

# The execution of Stanley “Tookie” Williams and the human rights debate on the death penalty in America

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**By Deborah Gabriel**

Should prisons seek to rehabilitate criminals to become productive members of society or should incarceration be metered as punishment for misdeeds? Or should prisons seek to do both?

If incarceration is in itself a punishment for crimes then what is the purpose of imposing a penalty of death- revenge? Should the death penalty even be imposed as punishment in the 21st century? Such issues are being hotly debated following the execution of Stanley “Tookie” Williams on Dec 13 after appeals for clemency to California State Governor, Arnold Schwarzenegger were rejected.

Alison Parker, Senior Researcher at Human Rights Watch USA told Black Britain:

“Unfortunately the US criminal justice system has lost track of the fact that there are many purposes for criminal punishment and one of the most important ones that underscores international human rights law is the purpose of rehabilitation.”

Ms Parker added that nothing can undermine the purpose of rehabilitation more than the death penalty: “At Human Rights Watch we take the position that the death penalty constitutes a serious human rights violation.”

Whilst serving time in prison Williams wrote a series of children’s books warning of the dangers of gang life which earned him several Nobel Peace Prize nominations and in 2005 he received a US presidential award from the President’s Council on Service and Civic Participation. Ironically in 2004 the California Ninth Circuit Court of Appeal said that Williams’ transformation and achievements might make him a worthy candidate for an act of clemency.

Governor Schwarzenegger did not share their sentiments, despite the fact that in January 2005 he announced that he intended to move the California prison system towards rehabilitation, rather than punishment. Ms Parker told Black Britain it was clear that Williams had shown signs of rehabilitation and the fact that he had done so “in a prison system which does not offer many opportunities for rehabilitation,” made his execution “a travesty of what criminal punishment should be about.”

## **Racial discrimination plagues the US criminal justice system**

The charge that Williams did not receive a fair trial because he was an African American is an issue that made his execution all the more questionable. In a letter to California State Governor Arnold Schwarzenegger requesting clemency, Human Rights Watch USA pointed out that Williams was convicted by an all-white jury after three black jury members were removed.

The fact that Williams defence counsel did not object to this meant that although the removal of the black jury members was racially discriminatory, this could not be used in

an appeal. The letter concluded that both inadequate counsel and race discrimination may have contributed to Williams' conviction.

Ms Parker told Black Britain that racial disparities in sentencing in the US are one of the biggest problems plaguing the criminal justice system: "Racial discrimination permeates all aspects of the system from the way in which police patrol certain neighbourhoods to the ways in which certain sentences have been passed by legislature which tend to target criminality that is more often committed by people of colour."

A black American who kills a white person is more likely to be given the death penalty than a white American who kills a black person. Ms Parker told Black Britain that in general black Americans are incarcerated at much higher rates than white Americans adding: "Whether it's the death penalty or something else, racial prejudice is permeating the system."

Ms Parker said it is important to question why and to ensure laws and procedures in the US are reformed so that "race is not a factor" and so that the system "is a just one."

### **Death penalty may result in the innocent being executed**

The law makes mistakes and one of the reasons for the ongoing debate against the death penalty is the possibility of an innocent person being put to death. Since 1976 more 120 people have been released from death row due to new evidence being produced that proved their innocence.

Human Rights Watch USA reports that in 1993 Ruben Cantu was executed in Texas but last month a co-defendant came forward and confessed that Cantu was not with him on the night of the murder and the only other eye witness recanted his story, saying that it was police intimidation that caused him to implicate an innocent person.

In the State of California six people have had their convictions overturned after proving their innocence and in 2003 the Santa Clara Law Review found several flaws in California's death penalty system. Many more innocent people remain on death row and even in the face of what would appear to be straightforward miscarriages of justice, still face an uphill struggle when they take on the American criminal justice system.

One such person is Mumia Abu Jamal who was convicted 14 years ago in December 1981 for the murder of a policeman in Philadelphia. Abu Jamal, who was a former member of the Black Panther Party, was a radio journalist and outspoken critic of police brutality. On the day of the murder Abu Jamal spotted policemen beating up a black man who turned out to be his own brother, but when he went to his brother's assistance he ended up being shot in the chest.

The policeman was shot dead and Abu Jamal was convicted of his murder and sentenced to death in 1989 even though the licensed gun he was carrying was a 38 and the policeman was shot with a 45. At his trial eleven black jury members were removed leaving only two African American jurors in a city that was 40 per cent black. His court-appointed lawyer didn't interview one witness and was later disbarred for incompetence.

