
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 25/2017**

Precautionary measure N° 184-17
Mohammad Rahim regarding the United States of America¹
July 25, 2017

I. INTRODUCTION

1. On March 20, 2017, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures from Major James D. Valentine² and Mr. Arnaud Mafille (hereinafter “the applicants”) urging the IACHR to request the United States of America (hereinafter “United States” or “the State”) to adopt the necessary measures to safeguard the life and personal integrity of Mr. Mohammad Rahim (hereinafter “the proposed beneficiary”). According to the request, Mr. Rahim, an Afghan citizen, is currently deprived of liberty in the American Naval Base in Guantanamo Bay, Cuba, since March 2008.

2. On May 12, 2017, the Commission requested information from the State. On June 20, 2017, the applicants submitted additional information. The State responded to the IACHR on July 18, 2017.

3. Having analyzed the submissions of fact and law presented by the applicants, the Commission considers that the information shows *prima facie* that Mr. Rahim is in a serious and urgent situation, in light of the allegations regarding his health situation and detention conditions. Consequently, in accordance with Article 25 of the Rules of Procedure of the IACHR, the Commission requests the United States to: a) adopt the necessary measures to protect the life and personal integrity of Mr. Mohammad Rahim; b) adopt the measures necessary to guarantee that the detention conditions of Mr. Mohammad Rahim comply with the applicable international standards; c) adopt the measures necessary to ensure Mr. Mohammad Rahim access to adequate medical treatment as recommended by the relevant specialists; and d) inform the IACHR on the measures taken to investigate the alleged facts that gave rise to the granting of these precautionary measures and thus prevent their repetition.

II. SUMMARY OF FACTS AND ARGUMENTS SUBMITTED BY THE APPLICANTS

1. Information submitted by the applicants

4. According to the request, the proposed beneficiary, a 52-year-old Afghan citizen, is currently deprived of liberty in Camp 7 in the American Naval Base in Guantanamo Bay, Cuba, since March 2008.

5. According to the applicants, the proposed beneficiary was captured approximately on June 25, 2007 in Lahore, Pakistan and afterwards handed over to the Central Intelligence Agency (hereinafter “CIA”). For approximately nine months, the CIA had kept the proposed beneficiary in a secret detention center, in the context of the “*Rendition, Detention and Interrogation Program*,” also known as “Torture Program,” according to the applicants. In this place, the proposed beneficiary had endured “enhanced

¹ In accordance with Article 17.2.a. of the Rules of Procedure of the IACHR, Commissioner James Cavallaro, an American citizen, did not participate in the debate or the discussion of the present matter.

² Major James D. Valentine of the *United States Marine Corps* was assigned by the Military Commissions Defense Organization to legally represent Mr. Mohammad Rahim.

interrogation techniques.”³ They affirm that these techniques included “[...] sleep deprivation, dietary manipulation, slapping, beatings to the abdomen and shakings.” Since the interrogations conducted by the CIA gave no result, the proposed beneficiary was transferred to Guantanamo Bay around March 14, 2008.

A. Detention conditions

6. The applicants indicated that the detention conditions of the proposed beneficiary are subject to a high level of confidentiality, as well as his location and the identity of the authorities in charge of his custody “[...] for the purported reason of protecting its own national security interests [those of the United States] but for the real and obvious reason of concealing the names, locations and other details of the crimes of torture that it committed and continues to perpetuate against Mr. Mohammad Rahim.” Therefore, they indicated that it is impossible to provide further details in that regard without being subject to retaliations from the Government.

7. Nevertheless, the applicants indicated that the proposed beneficiary is detained in a secret location of “Camp 7,” known for housing “high-value detainees.” Moreover, they indicated that the proposed beneficiary had been kept, from the moment of his detention to this date, in a state of practically absolute isolation for approximately twenty hours a day in an individual cell. In this regard, apparently once a day and under strict supervision, he is transferred to an adjacent room to pray, eat and socialize with other “high-value” detainees. Since he was deprived of his liberty in Guantanamo, he has reportedly not been outside in a prison courtyard or similar setting, remaining always in confined spaces and in isolation. Regarding the visitation schedule, he is only allowed access to his lawyer and members of the International Committee of the Red Cross. All his mail and reading material are strictly supervised as well as his diet, which is not suitable to his food requirements due to the injuries from which he had suffered. On the other hand, the applicants noted that the proposed beneficiary is currently not being subjected to threats, harassment or acts of violence.

