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**General Discussion on the preparation for a General Comment on**

**Article 6 (Right to Life) of the International Covenant on Civil and Political Rights,**

**Palais des Nations, Room XIX – 14 July 2015**

**Written contribution submitted by The Advocates for Human Rights, a non-governmental organization in special consultative status, in collaboration with The World Coalition Against the Death Penalty, an alliance of NGOs, bar associations, local authorities and unions and FIACAT, the International Federation of Action by Christians for the Abolition of Torture**

1. The Advocates for Human Rights (The Advocates) is a volunteer-based non- governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition Against the Death Penalty.
2. The World Coalition Against the Death Penalty (World Coalition), an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.
3. FIACAT, The International Federation of Action by Christians for the Abolition of Torture, is an international non-governmental human rights organisation, set up in 1987, which works towards the abolition of torture and the death penalty. The Federation brings together some thirty national associations, the ACATs, present in four continents.

FIACAT represents its members before international and regional organisations; by referring the concerns of its members working on the ground to international bodies, FIACAT’s aim is to encourage the adoption of relevant recommendations and their implementation by governments. FIACAT works towards the application of international human rights conventions, the prevention of torture in places of detention, and an end to enforced disappearances and impunity. It also takes part in the campaign against the death penalty by calling on states to abolish capital punishment in their legal systems. FIACAT also assists its member associations in organising themselves, supporting them so that they can become important players in civil society, capable of raising public awareness and having an impact on the authorities in their country.

**Introduction: Death Penalty In The Context Of The International Human Rights Framework**

 The preamble to the International Covenant on Civil and Political Rights (ICCPR), entered into force in March 1976, recognizes as one of its guiding principles "the inherent dignity of the human person." Article 6 of the ICCPR confirms that the right to life is at the core of human dignity, and declares that "no one shall be arbitrarily deprived of his life." Recognizing that numerous countries around the world still retained the death penalty, Article 6(2) provides:

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.

However, even at the time of ICCPR's adoption nearly 40 years ago, recognition of the pressing need to abolish the death penalty was evident. Article 6(6) makes clear that provisions of Article 6 striving to prevent the use of capital punishment in the most egregious instances (juvenile offenders and pregnant women), and to provide a definite path to seek clemency, must not be used as excuses for failure to progress toward full abolition.

 In 1982, the Human Rights Committee (the Committee) adopted General Comment No. 6 on the right to life as expressed in ICCPR Article 6. There the Committee observed that this right to life "is the supreme right from which no derogation is permitted," even in times of public emergency, and "should not be interpreted narrowly." Further, the Committee noted that "deprivation of life by the authorities of the State is a matter of the utmost gravity." Referring specifically to capital punishment, the Committee admonished State parties that "all measures of abolition should be considered as progress in the enjoyment of the right to life . . . " The Committee noted some progress toward abolition,[[1]](#footnote-1) but deemed that progress "quite inadequate."

 In 1989, the UN General Assembly adopted the Second Optional Protocol to the ICCPR (OP2), intended to push the international community toward abolition. OP2 recalled that both Article 3 of the Universal Declaration of Human Rights[[2]](#footnote-2) and Article 6 of the ICCPR recognized that all persons have the right to life, and noted the latter provision "strongly suggests that abolition is desirable." State Parties to OP2 committed, irrevocably, that no one within the party's jurisdiction would be executed. In keeping with the ICCPR's recognition that the right to life is the supreme right, from which no derogation is permitted, OP2 permits only one reservation - that the State may retain the right to use the death penalty for the most serious military crimes during time of war. 81 countries are parties to OP2, and 3 others are signatories.

 Nevertheless, a sea change has taken place with respect to the death penalty since the last General Comment on Article 6 was adopted in 1982. Since that time, sixty-seven additional countries have officially abolished capital punishment, bringing the total of abolitionist countries to 99.[[3]](#footnote-3) 35 others do not execute prisoners on death row. The number of countries voting in favor of General Assembly resolutions calling for moratorium on the death penalty increased from 104 in 2007 to 117 in 2015. Executions are declining even in many countries that retain the death penalty.[[4]](#footnote-4) While 90 States and two territories still officially retain the death penalty, only 22 actually carried out executions during 2014.[[5]](#footnote-5)

 At the same time the international community is experiencing hopeful signs of movement toward worldwide abolition, a growing body of scientific and anecdotal evidence demonstrates that the death penalty in retentionist states simply will not, and indeed cannot, be imposed or carried out in a manner consistent with the ICCPR or other provisions of international human rights law. Despite this evidence, some State parties to the ICCPR have recently reintroduced the death penalty or increased the pace of executions. 2014 saw 2,466 persons sentenced to death worldwide, an increase of 28% over 2013. As of June 1, Saudi Arabia had already carried out 90 executions during 2015, more than the 88 executions in that country in all of 2014. 41 of those executed so far this year were convicted of non-violent drug crimes.[[6]](#footnote-6)

 A critical mass of countries having abolished the death penalty in law or by practice may have finally been reached. The Committee must seize the opportunity afforded by this growing global trend to make clear that abolition is not merely wished for, but expected, of all state parties, and that any increase in the use of the death penalty is intolerable.

 Addressed below are certain critical issues for the Committee's consideration in crafting a General Comment concerning Article 6.

**Article 6, paragraph 1: Meaning of “arbitrary deprivation”**

 In order to comport with the requirement of the ICCPR that no person be *arbitrarily* deprived of life, convictions resulting in the death penalty must possess certainty. Without a high degree of certainty (in other words, where the person being put to death may in fact be innocent), the State party engages in arbitrary killing. Even in the absence of the other vital concerns discussed above, advances in understanding of the evidence upon which death sentences are imposed clearly indicate that convictions are far from certain or reliable.

*Exonerations*

 The sheer number of individuals who have been exonerated after being convicted of capital crimes and sentenced to death is a staggering demonstration that the level of certainty needed to prevent executions from being carried out arbitrarily is sorely lacking. The website Forejustice.org, which compiles reported cases of exoneration, currently lists more than 5,600 cases in which persons have been convicted of all manner of crimes but later determined to have been innocent.[[7]](#footnote-7) In 570 of those cases, the individual reportedly had been sentenced to death. In 2011, the BBC reported that a Taiwanese airman who was arrested in 1996, and executed in 1997, for the rape and murder of a five-year old girl had been posthumously exonerated.[[8]](#footnote-8) A Taiwanese court found that there was no evidence linking the executed man to the crime, and another suspect was later identified. The Australian Broadcasting Corporation earlier this year reported on the cases of three Japanese men who were exonerated after spending many years - in one case 48 years - on death row.[[9]](#footnote-9) All three cases involved confessions that had been coerced through brutal beatings and torturous interrogations.

