



**The 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 since 1996  
and

**The World Coalition Against the Death Penalty**

for the

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**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. Established in 1983, 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.

**The World Coalition Against the Death Penalty**, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

## EXECUTIVE SUMMARY

1. This submission addresses the United States' noncompliance with its human rights obligations with regard to its use of the death penalty, provides information about specific areas of noncompliance, and suggests questions to be posed to the United States with regard to such noncompliance.
2. In its concluding observations on the fourth periodic review of the United States, the Human Rights Committee addressed, as principal areas of concern, racial disparities in the criminal justice system (paragraph 6), the death penalty (paragraph 8), and the conditions of detention for death row prisoners (paragraph 20), making a number of specific recommendations for progress towards compliance in these areas. The United States has largely failed to implement these recommendations in relation to its use of capital punishment.

### **The United States fails to uphold its obligations under the International Covenant on Civil and Political Rights**

3. During the fourth periodic review of the United States, the Human Rights Committee noted three subjects as principal areas of concern that relate to the use of the death penalty. These included racial disparities in the criminal justice system (which are stark with regard to capital punishment), the implementation of the capital punishment system itself, and the conditions of detention for those held on death rows in the United States.
4. Between 2014 and 2018, 92 persons have been executed in the United States. Another 20 death row prisoners were exonerated and released during that time. The vast majority of death sentences are imposed at the state level. Some states' laws continue to permit imposition of the death penalty for crimes other than intentional killing. For example, Arizona's "felony murder rule" allows for the death penalty for a range of crimes if a death results even unintentionally, including a number of drug offenses, robbery, and sexual offenses, as well as for the death of a fetus.<sup>1</sup> The federal government also retains the death penalty and continues to impose new death sentences (including 8 since 2014), but has not carried out an execution since 2014.<sup>2</sup> However, in March 2018, then-Attorney General Jeff Sessions issued a memorandum to United States Attorneys instructing them to pursue the death penalty in certain cases of drug-related crimes, some of which do not involve intentional killing, as authorized by federal laws.<sup>3</sup> The federal government also continues to pursue the death penalty in jurisdictions that have abolished it, including, in recent years, Massachusetts and Puerto Rico.<sup>4</sup>

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<sup>1</sup> Arizona Revised Statutes, § 13-1105.

<sup>2</sup> Death Penalty Information Center, *Federal Death Penalty*, [111.deathpenaltyinfo.org/federal-death-penalty](http://111.deathpenaltyinfo.org/federal-death-penalty)

<sup>3</sup> Memorandum dated March 20, 2018, from the Attorney General of the United States to United States Attorneys, *Guidance Regarding Use of Capital Punishment in Drug-Related Prosecutions*, available at [www.deathpenaltyinfo.org/federal-death-penalty](http://www.deathpenaltyinfo.org/federal-death-penalty)

<sup>4</sup> In 2015, Boston Marathon bomber Dzhokhar Tsarnaev was sentenced to death by a federal court in Massachusetts, a state which does not permit the death penalty under state law. Death Penalty Information Center, *The Case of Dzhokhar Tsarnaev - Boston Bombing*, available at [www.deathpenaltyinfo.org/node/6394](http://www.deathpenaltyinfo.org/node/6394); Puerto Rico abolished the death penalty by statute in 1929, and the U.S. Congress ratified Puerto Rico's 1952 Constitution, which banned the death penalty under Article II, Section 7, but federal prosecutors are currently seeking the death penalty in Puerto Rico. Death Penalty Information Center, *Puerto Rico and the Death Penalty*, available at [www.deathpenaltyinfo.org/node/881](http://www.deathpenaltyinfo.org/node/881); *United States v. Jiminez-Bencevi*, No. 12-221 in the United States District

5. **Suggested questions** relating to capital punishment in general:

- How will the State Party ensure that capital punishment is not imposed on individuals who did not themselves commit an intentional killing?
- Please identify the number of cases for each year during this reporting period for which federal authorities have sought the death penalty. For each case, identify: (1) the nature of the crime(s) for which the death penalty was sought; (2) whether the state or territorial jurisdiction in which the defendant was prosecuted would have authorized the death penalty for a similar offense; and (3) whether the defendant was sentenced to death.
- What is the State Party's position as to whether the prosecution of capital cases in Puerto Rico, as authorized by the Federal Death Penalty Act of 1994, violates Article 6, paragraph 2, of the Covenant, in light of Puerto Rico's abolition of the death penalty by statute in 1929 and in its constitution in 1952?

