



Annual Report on the Death Penalty: The Case of Puerto Rico (2015)

Preamble

Puerto Rico is a Hispanic-American nation¹, an archipelago composed of three (3) islands in the Caribbean Sea to the west of the Dominican Republic and the American Virgin Islands to the east; with approximately 3.5 million people residing.

In 1898 the Spanish Crown ceded Puerto Rico to the United States of America at the end of the cubano-hispanic-philippine-american war, by virtue of the Treaty of Paris. That same year under Article II of that treaty put an end to the war². Shortly after, the Supreme Court of the United States of America determined that Puerto Rico constitutes a non-incorporated territory, in such a way that it belongs to but is not a part of the USA³. The congress of the USA holds supreme authority over Puerto Rico, as per Section 3 of Article IV of the Constitution of the United States of America⁴.

The Constitution of the Commonwealth of Puerto Rico was approved in 1952 after being edited by the US congress⁵. As a part of the Bill of Rights and to “promote the general well-being and to secure for all of us and our posterity the thorough enjoyment of human rights”⁶, the death penalty was abolished⁷. This constitutional prohibition was

¹ For the definition of nation see Guerra Iñiguez, D. (1999). International Public Law. Venezuela: Kelran Editorial

² Signed on December 10th, 1898 and proclaimed in Washington on April 11th, 1899, after its ratification, without the participation of representatives of the people of Puerto Rico, 30 Stat. 1754.

³ The doctrine on non-incorporated territories was adopted at the beginning of the XX century in the cases **Downes v. Bidwell**, 182 US 244 (1901); **Dorr v. United States**, 195 US 138 (1904) and **Balzac v. Porto Rico** 258 US 298 (1922), which served as a colonial *politique*. It deals with a doctrine adopted little after the same Supreme Court established “*separate but equal*”, a doctrine that justified racial segregation. **Plessy v. Ferguson**, 163 US 537 (1896).

⁴ See also, **De Lima v. Bidwell**, 182 US 1 (1901); **Downes v. Bidwell**, 182 US 244 (1901); **Califano v. Torres**, 435 US 1 (1978); and **Harris v. Rosario**, 466 US 651 (1980).

⁵ The United States Congress eliminated Section 20 of the bill of rights, in which was recognized the existence of various human rights, such as: the right to education, to work, to “obtain an adequate standard of living that secures for oneself and family; health, well-being and especially the necessary nutrition, clothing, housing and necessary social services”, among other things.

⁶ Preamble to the Constitution of the Commonwealth of Puerto Rico 1 L.P.R.A.

preceded by the 42nd Law of the 26th of April of 1929⁸. The last execution occurred in 1927.

The statutory repeal of the death penalty (1929) and its eventual constitutional prohibition (1952) were products of a long struggle; of manifestations and public protests, 12 projects of law and a moratorium on executions, all between 1900 and 1929⁹.

The Exposure of Puerto Ricans to Capital Punishment

Puerto Ricans are exposed to the possibility of capital punishment by virtue of American federal legislation applicable to Puerto Rico¹⁰; extradition¹¹ or committing a crime on a retentionist jurisdiction of the USA¹² and military legislation¹³.

Legislation for the Death Penalty and Federal Jurisdictional Conflict

Puerto Rico is marred in jurisdictional conflict where a retentionist jurisdiction is imposed (the federal jurisdiction of the United States of America) above the abolitionist

⁷ Article II, section 7 states: "It is recognized as a fundamental human right, the right to life, liberty and the enjoyment of property. **There will be no death penalty.** No person shall be deprived of their liberty or property without the due process of law, nor shall any person be denied in Puerto Rico equal protection of the laws of Puerto Rico. No laws shall be approved that impairs contractual obligations. The laws shall determine a minimum of property and belongings that shall not be subject to embargo..." (Emphasis our). So that the use of the death penalty in the Jurisdiction of the Commonwealth of Puerto Rico requires a constitutional amendment to its Bill of Rights.

⁸ The Penal Code of Puerto Rico in the beginning of the XX century included the death penalty as a sanction for murder in the first degree, Article 202 of the 1902 Penal Code (in vigor since July 1st, 1902). The Penal Code of 1902 substituted the "Old Judicial Criminal Code that was still in place during the days of Spanish domination and that continued by virtue of the Foraker Act of 1900". *Ex Parte Mauleón*, 4 D.P.R. 123 (1903).