 In the United States, the pace of exonerations is increasing. Seven former death row inmates were exonerated in 2014, six of them thirty years or more after conviction. 153 former death row inmates have been exonerated from 1973 to May 2015. At least ten persons have been executed in the U.S. despite strong evidence of innocence. A recent study published in *Proceedings of the National Academy of Sciences* indicates at least 4.1% of those currently under a death sentence in the United States would be exonerated if they remained on death row indefinitely - about 125 individuals. Many U.S. states actively resist efforts by death row inmates to present evidence of their innocence.

*Unreliable evidence*

 The reliability of forensic evidence upon which many convictions are based has recently been shown to be highly questionable. In the U.S., the Federal Bureau of Investigation admitted earlier this year that its examiners gave flawed and deliberately overreaching testimony about alleged forensic hair matches in *nearly all* of the cases in which they testified over an almost twenty year period.[[10]](#footnote-10) The first 268 cases reviewed, in which this testimony contributed to a conviction, included 32 defendants who were sentenced to death, 14 of whom had already been executed or passed away on death row. This review is continuing, and will ultimately involve more than 2500 cases in which FBI examiners testified to forensic hair matches. Moreover, the review does not include cases in which testimony about alleged hair matches was given not by an FBI examiner, but by one of the estimated 500 to 1000 state and local crime lab analysts who were trained by the FBI to testify in the same manner.

 Eyewitness testimony is perhaps the most persuasive kind of evidence introduced in criminal cases, including death penalty cases. Numerous studies, as well as the cases of exonerated death row inmates, clearly show that eyewitness testimony is unreliable and leads to false convictions. According to the U.S.-based Innocence Project, "eyewitness misidentification is the greatest contributing factor to wrongful convictions proven by DNA testing, playing a role in more than 70% of convictions overturned through DNA testing nationwide."[[11]](#footnote-11) The American Psychological Association says that factors such as the stress the witness is under, whether a weapon is present, the amount of time a witness had to look at the person, the lighting present at the time, how long it's been since someone first witnessed the crime or suggestions of guilt by police, and the power of suggestive interview techniques used by authorities can all undermine the reliability of a witness' memory.[[12]](#footnote-12)

*Lack of fair court proceedings*

 Although international law requires that the death penalty be imposed only after a fair trial, it appears that this critical condition is not met in most retentionist states. Amnesty International reports that imposition of the death penalty took place after proceedings that did not meet international standards for a fair trial. During 2014, Amnesty International raised concerns about the adequacy of court proceedings in Afghanistan, Bangladesh, China, Egypt, Iran, Iraq, North Korea, Saudi Arabia and Sri Lanka. Its report notes that death sentences in Afghanistan, Bahrain, China, Iran, Iraq, North Korea and Saudi Arabia were based on confessions "that may have been extracted through torture or other ill-treatment."[[13]](#footnote-13)

*Lack of justification for imposition of death*

 Finally, although those jurisdictions that retain the death penalty often argue that it must remain an option in order to maintain order and deter violent crime, it is now well-established that the death penalty does not act as a deterrent. A recent article in *The Economist* notes that "the murder rate in New York continued to go down after the state abolished the death penalty; Texas executes more people than any other state, yet does not have a lower murder rate than some states without capital punishment."[[14]](#footnote-14)

**Death Sentences and Executions Imposed in a Discriminatory Manner**

 The death penalty violates ICCPR's prohibition against the arbitrary deprivation of life, as well as numerous provisions of international law expressly prohibiting discrimination, because it is disproportionately applied to racial and ethnic minorities, and to foreign nationals in some countries. Arbitrary is often defined as not planned or chosen for a particular reason, or not based on reason or evidence. In the context of arrest and detention, the Committee has noted that arbitrariness is considered to contain elements of inappropriateness, injustice and lack of predictability.[[15]](#footnote-15)

Regional and national human rights bodies have also interpreted the term “arbitrary” in the context of the death penalty. The African Commission on Human and People's Rights has recognized that: "The right to life is the fulcrum of all other rights. It is the fountain through which other rights flow, and *any violation of this right without due process* amounts to arbitrary deprivation of life."[[16]](#footnote-16) According to Australia's Human Rights and Discrimination Commissioner, "'arbitrarily' is taken to mean not only 'illegally,' but also 'unjustly,' and includes a requirement to satisfy conditions of necessity and proportionality."[[17]](#footnote-17)

*Race and Ethnicity*

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 1(1) of ICERD defines racial discrimination as - "…any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[[18]](#footnote-18)

 Both the ICCPR and the ICERD serve to protect defendants in criminal cases from discriminatory application of the laws. In relevant part, the ICERD obligates member states to "prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law," including the "right to equal treatment before the tribunals and all other organs administering justice."[[19]](#footnote-19)

 Article 6 of the ICERD provides that parties "shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention." ICCPR Article 14 states that all persons "shall be equal before the courts and tribunals." Article 26 guarantees that "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law." Nevertheless, the death penalty is disproportionality applied to individuals in minority groups across the world.

 In many some States, whether or not a defendant receives the death penalty depends more on his race, ethnicity, or nationality than on whether he is more culpable, or his crime more serious, than others who do not receive the death penalty. For example, a 2003 Amnesty International report stated that 80% of people executed in the US were sentenced for murders involving white victims.[[20]](#footnote-20) This is true even though whites and blacks are equally likely to be victims of homicide. Since 1976 the U.S. has executed 31 white defendants for killing a black victim, and 293 black defendants for killing a white victim.[[21]](#footnote-21) There have been 1402 executions in the United States since 1976; 35% of those executed were black (about 13% of the U.S. population). 8% of those 1402 executions were Hispanic (Hispanics make up only about 4% of the U.S. population).[[22]](#footnote-22) In 1998, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions concluded that the application of the death penalty in the United States was both "discriminatory and arbitrary." He concluded that "race, ethnic origin, and economic status appear to be key determinants of who will, and who will not, receive a death sentence."[[23]](#footnote-23)

*Foreign Nationals*

 Foreign nationals are especially vulnerable to application of the death penalty in a number of retentionist states. In Saudi Arabia, for example, it has been reported that foreigners sentenced to death were more than eight times more likely to actually be executed than Saudi citizens who are under sentence of death.[[24]](#footnote-24) Most foreign nationals in Saudi Arabia are poor menial laborers who cannot make payments to a victim's relatives in order to win clemency. In Indonesia, seven of the eight persons executed in April 2015 for drug crimes were foreigners. In a 2009 report, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted that four out of five prisoners then awaiting execution on drug trafficking charges in Indonesia were foreigners.[[25]](#footnote-25)

