PRESS STATEMENT

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I spent two weeks (June 16-30) visiting the United States at the invitation of the Government and met with federal and state officials, judges, civil society groups, and victims and witnesses in Washington DC, New York City, Montgomery (Alabama), and Austin (Texas).

I am grateful to the U.S. Government for its cooperation and for having facilitated meetings with officials from the Departments of State, Justice, Defense and Homeland Security, as well as with officials in Alabama and Texas. The US Government's willingness to invite me and to engage in a constructive dialogue sends an important message.

Although the title of my mandate may seem complex, it should be simply understood as including any killing which violates international human rights or humanitarian law. This may include unlawful killings by the police, deaths in custody, killings of civilians in armed conflict in violation of humanitarian law, and patterns of killings by private individuals which are not adequately investigated and prosecuted by the authorities. My mandate is not abolitionist, but the death penalty falls within it as regards due process guarantees, its limitation to the most serious crimes and its prohibition for juvenile offenders and the mentally ill.

If there is a single theme that emerges from my visit it is the need for greater transparency in relation to a number of issues of major importance. In most instances, neither laws nor procedures for addressing any potentially unlawful killings are lacking. And, for the most part, data is gathered systematically and responsibly. But in too many cases it is extremely difficult, if not impossible, to gain access to that information. Instead, procedural and other impediments are firmly ensconced in order to thwart those who seek to monitor the accountability of public authorities. This reality is entirely inconsistent with the stated commitments of the Government and my hope is that the necessary steps can be taken to remove the obstacles and ensure full respect for human rights.

In different contexts, I was frequently told by Government officials that although they were unable to answer my specific questions, I should rest assured that there was accountability. Whether or not it does in fact exist, this "private" or "internal" accountability cannot take the place of genuine, public accountability. A Government open and accountable to its people is a foundational premise of a democratic state.

The present statement identifies some, but not all, of the issues and recommendations to be addressed in my final report.

Death penalty

In view of the very limited time available to me, I chose to visit Alabama because it has the highest per capita rate of executions in the US, and Texas because it has the largest number of executions and prisoners on death row.

Executing the innocent: a risk that cannot be ignored

Since 1973, 129 individuals waiting on death row have been exonerated across the US. This number continues to grow. Indeed, while I was in Texas, the conviction of yet another person on death row was overturned by the Court of Criminal Appeals. While in this case DNA testing ultimately prevented the execution of an innocent man, others may have been less fortunate. In Texas, I met a range of officials and others who acknowledged that innocent people might have been executed. The problem is that a criminal justice system with recognized flaws that the government refuses to address will always be capable of mistakes. While some officials seem to consider due process rights as mere "technicalities," the growing number of exonerations underscores that they are in fact indispensable safeguards against injustice in cases in which an error can be fatal. At present, a great deal of time and energy is spent trying to expedite executions. A better priority would be to analyze where the criminal justice system is failing in capital cases and why innocent people are being sentenced to death.

In Texas, there is at least significant recognition that reforms are needed. In Alabama, the situation remains highly problematic. Government officials seem strikingly indifferent to the risk of executing innocent people and have a range of standard responses, most of which are characterized by a refusal to engage with the facts. The reality is that the system is simply not designed to turn up cases of innocence, however compelling they might be. It is entirely possible that Alabama has already executed innocent people, but officials would rather deny than confront flaws in the criminal justice system.

Alabama's systematic rejection of concerns that basic international standards are being violated sits oddly alongside the Government's determined and successful bid to attract foreign investment from the European Union in particular. Indeed, Alabama's largest export market in 2007 was Germany. It would thus be appropriate for Alabama to engage in a dialogue on due process concerns in its death penalty with the international community.

Given the rising number of innocent people being exonerated nationwide, both Alabama and Texas need to ask what might be wrong with their criminal justice systems and how the problems might be fixed. I recommend a three-prong strategy: (1) problems such as judicial independence and the absence of an adequate right to counsel should be addressed immediately; (2) systematic inquiries into the workings of the criminal justice systems should be undertaken to identify needed reforms; and (3) the federal courts should be able to review all substantive claims of injustice in capital cases. I turn now to consider each of these.

