



Campaign for the Ratification of International and Regional Protocols Aimed at Abolition of the Death Penalty

RATIFICATION KIT FOR PARLIAMENTARIANS

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Introduction

The Second Optional Protocol is the only universal international treaty that prohibits executions and provides essential mechanisms to entrench the abolition of the death penalty in the world. It is a key instrument to abolish the death penalty. Through widespread ratification, it has the potential to ultimately outlaw the death penalty.

What does it say?

The Preamble of the Protocol underscores the significance of abolition of the death penalty as a measure enhancing human rights and assumes the commitment of States parties to this end.

Article 1 provides for a ban on executions and for the abolition of the death penalty within the jurisdiction of States parties. However, Article 2 allows States to reserve the right to apply the death penalty during wartime for serious military crimes committed during wartime.

Article 6 further specifies the non-derogable nature of the ban on executions, even in cases of state of emergency.

Articles 3, 4 and 5 concern the reporting obligations of States parties and the complaints procedure before the Human Rights Committee.

Finally, Articles 7 to 11 cover the procedural issues related to accessing to the Protocol.

As of 25th of September 2017, 85 States out of the 169 State parties to the ICCPR and out of the 141 abolitionist States in law or in practice have ratified the Second Optional Protocol (Azerbaijan, Brazil, Chile, El Salvador and Greece with a reservation on its application in times of war) and 2 States (Angola and the Gambia) have signed the Protocol but have not ratified it yet.



Check if your State is not already a State party to the Protocol:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en

Read the text of the Protocol:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>



Towards universal ratification

The Second Optional Protocol to the ICCPR is the only *universal* instrument aiming at the abolition of the death penalty, but there are also regional protocols for which the World Coalition is also campaigning:

- ➔ **The Protocol to the American Convention on Human Rights (ACHR) to Abolish the Death Penalty** was adopted in 1990 by the Organisation of the American States (OAS). Like the Second Optional Protocol to the ICCPR, it aims at abolishing capital punishment, with the same possibility for States “to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature”. It has been ratified by 13 of the 22 State parties to the ACHR, out of the 35 Member States of the OAS.
- ➔ **Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerning the Abolition of the Death Penalty** is the first regional abolitionist treaty. It has been signed by all 47 Member States of the Council of Europe and ratified by 46 of them. This text provides for the abolition of the death penalty, but still allows States to maintain it for crimes committed in time of war or of imminent threat of war.
- ➔ **Protocol 13 to the ECHR**, adopted in May 2002, ratified by 44 of the 47 States and signed by an additional one State, abolishes the death penalty in all circumstances and without possible reservations. Thus, it goes beyond the range of the Second Optional Protocol to the ICCPR.



Check if your country has ratified any of these protocols and read the texts of these regional treaties:

www.worldcoalition.org/A-universal-tool-with-regional-equivalents

Why Campaigning for Ratification

The aim of the World Coalition Against the Death Penalty and its members is to raise awareness about these mechanisms and encourage their ratification. **Between 2010 and 2017, 13 countries have ratified at least one protocol**, either regional or international or both (Benin, Bolivia, Dominican Republic, El Salvador, Gabon, Guinea Bissau, Kyrgyzstan, Latvia, Madagascar, Mongolia, Poland, Togo, and Sao Tome and Principe) and two other countries signed the Second Optional Protocol to the ICCPR (Angola and the Gambia).

The Second Optional Protocol to the ICCPR and the regional protocols are key tools to reinforcing and securing abolition of the death penalty worldwide, as:

- ➔ **abolitionist countries in law** irrevocably abolish the death penalty regardless of future changes in government and political situation;
- ➔ **abolitionist countries in practice** commit to ban executions, to commute death sentences and to take all necessary measures to abolish the death penalty within their jurisdiction; and



- **for retentionist countries**, a growing number of ratifications will put increasing pressure on retentionist States to stop executions.

