

COMPLAINT
LIFE OF A VICTIM IN IMMINENT DANGER
PRECAUTIONARY MEASURES

1. INTRODUCTION

The Complainants request the Organisation of American States, on behalf of the Victim, JUAN RAUL GARZA, who is facing imminent execution of death, to present this Petition to the Inter-American Commission on Human Rights (“IACHR”) at the earliest opportunity pursuant to Articles 51 and 52 of the Regulations of the IACHR, as approved on April 8 1980 and as subsequently amended, and requesting that the IACHR exercise its powers under Article 29 in providing PROVISIONAL RELIEF by written and oral communication with the President of the United States of America, Mr. William Jefferson Clinton, and by seeking from the Inter-American Court of Human Rights an interpretive opinion of the Victim’s Complaint in regard to the application of the relevant Articles identified in paragraph 5, below, of the American Declaration of the Rights and Duties of Man.

The Complainants request an oral hearing of this matter at the next session of the IACHR. This is an urgent matter as the Victim has exhausted his domestic rights to challenge the conviction that result in his sentence of death and that sentence. As a consequence the Federal Government of the United States of America is now able to set an execution date. The Federal Government of the United States of America has informed the Victim’s domestic attorney that an execution date may be set for the end of February 2000.

2. VICTIM

2.1	Name	Juan Raul Garza
2.2	Age	43 years old
2.3	Nationality	American
2.4	Inmate Number	62728-079 D
2.5	Social Security Number	371-58-1628
2.6	Marital Status	Divorced
2.7	Address	Mailing: P.O. Box 33 Terre Haute, Indiana 47808 Physical: United States Penitentiary State Highway 63 South Terre Haute, Indiana 47808
2.8	Telephone Number	812-238-1531

3. GOVERNMENT ACCUSED OF VIOLATIONS

United States of America

4. ALLEGED HUMAN RIGHTS VIOLATIONS

4.1 Right to Life

The Complainant relies on the facts set out in paragraph 42 in relation to this complaint.

4.2 Right to a fair trial

The Victim was tried in the United States District Court for the Southern District of Texas under United States Federal law and convicted on three counts of killing in the furtherance of a continuing criminal enterprise, in addition to seven other counts that included conspiring to import over 1000 kilograms of marijuana and possession with intent to distribute over 1 000 kilograms of marijuana. He was sentenced to death under 2 1 U.S.C. § 8 48. This provides, inter alia, that:

When the attorney for the Government has filed a notice as required under subsection (h) of this section and the defendant is found guilty of or pleads guilty to an offense under subsection (e) of this section, the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted -

(A) before the jury which determined the defendant's guilt;

(B) before a jury impaneled for the purpose of the hearing if -

(i) the defendant was convicted upon a plea of guilty;

(ii) the defendant was convicted after a trial before the court sitting without a jury;

(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

(iv) after initial imposition of a sentence under this section, r edetermination of the sentence under this section is necessary; or

(C) before the court alone, u pon the motion of the defendant and with the approval of the Government.

In this case the Victim was sentenced to death by the jury that had convicted him.

At the punishment stage of his hearing nearly all the non-statutory aggravating factors that were relied on by the government were derived from evidence of four unadjudicated murders that the Victim was alleged to have committed in Mexico. In particular, the U.S. Government relied on the testimony of three accomplices in the killing, Customs Agents that it had sent to Mexico to conduct an investigation into the murders and pathologists.

At a pre-trial hearing, c ounsel for the Victim attempted unsuccessfully to exclude the evidence of the unadjudicated Mexican murders. His argument before the District Court consisted of the following points:

(a) It was impossible for the defence to conduct a meaningful inquiry into the four separate murders that the Victim was alleged to have committed in Mexico.

(b) The Victim had no protection against the suppression, fabrication, or destruction of exculpatory evidence by the Mexican authorities. Also, he had no right to compulsory process in Mexico to obtain the testimony of any favourable witnesses.

(c) The United States Government on the other hand, has a treaty in effect with the Mexican Government entitling the former *inter alia*, to obtain evidence from the Mexican authorities.

(d) Since the Victim did not have independent subpoena power in Mexico, he could not obtain a fundamentally fair punishment phase trial.