B. Health situation

8. The applicants indicated that as a result of the alleged acts of torture conducted by the CIA against the proposed beneficiary, he still suffers, to this date, from numerous health problems. For instance, he has to wear protective covers on his wrists to reduce the pain from which he would suffer after being hanged from the wrists for long periods of time. Similarly, he has considerable pain in a nerve in his back that had been seriously damaged, as well as a nerve in his ankle. Furthermore, due to the continuous periods of forced starvation to which he had been subjected, the applicants indicated that he is currently not in condition to eat or digest almost any kind of food in general, or sleep without interruption because of the continuous secretion of bile at night. In spite of his health problems, the applicants denounced that the proposed beneficiary has not received any treatment to this date, except limited stretching therapies for his muscular pains. He is reportedly not receiving any psychological treatment either.

9. In their last communication received on June 20, 2017, the applicants indicated that the health situation of the proposed beneficiary continues to deteriorate even more. They also indicated that neither him nor his lawyer were allowed to have complete access to the report issued by the Senate

³ The applicants indicate that the proposed beneficiary worked as translator, facilitator and guide to Arab members of Al-Qaeda. These persons had been to his house in November 2001 and had asked him to help them move through the mountainous region of Tora Bora, in the Pakistan border. It seems that Osama bin Laden had been among these persons and for this reason they had managed to escape. However, the applicants argue that there is no proof that shows that the proposed beneficiary was a combatant or an important member of Al-Qaeda or the Taliban regime.

Committee on Intelligence that includes details on the alleged acts of torture carried out against him, which is the reason why the long term physical and psychological effects are still unknown. Moreover, the applicants informed that they requested access to his medical records from the competent military authorities, but they did not receive any response. Therefore, in view that “[...] the Government of the United States is intentionally hindering the access to his medical records, it is impossible to determine with precision how much his condition has deteriorated [...].”

C. Access to justice and due process

10. The applicants also informed the Commission that the proposed beneficiary, as well as the other detainees, to this date has not been given access to an effective remedy concerning his deprivation of liberty. In fact, they indicated that his case was only submitted before organs of administrative nature, but that there has not been any judicial review – specifically, to the former Combatant Status Review Board on February 9, 2009, and the Period Review Board on September 19, 2016, both rejecting his release in a summary manner and without the guarantees of due process.⁴ On the other hand, the applicants informed that the Guantanamo Military Commission⁵ is the only instance that could potentially resolve the situation of the proposed beneficiary. However, according to statements issued by the lead prosecutor of this Commission in May 2016, the State had no intention of bringing formal charges against the proposed beneficiary.

11. The applicants informed that although the United States Supreme Court of Justice stated that federal courts have jurisdiction to hear Guantanamo detainees’ habeas corpus petitions, in practice courts have since eroded due process to the point that “[...] currently there is no activity in Guantanamo related to habeas litigation in the United States federal courts.” Particularly, they indicated that since the United States Court of Appeals for the District of Columbia revoked in 2010 a writ of habeas corpus in favor of a detainee, the Court of the District of Colombia – the one hearing all Guantanamo habeas petitions in the first instance – denied almost all cases. In fact, the applicants informed that, since then, “[...] district courts have decided twelve petitions, eleven of which were denied. In the only case where the district court granted habeas [...], the D.C. Circuit quickly reversed and remanded the decision.” Therefore, the applicants considered that the proposed beneficiary would have no possibility of success before the judiciary authorities. Lastly, the applicants denounced that to this date no judiciary review had taken place regarding the alleged acts of torture against the proposed beneficiary.

2. Response of the State

12. The United States indicated that the Commission does not have the competence to request the adoption of precautionary measures, as there is no binding norm that allows so. It stated that the American Declaration of the Rights and Duties of Man does not create or impose obligations on the United States and that, in any case, in light of the principle of *lex specialis*, the law of war is applicable in the present matter, meaning that the Commission does not have the competence under its Statute or its Rules of Procedure.