Using the kit

The objective of the kit is to advise parliamentarians from abolition countries on how to achieve ratification or accession to the Protocol. It is complementary to other tools produced by the World Coalition, including:

- **Parliamentarians and the abolition of the death penalty – a resource** <http://www.worldcoalition.org/resourcecentre/document/id/1418140057>
- **The information leaflet** gives details about the importance of the Protocol and the reasons for a ratification campaign;
- **The ratification kits** are for policy-makers and give, country by country, the ratification procedure and the arguments to convince target countries to adopt the Protocol;
- **The questions and answers** on the protocol allow for a greater knowledge of the Protocol;
- **The legal glossary** explains the complexity of international law terminologies.

All these tools are available in French, English, Spanish and Arabic on the website: www.worldcoalition.org/protocol



Becoming a party to the Second Optional Protocol to the ICCPR

The means by which an international treaty enters into national legislation differs from country to country depending on the parliamentary system and national procedures. However, in all cases, States have to take a number of steps to become parties to the Protocol. These measures are standard practice under international law.

Joining the Second Optional Protocol

A State becomes a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) by signing and ratifying the Protocol or by acceding to it. A precondition to signing and ratifying the Second Optional Protocol is having signed and ratified the ICCPR.



Check if your country has signed, ratified or acceded to the ICCPR and is therefore competent to sign, ratify or accede to its Second Optional Protocol:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

What is the ICCPR?

The International Covenant on Civil and Political Rights is one the core United Nations human rights treaties. Adopted by the UN General Assembly in 1966, it entered into force in 1976. Together with the Universal Declaration on Human Rights and the International Covenant on Economic Social and Cultural Rights, it makes up what is known as the International Bill of Human Rights.

It covers a wide range of civil and political rights including the rights to life (article 6) and the prohibition of torture or cruel, inhuman or degrading treatment or punishment (article 7).

Signing the treaty

A State may sign the Second Optional Protocol to the ICCPR at any time. Signing should be arranged with the Office of Legal Affairs at United Nations Headquarters in New York. While some treaties do not leave open the period for signing, the Second Optional Protocol to the ICCPR are open for signing indefinitely.

The Second Optional Protocol to the ICCPR provides for a simple signing procedure. That means that there are no legal obligations imposed on a signatory State immediately after the treaty is signed. However, by signing the Protocol, States indicate their intention to take



steps to be bound by the treaty at a later date. Signing also creates an obligation, in the period between signing and ratification or consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty.



As of September 2017, only 2 States have signed the Protocol without ratifying it: **Gambia** (20 Sept. 2017) and **Angola** (24 Sept. 2013).

Since the adoption of the Protocol by the UN General Assembly in 1989, 35 States have signed and ratified the Protocol a couple of years later. 20 of them did so between 1989 and 1991. Since then, only eight of them took five years or more between the signature and the ratification of the Protocol.

For further information on the signatures, see the UN Treaty section:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en

The ratification process

→ Ratification at the national level

Some legal systems provide that the State might have to ratify the treaty in accordance with its own constitutional or legal provisions before it expresses consent to be bound internationally. For example, the Constitution might require Parliament to consider the terms of the Protocol and decide on ratification prior to any action at the international level that would indicate that the State consents to be bound by the treaty. However, ratification at the national level alone is not sufficient to establish a State's intention to be legally bound at the international level. That is why ratification at the international level is still necessary, regardless of national procedures.

→ Ratification at the international level

Upon ratification at the international level, i.e. the act by which a State's representation to the United Nations notifies the latter of its decision to ratify, the State becomes legally bound by the treaty.

Accession

A State may also express its consent to be bound by the Protocol by depositing an instrument of accession with the Secretary-General of the United Nations.

Accession has the same legal effect as ratification; however, unlike ratification, which must be preceded by signing to create binding legal obligations under international law, accession requires only one step, namely, depositing the instrument of accession.



The instrument of ratification or accession

When a State wishes to ratify or accede to the Protocol, the State must notify an instrument of ratification or accession, signed by the Head of State, Head of Government or Minister of Foreign Affairs.

There is no mandated form for the instrument; however, it must include the following information:

- ➔ Title, date and place of conclusion of the Protocol;
- ➔ Full name and title of the person signing the instrument;
- ➔ An unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the Protocol, and to undertake faithfully to observe and implement its provisions;
- ➔ Signature of the Head of State, Head of Government or Minister of Foreign Affairs (the official seal is not adequate) or any other person acting in such a position at the time or with full powers for that purpose issued by one of the above authorities.