 Foreign nationals often are not made aware of their rights under the Vienna Convention on Consular Relations (VCCR).[[26]](#footnote-26) The United States, a party to the VCCR, appears to be its chief violator. Article 36(1) requires parties arresting or detaining foreign nationals to inform such persons without delay of their right to have their consulate notified and, upon the foreign national’s request, to so notify the consulate of the arrest or detention without delay.[[27]](#footnote-27) The consulate has the right to communicate with and have access to the arrested or detained national and to arrange for his or her legal representation.[[28]](#footnote-28)

 This requirement has routinely been ignored by every U.S. state. As of February, 2015, 139 foreign nationals from 36 different countries sat on the death rows of 15 states and the U.S. federal government,[[29]](#footnote-29) with California, Florida, and Texas collectively holding 74% of the reported total.[[30]](#footnote-30) Death Penalty Information Center (DPIC) reports only seven cases of complete compliance with Article 36 requirements out of more than 160 reported death sentences (including those executed, reversed on appeal, or exonerated and released). Since the ICJ’s 2004 ruling in *Avena*, the United States has executed 10 foreign nationals, only one of whom was informed by authorities upon arrest of his consular rights.[[31]](#footnote-31) No individual state was found to have adequately complied with VCCR consular notification requirements.

 Paraguay, Germany, and Mexico have each brought consular notification cases against the United States in the International Court of Justice (ICJ). In a 2004 case involving 51 Mexican foreign nationals (*Avena*), the International Court of Justice (ICJ) ordered the United States to provide review and reconsideration of the convictions and sentences of the foreign nationals covered by such judgments.[[32]](#footnote-32) Angel Breard, a citizen of Paraguay, who was convicted of murder and sentenced to death.[[33]](#footnote-33) Police did not tell Breard of his consular rights, which Paraguayan officials claim caused him to lose his case, making serious errors in rejecting the advice of appointed counsel. Despite attempts to delay Breard's execution, the U.S. Court enforced the execution, because his appeal was not timely.

**Article 6, paragraph 2: Meaning of “Most Serious Crimes”**

 Article 6 (2) of the ICCPR provides that the death penalty may only be imposed for the "most serious crimes."[[34]](#footnote-34) The Committee has commented that the phrase "most serious crimes" must be "read restrictively," because the death penalty is a "quite exceptional measure."[[35]](#footnote-35) The phrase “most serious crimes” is an established principle of international law, but it was not specifically defined in the ICCPR. The Human Rights Committee has, however, authored a list of crimes which should not be considered within the definition of “most serious crimes.” It stated that “imposition . . . of the death penalty for offences which cannot be characterized as the most serious, including apostasy, committing a homosexual act, illicit sex, embezzlement by officials, and theft by force, is incompatible with Article 6 of the Covenant.”[[36]](#footnote-36)

Interpretations of the definition of “most serious crimes” limitation exist in other international norms and standards. Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (Safeguards), approved by the UN Economic and Social Council on 1984, provide standards that include a definition of "most serious crimes" .[[37]](#footnote-37) The Safeguards limit "most serious crimes" to “intentional crimes with lethal or other extremely grave consequences.”[[38]](#footnote-38) While not legally binding, the Safeguards have strong international support as demonstrated by their endorsement by the General Assembly.[[39]](#footnote-39)

 The Special Rapporteur on extrajudicial, summary or arbitrary executions has also offered a definition of "most serious crimes" that does not extend to economic, drug-related, or victimless offenses, or actions relating to moral values including adultery, prostitution and sexual orientation.[[40]](#footnote-40) Further, Special Rapporteur has interpreted the word “intentional" in this context as being "equated to premeditation and should be understood as deliberate intention to kill."[[41]](#footnote-41) All of these interpretations of the phrase "most serious crimes" have in common their limitation of it to crimes that are intentional, and that intentionally cause death or extremely grave consequences for the victim. Indeed, grave consequences other than death are arguably outside the exceedingly limited scope of this phrase. For example, the Human Rights Committee found that the imposition of the death penalty for a crime not resulting in the victim's death constituted a violation of Article 6(2).[[42]](#footnote-42) Despite the general agreement that crimes outside of this very narrow purview are not the most serious, many retentionist countries continue to impose the death penalty for other crimes.

*Examples of Crimes Treated As “Most Serious” That Lack International Support*

 Because there is no clear, single definition of “most serious crimes,” and none that is legally binding, countries that more broadly interpret the limitations imposed by “most serious crimes” may consider that they are not in violation of Article 6. General categories have emerged, however, of crimes for which a death sentence lacks international support. These categories include moral value actions, drug offenses, and crimes which result in no loss of life or other grave consequence for the victim.

* Moral Value Actions

 Currently, some Islamic states consider adultery and apostasy as constituting “most serious crimes.”[[43]](#footnote-43) The Human Rights Committee has specifically stated that apostasy is an offense which “cannot be characterized as the most serious.” [[44]](#footnote-44) Interpreting “most serious crimes” as extending to adultery also runs counter to the interpretations of that term in the Safeguards and by the Special Rapporteur on extrajudicial, summary or arbitrary executions. Adultery is beyond the proper scope of “most serious crimes.” Additionally, application of the death penalty to adultery and apostasy violates the interpretation of “most serious crimes” found in the Safeguards in that adultery and apostasy do not cause the “grave consequences” required under the definition given by the Safeguards.[[45]](#footnote-45)

* Drug Offenses

 A number of states, such as Singapore and Indonesia, punish drug offences with death.[[46]](#footnote-46) However, there is clear consensus that imposing the death penalty for drug crimes violates international law. The Special Rapporteur on extrajudicial, summary or arbitrary executions has specifically stated that “most serious crimes” does not extend to drug-related offenses.[[47]](#footnote-47) Additionally, the Safeguards suggest a limitation on “most serious crimes” that only extends to intentional crimes with lethal or other extremely grave consequences[[48]](#footnote-48) and drug-related offenses do not meet this criteria.