**I. Racial Disparities persist in the United States' application of the death penalty.**

6. Paragraph 6 of the concluding observations states that “the Committee continues to be concerned about racial disparities at different stages in the criminal justice system, as well as sentencing disparities . . . .” The Committee recommends that “the State party should continue and step up its efforts to robustly address racial disparities in the criminal justice system, including . . . at the federal, state and local levels.”
7. Paragraph 20 of the concluding observations states that “the Committee remains concerned about the continuing use of the death penalty and, in particular, racial disparities in its imposition that disproportionately affects African Americans, exacerbated by the rule that discrimination has to be proven on a case-by-case basis.” The Committee recommends that the State Party “take measures to effectively ensure that the death penalty is not imposed as a result of racial bias.”
8. The vast majority of death sentences in the United States are imposed and carried out at the state level.<sup>5</sup> Both new death sentences and executions carried out by the states continue to be disproportionately imposed on black persons.<sup>6</sup> While the population of the United States is only about 13% black, about 34% of all those executed since 1976 have been black. About 76% of the victims in those cases were white, even though only about 50% of murder victims overall are white.<sup>7</sup> According to the Equal Justice Initiative, 41% of those currently under a sentence of death in the United States are black. In Alabama, where the Equal Justice

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Court for the District of Puerto Rico; *United States v. Candelario*, No. 3:09-cr-00427 (FAB) (scheduled for trial in April 2019); *United States v. Vidal et al.*, No. 3:16-cr-00778 (GAG) (case certified but pending trial).

<sup>5</sup> The federal government and military have not carried out an execution in more than ten years. American Civil Liberties Union, *The Death Penalty in 2018: A Punishment on the Decline*, available at [www.aclu.org/blog/capital-punishment/innocence-and-death-penalty/death-penalty-2018-punishment-decline](http://www.aclu.org/blog/capital-punishment/innocence-and-death-penalty/death-penalty-2018-punishment-decline)

<sup>6</sup> Of the eight persons sentenced to death at the federal level since 2014, seven are white, one is Latino. None are black. Death Penalty Information Center, *Federal Death Penalty*, *supra*.

<sup>7</sup> Death Penalty Information Center, *Facts about the death penalty*, available at [deathpenaltyinfo.org/documents/FactSheet.pdf](http://deathpenaltyinfo.org/documents/FactSheet.pdf)

Initiative is headquartered, 51% of the 180 people on death row are black.<sup>8</sup> The population of Alabama is less than 27% black overall.<sup>9</sup>

9. Ten of the 28 individuals executed in 2015 were black (36%). Another 7 (25%) were Latino. About 18% of the US population is Latino. In addition, only 10 of the 28 cases did not involve a white victim, and in only one case was a white prisoner executed for the killing of a non-white victim. That case involved two victims, one of whom was white, and the other of whom was Latino.<sup>10</sup>
10. The racial disparity in executions briefly disappeared in 2016, when just three of the twenty people put to death were black or Latino, but only one of the crimes for which persons were executed involved the killing of a non-white victim.<sup>11</sup> In 2017, 8 of the 23 individuals executed were black (35%). In only one case was a white individual executed for a crime that did not involve a white victim.<sup>12</sup> Twenty-one executions were carried out in 2018. Five of the individuals executed were black (24%). Again, the vast majority of cases involved white victims, and in only one case was a white person executed for killing a non-white victim.<sup>13</sup>
11. Forty new death sentences were handed down in 2018, the vast majority in just four states: Texas, Florida, California, and Ohio. All 7 of the people sentenced to death in Texas were minorities.<sup>14</sup>
12. The Supreme Court of the State of Washington struck down that state's death penalty law in October 2018, finding that it had been imposed arbitrarily and with racial bias.<sup>15</sup> Other death penalty states have not taken such action, and the U.S. Supreme Court also has not found the death penalty unconstitutional due to racial bias in its application.
13. **Suggested questions** relating to racial disparities in capital punishment:
  - What steps has the State Party taken to implement the recommendations from Angola and France that it accepted during the last Universal Periodic Review to identify the causes of racial and ethnic disparities regarding the death penalty and to take steps to end possibly discriminatory practices?<sup>16</sup>
  - What steps is the State Party taking to ensure that racial bias is eliminated in the imposition of death sentences and in executions?
  - What steps is the State Party taking to ensure that racial disparities in death sentences and executions are not present based on the race of the victim?