Alabama and Texas both have partisan elections for judges. It is not for me to evaluate the compatibility of requirements for judicial independence with a system of multi-million dollar campaigns for judicial elections every four years. But if the outcome of such a system in practice is to jeopardize the right of capital defendants to a fair and just trial and appeal there is clearly a need to consider changes. Many of those with whom I spoke suggested strongly that judges in both states consider themselves to be under popular pressure to impose and uphold death sentences whenever possible and that decisions to the contrary would lead to electoral defeat. Yet the role of the judiciary is to ensure that justice is done in individual cases and to avoid the execution of innocent persons. It is not to ensure that the popular will prevails over other considerations. Too often, under the existing electoral system, the death penalty ends up being treated as a political rather than a legal issue.

This problem of politicizing death sentences is illustrated by Alabama's law permitting judges to override the considered opinion of the jury in sentencing. Even if a jury unanimously decides to sentence a defendant to life in prison, the judge can instead impose a death sentence. When judges override jury verdicts, it is nearly always to increase the sentence to death rather than to decrease it to life, and a significant proportion of those on death row would not be there if jury verdicts were respected. Given the key role of the jury in American justice, it is difficult to justify giving officials who will be held to account for their stance on the death penalty every four years the power to substitute their own individual opinions for those of the 12 member jury. Given concerns about possible innocence and the irreversible nature of the death penalty, Alabama should relieve judges of this invidious role by repealing the law permitting judicial override. Instead, juries should be permitted to play their historical role of protecting individual rights.

In both Alabama and Texas a surprisingly broad range of people in and out of government acknowledged the inadequacy of existing programs for providing criminal defense lawyers to those who cannot afford to hire their own. It is clear that major reforms would be required if the right to counsel is to be taken seriously. Yet, in both states, money-saving half-measures are being discussed when what is needed are state-wide, well-funded, independent public defender services. The system recently setup in the Texas panhandle to provide capital defense in scores of counties is a positive first step in this direction.

There is a clear onus on states to systematically evaluate the workings of their criminal justice systems to ensure that the death penalty is not imposed unjustly. In Texas, a particularly promising approach would be to establish, as some have proposed, an Innocence Commission designed to systematically assess why people have been wrongly convicted in particular cases and then apply these lessons by making recommendations for reforming the criminal justice system. Alabama could draw on the in-depth analysis of the issues produced by the American Bar Association (ABA). While various officials dismissed the ABA as being biased, they generally acknowledged that those who conducted the study were serious lawyers, and none had undertaken a thorough analysis of the report. Given the seriousness of the problems

identified, and the reluctance to undertake any alternative in-depth study, it is incumbent upon the authorities to formally respond to the ABA's findings and recommendations. Giving reasons for accepting or rejecting specific recommendations would indicate a serious concern to respond to alleged injustices.

The role of the federal courts in reviewing death sentences imposed by state courts has been curtailed by federal legislation designed to "expedite" such cases. As initially enacted, this legislation permitted states to opt-in to expedited review, if the state provided counsel for indigent death row inmates in post-conviction cases. The federal courts had responsibility to determine whether states qualified, and they found that few states met statutory requirements for the provision of counsel. The appropriate response to this would have been to improve state systems for indigent defense. Instead, Congress amended the law to permit the Department of Justice to adopt regulations under which it, rather than the Courts, would certify whether state indigent defense systems met this standard. The regulations initially drafted by DOJ were grossly inadequate for this purpose. The final regulations will be promulgated soon, but the approach of DOJ officials with whom I spoke regarding this issue leaves me far from optimistic that they will prove adequate either. Congress should take seriously the extent to which many state criminal justice systems fail to adequately protect constitutional rights in capital cases, rather than trying to find an expeditious shortcut. Instead of being forced to dismiss cases due to procedural technicalities, the federal courts can and should provide a critical back-stop to prevent injustice. The best way forward would be for Congress to enact legislation permitting federal courts to review all issues in death penalty cases on the merits, with appropriate exceptions, such as where a defendant attempts to deliberately bypass state court procedures.

