

PUBLIC

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18 March 2008

Further Information on UA 51/08 (AMR 34/004/2008, 27 February 2008) Death Penalty

GUATEMALA

Proposed resumption of executions

On 14 March Guatemalan President Álvaro Colom vetoed Decree 06-2008, known as the “Law regulating the commuting of sentence for those condemned to death” (*Ley Reguladora de la Conmutación de la Pena para los Condenados a Muerte*). The Decree has been sent back to Congress, which has up to 30 days to overturn the Presidential veto or to reconsider the bill. If two-thirds of the members of Congress vote to overturn the veto, the Decree will become law, meaning that there would be a danger that executions in Guatemala may resume.

Decree 06-2008, which was initially approved by Congress on 12 February, establishes a procedure for those condemned to death to request a pardon from the President. However, it does not mention and define the criteria under which pardons are to be granted. This is in breach of a ruling by the Inter-American Court of Human Rights (IACHR), which ordered Guatemala to specify clear criteria for evaluating individual petitions for pardon. This leaves Guatemala in breach of the American Convention on Human Rights. Guatemala’s own Constitution establishes that international human rights treaties prevail over national law.

In addition, Decree 06-2008 states that the lack of a presidential decision within 30 days of the application for commutation of the death sentence would suffice to consider the request “tacitly rejected”, which would therefore lead to execution. This could be used to speed up executions, and would result in the impossibility of appealing in order to stop them. This approach, known as “negative administrative silence”, is legally inconsistent with Guatemala’s obligation to establish specific criteria for evaluating each case and take them fully into account. Moreover, by leading to executions by default, administrative silence could lead to the execution of prisoners who have appealed their sentences to international bodies and whose cases are still pending.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in Spanish or your own language:

- expressing concern at the situation of public security and sympathy for the victims of crime;
- expressing deep concern that Guatemala is considering reactivating executions;
- urging the Guatemalan Congress not to approve Decree 06-2008 because it is in breach of the 2005 ruling of the Inter-American Court of Human Rights (*Ronald Ernesto Reyes Raxcacó vs Guatemala, 2005*); it introduces the element of “negative administrative silence”, which is incompatible with the seriousness with which clemency requests should be treated; and, it fails to mention and define the criteria under which pardons are to be granted;
- urging the Guatemalan Congress not to approve Decree 06-2008, because the death penalty is the ultimate form of cruel, inhuman or degrading treatment or punishment and it has not been shown to have a special deterrent effect;
- expressing serious concern that Guatemala will join the USA as the only other country in the American continent to execute people.

APPEALS TO:

President of the Congress

Dip. Arturo Eduardo Meyer Maldonado

Presidente del Congreso

Congreso de la República de Guatemala

9ª Avenida 9-44 Zona 1

Ciudad de Guatemala, Guatemala

Fax: +502 2220 4024

+502 2220 4019

Email: ameyer@congreso.gob.gt

Email via website: <http://www.congreso.gob.gt/gt/contactenos.asp>

President of the Congressional Human Rights Committee

Dip. Carlos Enrique Bautista Godínez

Presidente de la Comisión de Derechos Humanos

Congreso de la República de Guatemala

9ª Avenida 9-44 Zona 1

Ciudad de Guatemala, Guatemala

Fax: +502 2220 4019

Email: cbautista@congreso.gob.gt

Email via website: <http://www.congreso.gob.gt/gt/contactenos.asp>

President of the Congressional Extraordinary Justice Reform Committee

Dip. Humberto Leonel Sosa Mendoza

Presidente de la Comisión Extraordinaria de Reforma al Sector Justicia

Congreso de la República de Guatemala

9ª Avenida 9-44 Zona 1

Ciudad de Guatemala, Guatemala

Fax: +502 2220 4019

Email: hsosa@congreso.gob.gt

Email via website: <http://www.congreso.gob.gt/gt/contactenos.asp>

COPIES TO:

Local human rights organizations

Red de organizaciones por la abolición de la pena de muerte

c/o ICCPG

5a calle 1-49, Zona 1

Ciudad de Guatemala, Guatemala

Fax: +502 2230 1841

+502 2232 5121

Email: iccp@iccp.org.gt

and to diplomatic representatives of Guatemala accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 13 April 2008.