

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group of Experts on People of African Descent; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on discrimination against women and girls

REFERENCE:
UA USA 12/2021

1 March 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group of Experts on People of African Descent; Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/5, 45/24, 42/22, 44/10, 44/13, 43/36, 43/20, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the death penalty in the United States of America at both federal and state levels.

We welcome the commitments made by President Biden during his Presidential campaign, to work to pass legislation to eliminate the death penalty at the federal level and to incentivize states to do the same within their own jurisdictions. We respectfully urge President Biden to take prompt action to implement these commitments. We further call for President Biden to take all possible measures to prevent the carrying out or handing down of further federal death sentences including by granting clemency to all individuals currently on federal death row, supporting legislative efforts to abolish the death penalty and banning the sale and transportation of chemicals used for lethal injections.

We have previously expressed concern that the US federal Government resumed federal executions in July 2020.¹ According to information received, in total 13 federal

¹ Communication USA 28/2020, sent on 13 November 2020, concerning the resumption of federal executions and the case of Lisa Montgomery available at

His Excellency
Mr. Daniel B. Smith,
Acting Secretary of State

executions were carried out following this resumption, and 49 individuals remain on federal death row to date. In our previous letter we emphasised that the resumption of federal executions was in contradiction of the national and global trends away from the death penalty.² We further noted that the United Nations Human Rights Committee has expressed its deep concern at the de facto reinstatement of death sentences and executions by a State party to the International Covenant on Civil and Political Rights³ and we observed that the resumption of executions was incompatible with the United States of America's international commitments.

We have also previously raised several individual execution cases at state level.⁴ We note with concern that approximately 2500 individuals are currently on state death rows, of which 50 are women. Reportedly, one execution is currently scheduled to take place in March 2021 and seven others in the course of the same year.

We would like to emphasize that **the death penalty cannot be reconciled with the full respect for the right to life**, and that abolition is both desirable and necessary for the enhancement of human dignity and progressive development of human rights.⁵ The International Covenant on Civil and Political Rights (ICCPR), which the United States of America ratified on 8 June 1992, permits retentionist States to continue applying the death penalty. However, it is our view that this "dispensation" for States parties should not be construed as a justification for the deprivation of the life of individuals, albeit lawfully sentenced to death, and does not make the execution of a death sentence, strictly speaking, legal.⁶

The death penalty violates the right to life under article 6 of the ICCPR, and may amount to cruel, inhuman, or degrading treatment or punishment, or even torture, under article 7 of the ICCPR and articles 1 and 16 of the Convention Against Torture (CAT), which the USA ratified on 21 October 1994.

Only full respect for the most stringent **due process guarantees** distinguishes capital punishment, as tolerated under international law, from an arbitrary execution.

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25703>.

We regret that no reply has been received to this communication to date and that Ms. Lisa Montgomery was executed on 13 January 2021.

² Report of the Secretary-General, Question of the death penalty, A/HRC/27/23

³ Human Rights Committee, Concluding Observations on Syria, CCPR/CO/84/SYR, para. 7

⁴ This includes most recently on 16 February 2021 (USA 10/2021) concerning the case of Mr. Ramiro Ibarra Rubí as well as on 22 October 2019 (USA 20/2019) and 31 Jul 2018 (USA 15/2018) regarding the case of Mr. Charles Rhines, on 30 September 2019 (USA 19/2019) regarding the case of Mr. Russell Bucklew and on 9 November 2018 (USA 21/2018) regarding Mr. Roberto Ramos Moreno, to which no replies have been received. We also raised concerns on 15 February 2018 (USA 4/2018) regarding the case of Mr. Doyle Hamm, on 3 November 2017 (USA 25/2017) regarding the case of Mr. Ruben Cárdenas Ramírez and on 3 July 2017 (USA 10/2017) regarding the case of Mr. William Morva to which replies have been received. While Mr. Doyle Hamm was not executed following a botched attempt, we regret that Mr. Charles Rhines, Mr. Russell Bucklew, Mr. Roberto Ramos Moreno, Mr. Ruben Cárdenas Ramírez and Mr. William Morva were all later executed. The Communications, and replies where received, are available at

<https://spcommreports.ohchr.org/Tmsearch/TMDocuments>

⁵ Human Rights Committee, General comment No. 36 (2018) on the right to life, CCPR/C/GC/36, para. 50

⁶ See Human Rights Committee, CCPR/C/78/D/829/1998, appendix, individual opinion, page 30

The Human Rights Committee has repeatedly stated that the imposition of the death penalty in a manner that is contrary to another provision of the ICCPR also violates the right not to be arbitrarily deprived of one's life, as stated under article 6 of the Covenant. Any death sentence carried out on the basis of a trial that does not fully comply with the due process guarantees or on the basis of an ambiguous law, amounts to an arbitrary deprivation of life. Any trial which could lead to the imposition of the death penalty, including all stages before the trial and the consideration of appeals on matters of fact and law after the trial, must rigorously comply with the guarantees set out in Article 14 of the ICCPR.