⁹ C.B. 8 (1900); C.B. 13 (1902); C.B. 3 (1903); H.B. 1 (1903); H.B. 1 (1904); H.B. 36 (1905); H.B. 36 (1907); P. del S. 10 (1917); P. del C. 9 (1917); P. del S. 9 (1921); P. del S. 26 (1923); P. del S. 14 (1925). Also, Law 36 of the 30th of November, 1917 provided a moratorium on executions for four (4) years.

¹⁰ *Federal Death Penalty Act*, 18 U.S.C.A. sec 3591, *et. seq.* (1994). See, **Luis Guzman Dupont**, "El asesinato legal en Puerto Rico", Legal Review of the College of Lawyers of Puerto Rico, Law and Forum, Year 4, Number 1, p. 6-11. Also see: <http://www.deathpenaltyinfo.org/federal-laws-providing-death-penalty>.

¹¹ **The People of Puerto Rico v. Martínez Cruz**, 2006 T.S.P.R. 74.

¹² The Puerto Rican diaspora in the USA counts with more Puerto Ricans than the residents on the island of Puerto Rico.

¹³ *Uniform Code of Military Justice*, statistical and historical information available at: <http://www.deathpenaltyinfo.org/us-military-death-penalty>

jurisdiction of the Commonwealth of Puerto Rico that has been controlled by the metropolitan sovereignty of the United States (Washington DC).

Section 9 of the Law of Federal Relations¹⁴ imposes the application of federal laws as long as they are not locally inapplicable of that if they are in any other way already reflected in legislative text¹⁵.

As Such, the constitutional prohibition of the death penalty, incorporated into the Constitution of Puerto Rico, does not operate in favor of those accused of committing crimes in Puerto Rico when the penal process is under federal jurisdiction and legislation¹⁶. In such a case, the penal process develops in the District of the Federal Court for the District of Puerto Rico¹⁷, in English, a distinct language to the popular and legal language of Puerto Rico: Spanish.¹⁸

The Federal jurisdiction that the United States exercises in Puerto Rico is one of the most active in the celebration of death penalty cases. In spite of this, **it has never been able to convict in one of these cases**, if not, life imprisonment is more common.¹⁹

Between 2012 and 2015, **The Federal Court District of Puerto Rico effectuated 20% of all the death penalty cases, in federal jurisdiction (4 out of 20 cases)**²⁰. This is in spite the fact that that between 2014 and 2015, there were no death penalty cases in Puerto Rico.

¹⁴ Public law 81-600, approved on the 3rd of July of 1950, 64 Stat. 319, 48 U.S.C 734

¹⁵ See, **Elizabeth Vicens**, *Application of the federal Death Penalty Act to Puerto Rico: A new Test for the Locally Inapplicable Standard*, 80 New York University Law Review 106. (<http://www.law.nyu.edu/journals/lawreview/issues/vol80/no1/NYU106.pdf>)

¹⁶ **U.S. v. Acosta Martinez**, 252 F. 3rd 13 (2001)

¹⁷ The Federal Court District of Puerto Rico was created by Federal Congressional Disposition in the year 1900. The Foraker Law, Chapter 191, Sec. 33, 31 Stat. 84. Historical Documents, 43-44.

¹⁸ On the language of the Federal Court, see, 48 U.S.C.A. §864 and **U.S. v. Rivera-Rosario**, 300 F.3d 1, 5-6 (1st Cir. 2002)

¹⁹ Since 2003 has been seven (7) cases in which the accused has been exposed to capital punishment: **U.S. v. Acosta Martinez**, 106 F. Supp. 2d 311; 2000 U.S. Dist. LEXIS 10370 (case number for the Federal Court District) and 252 F.3d 13 (2001); **U.S. v. Hernando Medina Villegas and Lorenzo Vladimir Catalen Roman**, 3:02-cr-00117-PG-3; **U.S. v. Carlos Ayala Lopez**, 3:03-cr-00055-JAG-JA1; **U.S. v. Edison Burgos**, 06-cr-009 (JAG); **U.S. v. Lashaun Cassey**, 05-cr-277 (ADC); **U.S. v. Candelario-Santana**, 09-cr-427 (JAF) and **U.S. v. Jimenez-Bencevi**, et al, 12-cr-221- (JAF).

²⁰ Information taken from data in:

http://www.capdefnet.org/FDPRC/pubmenu.aspx?menu_id=803&folder_id=5633

Situation for Cases in 2015

In June 3rd, 2015, the Federal Tribunal for the first circuit revoked the conviction and sentencing of the case, *U.S. v. Jimenez-Becevi* and ordered the celebration of a new trial, which was not yet celebrated (Appellative Case 13-284). This is the first revocation in a case where the federal attorney asked for the death penalty. The jury has unanimously condemned the accused to life imprisonment (Case 12. Cr-221 (JAF))²¹.