 The Human Rights Committee, along with the UN Office on Drugs and Crime, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, have all similarly taken the position that execution solely for drug-related crimes violates international law.[[49]](#footnote-49) But executions for drug crimes have sky-rocketed - for example, from 1979 to 2011, Iran executed an estimated 10,000 individuals for drug-related offenses."[[50]](#footnote-50)

 Moreover, some countries that impose the death penalty for drug crimes have done so in a manner that sidestepped the due process procedural protections afforded those accused of other crimes. A 2009 decision in Yemen confirmed that a special court that reportedly failed to meet international fair trial standards was entrusted to handle drug dealing and trafficking cases.[[51]](#footnote-51) In 2010, Egypt extended an emergency law that permitted drug trafficking cases to be tried in emergency or military tribunals.[[52]](#footnote-52)

* Other Non-Lethal Crimes

 In other states such as Malawi, the death penalty is available for crimes such as rape, robbery and burglary which do not result in a loss of human life.[[53]](#footnote-53) Only individuals convicted of murder have received a death sentence since 1995,[[54]](#footnote-54) and no executions have been carried out in Malawi since 1992. The availability of the death penalty for such crimes, however, still contravenes the interpretation of “most serious crimes” found in the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty.[[55]](#footnote-55)

*Alignment of Laws with “Most Serious Crimes” Limitations*

 In an attempt to comply with the limitations contained in the “most serious crimes” requirement, some countries have modified their laws. India, for example, has determined that the death penalty not be applied except in gravest cases of extreme culpability.[[56]](#footnote-56) Courts in a number of countries have vacated death sentences imposed on accomplice defendants who did not conclusively act with lethal intent.[[57]](#footnote-57) These examples of state practice add support to an argument that the limitation of the death penalty to intentional crimes with lethal consequences is now part of customary international law.

 Several States have modified laws to adopt the principles, if not the specific wording, of the definition of “most serious crimes” proposed by the Safeguards.[[58]](#footnote-58) Often, this includes adding the requirement that intent be found in cases of murder.

 In Canada, the felony murder statute did not require the establishment of requisite intent. This law violated the Safeguards’ suggestion that the death penalty only be imposed for “intentional crimes.” Accordingly, the felony murder statute was held inconsistent with principles of fundamental justice.[[59]](#footnote-59) Similarly, a death sentence was vacated in Trinidad and Tobago because the sentence was imposed under a statute which did not require a determination of an intent to kill.[[60]](#footnote-60)

**Article 6, paragraph 5: Psychosocial and Intellectual Disability**

 The execution of persons with psychosocial disability or intellectual disability violates a plethora of international human rights laws and standards. The Safeguards provide that the death penalty shall not be carried out against "persons who have become insane." The Safeguards also urge States to take steps to "eliminate the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution."[[61]](#footnote-61) In 1997, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions cautioned that States that continue to use the death penalty "with respect to minors and the mentally ill are particularly called upon to bring their domestic legislation into conformity with international legal standards." In 2000, the former UN Commission on Human Rights urged all states that maintain the death penalty "not to impose it on a person suffering from any form of mental disorder; not to execute any such person."

 Notwithstanding these international imperatives, and despite U.S. Supreme Court decisions that also purport to bar such executions,[[62]](#footnote-62) persons with documented psychosocial disability or intellectual disability continued to be executed in the U.S. in 2014 and 2015. A Florida man was executed in January 2014 for a murder committed in prison in 1980. He had a long history of serious psychosocial disability, including a diagnosis of paranoid schizophrenia. The state of Texas executed an inmate with an IQ score of 67. The state of Georgia executed a military veteran who was found 100% disabled by the U.S. Veterans Administration due to post-traumatic stress disorder, and an inmate with an IQ of 70 whose attorney drank heavily during his trial and was later barred from practicing law.

 Most of the documented instances of execution of those with psychosocial disability or intellectual disability occurred in the U.S., but cases have also been noted in other countries. For example, Amnesty International reports that a Nigerian national was due to be executed in Malaysia on 14 March 2014. He had not received a fair trial and had been diagnosed as having schizophrenia, for which he had been receiving treatment before his appeal in 2007. Amnesty International was notified of the imminent execution 36 hours before it was due to be carried out and issued urgent appeals to the Malaysian authorities. His execution was stayed, but he remains on death row.[[63]](#footnote-63) In April 2015, a mentally ill Brazilian man was among eight persons executed by firing squad in Indonesia after being convicted of drug smuggling. He had been diagnosed with paranoid schizophrenia and bipolar disorder.[[64]](#footnote-64) According to Amnesty International, persons with psychosocial disability or intellectual disability were under sentence of death in Indonesia, Japan, Malaysia, Pakistan, Trinidad and Tobago, and the US during 2104.[[65]](#footnote-65)

 While many retentionist States’ laws do take account of psychosocial disability, they often do not make provision for intellectual disability, or they conflate it with psychosocial disability.[[66]](#footnote-66) Consequently, disabled individuals continue to face the death penalty around the world.[[67]](#footnote-67) Even in those countries where intellectual disability is considered in death penalty cases, the scope of that consideration varies widely.

A recent development emerged under international law with the adoption, in 2006, of the Convention on the Rights of Persons with Disabilities. With this new convention, a change in paradigm occurred and what used to be a category of vulnerable people, slowly evolved to be individual persons who have rights, including the right to be hold responsible for a crime, the right to be considered competent to stand trial, but above all, the right to a fair trial. However, safeguards are needed to ensure due process, and specific procedural accommodation should be put in place to take their disability into account. This accessibility approach to court is already being considered for persons with physical disabilities, such as wheel chair access to the courtroom, or sign language for a deaf person. It should now be extended to persons with intellectual or psychosocial disability to guarantee that they have access to justice and to a fair trial while taking into account their disability.

**Article 6, paragraph 6: Torture/Cruel, Inhuman and Degrading Treatment**

Torture is defined in Article 1 of the Convention Against Torture (CAT) as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” The CAT also prohibits acts of cruel, inhuman, and degrading treatment (CIDT) committed by States which do not reach the defined levels of torture.

ICCPR Article 7 provides: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." However, ICCPR Article 7 provides no differentiation between severity of the two terms because they are referred to simultaneously.[[68]](#footnote-68) Article 7 protects against torture and CIDT generally. ICCPR Article 10 protects those who have been "deprived of their liberty" from being treated inhumanely, and so applies ICCPR Article 7 to those incarcerated, including those awaiting execution.[[69]](#footnote-69)

The death penalty itself has not been traditionally considered a violation of the CAT, because the Article 1 definition of torture “does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." Pursuant to the Safeguards, however, in retentionist States, the death penalty "must be carried out in such a way as to cause the least possible pain and mental suffering" to avoid amounting to torture.[[70]](#footnote-70)

*Examples of Torture*

The Human Rights Committee has been wary to establish a bright line definition of torture or CIDT under ICCPR Article 7, but in considering individual communications has communicated specific examples of what does qualify, including: stoning, gas asphyxiation,[[71]](#footnote-71) subjecting individuals to beatings and hangings,[[72]](#footnote-72) holding 125 detainee in a 20 x 5 meter cell without food or water in a 20 x 5 meter cell,[[73]](#footnote-73) holding a detainee in solitary confinement and incommunicado for 44 days while subjecting them to electric shock treatments,[[74]](#footnote-74) hangings by the wrist, burnings, and immersion into water contaminated with urine, blood, and vomit until the point of nearly drowning,[[75]](#footnote-75) refusing to given proper medical treatment after detention officers beat detainees,[[76]](#footnote-76) not giving notice of a stay of execution until 20 hours after the decision and only 45 minutes before the scheduled execution time,[[77]](#footnote-77) and holding a detainee incommunicado, chained to a bed in a solitary room, with a severe food ration.[[78]](#footnote-78)

