

URGENT ACTION

TROY DAVIS FACING IMMINENT EXECUTION IN GEORGIA

A Georgia judge has signed a death warrant in the case of Troy Davis, authorizing the state to execute him in the week of 21 to 28 September. Doubts persist about Troy Davis' guilt in the crime for which he was sentenced to death two decades ago.

The county judge signed the death warrant of **Troy Davis** on 6 September. The Georgia Department of Corrections will set the actual date and time for the execution. The Department's usual strategy is to set it on the first day authorized under the warrant, in this case 21 September.

Troy Davis was sentenced to death in 1991 for the murder of police officer Mark Allen MacPhail in Savannah, Georgia in 1989. No physical evidence directly links him to the murder – no murder weapon was ever found. The case against Troy Davis primarily rested on witness testimony. Since his trial, seven of nine key witnesses have recanted or changed their testimony, some alleging police coercion.

In 2009, the US Supreme Court ordered a federal evidentiary hearing to review Troy Davis' innocence claim. At the 2010 hearing, US District Court Judge William Moore addressed whether Troy Davis could show "by clear and convincing evidence that no reasonable juror would have convicted him in the light of the new evidence" that had emerged since his 1991 murder trial. Under this "extraordinarily high" standard, Judge Moore wrote in his August 2010 opinion, "Mr. Davis is not innocent". Elsewhere in his ruling, he acknowledged that the new evidence presented by Troy Davis cast "some additional, minimal" doubt on his conviction, and that the state's case was not "ironclad". In 1991, the jury had found Troy Davis guilty "beyond a reasonable doubt," Judge Moore noted, "but not to a mathematical certainty."

In 2007 Troy Davis was less than 24 hours from execution when the Georgia Board of Pardons and Paroles issued a stay. The Board said that it would not allow an execution to go ahead "unless and until its members are convinced that there is no doubt as to the guilt of the accused." Since then Troy Davis has faced two more execution dates, both in 2008, which were stayed by the courts.

Please write immediately in your own language:

- Acknowledge the seriousness of the crime for which Troy Davis was sentenced to death;
- Note that doubts persist in the case even after the federal evidentiary hearing in 2010;
- Point out that the Board acts as a failsafe against irreversible error, and recall its statement in 2007 that it would not allow any execution to proceed where there was any doubt about the guilt of the prisoner;
- Point to the substantial evidence of the fallibility of the capital justice system;
- Call on the Board to grant clemency and to commute the death sentence of Troy Davis.

PLEASE SEND APPEALS AS SOON AS POSSIBLE, AND BEFORE 21 SEPTEMBER 2011 TO:

State Board of Pardons and Paroles

2 Martin Luther King, Jr. Drive, SE
Suite 458, Balcony Level, East Tower
Atlanta, Georgia 30334-4909
USA

Email: Clemency_Information@pap.state.ga.us AND

Webmaster@pap.state.ga.us

Fax: 1 404 651 8502

Salutation: Dear Board members

Please check with the AIUSA Urgent Action Office if sending appeals after the above date.

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ADDITIONAL INFORMATION

In the past four years, three states in the USA – New Jersey, New Mexico and Illinois – have legislated to abolish the death penalty. Signing the bills in law, the three governors pointed to the risk of irreversible error in an imperfect system as a reason to support abolition. In 2007, New Jersey Governor Jon Corzine said that “government cannot provide a fool proof death penalty that precludes the possibility of executing the innocent”. In 2009, Governor Bill Richardson of New Mexico said that to carry out an irrevocable punishment, “we must have ultimate confidence – I would say certitude – that the system is without flaw or prejudice.” This, he added, “is demonstrably not the case”. In March 2011, Illinois Governor Pat Quinn said that the capital justice system was “inherently flawed”, and that it was “impossible to devise a system that is consistent, that is free of discrimination on the basis of race, geography or economic circumstance, and that always gets it right.” He said that, “as a state, we cannot tolerate the executions of innocent people because such actions strike at the very legitimacy of a government”.

More than 130 people have been released from death rows across the USA since 1976 on the grounds of innocence. In each case, at trial the defendant had been found guilty beyond a reasonable doubt. Among other things the cases reveal the frequent unreliability of witness testimony. The Troy Davis case is one in which most of the witnesses who testified against the defendant have since retracted or contradicted their trial testimony in sworn statements. Nevertheless, a prisoner seeking to rely on revised witness testimony faces a high hurdle in the face of deference to the original jury verdict. At the June 2010 evidentiary hearing in US District Court, the Georgia prosecutor argued that “every court in the United States at every level has said, recantations are not favored, they are looked at with great skepticism, they’re unreliable.” She concluded about the Troy Davis case: “This was their chance. The standard is extremely high..., they have not met it”.

One of the witnesses who appeared at the hearing was Benjamin Gordon, who in 2008 had signed a statement that an alternative suspect (a relative of his by marriage) had told him that he had shot Officer MacPhail. At the hearing, Benjamin Gordon asserted for the first time that he had actually seen this individual shoot the police officer. Benjamin Gordon, who had just turned 16 at the time of the crime, again alleged that he had been coerced by police into signing a statement implicating Davis. He said that he had not come forward sooner with the assertion about seeing who shot the officer out of fear, and that he had decided to “come in today and just let the truth be known”. Judge Moore concluded that Benjamin Gordon was “not a credible witness”.

The international community has agreed safeguards for capital cases in those countries that still retain the death penalty. One of these concerns the burden of proof on the death penalty state: “Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts”. The “extraordinarily high” burden of proof chosen by Judge Moore is less protective than this.

Executive clemency is meant to be a failsafe where the courts have been unwilling or unable to act. In September 2010, for example, Ohio’s Governor commuted the death sentence of Kevin Keith to life imprisonment. The governor said that despite circumstantial evidence linking Kevin Keith to the crime, “many legitimate questions have been raised regarding the evidence in support of the conviction and the investigation which led to it” (see <http://www.amnesty.org/en/library/info/AMR51/079/2010/en>).

Amnesty International opposes the death penalty in all cases, unconditionally. There have been 1,266 executions in the USA since judicial killing resumed there in 1977, including 32 so far this year. There have been 51 executions in Georgia, three this year. For further information on the Troy Davis case, see USA: ‘Unconscionable and unconstitutional’: Troy Davis facing fourth execution date in two years, May 2009, <http://www.amnesty.org/en/library/info/AMR51/069/2009/en>; USA: Less than ‘ironclad’, less than safe, 27 August 2010, <http://www.amnesty.org/en/library/info/AMR51/077/2010/en>

Name: Troy Davis (m)

Issue(s): Death penalty, Legal concern

Further information on UA 210/11 (12 April, 2011)

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