Amongst other situations, the imposition of the death penalty is always arbitrary when the defendant does not have access to a competent legal defense of their own choice, sufficient time to prepare a defense and when the court ignores or discounts essential facts that may have significantly influenced a capital defendant's motivations, situation and conduct.

We have previously raised due process concerns in relation to multiple death penalty cases in the United States of America.⁷ This includes, most recently, in relation to the federal death penalty against Ms. Lisa Montgomery, who did not receive effective representation during initial proceedings. Her personal history of being the victim of an extreme level of physical and sexual abuse throughout her life and her mental health conditions, were essential facts which were not considered as mitigating circumstances during the legal process.⁸

In relation to women on death row, while we note there are currently no women on federal death row and that they constitute a minority on state death rows, on the basis of previous cases, women sentenced to death are often survivors of sexual physical and/or child abuse, are likely to have lacked access to adequate legal representation and to be cases where women are seen as violating the norms of gendered behavior.⁹

The death penalty should never be imposed on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psychosocial and intellectual disabilities impeded their effective defense.¹⁰

⁷ For example at state level, see Communication UA USA 20/2019, sent on 22 October 2019, concerning the case of Mr. Charles Rhines, Communication 21/2018, sent on 9 November 2018 concerning the case of Mr. Roberto Ramos Moreno and Communication UA USA 4/2018, sent on 15 February 2018, concerning the case of Mr. Doyle Hamm.

⁸ Supra note 1

⁹ Cornell Law School, Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty, VII Country case Studies, United States of America, available at <https://deathpenaltyworldwide.org/publication/judged-more-than-her-crime/?version=html#united-states-of-america>

¹⁰ General Comment No. 36, supra note 5, [para. 49](#)

Several of the individuals currently on federal death row reportedly have serious mental health conditions and psychosocial disabilities.¹¹ In this regard, we welcome that the United States of America signed the Convention on the Rights of Persons with Disabilities (CRPD) in July 2009.¹² We wish to stress that, in line with the Vienna Convention on the Law of Treaties (VCLT), signing creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.¹³ Article 13 of the CRPD enshrines an explicit right to access to justice of persons with disabilities on an equal basis with others. In particular, all persons with disabilities, and especially persons with intellectual and psychosocial disabilities, shall be informed about, and provided access to, promptly and as required, appropriate support and accommodation to facilitate their effective participation, as well as procedural accommodations to ensure fair trial and due process. This is similarly detailed in principles 2, 3 and 5 of the 2020 International Principles and guidelines on access to justice for persons with disabilities, which aim to support States in revising, designing and implementing justice systems that provide equal access to justice for persons with disabilities, in line with international human rights standards.¹⁴ Furthermore, Article 10 of the CRPD explicitly recognizes and protects the right to life, including protection against State conduct that threatens this right.

The Human Rights Committee has explicitly stated that persons with disabilities, including persons with psychosocial and intellectual disabilities, are entitled to specific measures of protection to ensure their effective enjoyment of the right to life on equal basis with others. Such measures of protection shall include the provision of reasonable accommodation in all stages of the process, access to essential facilities and services, and other specific measures.¹⁵ In addition, the Economic and Social Council resolution 1989/64 recommends that States strengthen further the protection of the rights of those facing the death penalty by eliminating it for persons with intellectual or psychosocial disabilities, whether at the stage of sentence or execution. Similarly, several resolutions adopted by the Commission on Human Rights urged all States not to impose the death penalty on, or to execute, any person with intellectual or psychosocial disabilities.

¹¹ See for example, Death Penalty Information Center, Case Summaries for Modern Federal Death Sentences

¹² We also note that and note that the United States of America has received recommendations to ratify the CRPD in all three previous cycles of the Universal Periodic Review, most recently in November 2020, and would urge Your Excellency's Government to step up its efforts to ratify the Convention.

