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USA: New Jersey Death Penalty Study Commission recommends abolition

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On 2 January 2007, the New Jersey Death Penalty Study Commission – set up by the state legislature in 2006 to study all aspects of capital punishment in New Jersey – released its final report. The 13-member Commission had held five public hearings between July and October 2006 at which it heard evidence from a variety of witnesses. Its report recommends abolition of the death penalty and its replacement with life imprisonment without the possibility of parole. It further recommends that any cost savings resulting from abolition be used to assist the families of murder victims. The County Prosecutors' Association of New Jersey has concurred with the recommendations. The Commission's findings include the following:

- **There is no compelling evidence that the New Jersey death penalty rationally serves a legitimate penological intent.**

Deterrence. The Commission noted that in the 24 years since the death penalty was reinstated in New Jersey in 1982, there had been 455 defendants who were eligible for the death penalty. Of these 228 were subjected to capital trials and 60 were sentenced to death. There have been no executions, and the majority of death sentences have been overturned on appeal, leaving nine people currently on death row. The Commission noted that “the measurement of any deterrent effect based on such miniscule percentages is fraught with difficulty”. It also noted that “many murders are not planned in advance but are committed impulsively or in a sudden outburst of rage”. Finally, it noted that “as a practical matter, the length of time that convicted murderers in New Jersey serve on death row argues against the usefulness of the death penalty as a deterrent”.

Retribution and Incapacitation. The Commission said that its members were divided about whether retribution is an appropriate penological goal. Of those who believed it to be appropriate, some felt that this goal could be met by imprisonment while others believed that it was “trumped by the serious problems with the death penalty”. Some argued that executing offenders permanently prevents them from committing further violence. However, they “recognized that life imprisonment without the possibility of parole similarly incapacitates an individual from committing further acts of violence outside the prison context”.

- **There is increasing evidence that the death penalty is inconsistent with evolving standards of decency.**

The Commission noted evidence of a trend against the death penalty in the USA, including the moratorium on executions in force in Illinois since 2000; the striking down of New York's death penalty statute by its Court of Appeals in 2004 and the state legislature's failure to reinstate it; abolition bills introduced in the legislatures of 10 states over the past two years; and the recent decline in death sentencing both in New Jersey and nationally.

- **Abolition of the death penalty will eliminate the risk of disproportionality in capital sentencing.**

The Commission found that “there may not be a significant difference in the crimes of those selected for the punishment of death as opposed to those who receive life in prison”. It noted

that the effectiveness of the state Supreme Court’s system of proportionality review had been questioned, including from within its own ranks. After considering such evidence, the Commission concluded that “despite the best efforts of the State, the risk remains that similar murder cases are being treated differently in the death penalty context thereby elevating the probability that the death penalty is being administered ‘freakishly’ and arbitrarily. Given the finality of the punishment of death, this risk is unacceptable”.

- **The penological interest in executing a small number of persons guilty of murder is not sufficiently compelling to justify the risk of making an irreversible mistake.**

The Commission considered the numerous cases of wrongful convictions in capital cases around the USA and in non-capital cases in New Jersey. It heard testimony from a number of witnesses, including a man who had spent 18 years in New Jersey prison for rape and murder before being exonerated on the basis of DNA testing. The Commission also noted the unreliability of witness identification, and heard testimony from a rape survivor whose mistaken identification of her attacker had led to a wrongful conviction in North Carolina.

- **The alternative of life imprisonment in a maximum security institution without the possibility of parole would sufficiently ensure public safety and address other legitimate social and penological interests, including the interests of the families of murder victims.**

The Commission heard testimony from family members of murder victims and other witnesses; the “overwhelming majority” testified that, in their opinion, life imprisonment without the possibility of parole “is the appropriate alternative to the death penalty”. In concluding, the Commission stated that it agreed with the words of one of the witnesses – the father of a murder victim – “who stated that the non-finality of death penalty appeals hurts victims, drains resources and creates a false sense of justice”.

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Amnesty International welcomes the New Jersey Commission’s recommendation to abolish the death penalty, a punishment which the organization has long opposed.<sup>1</sup> The death penalty is a destructive, diversionary and divisive public policy that offends widely held values – today, 128 countries are abolitionist in law or practice. It not only runs the risk of irrevocable error, it is also costly – to the public purse, as well as in social and psychological terms (the Commission found that “the costs of the death penalty are greater than the costs of life in prison without parole”, and that “intangible emotional and psychological costs must also be taken into consideration”). Capital justice tends to be marked by arbitrariness, and discrimination on grounds of race and class.<sup>2</sup> The death penalty denies the possibility of reconciliation and rehabilitation. It promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of the murder victim’s family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it. It is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity. As the Commission has concluded, it should be abolished. Amnesty International urges the New Jersey legislature and executive to maintain a moratorium on executions pending abolition. The organization will continue to work against the death penalty across the USA and the rest of the world.

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<sup>1</sup> Amnesty International currently does not campaign for or against the sentence of life imprisonment without the possibility of parole.

<sup>2</sup> The Commission concluded that the “available data do not support a finding of invidious racial bias” in New Jersey’s death penalty.