The instrument of ratification or accession becomes effective only when the State deposits it with the Secretary-General of the United Nations at the latter's headquarters in New York. States should deliver such instruments to the Treaty Section of the United Nations to ensure the action is promptly processed to the following address:

Treaty Section
Office of Legal Affairs
United Nations Headquarters
New York, New York
United States of America
Tel: +1 212 963 50 47
Fax: +1 212 963 36 93
E-mail: treaty@un.org

When feasible, the State should provide courtesy translations, in English and/or French, of instruments that are in other languages. This will help ensure that the instrument is promptly processed.

For further information on the ratification process, see the web-site of the Office of Legal Affairs: <http://untreaty.un.org>

Reservations to the Second Optional Protocol to the ICCPR

A reservation is a statement that purports to exclude or modify the legal effect of a treaty provision with regard to the State concerned. A reservation may enable a State that would otherwise be unwilling or unable to participate in the Protocol to do so.

States may make reservations only at the time of signing, ratifying or acceding. When the reservation is made at the time of signing, the reservation is merely declaratory and must



be formally confirmed in writing when the State expresses its consent to be bound, through ratification of the treaty.

Article 2: "No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime."

This reservation can only be made at the time of ratification or accession. Since no other reservation may be made at any time, States parties to the Protocol are committed to abolition even in the event of future changes in national legislation.



As of September 2017, only 5 States out of the 85 State parties to the Protocol made a reservation: **Azerbaijan, Brazil, Chile, El Salvador and Greece.**

For further information on the reservations made, see the UN Treaty section:
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en

Modifying and withdrawing reservations

An existing reservation may be modified. Modification might result in a partial withdrawal of the reservation or might create new exemptions from, or modifications of, the legal effects of certain provisions. A modification of the latter kind is similar to a new reservation. The Secretary-General of the United Nations circulates these modifications and grants other States 12 months to object to them. In the absence of objections, the Secretary-General accepts the modification in deposit. If there is an objection, the modification fails.

A State may withdraw any reservation it has made to the Protocol at any time. The withdrawal must be formulated in writing and signed by the Head of State, Head of Government or Minister of Foreign Affairs, or a person having full powers for that purpose issued by one of those authorities. The United Nations Secretary-General circulates a notification of a withdrawal to all States concerned.



Encouraging the withdrawal of existing reservations and abolition for all crimes

The World Coalition encourages the withdrawal of existing reservations as done by Spain, Malta and Cyprus in 1998, 2000 and 2003. As of September 2017, 5 countries are concerned: Azerbaijan, Brazil, Chile, El Salvador and Greece.

Greece is already abolitionist for all crimes in its legislation and has ratified Protocol 13 to the ECHR which abolishes the death penalty in all circumstances. Therefore, withdrawal of the reservation to the OP2-ICCPR would only be a formality.

Azerbaijan is already abolitionist for all crimes in its legislation but has yet to ratify Protocol 13 to the European Convention for Human Rights.



Brazil, Chile and El Salvador still retain the death penalty for crimes committed in times of war and the World Coalition is advocating to have the death penalty abolished for all crimes in these three countries, so that they may then withdraw their reservation to the Second Optional Protocol to the ICCPR and to the Protocol to the American Convention.

Objecting to Reservations

After a reservation is circulated, other States have 12 months to object to the reservation, beginning on the date the notification of reservation was deposited or the date on which the State expressed its consent to be bound by the treaty, whichever is later.

Normally, when a State formulates a reservation, it must be included in the instrument of ratification or accession, or be annexed to it and separately signed by the Head of State, Head of Government or Minister for Foreign Affairs, or a person having full powers for that purpose issued by one of the authorities just mentioned.

When a State emits an objection to a reservation and notifies it to the Secretary General after the 12 months deadline has expired, the Secretary General distributes the objection as a "communication".



