).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at §13.7

<sup>49</sup> Kelly v. Jamaica (No. 253/1987), UN Doc. A/46/40 241 (1991).

<sup>50</sup> Death Row Conditions, *The Cornell Center on the Death Penalty Worldwide*, available here: <http://www.deathpenaltyworldwide.org/death-row-conditions.cfm>

**Regional courts** have also confirmed and applied the doctrine of the death row phenomenon to demonstrate how it constitutes a cruel, inhuman and degrading treatment. In fact, the landmark case has been rendered by the European Court of Human Rights in **Soering v. United Kingdom**. Because the defendant would have waited for a very long time in extreme conditions, the ECHR held that the defendant's extradition to the United States would have exposed him to a real of risk of treatment going beyond the threshold set by Article 3 which prohibits torture and inhuman or degrading treatment.<sup>51</sup>

In **Hilaire, Constantine and Benjamin and al. v. Trinidad and Tobago**, the Inter-American Court of Human Rights adopted the same rationale finding that the death row phenomenon was cruel, inhuman and degrading treatment.<sup>52</sup>

**At a domestic level**, several courts have recognized that conditions on death row can constitute a possible breach of Article 7 of the ICCPR Covenant. In *Catholic Commissioner for Justice and Peace in Zimbabwe v. Attorney General and Others*, the Supreme Court of Zimbabwe held that based on the judicial and academic consensus concerning the death row phenomenon, the prolonged delay and the harsh conditions were a violation of the prohibition of torture and inhuman or degrading punishment.<sup>53</sup> **In the case of Susan Kigula**, the Supreme Court of Uganda also acknowledged that a prolonged delay constituted cruel and inhuman treatment.<sup>54</sup>

### 3. Death row, what impact on close relatives?

When dealing with death sentences and time spent on death row, it is also important to address the impact of conditions of detention on families, relatives, lawyers of persons sentenced to death, and even on prison staff.

#### - The impact of death row on families:

Although most prisoners have access to visits from their families and relatives, prisons remain hermetic and inaccessible. Families may face barriers in visiting their loved ones in prison. These obstacles can differ from one prison to another. It is often a question of geographical remoteness, but also of the expenses that visiting their relatives can generate and finally stigma and social ostracization. Indeed, although the sentenced person is alive, he is considered as "living dead".



In **INDIA**, in most states, prisoners sentenced to death are incarcerated in central prisons. Due to the vast distance between the residence of the families and these prisons, families are often compelled to travel for several days each time they visit the prisoner. It considerably reduces the number of visits between the family and the detainee<sup>55</sup>.

**Chetak** has had just one visit from his mother in the 11 years of his incarceration. His mother leads an extremely impoverished existence in a neighbouring state and does not speak the language of the state in which Chetak is confined<sup>56</sup>.

For **Dheer**, meeting his wife in prison is always a bittersweet experience. He knows that she has to travel for two days and spend Rupees 300 in coming to meet him. He feels guilty that his family has to undergo such hardship to meet him, seeing them also make him immensely happy<sup>57</sup>.

**Dhanvant's** family is terrified of going to meet Dhanvant who was sentenced to death for rape and murder of a minor. His father explains that the victim's family is powerful and influential, and he feared that they might not be allowed to live in the village if anyone find out that they were in touch with the prisoner<sup>58</sup>.

<sup>51</sup> *Soering v. United Kingdom*, Application, ECHR, No. 14038/88, Series A, No. 161, §111 (1989).

<sup>52</sup> United Nations General Assembly (UNGA), Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/67/279, §644 (Aug. 9, 2012).

<sup>53</sup> *Id.* §45.

<sup>54</sup> *Attorney General v. Susan Kigula and 417 others*, Supreme Court of Uganda, Constitutional Appeal (No. 3 of 2006)(2009).