Racism and the death penalty

Studies across the country suggest racial disparities in the application of the death penalty. In particular, many studies suggest that a defendant is more likely to receive the death penalty when the victim is white, and some studies also suggest that a defendant is more likely to receive the death penalty if he is African American. When I raised this issue with federal and state government officials, I was met with indifference or flat denial. Some officials had not read any specific reports on race disparity and showed little concern for the issue. Others conceded racial disparity as a fact, but invoked a handful of studies suggesting that this was not caused by racial bias. Thus I was told that the overrepresentation of African Americans among those sentenced to death as opposed to life without parole was related to racial disparities in criminality, or to the overrepresentation of African Americans in the prison population generally. Many officials wrote-off the results of studies showing racial disparity as being biased because they were written by researchers with anti-death penalty views. Given what is at stake, there is a need for governments at both the state and federal levels to revisit systematically the concerns about continuing racial disparities.

Consular notification

An issue of particular importance in Texas is how to handle the many cases in which foreign nationals have been sentenced to death without having been given the opportunity to contact their national consulates as required by the Vienna Convention on Consular Relations, a treaty to which the US is a party. The US Government has acknowledged that the US has a legal obligation to provide, in accordance with the International Court of Justice's judgment in *Avena*, review and reconsideration of the cases of Mexican nationals on death row who were not notified of their right to consular access. But the Texas Legislature has failed to authorize state courts to provide this review, and the US Congress has similarly failed to authorize federal courts to do so. In both cases, all that would be required is legislation permitting courts to review claims related to consular notification even if these claims would otherwise be dismissed for not having been raised in a timely fashion.

The very simplicity of the available solutions makes it all the more disturbing that nothing has been done. In my discussions with Texas officials, reliance was placed upon the fact that the US Supreme Court (in the *Medellin* case) had found that the federal government could not force Texas to abide by these legal obligations. This is true, but it fails to address the real issue. It is a bedrock principle of international law that when a country takes on international legal obligations those bind the entire state apparatus, whether or not it is organized as a federal system. There are many federal systems around the world and they have all devised means to ensure that treaties, whether dealing with trade, investment, diplomatic immunities, the environment, or human rights bind the entire state as such, including its constituent parts. Why would foreign corporations, relying in part upon treaty protections, invest in a state such as Alabama or Texas if

they risked being told that the treaty bound only the US government but was meaningless at the state level? This is where the *Medellin* standoff leaves things.

The provision of consular rights seems to be treated as an issue affecting only those foreign nationals currently on death row in Texas. But precisely the same issue applies to any American who travels to another country. One legislator with whom I spoke noted that when he travels overseas he is hugely reassured by the fact that he would have the right of access to the US consulate if he was arrested. The present refusal by Texas to provide review undermines the role of the US in the international system, and threatens the reciprocity between states with respect to the rights of each others' nationals. Texas, by refusing to provide review of the foreign nationals' cases, is putting the US in breach of its international legal obligations out of what appears to be pure stubbornness. Putting pride ahead of justice and commonsense is rarely a good strategy.

Deaths in immigration detention facilities

There have been at least 74 deaths in immigration detention facilities since 2003. I received credible reports from a variety of sources of denials of necessary care, long delays in the provision of treatment, and the provision of inadequate care and incorrect medication. The immigration detention facilities, managed by Immigration and Customs Enforcement (ICE), an arm of the Department of Homeland Security (DHS), hold immigrants with ongoing immigration legal proceedings, or awaiting removal from the US in some 365 facilities around the country.

The standards and procedures for medical care in all of these facilities are set by ICE. They are designed primarily to provide emergency care and generally exclude other care unless it is judged necessary for the detainee to remain healthy enough for deportation. Specialty care and testing believed necessary by the detainee's on-site doctor must be pre-approved by the Division of Immigration Health Services (DIHS) in Washington, DC. Reliable reports indicate that, in practice, an often very restrictive interpretation is applied. In their defense, DIHS and ICE explained to me that truly emergency care is formally provided at the discretion of medical personnel at each detention center without prior authorization from DIHS. But it is still necessary to obtain DIHS authorization in order for the care provider to get reimbursed for such emergency care. Denials of such requests have a chilling effect on decisions taken subsequently about whether to go ahead without authorization.

