The Advocates for Human Rights, a non-governmental organization in special consultative status with ECOSOC

and

Reprieve, a human rights charity

submit this

Update to the Shadow Report on the Death Penalty in the United States

for consideration during

the 110th Session of the United Nations Human Rights Committee

10 - 28 March 2014

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. 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.

Reprieve, a human rights charity, delivers justice and saves lives. Reprieve investigates, litigates and educates, prioritising those cases where human rights are most likely to be jettisoned or eroded. Reprieve promotes the rule of law around the world, targeting the death penalty and abuses committed in the name of the “war on terror.” Reprieve holds a seat on the Steering Committee of the World Coalition Against the Death Penalty.

The Advocates for Human Rights and Reprieve submit this update, as of February 7, 2014, to their previous shadow report submission.

1. On January 22, the state of Texas executed Mexican national Edgar Tamayo, despite requests for a new hearing made by Secretary of State John Kerry, former Governor of Texas Mark White, and Mexican Foreign Minister José Antonio Meade Kuribreña. Edgar Tamayo was one of the original fifty Mexican national plaintiffs referenced in the International Court of Justice’s (“ICJ”) 2004 Avena case ruling, which denounced the United States’ failure to adhere to international consular notification covenants; Tamayo was the third of those fifty
Mexican nationals to be executed. Despite a pending bill, the U.S. Congress has, to date, failed to pass legislation implementing the international obligations affirmed in the ICJ’s ruling.

2. Amidst ongoing restrictions adopted by foreign governments, the European Union, and corporations, U.S. states’ supplies for the traditional three-drug method of lethal injection have begun to be exhausted. This has led many of the 32 retentionist states to search for new and oftentimes untested and unregulated sources and methods of execution. Two approaches have emerged in the states’ search for new execution methods: some have adopted new, experimental execution protocols using untested, manufactured drugs; others have turned to compounded drugs. Under both approaches, the use of such unchartered means of execution has demonstrably increased the risks of executions constituting cruel and unusual punishment—as defined by the International Covenant on Civil and Political Rights as well as the Eighth Amendment to the U.S. Constitution—to alarming levels. The following is a synopsis of the executions using new methods that have taken place since the shadow report submission:

a. On October 15, the state of Florida executed William Happ, the first inmate to be executed using an untested three-drug method utilizing midazolam hydrochloride in place of pentobarbital, which was no longer commercially available for purchase by prisons. It has been reported that the execution took twice as long as under the previous protocol and that the prisoner experienced severe pain. The state executed Darius Kimbrough and Askari Muhammad on November 11 and January 7, respectively, in the same manner.

b. The states of Ohio and Louisiana have adopted a new, two-drug execution protocol, composed of an untested combination of midazolam and hydromorphone. This is also the back-up protocol in Kentucky. Ohio used these drugs to execute Dennis McGuire on January 16. In a clearly botched execution lasting roughly 25 minutes, McGuire proceeded to violently gasp for breath and otherwise struggle—a condition known as ‘air hunger’. The state of Louisiana announced that the two-drug combination would

---

be used in the execution of Christopher Sepulvado, scheduled for February 5, however this execution was stayed on February 3.  

c. Late last year, Tennessee, North Carolina, and Missouri announced their plans to utilize pentobarbital in a one-drug protocol, with Missouri and Tennessee stating their intent to obtain the drug through a compounding pharmacy. Compounding pharmacies are not regulated by the FDA and compounded drugs are not FDA approved. This means that the FDA does not verify the safety or effectiveness of compounded drugs.

d. The state of Texas executed Michael Yowell on October 9, using in its one-drug protocol—for the first time—pentobarbital provided by a compounding pharmacy. On February 5, Texas executed Susan Basso using pentobarbital again. On November 20, the state of Missouri executed Joseph Paul Franklin, the first inmate to be put to death using compounded pentobarbital. Several weeks later on December 11, and nearly two months after Governor Jay Nixon stayed the execution due to concerns regarding propofol in the state’s previous protocol, Missouri executed Allen Nicklasson in the same manner as Mr. Franklin. On January 29, Missouri executed Herbert Smulls in the same manner. Recently, although Louisiana previously announced that it would use this same method for the upcoming execution of Christopher Sepulvado, his execution has been stayed over concerns pertaining to the state’s change in protocol.

---

6 http://theadvocate.com/home/8254575-125/injection-drug-questions-halt-sepulvado
8 http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm
e. On January 9, the state of Oklahoma carried out its first execution using compounded pentobarbital. Concerns were raised that the execution had miscarried after the final words of the inmate, Michael Lee Wilson, were “I feel my whole body burning”.13

3. On October 25, the State of Missouri exonerated Reginald Griffin, dismissing the charges against him and freeing him from death row. This makes Griffin the 143rd person in the United States and the 4th in Missouri to have been found to be wrongfully placed on death row since 1973.14

---
