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Execution of Mexican Citizen in Texas Reopens Controversy on Capital Punishment, Consular Rights

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The long-standing conflict between Mexico and the US regarding the death penalty resurfaced in late-January after the state of Texas decided to move forward with the execution of Mexican national Édgar Tamayo Arias. Tamayo, convicted of killing a Houston police officer in 1994, became the ninth Mexican citizen executed by a US state since 1976, according to the Death Penalty Information Center. All but one of the executions have been carried out by the state of Texas, including the high-profile cases of José Ernesto Medellín Rojas in 2008 (SourceMex, Jan. 21, 2009) and Humberto Leal García in 2011 (SourceMex, July 13, 2011).

At the heart of all the cases was the failure by local law-enforcement authorities to comply with US international obligations, specifically the 1963 Vienna Convention on Consular Relations. Article 36 of the treaty, which the US ratified in 1969, requires that any foreign national who is arrested be given immediate access to consular staff from his or her home country.

"This does not mean that those Mexicans who have been detained should be declared innocent. Rather, as any person detained outside his or her home country, they must have the opportunity to defend themselves adequately and with support and advice from consular authorities," said Urya Palacios, a columnist for Grupo Expansión. "If this process is not followed, then we face a serious violation of human rights in which the outcome of a trial could be affected."

Others had similar comments. "Tamayo faced a legal process that started with a disadvantage, since he was not made aware of the rights to which he was entitled," columnist Yuriria Sierra wrote in the Mexico City daily newspaper Excélsior. "No one asked that he be declared innocent but only that he receive a trial in compliance with the rule of law."

The controversy about the failure of the US to comply with Article 36 of the Vienna Convention on Consular Relations reached the International Court of Justice (ICJ), also known as the World Court, in The Hague in 2004. In a decision known as the Avena Judgment, the ICJ ruled that the US was obligated to review and reconsider the sentences of 51 Mexicans on death row, including Édgar Tamayo. None of the Mexicans facing capital punishment had been notified of their right to receive assistance and protection from Mexican consular officials as established by Article 36 of the convention (SourceMex, April 14, 2004).

US State Department attempted to halt execution

Recognizing the US obligations under the convention, the US State Department launched a last-minute attempt to convince Texas Gov. Rick Perry’s administration to delay Tamayo’s execution, scheduled for Jan. 22, and reopen the case. In a letter to the Texas governor, Secretary of State John Kerry underscored the importance of the Vienna Convention on Consular Relations as a tool to protect US citizens who are visiting or reside in other countries. "Our consular visits help ensure US citizens detained overseas have access to food and appropriate medical care, if needed, as well as access to legal representation," Kerry said in his letter to Perry.
The Perry administration immediately rejected the appeal. "It doesn’t matter where you’re from—if you commit a despicable crime like this in Texas, you are subject to our state laws, including a fair trial by jury and the ultimate penalty," said Lucy Nashed, a spokeswoman for the governor.

The Mexican government was also unsuccessful with a couple last-minute attempts to halt Tamayo’s execution, which was carried out via lethal injection. A week before the scheduled execution, President Enrique Peña Nieto’s administration filed a federal lawsuit in Austin, Texas, requesting that Gov. Perry and the Texas Board of Pardons and Paroles refrain from proceeding with the execution until an appropriate and transparent procedure was established.

The Mexican government also sought the intervention of the Inter-American Commission on Human Rights (IACHR), which, since January 18, 2012, has granted precautionary measures ordering a stay of execution in the Tamayo case.

The Peña Nieto administration made a point of highlighting the differences between the US federal and state governments. In a statement the day before the execution, the Mexican government thanked the US government for its efforts while condemning the Perry administration’s decision to proceed with the execution. "Mexico appreciates the efforts of the US government to ensure that the state of Texas complies with the Avena Judgment as well as the repeated recognition of its international obligations during the past few years," the Secretaría de Relaciones Exteriores (SRE) said in a statement.

The SRE also lauded the efforts of some members of the US Congress to seek legislation that would ensure that all states comply with international obligations entered into by the US. "Unfortunately this legislation has not been adopted," said the SRE.

Some observers in Mexico questioned why some US states still use capital punishment, when it has not been much of a deterrent to crime. "Even so, it appears that a Mexican citizen will lose his life via this grotesque and inhumane mechanism," Excélsior columnist Ana Paula Ordorica wrote a few days before Tamayo was executed. "I struggle to understand why this practice is still used in a democratic society."

The issue is likely to resurface, as more than 40% of the 136 foreign nationals currently on death row in the US are Mexican citizens, according to Amnesty International (AI). The next case on the docket is also in Texas, where Mexican citizen Ramiro Hernández Llanas is scheduled to be executed on April 9 for the murder of his employer, rancher Glen Lich, in Kerr County, Texas.

**Mexican brothers also facing death penalty in Malaysia**

While most Mexican citizens on death row are in the US, a handful of cases are in other countries. The most prominent case involves brothers Luis, José, and Simón González Villarreal, who have been sentenced to death in Malaysia on drug-trafficking charges. The González Villarreal brothers were arrested at a secluded drug-production site near the city of Johor Bahru in 2008. At the time of the arrest, police discovered more than 29 kg of methamphetamines worth about US$15 million.

The three brothers, who claim they were on the site only to clean the premises, were taken into custody along with two other men—one a citizen of Malaysia and the other of Singapore. The brothers—who hail from the city of Culiacán in Sinaloa state—had no criminal history at the time of their arrest. Family members said they left their jobs as brick makers in Sinaloa to try to find better employment opportunities in Malaysia.
The González Villarreal brothers had to wait four years before their case reached the courts. In May 2012, Malaysia’s High Court convicted them of drug trafficking, but their lawyers immediately filed an appeal. More than a year later, in August 2013, an appeals court dismissed the appeal.

Observers said Malaysia and other countries in the region only recently strengthened their drug-trafficking laws in response to increased consumption and production of methamphetamines within their borders, which probably ensured that the brothers would be treated as scapegoats and convicted.

"The defense has tried to dismiss the case, alleging failures in what we know in our country as due process," said Excélsior columnist Sierra. "There were signs that someone tampered with the evidence, since one-third of the total methamphetamines that were seized disappeared mysteriously."

The brothers have one appeal left, which would not dismiss the case but reduce the sentence. Lawyers for the brothers said the irregularities at the time of the arrest offer sufficient grounds to reduce the charges from a trafficking offense (punishable by hanging) to simple possession, which only carries a long jail sentence. "[The González Villarreal brothers] are keeping their hopes high that their final appeal will succeed," defense lawyer Kitson Foong told the Associated Press.

As is the case with death penalty cases in the US, the Mexican government is also keeping a close eye on the legal developments for the González Villarreal brothers. "Mexico’s government regrets that Malaysia is upholding a death sentence against the González Villarreal brothers," the SRE said in a statement after the first appeal was denied. "We will exhaust the legal resources aiming to revoke the death sentence."

Sierra said the González Villarreal brothers could have benefited from consular assistance at the time of their arrest, but none was provided. "The brothers sentenced in Malaysia are also on the cusp of death, but they are facing a 19th century punishment—death by hanging," said the Excélsior columnist. "That is an example of why governments need to help their citizens navigate through the legal process in a foreign country."