

AI INDEX: AMR 51/166/99  
13 October 1999

## **PUBLIC STATEMENT**

### **US Supreme Court: dealing justice a lethal blow**

Amnesty International is appalled by yesterday's US Supreme Court rejection of an appeal by an indigent, learning disabled, death row inmate who was forced -- through poverty -- to appear at an earlier appeal hearing without a lawyer.

On 12 September 1996, Exzavious Lee Gibson, an African American with an IQ of between 76 and 82, stood in a Georgia courtroom at a state post-conviction (*habeas corpus*) hearing into his conviction and sentence. The hearing went ahead despite the fact that he had no representation as he was too poor to afford a lawyer. He attempted to represent himself, but a transcript of the hearing shows that he was clearly out of his depth. He offered no evidence, examined no witnesses, and made no objections. The court dismissed his appeal.

His subsequent appeal to the Georgia Supreme Court was rejected in early 1999. Three of the seven supreme court judges dissented, saying that Gibson's plight was one "that no just government should countenance". However, the majority ruled that he had no constitutional right to a lawyer at the 1996 hearing.

Yesterday, the US Supreme Court, without comment, let that majority decision stand, and moved Exzavious Gibson one step closer to execution. If such a blatant denial of a defendant's internationally-recognized rights were to occur in another country, the USA would likely be among the first to condemn it.

International standards demand that anyone facing the death penalty must have access to adequate legal representation at all stages of proceedings. The US Supreme Court has once more demonstrated the USA's continuing contempt for such standards.

Exzavious Gibson's death sentence itself violates international law. He was convicted of a murder committed when he was 17 years old. International law forbids the use of the death penalty for crimes committed by under 18-year-olds.

The importance of proper legal representation for capital defendants is demonstrated by the fact that more than 80 death row inmates have been released in the USA since 1973 after evidence of their innocence emerged. Many had been sentenced to death after being represented at trial by lawyers inexperienced in the immense complexities of US capital proceedings. Evidence of their wrongful conviction only came to light with the help of dedicated lawyers and others.

Over 90 per cent of those on death row in the USA are indigent. Many are mentally impaired. More than 70 people are on death row for crimes committed when they were children.

#### Background

Safeguard 5 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the United Nations Economic and Social Council (ECOSOC) in 1984, states that the capital process must provide all possible safeguards to ensure a fair trial, "including the right... to adequate legal assistance at all stages of the proceedings." In 1989 ECOSOC recommended that UN member states further strengthen the rights of those facing the death penalty including by affording "adequate counsel at every stage of proceedings, above and beyond the protection afforded in non-capital cases."

Exzavious Gibson was convicted of the 1990 murder of Douglas Coley in Eastman, Georgia. After he exhausted his direct appeals, he filed a petition for *habeas corpus*, a civil proceeding at which death row inmates can challenge the legality of the conviction and sentence. His case is believed to be the first in which an capital defendant has been forced to appear at his *habeas* hearing without a lawyer since the US Supreme Court resumed judicial killing in 1977.

This decision follows a pattern of attacks on death row inmates' right to meaningful legal representation. In 1995, the US Congress removed the funding for all of the Post Conviction Defender Associations (commonly known as Death Penalty Resource Centers). Attorneys at the Centers represented almost half of the country's condemned prisoners. Such attorneys had been highly successful in exposing the shortcomings of numerous death penalty trials, obtaining some form of relief for their clients in approximately 40 per cent of cases. As one attorney put it shortly before his office closed: "we have been victimised because of our own success."

The damage caused by the lack of adequate legal representation has been exacerbated by the implementation of the Anti-terrorism and Effective Death Penalty Act, signed into law by President Clinton in 1996. The Act severely limits the federal courts' ability to override the findings and decisions of state courts.

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