The Committee has also found violation of ICCPR Article 7 in relation to the death penalty with regard to the appeals process. The ICCPR requires that those sentenced to death be allowed to appeal the conviction. In many cases, however, appeals exist in name only. In other cases, prisoners are left waiting to hear about the appellate decision until moments before the execution.[[79]](#footnote-79) In *Chisanga v. Zambia*, the HRC found the State party in violation of Article 7 when a man was sentenced to death for armed robbery and informed his appeal was granted, moved to long-term prison for two years under the belief his sentence had been commuted to eighteen years, and then returned to death row.[[80]](#footnote-80)

*Solitary Confinement*

The majority of those sentenced to death await execution in solitary confinement. In 2007, nearly 88% of the world's executions were performed by only 5 countries: China, Iran, Saudi Arabia, Pakistan and the US.[[81]](#footnote-81) The US and Iran are parties to the ICCPR, but both subject those convicted to a death sentence to isolation, often for extraordinary lengths of time and in deplorable conditions. The average time between sentencing and execution in the US was 15.5 years (186 months) as of 2013. Research shows that extended solitary confinement results in brain abnormalities and damage comparable to victims of head trauma: [w]ithout sustained social interaction, the human brain may become as impaired as one that has incurred a traumatic injury."[[82]](#footnote-82)

The Committee has found that extended delays and prolonged proceedings do not *per se* violate ICCPR Articles 7 and 10, but must be evaluated on an individual case basis, even though these can cause mental strain.[[83]](#footnote-83) Decisions recognizing death row phenomenon as torture have been a source of concern because they may be relied upon as an excuse to speed up executions. "The provisions of the Covenant must be interpreted in light of the Covenant′s objects and purposes. As one of these objects and purposes is to promote reduction in the use of the death penalty, an interpretation of a provision in the Covenant that may encourage a State party that retains the death penalty to make use of that penalty should, where possible, be avoided."[[84]](#footnote-84)

The first case to expressly recognize "death row phenomenon" in the U.S. as torture was *Soering v. United Kingdom[[85]](#footnote-85)* in the regional European human rights system. The European Court of Human Rights found that extradition of Soering to the US, where he would be subject to prolonged detention awaiting execution, was equivalent to torture. While solitary confinement may not be a *per se* violation, *Soering* suggests that that the issue of whether death row phenomenon rises to the level of torture under ICCPR Article 7 should be considered. "Death row phenomenon" is a legal term used to describe what those sentenced to death experience when living in the harsh conditions of death row for an extended period of time.[[86]](#footnote-86) A parallel term, "death row syndrome" has been used to describe the psychological effects on individuals.[[87]](#footnote-87) Despite the term syndrome, the psychological effects of death row itself have not been "systematically studied and are not recognized by psychologists;[[88]](#footnote-88) however, the dehumanizing and mentally traumatic effects of lack of social interaction have been studied in other arenas.[[89]](#footnote-89) After only a week of solitary confinement, brain functions begin to slow.[[90]](#footnote-90) One study of U.S. supermax prisons showed that over time, prisoners began "to lose the ability to initiate behavior of any kind—to organize their own lives around activity and purpose . . . [c]hronic apathy, lethargy, depression, and despair often result[ed]. . . . In extreme cases, prisoners may literally stop behaving, becoming essentially catatonic."[[91]](#footnote-91) Side effects of solitary confinement can include "psychotic disturbances… anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis, and self-harm."[[92]](#footnote-92) Further, isolation can exacerbate previous mental conditions or illnesses, as well as other health problems.[[93]](#footnote-93) While discussions of death row phenomenon focus significantly on the amount of time spent on death row, courts do consider other factors, such as the personal circumstances of the inmate - including age and mental state, in deciding if the circumstances violate international standards regarding torture and CIDT.[[94]](#footnote-94)

Mr. Juan E. Mendez, the UN Special Rapporteur on torture, and other cruel, inhuman or degrading treatment or punishment, has suggested that to determine if solitary confinement reaches levels of torture or CIDT, all relevant circumstances should be considered on a case-by-case basis. The 2011 report of the Special Rapporteur notes that "solitary confinement, when use for the purposes of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffered beyond any reasonable retribution for criminal behavior and thus constitutes an act" in violation of the CAT or the ICCPR.[[95]](#footnote-95)

*Torture extends beyond the convicted*

While Article 10 of the ICCPR may apply to those who are detained by the state, the Committee has held that communications regarding the execution of one's family member can amount to torture, cruel, or inhumane treatment and result in sanctions under Article 7 of the ICCPR. In *Aliboeva v. Tajikistan*, the HRC found: "the secrecy surrounding the date of execution, and the place of burial, as well as the refusal to hand over the body for burial, have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities’ initial failure to notify the author of the execution of her husband and the failure to inform her of his burial place, amounts to inhuman treatment of the author, in violation of article 7 of the Covenant."[[96]](#footnote-96) The State must give families prior notice before the execution.[[97]](#footnote-97)

*Extradition and Refoulment*

Under Article 6 of the ICCPR, abolitionist States are obligated to protect against the application of the death penalty in cases of extradition, deportation, or refoulement. An abolitionist government cannot deport a person to a retentionist State unless steps can be taken to ensure the death penalty will not be imposed once returned.[[98]](#footnote-98) In *Maksudov et al v. Kyrgyzstan*, for example, the Committee found that removal of refugees to Uzbekistan was a violation of Article 7, even without "proof of actual torture having subsequently occurred" based on the "information that was known, or ought to have been known, to the State party's authorities at the time of the extradition."[[99]](#footnote-99)

CAT Article 3 also forbids extradition, deportation, or refoulement of a person to a State where there are substantial grounds for believing that that the person would be in danger of being subjected to torture.[[100]](#footnote-100) The Committee has established that there must be substantial basis for the State to conclude, at the time of the removal, that torture or death penalty will follow.

