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Guatemala: Congress should build on new momentum for abolition as country's highest court considers issue of death penalty

As the Constitutional Court of Guatemala considers a challenge on the constitutionality of the death penalty, Amnesty International urges the country's Congress to take the opportunity of this discussion at the highest court to abolish this punishment in national legislation once and for all.

The Constitutional Court of Guatemala has been called to answer the question of whether the imposition of the death penalty violates the principles enshrined in the country's Constitution. The petition to this aim was filed on November 25, 2016 and a decision is expected to be announced in coming days. Last year, the Constitutional Court held that provisions in Article 132 of the Guatemalan Penal Code, mandating the imposition of the death penalty for certain circumstances of aggravated murder, were unconstitutional.

There have been no executions in Guatemala since 2000, when Law Decree 159, which established the procedure for the President of the Republic to decide on petitions of clemency, was repealed. This created a void that prevented persons under sentence of death from accessing a clemency process, which would make any execution unlawful under the American Convention on Human Rights. The last remaining death sentence in the country was commuted in 2012.

While the Constitutional Court deliberates on the present matter, Amnesty International urges the members of the Congress of Guatemala to take the opportunity of the new momentum created by the Court deliberations to immediately abolish the death penalty for all crimes. Draft law 5100 was introduced in July 2016 to abolish the death penalty and received joint approval by the three parliamentary committees on Human Rights, Justice Reform and on Legislative and Constitutional Matters on 3 August. It underwent the first reading at the plenary session of the Parliament on 13 October and is to date pending before Congress.

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 ICCPR, ratified by Guatemala, has stated “all measures of abolition should be considered as progress in the enjoyment of the right to life”.¹

Amnesty International believes that every execution is an act that not only dehumanizes those that carry it out but also devalues the worth that society places upon human life. The death penalty is a unique form of cruel punishment: apart from the cruelty of the execution itself, it involves the cruelty of being forced to wait on death row contemplating the prospect of execution. While all criminal justice systems are vulnerable to discrimination and error, the death penalty is irrevocable and once inflicted cannot be undone.

Amnesty International is further concerned that the retention of this punishment has often been defended on the ill-founded assumption that the death penalty is an effective crime control measure. A comprehensive survey of research findings carried out by the UN on the relationship between the death penalty and homicide rates concluded there is no scientific proof that executions have a greater deterrent effect than life imprisonment.² Statistics from countries that have abolished the death penalty show that the absence of the death penalty has not resulted in an increase in the crimes previously subject to capital punishment.

The death penalty is also excluded from the punishments which *ad hoc* or permanent international criminal tribunals established in the last decades are authorized to impose, even though these have jurisdiction over extremely grave crimes such as genocide, crimes against humanity and war crimes.³

The global trend remains towards abolition of the death penalty. As of today, 141 countries—more than two-thirds of the world’s countries—have abolished the death penalty in law or in practice. The number of countries that carry out executions has also been declining, with only 11 countries known to have carried out executions every year in recent years.⁴ In 2015, 169 (88%) of the 193 UN Member States were executions-free.

For all the above stated reasons, Amnesty International calls on members of the Congress of Guatemala to immediately adopt proposed legislation to abolish death penalty and confine this punishment to history once and for all.

¹ Human Rights Committee, General Comment No. 6: The Right to Life, UN Doc. HRI\GEN\1\Rev.1 at 6, 27 July 1982, para. 6.

² Roger Hood, “The question of the death penalty and the new contributions of the criminal sciences to the matter: a report to the United Nations Committee on Crime Prevention and Control”, UN doc. E/AC.57/1988/CRP.7, 1988. The survey was last reviewed and published commercially as Roger Hood and Carolyn Hoyle, “The Death Penalty: A Worldwide Perspective”, Oxford, Clarendon Press, Fourth edition, 2015.

³ International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court of Sierra Leone, the Special Panels in Dili, East Timor and the Extraordinary Chambers for Cambodia as well as the Rome Statute of the International Criminal Court (to which Guatemala is a state party)..

⁴ Afghanistan, China, Iran, Iraq, North Korea, Saudi Arabia, Somalia, Sudan, Taiwan, USA and Yemen. See Amnesty International, Death sentences and executions in 2015, ACT 50/3487/2016, April 2016.