

P750039-0440
 (32)
 FOR RM USE ONLY

DEPARTMENT OF STATE

AIRGRAM

ORIGIN/ACTION

ARA 5-20		
RM/R	SY 3	SS 10
SEA 1	EUR	FE
NEA	DET 1	INR 6
SES 2	H 1	IO 2
L 2	FBO	AID 5
M/MS 3		
USON 4		
AGR	COM	FRB
INT	LAB	TAR
TR	XMB	AIR 5
ARMY 4	CIA 10	NAVY 5
OSD 26	USIA 7	NSA 3
HEW 4		

A-1285

LIMITED OFFICIAL USE

PRIORITY

HANDLING INDICATOR

TO : All ARA Posts

E.O. 11652: N/A
 TAGS: SHUM, XM

FEB 26 1 22 PM '75

FROM : Department of State

DATE:

SUBJECT : Human Rights and Protection of U.S. Nationals
 in Latin America
 REF : 7 FAM 300 - Welfare and Other Protective
 Services

FOR ATTENTION CHIEFS OF MISSIONS

INTRODUCTION AND SUMMARY:

Human rights issues in Latin America, especially with respect to treatment of U.S. nationals, host country nationals and others, receive a high priority in U.S. policy formulation and implementation.

With respect to human rights generally, Deputy Secretary Ingersoll has instituted important new procedures for reporting. These will broaden the requirements arising out of Section 32 of the Foreign Assistance Act of 1973 to include an assessment of the extent to which human rights are protected and violated in all countries. Human Rights Officers have been designated in the Department and a Special Assistant to the Deputy Secretary will be named to coordinate human rights activities.

In a letter dated June 27, 1974, Mr. Ingersoll assured Chairman Morgan of the House Foreign Affairs Committee that: "We take seriously our obligation under the United Nations Charter to promote respect for and observance of human rights and fundamental freedoms for all. No matter where in the world violations of human rights occur, they trouble and concern us and we make our best efforts to ascertain the facts and promote respect for human rights and fundamental freedoms." Such concern for human rights encompasses both American nationals and foreigners, since the Charter protects all persons.

ARA
 G. LISTER
 20 copies

FORM DS-323
 4-62

FOR DEPT. USE ONLY

In Out

Drafted by: SCA/SCS:WPChase

ARA:G.Lister/L/HR:CRunyon

1/31/75

x28369

Contents and Classification Approved by:

ARA/LA:WDRogers

Clearances:

SCA:LFWalentynowicz/SCA:Mr. Recknagel/H-KJenkins/H-WRichardson

~~LIMITED OFFICIAL USE~~

A-1285

- 2 -

U.S. interest in Latin American human rights performance has been stimulated by the urgency of cases arising in Chile, Brazil and other countries, including Mexico, as well as by our close cooperation with the OAS Inter-American Human Rights Commission.

BASIC PROCEDURES

For the United States, of course, an immediate and clear concern is the welfare of arrested, detained and imprisoned Americans abroad. This instruction deals exclusively with the protection of U.S. nationals arrested abroad and/or deprived of their human rights in host countries. It discusses the safeguarding of those rights and supplements guidance found in 7 FAM 300. This airgram should also be read in conjunction with a worldwide airgram shortly to be issued, updating guidance on protective services to be extended nationals detained abroad.

As soon as possible after learning of an arrest, the consular officer should seek access to the national. The Department should be informed when it is impossible to establish access. A personal visit to the national's place of detention is preferable, in order to: a) establish identity and citizenship; b) ascertain the national's well-being and promptly provide and facilitate any appropriate humanitarian assistance; c) ensure that the national is aware of his rights, including his rights under international law; d) advise the national concerning obtaining legal counsel; e) help him communicate, if he so wishes, with relatives and friends to apprise them of his situation; f) alert him to the basic legal, judicial and penal procedures of the host Government; and, g) observe whether he has been or is being mistreated.

In case a prisoner needs special attention, such as medical assistance, food, clothing, bedding, etc., he should be advised how to obtain such needs. If the prison authorities and the prisoner's relatives and friends do not provide the reasonable and necessary help, the consular officer should normally initiate appropriate action to obtain same. This could involve seeking the assistance of local charitable organizations. If a critical situation develops, the Department should be notified.

When an issue involving the legal rights of an American - especially his human rights - arises, the arrestee's own attorney will frequently prove to be the best source of information on local laws and practices. However, as appropriate, the post can use its standing authority to contract for personal services and employ a local lawyer to advise the post on what opportunities to effect protection are available.

