

USA: Time to end double standards and respect the consular rights of foreign nationals facing the death penalty

The death sentence of a Mexican man facing execution in Oklahoma should be commuted immediately, in light of the recent historic decision by the International Court of Justice (ICJ) upholding the right of arrested foreign nationals to seek consular assistance, Amnesty International said today.

"Nearly two months after the ruling, US authorities have yet to take steps to comply with the ICJ's binding judgement," the organization noted. "The inexcusable violation of consular rights in the case of Gerardo Valdez must be remedied without further delay."

*Highlighting the Valdez case, Amnesty International is releasing today a new report entitled *A time for action - Protecting the consular rights of foreign nationals facing the death penalty*. The report documents the worldwide concern over glaring violations of consular rights in US death penalty cases, which culminated in the compulsory judgement of the ICJ in the case of German brothers Walter and Karl LaGrand.*

Ruling in response to the execution of the LaGrand brothers in the state of Arizona in 1999, the ICJ found that the USA had violated its obligation under the Vienna Convention on Consular Relations to inform them of their right to communicate with their consulate after arrest. The ICJ also declared that domestic procedural rules must not prevent judicial review of convictions involving violations of the right to consular assistance, and that the USA must provide the means to permit review and reconsideration of similar cases.

"By ignoring the historic decision of the International Court of Justice which defends the consular rights of arrested foreign nationals, the USA is undermining the international rule of law," Amnesty International declared today. "No nation which claims to uphold international law can defy a binding judgement from the world's highest court."

"The USA vigorously defends the consular rights of its own citizens arrested abroad but refuses to remedy violations of those same essential rights within its own borders," the organization added. "How long must the world wait for the USA to obey the law?"

Amnesty International's 13-page report points out that the cases of Karl and Walter LaGrand are far from isolated examples. Of the 15 foreign citizens executed in the USA since 1993, not one was informed of their guaranteed right to consular notification and access. Since the reinstatement of the death penalty in the USA a quarter century ago, more than 120 foreign nationals representing nearly 40 nationalities have been sentenced to death. In virtually every case, the arresting authorities failed to inform the nationals of their crucial right to consular assistance, often with devastating effect on the quality of their legal representation and the outcome of their trials.

The report also provides compelling evidence that the failure of the USA to respect its human rights commitments is increasingly isolating it from the international community. For example, the United Nations General Assembly recently endorsed a resolution emphasizing the need for all countries to protect the universally recognized human rights of migrants, particularly their right to consular assistance. Only one nation -- the USA -- voted against the resolution.

Amnesty International is proposing 12 steps which state and federal authorities in the USA should take immediately to safeguard the universal right to consular assistance and to remedy violations of those rights in death penalty cases. Its key recommendations include:

! Prosecutors should withdraw their objections to appeals requesting judicial hearings based on violations of consular rights, particularly in death penalty cases.

! The State Department should actively seek the commutation of death sentences in all cases where foreign nationals facing imminent execution were not informed of their consular rights without delay.

! State legislatures and the US Congress should pass laws requiring prompt and complete compliance with the provisions of the Vienna Convention for all detained foreign nationals, including training procedures for law enforcement agencies and penalties for non-compliance.

"So long as it refuses to remedy violations of the consular rights of foreign nationals on death row, the USA will never achieve compliance with its binding duties under international law," Amnesty International concluded. "The human rights of all detained foreign nationals -- including US citizens abroad -- are endangered by this reckless defiance of the International Court of Justice decision."

Background

The case of Mexican national Gerardo Valdez Maltos clearly illustrates the failure by the USA to comply with the ICJ judgement. Although Oklahoma authorities knew of his nationality upon his arrest in 1989, Valdez was never informed of his consular rights and Mexican authorities

remained unaware of his conviction and death sentence for more than a decade.

Two months ago, the Oklahoma Pardons and Parole Board recommended the commutation of Valdez's death sentence, based on compelling new evidence uncovered through Mexican consular assistance. After consulting with the federal government, Governor Frank Keating later refused to grant clemency. Keating paid lip service to the ICJ ruling by declaring that he had provided review and reconsideration of the sentence, but stated that the absence of consular assistance had no effect on the outcome of the trial. Valdez was then scheduled for execution on 30 August, even though his inexperienced trial lawyer never presented the jury with readily available evidence that Valdez suffers from extensive brain damage. On 17 August, Governor Keating announced that he was granting a second 30-day reprieve at the request of the Mexican government and Valdez's attorneys, citing the "complicated questions of international law" raised by the case.

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