

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

REFERENCE:
UA USA 21/2018

9 November 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 33/30, 35/6 and 35/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. Roberto Ramos Moreno, a Mexican national who is currently facing execution in Texas on 14 November 2018.

According to the information received:

Mr. Ramos Moreno is a citizen of Mexico who is incarcerated on death row in the State of Texas. He was convicted of the capital murders of his wife and two children and sentenced to death on 23 March 1993. He has bipolar disorder and severe brain dysfunction. When he was arrested, he was not informed that he could receive consular assistance from the Government of Mexico and, during the trial, he received inadequate legal representation. As a person with psychosocial disabilities, he has not received information about the support and accommodations as may be needed for him to effectively exercise his substantive rights of access to justice and secure his defence.

Mr. Ramos Moreno is one of the 51 Mexican nationals referred to in the International Court of Justice's (ICJ) case concerning Avena and other Mexican nationals (Mexico v. United States of America, 2004).

In a [judgment](#) of 31 March 2014, the ICJ found that a) by not informing Mr. Ramos Moreno of his rights, without delay upon his detention, under Article 36 paragraph 1 (b) of the Vienna Convention on Consular Relations (VCCR), the United States of America (USA or US) breached its obligations under that subparagraph; b) the USA deprived Mexico of the right to communicate with and have access to Mr. Ramos Moreno and to visit him in detention therefore breaching its obligations under Article 36, paragraphs 1 (a) and (c) of the VCCR; c) the USA deprived Mexico of the right to arrange for legal representation of

Mr. Ramos Moreno, therefore breaching its obligations under Article 36 paragraph 1 (c) of the VCCR.

The ICJ also held that by not permitting the review and reconsideration of the conviction and sentence of Mr. Ramos Moreno, the USA breached their obligations under Article 36 paragraph 2 of the VCCR. As a result, the Court considered that appropriate reparation would consist in the obligation of the USA to provide review and reconsideration of the conviction and sentence of Mr. Ramos Moreno.

In its 28 January 2005 Merits report (N. 1/05) on Mr. Roberto Ramos petition (Case 12.430), the Inter-American Commission on Human Rights (IACHR) [found](#) that the USA breached Article II (right to equality before the law), XVIII (right to a fair trial) and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man. The Commission recommended that the USA, inter alia, provide Mr. Ramos Moreno with an effective remedy, which would include a new sentencing hearing in accordance with the equality, due process and fair trial protections; It should also ensure that foreign nationals are informed without delay of their right to consular assistance.

Furthermore, as a precautionary measure, the IACHR required the USA to take the necessary measures to preserve Mr. Ramos Moreno's life and physical integrity, pending the implementation of its recommendations.

Pursuant to the ICJ's judgement, the US Government acknowledged that it has a legal obligation to provide review and reconsideration of the case of Mr. Ramos Moreno, and of the other Mexican nationals on death row that were not notified of their consular rights. Thus far, however, no review and reconsideration of the case has been carried out and, despite repeated calls to suspend executions, five of those Mexican nationals have been executed.

While we do not wish to prejudge the accuracy of these allegations, we wish to recall that access to the outside world, including through consular visits, is an important component in securing a fair trial for detainees. In respect of foreign nationals detained abroad, a meeting with a consular official may constitute the only avenue for the detainee to be informed about how to exercise his or her fair trial rights, for instance the right to habeas corpus and the right to effective access to a lawyer (see [A/HRC/39/45](#)).

Accordingly, under international law, the denial of the right to consular notification leads to the violation of due process and the execution of a foreign national deprived of his or her right to consular services constitutes an arbitrary deprivation of life, in contravention of Articles 6 and 14 of the International Covenant on Civil and Political Rights, ratified by the USA in 1992 (see [A/HRC/27/23](#) and [CCPR/C/GC36](#)).

Foreign nationals who were denied the right to consular notification should therefore have their executions stayed and their cases fully reviewed and reconsidered. We understand that the US Federal Government acknowledged that it has a legal obligation to provide review and reconsideration of the cases of Mexican nationals on death row who were not notified of their consular rights, including Mr. Ramos Moreno. However, the Texas Legislature thus far failed to authorize state courts to provide this review and the US Congress similarly failed to authorize federal courts to do so. In this regard, we stress that domestic procedural rules must not prevent judicial review of convictions (see [A/HRC/11/2/Add. 5](#); [A/HRC/20/22/Add. 3](#)). We also recall that Your Excellency's Government expressed support to the recommendation received during the 2010 universal periodic review to take appropriate action to resolve the obstacles that prevent the full implementation of the Avena judgment and, until this occurs, to stay the execution of the individuals referred to in the said judgment (see [A/HRC/16/11/Add. 1](#)).

In addition, Mr. Ramos Moreno is a person with psychosocial impairments. He has had severe organic brain damage and bipolar disorder for most of his life including at the time of the offense. Article 13 of the Convention on the Rights of Persons with Disabilities enshrines an explicit right to access to justice on an equal basis with others. In particular, all persons with disabilities, and especially persons with intellectual disabilities and psychosocial disabilities shall be informed about, and provided access to, promptly and as required, appropriate support and accommodation to facilitate their effective participation, as well as procedural accommodations to ensure fair trial and due process.

Furthermore, Article 10 of the Convention explicitly recognizes and protects the right to life, including protection against State conduct that threatens this right. Furthermore, the Human Rights Committee has explicitly stated that persons with disabilities, including psychosocial and intellectual disabilities, are entitled to specific measures of protection to ensure their effective enjoyment of the right to life on equal basis with others. Such measures of protection shall include the provision of reasonable accommodation in all stages of the process, access to essential facilities and services, and other specific measures ([CCPR/C/GC/36 para. 24](#)). Moreover, States must refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psychosocial and intellectual disabilities impeded their effective defense ([CCPR/C/GC/36 para. 49](#)).

In addition, and especially relevant to the case is the Economic and Social Council resolution 1989/64, which recommends that States strengthen further the protection of the rights of those facing the death penalty by eliminating it for persons with intellectual or psychosocial disabilities, whether at the stage of sentence or execution. In conjunction with the several resolutions adopted by the Commission on Human Rights

urging all States not to impose the death penalty on, or to execute, any person with intellectual or psychosocial disabilities (e.g., Commission resolution 2005/59 para. 7 (c)).

In any event, given the irreversible nature of the death penalty, death sentences should not be carried out as long as international interim measures requiring a stay of execution are in place (see [A/HRC/39/19](#)).

We thus urge Your Excellency's Government to immediately halt the execution of Mr. Ramos Moreno, to annul the death sentence against him and to fully implement the Avena binding judgment of the ICJ, in compliance with its international obligations.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on measures adopted to protect the right to life and security of Mr. Ramos Moreno.
3. Please provide detailed information on the steps taken to fully implement the Avena judgment of the ICJ.
4. Please provide information on what disability specific support and accommodation have been provided to facilitate Mr. Ramos' effective access to fair trial and due process.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We are considering to publicly express our concerns in the near future as, in our view, the information in our possession in this case appears to be sufficiently reliable and serious to indicate a matter warranting immediate attention. We also believe that the

wider public should be alerted to the potential human rights implications of the above-mentioned allegations. Any public statement on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from Your Excellency's Government will be made public via the communications reporting [website](#) after 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention 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.

Please accept, Excellency, the assurances of our highest consideration.

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

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions