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Special Coverage of the 140th Period of Sessions of the Inter-American Commission on Human Rights

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SPECIAL COVERAGE OF THE 140TH PERIOD OF SESSIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The Human Rights Brief is uniquely situated to cover developments in the Inter-American Human Rights System (IAHRS) due to our proximity to the Organization of American States' headquarters and the Inter-American Commission on Human Rights (IACHR) in Washington, DC. Since its founding, the Brief has focused on covering developments in the IAHRS. This year we expanded our coverage to provide near real-time summaries of every public hearing of the 140th Period of Sessions of the IACHR. Within 48 hours of each hearing, we posted short summaries of the hearing — including audio and video interviews of participants in selected hearings — on our website at hrbrief.org. Because we are unable to reproduce every hearing summary here, we have included three particularly interesting summaries below. We invite our readers to take advantage of our full coverage at hrbrief.org.

PETITION ON GUANTANAMO BAY AND THE UNITED STATES: PETITIONERS CALL ON THIRD-PARTY STATES TO ACCEPT DETAINEES

On October 29, 2010, the Inter-American Commission on Human Rights (Commission) heard a petition brought by the Center for Constitutional Rights (CCR) and the Center for Justice and International Law (CEJIL) on behalf of Djamel Ameziane, an Algerian national who has been held in Guantanamo Bay since 2002. The United States was represented by several high ranking officials including the Principal Director in the Office of Detainee Policy, a representative from the Department of Defense, and the Deputy Assistant Secretary of Defense for Detainee Policy, among others. The Commissioners present to hear the case were Vice-Chair Felipe González Morales, Paulo Sérgio Pinheiro, María Silvia Guillén, and Rodrigo Escobar Gil.

According to the petitioners, Mr. Ameziane is a member of the ethnic Berber minority in the northern province of Kabyle in Algeria, where Berbers have historically suffered from discrimination. He left his native Algeria in 1995 to move to Canada because of the large French-speaking population and because he believed Canada's immigration laws would allow him to seek asylum. After five years of petitioning for asylum, Canadian authorities rejected his request in 2000. Afterwards, Mr. Ameziane went to Afghanistan because he believed he would not face discrimination as a Muslim and because he did not think he would be forcibly returned to Algeria. After the conflict began in Afghanistan in 2001, he tried to flee the state by crossing the border to Pakistan where the local police subsequently captured him. There are reports that the local Pakistani police sold Mr. Ameziane to United States officials for a bounty.

The petitioners alleged Mr. Ameziane had been held in detention in Guantanamo Bay since 2002 for suspected terrorist activities in the wake of September 11th. However, the United States government failed to charge him with a crime even though he was still in detention at the time of the hearing. While in detention, he was allegedly tortured and subjected to other cruel, inhuman, and degrading treatment in violation of Article I (right to life, liberty and personal security) of the American Declaration of the Rights and Duties of Man (American Declaration). The petitioners further alleged that his treatment in Guantanamo Bay amounted to the arbitrary deprivation of liberty, denial of due process, and the denial of the right to prompt judicial review also in violation of Articles XXV, XVIII, and XXVI of the American Declaration. The hearing came after a previous petition before the Commission on behalf of Mr. Ameziane in 2008 that established precautionary measures specifying that he not be subjected to torture and called for the United States to take all necessary measures to ensure his release.

Lawyers for CEJIL and the CCR requested that the Commission take steps to have Mr. Ameziane released to another state besides Algeria, because as a member of the ethnic Berber minority, he was concerned that he would be recruited by various warring factions in the region and be subjected to torture. Viviana Krsticevic, Executive Director for CEJIL, stated “[w]e encourage the IACHR to facilitate dialogue between the US government and the other member states of the Organization of American States to find a safe resettlement option for Mr. Ameziane.” Representatives for the United States echoed this request. Annette Martinez, on behalf of CEJIL, also asked the Commission combine the admissibility and merits phase of the complaint.

In response to the petitioners' complaints, representatives for the United States articulated the Obama administration's commitment to closing Guantanamo Bay, but stressed it would take time. Anthony Ritchie, the Deputy of the Special Envoy to Close Guantanamo Bay, responded that the United States complies with the Convention Against Torture and does not return detainees to states “more likely than not” to engage in torture or other inhuman treatment. Representatives for the United States also went into great detail about the improved conditions in Guantanamo Bay since 2008, even going so far as to mention the excellent medical facilities and the prisoners' reading habits, which include the Harry Potter novels. However, Wells Dixon, Senior Attorney at CCR, aptly responded, “better conditions of confinement are not an adequate substitute for freedom or due process.”

