

EL SALVADOR

Open letter to members of Legislative Assembly urging to oppose expansion of the death penalty

Dear members of the Legislative Assembly

Amnesty International is pleased to write to you in your capacity as newly elected members of the Legislative Assembly.

As you may know, Amnesty International campaigns for the release of prisoners of conscience (people detained anywhere for their beliefs or because of their ethnic origin, sex, colour, national or social origin, language or economic status - who have not used or advocated violence); to ensure fair and prompt trials for political prisoners; to abolish the death penalty, torture and other cruel treatment of prisoners; and to end extrajudicial executions and "disappearances". It also opposes abuses by opposition groups, including hostage-taking, torture and killing of prisoners and other deliberate and arbitrary killings.

Amnesty International is unconditionally opposed to the death penalty, which it considers the ultimate violation of the right to life. The organization believes the death penalty does not fulfil any penal objectives which could not be achieved equally by other forms of punishment.

Amnesty International is therefore writing to you with reference to the pending ratification of the Constitutional amendment to extend the use of the death penalty in El Salvador and to urge you to vote against such motion for the reasons outlined below.

As you know, the death penalty was abolished in El Salvador in 1983 for all crimes except "for cases stipulated in military legislation during a state of international war"¹ (Article 27 of the Constitution). However, on 10 October 1996, the Legislative Assembly of El Salvador approved a motion to amend Article 27 of the Constitution in order to extend the use of the death penalty to rape, kidnapping and aggravated homicide² at all times. We are aware that, before this constitutional reform can take effect, it must be ratified by two-thirds of the next elected Assembly, which in this case takes office on 1 May 1997. Previously, an extension of the death penalty was approved by the Assembly in the legislative period 1988 - 1991 but the members of the following Assembly (1991-1994) did not ratify it. In 1995 an attempt to discuss the issue failed in its early stages.

"Sólo podrá imponerse la pena de muerte en los casos previstos por las leyes militares durante el estado de guerra internacional"

Secuestro, violación y homicidio agravado

El Salvador is party to various international treaties³, some of which are relevant to the issue of the death penalty, namely the American Convention on Human Rights (ACHR) and the International Covenant on Civil and Political Rights (ICCPR). El Salvador would be in breach of its obligations under these instruments should the death penalty be extended beyond its present scope.

For example, the ACHR, which El Salvador ratified in June 1978, is extremely clear in its position on capital punishment. It states in Article 4(3): “The death penalty shall not be re-established in states that have abolished it” and in Article 4(2): “Its application [of the death penalty] shall not be extended to crimes to which it does not presently apply”. In view of the fact that El Salvador abolished the death penalty for all common crimes in 1983, the ratification of the constitutional amendment to extend the use of the death penalty for the crimes of kidnapping, aggravated homicide and rape would clearly breach the ACHR. It is worth pointing out that on 9 December 1994, at the request of the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights issued its 14th advisory opinion regarding international responsibility for the promulgation and enforcement of laws in violation of the ACHR. It decided unanimously “That the promulgation of a law in manifest conflict with the obligations assumed by a State upon ratifying or acceding to the Convention is a violation of that treaty. Furthermore, if such violation affects the protected rights and freedoms of specific individuals, it gives rise to international responsibility for the State in question”.⁴ This principle is reflected in Article 144 of the Constitution of El Salvador, which states: “International treaties between El Salvador and other states or international institutions, are laws of the Republic when they enter into force, in accordance with the provisions of such treaties and of this Constitution. [National] law cannot modify or repeal what has been agreed in a treaty which is in force. In case of conflict, the treaty will prevail over national law”.⁵

Amnesty International believes that the extension of the death penalty would also be inconsistent with international obligations under Article 6 of the ICCPR, which El Salvador

Que la expedición de una ley manifiestamente contraria a las obligaciones asumidas por un Estado al ratificar o adherir a la Convención, constituye una violación de ésta y, en el caso de que esa violación afecte los derechos y libertades protegidos respecto de individuos determinados, genera la responsabilidad internacional de tal Estado.