¹³ We wish to highlight that the CRPD was adopted as a resolution by the General Assembly and enjoys near universal ratification. It has standing as the most progressive interpretation of all existing human rights as they apply to persons with disabilities. These rights are furthermore guaranteed by all other human rights treaties.

¹⁴ See International Principles and Guidelines on access to justice for persons with disabilities, available at <https://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/GoodPracticesEffectiveAccessJusticePersonsDisabilities.aspx>

¹⁵ General Comment No. 36, supra note 5, para 24

The right to life must be respected and ensured without distinction of any kind.¹⁶ In 2014, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination expressed their concern about the **disproportionate application of the death penalty amongst African American defendants** in the United States of America.¹⁷ Article 5 of the International Convention on the Elimination of Racial Discrimination, ratified by the United States of America on 21 October 1994, states the obligation to guarantee to everyone, without distinction of race, colour or national or ethnic origin, the right to equality before the law, notably the right to equal treatment before the tribunals and all other organs of the administration of justice. According to information available to us, a disproportionate number of the individuals on federal death row are African-American.¹⁸ While there is no official data available on the socio-economic status of the individuals on federal death row, we additionally highlight **that people living in poverty are disproportionately affected by the death penalty.**¹⁹

In countries that have not abolished the death penalty, **the method of execution must respect article 7 of the ICCPR**, which bars certain methods including injection of untested lethal drugs and use of gas chambers as well as other painful and humiliating methods.²⁰ The method of execution must cause “the least possible physical and mental suffering.”²¹ In November 2020, the Department of Justice issued a rule allowing executions “in any manner consistent with [f]ederal law.”²² This, technically, would allow executions to be carried out through electrocution, lethal gas, and firing squad.²³

We note that recent federal executions have been carried out by lethal injection. In this regard, we are concerned that there have been a number of instances of “botched executions” at state level using lethal injections.²⁴ The Committee against Torture has called on the United States to review the use of lethal injections to perform executions in order to prevent severe pain and suffering.²⁵

¹⁶ ICCPR, Article 26 and General Comment 36, supra note 5, para. 61

¹⁷ Human Rights Committee, Concluding Observations on the United States of America, CCPR/C/USA/CO/4, para. 8; Committee on the Elimination of Racial Discrimination, Concluding Observations on the United States of America, CERD/C/USA/CO/7-9, para 20

¹⁸ Death Penalty Information Center, List of Federal Death-Row Prisoners, available at <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty/list-of-federal-death-row-prisoners>

¹⁹ See Press Release, Death penalty disproportionately affects the poor, UN rights experts warn, 6 October 2017, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E>

²⁰ General Comment No. 36, supra note 5, para 40

²¹ Human Rights Committee, General Comment 20, Article 7 (1992), CCPR/C/21/Add.3, para. 6

²² Manner of Federal Executions. 85 C.F.R. 75846. (Nov. 27, 2020)

²³ Congressional Research Service, The Federal Death Penalty, Updated December 1 2020, available at <https://fas.org/sgp/crs/misc/IN11474.pdf>

²⁴ Committee Against Torture, Concluding Observations on the United States of America, CAT/C/USA/CO/3-5, para. 25 and 26. See also Communication UA USA 4/2018, sent on 15 February 2018 concerning the case of Mr. Doyle Hamm and UA USA 19/2019, sent on 30 September 2019, concerning the case of Mr. Russell Bucklew.

²⁵ Ibid, see also CAT/C/USA/CO/2, para. 31

Additionally, we would like to call your Excellency's Government's attention to an emerging international customary norm prohibiting the death penalty as a form of cruel, inhuman, or degrading punishment. The cruelty of the death penalty goes beyond the execution itself. The "**death row phenomenon**" explains that prisoners on death row may experience severe mental trauma and physical deterioration, which may cross into the territory of degrading, cruel or inhuman treatment, or even torture. The Human Rights Committee has observed that "extreme delays in the implementation of a death penalty sentence, which exceed any reasonable period of time necessary to exhaust all legal remedies, may also entail the violation of article 7 of the Covenant, especially when the long time on death row exposes sentenced persons to harsh or stressful conditions, ... and when they are particularly vulnerable due to factors such as age, health or mental state."²⁶

The Inter-American Court of Human Rights similarly stated in *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* (2002) that being on the death row for a prolonged period and awaiting execution could cause severe mental and physical anguish that constituted a violation of the prohibition of torture and cruel, inhuman or degrading treatment. In the 1993 case of *Pratt and Morgan v. Jamaica*, the Judicial Committee of the Privy Council of the British House of Lords held that spending more than five years on death row was enough to consider the existence of the "death row phenomenon" on its merits. In this regard, we note that reportedly more than three quarters of the 49 individuals facing federal execution have been on death row for 10 years or more and several for 20 years or more.²⁷