~~LIMITED OFFICIAL USE~~

~~LIMITED OFFICIAL USE~~

- 3 -

It is important to note that all nationals are entitled to equal protection without regard to their apparent guilt or innocence, or to the nature of their alleged offense. In particular, persons charged with committing crimes involving illegal drugs and dissident political activity are to be accorded protective support in the same measure as those charged with other crimes and offenses.

Nevertheless, U.S. nationals traveling abroad must recognize, of course, that on entering a foreign country they are themselves primarily responsible for protecting their own interests. Thus, the primary thrust of the consul's efforts should be to show and advise the national how the national can appropriately use local remedies.

The following paragraphs may assist posts in recognizing deprivations of liberty which are unjust in the sense of 22 U.S.C. 1732 (see 7 FAM 352.1) and which require prompt notification to the Chief of Mission and the Department. Certain procedures and considerations in the handling of these cases are also set forth.

I. Unjust deprivations requiring prompt notice to the Chief of Mission and the Department

It is impossible to foresee all kinds of cases in which the detention or arrest of an American national should be reported immediately to the Chief of Mission and the Department as a denial of human rights case. As incidents arise, they should be reported by telegram with the heading: "Subject" Arrest Case: Human Rights (name of national)." Obviously any case involving urgent humanitarian considerations should be reported immediately. Another important category is that of cases involving any question of violation of international law or reasonable fear thereof. The most frequently recurring cases involve arrests or detentions in which the national is denied legal counsel and adequate opportunities for legal defense or where the national is subjected to mistreatment and torture. Reasonable fear may of course be founded in large part on the fact that the laws of the country deny elementary rights.

Naturally, any case raising questions of failure of the local government fully to comply with Article 36 of the Vienna Consular Convention or of relevant bilateral treaties must be immediately reported whether or not there is actual harm to the individual concerned. That Article is quoted in full:

~~LIMITED OFFICIAL USE~~

~~LIMITED OFFICIAL USE~~

A-1285

- 4 -

Article 36

"Communication and contact with nationals of
the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State:

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial, or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse or correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the provision, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended."

In ARA countries not parties to the Vienna Convention, Article 36 may be relied upon as reflective of general international law.

~~LIMITED OFFICIAL USE~~

~~LIMITED OFFICIAL USE~~

- 5 -

Most questions of unjust deprivation of liberty, in the sense of 22 USC 1732 and of international practice, fall into the following three categories. Except in extraordinary circumstances, none of them should be permitted to occur without protest. To avoid violations, and thus the need of a protest, the posts should discuss with host government authorities their responsibilities to meet international obligations. The three types of violations are:

(1) violation of Article 36 of the Vienna Convention by failure "without delay" to advise the national of his rights, or failure to notify his Government, if the citizen requests it, or failure to allow access, or failure to allow provision of counsel;

(2) deprivation of procedural safeguards, such as prompt action to bring charges or release a prisoner, availability of a lawyer with all other facilities for effective defense, recourse to courts by petition for a writ of habeas corpus or similar legal proceeding (i.e. "amparo" in many ARA countries), prompt trial, opportunity for appeal to a higher judicial authority; and,

(3) application of local laws and regulations which are themselves in violation of human rights, e.g. those that are discriminatory on grounds of nationality, race, sex, language or religion or are arbitrary as, for example, in requiring or authorizing torture, cruel, inhuman or degrading treatment or punishment, indefinite detention without effective recourse, execution without fair trial, ex post facto criminal sanctions, or deprivation of such fundamental freedoms as freedom of opinion, religion, expression, assembly and the like.

Finally, it should be noted that no single State's interpretation of international human rights is necessarily conclusive. International human rights must be determined objectively by reference to the sources of international law, which are set out in Article 38 of the Statute of the International Court of Justice.

II. Possibility that it may be appropriate to protest or file claims for damage.

Posts should also have in mind the possibility that the United States may have grounds for protest and that the national involved, or even the U.S. Government, may have just legal claims against the government concerned or its agents. Efforts should be made at every stage to collect and record accurately all relevant facts. Those records will assist the Department in deciding about any possible protests or claims. For this and other purposes, the post should maintain contact with all arrestees, and particularly with any who may have been denied their human rights.

~~LIMITED OFFICIAL USE~~

~~LIMITED OFFICIAL USE~~

A-1285

- 6 -

III. Importance of Interviews

It is essential that detained American nationals be interviewed by an appropriate U.S. official as soon as possible, as well as periodically, in order to obtain a timely and full account of their experience while under detention. Special attention should be given to allegations of any type of mistreatment, abuse or intimidation, physical, mental, direct or indirect. Such statements can be set forth in the form of an affidavit, should the American national so desire and local law permit. All pertinent facts and statements should be cabled to the Department promptly. A request that the government concerned itself promptly investigate all such allegations and report is generally in order. Finally, if appropriate, the Department should be notified when a national who has been denied human rights expects to return to the United States, in order that an interview can be arranged.

