

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 10/2015
PRECAUTIONARY MEASURE No. 46-15

Matter of Moath al-Alwi regarding the United States of America¹
March 31, 2015

I. INTRODUCTION

1. On February 25, 2015, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures presented by Syeda Tasnim et al. (hereinafter, “the applicants”), requesting that the IACHR require the United States of America (hereinafter, “the State”, “the U.S.” or “the United States”) to adopt the necessary precautionary measures in order to protect the life and personal integrity of Mr. al-Alwi, currently deprived of liberty in the U.S. Naval Station at Guantánamo Bay, Cuba.

2. After analyzing the factual and legal arguments put forth by the parties, the Commission considers that the information presented shows *prima facie* that Mr. Moath al-Alwi faces a serious and urgent situation, as his life and personal integrity are threatened due to the alleged detention conditions. Consequently, in accordance with Article 25 of its Rules of Procedure, the Commission requests that the United States: a) adopt the necessary measures to protect the life and personal integrity of Mr. al-Alwi; b) adopt the necessary measures to guarantee that the detention conditions are adequate in accordance with applicable international standards; c) adopt the necessary measures to ensure access to medical care and treatment; and d) report on the actions taken to investigate the presumed facts that led to the adoption of this precautionary measure in order to avoid the repetition of the alleged circumstances.

II. SUMMARY OF FACTS AND ARGUMENTS SUBMITTED BY THE APPLICANTS

3. The applicants indicated that the proposed beneficiary, a 35 year-old Yemeni, has allegedly been deprived of liberty for more than 12 years in the U.S. Naval Station at Guantánamo Bay, Cuba. Since his detention, the applicants sustain that the proposed beneficiary has suffered from threats and acts of violence against his life and personal integrity. In this sense, the applicants’ allegations are as follows:

A. As background information, the applicants reported that the proposed beneficiary was allegedly detained by the U.S. authorities in Pakistan, after he had been turned in by some individuals or “bounty hunters” in exchange for an economic compensation. Eventually, the proposed beneficiary was transferred to the Guantánamo Bay detention center on January 16, 2002. According to the applicants, the proposed beneficiary, raised in Saudi Arabia, moved to Afghanistan in search of spiritual teaching, but then fled to Pakistan because of the U.S. bombings carried out during the “Enduring Freedom Operation,” launched in the aftermath of the 9/11 attacks.

B. Concerning purported threats to life and personal integrity, the applicants alleged that while the proposed beneficiary was being held captive in the U.S. military base near Peshawar, in Pakistan, officials blindfolded, shackled, and hung him by his arms while they were still cuffed behind his back and stripped and beat him. Thereafter, while flying him to Guantánamo, U.S. military personnel reportedly drugged him without his consent. Then, when he arrived at Guantánamo, he was detained

¹ According to Article 17.2 of the Rules of the IACHR, First Vice-President James Cavallaro, a citizen of the U.S., did not participate in the debate or in the decision on the present precautionary measure.

in an open-air cage, exposed to the elements. There, military officers allegedly compelled him to witness military personnel having sexual intercourse in front of him so as to humiliate him. Moreover, the applicants sustained that during interrogations, personnel apparently fully shackled him for up to 10 to 12 hours without water or food. They also alleged that his interrogators denied him access to bathroom facilities, filled the interrogation room with cigarette smoke and lowered the thermostat to freezing temperature, while being forced to strip down his underwear and being sexually abused by the officers. In addition, the agents supposedly threatened to rape him, his sister and his mother. Moreover, the applicants alleged that on April 13, 2013, a day after the International Committee of the Red Cross completed a three-week visit to the detention center, some guards allegedly shot him several times with rubber-coated steel bullets, causing him immense pain. Furthermore, the applicants alleged that guards apparently continued to use sleep deprivation as a method of torture against him and other detainees by purposefully slamming doors throughout the night. As of February 2015, the applicants indicated that the proposed beneficiary supposedly remained in a situation of solitary confinement, with no communal prayer, meals or exercise allowed.

C. Furthermore, the applicants indicated that the proposed beneficiary allegedly began a series of hunger strikes along with other detainees in November 2008. Later, the proposed beneficiary carried out another hunger strike on February 6, 2013. Since then, officers allegedly began subjecting him to extremes of heat and cold, and placed him in solitary confinement, restricting his ability to be outside and confiscating personal belongings including prescribed medical items. In addition, the applicants alleged that the authorities reportedly started force-feeding him in June 2013. As of February 2015, guards and medical personnel supposedly continued to force-feed him at least daily by shackling him to a chair for several hours a day, with extra-large tubes to speed-up the process. According to the applicants, the proposed beneficiary currently weighs around 96 pounds. In this regard, the applicants reported that the proposed beneficiary continued with the hunger strike as of the time this request for precautionary measures was filed.