1. According to Amnesty International, twelve countries abolished the death penalty between 1976 and 1982. Data available at <https://docs.google.com/spreadsheet/ccc?key=0AonYZs4MzlZbdGJiUzRwTVhlM25DWDlPdjBmNURjOUE&hl=en#gid=1>, last visited May 29, 2015. [↑](#footnote-ref-1)
2. Adopted in 1948. [↑](#footnote-ref-2)
3. According to Amnesty International, 99 countries have abolished the death penalty for all crimes as of March 2015. Available at <https://www.amnesty.org/en/what-we-do/death-penalty/>, last visited June 1, 2015. [↑](#footnote-ref-3)
4. The Death Penalty Information Center reports that US death sentences reached a 40 year low in 2014, while US executions in 2014 were the lowest in 20 years. Available at <http://deathpenaltyinfo.org/documents/2014YrEnd.pdf>, last visited June 1, 2015. Ten US states have either abolished or officially suspended executions since 2007. The Marshall Project, "How Nebraska repealed the death penalty," available at <https://www.themarshallproject.org/2015/05/28/how-nebraska-repealed-the-death-penalty?utm_medium=social&utm_campaign=sprout&utm_source=twitter>, last visited June 1, 2015. [↑](#footnote-ref-4)
5. Death Penalty Worldwide Database, available at <http://www.worldcoalition.org/worldwide-database.html>, last visited June 1, 2015. [↑](#footnote-ref-5)
6. "Saudi Arabia: Spike In Executions," Human Rights Watch, available at <http://www.hrw.org/news/2015/06/01/saudi-arabia-spike-executions>, last visited June 1, 2015. [↑](#footnote-ref-6)
7. Available at <http://forejustice.org/search_idb.htm>, last visited June 1, 2015. [↑](#footnote-ref-7)
8. "Executed Taiwan airman Chiang Kuo-ching innocent," BBC News, available at <http://www.bbc.com/news/world-asia-pacific-14895747>, last visited June 1, 2015. [↑](#footnote-ref-8)
9. "Will Wrongful Convictions Be a Catalyst for Change in Japanese Criminal Justice?" *Asia-Pacific Journal,* Vol. 13, Issue. 6, No. 3, September 02, 2015, available at <http://japanfocus.org/-David_T_Johnson/4271/article.html>, last visited June 1, 2015. (Article contains link to ABC video.) [↑](#footnote-ref-9)
10. "FBI admits flaws in hair analysis over decades," *The Washington Post,* April 18, 2015, available at <http://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4-b510-962fcfabc310_story.html>, last visited May 29, 2015. [↑](#footnote-ref-10)
11. "Eyewitness misidentification," Innocence Project, available at <http://www.innocenceproject.org/causes-wrongful-conviction/eyewitness-misidentification>, last visited May 29, 2015. [↑](#footnote-ref-11)
12. "The limits of eyewitness testimony," *Monitor on Psychology,* American Psychological Association, December 2011, available at <http://www.apa.org/monitor/2011/12/eyewitness.aspx>, last visited May 29, 2015. [↑](#footnote-ref-12)
13. "Death Sentences and Executions 2014, Amnesty International, supra. [↑](#footnote-ref-13)
14. "Killing It," *The Economist,* May 2015, available at <http://www.economist.com/news/united-states/21652277-nebraskas-ban-another-sign-decline-support-death-penalty-killing-it>, last visited May 29, 2015. [↑](#footnote-ref-14)
15. *Van Alphen v. The Netherlands*, Communication No. 305/1988, U.N. Doc. A/45/40, Vol. II, p. 108, para 5.8. [↑](#footnote-ref-15)
16. *African Commission Forum of Conscience v. Sierra Leone,* African Commission on Human and Peoples’ Rights, Communication No. 223/98 (emphasis added). [↑](#footnote-ref-16)
17. "The Right To Life: Legal Fact Sheet," available at <http://www.hrc.act.gov.au/res/Right%20to%20life%20281011.rtf>, last visited June 2, 2014. [↑](#footnote-ref-17)
18. International Convention on the Elimination of All forms of Racial Discrimination, General Assembly resolution 2106 (xx) of 21 December 1965, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>, last visited June 2, 2014. [↑](#footnote-ref-18)
19. CERD, Article 5(a). [↑](#footnote-ref-19)
20. "US: Death by Discrimination - The Continuing Role of Race in Capital Cases," (April 23, 2003), available at <http://www.amnesty.org/en/library/info/AMR51/046/2003/en>, last visited June 2, 2014. [↑](#footnote-ref-20)
21. "Death Penalty 2015: A Quarterly Report bythe Criminal Justice Project of the NAACP Legal Defense and Educational Fund, Inc.," available at <http://www.deathpenaltyinfo.org/documents/DRUSAWinter2015.pdf>, last visited June 2, 2015. [↑](#footnote-ref-21)
22. *Exonerations by Race*, Death Penalty Information Center, <http://www.deathpenaltyinfo.org/innocence-and-death-penalty> (last visited Feb. 27, 2015); *United States Census Data,* U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/00000.html> , last visited June 2, 2015. [↑](#footnote-ref-22)
23. Report of United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: Mission to the United States of America, U.N. Doc. E/CN.4/1998/68/Add.3, para. 2, para. 148 (1998). [↑](#footnote-ref-23)
24. "Foreigners eight times more likely to be executed in Saudi Arabia, report says," *The Telegraph,* October 14, 2008, available at <http://www.telegraph.co.uk/news/worldnews/middleeast/saudiarabia/3192085/Foreigners-eight-times-more-likely-to-be-executed-in-Saudi-Arabia-report-says.html>, last visited June 2, 2014. [↑](#footnote-ref-24)
25. "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions," A/HRC/11/2/Add.1, p. 174 (May 29, 2009). [↑](#footnote-ref-25)
26. Vienna Convention on Consular Relations, 21 U.S.T. 77, 596 U.N.T.S. 261 (April 24, 1963) (ratified by the U.S. in 1969) (hereinafter Vienna Convention). [↑](#footnote-ref-26)
27. Vienna Convention on Consular Relations, signed Apr. 24, 1963, effective Mar. 19, 1967, 21 U.S.T. 77, 596 U.N.T.S. 262. [↑](#footnote-ref-27)
28. Ibid.; *see also* *Honored in the Breach: The United States’ Failure to Observe Its Legal Obligations Under the Vienna Convention on Consular Relations (VCCR) in Capital Cases*, Reprieve 2 (2012), *available at* http://www.reprieve.org.uk/static/downloads/2013\_02\_26\_PUB\_VCCR\_Report\_Web.pdf. [↑](#footnote-ref-28)