IV. Medical assistance and evidence

In cases where the American national may have suffered physical mistreatment or otherwise needs medical attention, immediate steps should be taken, with the national's permission if communication exists, to facilitate, and see that local authorities facilitate, prompt and competent medical attention.

V. Acceptance of custody of nationals by consular officers

The Foreign Service has no statutory authority and no physical or personnel resources to accept formal or legal custody of any American national. Foreign Service personnel have no authority to deprive any national of his freedom or to control his movements or activities. Thus, no post can be authorized to "accept custody" of a person who is being detained by a foreign government.

Nevertheless, each post is under standing instructions to provide all appropriate protection to Americans abroad. Thus, in an emergency situation only, and preferably only after consultation with the Department, a post may offer to cooperate with a host government in facilitating a national's prompt departure from the country. This may include agreeing to help arrange the national's temporary lodging and transportation out of the country. In such an instance, the post must make it completely clear to the local authorities that the post and its staff are not accepting any legal responsibilities and are not guaranteeing either the national's good behavior or even his departure from the country.

~~LIMITED OFFICIAL USE~~

~~LIMITED OFFICIAL USE~~

A-1285

- 7 -

CONCLUSION

Failure to act promptly in protection cases may not only endanger the rights of the American nationals involved but also can prove most detrimental to the Department's relations with the public, the information media and with the Congress. The Department recognizes the limitations, both in legal authority and resources, that handicap posts in dealing with these problems. But it should be kept in mind that complaints of U.S. nationals alleging inadequate Embassy protection, particularly when accompanied by claims of torture and/or other mistreatment by host government authorities, can produce explosive publicity. This is true regardless of the validity of such claims and allegations. Such incidents often result in a flood of public mail, Congressional inquiries to the Department, requests for detailed chronologies of events, GAO investigations, appearances of the complaining U.S. nationals on nation-wide TV shows and at Congressional hearings, etc. Conversely, quick and effective protection can be very helpful to all - the U.S. national, the Department and the field. In this connection there is enclosed a copy of the recent testimony of Mr. Frederick Morris before the Subcommittee on International Organizations and Movements of the House Committee on Foreign Affairs, reporting mistreatment while imprisoned in Recife and praising U.S. Government efforts on his behalf (ref. pages 21-22).

KISSINGER

Enclosure:
Testimony of Mr. Frederick Morris

~~LIMITED OFFICIAL USE~~

ARA POSTS

LIST OF POST FOR A-1285 2/26/75

ARGENTINA

Buenos Aires (E)
Cordoba (CA)

BAHAMAS

Nassau (E)

BARBADOS

Bridgetown (E)

BELIZE

Belize City (CG)

BOLIVIA

La Paz (E)

BRAZIL

Brasilia (E)
Belem (C)
Manaus (CA)
Porto Alegre (C)
Recife (CG)
Rio de Janeiro (CG)
Salvador (C)
Sao Paulo (CG)

CHILE

Santiago (E)

COLOMBIA

Bogota (E)
Buenaventura (CA)
Cali (C)
Medellin (C)

COSTA RICA

San Jose (E)

DOMINICAN REPUBLIC

Santo Domingo (E)

ECUADOR

Quito (E)
Guayaquil (CG)

EL SALVADOR

San Salvador (E)

FRENCH WEST INDIES

Martinique (CG)

GUATEMALA

Guatemala City (E)

GUYANA

Georgetown (E)

HAITI

Port-au-Prince (E)

HONDURAS

Tegucigalpa (E)

JAMAICA

Kingston (E)

MEXICO

Mexico City (E)
Ciudad Juarez (C)
Guadalajara (CG)
Hermosillo (CG)
Matamoros (C)
Mazatlan (C)
Merida (C)
Monterrey (CG)
Nuevo Laredo (C)
Tijuana (CG)

NETHERLANDS ANTILLES

Curacao (CG)

NICARAGUA

Managua (E)

PANAMA

Panama City (E)

PARAGUAY

Asuncion (E)

PERU

Lima (E)
Piura (CA)

SURINAM

Paramaribo (CG)

TRINIDAD

Port of Spain (E)
Scarborough, Tobago (CA)

URUGUAY

Montevideo (E)

VENEZUELA

Caracas (E)
Maracaibo (C)

Embassies.....	24
Consulates General.....	11
Consulates.....	11
Consular Agencies	5
Total.....	51