February 8, 2008

Gerald F. Uelmen, Executive Director
California Commission on the Fair Administration of Justice
900 Lafayette Street, Suite 608
Santa Clara, California 95050

Dear Mr. Uelmen:

Thank you for the opportunity to share Human Rights Watch’s concerns about the death penalty in connection with the California Commission on the Fair Administration of Justice hearing on February 20, 2008. Human Rights Watch opposes capital punishment in all circumstances because of its inherent cruelty. In submitting this letter, we urge the Commission to take three points into particular consideration: (1) the execution of innocent persons results in an irreparable miscarriage of justice; (2) the United States occupies a position of increasing isolation among our peer nations in employing the death penalty; and (3) capital punishment is unnecessary, and is often carried out in a discriminatory manner.

1. Death Row Exoneration Reveals The Fallibility of the System.

The inherent fallibility of all criminal justice systems assures that even when full due process of law is respected, innocent persons are sometimes executed. Advances in DNA evidence have yielded significant increases in exonerations from death row. Indeed, since 1973, 126 people in 26 states in the United States have been released from death row with evidence of their innocence.1 In California alone, three individuals have been exonerated and released from death row since 1973.2

In view of its mandate to ensure that the administration of criminal justice in California is just, fair, and accurate, we urge the Commission to afford these statistics significant weight. Because any miscarriage or failure of justice in the death penalty’s implementation is irreversible, this evidence of fallibility in the system illustrates the need for a moratorium on the death penalty.

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2 Ibid.

Despite the global trend toward the abolition of the death penalty, the United States retains the use of capital punishment. Our retention of the death penalty alienates us from our peer nations, all of whom are abolitionist. The European Union (EU) campaigns for the universal abolition of the death penalty and requires abolition as a condition of EU membership. The EU roots its stance on capital punishment in the belief in the inherent dignity of all human beings and the inviolability of the human person, regardless of the crime committed.3

On December 18, 2007, the United Nations General Assembly adopted by a wide margin a resolution calling for a worldwide moratorium on the death penalty. Urging moratoriums on executions to be established in all States that still maintain the death penalty, the resolution states that “there is no conclusive evidence of the death penalty’s deterrent value and that any miscarriage or failure of justice in the death penalty’s implementation is irreversible and irreparable.”4 The resolution further considers that “use of the death penalty undermines human dignity.”5

3 Capital Punishment is Unnecessary and is Applied in a Discriminatory Manner.

Within the United States, the death penalty is not uniformly applied. The fact that 14 states, as well as the District of Columbia, decline to employ the death penalty demonstrates that it is not necessary to the criminal justice system.6 Moreover, use of the death penalty is declining. Since 1999, the number of new death sentences per year has dropped dramatically—from 284 death sentences imposed in 1999 to 110 in 2007.7 California had one execution in 2006, and none in 2007.8

New Jersey is the most recent state in the nation to abolish the death penalty. In voting for abolition on December 13, 2007, New Jersey’s General Assembly followed the recommendation of a state commission report that found “no compelling evidence” that the death penalty rationally serves a legitimate interest, and increasing evidence that the death penalty “is inconsistent with evolving standards of decency.”9 Human Rights Watch urges California to follow New Jersey’s example.

5 Ibid.
6 The following states, and the District of Columbia, do not employ the death penalty: Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Rhode Island, West Virginia, Wisconsin, Vermont.
7 DPIC, “Facts About the Death Penalty.”
8 Ibid.
We are also deeply concerned that racial discrimination has entered into the determination of who is executed and who is allowed to live. According to the Death Penalty Information Center, in 96 percent of the states where there have been reviews of race and the death penalty, there was a pattern indicating either race-of-victim or race-of-defendant discrimination, or both. In California, a recent study found that individuals who killed whites were over three times more likely to be sentenced to death than those who killed blacks, and over four times more likely than those who killed Latinos.

This discriminatory application of the death penalty is inconsistent with our obligation to comply with the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"), a treaty ratified by the United States in 1994. This concern is both troubling and timely. The February 20, 2008 death penalty hearing before the California Commission on the Fair Administration of Justice will coincide with hearings on the United States' compliance with ICERD occurring that same week in Geneva before the Committee on the Elimination of Racial Discrimination. Abolition of the death penalty, and its racially discriminatory application, would greatly advance efforts to comply with our treaty obligations under ICERD.

For the foregoing reasons, Human Rights Watch urges the California Commission on the Fair Administration of Justice to work toward the abolition of capital punishment in California.

Thank you for your consideration, and please feel free to contact me if I can provide you with any further information.

Sincerely,

Carol Chodroff
Advocacy Director, US Program

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