

## UNITED STATES OF AMERICA

### Violation of the Rights of Foreign Nationals Under Sentence of Death

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More than 60 foreign citizens representing 22 nationalities are under sentence of death in the United States of America (USA). In virtually every case, the arresting authorities failed to notify detained foreigners of their right to communicate with their consular representatives. As a consequence, foreign nationals confronted by an unfamiliar legal system have been tried and sentenced to death without the benefit of the crucial support from the authorities of their native countries. Since 1993, the United States has executed at least five foreign nationals, including citizens of the Dominican Republic, Mexico and Cuba.

In 1969, the USA ratified the Vienna Convention on Consular Relations, a multilateral treaty regulating the functions of consulates in at least 144 nations. Article 36 of the Vienna Convention requires the local authorities to promptly inform arrested foreigners of their right to consular assistance. At the request of the detainee, the authorities must notify the consulate of the arrest and permit consular access to the detained national.

Article 36 ensures that all arrested foreigners have the means at their disposal to prepare an adequate defence and to receive the same treatment before the law as domestic citizens. Consuls are uniquely placed to provide a wide range of essential services to their nationals, including legal advice and assistance, translation, notification of family members, the transferring of documentation from the native country and observing court hearings.

The right to consular notification and visits is also reiterated under international human rights standards, including Principle 16(2) of the United Nations (UN) Body of

Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment and Article 38(1) of the UN Standard Minimum Rules for the Treatment of Prisoners.

The US Department of State considers Article 36 (notification for US citizens arrested abroad) to be a matter of the highest importance. However, the US federal government has taken no meaningful measures to ensure domestic compliance with the Vienna Convention or to remedy past violations which resulted in death sentences and executions of foreign nationals. Amnesty International is concerned that what appears to be a double standard applied by the US authorities may undermine the integrity of international law and endanger the fundamental human rights of foreign nationals detained worldwide.

In May 1997, 32 US law firms that represent foreign nationals on death row sent a joint letter to Secretary of State Madeleine Albright, protesting the denial of their clients' consular rights. The letter pointed to "an alarming, widespread pattern of indisputable and indefensible violations" of Article 36 and urged the State Department to intervene. To date, there has been no substantive reply from the Secretary of State to the joint letter.

The cases of two Mexican nationals executed in 1997 illustrates the vital importance of timely consular intervention and the utter failure of the US authorities to meet their obligations under international law.

On 18 June 1997, Texas executed Irineo Tristán Montoya, a Mexican national sentenced to death in 1986. Following his arrest, Montoya underwent a lengthy police interrogation without the presence of an attorney or the assistance of the Mexican Consulate. He then signed a four-page confession written in English, a language that he did not read, speak or understand.

Although only 18-years-old at the time and despite his secondary involvement in the crime (he was charged as an accessory to the murder), Montoya was condemned to death. The actual killer received a prison sentence.

Texas authorities were fully aware of Montoya's nationality but failed to inform him of his right to consular access. Shortly before the execution, the State Department contacted the Governor of Texas, in a belated attempt to determine the circumstances surrounding the breach of Article 36. However, in a remarkable reply that showed the Texas authorities' misunderstanding of, or contempt for, international treaties, the officials refused to investigate the violation or to assess its possible impact, on the grounds that Texas was not a signatory to the Vienna Convention. A final appeal to the US Supreme Court on the treaty violation was dismissed without comment.

Mario Benjamin Murphy was executed in Virginia on 17 September 1997. Murphy was one of six people charged with the 1991 'murder for hire' of a US Navy petty officer.

Murphy cooperated fully with the police and was clearly not the most culpable individual. He was also the only defendant not offered a plea bargain by the prosecution and the only one sentenced to death -- and the only foreign national.

Mario Murphy finally learned of his consular rights in 1996; however, both the prison warden and the Virginia Attorney General refused his request that they contact the

Mexican Consulate on his behalf. A District Court judge later criticised Virginia officials for their "defiant and continuing disregard" of the Vienna Convention. During a hearing at the Fourth Circuit Court of Appeal, the Virginia Assistant Attorney General and two of the panel judges admitted that they had never heard of the Vienna Convention prior to the Murphy case.

The Mexican Consulate filed an "amicus curiae"<sup>1</sup> brief outlining the "flexible and far-reaching assistance to avoid imposition of the death penalty" which consular officials would have provided, including efforts to obtain a plea bargain and the gathering of mitigating evidence. Ignoring the obvious misconduct of state officials, the US courts ruled that the issue was "procedurally defaulted" because Murphy had failed to raise the claim at an earlier stage of appeal.

The day after Murphy's execution, the State Department sent a formal apology to the Mexican Embassy for the failure of Virginia officials to provide Murphy with the required notification of his right to consular assistance.

The consistent failure of the United States to meet its obligations under the Vienna Convention on Consular Relations is an issue of legitimate and growing concern to the international community. The governments of Canada, Mexico and Paraguay have all taken vigorous diplomatic and legal action to protect the consular rights of their citizens currently under a sentence of death.

Despite sporadic advisory notices from the State Department, most state and local authorities remain ignorant of their Article 36 responsibilities. Gerald Arenberg, Executive Director of the National Association of Retired Police Chiefs, was recently quoted as stating that: "In my 47 years in law enforcement, I have never seen anything from the State Department or FBI about this".

In an interview prior to the execution of Mario Murphy, the trial prosecutor, Robert Humphreys showed contempt for Virginia's treaty violation: "I mean, what is the remedy? I suppose Mexico could declare war on us...To me, it's a completely ridiculous issue". In the same interview, Humphreys gave an entirely incorrect interpretation of Article 36: "The burden is on [defendants] to say, 'Hey, excuse me, I'm a Mexican citizen. Tell my Embassy'...".

Many violations of foreign nationals rights under the Vienna Convention are also violations of the USA's obligations under the International Covenant of Civil and Political Rights (ICCPR), ratified by the USA on 8 June 1992. For example, Article 14 (3a) of the ICCPR states that: "...[a defendant has the right] To be informed promptly and in detail in a **language which he understands** of the nature and cause of the charge against him" (emphasis added). General Comment 15 of the ICCPR's Position of Aliens

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<sup>1</sup>Interested parties may appeal to a court via an 'amicus curiae' (friend of the court) brief

under the Covenant also expands on the rights of foreign nationals charged with a criminal offence.

In response to mounting international pressure, the State Department is reportedly considering measures to ensure better domestic compliance with the Vienna Convention. These measures are said to include revised material for advising US police forces of the procedures to be followed when arresting foreign nationals.

Amnesty International welcomes these preliminary steps. However, the organization believes that they are insufficient to ensure that all US police departments are aware of -- and comply with -- the binding requirements of Article 36.

Amnesty International also remains deeply concerned over the reluctance of the US authorities to develop effective remedies in the cases of foreign nationals who were sentenced to death without receiving notification of their consular rights. The US Government continues to oppose efforts by death-sentenced foreign citizens (and their governments) to obtain relief through the courts.

In response to a law-suit filed by the Republic of Paraguay against Virginia officials, attorneys for the US Department of Justice argued that foreign governments are not entitled to a judicial remedy for Article 36 violations and that the proper recourse for breaches of consular rights is through diplomatic channels. However, it is not clear how diplomatic channels could correct the violation of the rights of those foreign nationals currently under sentence of death.

In light of the State Department's insufficient efforts to intervene prior to the recent execution of foreign nationals, Amnesty International finds this position completely unacceptable. Without fair and effective remedies for past violations of Article 36 in capital cases, any assurances of future domestic compliance from the US authorities can only be seen as hollow promises.

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