<sup>55</sup> Death Penalty India Report, National Law University, Delhi, *family visits*, p92

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* p94

<sup>58</sup> *Id.* p91



Visits can thus become spaced, reinforcing the dimension of oblivion for people who are detained on death row. Some visits even stop overnight because the pain of separation is too much to bear.

**When visits still take place**, families also suffer the impact of conditions of detention. In many cases, families cannot have physical contact and may be separated by glass.

There is also the lack of privacy, with the guards often listening to conversations, preventing families from having the necessary moments of intimacy.



Alexandra met her father, Gennady Yakovitsky, on death row in **BELARUS** several times before he was executed. Father and daughter saw each other through a glass window, always closely watched by guards. "We didn't talk about the case, it was forbidden. We could only talk about family things." On one of her eight visits Alexandra, then 27, complained to him about the long time it was taking to receive a new passport. "The guards said sarcastically: 'You still have a little time left'."<sup>59</sup>

In **VIETNAM**, people sentenced to death use art to send life signs to their families through the back door.

Nguyen Truong Chinh received plastic figurines made and sent by his son from death row, but "Like other relatives of convicts who received them through former common law inmates employed on death row, he [Nguyen Truong Chinh] no longer receives these creative signals. And like the other families, he doesn't dare ask his son for an explanation during their closely watched 30-minute monthly meetings."<sup>60</sup>



For further information see the **World Day Leaflet** and other testimonies on the **World Coalition website** and social media

#### - The impact of death row on legal professionals, lawyers

Before examining what impact these conditions of detention may have on lawyers, it should not be forgotten that for a post-conviction capital defense lawyer, the stakes are as high as can be: **loss of a case means loss of a client's life.**

Lawyers may sometimes go to prison and not have the opportunity to meet their clients under "normal" conditions, as lack of confidentiality is often criticized and denounced.

These hazards to prepare the defense of a person already sentenced to death have a real impact on the defense, and if the sentenced person loses his appeal, that the lawyer fails to commute the sentence, it is a human life that will be killed.

The looming threat of execution makes the work of lawyers dealing with a case that has already been sentenced all the more difficult and crucial. The urgent need for representation of each client and the need to be experienced and well informed for this type of file implies a substantial individual and professional investment<sup>61</sup>.



A lawyer from **UNITED STATES** testifies: "His life is on my shoulders. It's terribly stressful and burdensome. It is, for me, almost unbearable."<sup>62</sup>

In *Fighting for Their Lives: Inside the Experience of Capital Defense Attorney*, a lawyer testifies<sup>63</sup>: "You feel like you're the only thing between your client and him getting executed"<sup>64</sup>.



See the **Practical sheet for lawyers**

<sup>59</sup> "Death Penalty in Belarus. Murder on (Un)lawful Grounds", FIDH and VIASNA.

<sup>60</sup> Au Vietnam de l'art dans les couloirs de la mort, témoignages de Nguyen Truong Chinh ; *Challenges*, available here : [https://www.challenges.fr/societe/au-vietnam-de-l-art-dans-les-couloirs-de-la-mort\\_590266](https://www.challenges.fr/societe/au-vietnam-de-l-art-dans-les-couloirs-de-la-mort_590266)

<sup>61</sup> PRI, *Fighting for clients' lives: the impact of the death penalty on defence lawyers*, available here: <https://www.penalreform.org/wp-content/uploads/2014/04/fighting-for-clients-v3-web.pdf>

<sup>62</sup> *Id.*

<sup>63</sup> *Fighting for Their Lives: Inside the Experience of Capital Defense Attorneys* by Susannah Sheffer


<sup>64</sup> *Id.*

## - The impact of death row on prison staff<sup>65</sup>

It often happens that **prison staff**, confronted daily to death row and deplorable conditions of detention mentioned above, are deeply affected by the environment, the constant suffering they face, and the role they play in this deadly scheme.


People sentenced to death are usually considered among the most dangerous prisoners and are placed in the highest security conditions. Prison guards are frequently suspicious of death row prisoners, are particularly vigilant<sup>66</sup> around them, and experience death row as a **dangerous place**.