Los tratados internacionales celebrados por El Salvador con otros estado o con organismos internacionales, constituyen leyes de la República al entrar en vigencia, conforme a las disposiciones del mismo tratado y de esta Constitución. La ley no podrá modificar o derogar lo acordado en un tratado vigente par El Salvador. En caso de conflicto entre el tratado y la ley, prevalecerá el tratado.

ratified in 1967. The General Comment on Article 6, adopted in 1982 by the Human Rights Committee, states that this article refers generally to abolition in terms which “strongly suggest that abolition is desirable”. In addition, the General Assembly, in resolution 32/61, said that “the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment”. The Special Rapporteur on extrajudicial, summary and arbitrary executions has repeatedly expressed his concern about the extension of the scope of the death penalty and proposals to reintroduce it and has recommended that the UN General Assembly adopt a resolution calling for the abolition of the death penalty.

You will be aware that the wave of killings in late 1996 and the approval of the constitutional amendment caused such concern in the European Parliament that it led to the adoption of a resolution on 14 November 1996, calling, among other things, “for the death penalty and other measures to increase penalties ... to be removed from the El Salvador statute book ...”.

Amnesty International is aware that criminal activity in El Salvador increased during 1996 and that the population is increasingly concerned about their safety. In such circumstances calls for the death penalty abound and its reinstatement may give the wrong and unfounded impression that such drastic measures will contribute to combat crime. A more realistic approach, however, was outlined by the National Human Rights Procurator, Dra Marina de Avilés, when she said in an interview: “... it is not by imposing harsher punishments that we shall combat crime....We have to attack crime head-on, but with the participation of citizens, society, state - through its institutions ... by strengthening the administration of justice, investigation of crime ...” and that “If the expectation is that this short term measure will stop crime, that is not true ...”⁶.

We believe that in the context of the transitional process still in progress in El Salvador, which aims to consolidate the protection of human rights but has not yet been fully completed, the extension of the death penalty would seriously infringe El Salvador’s national and international commitments regarding the protection of human rights. For example, the San José Agreement on Human Rights, signed in July 1990 in the early stages of the peace process, also bears witness to the commitments to prohibit any practice which violates, among others, the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

El Diario de Hoy, 29 September 1996. “... *no es endureciendo las penas que se combatirá la delincuencia. ...Aquí se debe hacer un ataque frontal a la delincuencia, pero con la participación ciudadana, de la sociedad, del Estado, a través de sus instituciones ... fortaleciendo la administración de justicia, las institución de la investigación del delito...*”. “*Si se espera que esta medida a corto plazo va a detene la criminalidad, tampoco es cierto*”

One of the main arguments put forward for the use of the death penalty is its purported deterrent effect. However, AI is not aware of any convincing evidence to support this assumption.

The organization has found that the death penalty has not shown itself to be effective in reducing levels of crime in the countries which retain it. Comparisons of crime rates in different countries that have retained or abolished the death penalty do not indicate that the threat of execution has been effective in preventing capital crimes. Also, a study conducted by the UN in 1988 (and updated in 1996) on the relation between the death penalty and homicide rates, concluded that "... research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis". Furthermore, since no criminal justice system is flawless the possibility of judicial error must always be taken into account. Such possibility assumes even greater importance in capital cases because the death penalty is *the* ultimate and irreversible punishment.

Finally, Amnesty International would like to bring to your attention the following facts regarding the use of the death penalty. As of October 1996:

○ In Latin America

- ⇒ nine countries in Latin America were abolitionists for all crimes;
- ⇒ six (including El Salvador) were abolitionist for ordinary crimes;
- ⇒ one was abolitionist *de facto* and
- ⇒ three still retained the death penalty for ordinary crimes.

○ Around the world

- ⇒ between 1990 and 1996, 21 countries around the world abolished the death penalty for all or ordinary crimes.

Amnesty International urges you to consider this trend (which has led to more than half the countries in the world to abolish the death penalty in law or practice) and the arguments presented above and calls on you to oppose the ratification of the constitutional amendment, which would extend the use of the death penalty, when it comes to the vote at the Legislative Assembly.

Yours sincerely

Herve Berger
Deputy Secretary General