

PUBLIC

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UA 51/08 Death Penalty

GUATEMALA Proposed resumption of executions

On 12 February the Congress of Guatemala approved 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*"), which established a procedure for those condemned to death to request a pardon from the President. Decree 06-2008 effectively leaves open the possibility of executions to resume after a prolonged *de facto* moratorium due to the absence of the presidential pardon facility.

Decree 06-2008 was due to be sent by the Congress of Guatemala to the President on 26 February (according to the Constitution Congress has 10 days after the approval of a law to send it to the President). The President will have 15 days from the date he receives the Decree to either approve the law or veto it.

In 2000, Congress had revoked the law which allowed those sentenced to death to apply for presidential clemency. In 2005 the Inter-American Court of Human Rights (IACHR) found that Guatemala could not carry out executions without a clemency procedure in place and established criteria for such a procedure.

Although Congress's passing of Decree 06-2008 is presented as Guatemala's attempt to comply with part of the IACHR's ruling, the new law in fact breaches both the ruling and international human rights law which the Guatemalan state has committed itself to respect:

Firstly, Decree 06-2008 fails to mention and define the criteria under which pardons are to be granted, even though the IACHR's ruling ordered the Guatemalan state to specify clear criteria for evaluating individual petitions for pardon. This leaves Guatemala in breach of the American Convention on Human Rights, which establishes that countries must comply with the IACHR's judgements. In addition, Guatemala's own Constitution establishes that international human rights treaties prevail over national law.

Secondly, according to Decree 06-2008, 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 immediate execution. This is known as "negative administrative silence". Under the terms of the new law, administrative silence is effectively used as a means of speeding up executions and would result in the impossibility of appealing in order to stop them. Amnesty International considers the use of administrative silence, when related to the right of life in the context of impending executions as wholly unacceptable. In addition, administrative silence is legally inconsistent with the obligation to establish specific criteria for evaluating each case and take them into account. If an appeal for clemency were rejected by administrative silence, the authorities would be failing in their duty to substantiate their decisions following the criteria established by law. Moreover, by leading to immediate 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.

Amnesty International recognises the grave situation of public security in Guatemala. With over 5,000 murders a year and a conviction rate of less than one per cent, there is understandably much public anxiety at the lack of security. To oppose capital punishment is not to excuse or minimize the consequences of violent crime. Amnesty International has been among many national and international organizations campaigning on behalf of victims of violent crime and recommending changes in public security policies for many years, in a manner consistent with human rights.

BACKGROUND INFORMATION

To end the death penalty is to recognize that it is a destructive, diversionary and divisive public policy that is not consistent with widely held values. It runs the risk of the irrevocable error of executing the innocent. It tends to be applied discriminatorily on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It promotes simplistic answers to the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it. It is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity. It should be abolished.

At present, 135 countries - more than two thirds of the countries in the world - have now abolished the death penalty in law or practice. Furthermore, last December the United Nations General Assembly adopted a resolution calling for a moratorium on executions. The resolution was adopted by an overwhelming majority of 104 states - including Guatemala. The resolution called for all states that still use the death penalty to respect international standards that provide safeguards to those facing execution and to establish a moratorium on executions with a view to abolishing the death penalty.

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 the crime;
- expressing deep concern, however, that Guatemala is considering reactivating executions;
- urging the President to exercise his constitutional power to veto Decree 06-2008 because it is inconsistent with 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 President to exercise his constitutional power to veto Decree 06-2008, because the death penalty is the ultimate form of cruel, inhuman or degrading treatment or punishment, with an average of two to three countries per year abolishing capital punishment in the last two decades, 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

Presidente de la República de Guatemala

Lic. Álvaro Colom

Casa Presidencial, 6ª Avenida, 4-18, Zona 1.

Ciudad de Guatemala, Guatemala

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E-mail: cartapresidente@scspr.gob.gt

Salutation: Estimado Sr. Presidente

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

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Please also send 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 9 April 2008.