



## **FIACAT and ACAT USA contribution for the 3<sup>rd</sup> Universal Periodic Review of the United States of America**

### *Death Penalty*

During the last Universal Periodic Review of the United States of America (USA), the USA received 43 recommendations regarding the abolition of the death penalty.<sup>1</sup>

There are currently 29 States among the 50 States of the USA where the death penalty is still legal<sup>2</sup>. Among those States, 3 have a moratorium on the execution (California since the executive order from the Gov. Gavin Newsom on March 13, 2019; Oregon since 2011 and Pennsylvania since 2015) and 8 have not carried out any executions for several years<sup>3</sup>. It should also be noted that the death penalty is still in force at the Federal level and in Military Justice. If no executions had been carried out by the federal government since 2003, the Justice department announced the resumption of executions on 25 July 2019.

Even though each State applies its own criminal law it should be noted that the U.S. Supreme Court ruled in *Kennedy v. Louisiana* on June 25<sup>th</sup> 2008 that the death penalty can only be applied for crimes in which a victim is killed. Many States still allow the death penalty to be imposed to those who have participated to felonies in which death occurred even though they may not have directly killed someone.

Regarding the persons against which a death sentence can be pronounced, it should be noted that the US Supreme Court rules in its decision *Roper v. Simmons* on March 1, 2005 that no death penalty can be imposed on people for crimes committed when they were under 18. Furthermore, in *Atkins v. Virginia*, on June 20, 2002, the US Supreme Court ruled that the executions of “mentally retarded” criminals are a violation of the Eighth Amendment as they would be cruel and unusual punishments. However, the determination of intellectual disability varies from one State to another and remains problematic. Thus, Florida and Texas have recently overturned appeals and executed men with intellectual disability.

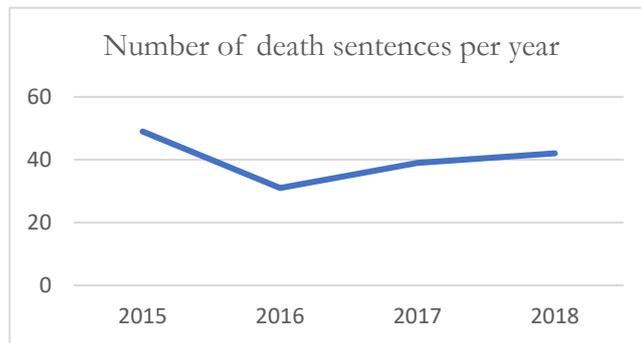
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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/30/12, recommendations made by Timor Leste, Chile, Namibia, Australia, Gabon, Nicaragua, Ecuador, Costa Rica, Plurinational State of Bolivia, Austria, Congo, Lithuania, Luxembourg, Nepal, Uruguay, Argentina, Togo, France, Montenegro, Spain, Turkey, Rwanda, Portugal, Iceland, Ireland, Sweden, Russian Federation, Azerbaijan, Germany, Netherlands, Slovakia, New Zealand, Estonia, Sierra Leone, Italy, Cyprus, Greece, Holy See, Uzbekistan, Norway, Angola, Belgium, Democratic Republic of the Congo, Poland and Bulgaria para 176.10 to 176.14 and 176.165 to 176.202.

<sup>2</sup> Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming.

<sup>3</sup> Colorado – no executions since 1997, Indiana - no executions since 2009, Kansas – no executions since 1965, Kentucky – no executions since 2008, Montana – no executions since 2006, Nevada – no executions since 2006, North Carolina - no executions since 2006 and Wyoming – no executions since 1992

If the number of condemnations went down between 2015 and 2016 it should be noted that it has increased again since then<sup>4</sup>.



The same tendency can be noted regarding the number of executions per year<sup>5</sup>.



There are currently about 2000 prisoners awaiting executions. It should be noted that since 1973, 166 people on death row have been exonerated.

The detention conditions on death row often amount to cruel, inhuman or degrading treatment. In fact, detainees on death row face many restrictions and their detention can amount to solitary confinement in some States such as in Texas. Such regime could be very detrimental to the physical and mental health of the detainees on death row. Also, each State has its own policy regarding visitation for death row prisoners. Even though there is evidence that prisoners benefit from liberal visitation policies and that prisoners who are allowed visitation are better behaved while incarcerated, prison security is always the overarching consideration and guards are almost always present.

**Thus, FIACAT and ACAT USA recommend to the United States of America to:**

- ***Impose a moratorium on the death penalty at the Federal and State level aiming at the complete abolition and take all necessary measures to ensure that the death penalty complies with minimum standards under international law.***
- ***Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.***

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<sup>4</sup> Data from the Death Penalty Information Centre (DPIC) on October 2, 2019: <https://deathpenaltyinfo.org/facts-and-research/sentencing-data/death-sentences-in-the-united-states-from-1977-by-state-and-by-year>

<sup>5</sup> Data from the Death Penalty Information Centre (DPIC) on October 2, 2019: <https://deathpenaltyinfo.org/executions/2019>