During 2015, some 25 accused were eligible for capital punishment. At the beginning of the same year, nine (9) of those cases were pending the certification as a death penalty case by the Federal Justice Department. In July of 2015, 16 additional accused were added. This is related to those accused in conjunction, in the case, 15-462 (JAF), allegedly members of the organization known as the “Rompe ONU”. The accused are: Josué Vázquez Carrasquillo, Pedro Vigio Aponte, Luis F. Alicea Colón, Reyfrank Quiñones Carrión, Víctor M. Rodríguez Torres, Emanuel Zabala Pérez, Oscar Calviño Acevedo, William Zambrana Sierra, Xavier Castro Vega, Carlos M. Guerrero Castro, Analdi Tanco Moreno, Luis Yanyore Pizarro, José Rivera Maldonado, José D. Resto-Figueroa, Orlando Padilla Ayala and Carlos Velázquez Fontánez.

Also during 2015, three eligible cases that included eighteen (18) accused **were not certified** by the Federal Secretary of Justice, the reason for which the solicitation for the death penalty in these cases desisted. The cases in mention are, *U.S. v. Seary-Colon, case 12-cr-00312*²²; *U.S. v. Simon Ostolaza Robles, 13-cr-00771*²³; and *US v. Josué Vázquez Carrasquillo, et als, 15-462 (JAF)*²⁴.

At the end of 2015, there is still two (2) cases with seven (7) accused, eligible for the death penalty. Cases, 3:12-cr-00312-JAF (Oscar “Cali” Martínez Hernández, Ángel D. Ramos Cruz, Miguel “Bolo” Díaz Rivera, Juan Quiñones Meléndez, Orlando Mojica

²¹ To see the voting ballot:

http://www.capdefnet.org/FDPRC/pubmenu.aspx?menu_id=803&folder_id=5633

²² **El Vocero**, Electronic ed, September 22nd, 2015.

²³ The federal attorney informed by a written motion, subscribed **February 2nd, 2015**, that there would not be a solicitation for the death penalty, for the case.

²⁴ The federal attorney informed by a written motion, subscribed on **October 22nd, 2015**, that there would not be a solicitation for the death penalty, for the case.

Meléndez and Jayson Rodríguez González)²⁵, with the sealed case, 14-229, in which the name of the accused is not divulged, nor the details of the accusation at this moment.

Puerto Ricans Condemned to Death in the U.S.A.

It is estimated that in the United States there is 2,943 condemned to death on the first of January of 2016, of which, 383 (13.01%) are classified as Latinos²⁶.

A preliminary list prepared by the Institute for the Investigation and Promotion of Human Rights (INIPRODEH), ascribed to the Sacred Heart University in Puerto Rico, has permitted the identification of thirty-two (32) Puerto Ricans condemned to death in seven (7) states and one (1) that was identified in the federal jurisdiction.²⁷ Another fourteen (14) cases where the accused were at the guise of death, in recent decades. The last execution of a Puerto Rican in the United States was Ángel Nieves Díaz, December 13th, 2006, in the state of Florida.

The Puerto Rican Coalition against the Death Penalty is a non-profit, non-governmental entity, that groups organizations of all kinds: civic, human rights defenders, religious, student, professional, syndicates, etc... and individual people with one goal in mind: the abolition of the death penalty. It was created on March 15th, 2005. Since 2006, the Puerto Rican Coalition forms a part of the Global Coalition against the Death Penalty.

You can send your suggestions or comments to:

noenminombrepr@gmail.com

also:

https://www.facebook.com/CoalicionPuertorriquenaContraLaPenaDeMuerte/info/?tab=page_info

²⁵ The Candelario case will commence on September 7th, 2016. **El Vocero**, Digital ed, January 4th, 2016. The case deals with co-accused charged with the murder of police Lt. Osvaldo Albarati, from the Metropolitan Center of Guaynabo. Originally the case was set to commence in January 25th, 2016. **El Vocero**, Electronic ed, January 4th, 2016.

²⁶ Data taken from: NAACP Legal Defense Fund, “Death Row USA” (January 1, 2016).

²⁷ Prof. Lina Torres and Prof. Carmelo Campos, both members of the Puerto Rican Coalition Against the Death Penalty, ran the investigation. See, **El Nuevo Día**, April 29th, 2012, page 53.