In addition, the ICE standards are merely internal guidelines rather than legal regulations. This has insulated ICE policy-making from the external oversight provided by the normal regulatory process and limits the legal remedies available to detainees when the medical care provided is deficient. ICE reassured me that there are internal grievance procedures, but detainees and their lawyers regularly report no or delayed responses to complaints, and complaint hotline telephones that simply don't work. The DHS should promulgate legally enforceable administrative regulations, and these should be consistent with international standards on the provision of medical care in detention facilities.

With respect to the investigation of detention center conditions, I met with the DHS Inspector General (IG). The IG role is an important one and a number of valuable reports have been prepared. But the system is incomplete by virtue of the fact that internal and external accountability functions are more or less combined. The law enforcement officers who investigate abuses by DHS personnel themselves report to the IG. Existing IG peer review arrangements seem most unlikely to act as an appropriate external check on the performance of the IG in relation to sensitive and problematic cases.

ICE has no legal reporting requirements when a death occurs in ICE custody. This has resulted in a clear failure of transparency by ICE in relation to deaths in custody. Both civil society groups and Congressional staff members told me that for years they were unable to obtain any information at all on the numbers of deaths in ICE custody. ICE's recent public reporting of the number of deaths, and their voluntary undertaking to report future deaths is encouraging, but insufficient. ICE should be required to promptly and publicly report all deaths in custody, and these deaths should be fully investigated.

Due process concerns in death penalty cases under the Military Commissions Act

To date, six "alien unlawful enemy combatants" detained at Guantánamo Bay, Cuba, have been charged with capital offences under the Military Commissions Act (MCA). They are being tried before military commissions on war crimes charges, and if convicted, face the death penalty.

The US has an obligation to provide fair trials which afford all essential judicial guarantees. The fundamental principles of a fair trial may never be derogated from. But the text of the MCA, which provides the rules which govern the trials, and the experiences of those with whom I met during my mission involved in the trial process to date, indicate clearly that these trials utterly fail to meet the basic due process standards required for a fair trial under international humanitarian and human rights law. Access to counsel has been severely limited. Second and third hand hearsay evidence can be used. The prosecution can withhold evidence from the accused. The opportunity for the defense to obtain witnesses is restrictive. It has been publicly stated that at least one of those facing trial was subjected to "waterboarding", and other forms of coercion during interrogations have been widely acknowledged. Yet the MCA does not prohibit all coerced statements from being admitted into evidence. The commissions are not sufficiently independent from the executive. This incomplete list of fundamental due process flaws suffices to demonstrate that the current procedures constitute a gross violation of the right to a fair trial. It would violate international law to execute someone following this kind of proceeding.

Deaths in Guantánamo Bay, Cuba

There have been five reported deaths of detainees at Guantánamo Bay in 2006-07. Four were classified as suicides, and one was attributed to cancer. In the custodial environment, a state has a heightened duty and capacity to ensure and respect the right to life. As a result, there is a rebuttable presumption of state responsibility — whether through acts of commission or omission — in cases of custodial death. The state has an obligation to investigate the deaths, and publicly report on the findings and the evidence upon which the findings are based. But the Department of Defense (DOD) has provided little public information about the causes or circumstance of any of these deaths. While it has been reported that autopsies were conducted in each case, the results have not been made public — or even provided to the families of the deceased men. It was also reported that the Naval Criminal Investigative Services (NCIS) is conducting investigations into each of the deaths. But over two years since the first deaths, no results of investigations have been released. I spoke with civil society groups who have been attempting during that time to obtain the results, but to no avail. The results of autopsies conducted should be released to the families of the deceased men, and the results of any NCIS investigations should be made public.

Ensuring respect for human rights and the rule of law in US military operations in Afghanistan and Iraq

All governments have an obligation to effectively investigate, prosecute, and punish violations of the right to life in situations of armed conflict. It is important, of course, to acknowledge the unique characteristics of armed conflict. The rules governing the use of lethal force are different than in ordinary situations, and intentional killing is often permitted. But, while different laws apply, the importance of ensuring that these laws are followed remains. In other words, the rule of law must be upheld in war as in peace. Some aspects of the rule of law have been taken seriously during US military operations. Thus, after visiting Afghanistan last month, I noted that I had seen no evidence that the international forces present in Afghanistan — including those of the US — were committing widespread intentional killings in violation of human rights or humanitarian law. In addition, the Government has implemented programs for providing compensation to civilian victims of US military operations. While these programs should be improved, the US should also be proud of the leadership that it has shown in this area.