13. The State added that even though a situation of armed conflict does not necessarily suspend the application of human rights obligations, the treaties and the customary norms related to humanitarian

⁴ See: IACHR. Towards the closure of Guantanamo, report of June 3, 2015, paragraphs 254 and subsequent. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>

⁵ See: IACHR. Towards the closure of Guantanamo, report of June 3, 2015, paragraphs 190 and subsequent. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>

law cannot be applied by the Commission through a non-binding instrument such as the American Declaration.

14. In light of the foregoing, the State indicated that, as a courtesy, it will provide information on the law, policies and practices of the United States regarding the detentions, safeguards against torture and mistreatments, as well as the medical treatment regarding the detainees in Guantanamo, including pertinent information on Mr. Rahim.

15. The State indicated that Mr. Rahim's detention is legal (*Use of Military Force U.S. Public Law 107-40*), which enables the President of the United States to use "[...] all necessary and appropriate force against those [...] organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001," including the ability of detaining persons who are part of al-Qaeda, the Taliban regime or other associated forces. It indicated that, in September 2016, the Period Review Board determined that Mr. Rahim merited continuous detention under the law of war, considering that he was a trusted member of al-Qaeda and who worked directly with its leaders, "[...] including Osama bin Laden, serving as translator, messenger, facilitator and operator."

16. The State indicated that the detainees in Guantanamo may contest the legality of their detention before a federal court by means of a habeas corpus petition. It stated that, with the exception of circumstances required for imperative grounds of security, all the information is disclosed to the detainees' representatives, who have been granted security clearance to observe classified evidence, and the detainees can submit their written statements and provide testimony in hearings through a video conference. It indicated that, in such cases, the State is in charge of establishing its legal competence to keep the detainees in this condition.

17. The State indicated that in 2009 President Barack Obama issued Executive Order 1392, which required a comprehensive review of the status of the Guantanamo detainees, which was completed on January 22, 2010. In this review, it had been decided that Mr. Rahim should remain in continuous detention under the law of war. The State indicated that the Period Review Board continues to assess when the detention under the law of war is necessary to protect the security of the United States from a threat. It indicated that 77 determinations have been made, as a result, 38 detainees have been transferred, and 36 have been released under custody of the United States and restored or repatriated.

18. The State indicated that in the initial review Mr. Rahim was represented by two lawyers, who were provided with the information relevant to the proceeding. It indicated that Mr. Rahim is also represented by a private lawyer in the review before the Board, however, his documentation was not submitted on time to receive security clearance and thus be allowed to participate in the 2016 proceeding, or have information on the proceeding. The State indicated that Mr. Rahim is still eligible to be reviewed by the Board and that he shall automatically have a review in September 2019. Meanwhile, every six months, a review of his case file is conducted to determine if there is any new information which could raise a reasonable doubt on whether his detention is still justified.

19. The State submitted information on the treatment given to the detainees linked to armed conflicts, including Guantanamo, in accordance with Article 3 Common to the Geneva Conventions, and the applicable instruments. Particularly, it indicated that Executive Order 13491 ensuring lawful interrogations determines that the detainees shall be humanely transferred in accordance with the domestic law and the United States policies, and the obligations of the treaties. The State provided detailed information on the investigations conducted regarding "credible" allegations of torture. In particular, it indicated that the Central Intelligence Agency (CIA) has investigated more than twenty-five situations regarding the detainees after 9/11 and the Department of Defense has conducted thousands

of investigations since 2001 and has disciplined hundreds of members for misconduct, including mistreatment of the detainees. The State added that adequate training is provided to avoid such behavior and that the International Committee of the Red Cross works closely with the Department of Defense to guarantee the communication between the Guantanamo detainees and their families.

20. The State provided information on the medical treatment received by the detainees. In particular, it indicated that the Guantanamo Joint Medical Group provides appropriate treatment. The State also informed that the military physicians and healthcare workers observe the highest medical and ethical standards, and they make daily rounds in each cellblock to guarantee the medical treatment. It indicated that the team included an internist-oncologist, a dentist, a physician's assistant, nurses, a medical surgeon, caretakers, technicians (laboratory, radiology, pharmacy, operating room, respiratory and physical therapy, and biomedical repair) and administrative staff. The State indicated that in addition to responding to the detainees' requests, the medical staff must investigate medical matters identified by them.

21. The State indicated that at the start of 2007, the Senate of the United States appointed an Intelligence Committee which conducted a review of the CIA detention and interrogation program, and which produced an extensive report. It indicated that, afterwards, an unclassified executive summary was drawn up, and that its findings and conclusions are public in the interest of transparency.

