

25° Human Rights Council  
“ **International Actions with the view to abolishing the death penalty**”  
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13:15 hrs  
Room XXIII  
*Statement by*  
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*Permanent Representative of Mexico to the UN and other Intl Organizations*

**Monsieur le President,**  
**Señor Ministro,**  
**Your excellencies,**

- I am deeply honored to share this panel with you.
- Allow me to begin with a clear and strong statement: for Mexico the death penalty constitutes an inhuman and extreme punishment that must be abolished.
- How did we arrive to such a conviction?
- Until a few years ago, Mexico was considered a de facto abolitionist country, since the last application of the death penalty in a civil forum took place in 1937 and in a military forum in 1961.
- However, in December 2005 Mexico expressly prohibited the death penalty in the text of its Constitution.
- As a consequence of this decision, Mexico adhered to the Second Optional Protocol to the International Covenant on Civil and Political Rights of 1989 and to the Protocol to the American Convention on Human Rights of 1990 concerning the abolition of the death penalty.
- But our certainty on the issue took us even farther: as a result of the incorporation of the pro homine principle into article 1 of the Constitution and the recognition of international treaties as the supreme law of the union in 2011, under no circumstances would it be possible for Mexico to reincorporate the death penalty into its legal system.
- Nevertheless, Mexicans abroad still face the inhuman and extreme punishment of the death penalty. As of today, 63 Mexican nationals are condemned to the capital punishment, 61 of them in the United States.
- To respond to this and in full consistence with the principles behind our new legal framework at home, the Ministry of Foreign Affairs established a program to provide legal support to all Mexicans facing the death penalty in the United States. The aim is to raise the quality of legal defense from the suspect's time of arrest all the way up to the post-judgment processes, both at the state and federal level.

- In most of the cases in which the Consular Authorities had been able to assist the Mexican Nationals in a timely manner, it has been possible, depending on the case, either to achieve non-guilty verdicts, persuade prosecutors not to seek charges for the death penalty, convince jurors not to apply it or revoke death sentences.
- This only proves that in many cases in which the death penalty is imposed, serious omissions in the right of the accused to due process occur, particularly when it comes to minorities or foreigners.
- Having detected that, Mexico started an important international legal offensive for the respect of the right of any foreign detainee to receive consular assistance in accordance to article 36.1 of the Vienna Convention on Consular Relations.
- In Advisory Opinion 16/99 of the Inter-American Court of Human Rights, requested by Mexico, the Court found that Article 36.1 is linked to due process given that it is the proper means for foreigners to have access to an adequate defense, especially when accused of an offence punishable by the death penalty.
- Following this principle, in the Avena case in 2003, Mexico brought an action against the United States before the International Court of Justice for breach of the obligation of consular notification contained in Article 36.1 of the Vienna Convention on Consular Relations in respect to 51 cases of Mexicans sentenced to death in the United States. In its ruling, the Court held that the failure to notify the consular authorities had affected the defense of those accused by not benefitting from consular assistance. Under this reasoning, the Court ordered the United States to review and reconsider the sentences of the 51 Mexicans on death row, while granting the United States the freedom to determine the method by which to satisfy this judgment.
- In dealing with the judgment, the Supreme Court of the United States determined that the ruling by the ICJ was not binding to the States of the Union; for this to be the case the adoption of implementing legislation was required.
- Given the lack of compliance with the ruling, in 2008 the Government of Mexico presented before the ICJ a request for interpretation of the 2004 judgment. After granting Mexico provisional measures for the first time in a case of interpretation (in this case, the executions of five Mexican nationals), the ICJ declared that the United States had not an obligation of means but one of results, as the subject of international obligations is the State with capital S (in this case the USA), regardless of its internal arrangements or political system.

- Despite the binding ruling of the ICJ and in violation of its legal obligations resulting from the Avena judgment, the state of Texas executed the Mexican nationals Humberto Leal, Ernesto Medellín and more recently Edgar Tamayo, without the review and reconsideration of their cases by the states' judicial authorities.
- Furthermore, in recent months the methods of execution have brought additional and unnecessary suffering for the executed. The growing refusal of pharmaceutical manufacturers to supply drugs for executions has prompted US states' authorities to resort to the use of so called compounding pharmacies which, plaintiffs have argued, may cause "risk of severe of pain", all of which has led to legal challenges before US courts in several states. In this context, yet another Mexican national, Ramiro Hernández, is scheduled for execution in April.
- In spite of all remaining as well as new challenges, the world has come a long way in moving forward with the agenda of protecting human rights. So it is somewhat puzzling that in this age and time more than 58 countries still defy the ultimate human right, the right of life. Let me then conclude by stressing that Mexico is persistently seeking to promote open dialogues in multilateral fora that could lead the international community to a moratorium and eventually to the universal abolition of the death penalty.