



**Statement Submitted to the OSCE Human Dimension Implementation Meeting by the
American Civil Liberties Union on:**

Capital Punishment in the United States

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My name is Jamil Dakwar, and I am Director of the Human Rights Program at the American Civil Liberties Union (ACLU). The ACLU is the largest civil liberties organization in the United States, with offices in 50 states and over half a million members. We are honored to address this important forum as part of our commitment to ensure that the U.S. government complies with universally recognized human rights principles in addition to upholding the U.S. Constitution.

The administration of the death penalty in the U.S. has been a failed experiment with, unfortunately, very high cost in human suffering and inestimable damage to the country's standing and image in the world as a beacon for human rights and democratic values. Since 1977, over 1125 people- men, women, children (at the time of the crime), the mentally retarded, and mentally ill- have been denied their right to life at the hands of the State. The U.S.' administration of the death penalty, in 35 states, in the federal system and in the military, continues to violate this basic right. In fact, 52 people have been executed since October of 2008. As of January 2009, the number of people awaiting execution across the country was approximately 3,300!

In recent years, the U.S. has taken some important steps in protecting the right to life by barring the execution of juveniles and the mentally retarded. Yet, the system of death penalty continues to be flawed and unsalvageable. In fact, the problems continue to worsen. We have long been afraid that an innocent person has been executed in the

United States. Those fears have become reality. Cameron Todd Willingham was executed in 2004 for the arson-murder of his three children. Independent investigations by a newspaper and a nonprofit organization using top experts in the field of fire science found that arson was not the cause of the fire. The State of Texas hired a fire expert to investigate. But even the state's distinguished expert found that the fire was not intentionally set. All of this leads to one conclusion. Cameron Todd Willingham was executed for a crime he almost certainly did not commit.

The risk of executing more innocent people was evident in the fact that five men were released from death row in four different states in 2009. This number is staggering when you consider the amount of time these men spent in prison for crimes they did not commit, and that there were people allowed to actually get away with murder because others were incarcerated and sentenced to death for their crimes. The death penalty does not make people living in the U.S. any safer; in fact, it only increased the suffering of the wrongfully convicted and the victims' families.

The fairness of the criminal justice system also must be questioned as a result of matters of judicial misconduct. One inmate, Charles Dean Hood, was convicted and sentenced to death at a trial where the prosecutor and presiding judge were once lovers. Although it was a rumor in legal circles, the defense could not know that this relationship actually happened since both parties denied it. The inmate's execution was stayed while his lawyers filed a civil lawsuit to find out about the relationship. Finally, when questioned under oath, the prosecutor and judge did indeed admit to having an affair. The Texas Court of Criminal Appeals ruled that the defense did not discover information about the affair soon enough and, therefore, the inmate was not entitled to a new trial.

The Chief Judge of the Texas Court of Criminal Appeals has been under scrutiny since 2007. She has been brought before the State Commission on Judicial Conduct because she showed callousness when she did not allow lawyers for a condemned man file documents based on an upcoming case before the Supreme Court of the United States. Instead of following the established procedure, when the judge was asked about a late

filing, she said “the courthouse closes at 5:00.” The condemned man was executed even though the method by which he was killed was the very method to which the Supreme Court had agreed to hear a challenge.

Although, the U.S. Supreme Court stated that the method of lethal injection used was not unconstitutional, it appears that several people have suffered because of this form of execution. Recently, in Ohio, Rommel Broom was subjected to 18 attempts at finding a vein so that he could be killed by lethal injection. The process to try to execute him took over two hours. Finally, the governor had to stop the execution and grant the inmate a one week reprieve. The man has not been executed because he is challenging the state’s attempt to kill him after it failed the first time causing him great pain and suffering.

This is not the first time the State of Ohio has had problems executing inmates. One inmate, Joseph Clark, screamed, “it don’t work” and requested to take something by mouth so the torture would end when his executioners took thirty minutes to find a vein. A second Ohio inmate’s execution, Christopher Newton, took so long that he was given a bathroom break. His execution took two hours.

Last June, the U.N. Special Rapporteur on extrajudicial, summary, or arbitrary executions, released his full report on his official visit to the U.S. His report concentrated on the states of Texas, with the highest number of executions in the country, and Alabama, with the most death sentences per capita. In those states, Alston noted particularly egregious violations: defendants regularly lack adequate legal counsel, the system of selecting judges through the electoral process is defective, and the states show no sense of urgency in reforming their blatantly flawed criminal justice systems. Alston also noted that procedural barriers in the federal legal system make it difficult for defendants under a death sentence to obtain adequate review of their cases.

If there is any reason for hope, it is that the State of New Mexico repealed its capital punishment statute in March of 2009. There is also hope for Troy Davis, a man in Georgia who is almost certainly innocent of the murder of an off-duty police officer.

Since there was no murder weapon or physical evidence, Davis was convicted based on eyewitness testimony. Seven of the nine non-police witnesses have recanted or contradicted their trial testimony. Davis had come close to execution three times without a court ever hearing the evidence of the recantations. One reason the evidence was never heard is because of a law passed in 1996, which limits the ability of capital defendants to file petitions with the court. The U.S. Supreme Court granted Davis's original habeas petition--the court had not done so in 50 years--and ordered a federal court in Georgia to hold a hearing to hear evidence that may prove that Davis is actually innocent. In the order, Justice John Paul Stevens quoted another judge and wrote, "[i]t 'would be an atrocious violation of our Constitution and the principles on which it is based' to execute an innocent person."

The only way for the U.S. to prevent executing other innocent people is to end the practice of capital punishment. There are too many incurable problems with the death penalty. It remains arbitrary. There is racial and geographic bias in the decisions to try the cases. It continues to be the penalty of the poor. While the system can never be fair, the executive branch of the U.S. can provide funding for indigent defense to ensure that there are less death sentences handed out because of unprepared, overworked and outmatched defense attorneys, an endemic problem. It can also place a moratorium on all federal death penalty trials as well as executions.

The U.S. should heed domestic and international calls to bring an end to the use of capital punishment. At minimum the U.S. should join the vast majority of countries in the OSCE region and impose national moratorium on the use of capital punishment.

Thank you.

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