

**Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on extrajudicial, summary or arbitrary executions**

REFERENCE:  
UA USA 25/2017

3 November 2017

Mr. Allegra,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 33/30 and 35/15.

In this connection, we would like to draw to the attention of your Government information we have received concerning **the imminent execution of Mr. Ruben Cárdenas Ramírez, a 47-year-old Mexican national, reportedly denied his consular rights and due process guarantees and at risk of imminent execution in the United States of America. Mr. Cárdenas is scheduled to be executed on 8 November 2017.**

According to the information received:

**Mr. Ruben Cárdenas Ramírez** was charged with the murder of his 16-year-old cousin, in 1997.

Following his arrest, he was held during an 11-day period without legal representation and subjected to repeated and lengthy interrogations.

Mr. Cárdenas should have had the right to seek consular assistance after arrest. However, he was not advised of this right. In an affidavit signed in 2005, an official from the Mexican Foreign Ministry said “Had Texas authorities complied with their article 36 [Vienna Convention on Consular Relations] obligations, a representative of the Mexican Consulate would have promptly contacted Mr. Ramírez Cárdenas. In accordance with their training, consular officers would have advised him of the importance of having a lawyer present during any conversations with the police... Mexican consular officers would also have advised him in very clear terms that he should only speak to the police after first seeking the advice of a lawyer”.

**Mr. Cárdenas was convicted of capital murder in 1998.** During his trial, the prosecution reportedly relied on DNA evidence of a type that would be considered unreliable by current standards, as well as on statements given by Mr. Cárdenas which are inconsistent with each other and were given during the period he was interrogated without access to a lawyer.

Mr. Cárdenas' conviction for capital murder was affirmed by the Texas Court of Criminal Appeals on 26 April 2000.

The case of Mr. Cárdenas was referred alongside the cases of 50 other Mexican nationals on death row to the International Court of Justice (ICJ). The Court determined, in the case *Avena and Other Mexican Nationals* (2004), that the United States had breached its obligations under article 36 of the Vienna Convention on Consular Relations, including in particular, the obligation to informing him of his right to consular notification and communication, to notify Mexican consular officials of his detention, and to enable Mexican consular officers to communicate with, have access to and visit him. The ICJ concluded that the United States courts must review Mr. Cárdenas' conviction and sentence, to determine whether he was prejudiced by the violation.

After the execution, in August 2008, of another individual who was also subject to the ruling by the ICJ in the *Avena and Other Mexican Nationals* case, the Mexican Government requested an interpretation of the ICJ judgment. The ICJ reiterated that the U.S. had an obligation not to execute Mr. Cárdenas, until he received the judicial hearing to which he was entitled. Since this date three other Mexican nationals entitled to a review as part of the *Avena* case have been executed.

In 2009, the Inter-American Commission on Human Rights determined, in *Case 12.644, Medellín, Ramírez Cárdenas and Leal García*, that the consular rights violation deprived Mr. Cárdenas of minimum standards of due process and a fair trial under the American Declaration of the Rights and Duties of Man. The Commission recommended Mr. Cárdenas' death sentence to be vacated and that he be provided with an effective remedy, including a new trial. Mr. Cárdenas remains under the protection of the precautionary measures ordered by the Inter-American Commission, which provide that the United States is required to "take the necessary measures to preserve" Mr. Cárdenas' life and physical integrity "pending the implementation of the Commission's recommendations in the matter."

To date, all of Mr. Cárdenas' appeals to U.S. state and federal courts have been dismissed and the conviction and sentence confirmed.

On 15 September 2017, Mr. Cárdenas filed a motion for additional DNA testing of previously untested biological evidence, in the District Court of Hidalgo County, in the State of Texas.

