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NEWS FROM THE INTER-AMERICAN SYSTEM

by Megan Hagler*

Inter-American Commission on Human Rights

Precautionary Measures Adopted for Detainees Held in Guantánamo Bay, Cuba (United States)

Facts: The petitioners, the Center for Constitutional Rights, the Center for Justice and International Law, Judith Chomsky, Columbia University's Human Rights Clinic, and Professor Richard Wilson of the Washington College of Law, requested that the Inter-American Commission on Human Rights (Commission) adopt precautionary measures to protect the detainees held by the United States at its military base in Guantánamo Bay from imminent harm. The petitioners argued that according to the Geneva Conventions, to which the United States is bound, the United States must treat the prisoners as prisoners of war until an independent court determines their status. Despite the fact that an independent tribunal had not determined each individual's status, the United States declared that all Guantánamo prisoners are not prisoners of war, and therefore do not deserve the protections given to prisoners of war. Further, the petitioners asserted that because the detainees were allegedly held incommunicado, subjected to inhumane treatment, and held indefinitely, precautionary measures were necessary to protect the detainees' liberty and security.

Decision: The Commission adopted precautionary measures on March 12, 2002 pursuant to Article 25 of the Commission's Rules of Procedure. In reaching its decision, the Commission maintained that the fundamental rights of individuals under the control of a state during armed conflict may be determined pursuant to international human rights law as well as international humanitarian law. In instances of armed conflict in which international humanitarian law does not apply, individuals are still entitled to protection of their non-derogable rights under international human rights law. The Commission underscored that no individual under the authority and control of a state, regardless of his or her circumstances, should be denied legal protection of his or her fundamental and non-derogable human rights.

The Commission further stated that according to international norms applicable in peacetime and war, such as the right to a fair trial codified in Article V of the Third Geneva Convention and Article XVIII of the American Declaration of the Rights and Duties of Man, a competent court must be charged with honoring the legal status and rights of persons who fall under the authority and control of a state. With respect to the petitioners' claim, the Commission concluded that the detainees were at the "unfettered discretion of the United States government" as a result of the government's failure to require its courts to clarify the detainees' legal status and determine which protections apply to the detainees under domestic or international law. Accordingly, the Commission adopted precautionary measures to ensure that: (1) the government require that domestic courts clarify the legal status of each of the detainees; and (2) that the government provide the legal protections according to the courts' determinations regarding each detainee's status.

Response of the United States: On April 15, 2002, the U.S. government replied that the Commission's decision regarding precautionary measures was inappropriate because the Commission lacks jurisdiction to apply international human-

itarian law. The government maintained that even if the Commission had jurisdiction to apply international humanitarian law, the precautionary measures were unnecessary because the legal status of the detainees was clear pursuant to statements of the U.S. government. The government did not respond to the Commission's contention that the detainees were entitled to a determination of their status by an independent court. Finally, in arguing that the detainees were not at risk of irreparable and immediate harm, the United States alleged that the officials' treatment of the detainees complied with the principles of the Geneva Convention.

Precautionary Measures Adopted for September 11th Detainees Ordered Deported or Granted Voluntary Departure (United States)

Facts: The petitioners, the Center for Constitutional Rights, the Center for Justice and International Law, and the International Human Rights Law Group, requested that the Commission order precautionary measures to protect an undisclosed number of foreign nationals detained after September 11th. The petitioners alleged that precautionary measures were necessary to prevent continued unlawful treatment allegedly threatening the detainees' right to be free from arbitrary detention, as well as their rights to due process, protection of personal integrity and family life, and equal treatment. Specifically, the petitioners alleged that the Immigration and Naturalization Service (INS) continued to hold dozens of detained Muslim men of Arab and South Asian descent because the United States required that the detainees be "cleared" of their possible connection to terrorism before their release and departure, even though the INS did not have probable cause to suspect that the detainees were involved in criminal activity. Petitioners argued that even though these detainees were initially held for minor immigration violations and had never been charged with terrorism, the INS had routinely denied the detainees bail and had detained some for up to four months beyond the expiration of their deportation orders at the time of the petition's filing. Petitioners further substantiated their claim for precautionary measures with testimony of detainees who, after returning to their countries, claimed to have been subjected to severe physical and verbal abuse while in detention. Petitioners alleged that there is no basis under domestic or international law for the detainees' continued detentions, and that the detainees had been held without being granted the possibility of challenging the legality of their detentions before domestic courts. Additionally, the petitioners alleged that no information regarding the detainees' conditions of detention or the supervision of those conditions had been released.

