



**United States' Compliance with the International Covenant on Civil and Political Rights  
Suggested List of Issues Relating to the Death Penalty**

**Submitted by The Advocates for Human Rights,  
a non-governmental organization in special consultative status with ECOSOC**

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**I. Reporting Organization**

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.

**II. Issue Summary**

2. The administration of the death penalty in the United States violates several human rights standards set forth in the International Covenant on Civil and Political Rights (ICCPR). Prime among them are right to freedom from cruel, unusual, or degrading treatment or punishment, right to equality before the courts, right to freedom from discrimination, right to liberty and security of person, and the right not to be arbitrarily deprived of life. Currently, the United States federal government, as well as thirty-three states retain the death penalty.<sup>1</sup>
3. The death penalty in the United States violates human rights regarding the right to life, liberty and security, due process of law, and equal protection of the law by subjecting innocent people to punishment. Since 1973, 141 innocent people in the United States have been exonerated from death row because they were wrongly convicted, including nine who were released in 2009.<sup>2</sup> Additionally, evidence suggests innocent people may have been wrongfully convicted and executed in the United States.<sup>3</sup>
4. The arbitrariness of the death penalty in the United States violates its obligations under the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination. The death penalty in the United States is fraught with racial, economic, and geographic disparities, and minorities accused of killing white persons are more likely to be sentenced to death than if the victim is a racial or ethnic minority.<sup>4</sup> Studies show defendants convicted of killing white victims are more likely to receive death sentences than defendants convicted of killing African-American victims.<sup>5</sup> A 2007 study showed African-American defendants received the death penalty at three times the rate of white defendants when the victims were white.<sup>6</sup> Similarly, indigent persons with court-appointed counsel are more likely to be sentenced to death than persons with sufficient income to afford an attorney.<sup>7</sup>
5. Death by lethal injection can result in severe and excruciating pain violating human rights protections against cruel and unusual punishment. Reports show executions by lethal injection can last over twenty minutes and lead to severe suffering and convulsions.<sup>8</sup> In addition, the injections are often administered by untrained personnel, thus contributing to the risk of procedural errors. Certain states ban the use of the drugs used in lethal injection executions on

animals, but continue to use the drugs for death penalty executions.<sup>9</sup> The U.S. Supreme Court granted certiorari to hear a challenge to Kentucky's lethal injection process, but in 2008, decided to allow the continued use of a method of execution by lethal injection challenged by Kentucky death row inmates.<sup>10</sup> Yet, problems persist with states' lethal injection procedures: on September 15, 2009, during the attempted execution of Romell Broom, Ohio officials spent over two hours attempting to locate a suitable vein to use for the lethal injection before finally postponing his execution.<sup>11</sup>

6. The failure to pass legislation implementing the 2004 International Court of Justice decision (*Avena and Other Mexican Nationals (Mexico v. United States of America)*) violates Article 14 on equality before the courts and tribunals, including the right to adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing, and Article 2(3) on the right to an effective remedy.<sup>12</sup> In 2011, Senator Patrick Leahy introduced legislation that would have authorized U.S. federal courts to review violations of the Vienna Convention on Consular Relations in the cases of foreign nationals who have been sentenced to death. Congress failed to pass the proposed legislation. The United States has failed to implement the ICJ's 2004 decision, and has since executed two Mexican nationals affected by the decision. The State of Texas executed both Jose Medellin on August 5, 2008 and Humberto Leal on July 7, 2011.

### III. **Concluding Observations From 2006 Review and the United States' Fourth Periodic Report**

7. In Concluding Observations issued after the United States' last review in 2006, the Human Rights Committee recommended that the United States "should review federal and state legislation with a view to restricting the number of offences carrying the death penalty. The State party should also assess the extent to which death penalty is disproportionately imposed on ethnic minorities and on low-income population groups, as well as the reasons for this, and adopt all appropriate measures to address the problem. In the meantime, the State party should place a moratorium on capital sentences, bearing in mind the desirability of abolishing death penalty."<sup>13</sup>
8. In its Fourth Periodic report to the Human Rights Committee, the United States government responded that, since the Second and Third Periodic Reports were submitted in 2005, the Supreme Court has narrowed the categories of defendants against whom the death penalty may be applied<sup>14</sup> and heightened procedural protections apply in the context of capital punishment.<sup>15</sup> The United States also noted that several states have abolished the death penalty and the size of the population on death row has declined.<sup>16</sup>
9. The United States also acknowledged that the death penalty continues to be an issue of extensive debate and controversy in the United States, particularly regarding concerns about the overrepresentation of minority persons in the death row population.<sup>17</sup> The United States also noted that the Supreme Court has repeatedly refused to consider the contention that a long delay between conviction and execution constitutes cruel and unusual punishment under the Eighth Amendment.<sup>18</sup> Further, the United States government detailed procedural guarantees for trials of foreign nationals in state court resulting in capital punishment and stated that "The United States remains resolved to work to secure timely enactment of the Consular Notification Compliance Act."<sup>19</sup>

