

PUBLIC

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Further information on UA 320/03 (AMR 51/137/2003, 7 November 2003) - Death penalty / Legal concern

USA (Oklahoma)

Hung Thanh Le (m), Vietnamese national, aged 36

Following a clemency hearing on 9 December, the Oklahoma Pardon and Parole Board recommended by four votes to nil that the governor should commute Hung Thanh Le's death sentence to life imprisonment. The Board's decision is not binding on the governor. It is not known when the governor will make his decision on the case.

Hung Le remains scheduled to be executed in Oklahoma on 6 January 2004. He was sentenced to death in September 1995 in Oklahoma County for the murder of Hai Hong Nguyen (m) in 1992.

Hai Nguyen and Hung Le fled their native Vietnam and later met in 1985 in a refugee camp in Thailand. Both immigrated to the USA, and by 1992, Hung Le had settled in Cleveland, Ohio, and Hai Nguyen was living in Oklahoma City. Hai Nguyen died of stab wounds after being attacked in his home on 12 November 1992. Hung Le was arrested at Oklahoma City's airport the following day as he was about to return to Cleveland, travelling under a false name and with cash taken from the victim's safe deposit box. In a videotaped police interview, Hung Le admitted stabbing Hai Nguyen. He claimed that he had only intended to rob him, but that the situation had escalated. He stated that he had recently lost his job, and that his family had just arrived from Vietnam and that he needed money to support them.

Despite Hung Le's limited command of English, the police made no effort to obtain an interpreter. He waived his right to have a lawyer present, yet towards the end of the interview, Hung Le said: "Too many things confusing me right now. I still don't know what to do and what to say. I don't have an attorney." Asked whether he wanted a lawyer, he replied "No what is it? Like what for is it?"

In October 1993 pre-trial proceedings, during which he had an interpreter, Hung Le entered a guilty plea. A year later, the judge allowed him to withdraw that plea on the grounds that, even with an interpreter, he had not understood the proceedings, including that he could be sentenced to death. However, a different judge overseeing the trial allowed Hung Le's videotaped statement to be shown to the jury, despite defence objections that he had had insufficient command of English to be able to have intelligently waived his rights to remain silent and to a lawyer. At a hearing on the admissibility of the statement, Hung Le explained that he had had no prior contact with law enforcement in the USA, apart from a speeding ticket, and that he had feared that he might face torture if he did not cooperate with the police, as he said had been police practice in Vietnam.

At the sentencing phase of a US capital trial, the state argues for execution and the defence can present any mitigating evidence in support of leniency. Members of Hung Le's family testified as to his good character, and three jail employees testified about his good conduct in the local jail. One said that he was the most courteous inmate he had ever come across. Hung Le's father told of his and his son's flight from Vietnam, and of their life in refugee camps, in Cambodia for four years, and then in Thailand.

The United Nations (UN) Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty require that capital defendants be afforded "adequate legal assistance at all stages of proceedings". The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has also emphasised that "all mitigating factors must be taken into account". Hung Le's lawyers had done almost no investigation into his background or preparation of the witnesses. As a result, the mitigation testimony was brief, and did not

include any expert evidence about the possible impact of Hung Le's past. A juror from the trial later stated that a Vietnamese woman who was on the jury had not wanted to impose a death sentence, and had unsuccessfully tried to persuade the other jurors that Hung Le's actions may have been affected by his cultural and personal background. Since the trial, a Vietnamese psychologist has concluded that, as a result of his life experiences, Hung Le was suffering from post-traumatic stress disorder at the time of the crime. Hung Le was 16 years old when he fled Vietnam. He reportedly witnessed, and was subjected to, violence and deprivation in the refugee camps.

The UN Guidelines on the Role of Prosecutors require prosecutors to "perform their duties fairly" and to "respect and protect human dignity and uphold human rights". Hung Le's trial was riddled with prosecutorial misconduct. The prosecutor made inflammatory remarks. For example, arguing for execution he asked the jury "do you really think that justice would be done if this man goes to prison, gets three meals a day and a clean bed every night and regular visits from his family while Hai Nguyen lays cold in his grave?" He also misstated the law as it related to mitigating evidence: in response to the mitigating factors presented, including regarding the defendant's good character and the absence of any criminal record, the prosecutor wrongly suggested that the jurors need not consider any evidence "about whether [Hung Le had] been a good guy in the past or anything like that". The prosecutor referred to facts that were not in evidence. For example, with no evidence to back him up, he suggested that Hung Le may have murdered before: "All we know about his past is what he has told us...It's kind of hard to believe that the man who has done what he has done never has done it before in his life". The prosecutor repeatedly dehumanized Hung Le. He stated that "this man may be a small man in stature but he's cold as an icicle. The state submits he's without compassion or feelings". The prosecutor told the jury that allowing the defendant to live in prison "doesn't even come close to being justice... and you can only do justice in this case by bringing in a verdict of death".

Oklahoma County prosecutors have repeatedly been criticized by state and federal appeal courts (see AI report, *Old habits die hard: The death penalty in Oklahoma*, AMR 51/055/2001, April 2001). In Hung Le's case, a federal judge wrote in November 2002 that "...at some point the repeated violation of ethical responsibility threatens the violation of our justice system". Despite finding that the prosecution's arguments were "improper" and "irrelevant", the appeal courts have allowed Hung Le's death sentence to stand. It is left to the clemency authorities to provide a remedy.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the family and friends of Hai Hong Nguyen, and acknowledging the suffering his death will have caused;
- expressing concern that the jury heard no detailed or expert testimony about the possible impact of Hung Thanh Le's cultural and refugee background on his actions, noting the post-conviction evidence of post-traumatic stress disorder;
- expressing concern about the prosecutorial misconduct in this case, including inflammatory remarks, misstatements of law, and reference to facts not in evidence, noting that the appeal courts have repeatedly criticized Oklahoma County prosecutors, including in this case;
- welcoming the Pardon and Parole Board's unanimous decision to recommend commutation of Hung Thanh Le's death sentence;
- urging the governor to accept the Board's recommendation.

APPEALS TO:

Governor Brad Henry, 212 State Capitol, 2300 N. Lincoln Blvd, Oklahoma City. OK 73105, USA

Fax: + 1 405 521 3353

Email: <http://www.governor.state.ok.us/main.php?main=correspondences&head=transitionh>

Salutation: Dear Governor

COPIES TO: Diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.