Decision: On September 26, 2002, the Commission adopted precautionary measures to avoid potential irreparable harm to the detainees. Citing to its decision on the request for precautionary measures for the Guantánamo Bay detainees, the Commission reasoned that "no person under the authority and control of a state, regardless of his or her circumstances, is devoid of legal protection for his or

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her fundamental and non-derogable human rights.” Specifically, the Commission requested that the U.S. government take necessary steps to protect the detainees’ right to personal liberty and security, their right to humane treatment, and their right to resort to the courts for an independent determination whether their detention is lawful and whether the detainees are in need of protection. The Commission requested that the government provide information regarding its compliance with the precautionary measures within 30 days of receipt of the Commission’s communication and periodically thereafter.

Inter-American Court of Human Rights

Hilaire, Constantine and Benjamin et al. Case (Trinidad and Tobago)

Facts: This case results from the joinder of 32 cases the Commission sent to the Inter-American Court of Human Rights (Court) regarding the use of the death penalty, issues of due process, and treatment of detainees. This is the first case in which the Court has ruled on death penalty issues.


The domestic courts sentenced each victim to death by hanging pursuant to a statute that mandates the strict application of the death penalty for murder convictions. Instead of considering mitigating factors when issuing their death sentences, the courts issued a mandatory death sentence in each victim’s case, and none of victims had the opportunity to apply for pardons. Several of the victims alleged that the courts did not provide them with effective legal representation, delayed their criminal proceedings, and committed due process violations during the pre-trial, trial, and appeal phases. Further, the petitioners alleged that several of the victims were subjected to inhumane treatment and were confined in unsuitable conditions. Experts testified that in Trinidad and Tobago prisons, there is a severe shortage of psychiatric assistance; overcrowding is common, with up to 14 prisoners occupying a single cell; there are no proper toilet facilities; the lighting and ventilation is poor; many prisoners do not have the opportunity to leave their cells for exercise; and those on death row often wait for prolonged periods before being executed.

Decision on the Merits: The Court ruled that issuing mandatory sentences without considering the individual circumstances of each crime arbitrarily deprived the victims of their right to life in violation of Article 4(1) of the American Convention on Human Rights (Convention), and that ordering the death penalty without considering the seriousness of each crime also violated Article 4(2) of the Convention, in relation to Article 1(1), which requires that states respect the rights of the provisions of the Convention. Additionally, the Court held that the state’s continued application of the statute requiring mandatory death penalty sentencing in murder cases violates Article 2 of the Convention, which requires that its domestic legislation does not contradict the protections set forth in the Convention. Because the state did not guarantee an effective procedure for granting amnesty, pardon, or commutation of sentence, the Court found a violation of Article 4(6), which provides that those condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence. The Court considered that not allowing an effective pardon procedure also violated the victims’ due process rights under Article 8 in conjunction with Article 1(1) of the Convention. The Court deemed that Trinidad and Tobago had violated the right to

life of the only victim who was executed, as the state executed the victim after the Court had issued provisional measures to protect the victim’s life.

The Court concluded that the state violated the victims’ rights to personal liberty, due process, and judicial protection under Articles 7, 8, and 25 of the Convention, respectively, in relation to Article 1(1). Specifically, the Court considered that the delay in the processing of the victims’ domestic cases violated Articles 7(5) and 8(1). The Court also considered that the state violated Articles 8 and 25 in relation to Article 1(1) by not providing legal assistance to certain victims, thereby rendering their appeals illusory.

Furthermore, although the Commission alleged that only certain victims were subject to inhumane treatment as a result of the inadequate prison conditions, the Court found that the evidence provided by expert witnesses was indicative of the general conditions of prisons in Trinidad and Tobago. The Commission therefore considered that all individuals in this case suffered violations of their rights to personal integrity and to be free from cruel, inhuman or degrading treatment under Articles 5(1) and 5(2) in relation to Article 1(1) of the Convention.

The Court ordered the state to provide several forms of reparations pursuant to Article 63(1) of the Convention. Specifically, the Court demanded that the state refrain from applying the mandatory death penalty statute in the future and brings its domestic law into compliance with Article 2 of the Convention. The Court recommended that the state adopt legislative reforms to introduce different categories of murder, allowing courts to consider the severity of an act and apply a penalty commensurate with the gravity of that act. The Court requested that the state order a retrial for the criminal charges brought against all victims and apply the reformed laws in their trials. On the grounds of equity, the Court urged the state not to execute any of the individuals, regardless of the outcomes of their trials. The Court additionally requested that the state indemnify the family members of the executed victim, and that the state pay for a portion of the victims’ legal expenses in the proceedings before the Court. (*For information regarding the preliminary objections in the Hilaire Case, see “News from the Inter-American System” in the Human Rights Brief, Volume 9, Issue 3.* 

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