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<sup>8</sup> Equal Justice Initiative, *Race and Poverty*, available at [www.eji.org/death-penalty/race-and-poverty](http://www.eji.org/death-penalty/race-and-poverty)

<sup>9</sup> United States Census Bureau, *Alabama Quick Facts*, available at [www.census.gov/quickfacts/al](http://www.census.gov/quickfacts/al)

<sup>10</sup> Death Penalty Information Center, *Execution List 2015*, available at [www.deathpenaltyinfo.org/execution-list-2015](http://www.deathpenaltyinfo.org/execution-list-2015)

<sup>11</sup> Death Penalty Information Center, *Execution List 2016*, available at [www.deathpenaltyinfo.org/execution-list-2016](http://www.deathpenaltyinfo.org/execution-list-2016)

<sup>12</sup> Death Penalty Information Center, *Execution List 2017*, available at [www.deathpenaltyinfo.org/execution-list-2017](http://www.deathpenaltyinfo.org/execution-list-2017)

<sup>13</sup> Death Penalty Information Center, *Execution List 2018*, available at [www.deathpenaltyinfo.org/execution-list-2018](http://www.deathpenaltyinfo.org/execution-list-2018)

<sup>14</sup> American Civil Liberties Union, *The Death Penalty in 2018: A Punishment on the Decline*, available at [www.aclu.org/blog/capital-punishment/innocence-and-death-penalty/death-penalty-2018-punishment-decline](http://www.aclu.org/blog/capital-punishment/innocence-and-death-penalty/death-penalty-2018-punishment-decline)

<sup>15</sup> *State v. Gregory*, No. 88086-7 in the Supreme Court of the State of Washington, October 11, 2018.

<sup>16</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, 14 September 2015, A/HRC/30/12/Add. 1, at 3

- How will the State Party promote racial fairness in the imposition of death sentences and executions at the state level?

## **II. U.S. courts continue to sentence innocent persons to death and to deny compensation and rehabilitation to victims of wrongful prosecutions.**

14. The Committee expressed concerns about “the high number of persons wrongly sentenced to death, despite existing safeguards, and by the fact that 16 retentionist states do not provide for compensation for persons who are wrongfully convicted, while other states provide for insufficient compensation.” The Committee recommended that the state party “strengthen safeguards against wrongful sentencing to death and subsequent wrongful execution by ensuring, inter alia, effective legal representation for defendants in death penalty cases, including at the post-conviction stage,” and “ensure that retentionist states provide adequate compensation for persons who are wrongfully convicted.”
15. Since the beginning of 2014, 20 individuals who had been sentenced to death have been exonerated and freed from death row. The average time between sentencing and exoneration for all individuals freed from death row is 11.3 years.<sup>17</sup>
16. Inadequate representation for indigent persons charged with capital offenses remains a widespread and serious failing in the capital punishment system in the United States. According to a 2018 report by a committee appointed by United States Supreme Court Chief Justice John Roberts, these defendants often do not receive experienced and qualified counsel or the extensive resources needed to properly prepare a capital murder defense. The report recognizes that “disastrous” consequences result from failure to appoint qualified counsel.<sup>18</sup>
17. Wrongful convictions in capital cases also sometimes result from prosecutorial misconduct. For example, Texas prosecutors convicted Kerry Max Cook on the basis of false evidence that was concealed by the prosecution for decades. Cook spent 20 years on death row, and was only completely freed of the charges when prosecutors dropped them 40 years after the crime took place. Prosecutors continued to oppose Cook’s efforts to demonstrate his innocence and obtain compensation.<sup>19</sup>
18. The U.S. federal government passed the Innocence Protection Act, which grants a maximum of \$100,000 per year for wrongful imprisonment on federal death row.<sup>20</sup> The majority of states’ compensation laws, however, do not meet the U.S. federal standard of

