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Guatemala: court decision ruling death penalty unconstitutional for most crimes is a key step on path to full abolition

Amnesty International welcomes the coming into force today of a recent decision by the Constitutional Court of Guatemala that has the effect of abolishing the death penalty for ordinary crimes. Guatemala has now become the 142nd country to have rid itself of this punishment in law or practice, a milestone that the authorities should build on to fully consign the death penalty to the history books.

On 24 October 2017 the Constitutional Court of Guatemala declared Articles in the Penal Code and the Anti-Narcotics Law allowing for the imposition of the death penalty unconstitutional. The Court found that they violate the principle of legality and the prohibition, enshrined in the American Convention on Human Rights, on the expansion of the scope of the death penalty. As a result of the decision, from today the death penalty can no longer be imposed for crimes charged under ordinary laws in Guatemala – a step forward for the promotion and protection of human rights in the country and a major milestone in its journey towards abolition.

The last remaining death sentence in the country was commuted in 2012. Despite today's positive development, the death penalty can still be applied under the Military Code. Amnesty International calls on the members of the Congress of Guatemala to take the opportunity of the renewed momentum created by the Court decision to immediately abolish the death penalty for all crimes.

While proposals to facilitate the implementation of this punishment have been introduced in the Guatemalan Congress, including most recently in October 2017, the country's lawmakers have before them a unique opportunity to make the death penalty history for all crimes by swiftly adopting a law to this effect. Draft law 5100 was introduced at Congress in July 2016 to abolish this punishment and received joint approval by the three parliamentary committees on Human Rights, Justice Reform and on Legislative and Constitutional Matters the following month. It underwent the first reading at the plenary session of the Parliament on 13 October 2016 and is to date pending before Congress.

The momentum created by developments in Guatemala should also be a wake-up call for other countries in the Americas and Caribbean region. While some defenders of the death penalty justify its retention with the ill-conceived premise that it has a unique deterrent effect against crime, the trend has steadily been changing. The USA has been the only country in the Americas region to carry out executions in the past nine years. Only three other countries – Barbados, Guyana and Trinidad and Tobago – have been imposing death sentences, alongside it. Antigua and Barbuda, the Bahamas, Belize, Cuba, Jamaica, and Saint Lucia have reported empty death rows in recent years, after the last remaining death sentences were commuted. Nearly 100 people were under sentence of

death in the Caribbean five years ago, a figure that had dropped to 72 at the end of 2016 – a significant drop for a region with significantly high murder rates and low detection figures.

Suriname abolished the death penalty in 2015, leaving Guyana as the last retentionist country in South America. Legislative amendments to abolish the mandatory death penalty have been pending in Barbados. Amnesty International renews its calls on governments in the region to immediately establish a moratorium on executions, commute all existing death sentences, and abolish the death penalty for all crimes.

Background

The Constitutional Court of Guatemala found that provision in the Penal Code and the Anti-Narcotics Law are unconstitutional as they include the “dangerousness” of the perpetrator as an element to determine whether the death penalty should be imposed, and as they violate Article 4.2 of the American Convention on Human Rights. This Article requires the country’s authorities not to introduce the death penalty for crimes it did not apply at the time of Guatemala’s ratification of the treaty in 1978, and makes it practically impossible for Guatemala to introduce new laws allowing for the death penalty in the future. The decision builds on a previous opinion by the Constitutional Court issued on 22 March 2016, in which it declared provisions in Article 132 of the Penal Code, which provided for the mandatory death penalty for certain circumstances of aggravated murder, to be unconstitutional.

Executions in Guatemala halted in 2000, when a law establishing procedures for the consideration of clemency petitions by the President was repealed. This created a legal void that would have rendered any execution unlawful under the American Convention on Human Rights.

Amnesty International opposes the death penalty unconditionally, as a violation of the right to life and the ultimate cruel, inhuman and degrading punishment. The right to life is recognized in the Universal Declaration of Human Rights as well as a number of international and regional human rights instruments. The desirability of the abolition of the death penalty is enshrined in international law. The Human Rights Committee – the expert body tasked with overseeing the implementation of the International Covenant on Civil and Political Rights, ratified by Guatemala – has stated that “all measures of abolition should be considered as progress in the enjoyment of the right to life”. The full abolition of the death penalty in law would make Guatemala the 106th country to have done so globally.