

# URGENT ACTION

## INTER-AMERICAN BODY CALLS FOR EXECUTION STAY

**The Inter-American Commission on Human Rights has called for a stay of execution in the case of Nicaraguan national Bernardo Abán Tercero, who is due to be put to death in Texas on 26 August. It has concluded that his consular and fair trial rights were violated.**

On 19 August the Inter-American Commission on Human Rights (IACHR) called on the USA to stay the execution of **Bernardo Abán Tercero**, a Nicaraguan national sentenced to death in 2000 for the murder of Robert Berger, and that he be granted “effective relief” for violations of his rights. The Commission found that the state’s failure to inform Bernardo Abán Tercero of his right under the Vienna Convention on Consular Relations to seek consular assistance had deprived him of his due process and fair trial rights. It also concluded that his court-appointed counsel had committed “serious mistakes that affected his right to defense, especially taking into account the applicable standards in a case involving the death penalty”. The IACHR asserts that should the execution go ahead, Texas would be committing a “serious and irreparable violation of the basic right to life recognized in Article I of the American Declaration [of the Rights and Duties of Man].”

At his trial, Bernardo Abán Tercero’s inexperienced lawyers had done little investigation into possible mitigation and presented no expert testimony – such as from a mental health expert – or from anyone else who could describe how the defendant’s childhood in Nicaragua – marked by abject poverty, war and exposure to toxic pesticides as a child labourer – might have impacted his life and conduct. Following the trial, the lawyer appointed for state habeas corpus appeals failed to raise a single claim outside of the trial record (the purpose of such appeals), and did not conduct his own investigation of the case or of the mitigation failure by the trial lawyers. In 2006 a leading Texas newspaper published an investigation into the poor quality of capital defence representation in the state. The two lawyers appointed to represent Bernardo Abán Tercero for state level appeals featured prominently in this review.

### **Please write immediately in English or your own language:**

- Calling on the Governor to ensure that Bernardo Abán Tercero’s execution is stopped and his death sentence commuted;
- Note that the Inter-American Commission on Human Rights has found that Bernardo Abán Tercero’s due process and fair trial rights were violated and has called for stay of execution and effective remedy.

### **PLEASE SEND APPEALS BEFORE 26 AUGUST 2015 TO:**

Governor Greg Abbott

Office of the Governor

P.O. Box 12428

Austin, Texas

78711-2428, USA

Fax: +1 512 463 1849

**Salutation: Dear Governor**

### **Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:**

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date. This is the first update of UA 176/15. Further information: [www.amnesty.org/en/documents/amr51/2239/2015/en/](http://www.amnesty.org/en/documents/amr51/2239/2015/en/)

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INTERNATIONAL**



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### ADDITIONAL INFORMATION

Bernardo Abán Tercero grew up in extreme poverty in Nicaragua. He was raised by his elderly grandmother after he was abandoned by his mother as a baby and his father refused to have anything to do with him. The family had no electricity or running water, and no access to health care. They lived in an area greatly affected by the civil war in the 1970s and 80s. Poverty meant that even the children worked. According to his clemency petition, which provides the executive authorities with mitigating evidence not presented to the jury, Bernardo Abán Tercero worked in the fields for years from the age of 10. Planes would spray toxic pesticides every two days, with the workers below not provided protective gloves or masks. Bernardo Abán Tercero was among those who became sick and vomited after such sprayings, and suffered severe headaches. Relatives have said that he was one of the worst affected. A neuropsychological assessment is currently being produced for the clemency effort.

Robert Berger was shot dead on 31 March 1997 during a robbery of a dry cleaners in which he was waiting with his five-year-old daughter, in Houston, Texas. Bernardo Abán Tercero was arrested in 1999 when re-entering the USA having returned to Nicaragua after the crime. In 2000, he was convicted of capital murder. At the sentencing, the prosecution argued that this crime and his alleged involvement in crimes in Nicaragua after he left Texas showed that he would be a future danger – a prerequisite for a death sentence in Texas. Among other things, the prosecutor described the defendant as a “beast” and a “demon”. The defence lawyers did not object to these inflammatory comments meaning that this issue was forfeited on appeal. In a bare mitigation case, the defence presented members of the defendant’s family as character witnesses and to argue that he was capable of rehabilitation. A jail chaplain testified that he had shown remorse. The jury voted for the death penalty.

An employee of the dry cleaning business where the murder occurred said that she had helped to orchestrate the robbery with Bernardo Abán Tercero, who lived with her sister and needed money. According to the record, there was a co-defendant who fled to Mexico and was never tried. At his trial in 2000, the defence argued that Bernardo Abán Tercero had lacked the intent necessary for capital murder. The only witness called by the defence, to counter the 17 witnesses presented by the prosecution, was the defendant himself. He testified that the victim Robert Berger had tried to grab his gun and it had gone off during the ensuing struggle. He also alleged that the employee had been a willing participant in the plan. The prosecution maintained that specific intent could be inferred from evidence that he had used threats to coerce the employee into her participation, that he had taken a loaded gun with him into the dry cleaners, and that he had shot the victim because he could identify him. The jury convicted him of capital murder and, after voting yes to the “future dangerousness” question and finding no mitigation to warrant a life sentence, sentenced him to death.

Texas accounts for 528 of the 1,413 executions carried out in the USA since judicial killing resumed there in 1977 under revised capital laws; 124 of the Texas executions were of prisoners convicted in Harris County. There have been 19 executions in the USA so far in 2015, ten of them in Texas. Amnesty International opposes the death penalty in all cases, unconditionally. Some 140 countries have abolished the death penalty in law or practice.

Name: Bernardo Abán Tercero

Gender m/f: m

Further information on UA: 176/15 Index: AMR 51/2326/2015 Issue Date: 24 August 2015