Despite the allegedly improved conditions at Guantanamo Bay, Commissioners Pinheiro and González remained especially concerned with the practical application of habeas corpus proceedings in the United States and shared their doubts as to its efficacy. This hearing, which was among the most heated and well-attended hearings of the week, showed the continued trouble plaguing the United States and its treatment of those detainees remaining in Guantanamo Bay. The point most stressed by the petitioners was that the Commission should become involved with Mr. Ameziane's relocation, possibly to a Latin American state. Such a request placed by the Commission could have an impact on the remaining 174 individuals still held at Guantanamo Bay.

Sarah Mazzochi, an LL.M. candidate at the American University Washington College of Law, covered this hearing for the Human Rights Brief.

**CHINESE NATIONAL FACES
EXTRADITION IN PERU:
PETITION 366/09—WONG HO WING**

The Inter-American Commission on Human Rights (IACHR) faces a difficult decision in the case of Wong Ho Wing, a Chinese national who may face the death penalty if extradited from Peru. At a hearing on October 26, 2010, the IACHR heard arguments from Delia Muñoz, Peru's Specialized Supranational Public Prosecutor; Luis Lamas Puccio, the defense attorney for Wong Ho Wing; and Kin Mui Chan, Wong Ho Wing's wife, regarding the admissibility of Wong Ho Wing's petition. Commissioners Rodrigo Escobar Gil, Jesús Orozco Henríquez, and Felipe González Morales were left to decide whether the IACHR would intervene in Peru's judicial process in order to prevent the extradition of an individual who may face the death penalty upon his return to the People's Republic of China (China).

Wong Ho Wing was arrested by Peruvian authorities in October 2008 on an extradition request from China. Luis Lamas Puccio, Wing's defense counsel, argued before the IACHR hearing that the exact charges China has brought against Wing are unclear. However, both the state representative Delia Muñoz, and Wing's attorney, Puccio, agreed that the charges against Wing were related to tax fraud, which is a capital crime in China.

Puccio argued that extradition would violate Wing's right to life as set forth in Article 4 of the American Convention on Human Rights, of which Peru is a party. Article 4 also limits the application of the death penalty to the most serious crimes. Peru has also ratified the Inter-American Convention to Prevent and Punish Torture, which under Article 13, prohibits extradition in cases where there is reason to believe that the life of the extradited party will be in danger.

State representative Delia Muñoz reported that Peru has received assurances from China that Wing will not face the death penalty if he returns. Puccio and the Commissioners questioned the extent to which China's assurances are credible or binding. Muñoz responded that Peru must respect China's assurances and refrain from judging the practices of another country.

Puccio further argued that China's liberal imposition of the death penalty is well

known and there is no way of knowing what will happen if Wing is extradited. Amnesty International reports that while China's death sentence statistics are classified, China is a leader in the world in the number of death sentences it proscribes for the 68 capital crimes in its penal code.

During the IACHR hearing, Kin Mui Chan, Wing's wife, expressed concerns that both the Peruvian and Chinese judicial systems are vulnerable to manipulation and political influence. She urged the IACHR to accept Wong Ho Wing's case in hopes that he could be released and returned to his family. Wong Ho Wing has been detained for two years in Peru while the judicial system processes his case, a delay that Puccio argued is simply too great to ignore. His case has passed through multiple courts and involved multiple petitions for writs of habeas corpus to safeguard Wing's fundamental rights in the face of an outcome that could ultimately deprive him of his life.

In May of 2010, the IACHR requested that Peru adopt precautionary measures, a tool often used by the IACHR to encourage states to prevent irreparable harm, in order to prevent Wing's extradition until the Commission decided the merits of his petition for protection. Despite this request for precautionary measures, the Permanent Criminal Chamber of the Supreme Court of Peru moved forward with the extradition request, which awaits a final decision in Peru's judicial system. On November 1, 2010, the IACHR approved the admissibility of Wing's petition and issued a report urging the parties to negotiate a peaceful settlement. If the parties fail to reach a peaceful settlement, the IACHR may refer Wing's case to the Inter-American Court of Human Rights. Wing will remain in prison while Peru evaluates the IACHR's report and decides whether to negotiate a settlement.

Commissioner González noted that the IACHR requires an indication that a human rights violation is occurring in order to declare a case admissible; however, the IACHR is bound by Article 31 of its Rules of Procedure to allow member states to exhaust domestic remedies before intervening. Article 31 allows exceptions for intervention if domestic remedies have been exhausted, an individual is denied access to these remedies or there is an unwarranted delay in reaching judgment.

Despite Peru's arguments to the contrary, the IACHR's November report decided that Wing has exhausted all domestic remedies to avoid extradition. In determining the admissibility of Wing's petition, the IACHR reviewed the fairness and expediency of the process in Peru in light of Wing's right to life and the limits on extradition as set forth by the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture. The IACHR has concluded that, if the parties cannot reach a peaceful settlement, intervention may be necessary.

Jess Portmess, a J.D. candidate at the American University Washington College of Law, covered this hearing for the Human Rights Brief.