22. Lastly, the State indicated that the decisions adopted after the attacks of September 11, 2001 related to the program are part of history and do not represent the manner in which the United States handles current terrorist threats. The State emphasized that this report must be viewed as it is: a report on a period of the United States history which has already passed.

III. PRELIMINARY CONSIDERATIONS ON THE PRESENT SITUATION

23. The Commission reiterates that by assessing the human rights situation of the detainees in the Guantanamo Bay, the international human rights law operates in a complementary manner to the humanitarian international law. Therefore, both regulatory bodies are applied to offer a comprehensive protection of the human rights, among the specificities deriving from the humanitarian international law which is the *lex specialis* applicable to the law of war.⁶ In that sense, as it has been stated in various opportunities, the Commission is competent to use its attributions to protect the human rights which derive from the mandate granted by the Member States of the OAS.

24. In this sense, the Commission recalls that in accordance with the long standing and well established jurisprudence and practice of the Inter-American System, the American Declaration is acknowledged as the source of the OAS Member States' legal obligations, including in particular those States which are not part of the American Convention.⁷ Moreover, it has been considered that these obligations arise from the human rights obligations of the Member States set forth in the OAS Charter, of which the United States is part. In particular, Articles 106 and 150 of the Charter authorize the Inter-American Commission to protect the human rights mentioned and defined in the American Declaration. This competence is explicitly embodied in Article 1 of the Commission's Statute, approved in 1979 by

⁶ IACHR, *Towards the closure of Guantanamo*, report of June 3, 2015, para. 69. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>. See also IACHR, *Report on Terrorism and Human Rights*, October 22, 2002, para. 8 Available at: <http://www.cidh.org/Terrorism/Eng/toc.htm>

⁷ See IACHR, Report N° 17/12 Djmael Ameziane (United States), March 20, 2012, para. 27. Article 20(b) of the IACHR's Statute; Charter of the Organization of American States, Articles 3, 16, 51, 112, 150; IACHR's Rules of Procedure Articles 49 and 50. IHR Court Consultative Opinion CO-10/89 "Interpretation of the American Declaration of the Rights and Duties of Man in the context of Article 64 of the American Convention on Human Rights," July 14, 1989. Series A N° 10 (1989), paragraphs 35-45; and IACHR James Terry Roach and Jay Pinkerton (United States) Case 9647, Res. 3/87, September 22, 1987, Annual Report 1986-87, paragraphs. 46-49.

Resolution N° 4479 of the OAS General Assembly.⁸ Given the obligation which arises from the OAS Charter, and the nature of the mandate granted to the Commission regarding the monitoring of the compliance with the regulations related to human rights, “the OAS Member States must comply in good faith with the Commission’s precautionary measures and with its recommendations more generally.”⁹

25. In this regard, the Commission recalls that it has been monitoring the situation of the detainees in Guantanamo Bay since the first precautionary measures¹⁰ were granted in their favor in 2002.¹¹ The initial request was submitted in favor of all the persons in this center – at that time, approximately two hundred and fifty-four persons – who had been captured in Afghanistan as a result of a military operation conducted by the United States against the Taliban regime and al-Qaeda. The request indicated that the detainees in Guantanamo Bay were at risk of irreparable harm since the United States were refusing to treat them as prisoners of war until a competent court determined the contrary in accordance with the Third Geneva Convention of 1949. The request also indicated that the detainees were arbitrarily deprived of their liberty and uncommunicated for a long period. They had also been questioned without having access to a lawyer. Furthermore, according to the request, certain detainees were at risk of being prosecuted and sentenced to death before military commissions that did not comply with the principles established by international law.

26. The scope of this precautionary measure has evolved through three different stages. Initially, the Commission requested the United States to adopt “the necessary and urgent measures so that a competent court determines the judiciary situation of the detainees in Guantanamo Bay.”¹²

27. On October 28, 2005, the IACHR requested the United States to investigate exhaustively and impartially, prosecute and sanction all the instances of torture and other mistreatments that had been perpetrated against the detainees in Guantanamo Bay. Furthermore, it requested the United States to fully respect the principle of *non-refoulement*, which prohibits the transfer and deportation of individuals to countries where they could be at risk of being tortured, pointing out that the diplomatic guarantees could not be used to avoid this obligation.¹³ In that context, the Commission extended the precautionary measures in light of the allegations of abuse and mistreatment to the persons who would be in Guantanamo, which motivated the Commission to request the United States to investigate the alleged cases of torture and mistreatment and accuse and punish those who were responsible.¹⁴

⁸ IACHR, *Towards the closure of Guantanamo*, report of June 3, 2015, para. 18. IHR Court, Consultative Opinion CO-10/89 “Interpretation of the American Declaration of the Rights and Duties of Man in the context of Article 64 of the American Convention on Human Rights,” July 14, 1989, Ser. A N° 10 (1989), para. 41.

⁹ IACHR, *Towards the closure of Guantanamo*, report of June 3, 2015, para. 21. The IACHR has granted different precautionary measures in regard to the detainees in Guantanamo: IACHR, Precautionary Measure 259/02 – Detainees held by the United States in Guantanamo Bay, March 12, 2002; Precautionary Measure 8/06 – Omar Khadr, United States, March 21, 2006; Precautionary Measure 211/08 Djamel Ameziane, August 20, 2008; Resolution N° 2/06 In regard to Precautionary Measures for the detainees in Guantanamo, July 28, 2006; Resolution N° 2/11, In regard to the situation of the detainees held at Guantanamo Bay, Precautionary Measure 259-02, July 22, 2011.

¹⁰ IACHR, *Towards the closure of Guantanamo*, report of June 3, 2015, paragraphs 24 and subsequent. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>

¹¹ IACHR, *Persons detained by the United States in Guantanamo Bay regarding the United States* (PM-259-02) granted on March 12, 2002, in IACHR, Annual Report 2002, Chapter III, C, paragraph 57.

¹² IACHR, *Persons detained by the United States in Guantanamo Bay regarding the United States* (PM-259-02) granted on March 12, 2002, in IACHR, Annual Report 2002, Chapter III, C, paragraph 57.

¹³ IACHR, *Persons detained by the United States in Guantanamo Bay regarding the United States* (PM-259-02), extension granted on October 28, 2005.

¹⁴ IACHR, *Persons detained by the United States in Guantanamo Bay regarding the United States* (PM-259-02), extension granted on July 29, 2004. IACHR, *Omar Khadr regarding the United States* (PM-8-06), granted on March 21, 2006, in IACHR, Annual Report of 2006, Chapter III, C. Available in Spanish at: <http://www.cidh.oas.org/annualrep/2006sp/cap3.1.2006.sp.htm>. IACHR, *Diamel Ameziane regarding the United States* (PM-211-08) granted on August 20, 2008, in IACHR, Annual Report of 2008. Chapter III, C, paragraph 20. Available in Spanish at: <http://www.cidh.oas.org/annualrep/2008sp/cap3.C.1.sp.htm>. IACHR, *Moath al-Alwi regarding the United States* (PM-46-15), Resolution 10/2015 of March 31, available at: <http://www.oas.org/en/iachr/decisions/precautionary.asp>. IACHR, *Mustafa Adam al-Hawsawi regarding the United States* (PM-422-14) Resolution 24/2015 of July 7, available at: <http://www.oas.org/en/iachr/decisions/pdf/2015/PM422-14-EN.pdf>

28. After a hunger strike initiated in February 2012 by various detainees to protest their situation of indefinite detention, the allegations of generalized abuse and mistreatment, as well as the lack of implementation of the precautionary measures by the United States, the Inter-American Commission *ex officio*, on July 23, 2013, decided to extend the scope of the measures. The IACHR requested the government of the United States to proceed with the immediate closure of the detention center, to transfer the detainees to their countries of origin or to a third country respecting the principle of *non-refoulement*; to expedite the release of the detainees whose transfers had already been authorized; to house the detainees in trial under adequate conditions and to guarantee their applicable rights to due process.

