

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

REFERENCE:
UA USA 10/2021

16 February 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; and Special Rapporteur on the rights of persons with disabilities, pursuant to Human Rights Council resolutions 44/5, 42/22, and 44/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Ramiro Ibarra Rubí**, a Mexican national currently imprisoned in Texas, scheduled to be executed on 4 March 2021.

Mr. Ibarra Rubí is one of the 51 Mexican nationals referred to in the case of Avena and other Mexican nationals brought before the International Court of Justice in 2003 (Mexico v. United States of America, 2004)¹. Pursuant to the Court's judgment in 2004, his case should undergo judicial review and be fully reconsidered².

We recall that in an urgent appeal dated 9 November 2018 (UA USA 21/2018), we brought to the attention of Your Excellency's Government the case of another Mexican national, Mr. Roberto Ramos Moreno, who also was among the 51 persons concerned by the Avena decision³.

We deeply regret that our urgent appeal remained unheard and profoundly deplore that the execution of Mr. Ramos Moreno was carried out on 14 November 2018, despite our and other calls to suspend the application of the death penalty and to properly review his case.

According to the information received:

Mr. Ramiro Ibarra Rubí is a citizen of Mexico who has been incarcerated for 20 years on death row, in the State of Texas, for the murder of a 16-year-old girl. Mr. Ibarra Rubí has an intellectual disability, including at the time of the offense. He is not proficient in English and has extremely limited education.

¹ International Court of Justice, Avena and Other Mexican Nationals (Mexico v. United States of America), Overview of the case: <https://www.icj-cij.org/en/case/128>

² Judgment: <https://www.icj-cij.org/public/files/case-related/128/128-20040331-JUD-01-00-EN.pdf>

³ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24184>

When he was arrested in Texas, in 1987, he was not informed that he could receive consular assistance from the Government of Mexico and, during the subsequent trial, he allegedly received inadequate legal representation.

Mr. Ibarra Rubí's conviction for capital murder was affirmed by the Texas Court of Criminal Appeals in 1999. The Court subsequently denied Mr. Ibarra Rubí's applications for habeas corpus relief on four occasions, namely on 4 April 2001, on 26 September 2007 (two applications) and on 1 October 2008.

In 2004, in the case of Avena and other Mexican nationals (*Mexico v. United States of America*, 2004), the International Court of Justice found that: a) by not informing Mr. Ibarra Rubí of his rights without delay upon his detention, as provided by Article 36 paragraph 1 (b) of the Vienna Convention on Consular Relations (VCCR), the United States of America breached its obligations under that sub-paragraph; b) the United States of America deprived Mexico of the right to communicate with and have access to Mr. Ibarra Rubí and to visit him in detention therefore breaching its obligations under Article 36, paragraphs 1 (a) and (c) of the VCCR; c) the United States of America deprived Mexico of the right to arrange for legal representation of Mr. Ibarra Rubí, 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. Ibarra Rubí, the United States of America breached its obligations under Article 36 paragraph 2 of the VCCR.

The Court therefore considered that judicial review and reconsideration of the conviction and sentence of Mr. Ibarra Rubí, and that of the other 51 cases, would constitute appropriate reparation.

On 31 March 2011, the United States District Court for the Western District of Texas, Waco Division, denied Mr. Ibarra Rubí's petition for writ of habeas corpus; and the Fourth Circuit affirmed on 26 August 2019.

On 2 February 2018, Mr. Ibarra Rubí filed a request for precautionary measures with the Inter-American Commission on Human Rights (IACHR or Commission), urging the Commission to require that the United States of America do not execute the death penalty imposed on him.

On the merits, Mr. Ibarra Rubí alleged a violation of Article I (right to life, liberty, and personal security), Article II (right to equality before law), Article XVIII (right to a fair trial), Article XIX (right to nationality), Article XXV (right to protection from arbitrary arrest) and Article XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man.

On 1 October 2018, the Commission issued precautionary measures, requesting the United States of America to protect the life and personal integrity of Mr. Ramiro Ibarra Rubí; to refrain from carrying out the death penalty imposed

on him; and to ensure that the conditions of his detention would be consistent with applicable international standards.

The examination of the merits of the case currently remains pending before the Commission.

