

EXTERNAL

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Death Penalty / Legal concern

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USA (VIRGINIA) Mario B Murphy, Mexican national

Mario Benjamin Murphy, a Mexican national, is scheduled to be executed in Virginia on 17 September 1997.

Murphy was one of six people charged with the 1991 murder of Navy Petty Officer James Radcliff, but was the only one sentenced to death. Four of Murphy's co-defendants pleaded guilty in exchange for sentences of life imprisonment. The fifth defendant, Radcliff's wife Robin, refused a plea agreement and was tried on a charge of capital murder but was spared the death penalty; she received a sentence of life plus 20 years' imprisonment. Amnesty International does not know why Murphy was not offered the same plea-bargain as his co-defendants. Murphy himself believes that he was "singled out" because of his Mexican nationality. He was 19 at the time of the crime and had no any prior criminal convictions for violence.

James Radcliff's death was the result of a murder-for-hire scheme initiated by Robin Radcliff and Gerard Hinojosa, with whom she was having a relationship. At Hinojosa's sentencing hearing, the prosecution stated: "*it's clear that this defendant was the moving party in arranging for the death of...James Radcliff.*" The pair recruited Hinojosa's roommate, Radcliff's son-in-law and Murphy to kill Radcliff. Murphy also recruited a teenager. Radcliff was murdered as he slept. Robin Radcliff then rolled in her husband's blood so as to appear to be a victim of the attack. She then called police saying that her husband had been beaten by burglars.

Murphy, as a citizen of Mexico, was entitled under the Vienna Convention on Consular Relations (1963) to be informed that he had the right to contact the Mexican Embassy and ask for assistance. At no time, from his arrest by the Virginia Beach police department on 4 September 1991, to the imposition of his death sentence on 19 October 1992, was he informed of this right.

The Convention stipulates that the appropriate foreign government officials must be informed when one of their nationals is arrested, in order that they may have the opportunity to offer their citizen legal assistance. Article 36(1b) of the Convention clearly states: *If he so requests, the competent authorities of the receiving state shall, without delay, inform the consular post of the sending state if, within its consular district, a national of that state is arrested or committed to prison or to custody pending trial or is detained in any other manner.... The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph.*" (Emphasis added). The USA ratified, without reservations, the Vienna Conventions in 1969.

Had Murphy *known* of his right to contact his consul, the latter could have offered substantial assistance to the defence. Murphy's conviction and sentencing occurred without any involvement from the Mexican consul. Even after Murphy had learned of his consular rights in May 1996, the prison warden and Virginia's Attorney General refused to pass on his requests for a visit from the Mexican Consulate.

Legal authorities in Virginia appear to be contemptuous of their obligations under the convention. When asked to comment on Virginia's violation of Article 36, Virginia Beach Commonwealth's Attorney Robert Humphreys called the issue 'ridiculous', saying that at the time of prosecution he had no idea that Murphy was a Mexican national and that the prosecution were not 'mind-readers'. He went on to say that "the burden is on [defendants] to say, 'Hey, excuse me,

I'm a Mexican citizen. Tell my embassy.' But he didn't. He never thought of it until his lawyers thought it up for him.'"

Amnesty International is not aware of evidence to suggest that Murphy was any more blameworthy than his co-defendants and can therefore see no reason why he alone has been sentenced to death. The Attorney General of Virginia, responsible for representing the prosecution during the appeal process, has stated: "*that Mr Murphy was more culpable than any of his co-defendants (is) simply wrong.*" This clearly contradicts statements by Humphreys who has been quoted as stating that *We regarded the two most culpable people in the case as Mario Murphy and Robin Radcliff* and cited Murphy's recruitment of the teenager to take part in the crime as justification for this view. However, Robin Radcliff recruited her son-in-law, Michael Bourne, and Hinojosa enlisted his housemate James Hall and Murphy. Therefore it would appear that, using this criteria, Hinojosa should also have had the death penalty sought against him instead of being offered a plea-bargain.

There are at least 60 foreign nationals on death row in the USA whose rights under the Vienna Convention on Consular Relations may have been contravened. On 14 May 1997, American attorneys representing many of these foreign nationals urged the State Department to take strong action against violations of the convention.

The most recent execution of a foreign national by the USA was that of Irineo Tristan Montoya in Texas on 18 June 1997. According to press reports, prior to Montoya's execution the US State Department had asked the Texas authorities to investigate the breach of the Convention. However, state officials refused to carry out a full investigation of the treaty violation on the grounds that Texas was not a signatory to the Convention.

BACKGROUND INFORMATION

There are currently 47 prisoners on death row in Virginia. Forty-one prisoners have been executed under the state's present death penalty laws, most recently Joseph O'Dell on 23 July 1997. Prisoners in Virginia choose their method of execution from either electrocution or lethal injection. The governor has sole authority to grant commutations, although he may act on a recommendation for commutation from the state's Board of Pardons and Paroles.

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express/airmail letters in English or your own language:

- expressing concern that Mario Murphy is scheduled to be executed in Virginia on 17 September 1997 despite being denied his rights under the Vienna Convention on Consular Rights (1963);
- stating your belief that the violation cannot be considered a "harmless error" as Murphy may well have been able to negotiate a plea-bargain similar to those of his co-defendants had he received legal assistance from the Mexican authorities;
- requesting that the State Department ensures that, in future, foreign nationals charged with serious offences in the USA are informed of their rights under the Convention;
- requesting that the State Department do everything within its power to stop the execution of Mario Murphy.

APPEALS TO:

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PLEASE SEND APPEALS IMMEDIATELY.