“THe human rights IMPLICATIONS OF SOLITARY CONFINEMENT, EXTREME SENTENCING,

AND THE DEATH PENALTY”

SIDE EVENT hosted by the

Permanent Mission of Switzerland to the UN in Geneva,

in cooperation with the American Civil Liberties Union (ACLU), Human Rights Advocates, and Penal Reform International (PRI)

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**The Death Row Phenomenon**

Penal Reform International is very pleased to co-sponsor and participate in this side event, and would specifically like to thank the Permanent Mission of Switzerland for co-sponsoring this event, and the Special Rapporteur on Torture for his participation.

**Jurisprudence**

I was asked to focus on the death row phenomenon, which is a relatively new concept, but one that has already become firmly established in international jurisprudence.

It was first acknowledged in the landmark decision by the European Court of Human Rights in the case of *Soering v. United* Kingdom[[1]](#footnote-1) in 1989.

The Court gave legitimacy to the doctrine of the death row phenomenon and identified it as a combination of the following three circumstances:

1. The prolonged period of time spent on death row.

2. The extremely harsh conditions of death row.

3. The ever present and mounting anguish of awaiting execution.

The combination of these circumstances was found to produce severe mental trauma and physical deterioration in prisoners under sentence of death.[[2]](#footnote-2) It has therefore been found to amount to a violation of Article 7 of the International Covenant on Civil and Political Rights.

Since then various courts, for example in Canada, India, Uganda, Pakistan, Zimbabwe, and the Judicial Committee of the Privy Council, as well as the Human Rights Committee, have referred to, and developed jurisprudence on, the death row phenomenon.

One of the most recent judgments on this issue was a 2009 ruling by the Uganda Supreme Court, which held that to execute a person after a delay of three years in conditions that were “not acceptable by Ugandan standards” would amount to cruel, inhuman punishment. The 2009 *Susan Kigula* judgment resulted in 186 death row prisoners having their sentences commuted to life imprisonment, five of whom were immediately released from prison as they had served more than 20 years on death row. As this case clearly illustrates, the death row phenomenon can have an indirect effect on challenging the legitimacy of the death penalty, and has the potential to pressure states to modify their procedures or abandon executions.

**Living hell**

Death row itself has been characterised as a living hell. Not only do inmates spend an enormous amount of time anticipating their own execution, they do so in horrific conditions, which are often much worse than those for the rest of the prison population. Examples of current death row conditions around the world include:

• Solitary confinement for up to 23 hours a day in small, cramped, airless cells, often under extreme temperatures.

• Inadequate nutrition and sanitation arrangements.

• Limited contact with family members and/or lawyers, including prohibitions on any kind of physical contact.

• Excessive use of handcuffing or other types of shackles or restraints.

• Physical or verbal abuse.

• Lack of appropriate health care (physical and mental).

• Being denied access to books, newspapers, exercise, education, employment, or any other type of rehabilitative activities.

In some countries, prisoners wait for more than a decade to be executed. For death-sentenced prisoners in the United States, the average time spent on death row is approximately 14 years. In Nigeria, prisoners have an average twenty-year stay on death row. More than one-third of Japanese death row prisoners have spent more than ten years awaiting execution, and in one reported case, a prisoner had spent more than 38 years on death row.

You can imagine the psychological situation of a prisoner on death row and the extreme uncertainty, anxiety, isolation and sensory deprivation that death row must trigger, even more so if linked to solitary confinement.

Under these conditions, it is not surprising that a prisoners’ mental and physical state deteriorate rapidly.

**Death row phenomenon extended**

Yet, the point I would like to make today is that the “death row phenomenon” goes beyond the actual death row prisoner.

Have you ever tried to imagine what it must be like for the family members of a prisoner on death row, in particular for their children? The suffering associated with a death sentence or execution does not remain restricted to the individual convict, but can also be inflicted on their children. They too have to endure the hope and despair of lengthy appellate processes, as well as having to go through the highs and lows of numerous execution dates that may be stayed and then re-scheduled.

Both mental and physical health and wellbeing are affected by the incarceration of a parent in the first place. How can one bear to be waiting for a final verdict on whether your mother or father will die in the hands of the state?

On top of that, in many countries, the location of death row may be kept secret or opportunities for visits of family members will be limited. As death row prisoners are usually kept under a tight security regime, often children will not get to touch or hold their parent.

Very often, the family will not know in advance about the date of the execution and will not have a chance to say good-bye. If an execution takes place in public, the family will be humiliated alongside the prisoner under sentence of death.

Moreover, in many retentionist states the family will not receive information about the remains of an executed parent, and the body may not be returned for burial, or the burial ground will not be disclosed to the family, which can make the grieving process especially acute.

Finally, following a death sentence or an execution, the children then have to live with the stigma, discrimination and shame from having a parent executed, as well as dealing with the heightened media attention which can lead to feelings of exposure, humiliation and isolation.

All of these circumstances are why I would like us to think of the “death row phenomenon” as affecting more than just the actual prisoner, it affects their children.

For those states that retain the death penalty, but has ratified the Convention on the Rights of the Child, additional consideration should be given to the negative impact of a parent’s death sentence and his or her execution on his or her children.

Later this month, the Permanent Mission of Belgium will be tabling a resolution in the Human Rights Council which calls to convene a panel discussion in September which will have a particular focus on the human rights of children of parents sentenced to the death penalty or executed. Penal Reform International encourages all states to co-sponsor this resolution, and to share practices and experiences from their own countries on how they take into consideration the best interests of children in relation to their parents sentenced to death or executed.

Finally, let me end with a quote of a ten year old girl in Texas, at the time of her father’s execution asked: “they’re going to kill him because he killed somebody, so when they kill him, who do we get to kill?”

Thank you for your attention.

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1. *Soering v. The United Kingdom* (1989) 11 EHRR 439 (Series A, No 161; Application No 14038/88). [↑](#footnote-ref-1)
2. For example, Patrick Hudson, “Does the death row phenomenon violate a prisoner’s rights under international law?”, European Journal of International Law, vol. 11, No. 4 (2000), pp. 834-837. [↑](#footnote-ref-2)