The Court of Appeals affirmed the conviction and sentence on direct appeal. T he Supreme Court denied the victim's petition for a writ of certiorari. Pursuant to 28U.S.C. § 2255 which allows, inter alia, a prisoner to argue that a sentence is contrary to the Constitution, the Victim

filed a motion to vacate his sentence. The Victim argued that the Government, by introducing the evidence of the four unadjudicated murders, violated his rights under the Due Process Clause of the United States Constitution because he did not have an opportunity to deny or explain the evidence. The District Court denied the motion as did the Court of Appeals. The Court of Appeals based its decision on the fact that the Government turned over to the Victim every document that it received from Mexico and had notified the Victim of its intention to rely on the unadjudicated murders at sentencing. It further noted that the Victim was provided with full pre-trial discovery of the evidence in the possession of the prosecution and had the opportunity to cross-examine all of the prosecution witnesses at trial. The Court of Appeals also denied the Victim's request for a certificate of appealability. The Supreme Court have now denied the Victim's petition for a writ of certiorari.

4.3 Right to Due Process of Law

The Complainant relies on the facts set out in paragraph 42 in relation to this complaint.

5. ARTICLES OF THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN THAT HAVE BEEN VIOLATED

5.1 Article I - Right to Life

Every human being has the right to life, liberty and the security of his person.

The guarantee of the right to life does not expressly provide for any limitation. On a straight reading of the text, it would seem that the death penalty constitutes a violation of the right to life. The case law of the IACHR has been to view the death penalty as an exception to the right to life contemplated by the drafters of the Declaration in 1948 (See e.g. Roach and Pinkerton v US (Resolution No. 3 /87)). However, in the same case the IACHR also considered that this is not a static norm, and that its interpretation would evolve over time. Given that this is not a static norm and the Victim is likely to become the first person executed by the Federal Government of the United States for over 35 years this may be an appropriate time for the IACHR to review this issue. In support of this submission the increasing trend for states to abolish the death penalty as a criminal penalty should be noted. This is perhaps most clearly shown by the adoption of the 6th Protocol to the European Convention on Human Rights on 11 May 1994. It should also be noted that there is nothing in the American Declaration - unlike the treaty norms interpreted by the IACHR, the Inter-American Court and the European Court of Human Rights - to indicate that the death penalty is recognized as an exception to the right to life.

Nevertheless, it now seems to be beyond debate that if the right to a fair trial is not respected in the strictest fashion where capital punishment is at issue, that there is a violation not only of the right to a fair trial but also of the right to life. This interpretation has been developed by the Human Rights Committee in views concerning petitions filed under the Optional Protocol to the International Covenant on Civil and Political Rights G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. See: General Comment 6(16) of the Human Rights Committee, para. 7.

5.2 Article XVIII - Right to a Fair Trial

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

It is the Complainants' submission that this Article of the American Declaration of the Rights and Duties of Man should be interpreted so that it bears a similar meaning to its counterpart articles providing a right to a fair trial in other international human rights instruments. That is because the IACHR has recognised that the American Declaration of the Rights and Duties of Man should be interpreted in accordance with customary international law (See e.g. Roach and Pinkerton v US (Resolution No. 3/87)). It is the Complainants submission that international human rights instruments are evidence of customary international law.

In particular it is submitted that the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N. T.S. 171, *entered into force* Mar. 23, 1976 and the views of the Human Rights Committee interpreting the Covenant in communications filed under the Optional Protocol to the Covenant, as well as its general comments and concluding observations, the decisions of the Human Rights Committee interpreting the Covenant are of particular relevance. That is because the International Covenant on Civil and Political Rights represents the standards of in excess of 140 nations that have ratified the Covenant. It is also significant that the United States of America has ratified the International Covenant on Civil and Political Rights and must accept the standards of that Convention.

Article 14 of the International Covenant on Civil and Political Rights states, inter alia, that:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...¹

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The Complainants note that the United States has entered a reservation that: *That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.*

The United States has, however, entered no relevant reservation in relation to Article 14. The United States cannot intend that those facing capital trial should receive a less fair trial than those who face trial for lesser matters. As a consequence it is submitted that this reservation has no relevance when considering whether the standards contained in Article 14 have been breached.

It is the Complainants' submission that although the provisions of this Article are more specific than Article XVIII of the American Declaration of the Rights and Duties of Man, both Articles essentially guarantee a right to a fair trial and so the standards of justice embodied in them are essentially the same. Moreover, the provisions of *American Convention on Human Rights* correspond generally to the content of article 14 of the Covenant. Furthermore, article 14 of the Covenant has been recognized as a general statement of the right to a fair trial in such instruments as the statutes of the ad hoc international criminal tribunals, as well as in article 67 of the Rome Statute of the International Criminal Court.

The views of the United Nations Human Rights Committee show that a number of principles can be derived from this provision and other provisions of the International Covenant on Civil and Political Rights. Firstly it is clear that the highest standards of fairness must be applied in capital cases (See e.g. **Collins v Jamaica**, Communication No. 356/1989, U.N. Doc. CCPR/C/47/D/356/1989 (1993)). In particular "the provisions of the Covenant implies that 'the procedural guarantees therein must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to a review by a higher tribunal'" (See *Id.*). In addition the principle of "equality of arms" is an important element of the right to a fair trial protected by Article 14 (See e.g. **Grant v Jamaica**, Communication No. 353/1988, U.N. Doc. CCPR/C/50/D/353/1988 (1994) and **Gordon v Jamaica**, Communication No. 237/1987, U.N. Doc. CCPR/C/46/D/237/1987 (1992)).

The concept of "equality of arms" has been developed further in the jurisprudence considering the relevant articles of the European Convention on Human Rights, E.T.S. No. 5. Articles 6(1) and 6(3)(b) and (d) of this Convention state, inter alia, that:

1. *In the determination of...any criminal charge against him, everyone is entitled to a fair and public hearing...by an independent and impartial tribunal...*
3. *Everyone charged with a criminal offence has the following minimum rights:*
 - ...
(b) *to have adequate time and facilities for the preparation of his defence; ...*
 - (d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

Article 6 of the European Convention is similar in content to article 8 of the American Convention and article 14 of the Covenant, and the interpretation of the right to a fair trial developed by the Strasbourg organs is generally recognized as authoritative. The case law of the European Commission and the European Court has been cited frequently by the Inter-American Court.

In **Jespers v. Belgium**²⁷ DR 61 (1981) the European Commission for Human Rights made the point that the "equality of arms" principle applies both at the trial of accused and when he is being sentenced. The court stated that:

The equality of arms principle imposes on prosecuting and investigating authorities an obligation to disclose any material in their possession or to which they could gain access, which may assist the accused in exonerating himself or in obtaining a reduction in sentence. This principle extends to material which might undermine the credibility of a prosecution witness [emphasis added].

In **Barberà, Messagné and Jabardo v. Spain** 11 EHRR 360, the European Court of Human Rights elaborated on what exactly is meant by 6(1) and 6(3):

Taken together they require the Contracting State to take positive steps in particular to inform the accused promptly of the nature and cause of the accusation against him, to allow him adequate time and facilities for the preparation of his defence, to secure him the right to defend himself in person or with legal assistance and to enable him to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. The latter right not only entails equal treatment of the prosecution and defence in this matter but also means that the hearing of witnesses must in general be adversarial [emphasis added].

It is the Complainants' submission that the above judgements show clearly that the principle of "equality of arms" applies to the sentencing phase of a criminal trial as well as to the guilt phase and that it entitles a defendant to the same rights to call witnesses as the prosecution at this phase. In addition "equality of arms" requires the prosecuting authorities to supply the defence with material that might undermine prosecution witnesses.

It is the Complainants' submission that the Victim's right to a fair trial was violated by the introduction evidence of unadjudicated crimes after the Victim was convicted at the stage when the jury was required to determine the imposition of the death penalty. That is because the reliability of the allegations have not been proved at a criminal trial at which rules of evidence ensure the safety of the conviction. This is because 21 U.S.C. § 848 provides, inter alia, that:

Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

This problem has been recognised by jurists in the United States. For example in **Williams v. Lynagh**, 484 U.S. 935 (1987) at 938 Justice Marshall wrote:

This Court has repeatedly stressed that because the death penalty is qualitatively different from any other criminal punishment, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case. In my view, imposition of the death penalty in reliance on mere allegations of criminal behavior fails to comport with the constitutional requirement of reliability. A conviction signals that the underlying criminal behavior has been proved beyond a reasonable doubt to the satisfaction of an unbiased jury in conformance with constitutional safeguards. The testimony on which the State relied in this case, by contrast, carries with it no similar indicia of reliability.

In addition, the jury had clearly already decided that the Victim was guilty of serious offences at the time that they were required to consider the evidence regarding unadjudicated crimes. In those circumstances it is submitted that it is impossible for the jury to assess fairly the evidence of the unadjudicated crimes. The jury is inevitably likely to favour evidence presented by the prosecution after they have already determined guilt.