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<sup>17</sup> Twelve of these 20 people found to have been wrongly convicted and sentenced to death were black; three more were Latino. Just four of the wrongly convicted were white. Death Penalty Information Center, *Innocence: List of Those Freed From Death Row*, available at [www.deathpenaltyinfo.org/innocence-list-those-freed-death-row](http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row)

<sup>18</sup> The committee’s charge was to conduct a review of the federal Criminal Justice Act program for appointing lawyers to represent federal defendants, but because the Act plays an important role in the litigation of capital cases during federal habeas corpus proceedings, the committee also devoted a chapter of its report to capital litigation. Committee to Review the Criminal Justice Act Program, 2017 Report, available at <https://cjastudy.fd.org>

<sup>19</sup> American Civil Liberties Union, *Prosecutorial Misconduct and Capital Punishment*, available at <https://www.aclu.org/blog/capital-punishment/prosecutorial-misconduct-and-capital-punishment/because-prosecutors-withheld>

<sup>20</sup> U.S. Senate, The Innocence Protection Act of 2002, 107<sup>th</sup> Cong., 2d sess., S.486, March 7, 2001.

compensation.<sup>21</sup> This compensation does not apply to exonerees wrongfully imprisoned by states, yet such individuals are the vast majority of exonerees.

19. The District of Columbia and 33 states have laws to provide compensation to wrongfully convicted persons. These laws typically provide inadequate financial compensation and few or no support services to assist a person released from incarceration. These laws also contain deadlines for filing a claim for compensation,<sup>22</sup> and often restrict eligibility. Some states choose to compensate such individuals only if “private legislation” is enacted, requiring that a bill to compensate a specific person be introduced and passed by the state’s legislature.<sup>23</sup> For example, Anthony Ray Hinton spent thirty years on death row in Alabama before his conviction was vacated and the charge dismissed in 2015 because only evidence that had connected him to the crime—a report purporting to show the bullets that killed the victim were fired from his gun—was false. The Alabama legislature has refused to pass a bill to provide statutory compensation to Hinton.<sup>24</sup>
20. Many states require that an individual affirmatively prove his or her innocence in order to be eligible for compensation, even where it has been established that the state lacked any evidence to convict the person. Glenn Ford spent 29 years on Louisiana’s death row before being released in March 2014. Upon his release, Ford was given a debit card worth \$20. Although Louisiana law provides that wrongfully incarcerated people are eligible for up to \$250,000 in compensation, plus another \$80,000 for loss of life opportunities, Louisiana denied compensation to Ford, arguing that he “did not have clean hands” even though a court ruled that his conviction was wrongful. Soon after his release, Ford was diagnosed with lung cancer, and passed away in July 2015 without ever receiving any compensation.<sup>25</sup>
21. Moreover, as noted below in paragraph 33, in many jurisdictions people under sentence of death are denied access to educational, vocational, and rehabilitative programs. Therefore, persons exonerated from death row often lack skills and training they need to reintegrate after release.
22. **Suggested questions** relating to innocent persons sentenced to death:
  - What steps is the State Party taking to ensure that persons charged with capital offenses receive effective representation and the necessary resources to properly defend against the charges?

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<sup>21</sup> The Innocence Project, *Making up for Lost Time: What the Wrongfully Convicted Endure and How to Provide Fair Compensation*, 2009, at 15.