On 22 September 2017, Mr. Cárdenas filed a motion to withdraw the current execution date of 8 November 2017. On 9 October, Mr. Cárdenas filed a

clemency petition with the Texas Board of Pardons and Paroles, requesting either a stay of execution or the commutation of his sentence to life imprisonment. Also on 9 October 2017, Mr. Cárdenas sent a letter to the Governor of Texas, requesting a thirty-day reprieve of the death sentence.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at the imminent execution faced by Mr. **Ruben Cárdenas Ramírez**, as well as for the alleged violations of his due process rights.

Without expressing at this stage an opinion on the facts of the case, the allegations described above appear to be in contravention of the right of every individual to life, liberty and not to be arbitrarily deprived of life as set out in article 3 of the Universal Declaration of Human Rights (UDHR) and article 6.1 of the International Covenant on Civil and Political Rights (ICCPR), which the United States of America has ratified on 8 June 1992. The rights not to be deprived arbitrarily of one's liberty and to fair trial before an independent and impartial tribunal are set forth in articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR.

Article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after a legal process which guarantees all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

The Human Rights Committee, in paragraph 4 of its general comment No. 31 (CCPR/C/21/Rev.1/Add. 13) confirms that the obligations contained in the ICCPR are binding on every State as a whole, including all branches of government and other public or governmental authorities, at whatever level – national, regional or local – as all of them are in a position to engage the responsibility of the State Party *vis-à-vis* its international obligations.

Under international law and human rights standards, foreign nationals are entitled to communicate with consular or diplomatic authorities of their states of origin when they are arrested or committed to prison or custody pending trial or detained in any other manner. Article 36 of the 1963 Vienna Convention on Consular Relations, ratified by the United States of America on 24 Nov 1969, provides that the host state shall inform, without delay, the consulate of the arrested/detained individual and provide them with an opportunity to communicate with and arrange legal representation for the detainee.

The International Court of Justice in the *Avena and Other Mexican Nationals* case called for a “review and reconsideration” of the case of Mr. Cárdenas as well as other Mexican nationals. In its 2008 interpretation of the *Avena* judgment it recalled “the obligation upon the United States not to execute Messrs... Rubén Ramírez Cárdenas...

pending review and reconsideration being afforded.” The Inter-American Commission on Human Rights in Case 12.644, Medellín, Ramírez Cárdenas and Leal García, recommended “an effective remedy, which includes a new trial in accordance with the equality, due process and fair trial protections.”

**In view of the irreversibility of the punishment of the death penalty, we urge your Government** and the authorities in Texas to take all necessary measures **to halt the execution of Mr. Cárdenas**, which - under the facts and allegations described above - may constitute a violation of applicable international human rights standards, and thus an arbitrary execution. We further urge your Government to ensure that the death sentence against the aforementioned individual is annulled and that he is re-tried in compliance with international standards relating to due process and fair trial.

To prevent the recurrence of such circumstances, we also respectfully request that your Government ensure that all domestic state legislation and practice in respect of death penalty cases comply with the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, including the fundamental fair trial guarantees as enshrined in article 14 of the ICCPR.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

The execution of the death penalty against Mr. Cardenas is scheduled to take place **on 8 November 2017**. In view of the urgency of the matter, we would appreciate a response on the steps undertaken by your Government to safeguard the rights of this person in compliance with the obligations of the USA under the human rights treaties it has ratified.

Given the importance of the matter – someone’s life is at risk – we are also considering publicly expressing our concerns in this case as, in our view, the information at hand is sufficiently reliable to indicate a matter warranting the most immediate attention. We indeed believe that given the above circumstances the public should be alerted to the potential implications of the case for the protection of the right to life in the USA. Any public statement on our part would indicate that we have been in contact with your Government’s to clarify the issue in question, and recall the State’s international legal obligations.

Lastly, the Working Group on Arbitrary Detention would like to inform your Excellency’s Government that after having transmitted an urgent appeal to the Government, it may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure

A copy of this letter is being sent to Texas Board of Pardons and Paroles the Office of the Governor of Texas.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Allegra, the assurances of our highest consideration.

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions