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UNITED STATES OF AMERICA Texas: One governor, 200 executions

30 April 2009

AI Index: AMR 51/059/2009

On 2 June 2009, Texas is scheduled to carry out its 200th execution under the governorship of Rick Perry. In a new report, Amnesty International looks back at a few of the cases of prisoners executed during Governor Perry's term in office and forward to a few cases that may yet come before him for clemency.

The macabre milestone – in an increasingly abolitionist world – of the 200th execution under an eight-and-a-half-year governorship should give pause for thought for officials with the power over life and death in the capital justice system. Any of them, whether judge or prosecutor, legislator or governor, can and should speak out for an end to this cruel and unnecessary punishment. Amnesty International urges Governor Perry to join such calls, and work with the state legislature to abolish the death penalty in Texas. Meanwhile, he and the parole board should do all in their power to prevent further executions in Texas.

Amnesty International's report considers a number of issues, and places them in the context of an executive clemency system in Texas which is far from the "failsafe" against injustice it purports to be:

- **17-year-old offenders.** Before 2005 when the US Supreme Court outlawed the death penalty against children, the USA was a world leader in this international law violation, with Texas its leading perpetrator. Four of the last five child offenders executed in the USA were put to death in Texas after Governor Perry and the parole board denied clemency. All four were African American, highlighting the issue of race, an ever-present aspect of the US capital justice system.
- **18- and 19-year-old offenders.** The prohibition of the death penalty against under-18-year-olds recognizes the immaturities associated with youth and the capacity for change in a young person. Eighteen is a *minimum* standard – such attributes continue beyond 17. Some 31 individuals have been put to death during Governor Perry's term in office for crimes committed when they were 18 or 19 years old. Nineteen of the 31 were African Americans, 13 of whom were executed for crimes involving white victims. Another 46 await execution for crimes committed at 18 or 19. One, Derrick Johnson, is due for execution this evening, 30 April, for a crime committed when he was 18. He and 26 of these 46 inmates are black. Eight are white.
- **Executions of prisoners with mental illness.** As in the case of young offenders, by the time Governor Perry took office, Texas was no stranger to killing condemned inmates suffering from serious mental illness. A number of such prisoners have gone to their deaths in the state execution chamber since then. International human rights bodies and experts have long called for the death penalty not to be used against individuals suffering from mental disorders. In 2004, in the case of an inmate suffering from very serious mental illness, Governor Perry rejected a rare recommendation for commutation by the Board of Pardons and Paroles.
- **Inadequate protections for condemned inmates with learning disabilities.** In 2002, in *Atkins v Virginia*, the US Supreme Court outlawed the execution of people with mental retardation. The Court left it to states to take the appropriate steps to comply with the ruling, thereby opening

the door to inconsistent approaches. Seven years on, the Texas legislature has still not passed a post-*Atkins* statute, and Texas is one of the states causing concern about inadequate protection for mentally impaired death row prisoners, a situation exacerbated by ineffective clemency.

- **Inadequate legal representation.** The poor quality of legal representation that indigent capital defendants receive, both at trial and for state-level appeals, remains a recurring theme in Texas capital justice. Also recurring has been the failure of the clemency authorities to recognize the injustice and stop the execution. Some inmates have gone to their deaths after their lawyers missed deadlines for filing federal appeals. Several more in this position face execution.
- **Future dangerousness.** Every death sentence and execution in Texas is based on a finding of the condemned individual's "future dangerousness". Texas prosecutors have repeatedly resorted to the highly dubious use of "expert" testimony purporting to be able to predict the defendant's dangerousness. Research has shown such predictions to be wildly inaccurate. Questions about the future dangerousness scheme also include whether it has allowed fear, rather than a rational consideration of defendant culpability, to drive juror decision-making. Rehabilitation appears to be another issue that the clemency authorities fail to see as a valid reason to spare the life of the condemned prisoner.
- **Foreign nationals denied their consular rights.** In violation of international law, Texas has continued to execute foreign nationals whose right to consular access after arrest was denied.
- **Executing the innocent.** For many people, the death penalty's most intolerable flaw is the risk of irreversible error that accompanies it. During Governor Perry's time in office, Texas has continued to execute prisoners whose guilt remained in doubt. One of them was Cameron Willingham, convicted of arson murder. Experts now believe the fire may have been an accident. In another case, that of Richard Wayne Jones, the judge who sentenced him to death now believes he may have been innocent. The then Governor, George W. Bush, was out of Texas campaigning for the US presidency and left the case to his Lieutenant Governor, Rick Perry. The requested reprieve for DNA testing was denied and Jones was executed.

Amnesty International is not suggesting that the Texas governor alone is responsible for the fate of those on death row. Many people are involved in capital justice – from prosecutors to jurors, from legislators to prison staff, from judges to members of the clemency board, and the Texas governor's clemency powers are somewhat circumscribed. However, like his predecessor, Governor Perry has rarely exercised his power of reprieve, or used his authority to seek commutation of a death sentence, and continues to advocate strongly for capital punishment.

On a positive note, there is reason to believe that the USA is turning against the death penalty. The number of people sentenced to death in 2007 was a third of what it was in 1996 and the lowest since 1977. This pattern is reflected in Texas too. In the five years from 1995 to 1999, Texas juries sent 192 people to death row, at an average of 38 per year. In the five years from 2004 to 2008, they sentenced 71 defendants to death, at an average of 14 per year.

This would seem to reflect a broader downturn in public support for the death penalty in the USA. 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.

Politicians and legislators in Texas and elsewhere in the United States of America should seize this opportunity to break their country's death penalty habit and lead the USA towards joining the clear majority of countries that have abandoned this punishment.

For further information, see 'USA: Too much cruelty, too little clemency. Texas nears 200th execution under current governor', 30 April 2009, available at <http://www.amnesty.org/en/library/info/AMR51/057/2009/en>.

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