<sup>22</sup> 13 states' laws require that a claim be made within two years. Several others provide a one-year time limit. Florida's statute allows just 90 days after a conviction is vacated to make the initial required filing. The Innocence Project, *State-by-State Compensation Laws*, available at [www.innocenceproject.org/wp-content/uploads/2017/09/Adeles\\_Compensation-Chart\\_Version-2017.pdf](http://www.innocenceproject.org/wp-content/uploads/2017/09/Adeles_Compensation-Chart_Version-2017.pdf)

<sup>23</sup> The Innocence Project, *Compensating the Wrongfully Convicted*, available at [www.innocenceproject.org/compensating-wrongfully-convicted/](http://www.innocenceproject.org/compensating-wrongfully-convicted/)

<sup>24</sup> Equal Justice Initiative, *Alabama Refuses Compensation to Innocent Man Who Spent 30 Years on Death Row*, available at [www.eji.org/alabama-refuses-compensation-to-anthony-ray-hinton-innocent-man-who-spent-30-years-death-row](http://www.eji.org/alabama-refuses-compensation-to-anthony-ray-hinton-innocent-man-who-spent-30-years-death-row)

<sup>25</sup> Washington Post, Glenn Ford, *wrongfully convicted in Louisiana murder case, dies at 65*, available at [www.washingtonpost.com/national/glenn-ford-wrongfully-convicted-in-louisiana-murder-case-dies-at-65/2015/07/04/0dfa3cec-2266-11e5-84d5-eb37ee8ea61\\_story.html?noredirect=on&utm\\_term=.8902a769d586](http://www.washingtonpost.com/national/glenn-ford-wrongfully-convicted-in-louisiana-murder-case-dies-at-65/2015/07/04/0dfa3cec-2266-11e5-84d5-eb37ee8ea61_story.html?noredirect=on&utm_term=.8902a769d586)

- What steps is the State Party taking to promote the adoption of compensation statutes in jurisdictions that lack such laws, and to encourage improvements in existing laws that do not provide adequate access to compensation?
- What steps is the State Party taking to provide assistance to exonerated persons who encounter obstacles to obtaining appropriate compensation?

### **III. Methods of execution lack transparency and amount to torture or cruel, inhuman, or degrading punishment.**

23. The Committee also “note[d] with concern reports about the administration, by some states, of untested lethal drugs to execute prisoners and the withholding of information about such drugs (arts. 2, 6, 7, 9, 14 and 26).” The Committee recommended that the State Party “ensure that lethal drugs used for executions originate from legal, regulated sources, and are approved by the United States Food and Drug Administration and that information on the origin and composition of such drugs is made available to individuals scheduled for execution.”
24. All of the 31 retentionist U.S. states and the U.S. federal government currently specify lethal injection as the primary means of executing prisoners. The traditional three-drug lethal injection procedure has come under constitutional challenge in a number of states as a form of cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution. The U.S. Supreme Court held in 2008 the lethal injection method used by Kentucky does not qualify as cruel and unusual punishment.
25. After the U.S. Supreme Court refused to intervene in the use of the three-drug protocol, several foreign governments and the European Union restricted the supply of drugs used in executions. As these drugs became increasingly harder to obtain, U.S. states turned to other drugs. In turn, pharmaceutical companies refused to supply these drugs for execution purposes in the United States. In response, states have turned to questionable sources—including compounding pharmacies selling drugs that are not FDA approved—to obtain the drugs required to administer executions.<sup>26</sup> When drugs originate from sources outside of federal oversight and regulation, there is a greater likelihood of tampering, improper labeling, and diminished potency, quality, and efficacy of those drugs—factors which elevate the risk of an execution method that will amount to torture.<sup>27</sup>
26. States’ difficulty in securing drugs has led to a steady decrease in lethal injections since 2014 (250 lethal injections from 2009 to November 2014, and 86 lethal injections from 2014 to May 2018); nonetheless, the untested drug combinations used in executions as well as questionable administration of the lethal injections to prisoners with known health complications sometimes result in executions that amount to torture. For example, the State of Alabama unsuccessfully attempted to execute Doyle Hamm by lethal injection in February 2018, despite having detailed knowledge regarding his medical condition that severely compromised access to his veins. As a result, Hamm was subjected to an hour long attempt to administer the injection, including numerous punctures in his legs, feet, and groin that left

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<sup>26</sup> U.S. Food & Drug Administration, *The Special Risks of Pharmacy Compounding*, [www.fda.gov/ForConsumers/ConsumerUpdates/ucm107836.htm](http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm107836.htm) (last visited Aug. 25, 2014).

