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## USA: 30 years of executions, 30 years of wrongs

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If the USA's capital justice system was a private company it would have been shut down long ago. After three decades, this is an enterprise showing no measurable benefit for society despite an investment of billions of dollars. On the cost side have been multiple errors and inconsistencies, racism, cruelty and damage to the national image abroad. This business may repeatedly be making a killing, but it is operating at a huge loss, and has been from the outset.

Executions resumed in the USA on 17 January 1977 after a decade without them. By 16 January 2007, there had been 1,059 executions. A third of these killings – 380 – had been carried out in Texas, which is set to mark the 30<sup>th</sup> anniversary with another execution.<sup>1</sup> In the same 30 years, some 70 countries have abolished the death penalty, bringing to 128 the number that have turned their backs on judicial killing.

There are signs that the USA, too, is slowly turning against the death penalty. The 53 executions in 2006 was the lowest annual total for a decade, and death sentencing continues to drop from its peak in the mid-1990s. The number of people sentenced to death in 2006 was the lowest since 1977. An erosion of the public's belief in the deterrence value of the death penalty, an increased awareness of the frequency of wrongful convictions in capital cases, and a greater confidence that public safety can be guaranteed by life prison terms rather than death sentences have all contributed to the waning of enthusiasm for capital punishment.

Under US law, the death penalty is supposed to be reserved for the "worst of the worst". The execution of at least 50 offenders with mental retardation or who were children at the time of their crimes alone show that this has been a principle on paper only. Although the US Supreme Court belatedly outlawed such executions after finding that "standards of decency" had evolved in the USA to make them unconstitutional, offenders with serious mental illness remain subject to the death penalty, with at least 100 such individuals having been executed since 1977 and scores more remaining on death row.

In a country where the difference between a death sentence and a life term can hinge not only on where the crime was committed, but also on the quality of the defence lawyer, the conduct of the prosecutor, or the race of the victim or defendant, the question arises as to whether US executions generally violate the prohibition on the arbitrary deprivation of life, as enshrined in the International Covenant on Civil and Political Rights which the USA ratified in 1992. Arbitrariness riddles the system:

- James Elledge was executed in Washington State in 2001 for the murder of a woman. He had turned himself in after the crime, and pleaded guilty at the trial. He refused to allow any mitigating evidence to be presented and waived his right to appeal. Two years later in Washington State, Gary Ridgway was sentenced to life imprisonment for the murder of 48 women. He avoided a death sentence in return for his cooperation with the authorities and a guilty plea. If Gary Ridgway was not subject to the death penalty, why was James Elledge executed for killing 47 fewer victims?

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<sup>1</sup> Johnathan Moore is due to be executed at 6pm Texas time on 17 January 2007. For details of the case, see Amnesty International Urgent Action, <http://web.amnesty.org/library/Index/ENGAMR510052007>.

- Gary Graham was sentenced to death in Texas for the murder of a man in 1981. There was no physical evidence against him and the witness testimony against him was highly suspect and witnesses not heard at trial said that he was not the killer. Phillip Smith was sentenced to death in Oklahoma for the murder of a man in 1983. There was no physical evidence against him and the witness testimony against him was either inconsistent or later recanted. In 2001, the governor of Oklahoma commuted Smith's death sentence because of doubts about his guilt. A year earlier, the governor of Texas refused to intervene in Graham's case and he went to his death proclaiming his innocence.
- John Luttig and Ivan Holland were murdered in the same town in Texas. John Luttig was a wealthy white businessman, Ivan Holland was a homeless African American man. Ivan Holland's assailants were three young white men who targeted him because of his race. John Luttig's attackers were three black teenagers who targeted him for his Mercedes Benz. Two of John Luttig's attackers were sentenced to life imprisonment and will be eligible for parole after 80 years, or about six decades after Ivan Holland's assailants. The third black youth, Napoleon Beazley, was sentenced to death by an all-white jury and executed in 2002. A few hours earlier, in Missouri, the state high court granted an indefinite stay of execution to Christopher Simmons – like Napoleon Beazley, 17 years old at the time of the crime – on exactly the same argument that had been rejected by the Texas court in Beazley's case. The US Supreme Court then took the Simmons case to decide that juvenile offenders should be exempt from execution. Yet it had allowed Napoleon Beazley to go to his death.

The death penalty makes assumptions about a world that does not exist. It assumes the absolute perfection of the justice system, and the absolute imperfection of the people it condemns to death. It assumes that human beings can decide – free from error or inequity – which of their fellow human beings convicted of crimes should live and which should die. It assumes that even if discrimination has not yet been eradicated in society, it can be overcome in the course of capital justice.

The US government told the UN Committee Against Torture in Geneva in 2006: “All governments are imperfect because they are made up of human beings who are, by nature, imperfect. One of the great strengths of our nation is its ability to recognize its failures, deal with them, and act to make things better.” So when will the USA abandon its failed death penalty experiment? Once one accepts the fallibility of governments and human beings more generally, one must reject the death penalty, realizing that no amount of tinkering with the machinery of death can free this outdated punishment from its inescapable flaws.

To end the death penalty is to abandon a destructive, diversionary and divisive public policy that is not consistent with widely held values. 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. It has not been proved to have a special deterrent effect. It tends to be applied discriminatorily on grounds of race and class. It 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. It should be abolished.

See *USA: The experiment that failed – A reflection on 30 years of executions*, available at <http://web.amnesty.org/library/Index/ENGAMR510112007>.

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