29. The Commission has also analyzed the situation of the detainees in Guantanamo Bay through its other mechanisms. In fact, in the context of Resolution 2/06 of July 2006 on the situation of the detainees, among other considerations, the Commission indicated that the refusal of the United States to adopt the precautionary measures had resulted in an irreparable harm to their human rights. Therefore, it requested the Government to close the detention center and to transfer the detainees, ensuring that its obligations under international law are respected. In the said Resolution 2/11, the Commission reviewed the evolution of the situation and expressed specific concerns regarding the prolonged detention, the detention conditions and the insufficient legal protection. The Commission reiterated that non-compliance with the precautionary measures had caused irreparable damage to the detainees' rights and urged the United States to close the facilities without delay and to release the detainees, or to prosecute them with the guarantees of due process.

30. Furthermore, as part of its continuous efforts to monitor the precautionary measures, the Commission held two working meetings and eleven hearings on the matter between 2002 and 2015. In addition, it published nine press releases on the situation of the detainees in Guantanamo Bay and on the serious concerns regarding their human rights due to their indefinite detention.¹⁵ Moreover, the Commission requested permission in three instances to conduct an *in situ* visit to the detention center in Guantanamo Bay in order to observe the conditions in person and to freely interview the detainees.¹⁶ Representatives of the government of the United States informed the Commission that the visit could take place, but that they would not allow the delegation to communicate freely with the detainees. The Commission considered this limitation unacceptable and, thus, it was unable to conduct the visit. To this date, the Commission continues to reiterate its interest in conducting a visit to the American detention center in Guantanamo with direct and private access to the detainees and without other restrictions.

31. More recently, the Commission issued in June 2015 a thematic report on Guantanamo,¹⁷ in which it made recommendations to the Government of the United States regarding the detention conditions, the access to justice and the closure of this center.

IV. ANALYSIS ON THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABILITY

32. The precautionary measures mechanism is part of the Commission's function of overseeing member state compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are set forth in Article 41(b) of the

¹⁵ The list of public hearings and working meetings, press releases and visitation requests are available at: <http://www.oas.org/en/iachr/pdl/decisions/Guantanamo.asp#Resol>.

¹⁶ IACHR, *Towards the closure of Guantanamo*, report of June 3, 2015, paragraphs 55 and subsequent. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>

¹⁷ IACHR, *Towards the closure of Guantanamo*, report of June 3, 2015, paragraphs 254 and subsequent. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>

American Convention on Human Rights and in Article 18 (b) of the IACHR Statute; the precautionary measures mechanism is described in Article 25 of the Commission's Rules of Procedure. According to that Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

33. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter the "Inter-American Court") have consistently held that precautionary measures have a dual nature: precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations being considered by the IACHR. Their precautionary nature aims at preserving those rights at risk until the petition in the *Inter-American* system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the ordered reparations. As such, for the purpose of making a decision in accordance with Article 25(2) of its Rules of Procedure, the Commission considers that:

- a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American system;
- b. "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

34. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the information provided should be assessed under a *prima facie* standard, in order to determine where a serious and urgent situation exists.¹⁸

35. Regarding the requirement of seriousness, the Commission observes that Mr. Rahim is reportedly being exposed to different sources of risk that might have a severe impact on his rights to life and to personal integrity. Hence:

- Firstly, the Commission reiterates that, in the context of its monitoring functions, it has become aware of the situation of risk of the rights of the detainees in Guantanamo. Indeed, it received general information regarding the use of sensory deprivation techniques, severe blows, electroshocks and hypothermia during interrogations,¹⁹ as

¹⁸ For instance, in regard to the precautionary measures, the Inter-American Court has indicated that a minimum of detail and information is required to appraise *prima facie* an extremely serious and urgent situation. IACHR Court, Matter of the children and adolescents deprived of their liberty in the "Complexo do Tatuapé" of the Fundação CASA. Request for the extension of precautionary measures. Precautionary measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. See 23.

¹⁹ Stephen Lendman, *Torture As Official US Policy*, *Global Research*, July 18, 2008. Available at: <http://www.globalresearch.ca/torture-as-official-us-policy/9610>. See IACHR, *Towards the Closure of Guantanamo*, report of June 3, 2015, paragraph 103. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>

well as force-feeding procedures,²⁰ which have been described as “having a razor inserted down the throat,”²¹ among other extremely alarming data.