Harsh prison conditions can make things worse not only for prisoners but also for prison staff. The suffering of prisoners living in this way, combined with prolonged incarceration and constant anxiety due to forthcoming execution<sup>67</sup>, sometimes leads prison staff to fear for their own safety.

 In 2014, in **UNITED STATES**, the Texas prison guards union appealed for less restrictive living conditions on death row, because the guards faced daily danger from prisoners made mentally ill by solitary confinement and who had “nothing to lose”; including physical and verbal violence, threats, etc. against guards<sup>68</sup>. And the restrictive conditions do not improve security inside the prison.

Despite the stark conditions, death rows are still places where human connections form. In all but the most extreme solitary settings, guards engage with prisoners regularly, Guards may spend more time with death row prisoners than with friends or family outside and can develop empathy towards the prisoners and a sentimental bond sometimes difficult to manage afterwards.

Managing visits from family members can be emotionally tough for guards, especially when prisoners are banned from touching their visitors and visits take place through glass partitions or mesh wires<sup>69</sup>.

 In **UNITED STATES** Edgar Fincher, correctional officer on the Ellis Unit (former Death Row) in Walker County in **Texas** testifies: “The ‘most difficult thing’ as an attending guard is ‘to see on the other side of the glass ... the families. Children. Never be able to touch. Never be able to hug’.”

The moment when the guards see the prisoner for the last time can sometimes be very difficult, when the prisoners leave for the execution, many guards testimonies have reported a feeling of sadness. A Tanzanian prison officer described how he would “spend sleepless nights for a week before regaining my composure”<sup>70</sup>. One US guard reported at least a dozen occasions in which a prisoner about to go to the execution chamber would stick his hand out of the slot in the door to shake his hand and say something like: “Good to know you ... Thanks for being a good officer”<sup>71</sup>.

 See the **Practical sheet for prison staff**

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<sup>65</sup> Prison guard and the death penalty available here : <https://www.penalreform.org/wp-content/uploads/2015/04/PRI-Prison-guards-briefing-paper.pdf>

<sup>66</sup> Information from India, Japan and USA, 2014 and 2015.

<sup>67</sup> Penal Reform International, Death Penalty Information Pack, London, p. 35, (2014)

<sup>68</sup> Joanna Walters, ‘Prison Guards Working On Texas’ Death Row Call For Softer Conditions For Condemned Inmates’, The Telegraph website 18 February 2014, <http://www.telegraph.co.uk/news/worldnews/northamerica/10647442/Prison-guards-working-on-Texas-Death-Row-call-for-softer-conditions-for-condemned-inmates.html>

<sup>69</sup> Oliver Robertson and Rachel Brett, Lightening the Load of the Parental Death Penalty on Children, Quaker United Nations Office, Geneva, p. 20, June 2013.

<sup>70</sup> Kiangiosekazi Wa-Nyoka, ‘Death penalty with its perceived deterrent effect’, Daily News website, 15 November 2014, accessed 27 November 2014 at <http://dailynews.co.tz/index.php/columnists/columnists/38290-death-penalty-with-its-perceived-deterrent-effect> (Perceived deterrent effect)

<sup>71</sup> Edgar Fincher Interview



The World Coalition, an alliance of more than 150 NGOs, bar associations, local bodies and unions, was created in Rome on 13 May 2002. It was founded as a result of the commitment made by the signatories of the Final Declaration of the 1st World Congress against the Death Penalty, which was organized by the French NGO Together Against the Death Penalty (ECPM) in Strasbourg in June 2001. The aim of the WCADP is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the end of death sentences and executions in those countries where the death penalty is in force.



The WCADP is striving to achieve these by lobbying international organisations and States, organising international events, and facilitating the creation and development of national and regional coalitions against the death penalty. Since 2003, the WCADP has made 10 October the World Day against the Death Penalty.

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