29. *See* *Reported Foreign Nationals Under Sentence of Death in the U.S.*, Death Penalty Info. Center, http://www.deathpenaltyinfo.org/foreign-nationals-and-death-penalty-us#Reported-DROW (last visited Sept. 8, 2014). [↑](#footnote-ref-29)
30. *See* ibid. [↑](#footnote-ref-30)
31. *Reported Foreign Nationals Under Sentence of Death in the U.S.*, Death Penalty Info. Center, http://www.deathpenaltyinfo.org/foreign-nationals-and-death-penalty-us#Reported-DROW (last visited Sept. 8, 2014). Of the 10 foreign nationals executed since the *Avena* decision, five were from Mexico, three were from Cuba, one was from Honduras and one was from Jamaica. In seven of the 10 cases, Texas was the executing state. Two of the other cases were in Florida, and one was in Virginia. Only Angel Maturino Resendiz, a Mexican foreign national executed by the State of Texas, reportedly received information regarding consular rights without delay after arrest as required under the VCCR. [↑](#footnote-ref-31)
32. *Case Concerning Avena and Other Mexican Nationals* (*Mexico v. United States*), 2004 I.C.J. 128 (Mar. 31). In *Avena*, the Mexican government alleged that the United States had failed to comply with Article 36 of the VCCR in 52 separate cases involving Mexican nationals who had been convicted and sentenced to death. The ICJ held that the United States had violated the Vienna Convention in 51 of the 52 cases. [↑](#footnote-ref-32)
33. *Breard v. Greene*, 140 L. Ed. 2d 529 (1998)--Add Supreme Court?? [↑](#footnote-ref-33)
34. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. [↑](#footnote-ref-34)
35. UN Human Rights Comm., CCPR General Comment No. 6: Article 6 (Right to Life) 16 para.7 (1982). [↑](#footnote-ref-35)
36. CCPR/C/79/Add quoted in Supra Note 8, 26. [↑](#footnote-ref-36)
37. ECOSOC, *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* (1996), E.S.C. res. 1984/50; GA Res. 39/118. [↑](#footnote-ref-37)
38. *Id*. [↑](#footnote-ref-38)
39. William A Schabas, *The Abolition of the Death Penalty in International Law* (Third Edition: Cambridge UP, 2002), 373. [↑](#footnote-ref-39)
40. Eric Prokosch, *‘The Death Penalty versus Human Rights’ in Death Penalty: Beyond Abolition* (Council of Europe Publishing: Strasbourg, 2004), 23-35, 27; Supra Note 7, 373. [↑](#footnote-ref-40)
41. United Nations, Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, UN Doc. CCPR/C/79/Add.85, 19 Nov. 1997, para. 13. [↑](#footnote-ref-41)
42. *Chisanga v. Zambia*, Communication No. 1132/2002, para. 5.4. [↑](#footnote-ref-42)
43. William A Schabas, *The Abolition of the Death Penalty in International Law* (Third Edition: Cambridge UP, 2002), 373. [↑](#footnote-ref-43)
44. UN Human Rights Comm., CCPR General Comment No. 6: Article 6 (Right to Life) 16 para.7 (1982). [↑](#footnote-ref-44)
45. ECOSOC, *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* (1996), E.S.C. res. 1984/50; GA Res. 39/118. [↑](#footnote-ref-45)
46. Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2012* [↑](#footnote-ref-46)
47. Eric Prokosch, ‘*The Death Penalty versus Human Rights’ in Death Penalty: Beyond Abolition* (Council of Europe Publishing: Strasbourg, 2004), 23-35, 27; Supra Note 7, 373. [↑](#footnote-ref-47)
48. *Id*. [↑](#footnote-ref-48)
49. HRC Concluding Observations: Thailand, CCPR/CO/84/THA, para. 14 (July 8, 2005); HRC Concluding Observations: Sudan, CCPR/C/SDN/CO/3, para. 19 (August 29, 2007); UNODC, Drug control, crime prevention and criminal justice: a human rights perspective, Fifty-third session, Vienna (March 8-12, 2010), E/CN.7/2010/CRP.6\*-E/CN.15/2010/CRP.1\*; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (January 14, 2009), A/HRC/10/44, para.66; UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (August 6, 2010), A/65/255, para, 17. [↑](#footnote-ref-49)
50. "2010 International Narcotics Control Strategy Report, Volume 1," U.S. Department of State. [↑](#footnote-ref-50)
51. "Yemen: Cracking Down Under Pressure," *Amnesty International,* August 25, 2010. [↑](#footnote-ref-51)
52. "Egyptian emergency law is extended for two years," *New York Times,* May 11, 2010. [↑](#footnote-ref-52)
53. The Advocates for Human Rights, Malawi: Universal Periodic Review May 5, 2015 at 2 (2015). [↑](#footnote-ref-53)
54. *Id*. [↑](#footnote-ref-54)
55. ECOSOC, *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* (1996), E.S.C. res. 1984/50; GA Res. 39/118 [↑](#footnote-ref-55)
56. *Machhi Singh v. State of Punjab* 1983 3 SCC 470 (Supreme Court of India). [↑](#footnote-ref-56)
57. E.g., Ram Anup Singh & Ors. v. State of Bihar, 2002(3) RCR Criminal 7856 (Supreme Court of India); Haroon Khan v. the State, (Trinidad and Tobago) Privy Council Appeal No. 28 of 2003, Judgment of 20 November 2003, UKPC (2003) (vacating death sentence imposed under a statute not requiring determination of intent to kill); Machhi Singh v. State of Punjab 1983 3 SCC 470 (Supreme Court of India) (death penalty not to be applied except in gravest cases of extreme culpability); R. v Vaillancourt v The Queen (1987) 47 DLR 399, (4th) 415-417 and R. v Martineau [1990] 2 SCR 633, 646-647 (Canadian felony murder statute not requiring establishment of requisite intent inconsistent with principles of fundamental justice). [↑](#footnote-ref-57)
58. ECOSOC, *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* (1996), E.S.C. res. 1984/50; GA Res. 39/118 [↑](#footnote-ref-58)
59. *R. v Vaillancourt v The Queen* (1987) 47 DLR 399, (4th) 415-417 and *R. v Martineau* (1990) 2 SCR 633, 646-647. [↑](#footnote-ref-59)
60. *Haroon Khan v. the State*, (Trinidad and Tobago) Privy Council Appeal No. 28 of 2003, Judgment of 20 November 2003, UKPC (2003). [↑](#footnote-ref-60)