Tracking civilian casualties

The military has repeatedly stated that it does not systematically compile statistics on civilian casualties that occur during its operations in Afghanistan or Iraq. This was confirmed in my discussions with officials at the Department of Defense. The purported reason for not doing so is that "body counts" are not relevant either to evaluating the effectiveness or legality of military operations. It is true that a simple "body count" is not very useful. However, systematically tracking how different kinds of operations result in different levels of civilian casualties is critical if the US is serious about minimizing civilian casualties. Despite this general policy, the military reportedly has tracked the civilian casualties that occur at checkpoints in Iraq when soldiers fire at civilians they mistakenly believe to be suicide bombers or other attackers. My understanding is that these monitoring efforts resulted in changes to procedures that saved lives. This kind of effort to track, analyze, and learn from the consequences of military operations on civilians should be

made routine not exceptional. The numbers and trends found should be reported publicly so as to strengthen external accountability.

Improving the transparency of the military justice system

The troublingly opaque character of the US military justice system is well illustrated by a case described to me by witnesses and investigators when I visited Afghanistan. On March 4, 2007 US Marines responded to a suicide attack on their convoy in which one soldier was wounded by killing some 19 persons and wounding many others in the space of a ten mile retreat. I asked the regional commander in Afghanistan what follow-up had occurred. He could not tell me and explained that his unit had just arrived in Afghanistan and that accountability for incidents involving the previous unit was its responsibility and that it had taken all the relevant files when it left the country. In fact, a Court of Inquiry into the incident proceeded in North Carolina.

Shortly after I returned from Afghanistan, the US military released a short statement on this incident indicating that the commander of U.S. Marine Corps Forces Central Command had conducted a "thorough review of the report of a Court of Inquiry" and had determined that the soldiers had "acted appropriately and in accordance with the rules of engagement and tactics, techniques and procedures in place at the time in response to a complex attack". Unsurprisingly, this conclusory and unsubstantiated response to such a serious incident was met with dismay in Afghanistan. Afghans — and Americans — have a right to ask on what basis this conclusion was reached. But all of the documents produced by the Court of Inquiry have remained classified. The record of proceedings has not been released. The 12,000 page report of the Court of Inquiry including recommendations and factual findings has not been released. The Government has even disregarded the existing regulation stating that the convening authority should ensure that an executive summary of the report be made public in order to inform Government officials, the legislative branch, the media, and the next of kin of the victims of the investigation's findings and recommendations. Whether or not the decision not to initiate courts-martial was justified, the manner in which the military justice system has operated in this case is entirely inconsistent with principles of public accountability and transparency.

Unfortunately, this particular incident is only one of many in which the military justice system has failed to provide the appearance — and, perhaps, the reality — of justice. The system is opaque, making it remarkably difficult for the US public, victims, or even commanders to obtain up-to-date information on the status of cases, the schedule of upcoming hearings, or even judgments and pleadings which are theoretically public. This lack of transparency is, in part, a side-effect of the decentralized character of the system, in which commanders around the world are given the authority to conduct preliminary investigations and act as "convening authorities" to initiate courts-martial.

If there is the will to do so, this problem can be solved quickly and easily. Reporting requirements and a central office, or registry, could be added to the existing system at little cost, and this would markedly improve accountability and reduce the sense among Afghan and Iraqi civilians, and others around the world, that US forces operate with impunity.

Improving the effectiveness of the military justice system

While the US military justice system has achieved a significant number of convictions, some sentences appear too light for the crime committed, and senior officers have not been held to account in the same way that enlisted men have been. The requirement that a sentence be proportionate to the gravity of the offence is one that I have raised with the Government and will explore further in my report.

One possible response to some of these distortions would be to explore the creation of a position of Director of Military Prosecutions. Rather than permitting commanding officers whether to prosecute their own soldiers, this official would make those decisions. This has been done in recent years in various states, including Australia, Canada, Ireland, New Zealand and the United Kingdom. The goal is to ensure independent decisions as to prosecution and to distance the convening authorities from decisions in which they and the troops serving under them can be considered to have a direct and potentially conflicting interest.