### IV. **Recommendations From Other UN Human Rights Bodies**

10. During the 2010 Universal Periodic Review of the United States by the Human Rights Council, twenty States recommended to the United States that it abolish the death penalty and/or take steps towards an abolition of the death penalty.<sup>20</sup> Further, eighteen States recommended to the United States that it establish a moratorium on the death penalty and/or take steps towards establishing a moratorium on the death penalty.<sup>21</sup>

11. In response, the United States noted that as a matter of law capital punishment is permitted for the most serious crimes with appropriate safeguards. The delegation noted that the Supreme Court recently narrowed the class of individuals that can be executed, the types of crimes subject to the death penalty, and the manner by which the punishment is administered so that it is not cruel and unusual.<sup>22</sup> The United States accepted only six of the thirty-two recommendations regarding the death penalty.<sup>23</sup>
12. Further, both Phillip Alston, former Special Rapporteur on extrajudicial, summary or arbitrary executions, and Christof Heyns, the current Special Rapporteur, have discussed due process concerns relating the death penalty in certain states and at Guantanamo Bay.<sup>24</sup>
13. In Concluding Observations issued at the end of the United States' last review by the Committee on the Elimination of Racial Discrimination, the Committee recommended that the United States undertake further studies to identify the underlying factors of the substantial racial disparities in the imposition of the death penalty, with a view to elaborating effective strategies aimed at rooting out discriminatory practices. The Committee also reiterated its previous recommendation contained in paragraph 396 of its previous concluding observations of 2001, that the United States 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.<sup>25</sup>

#### V. **Recommended Questions**

2. The use of new technologies in DNA analysis continues to establish the innocence of people who have been waiting on death row for their execution.<sup>26</sup> What steps has the US taken to exclude the possibility that innocent individuals may be executed?
3. What measures has the United States taken to ensure that the death penalty is not imposed disproportionately on racial minorities and low-income populations? Similarly, what measures has the United States taken to ensure that quality legal representation is provided to indigent defendants charged with crimes that may result in capital punishment?
4. What steps is the United States taking to ensure that states' lethal injection policies do not constitute cruel and unusual punishment?
5. What steps is the United States taking to implement the ICJ *Avena* decision and guarantee a remedy to Mexican nationals on death row affected by the decision? When does the United States expect to be able to implement the decision? What steps will the United States take to ensure that other Mexican nationals are not executed until this legislation is adopted?

#### VI. **Suggested Recommendations**

6. The United States should withdraw its reservation to Article(5) of the ICCPR prohibiting the death penalty for juvenile offenders.
7. The death penalty in the United States as applied is discriminatory and arbitrary, states' lethal injection procedures run the risk of subjecting sentenced persons to cruel and unusual punishment, and there continues to be a real risk of sentencing/executing innocent individuals given the growing number of death row exonerations. Given these concerns, the United States should immediately implement a moratorium on the death penalty.
8. The United States should carry out or fund a comprehensive study to examine the question of the death penalty's arbitrariness with regard to race, geography, and economic status.
9. The United States should immediately pass legislation to implement the ICJ *Avena* decision and guarantee a remedy to Mexican nationals on its death row in appropriate cases.

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<sup>1</sup> DEATH PENALTY INFORMATION CENTER , DEATH PENALTY FACT SHEET (2012), *available at* <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>

<sup>2</sup> Death Penalty Information Center, <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row> (last visited Dec. 13, 2012).

<sup>3</sup> *See* David Gram, *Trial by Fire*, THE NEW YORKER, Sept. 7, 2009. Cameron Todd Willingham, Troy Davis, and Carlos de Luna are a few individuals who were executed despite overwhelming evidence of their innocence. [http://www.newyorker.com/reporting/2009/09/07/090907fa\\_fact\\_grann](http://www.newyorker.com/reporting/2009/09/07/090907fa_fact_grann) (last visited Apr. 1, 2010); *see also* Death Penalty Information Center, <http://www.deathpenaltyinfo.org/executed-possibly-innocent> (last visited Apr. 1, 2010).