We further stress that there exists **no evidence that the death penalty has a deterrent effect** against crime. In recent decades, murder rates in the USA have consistently been lower in states that have abolished the death penalty than in those that retain it.²⁸ Additionally, data show that murder rates do not increase after states abolish the death penalty, which would be expected if the death penalty had a deterrent effect. Senior criminal justice personnel have also recognized its inefficiency.²⁹

Evidence from across the world suggests that authorities rely on death penalty to display concern for public safety or to convey that they are "tough on crime." This motive however **does not address the root causes of crime** and detracts attention from the action needed to address the complex underlying social issues. Additionally, the death penalty takes up significant public resources that should be used instead to tackle those issues and to invest in education, prevention, including prevention of and

²⁶ General Comment 36, supra note 5, para. 40

²⁷ See Death Penalty Information Center, List of Federal Death-Row Prisoners, year of sentencing, available at <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty/list-of-federal-death-row-prisoners>

²⁸ Based on data from the Federal Bureau of Investigation's Uniform Crime Reports. See Death Penalty Information Center, Policy Issues, murder rates, available at <https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>

²⁹ See ACLU, The Case against the death penalty, available at <https://www.aclu.org/other/case-against-death-penalty> and the Death Penalty Information Center, Facts and Research, Law enforcement, available at <https://deathpenaltyinfo.org/facts-and-research/new-voices/law-enforcement>

protection from sexual and gender-based violence, community policing, and a range of tested responses to drug abuse, amongst others.³⁰

Last but not least, the death penalty always carries the unacceptable risk of execution of innocent individuals, recalling that, unlike any other criminal punishment, the implementation of the death penalty is irrevocable. Reportedly, since 1973, more than 170 people who had been wrongly convicted and were sentenced to death in the United States of America, were later exonerated.³¹ Based on recent cases and statistics, many innocent people remain on death rows across the country.

In this context, we respectfully call on President Biden to take all possible steps to eliminate the death penalty in the United States of America. We understand that the President has multiple powers that could be used to work towards this end. In particular, we call on President Biden to **promptly grant clemency to the 49 individuals who remain on federal death row** to prevent them being executed now or in the future. We further urge the President, as well as members of Congress, to strongly **support legislative efforts to formally abolish the death penalty** at federal level. We additionally encourage the President to consider rescinding the lethal injection protocol and the “Manner of Execution” regulation, directing the Department of Justice to stop seeking the death penalty, withdrawing notices of intent to seek the death penalty in ongoing cases and dismantling the death chamber used to execute federal death row prisoners in Terre Haute, Indiana.

In relation to the death penalty at state level, we encourage President Biden to promptly explore **concrete and specific ways to incentivize states to eliminate the death penalty**, including the possibility of linking some forms of federal funding to alternative sentencing. Additionally, we urge that the **sale and transport of chemicals used in lethal injections be banned**. Such steps are particularly urgent given that a number of executions are planned at state level in the coming months.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to clarify all cases brought to our attention, we would be grateful for your observations and/or considerations on the above information.

We would also be grateful if you could provide us with an account of the plans in place and timeline to fulfill the public commitments made by President Joe Biden on the death penalty.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

³⁰ Regarding the cost of the death penalty, the Indian General Assembly found the average cost of a death penalty trial and direct appeal was nearly ten times more than cases where life without parole was sought by the prosecution, see Death Penalty Facts, Last updated 2/27/2019, available at <https://www.in.gov/ipdc/files/Facts-about-the-death-penalty-.pdf>. For other examples, see Death Penalty Information Center, State Studies on Monetary Costs

³¹ Death Penalty Information Center, Policy Issues, Innocence, available at <https://deathpenaltyinfo.org/policy-issues/innocence>

Given the importance of the matter we intend to publicly express our concerns on this issue as, in our view, the information at hand is sufficiently reliable to indicate a matter warranting the most immediate attention. We believe that given the above circumstances the public should be alerted to these concerns and the human rights implications of the case. Any public statement on our part would indicate that we have been in contact with your Excellency's Government to clarify the issue in question and recall the State's international legal obligations.

Please accept, Excellency, the assurances of our highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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Chair-Rapporteur of the Working Group of Experts on People of African Descent

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