The role of parliaments in the ratification process

Parliaments have a key role to play in the ratification process

Abolition of the death penalty has gained momentum with an increase in parliamentary democracy in many parts of the world which itself has been accompanied by a vastly increased concern about human rights. Parliamentarians are essential to the process of abolition in several ways. They are central to law-making in their own countries and within regional and global government entities. Even when not in government they can lead and influence policy and public opinion. In terms of government scrutiny they can expose flaws in the national criminal justice system which highlights what a dangerous and irretrievable instrument the death penalty is. They can also identify and signpost better ways to protect victims and improve security. In the long term, they can play a role in campaigning and influencing parties and individuals who may form future governments.

While it is a representative of the executive – Head of State, Head of Government or the Minister of Foreign Affairs – who signs and ratifies treaties, in most countries, the ultimate decision on ratification rests in most countries with parliament, which must approve ratification. This is certainly the case in countries with a civil-law tradition. However, in most countries with a common-law tradition, treaty making power is generally vested in the executive, and parliaments have a more limited role to play in the ratification process. As international treaties increase in number and cover a growing range of subjects, with clear implications for domestic law and policy, parliaments in all countries are taking a greater interest in the executive's prerogative to make treaties.



Checklist for parliamentarians

How I can help ensure that my Government signs and ratifies, or accedes to the Second Optional Protocol:

- ➔ Check whether your Government has the intention of signing and ratifying or acceding to the Protocol.
- ➔ If not, use parliamentary procedure to determine the reasons for such inaction and encourage the Government to start the signing and ratification process without delay. For example, put an oral or written question to your Government to determine its intention to ratify or the reasons for any Government inaction.
- ➔ Use the ratification kit for your country (www.worldcoalition.org/protocol) to check if it has already taken international commitments for the ratification.
- ➔ If a signing procedure is underway, check whether the Government intends to make reservations to the Protocol and, if so, determine whether the reservations are necessary. If you conclude that they are groundless, take action to ensure that the Government reverses its position.
- ➔ Consider your right to submit a private member's bill on the matter.



- Encourage parliamentary debate on the question.
- Hold parliamentary hearings on the abolition of the death penalty.
- Mobilize public opinion through public-awareness campaigns and disseminate information promoting ratification of the Second Optional Protocol to the ICCPR.
- Make a statement, particularly on World Day Against the Death Penalty (10 October) or on the World Human Rights Day (10 December).
- Organize television and radio interviews.
- Write articles on the international standards for newspapers, journals, magazines, and other publications.

Mobilize other stakeholders

- Liaise with civil society groups, including human rights organizations, churches, trade unions, lawyers, and judges...;
- Debate within your political party;
- Form alliances with other parliamentarians, to strengthen your lobbying capacity;
- Encourage the development of a national ratification strategy, including by targeting governmental agencies and governmental decision-makers;
- Identify and maintain contacts with international governmental organisations which have a presence in your country, such as the UN Office of the High Commissioner for Human Rights, European delegations the African Commission for Human and People's Rights or the Inter-American Commission on Human Rights.
- Get some support and advice from international NGOs, such as the World Coalition Against the Death Penalty or Parliamentarians for Global Actions which coordinates the Global Parliamentary Platform for the Abolition of the death penalty: <http://www.pgaction.org/campaigns/abolition-of-the-death-penalty.html>

National legislation and the Protocol

It is a basic principle of international law that a State party to an international treaty must ensure that its own domestic law and practice are consistent with what is required by the treaty. Among the obligations incumbent upon the State party following ratification or accession to the Protocol are the **prohibition of executions** and **withdrawal of the death penalty from internal criminal law**.

Members of Parliament should thus consider the best way of giving effect to these obligations. The method selected varies according to the constitutional and legal systems of individual countries:

- In some countries, once it is ratified at the international level, the treaty may automatically form part of national law. In other words, the Protocol would be directly enforceable by national courts and other implementing authorities.
- In some other countries, the legislature might have to adopt an act of ratification at the national level. This may have the effect of incorporating the Protocol into



domestic law. However, even when parliaments ratify the Protocol (national ratification), many provisions might still require legislative action before they come into force, i.e. abolition in the criminal code, in the military criminal code, in the constitution...

- ➔ In other cases, including many common-law countries, only those provisions of the treaty that are directly incorporated into national law will give rise to enforceable rights and duties.