With respect to "command responsibility", it is notable that this is absent from both the Uniform Code of Military Justice (UCMJ) and the War Crimes Act as a basis for criminal liability. This concept has been

systematically recognized since the trials which followed the Second World War. It reflects the importance of hierarchy and discipline within the military as well as the essential role of the military commander in preventing and punishing war crimes. Inaction by a commander in response to crimes committed by his men will only result in impunity and more crimes being committed.

While the US military prosecutes commanders under the UCMJ for "dereliction of duty" this does not adequately reflect the responsibility the commander has for the actions of the men under his orders, nor does it result in sentences proportionate to the gravity of the offences committed. The criminal liability of commanders for having failed to take the necessary steps to prevent or punish the crimes committed by their subordinates should therefore be codified in the UCMJ and the War Crimes Act.

Ensuring accountability for killings by private security contractors and civilian Government employees in Afghanistan and Iraq

The existence of a zone of de facto impunity for killings by private contractors operating in Iraq and elsewhere has been tolerated for far too long. Government officials with whom I met acknowledged this lack of accountability, and it now seems to be recognized that this vacuum is neither legally nor ethically defensible — nor politically sustainable. Indeed, many of the contractors themselves now accept the need for legal regulation and accountability. It is also encouraging that the US has participated in efforts to clarify the relevant international standards as part of the Swiss Initiative on Private Military and Security Companies.

Congress has adopted a series of statutes expanding and clarifying jurisdiction over offences committed by contractors and civilian Government employees operating in areas of armed conflict. To date, however, these legislative initiatives have been largely reactive to specific incidents such as the abuses at Abu Ghraib and the shooting incident at Nisoor Square. The result is legislation that closes particular jurisdictional gaps but leaves others. Congress should adopt legislation that comprehensively provides criminal jurisdiction over contractors and civilian employees. I was briefed by a number of Congressional staffers on ongoing efforts to do exactly this. There was, however, also talk of including a so-called "intelligence carve-out" that would provide impunity for contractors and employees working for US intelligence agencies. This would be wholly inappropriate.

However, the principle problem today is that US prosecutors have failed to use the laws already on the books to prosecute contractors. The Department of Justice (DOJ) is responsible for prosecuting private security contractors, civilian government employees, and US soldiers for violations of a range of federal statutes, including the Military Extraterritorial Jurisdiction Act (MEJA), the Special Maritime Territorial Jurisdiction Act (SMTJ), and the War Crimes Act. But the Department has failed miserably in these areas. Its efforts are coordinated by two bodies. A task force based at the US Attorney's Office for the Eastern District of Virginia deals with cases of detainee abuse, including those resulting in death. The Domestic Security Section (DSS) of DOJ's Criminal Division coordinates the prosecution of other cases involving contractors, such as unlawful shootings committed while protecting convoys. The first of these bodies recently stated that it had been referred 24 cases of alleged detainee abuse and that, of these, it had declined to exercise jurisdiction in 22. When I spoke with DSS representatives about the other set of cases, they acknowledged the lack of convictions but refused to provide even ballpark statistics on the allegations received. The lamentable bottom line is that the DOJ has achieved a conviction in only one case involving a contractor in Afghanistan or Iraq.

One well-informed source succinctly described the situation: "The DOJ has been AWOL in response to these incidents". This must change. The keys are political and prosecutorial will. On the latter issue, one problem is that cases involving contractors are ultimately handled by US Attorneys offices around the country. The incentives of these prosecutors to prioritize cases that are difficult and expensive to investigate have proven inadequate, especially when they are expected to do so with their ordinary operating budget. One important institutional reform would be to establish an office within DOJ dedicated solely to prosecuting cases involving crimes committed by contractors, civilian Government employees, and soldiers in situations of armed conflict, and to provide appropriate funding.

Building on existing arrangements for providing reparations for deaths of civilians

The Government has implemented a number of programs for providing reparations, or compensation, to civilian victims of US military operations. In important ways, these programs provide a model to be emulated. Victims or their families receive compensation before any determination has been made that US soldiers engaged in any unlawful act and in many cases in which the death or injury resulted from what was almost certainly a completely lawful attack. The US is a leader in this area and should continue to build on its achievements by increasing funding, proactively seeking out victims and their families rather than waiting to receive requests, and by regularizing and better coordinating existing programs.