61. ECOSOC, "Implementation of the Safeguards Guaranteeing Protection of Rights of Those Facing the Death Penalty," E/1989/91, p. 51, para. 1(d), May 24, 1989. [↑](#footnote-ref-61)
62. Although the U.S. Supreme Court held those with "mental retardation" exempt from the death penalty in *Atkins v. Virginia* (2002)*,* states have had wide latitude in determining what qualifies as intellectual disability. This resulted in inconsistency, and many with intellectual disability being sentenced to death. In *Hall v. Florida* (2014)*,* the Court held a strict IQ cutoff score an insufficient method for determining intellectual disability but left to states discretion to fashion other criteria.States also have broad discretion in determining whether persons with mental illness are eligible to have the death penalty imposed, or to be executed. [↑](#footnote-ref-62)
63. "Death Sentences and Executions in 2014," Amnesty International, available at <https://www.amnesty.org/en/documents/act50/0001/2015/en/>, last visited June 1, 2015. [↑](#footnote-ref-63)
64. "Am I being executed? Brazilian killed by Indonesia unaware until end, priest says," *The Guardian,* available at <http://www.theguardian.com/world/2015/apr/30/brazilian-executed-by-indonesia-was-hearing-voices-all-the-time>, last visited June 1, 2015. [↑](#footnote-ref-64)
65. "Death Sentences and Executions 2014, Amnesty International, supra. [↑](#footnote-ref-65)
66. "Mental Retardation," Death Penalty Worldwide, available at <http://www.deathpenaltyworldwide.org/mental-retardation.cfm>, last visited June 1, 2015. [↑](#footnote-ref-66)
67. U.N. ECOSOC, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty:  Report of the Secretary General, paras. 86-88, U.N. Doc. E/2005/3, Mar. 9, 2005. [↑](#footnote-ref-67)
68. *See* Article 7; Chris Ingelse, United Nations Committee Against Torture: An Assessment, Kluwer Law International 399, 2001 [↑](#footnote-ref-68)
69. "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." [↑](#footnote-ref-69)
70. Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50, U.N. Doc. 1. E/1984/85(1984). [↑](#footnote-ref-70)
71. Charles Chitat Ng v Canada, Communication No. 469/1991, UN Doc. CCPR/C/49/D/469/1991. [↑](#footnote-ref-71)
72. Herrera Rubio v. Colombia, Communication No. 161/1983 (2 November 1987), U.N. Doc. Supp. No. 40 (A/43/40) at 190 (1988). [↑](#footnote-ref-72)
73. Martinez Portorreal v. Dominican Republic, Communication No. 188/1984 (5 November 1987), U.N. Doc. Supp. No. 40 (A/43/40) at 207 (1988). [↑](#footnote-ref-73)
74. Lafuente Penarrieta et al. v. Bolivia, Communication No. 176/1984 (2 November 1987), U.N. Doc. Supp. No. 40 (A/43/40) at 199 (1988). [↑](#footnote-ref-74)
75. Conteris v. Uruguay, Communication No. 139/1983 (17 July 1985), U.N. Doc. Supp. No. 40 (A/40/40) at 196 (1985). [↑](#footnote-ref-75)
76. Thomas v. Jamaica, Communication No. 321/1988, U.N. Doc. CCPR/C/49/D/321/1988 (1993). [↑](#footnote-ref-76)
77. Earl Pratt and Ivan Morgan v. Jamaica, Communication nos. 210/1986 and 225/1987. G.A.O.R. 44th Session. Supplement no. 40 (A/44/40). [↑](#footnote-ref-77)
78. Wight v. Madagascar, Communication No. 115/1982 (1 April 1985), U.N. Doc. Supp. No. 40 (A/40/40) at 171 (1985). [↑](#footnote-ref-78)
79. Yuzepchuk v. Belarus, Communication No. 1906/2009, CCPR/C/112/D/1906/2009 (17 November 2014). [↑](#footnote-ref-79)
80. Communication No. 1132/2002, CCPR/C/85/D/1132/2002 (18 November 2005). Chisanga was further denied a presidential pardon granted to all death row inmates who had served ten years by 2004, due to the move to long term prison. This amnesty denial was a further violation of the ICCPR. [↑](#footnote-ref-80)
81. Executions Around the World, via Amnesty International. http://www.deathpenaltyinfo.org/death-penalty-international-perspective [↑](#footnote-ref-81)
82. *See* Atul Gawande, *Hellhole*, New Yorker, Mar. 30, 2009, http://www.newyorker.com/reporting/2009/03/30/090330fa\_fact\_gawande. [↑](#footnote-ref-82)
83. Soering v United Kingdom (1989) 11 EHRR 439, Series A, No. 161, Application No. 14038/88, 7 July 1989. [↑](#footnote-ref-83)
84. Errol Johnson v Jamaica, Communication No. 588/1994, views adopted on 22 March 1996 at the 56th Session, UN Doc. A/51/40 Vol. II, p. 174. [↑](#footnote-ref-84)
85. 11 EHRR 439, Series A, No. 161, Application No. 14038/88, 7 July 1989. [↑](#footnote-ref-85)
86. Amy Smith, *Not "Waiving" But Drowning: The Anatomy of Death Row Syndrome and Volunteering for Execution*, 17 B.U. Pub. Int. L.J. 237, 238-239 (2008). [↑](#footnote-ref-86)
87. *Id.*  [↑](#footnote-ref-87)
88. *Id.*  [↑](#footnote-ref-88)
89. See Gawande, supra note \*. [↑](#footnote-ref-89)
90. *Id.* [↑](#footnote-ref-90)
91. *Id.*  [↑](#footnote-ref-91)
92. Stuart Grassian, Psychiatric Effects of Solitary Confinement, 2 (1993) [↑](#footnote-ref-92)
93. *Id.* at 8. [↑](#footnote-ref-93)
94. Juan E. Mendez, *The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment,* Human Rights Brief 20, no. 1 (2012): 2-6. [↑](#footnote-ref-94)
95. U.N. Secretary General, *Torture and other cruel, inhuman, or degrading treatment or punishment: Rep. of the Special Rapporteur*, ¶ 71-72, U.N. Doc A/66/150 (Aug. 5, 2011) [↑](#footnote-ref-95)
96. *Aliboeva v. Tajikistan*, Communication No. 985/2001, CCPR/C/85/D/985/2001, (16 November 2005). [↑](#footnote-ref-96)
97. *Maryam Khalilova v. Tajikistan,* Communication No. 973/2001, CCPR/C/83/D/973/2001 (13 April 2005). [↑](#footnote-ref-97)
98. See UNHCR Roger Judge v Canada, Communication No. 829/1998 (13 August 2003) UN Doc CCPR/C/78.D/829/1998 [↑](#footnote-ref-98)
99. Maksudov et al v. Kyrgyzstan, Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006 (31 July 2008) UN DOC CCPR/C/93/D/1461,1462,1476& 1477/2006 [↑](#footnote-ref-99)
100. Chris Ingelse, United Nations Committee Against Torture: An Assessment, Kluwer Law International 316, 2001. [↑](#footnote-ref-100)