Encouraging the accession of abolitionist countries in practice

The World Coalition started targeting abolitionist countries in practice in 2012 and used its ratification campaign as a tool to encourage abolition in law. With such countries, which ratified an abolitionist protocol but have not abolished the death penalty in law, the World Coalition started monitoring respect for the provisions of these international and regional protocols.

As of September 2017, only 1 country is concerned: Liberia. The World Coalition is closely monitoring the situation in **Liberia** where a law was passed to increase the number of crimes punishable by death after the accession to the Second Optional Protocol.

Obligations of a State party and a State who is signatory

International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights.

Under the Second Optional Protocol the main duties of State parties are:

- ➔ to **ban executions** within their jurisdiction; and
- ➔ to **take all necessary measures to abolish the death penalty within their jurisdiction.**

States that are signatories to the Covenant but have not yet ratified it are not bound by the obligations contained in the Covenant. However, under the law of Treaties established by the Vienna Convention on the Law of Treaties (1969), a State which is signatory to a Convention is obliged to refrain from acts which would defeat the object and purpose of a treaty. In the case of the Second Optional Protocol it can be argued that **by becoming signatories to the Protocol States are prohibited from carrying out executions** within their territory as this would be seen as violating the object and purpose of the treaty.

The Protocol provides for no delay in its implementation after ratification. In other words, from the moment a State ratifies it has the obligation not to execute anyone within its jurisdiction and to abolish the death penalty immediately. Given the clear prohibition of executions contained in the Protocol, the State would be obliged to **commute existing death sentences**. The Second Optional Protocol obliges a country in all circumstances to ensure it exposes no one to the real risk of execution.



The Second Optional Protocol is significant at a national level since it virtually precludes reinstatement of the death penalty. Indeed, any State party wishing to reintroduce the death penalty would first have to withdraw from the Protocol. Unusually, there is no withdrawal mechanism in the Protocol. The absence in the Protocol of a procedural clause for withdrawal means that once a State has ratified the Second Optional Protocol the death penalty can never be reintroduced without violating international law.



Checklist for parliamentarians

How I can help ensure that all obligations following the signature, ratification or accession to the Second Optional Protocol to the ICCPR are respected:

- If signature has taken place, check whether your Government has the intention of ratifying the Protocol
- If ratification or accession has taken place, check whether your Government has the intention of ratifying or acceding to the related regional protocol (for member States of the Council of Europe and the Organisation of American States only)
- If ratification or accession has taken place, check whether your Government has made a reservation for most serious crimes of a military nature committed during wartime and whether this reservation is necessary. If you conclude that it is not, take action for their withdrawal (this may mean to also amend the military criminal code).
- If ratification or accession has taken place, check whether there are still any provisions for the death penalty in your national legislation. If there are, take action for the full abolition of the death penalty in all national legislation.
- If ratification or accession has taken place and if there are still some provisions for the death penalty in your national legislation, check whether there are people sentenced to death in your country. If there are, take action for the commutation of all death sentences.
- Make sure that public officials, State agents and the general public are aware that the State has ratified or acceded to the Second Optional Protocol to the ICCPR.
- Make sure that the State fulfils its duty to submit regular reports to the Human Rights Committee on the measures the country has adopted to give effect to the Protocol.
- Make sure that the State takes no action that would be in contradiction with the Second Optional Protocol and takes more positive steps to enhance its impact, such as a vote in favour or co-sponsorship of the resolution of the United Nations' General Assembly for a moratorium on the use of the death penalty.
- Encourage the State to promote the ratification of the Protocol in its relations with other countries in the region to create an anti-death penalty zone.



**Campaign for the Ratification
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RATIFICATION KIT FOR PARLIAMENTARIANS

Note:

The contents of this kit were adapted from the Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol: From Exclusion to Equality Realizing the rights of persons with disabilities. United Nations Office of the High Commissioner for Human Rights and Inter-Parliamentary Union.

It was created by the World Coalition Against the Death Penalty in collaboration with Parliamentarians for Global Action (PGA).

For more information:

<http://www.worldcoalition.org/protocol>

<http://www.pgaction.org/activity/pga-targeted-campaigns-abolition-of-the-death-penalty.html>



**Parliamentarians for Global Action
Parlamentarios para la Acción Global
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