The United Nations Committee against Torture condemned the treatment of the prisoners in Guantanamo and established that the indefinite detention constitutes per se a violation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Rapporteur considered that the practice of the United States of maintaining the prisoners in indefinite deprivation of liberty due to the fact that they constitute a significant threat to the security of the United States is a violation of the prohibition of torture and mistreatment.²²

- Secondly, in regard to the situation of risk faced by Mr. Rahim, the Commission observes that the applicants have argued that he has been subject to a virtually absolute solitary confinement since he entered this establishment in March of 2008, specifically in the unit known as “Camp 7,” that he has very restricted visits and an inadequate diet despite his physical condition. Although the applicants explained that they could not provide further details since this information is kept confidential, the Commission observes that, in its report on Guantanamo, worrying information has been received in regard to the conditions endured by the persons placed in that section, “[...] an establishment which consists of individual cells and that is currently used to accommodate a small number of the prisoners known as ‘high-value detainees’[...]” where “[...] they are not allowed to contact their families neither by phone nor by video [...]” and have limited opportunities for recreation, among others.²³ Likewise, in its final recommendations, the Commission emphasized the need to “[d]eclassify all evidence of torture and mistreatment [as well as] to make public the detention conditions of the Camp 7,” and “[e]stablish an independent body of monitoring, with the participation of the civil society, to investigate the detention conditions in the Guantanamo Bay, including the Camp 7.”²⁴
- Additionally, the applicants alleged that Mr. Rahim has been subject to different types of torture and mistreatment, which had serious effects on his health. The applicants mentioned indeed that neither Mr. Rahim nor his lawyer have access to his medical records. Consequently, the extent to which the harm – caused by the alleged acts of torture practiced by the American authorities while he was deprived of liberty – had impacted his health is unknown. The applicants alleged that Mr. Rahim does not receive adequate medical diagnosis or attention and that these circumstances prevent any knowledge of the medical treatment recommended by the relevant specialists in order to safeguard the rights to life and personal integrity of Mr. Rahim. This situation could be aggravated when considering his advanced age, and the potential risks that have

²⁰ IACHR hearing, *Situation of the detainees in Guantanamo*, 147th session of the IACHR, March 12, 2013. IACHR, *Towards the Closure of Guantanamo*, report of June 3, 2015, paragraph 103. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>

²¹ *IACHR experts meeting on the situation of the detainees in the American Naval Base in the Guantanamo Bay*, Washington DC, October 3, 2013. See also: *Poems from Guantanamo*, Amnesty International Magazine, autumn 2007, Mark Falcoff. Available at: <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/prisoner-testimonies/poems-from-guantanamo>. IACHR, *Towards the Closure of Guantanamo*, report of June 3, 2015, paragraph 103. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>.

²² Press conference of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, Expert meeting of the IACHR in regard to the situation of the detainees at the U.S. naval base at Guantánamo Bay, Washington, D.C., October 3, 2013.

²³ IACHR, *Towards the Closure of Guantanamo*, report of June 3, 2015, paragraph 120 and subsequent paragraphs. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>

²⁴ IACHR, *Towards the Closure of Guantanamo*, report of June 3, 2015, paragraph 329 and subsequent paragraphs. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>

been reported in the abovementioned report on Guantanamo in regard to the population that is older than fifty years.

36. In regard to the information above, the Commission observes that the State indicated that the unclassified version of the United States Senate Intelligence Committee report's executive summary refers to the situation of Mr. Rahim. The Commission notes that the information provided by the State indicates that Mr. Rahim had been subject to interrogation techniques in 2007, which included sleep deprivation, facial holds and abdominal slaps, as well as a diet consisting of water and liquid "Ensure"²⁵ meals. According to what the State informed, Mr. Rahim is indeed still detained in Guantanamo and even though general information was provided regarding the medical treatment received by the detainees, this information does not allow for the identification of specific measures that the competent authorities are reportedly implementing in order to address Mr. Rahim's situation of risk alleged by the applicants; specifically, in regard to the current detention conditions and the alleged precarious state of his health as a result of the alleged torture and mistreatment to which he was subjected.

37. The Commission reminds that the States "have a special role as guarantors, because the prison authorities exercise strong control or dominion on the persons subject to their custody. The foregoing, as a result of the special relation and interaction of subjection between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate their rights and obligations [...] because of the circumstances of the detention itself, where the inmate is prevented from satisfying his or her own series of basic needs essential for the development of a life in dignity."²⁶

38. In view of the specific characteristics of the present matter and in light of the *prima facie* standard of the precautionary measures mechanism, the Commission considers that the rights to life and personal integrity of Mr. Mohammad Rahim are at serious risk as a result of the alleged detention conditions and his current health situation.