On 8 June 2020, the United States Supreme Court denied Mr. Ibarra Rubí's petition for writ of certiorari. All of Mr. Ibarra Rubí's appeals to US states and federal courts have therefore been denied and the trial court's conviction and sentenced affirmed.

Pursuant to the ICJ's judgement, the Government of the United States of America acknowledged that it has a legal obligation to provide review and reconsideration of the case of Mr. Ibarra Rubí, 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, six of the 51 Mexican nationals concerned have been executed.

While we do not wish to prejudge the accuracy of these allegations, we reiterate that foreign nationals detained abroad have a right to consular assistance and stress that, in death penalty cases, consular notification and assistance is a minimum due process and fair trial guarantee⁴. Consular assistance is a fundamental protection against the arbitrary detention of individuals who are arrested and detained in a foreign State, to ensure that international standards are being complied with.⁵

Accordingly, foreign nationals who were denied the right to consular notification should have their executions stayed and their cases fully reviewed and reconsidered. The enforcement of a death sentence on a foreign national who did not have access to consular services could otherwise amount to an arbitrary execution, in violation of Article 6 of the International Covenant on Civil and Political Rights, ratified by the United States in 1992.

We also note that, while the IACHR requested the United States to adopt precautionary measures in favor of Mr. Ibarra Rubí, including the suspension of his execution, it did not yet examine the merits of the application Mr. Ibarra Rubí brought before it. We therefore recall that, as long as international interim measures requiring a stay of execution are in place, death sentences should not be carried out⁶.

In the present case, we also believe that assistance from consular officers would have been particularly important to ensure effective legal representation of Mr. Ibarra Rubí, including in regard to his intellectual disability. We note that the death penalty

⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/74/318): <https://undocs.org/A/74/318> ; as well as Report of the Working Group on Arbitrary Detention (A/HRC/39/45): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/196/69/PDF/G1819669.pdf?OpenElement>

⁵ A/HRC/39/45, paras 50-58.

⁶ Report of the Secretary-General, Question of the death penalty (A/HRC/39/19): <https://daccess-ods.un.org/TMP/3811176.71728134.html>

should not be imposed on individuals who face specific barriers in defending themselves on an equal basis with others, such as persons with intellectual disabilities, and recall that, in death penalty cases, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings⁷.

In this regard, we wish to bring to the attention of Your Excellency's Government the 2020 International Principles and Guidelines on access to justice for persons with disabilities, which aim at supporting States in revising, designing and implementing justice systems that provide equal access to justice for persons with disabilities, in line with international human rights standards.

Under these circumstances, we respectfully call on Your Excellency's Government **to refrain from carrying out the death penalty on Mr. Ramiro Ibarra Rubí; to annul the death sentence imposed on him; to review his case; and to fully implement the ICJ binding judgment in the Avena case.**

We understand that the United States Federal Government acknowledged that it has a legal obligation to provide review and reconsideration of the cases of all the Mexican nationals on death row who were not notified of their consular rights, including Mr. Ibarra Rubí. However, the Texas Legislature thus far failed to authorize state courts to provide this review and the United States Congress similarly failed to authorize federal courts to do so. We therefore stress that domestic procedural rules must not prevent judicial review of convictions⁸.

We 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**⁹.

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 Mr. Ibarra Rubí 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:

⁷ Report of the Secretary-General, Question of the death penalty (A/HRC/45/20): <https://undocs.org/A/HRC/45/20>

⁸ Reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/11/2/Add.5): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/135/57/PDF/G0913557.pdf?OpenElement>; and A/HRC/20/22/Add.3: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/125/43/PDF/G1212543.pdf?OpenElement>

⁹ Report of the Working Group on the Universal Periodic Review – United States of America (A/HRC/16/11/Add.1): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/116/28/PDF/G1111628.pdf?OpenElement>

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 the measures adopted to protect Mr. Ibarra Rubí's right to life, as well as his physical and mental integrity.
3. Please provide detailed information on steps taken or envisaged to be undertaken by the Government of the United States of America to fully implement the Avena judgment of the ICJ.
4. Please explain how the executions of Mexican nationals referred to in the Avena case that have thus far been carried out are compatible with the United States' international human rights obligations.

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 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government 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](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities