



## BACKGROUND DOCUMENT

### Virtual meeting organized by the PGA National Group and the Parliamentary Group for Human Rights National Assembly of Ecuador

#### The Death Penalty in the Americas: A Problem of the Past?

##### The death penalty: an increasingly obsolete punishment

The death penalty has always been a part of human history, dating as far as back as the Code of Hammurabi of Babylon (18th century BC). Today, some of the most populous and/or powerful countries – such as China or the United States of America (USA) - remain in the group of firmly retentionist countries. Even so, in 2019 as in the years before the overwhelming majority of victims of the death penalty were executed by a handful of States: China (for which public information is not available but estimated to thousands of executions), Iran, Saudi Arabia, and Iraq were responsible for the vast majority of executions.

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*21 member states of the Organization of American States (OAS) have abolished the death penalty for ordinary crimes or for all other crimes. 14, mostly Caribbean countries that have not carried out executions in the last 10 years, continue to maintain capital punishment in their respective criminal codes and laws.*

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However dark and alarming this observation is, it should not overshadow the fact that the death penalty has indeed become increasingly obsolete. **Since the creation of the United Nations in 1945, the number of countries having formally abolished capital punishment has soared: from 8 then, they are now 106.** A further 36 States have either partially abolished the death

penalty (for ordinary crimes only) or have not carried out any execution over the past 10 years.

Every year, new states decide to abolish the capital punishment. In 2019, confirmed executions have decreased by 5% compared to 2018, the lowest figure in at least 10 years, confirming a year-on-year reduction since 2015.

The reasons why countries or states have become abolitionist recently are varied. They can include:

- a desire to break with a repressive past, a military past and a period of armed conflict;
- the personal experience of heads of state who faced the prospect themselves, or had friends or family face the prospect of the death penalty in previous regimes, or the personal convictions of an individual head of state or government who then shows decisive leadership;
- improved understanding of the fallibility of the criminal justice system and the impossibility of reversing an execution as well as well publicised cases of miscarriages of justice;
- a recognition that the death penalty is disproportionately applied to ethnic minorities, the poor, the excluded and as an instrument of political repression;
- cost factors; *and*
- the influence of normative pressure from the abolitionist majority at the international level and the influence of human rights regional systems.

## The death penalty in international law

The death penalty is not prohibited under customary international law or any international instrument which could be considered universal. However, the International Covenant on Civil and Political Rights (ICCPR) restricts its use to exceptional circumstances: under its Article 6, capital punishment may only be used for the most serious crimes after a rigorously fair trial. Juveniles may never be sentenced to death, while pregnant women cannot be executed. Appeals, pardons or commutations must be available to those who have been sentenced to death. Regional human rights instruments also protect the right to life while allowing States to retain the death penalty in certain circumstances: the African Charter on Human and Peoples' Rights (ACHPR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Arab Charter on Human Rights, and of course the American Convention on Human Rights (ACHR).

**Protocols to these conventions have been adopted, showing a growing movement in favour of abolition.** The Second Optional Protocol to the ICCPR (ICCPR-OP2) aiming at the abolition of the death penalty, adopted in 1989, prohibits its States Parties from carrying out executions and encourages them to abolish *de jure*. 88 States have now ratified it. Protocol No. 6 to the ECHR concerning the abolition of the death penalty, adopted in 1985, was limited to capital punishment in times of peace. It was followed by Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances, adopted in 2002, which aims to fully abolishing the death penalty. The Protocol to the ACHR to abolish the death penalty, adopted in 1990, prohibits the use of the death penalty, except for serious military crimes committed in wartime. A draft Protocol to the ACHPR has also been prepared but has yet to be adopted.

Finally, **since 2007, the United Nations General Assembly adopts a resolution calling on a moratorium on the use of the death penalty every two year.** With every resolution, the number of States supporting the moratorium grows: in 2018, a record 121 States (out of the 193 members of the UN) voted in favour of the resolution.

What this growing number of international instruments, binding and non-binding shows is that the capital punishment is being rejected by more countries every year. This agreement of a vast majority of States across the world may contribute to the birth of a rule of customary international law, prohibiting the use of the death penalty.

### Being abolitionist: an everlasting process

While the growing rejection of the death penalty should be celebrated, it would be naive to think the abolitionist struggle is over. It is of course imperative to keep advocating against the death penalty in the countries which still retain it, and to support individuals who face being sentenced to death.

However, it is also important to be vigilant and to continuously raise awareness around abolition, dispel commonly held misconceptions around capital punishment, and curb any attempt or calls to reinstate this cruel and irreversible punishment. Far from being a hypothetical scenario, the reinstatement of the death penalty and resumption of executions is a real risk in many countries, especially as a populist response to instances of crimes that shock and mark the public. For example, since his election in 2016, President Duterte of the Philippines has repeatedly called for the death penalty to be reinstated in the country. Many

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### *Ecuador is certainly a pioneer of abolition*

- *it abolished the death penalty as early as 1906;*
  - *it ratified the ICCPR in 1969 and the ICCPR-OP2 in 1993;*
  - *it ratified the ACHR in 1997 and the protocol abolishing the death penalty in 1998;*
  - *it has voted in favor of every UNGA moratorium resolution.*
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bills have been introduced to Parliament to that end and are being discussed. This is not limited to States which have had a serious democratic backslide: a September 2020 survey showed that 55% of people supported the reinstatement of the death penalty in France. Basic facts about the death penalty and how it is effectively used thus bear reminding, even in countries where abolition might appear to be a given.

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### Some facts about the death penalty

- ***The death penalty is irrevocable:*** no criminal justice system across the world can pretend to be immune from error, even if they adhere to the most stringent guarantees against unfair trials. Executing a human being necessarily incurs the risk of killing someone who might be proven to be innocent later. It also removes any possibility of rehabilitation of the offender.
- ***The death penalty does not have a deterrent effect:*** the capital punishment has been used since the dawn of humanity, yet crimes continue to exist. On the contrary, several studies have shown that rather than the severity of the sentence (death penalty being the most severe), it is the ‘certainty’ of punishment by the criminal justice system that effectively deters crime. States should thus focus on strengthening the capacity of their law enforcement and courts and improving access to justice, rather than give way to populist discourse calling on increasingly severe and cruel punishments.
- ***The death penalty is unfairly applied:*** most criminal justice systems disproportionately affect some groups, such as the poor, the mental ill, or minorities. The death penalty is no different: being indigent or from a persecuted minority can mean the difference between life and death.
- ***The death penalty does not bring ‘closure’ to victims:*** on the contrary, it only inflicts more pain, not only to the death row detainee – who will often live years awaiting in fear their execution, in inhuman conditions – but to their relatives as well. Many victims and victims’ groups in the world have denounced the fact that executions are carried out in their names, even if they themselves do not support the death penalty.
- ***Public opinion’s support for the death penalty is often misinformed:*** it is not rare for supporters of capital punishment to use public opinion as a mandate for their position. However, studies have shown that surveys are often conducted in a way that creates bias in the results. The questions do not capture the full picture of how capital punishment is applied nor do they place it along with alternatives (such as imprisonment).

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### What can PGA and parliamentarians do?

In 2013, PGA launched its Campaign for the Abolition of the Death Penalty. The goal of the campaign is to ensure the right to life is upheld and to promote justice systems grounded in the rule of law. Through drafting legislation, deliberating on national policies, and enlightening public opinion, parliamentarians have a crucial role to play in the movement to restrict the use of the death penalty and ultimately abolish it.

For this purpose, PGA assists its members from both retentionist and abolitionist countries. It takes a step-by-step approach to further up the country’s abolitionist path, including:

1. Improving conditions of detention on death row by addressing issues like prison overcrowding, insufficient food or drinking water, lack of medical care, lack of personnel and infrastructure, deplorable sanitary conditions, physical violence, etc.
2. Strengthened legal safeguards in capital cases, including right to due process, right to appeal and clemency proceedings, right to adequate legal counsel, right to a fair trial.
3. Reduced scope of application of the death penalty, including the elimination of mandatory sentencing.
4. [For retentionist countries] Adoption of a moratoria, including through affirming the biannual United Nations General Assembly (UNGA) resolution on a moratorium on the use of the death penalty.
5. Abolition of the death penalty and promotion of an international norm prohibiting it, through supporting the ratification, accession, or adoption the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2).

## **Resources**

[Quarterly Updates of the Campaign for the Abolition of the Death Penalty](#)

[Parliamentarians and the Abolition of the Death Penalty – A Resource](#) (2014)

[Factsheet for Parliamentarians on the Death Penalty and Mental Health](#) (2014)

[Factsheet for Parliamentarians on the Death Penalty and Terrorism-Related Offenses](#) (2016)

[Factsheet for Parliamentarians on the Death Penalty and Poverty](#) (2017)

[Factsheet for Parliamentarians on the Death Penalty and the Right to Effective Legal Representation](#) (2020)