**FORCED EVICTION FROM
DISPLACEMENT CAMPS IN HAITI**

Disease, malnourishment, contaminated water, and sexual assault plague internally displaced persons (IDPs) camps in Haiti, while post-disaster aid is going into the "wastebasket of corruption," according to Mario Joseph of the Bureau des Avocats Internationaux (BAI). Mr. Joseph testified before the Inter-American Commission on Human Rights (IACHR) on October 26, 2010, during a hearing on human rights in IDP camps in Haiti. After the January 12, 2010 earthquake that left more than 200,000 dead, 1.5 million Haitians have been forced to live in squalid conditions in IDP camps and tent cities across the country. Now residents of IDP camps are facing the threat of eviction.

Since March, approximately 28,000 IDPs have been forcefully evicted through intimidation tactics, including verbal assault, sexual aggression, and rape. Another 144,000 IDPs have been threatened with eviction. During the October, 2010 IACHR hearing, petitioners from BAI, the Institute for Justice and Democracy in Haiti (IJDH), and Washington College of Law's International Human Rights Clinic advocated on behalf of the unnamed victims of forced evictions from five IDP camps before IACHR Chair Luz Patricia Mejía Guerrero, Rapporteur for Haiti Dinah Shelton, and Commissioner Rodrigo Escobar Gil. The petitioners indicated that two fact-finding missions to Haiti and ongoing work with displaced communities at the BAI office exposed the increasing vulnerability of camp residents to forced eviction. Of the over 1,300 IDP camps in

Haiti, many were located on private land and are at risk of destruction by landowners and law enforcement.

Mario Joseph of BAI underscored the irreparable harm caused by state agents who have demolished shelters and camps, depriving Haitians of their right to property under Article 21 of the American Convention on Human Rights (American Convention). Mr. Joseph contended that even without producing land deeds, unverified landowners had enlisted the support of the Haitian National Police to extrajudicially evict persons living in camps on private lands without trial, order, or judicial procedure. IJDH staff attorney Nicole Phillips agreed that the state had done little to ensure the safety of camp residents and has been complicit to arbitrary evictions by police forces.

Petitioners Jennifer Goldsmith and Laura Karr from American University Washington College of Law's International Human Rights Clinic cited numerous violations of internationally-recognized rights, including the rights to life, privacy, property, due process, and humane treatment. Ms. Karr reported that victims of extrajudicial evictions had been deprived of the right to a fair trial under Article 8 of the American Convention and that the destruction of shelters on private property did not absolve landowners and state agents from violations of the right to property. Ms. Goldsmith cited the case of *Ituango Massacres v. Colombia*, in which the Inter-American Court of Human Rights found

a violation of Article 21 of the American Convention when property was destroyed, including any personal property without regard to its value. Ms. Goldsmith further contended that destruction of tents and shelters by police also violated the right to privacy under Article 11, which she noted, "protects an individual's private life and home from arbitrary or abusive interference." The petitioners also said that forced evictions were only a sampling of the human rights violations that were occurring in IDP camps, which were wrought with socioeconomic wrongs.

The Commissioners shared concern for the State's alleged complicity to the forced evictions and expressed interest in the State's involvement in the establishment of camps and settlement of those individuals who had been evicted. Commissioner Mejía inquired as to what mechanisms exist to keep the state informed of criminal offenses involving forced evictions. Commissioner Escobar Gil noted that if evictions were carried out on a *de facto* basis, then the police were committing criminal offenses, and further inquired whether claims had been lodged with the proper authority and what judicial procedures were available. The petitioners responded that the State was aware of the evictions, and had consistently ignored the right of IDPs to housing. Ms. Phillips suggested that the state could have allocated public land or used their authority to invoke eminent domain policies to ensure adequate land for IDPs. Representatives

of the State were not present at the hearing to provide further details regarding the mechanisms in place to prevent and document forced evictions.

On behalf of the Haitian evictees, the petitioners requested that the Commission condemn the epidemic of forced eviction, execute an official investigation in Haiti, and call on the Haitian government and civil society organizations to protect the rights of IDPs. The petitioners emphasized the critical need for adequate housing for those evicted, who are more vulnerable to acts of rape and violence that pervade the recovering country, and implored the Commission and the State to take immediate precautionary and remedial measures. At the request of the Commission, the petitioners filed a formal Request for Precautionary Measures on November 2, which was subsequently granted by the Commission. The Commission recommended that the State adopt a moratorium on expulsions from IDP camps, provide minimum health and security conditions to victims of forced eviction, and guarantee access to effective legal recourse before a court. With a decade projected for reconstruction, the need for immediate and long-term solutions for housing and protecting IDPs is vital. As petitioner Ryan Smith asserted, "being evicted means being less likely to survive."

Alexandra Haney, a J.D. candidate at the American University Washington College of Law, covered this hearing for the Human Rights Brief. [HRB](#)