There was no physical evidence linking him to the murder and his case was heard before a judge who has links with the Philadelphia police. Even though a witness later came forward to say that she had been coerced into giving false evidence by the police, in June 1995 the Governor of Philadelphia signed Abu Jamal's death warrant.

In 1998 the Pennsylvania Supreme Court denied an appeal. But on Dec 8 2005 the United States Court of Appeal for the Third Circuit agreed to accept a review of several aspects of the original trial including racism in jury selection. The opening briefs of the case are due to be filed in January 2006. Mumia Abu Jamal has attracted widespread international support from both Civil Rights and Human Rights organisations.

Ms Parker of Human Rights Watch USA told Black Britain that economic disadvantage is also a factor to be considered when looking at individuals who are sentenced to death. People from poorer backgrounds usually have public defenders "who may or may not be doing their best but the quality of counsel that they have is often very compromised", as in Abu Jamal's case.

She added: "These kinds of problems in our criminal justice system certainly raise questions about the legitimacy of the sentences that people end up receiving."

### **America and Europe poles apart on the death penalty**

The US stands out as one of the few democratic nations to issue capital punishment in the 21st century and had one of the highest levels of executions in 2004 alongside China, Iran and Vietnam. But there is a marked contrast between Europe and America on the issue of capital punishment and the death penalty.

In Europe, the Second Optional Protocol to the International Pact on Civil and Political Rights, aimed at the abolition of the death penalty came into force in 1991. As a result the death penalty is now banned in 46 members states of the European Union and any new members are required to place an immediate moratorium on all executions and sign the treaty abolishing the death penalty within three years.

By contrast America has executed over 1000 prisoners in the last 28 years- one person every 10 days and the death penalty is legal in 38 American states. Over 3,400 prisoners were on death row as of January 1 2005 and in 2004 59 prisoners were executed in the US. Far from deterring crime, the murder rate is 44 per cent higher in states which carry out the death penalty, according to data from the Death Penalty information Center. Furthermore, the murder rate in the US is four times higher than in Europe, where the death penalty has been outlawed.

Ms Parker of Human Rights Watch USA told Black Britain: "The other point of the criminal justice system is to deter crime. The US has steered its system towards retribution and on its own retribution serves as a justification for harsh punishment but it loses sight of other goals such as deterrence and rehabilitation."

Although there is a treaty on the abolition of the death penalty which has been adopted by the United Nations the death penalty is not prohibited under international law. Black Britain spoke to Jose Luis Diaz, spokesperson for the United Nations High Commissioner for Human Rights. When asked whether the fact that the US still carries out the death penalty sent the right message to the international community, Mr Diaz said that it was a matter for the internal legislation of the US.

Mr Diaz said: "The position of the UN is that we want the abolition of the death penalty but if a country applies the death penalty, since it is not prohibited under international law, if it is applied within the legislation of the country then it is permissible under the laws of that country."

Black Britain asked Mr Diaz why the UN had not called for a moratorium on ALL executions across the globe, but it seems that the UN is reluctant to go head to head with the US on this issue. Mr Diaz said the UN powers are limited to "encouraging" countries to place a moratorium on executions. He said: "We want all countries to do that and we want all countries to abolish the death penalty. But we cannot force them;

they have to sign up to the treaty.”

Recent events in the US suggest a move away from executions. In 2003 the outgoing governor of the State of Illinois commuted the death sentences of all 167 prisoners on death row after a two year moratorium. In March 2005 the Supreme Court abolished the execution of juveniles and in April this year the New York Assembly Committee voted against the re-instatement of the death penalty.

The State of New Jersey passed a moratorium on the death penalty on Dec 8 2005 and has ordered a study into state executions. The States of Arizona, Connecticut, Illinois, Kansas, Maryland, Nebraska, Nevada, Mississippi, Pennsylvania, Virginia and Washington have all carried out studies into the state capital punishment systems.

Jose Luis Diaz told Black Britain that the tide is turning against capital punishment: “More and more countries are either declaring moratoriums or abolishing the death penalty. I think there is a trend to abolish the death penalty so in the future I think it will be rarer for countries to apply it.”

Alison Parker of Human Rights Watch USA is far less optimistic about the signs of change in the US. She told Black Britain that although there is a willingness among judges and justices of the Supreme Court to look to international standards and practices in other countries there is still a lot of resistance:

“I think there are still plenty of states in this country that are willing to continue to impose the death penalty and states that are very resistant to looking at international standards.

International standards and practices certainly show that the rest of the world has absolutely turned its back on a punishment as harsh as the death penalty.”

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