<sup>27</sup> A botched execution such as what occurred with Oklahoma’s execution of Clayton Lockett.

him severely bruised and in such extreme pain that he began to wish for death. The effort to execute Hamm ended only because the court order allowing his execution was expiring.<sup>28</sup>

27. Since 2011, at least thirteen U.S. states have passed secrecy laws to conceal the identities of these drug suppliers, thus allowing states to withhold critical information to prisoners seeking assurances about the drugs' quality and effectiveness and preventing them from adequately challenging the method of execution.<sup>29</sup> Of the seventeen states that carried out executions between 2011 and 2018, all withheld at least some information about the execution process, and all but one withheld information about the source of the drugs used in carrying it out. In order to prevent witnesses from reporting evidence of botched executions, fifteen states prevent witnesses from seeing or hearing parts of the execution process.<sup>30</sup>

28. Given the continuing obstacles to obtaining and using existing lethal injection protocols, Oklahoma and Mississippi, as well as Utah, have approved execution by firing squad. In August 2018, Nebraska became the first state to carry out an execution using the opioid painkiller fentanyl. Because the prisoner was first administered a paralytic agent, it was not possible to determine whether he suffered pain or other physical distress after being given the lethal dose of fentanyl.<sup>31</sup> Fourteen states still have laws permitting execution by electrocution. In 2014, Tennessee became the first to make the electric chair a mandatory alternative when lethal injection drugs are not available. Two prisoners were put to death in Tennessee's electric chair in November and December 2018.<sup>32</sup> Alabama, Mississippi, and Oklahoma have all approved the use of nitrogen hypoxia, replacing oxygen with nitrogen gas until the prisoner dies, as an alternative in the event the state is unable to carry out an execution by lethal injection. Veterinary experts warn against the use of nitrogen or other inert gases for euthanizing animals, because available evidence indicates animals may experience distress before losing consciousness.<sup>33</sup>

29. **Suggested questions** relating to lethal injection:

- What efforts has the State Party made to ensure that drugs used to administer lethal injection are subject to federal government regulation and oversight?
- Has the State Party taken any steps to enforce federal regulations regarding the drugs used to administer lethal injections?

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<sup>28</sup> Bernard Harcourt, *The Barbarism of Alabama's Botched Execution*, available at [www.nybooks.com/daily/2018/03/13/the-barbarism-of-alabamas-botched-execution/](http://www.nybooks.com/daily/2018/03/13/the-barbarism-of-alabamas-botched-execution/); NBC News, *Doyle Lee Hamm wished for death during botched execution, report says*, available at [www.nbcnews.com/storyline/lethal-injection/doyle-lee-hamm-wished-death-during-botched-execution-report-says-n853706](http://www.nbcnews.com/storyline/lethal-injection/doyle-lee-hamm-wished-death-during-botched-execution-report-says-n853706)

<sup>29</sup> Death Penalty Information Center, *Behind the Curtain: Secrecy and the Death Penalty in the United States* (2018), at 4, available at <https://deathpenaltyinfo.org/files/pdf/SecrecyReport.pdf>

<sup>30</sup> *Id.* at 4-5, 23.