<sup>4</sup> *See* DEATH PENALTY INFORMATION CENTER , DEATH PENALTY FACT SHEET (2012), *available at* <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>.

<sup>5</sup> *See* AMNESTY INTERNATIONAL, DEATH PENALTY FACTS SHEET (2012), *available at* <http://www.amnestyusa.org/abolish/factsheets/DeathPenaltyFacts.pdf>.

<sup>6</sup> *See* AMNESTY INTERNATIONAL, DEATH PENALTY FACTS SHEET (2012), *available at* <http://www.amnestyusa.org/abolish/factsheets/DeathPenaltyFacts.pdf>.

<sup>7</sup> *See, e.g.*, AMNESTY INTERNATIONAL, Death Penalty and Arbitrariness, *available at* <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penalty-and-arbitrariness> (last visited Dec. 13, 2012).

<sup>8</sup> *See* AMNESTY INTERNATIONAL, EXECUTION BY LETHAL INJECTION: A QUARTER CENTURY OF STATE POISONING (2007), *available at* <http://www.amnestyusa.org/document.php?lang=e&id=ENGACT500072007>

<sup>9</sup> *See* AMNESTY INTERNATIONAL, DEATH PENALTY FACTS SHEET (2012), *available at* <http://www.amnestyusa.org/abolish/factsheets/DeathPenaltyFacts.pdf>.

<sup>10</sup> *Baze v. Rees*, 553 U.S. 35 (2008); *see also* Linda Greenhouse, *Supreme Court Allows Lethal Injection for Execution*, N.Y. TIMES, Apr. 17, 2008 [http://www.nytimes.com/2008/04/17/us/16cnd-scotus.html?\\_r=1](http://www.nytimes.com/2008/04/17/us/16cnd-scotus.html?_r=1) (last visited Apr. 1, 2010).

<sup>11</sup> Death Penalty Information Center, <http://www.deathpenaltyinfo.org/information-about-romell-broom-botchedexecution> (last visited Apr. 1, 2010).

<sup>12</sup> *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, ICJ Reports 2004, p. 12.

<sup>13</sup> [Concluding observations of the Human Rights Committee](#) (Consideration of Article 40 report submitted by the United States at the 87<sup>th</sup> Session (2006) at ¶ 29).

<sup>14</sup> U.S. Dept. of State, Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights ¶ 151 (2011).

<sup>15</sup> *Id.* ¶ 152.

<sup>16</sup> *Id.* ¶ 153.

<sup>17</sup> *Id.* ¶ 155.

<sup>18</sup> *Id.* ¶ 156.

<sup>19</sup> *Id.* ¶ 157-58.

<sup>20</sup> Australia, Belgium, Cyprus, Germany, Holy See, Hungary, Ireland, Italy, Netherlands, New Zealand, Nicaragua, Norway, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom, Uruguay, Venezuela. *See* Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/16/11 (Jan. 4, 2011) ¶ 92, *available at* <http://www.ohchr.org/EN/HRBodies/UPR/Pages/USSession9.aspx> [hereinafter Report of the Working Group].

<sup>21</sup> Algeria, Australia, Belgium, Cyprus, Denmark, France, Hungary, Italy, Netherlands, New Zealand, Norway, Russian Federation, Slovakia, Spain, Sweden, Switzerland, United Kingdom, Uruguay. *See* Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/16/11 (Jan. 4, 2011) *See Id.* at ¶ 92.

<sup>22</sup> *Id.* ¶ 55.

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<sup>23</sup> Addendum of the United States of America to the Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/16/11/Add.1 (Mar. 8, 2011) ¶ 7-9, *available at* <http://www.ohchr.org/EN/HRBodies/UPR/Pages/USSession9.aspx>.

<sup>24</sup> *See* Special Rapporteur on extrajudicial, summary, or arbitrary executions, Addendum – Mission to the United States of America, 2, U.N. Doc. A/HRC/112/Add.5 (May 2009) (by Philip Alston) *available at* <http://www.deathpenaltyinfo.org/documents/AlstonUN.pdf>; Follow-up report (A/HRC/20/22/Add.3) by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, to the 2008 fact-finding mission to the United States by the previous mandate holder, Professor Philip Alston (A/HRC/112/Add.5), ¶ 7.

<sup>25</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 19 of the Convention, United States of America ¶ 23 (2008), *available at* <http://www2.ohchr.org/english/bodies/cerd/cerds72.htm>.

<sup>26</sup> *See* DEATH PENALTY INFORMATION CENTER, DEATH PENALTY FACT SHEET (2012), *available at* <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>.