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USA: another "double standard" on consular rights?

Just over a week ago, President George W. Bush signed a memorandum to the US Attorney General affirming that the United States would comply with the binding decision of the International Court of Justice (ICJ) protecting the consular rights of foreign nationals under sentence of death. Consistent with the ICJ judgment of 31 March 2004 in the *Avena* case, the President announced that state courts would be required to review and reconsider the effect of violations of the Vienna Convention on Consular Relations (VCCR) in 51 cases of Mexican nationals who were subsequently sentenced to death.

In a brief submitted to the US Supreme Court regarding the judicial enforcement of the ICJ decision, the US Solicitor General declared that "Compliance serves to protect the interests of United States citizens abroad, promotes the effective conduct of foreign relations, and underscores the United States' commitment in the international community to the rule of law." The Solicitor General also promised that "a new trial or a new sentencing would be ordered" wherever judicial review established that the treaty violation had been prejudicial.

Despite that stated commitment to full treaty compliance, the United States has now announced its withdrawal from the VCCR Optional Protocol Concerning the Compulsory Settlement of Disputes, the international legal instrument which empowers the ICJ to interpret and apply the terms of the treaty.

Amnesty International welcomes the decision by President Bush to comply with the ICJ judgment and calls on the US courts to provide a full, fair and meaningful review in all cases where foreign nationals were deprived of their consular rights and sentenced to death. At the same time, however, the organization is deeply concerned by the USA's decision to withdraw from the VCCR Optional Protocol. This backward step cannot be reconciled with the United States' own declaration that compliance with the ICJ serves to protect American interests abroad and promotes the global rule of law.

Unquestionably, the timely access to consular assistance safeguarded under the Vienna Convention serves to protect the human rights of foreign detainees worldwide. As the US Government itself recognized following the execution of Paraguayan national Ángel Breard in Virginia in 1998, "We fully appreciate that the United States must see to it that foreign nationals in the United States receive the same treatment that we expect for our citizens overseas. We cannot have a double standard." Any step taken by the United States to undermine the legal authority of the VCCR is a step towards danger for all detained foreigners everywhere, including US citizens abroad.

For more on the ICJ *Avena* judgment, see <http://web.amnesty.org/library/Index/ENGAMR510572004>.