<sup>31</sup> Governing, *Fentanyl, Gas, Firing Squad: Why Execution Methods Are Changing*, August 16, 2018, available at [www.governing.com/topics/public-justice-safety/gov-nebraska-execution-method-states-fentanyl.html](http://www.governing.com/topics/public-justice-safety/gov-nebraska-execution-method-states-fentanyl.html)

<sup>32</sup> CNN, *Tennessee executes 2nd inmate in 2 months using electric chair*, December 7, 2018, available at [www.cnn.com/2018/12/06/us/tennessee-second-electric-chair-execution/index.html](http://www.cnn.com/2018/12/06/us/tennessee-second-electric-chair-execution/index.html)

<sup>33</sup> The New York Times, *States Turn to an Unproven Method of Execution: Nitrogen Gas*, May 7, 2018, available at [www.nytimes.com/2018/05/07/health/death-penalty-nitrogen-executions.html](http://www.nytimes.com/2018/05/07/health/death-penalty-nitrogen-executions.html)



- How does the State Party ensure that individuals with imminent executions have full access to information about the drugs to be used for their executions and the sources of those drugs, so that they may assess whether a legal challenge is appropriate?
- What steps has the State Party taken to ensure that prisoners are not subjected to torture or cruel, inhuman or degrading treatment during the execution process?

**IV. Conditions of detention for persons sentenced to death amount to torture or cruel, inhuman, or degrading treatment.**

30. At paragraph 20 of the concluding observations, the Committee stated its concern “about the continued practice of holding persons deprived of their liberty, including, under certain circumstances, juveniles and persons with mental disabilities, in prolonged solitary confinement and about detainees being held in solitary confinement in pretrial detention. The Committee is furthermore concerned about poor detention conditions in death-row facilities (arts. 7, 9, 10, 17 and 24).” The committee recommended that the state party “should monitor the conditions of detention in prisons, including private detention facilities, with a view to ensuring that persons deprived of their liberty are treated in accordance with the requirements of articles 7 and 10 of the Covenant and the Standard Minimum Rules for the Treatment of Prisoners. It should impose strict limits on the use of solitary confinement, both pretrial and following conviction, in the federal system as well as nationwide, and abolish the practice in respect of anyone under the age of 18 and prisoners with serious mental illness. It should also bring the detention conditions of prisoners on death row into line with international standards.”
31. Approximately 2,500 U.S. prisoners are under sentence of death in more than 30 states.<sup>34</sup> In most of those places, conditions are identical or nearly identical to those in other solitary confinement or segregation units. Death row prisoners are confined to one person cells that are generally the size of an average bathroom, ranging in size from 100 square feet (9.2 square meters) to less than 40 square feet (3.7 square meters). The cells typically contain a steel or concrete slab bed and a steel toilet. Prisoners are alone in their cells the vast majority of their time, for 20 hours a day or more, including for all meals.<sup>35</sup>
32. A recent report published by the University of Texas School of Law’s Human Rights Clinic found that living conditions on Texas’ death row were so abysmal that they violate “basic human rights as well as a number of international treaties that were voluntarily ratified by the U.S. and which are binding on Texas.” The report states that death row prisoners in Texas are confined to 8 by 12 foot cells for 23 hours per day, and that while policy dictates one hour of out of cell recreation every day, in practice it is only permitted two to four times per week.

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<sup>34</sup> NAACP Legal Defense and Educational Fund, Inc., *Death Row U.S.A.* (Summer 2018), at 1, available at <https://www.naacpldf.org/wp-content/uploads/DRUSASummer2018.pdf>; Death Penalty Information Center, *The Death Penalty in 2018: Year End Report*, at 5, available at <https://deathpenaltyinfo.org/documents/2018YrEnd.pdf>.

<sup>35</sup> The Marshall Project, *Condemned to Death - And Solitary Confinement*, July 23, 2017, at 2, available at [www.themarshallproject.org/2017/07/23/condemned-to-death-and-solitary-confinement](http://www.themarshallproject.org/2017/07/23/condemned-to-death-and-solitary-confinement); American Civil Liberties Union, *A Death Before Dying: Solitary Confinement on Death Row*, at 4-5, available at [www.aclu.org/issues/prisoners-rights/solitary-confinement/death-dying](http://www.aclu.org/issues/prisoners-rights/solitary-confinement/death-dying); The Intercept, *Pennsylvania keeps all death-row inmates in solitary confinement*, available at <https://theintercept.com/2018/1/25/pennsylvania-death-row-solitary-confinement-aclu/>