39. As for the requirement of urgency, the Commission considers that it is fulfilled to the extent that Mr. Rahim has been deprived of his liberty in the Naval Base in Guantanamo for almost ten years in conditions that have already been qualified as unacceptable by the Commission, and in spite of the recurrent calls to the Government of the United States to put an end to the intolerable conditions endured by the persons deprived of liberty in this establishment. In these circumstances, the Commission considers that the mere passing of time might cause additional damage to the rights to life and personal integrity of Mr. Rahim.

40. Regarding the requirement of irreparability, the Commission considers that it is fulfilled to the extent that the potential impact on his right to life and personal integrity constitutes the highest level of irreparability.

V. BENEFICIARIES

41. The Commission extends this precautionary measure in favor of Mohammad Rahim, who is duly identified in the context of this proceeding.

²⁵ "During the interrogation of Rahim using the CIA's enhanced interrogation techniques, Rahim was subjected to eight extensive sleep deprivation sessions, as well as to the attention grasp, facial holds, abdominal slaps, and the facial slaps [...] Rahim's diet was almost entirely limited to water and liquid Ensure meals." See Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, Declassification Revisions December 3, 2014. Page 165. Available at: https://www.intelligence.senate.gov/sites/default/files/press/executive-summary_0.pdf

²⁶ IACtHR. Case of the "Juvenile Reeducation Institute" V. Paraguay, Judgment of September 2, 2004, par. 152. Available in Spanish at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_112_esp.pdf

VI. DECISION

42. In view of the aforementioned, the Inter-American Commission on Human Rights considers that the present matter meets *prima facie* the requirements of seriousness, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission hereby requests that the United States:

- a) adopt the necessary measures to protect the life and personal integrity of Mr. Mohammad Rahim;
- b) adopt the measures necessary to guarantee that the detention conditions of Mr. Mohammad Rahim comply with the applicable international standards;
- c) adopt the measures necessary to ensure Mr. Mohammad Rahim access to adequate medical treatment as recommended by the relevant specialists; and
- d) inform the IACHR on the measures taken to investigate the alleged facts that gave rise to the granting of these precautionary measures and thus prevent their repetition.

43. The Commission also requests that the United States provide information within a period of 15 days from the date that the present resolution is issued on the adoption of these precautionary measures and provide updated information periodically.

44. The Commission points out that, in accordance with Article 25 (8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State shall not constitute a prejudgment of any violation of the rights protected in the American Declaration on the Rights and Duties of Man and any other applicable instruments.

45. The Inter-American Commission urges the Government of the United States – a member of the Organization of American States – to implement all the recommendations set forth in the context of precautionary measures granted to this date in regard to the situation of persons deprived of liberty in Guantanamo, as well as those recommendations set out in the context of its faculties of monitoring and advocacy in order to comply with the international obligations regarding human rights.

46. The Commission reiterates that “the continuous and indefinite detention of individuals in Guantanamo without the right to due process is arbitrary and constitutes a clear violation of international law.”²⁷ Therefore, the State, among other measures, shall “ensure detainees’ access to a proper judicial review of the legality of their detention, reviews that must be available, adequate and effective, and provide the possibility of release.”²⁸

47. Finally, in order to duly comply with the international obligations regarding human rights, the Commission reiterates “its call for the immediate closure of the detention center in Guantanamo Bay.”²⁹

48. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the United States and to the applicants.

²⁷ IACHR, *Towards the Closure of Guantanamo*, report of June 3, 2015, paragraph 328.

²⁸ IACHR, *Towards the Closure of Guantanamo*, report of June 3, 2015, recommendation 9.

²⁹ IACHR, *Extension of the PM 259/02-2013*, July 23, 2013. See also *Towards the Closure of Guantanamo*, report of June 3, 2015, para. 13 and recommendation 13.

49. Approved on July 25, 2017, by: Francisco Eguiguren Praeli, President; Esmeralda Arosemena de Troitiño, Second Vice-President; José de Jesús Orozco Henríquez; Paulo Vannuchi; Luis Ernesto Vargas Silva, members of the Commission.

Elizabeth Abi-Mershed
Assistant Executive Secretary