Preliminary recommendations

Domestic US issues

Due process in death penalty cases should be improved

- Alabama and Texas should establish well-funded, state-wide public defender services. Oversight of these should be independent of the executive and judicial branches.
- In light of current flaws in state criminal justice systems and the finality of death, the US Congress should enact legislation permitting federal courts to review all issues in death penalty post-conviction review cases on the merits.
- Executions of foreign nationals who have claims related to consular notification requirements under international law should be suspended until legislation is enacted that authorizes review of such claims on the merits.
- Texas should establish a commission to review cases in which persons convicted of crimes have been subsequently exonerated, analyze the reasons for these wrongful convictions, and make recommendations for reforms to the criminal justice system to prevent future mistakes.
- Alabama should evaluate and respond in detail to the findings and recommendations of the American Bar Association report on the implementation of the death penalty in that state.
- Reforms to the system of partisan elections for judges should be considered in order to ensure that capital case defendants receive a fair trial and appeals process.

Medical care provided in immigration detention should be improved

- All deaths in immigration detention should be promptly and publicly reported and investigated.
- The Department of Homeland Security should promulgate appropriate regulations through the normal administrative rulemaking process, and these should be consistent with international standards on the provision of medical care in detention facilities.

International military operations and "war on terror" issues

Trials of Guantánamo Bay detainees should respect due process standards

- Current proceedings against Guantánamo Bay detainees under the Military Commissions Act should be discontinued. All trials should respect due process standards under international human rights and humanitarian law.
- Investigations and autopsy results into the deaths of persons at Guantanamo Bay should be publicly released.

The transparency of the military justice system should be improved with institutional reforms

- *Central office (registry).* A central office, or "registry", should be established in the Department of Defense to maintain a docket and track cases from investigation through final disposition.
- *Docket*. All convening authorities under the UCMJ should be required to promptly provide the time, date, and location of all upcoming hearings to the registry, and a centralized, public, web-accessible docket should be maintained.
- *Database for tracking cases*. All convening authorities should also be required to promptly provide copies of the findings of formal and informal investigations, rulings, pleadings, transcripts of

testimony, and exhibits to the registry. The registry should maintain a database of this information which would permit access to each individual document, the tracking of particular cases as they move through the system, and the compilation of statistical information.

- To improve internal oversight, commanders should have immediate access to all information in the database concerning their areas of responsibility.
- To improve transparency and public accountability, the database should be made publicly accessible on a web site insofar as consistent with legal requirements related to national security and individual privacy. This would mean that the public would be able to immediately access some documents (such as judgments and pleadings) as well as up-to-date statistical information on investigations and courts-martial. Other documents should be continually evaluated and made public as appropriate, whether in their entirety or redacted. (The registry should initiate this process regardless of whether it has received any request under the Freedom of Information Act (FOIA).)

Comprehensive criminal jurisdiction over offences that occur in areas of armed conflict should be ensured

- Congress should adopt legislation that comprehensively provides criminal jurisdiction over contractors and civilian employees, including those working for the intelligence agencies.
- The concept of "command responsibility" as a basis for criminal liability should be codified in both the Uniform Code of Military Justice (UCMJ) and the War Crimes Act.
- Consideration should be given to establishing a Director of Military Prosecutions rather than leaving commanding officers to decide whether to prosecute their own troops.
- An office dedicated to the enforcement of statutes providing civilian jurisdiction over unlawful killings by contractors, civilian Government employees, and soldiers in areas of armed conflict should be established within the Department of Justice (DOJ). This should receive the resources and investigative support necessary to handle these cases. The DOJ should promptly make public statistical information on the status of these cases, disaggregated by the kind, year, and country of alleged offence.

Existing programs to provide reparations to civilian victims of armed conflict should be enhanced and regularized

- The level of funding for programs to provide compensation to the families of those killed in US military operations should be increased. Such funds should be dedicated exclusively to providing compensation to civilian victims so that individual commanders need not choose between using their limited discretionary funds to compensate civilians or engage in other priorities.
- In missions involving a range of international forces, such as those in Afghanistan and Iraq, the Government should urge allies to implement similar programs and should promote the development of coordination and information-sharing bodies designed to coordinate policy and help ensure that all cases are covered under one program or another.