Moreover, prisoners are not allowed to watch television or use a telephone other than for attorney communication.<sup>36</sup>

33. Moreover, in many jurisdictions, prisoners under sentence of death do not have access to educational, vocational, or rehabilitation programs.<sup>37</sup>
34. In the few states that have lifted such restrictions on death row prisoners, experience demonstrates that allowing those prisoners more human contact and less time in segregation-like conditions reduces violent behavior and other behavioral problems. For example, Louisiana officials reported fewer fights after such changes were made. In addition, research shows that those who spend time in solitary confinement are seven times more likely to engage in self-harm than other prisoners.<sup>38</sup> According to Dr. Craig Haney, a noted expert on the effects of solitary confinement, such conditions are known to induce suicidal thoughts and actions even in prisoners who have no prior history of mental illness or suicidal behavior.<sup>39</sup> Dr. Haney also describes a number of other psychological harms, including depression and “isolation panic,” that frequently result from being confined in a segregation environment.<sup>40</sup>
35. Individuals with intellectual and psychosocial disabilities continue to be sentenced to die in the United States, despite the absence of procedural safeguards to accommodate their disabilities, and they are held in the same conditions as other death row prisoners. Although the United States Supreme Court has held that those found to have an “intellectual disability” are exempted from execution, states continue to find ways to fight such findings in an effort to impose the death penalty on individuals to whom the exemption should apply. For example, Texas continues to pursue the execution of Bobby Moore, who has been on death row since 1980, even though the prosecutor agrees with defense counsel that he is too intellectually disabled to be eligible for the death penalty.<sup>41</sup> No exemption exists for persons with severe psychosocial disabilities.
36. **Suggested questions** relating to solitary confinement and other conditions on death row:
- What efforts has the State Party made to ensure that conditions on death row are consistent with the minimum standards for detention conditions?
  - Has the State Party undertaken any efforts to investigate and/or address the conditions of confinement for persons with severe psychosocial disabilities on death row?

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<sup>36</sup> Prison Legal News, *Report Finds Texas Death Row Conditions Violate Basic Human Rights*, March 6, 2018, available at [www.prisonlegalnews.org/news/2018/mar/6/report-finds-texas-death-row-conditions-violate-basic-human-rights/](http://www.prisonlegalnews.org/news/2018/mar/6/report-finds-texas-death-row-conditions-violate-basic-human-rights/)

<sup>37</sup> Arthur Liman Public Interest Program, Yale Law School, *Rethinking Death Row: Variations in the Housing of Individuals Sentenced to Death* (July 2016) at 7, available at [law.yale.edu/system/files/documents/pdf/Liman/deathrow\\_reportfinal.pdf](http://law.yale.edu/system/files/documents/pdf/Liman/deathrow_reportfinal.pdf).

<sup>38</sup> The Marshall Project, *Condemned to Death - And Solitary Confinement*, supra, at 4.

<sup>39</sup> PBS, *Craig Haney: Solitary Confinement is a “Tried-and-True” Torture Device*, April 22, 2104, at 8, available at [www.pbs.org/wgbh/frontline/article/craig-haney-solitary-confinement-is-a-tried-and-true-torture-device/](http://www.pbs.org/wgbh/frontline/article/craig-haney-solitary-confinement-is-a-tried-and-true-torture-device/)

<sup>40</sup> Id. at 5.

<sup>41</sup> Houston Chronicle, *Texas AG fights Harris County prosecutors to keep Bobby Moore on death row*, available at [www.chron.com/news/houston-texas/article/Texas-AG-fights-Harris-County-prosecutors-to-keep-13373197.php](http://www.chron.com/news/houston-texas/article/Texas-AG-fights-Harris-County-prosecutors-to-keep-13373197.php).

- Has the State Party taken any steps to ensure that persons confined on death row are afforded treatment for psychological harms associated with long-term solitary confinement?
- What measures will the State Party take to ensure that persons confined on death row have access to educational, vocational, and rehabilitative programs to the same extent as people in the general prison population?