The impossibility of the jury approaching the evidence of unadjudicated convictions in an unbiased manner is contrary to the principle of trial by an impartial tribunal and the principle

of equality of arms. As such the Victim's right to a fair trial as guaranteed by Article XVIII of the American Declaration of the Rights and Duties of Man was violated.

If the Complainants are wrong and the right to a fair trial does not prevent the introduction of unadjudicated offences at the sentencing stage of a criminal trial, it is still the Complainants' submission that in this particular case, the Victim's ability to obtain the attendance and examination of witnesses on his behalf was not under the same conditions as witnesses against him. Similarly, the Victim could not obtain exculpatory evidence under the same conditions that evidence incriminating him was obtained by the prosecution. There are two reasons for this fundamental unfairness.

Firstly, there exists between the United States and Mexico the Treaty on Cooperation Between the United States of America and The United Mexican States for Mutual Legal Assistance, Dec. 9, 1987, U.S.-Mex., 27 I.L.M. 447. This treaty obliges the parties to provide each other *inter alia* with assistance in criminal matters including the taking of testimony or statements of persons, the provision of documents, records and evidence, and the execution of legal requests for searches and seizures (Article 1(4)). Article 1(5) expressly excludes the possibility of the Defendant being accorded the same facilities as the State party. It states as follows:

This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

This shows clearly that the state and the victim did not have equality of arms.

Moreover, to date, there does not exist a letters rogatory process between the United States and Mexico in relation to criminal matters. It is particularly noteworthy that the Inter-American Convention on Letters Rogatory allows states to apply the Convention in criminal matters but neither the United States or Mexico have done this.

The Court of Appeals in denying the Victim's motion alleging a violation of the Due Process clause of the Constitution, relied on the inability of the Victim to show that he was prejudiced as he was unable to show that there were witnesses or evidence that he was unable to call. It is the Complainant's submission that the Court of Appeals erred as it failed to realize that because the Victim could not himself conduct a meaningful investigation, he was prevented from identifying with particularity any favourable evidence. That is essentially the inherent unfairness of the Victim's situation. As was noted by Rovner J (dissenting) in the United States case of **Bracy v. Gramley**, 81 F. 3d 684, 697 (7th Cir. 1995) by refusing to give petitioners "every opportunity" to prove that their allegations were more than mere speculation, the majority wanted to "have it both ways: we cannot criticize [the petitioners] for speculation and at the same time deprive them of the chance to render their theory anything more".

As a consequence of the Victim's inability to conduct his own meaningful investigation in Mexico and thus his inability to obtain favourable documentary evidence and the attendance and examination of witnesses on his behalf, he was unable to conduct any meaningful adversarial testing of the prosecution evidence. As such his right to a fair trial as guaranteed by Article XVIII of the American Declaration of the Rights and Duties of Man was violated.

5.3 Article XXVI - Right to Due Process of Law

Every accused person is presumed to be innocent until proved guilty. Every person accused of an offence has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

It is the Complainants' submission that the use of evidence of unadjudicated crimes at the sentencing phase violates this principle. As noted above, it is the Applicant's submission that a jury that has recently convicted a person of capital murder cannot be regarded as an impartial tribunal if it is subsequently asked to assess evidence of further crimes. As such his right to due process as guaranteed by Article XXVI of the American Declaration of the Rights and Duties of Man was violated.

6. NAMES AND TITLES OF PERSONS/AUTHORITIES WHO COMMITTED THE VIOLATIONS

6.1 Janet Reno
US Attorney General
US Department of Justice
950 Pennsylvania Avenue NW
Washington
DC 20530

6.2 Kathleen Hawk Sawyer
Director
Federal Bureau of Prisons
320 First Street NW
Washington
DC 20534

7. WITNESSES TO THE VIOLATIONS

7.1 Juan Raul Garza

7.2 Gregory W Wiercioch, the Victim's US Attorney in proceedings before the Supreme Court

8. DOCUMENTS/AFFIDAVITS

Petition for a writ of certiorari.

9. DOMESTIC LEGAL REMEDIES PURSUED

The Victim has exhausted his appeal and habeas corpus rights.

10. DOMESTIC LEGAL REMEDIES YET TO BE PURSUED

There are no further legal remedies available to the Victim that will allow him to raise the issues raised in this complaint.

11. COMPLAINANTS

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