



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

Death Penalty in the United States of America

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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 all 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 when the modern death penalty era began in the United States, 1270 people -- men, women, children (at the time of the crime), the intellectually disabled, 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 34 states, in the federal system and in the military, continues to violate this basic right. In fact, more than 82 people have been executed since I last addressed this body in September of 2009. As of today, there are 3251 people awaiting execution across the country.

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. The numbers of death sentences and executions has dropped by nearly half. Four states in four years have repealed the death penalty, most recently the state of Illinois, seven years after recognizing the numbers of wrongful convictions in that state, many obtained by prosecutorial and police misconduct.

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 now more than once.

Last week, the state of Georgia executed Troy Davis, a Black man who was almost certainly innocent of the murder of a white off-duty police officer. The circumstances of his execution raised an international outcry, for good reason. Davis was convicted based on eyewitness testimony, since there was no murder weapon nor physical evidence presented by the prosecution. Seven of the nine eyewitnesses recanted or contradicted their trial testimony, many of them saying they were pressured or threatened by police at the time. Troy Davis came close to execution three previous times, because of the difficulty of getting any court to listen to new evidence casting doubt on his conviction. After passage of a federal law in 1996, petitioners are very limited in their ability to appeal death sentences, and courts routinely refuse to hear new testimony, even evidence of innocence. When Troy Davis finally did get a hearing on his evidence, the judge required “proof of innocence” – an impossibly high standard which he ruled that Mr. Davis did not meet. Despite the overwhelming call for clemency, supposed to be the “fail-safe” of the death penalty system, the Georgia Board of Pardons refused to commute the sentence to life and Mr. Davis was executed.

In Texas in 2004, Cameron Todd Willingham was executed for the arson-murder of his three children. Independent investigations by a newspaper, a nonprofit organization using top experts in the field of fire science, and an independent expert hired by the State of Texas all found that accident, not arson was the cause of the fire. There simply was no reliable evidence that the children were murdered. Yet even with these reports in hand, the state of Texas executed Mr. Willingham. Earlier this year, the Texas Forensic Science Commission was poised to issue a report officially confirming these conclusions until Texas Governor Rick Perry replaced the Commission’s chair and some of its members. Cameron Todd Willingham, who claimed innocence all along, was executed for a crime he almost certainly did not commit. As an example of the arbitrariness of the death penalty, another man, Ernest Willis, also convicted of arson-murder on the same sort of flimsy and unscientific testimony, was freed from Texas death row six months after Willingham was executed.

The death penalty does not make people living in the U.S. any safer. Since 1973, 138 people in 26 states have been released from death row due to innocence. Every one of those 138 people suffered years on death row for crime committed by someone else, the truly guilty person who was not apprehended. Only one day after Troy Davis was executed, two men were freed by the special Innocence Commission of North Carolina after a decade apiece in prison. The two men had

actually pled guilty to a crime they did not commit, because they were threatened with the death penalty.

The system of capital punishment in the United States discriminates against people of color, and the poor. It is often the person with the worst lawyer who gets the death penalty, not the person with the worst crime. Its application is arbitrary and random, still as likely as being “struck by lightning”. Among thousands of potentially eligible cases, only a handful of those convicted are sentenced to death. Those actually executed are primarily prisoners in the Deep South, while two states California and Pennsylvania, hold nearly a thousand condemned prisoners, most of them for decades. They wait, condemned to die, warehoused in isolation, in violation of internationally recognized prohibitions against psychological mistreatment. Reforms are inadequate, if undertaken at all.

Increasingly, judges, prosecutors, and former supporters of the death penalty acknowledge that its problems are too legion and the consequences of error too severe. In 2009 the American Law Institute withdrew the section of the Model Penal Code upon which most state statutory schemes were based, saying that the Institute no longer wanted to play any role in legitimizing the death penalty after three troubling decades of experience.

Racial inequity continues. Texas was prepared to execute Duane Buck on September 15th of this year. Mr. Buck was condemned to death by a jury that had been told by an expert psychologist that he was more likely to be dangerous because he was African-American. The Supreme Court stayed the case, but Mr. Buck has not yet received the new sentencing hearing justice requires.

Although the U.S. Supreme Court has held that the current method of lethal injection used is constitutional, several people have suffered because of this form of execution. 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. Mr. Broom has not been executed because he is challenging the state’s right to hold a second execution attempt. Nor was he the only Ohio inmate so maltreated. During his 2006 execution 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. Christopher Newton’s execution took over two hours – so long that he had to be given a bathroom break.

The drugs used for lethal injections are no longer manufactured in the United States, so many states are now engaged in back-door deals with other states and foreign businesses to obtain drugs to be used “off-label”. Efforts in the U.K. and

Denmark, among other countries, have succeeded in limiting some sources of those drugs. So far, legal challenges against this substitution of lethal drugs have not succeeded in the U.S. courts.

In 2009, the U.N. Special Rapporteur on extrajudicial, summary, or arbitrary executions, released a report on his official visit to the U.S. which included an assessment of capital punishment in the states of the U.S. Mr. Alston's 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, the Special Rapporteur 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. Mr. Alston also noted the troubling procedural barriers in the federal legal system previously mentioned, that make it difficult for defendants under a death sentence to obtain adequate review of their cases.

The only way for the U.S. to prevent executing other innocent people is to end the practice of capital punishment altogether. Important interim reforms would include fuller federal review of cases, and adequate funding for indigent defense. These are matters within the purview of the federal government, which could 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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