



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

Capital Punishment in the United States

**Warsaw, Poland
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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.

One human rights principle that the United States must honor is the right of a person not to lose his or her life for a crime, no matter how heinous. While there should be punishment for crimes, the state should not deprive a person of their most important human right and that is the right to life. Today I will explain why the U.S. capital punishment system is plagued with problems and fraught with error. First, there is the danger of executing an innocent person. People have been or will be convicted based on evidence which is subject to human error or dishonesty. As of today, 130 death row prisoners have been exonerated in the past 35 years.

Another significant problem with the death penalty in the U.S. is the lack of adequate counsel and access to the courts. People have been convicted of capital crimes because their lawyers were asleep, drunk or just unqualified to handle the case. Indigent defendants have been subjected to court appointed attorneys or public defenders who are overworked and underfunded. In the state of Georgia, indigent defense system has come under scrutiny because the attorneys representing a high profile client are not getting paid and are unable to provide the vigorous defense a capital defendant requires. The state of Georgia Public Defender Standards Council has run out of money.

Earlier this year, Philip Alston, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, visited the U.S. and examined the death penalty system. Mr. Alston was concerned by what he found. He highlighted the issue of a lack of adequate legal counsel in the states of Alabama and Texas. Mr. Alston also expressed the need for these states to find a better method for selecting judges other than the electoral process. Another concern was the lack of urgency that both Alabama and Texas showed in reforming what are obviously broken criminal justice systems. Mr. Alston also noted that federal legislation created so many procedural barriers that people with death sentences have a difficult time getting an adequate review of their cases. Mr. Alston recommended that the U.S. Congress pass legislation removing these obstacles.¹

Race continues to play an unfortunate role in the criminal justice system in the U.S. This problem is also reflected in capital cases. An American Sociological Review article from 2007 showed that minorities capitally sentenced for killing white people were more likely to have their sentences carried out than minorities who kill non-whites.² One of the authors of the study said, “[w]hite lives are still valued more than black ones when it comes to deciding who gets executed and who does not.”³

In October 2007, the American Bar Association (ABA) released the findings from its three-year study on state death penalty systems and called for a nationwide moratorium on executions. Based on a detailed analysis of death penalty systems in eight sample states, the ABA identified key problems common to the states studied, including major racial disparities, inadequate indigent defense services and irregular clemency review processes – making their death penalty systems operate unfairly.⁴ “Racial Disparities in the Capital of Capital Punishment,” as reported in the New York Times in April 2008, is another recent study of race and the death penalty that focused on capital cases from Harris County, Texas. This study found that there is “a robust relationship between race and the likelihood of being sentenced to death even after the race of the victim and other factors were held constant”⁵

¹ Press Statement by Professor Philip Alston, United Nations Human Rights Council Special Rapporteur on extrajudicial, summary or arbitrary executions, New York, 30 June, 2008. Available at:

http://www.extrajudicialexecutions.org/news/united_states/Press_Statement.pdf

² American Sociological Review, 2007, VOL. 72 (August:610–632)

³ Research News, Ohio State University, July 21, 2007

⁴ American Bar Association, “State Death Penalty Assessments: Key Findings,” 29 October 2007,

<http://www.abanet.org/moratorium/assessmentproject/keyfindings.doc>

⁵ New York Times Sidebar by Adam Liptak, April 29, 2008. Available at:

http://graphics8.nytimes.com/packages/pdf/national/20080429_sidebar_study.pdf

Several international human rights bodies including the U.N. Human Rights Committee, and most recently the U.N. Committee on the Elimination of Racial Discrimination raised similar concerns and called on the U.S. to “adopt all necessary measures, including a moratorium, to ensure that death penalty is not imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers.”⁶

Given the problems with capital punishment including human error, law enforcement misconduct, inadequate and untrained counsel, racism and unfair hearings, the U.S. should end the use of capital punishment and follow the steps of the overwhelming majority of countries in the OSCE region. At minimum, the U.S. should impose a national moratorium on its use consistent with the 2007 U.N. General Assembly resolution calling for a global moratorium, because in the words of the most senior U.S. Supreme Court Justice, Paul Stevens, the time had come to reconsider “the justification for the death penalty itself.”⁷

Thank you.

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⁶ Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States parties Under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/USA/CO/6, May 8 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/G08/419/82/PDF/G0841982.pdf?OpenElement>

⁷ BAZE v. REES (No. 07-5439) 217 S. W. 3d 207, available at: <http://www.law.cornell.edu/supct/html/07-5439.ZC1.html>