D. Moreover, the applicants denounced that, since his deprivation of liberty, the proposed beneficiary has allegedly been denied access to proper medical care on many occasions, including after the purported shooting on April 13, 2013. The applicants stated that, due to his hunger strike, the proposed beneficiary's health is rapidly deteriorating. In this sense, his medical concerns include colon and digestive issues from his hunger strike and force-feeding, as well as severe back pain because he is supposedly tied on a daily basis to a restraint chair during the procedure. Moreover, the applicants denounced that there is no reliable or true physician-patient relationship between the medical personnel at Guantánamo and the detainees, and that there is "barely" a difference between their behavior and that of the guards. In this regard, the applicants informed that the detention center officials apparently have authority over the medical staff, thus not allowing them to grant additional or specific treatment or drugs to the proposed beneficiary. According to the applicants, on some occasions the authorities confiscated medical pillows for his chronic back pain, a special pillow for his hemorrhoids, as well as basic necessities including hygienic products like toothbrushes and soap.

E. The applicants alleged that for the past 12 years of deprivation of liberty, the detention center authorities supposedly prohibited the proposed beneficiary from having access to the outside world, also limiting his ability to communicate with his lawyers. Moreover, they reported that, more recently, the proposed beneficiary has been permitted to speak with his family apparently via a "constantly monitored, time delayed video teleconferencing call every 10 to 12 weeks." The calls last for only one hour, but they are often interrupted or end abruptly due to alleged bad connections or U.S. censors who supposedly do not allow families to ask detainees about their conditions at Guantánamo.

F. The applicants denounced that there is virtually no true access to justice and domestic remedies. In this regard, they informed that after many years in a “legal vacuum,” in 2008 the Supreme Court of the U.S. recognized the Guantánamo detainees’ right to petition for the writ of habeas corpus, although it did not elaborate on what the concept of “meaningful review” entailed, thus leaving that determination to lower courts. In this regard, the applicants alleged that in the event detainees won at trial court level, the decisions have eventually been reversed by the U.S. Court of Appeals for the D.C. Circuit since, according to them, its precedents “[...] allow the use of unreliable hearsay evidence and coerced statements to justify the indefinite detention of the men at Guantánamo.” This “strong message” sent to lower courts is reportedly complemented by many obstacles to due process and access to justice. Furthermore, the applicants stressed that even if the Court of Appeals were to grant the habeas petition finding that a person is being detained unlawfully, the court apparently cannot grant the release of a detainee because it has no enforcement mechanism. That is to say, pursuant to current and past versions of the National Defense Authorization Act, Guantánamo detainees cannot be released to the U.S. and courts can only recommend that the Executive release the detainee to another country, “[...] with the final decision always in the hand of the Executive.”

G. The applicants informed that the proposed beneficiary’s petition for habeas corpus was denied by federal court in 2011, in a trial supposedly “[...] riddled with procedural and evidentiary infringements [...]” In addition, the applicants indicated that although the proposed beneficiary is apparently eligible for a Periodic Review Board – a mechanism created in 2011 to establish whether law of war detention remains “necessary to protect against a continuing significant threat to the security of the United States” –, the authorities to date apparently have not provided information on whether this might occur in his specific case, and this process allegedly fails to conform to necessary procedural guarantees, such as access to documents and information.

H. The applicants sustained that the proposed beneficiary’s deprivation of liberty might last for an undetermined period of time. That is to say, apparently, the Supreme Court upheld the detention of Guantánamo detainees in 2004 “for the duration of the particular conflict, in which they were captured,” and that detentions were to be considered as “incidents of war.” However, it did not discuss how the detainees’ rights would change if the “Global War on Terror” continued once hostilities in Afghanistan ended. In this regard, even though “Enduring Freedom Operation” (under which the proposed beneficiary was initially captured) was formally concluded at the end of 2014, the applicants sustained that this would have little to no effect on Guantánamo detainees, since the U.S. authorities now launched “Operation Resolute Support,” a scaled-down mission involving about 12,000 troops who will indefinitely advise Afghan forces in the fight against Taliban insurgents. According to the applicants, the proposed beneficiary will likely remain in detention for an undetermined period of time, since U.S. troops are still “in active combat,” according to military provisions. In this regard, the applicants denounced that the proposed beneficiary has been deprived of liberty since 2002 without any charges against him.

4. On March 13, 2015, the IACHR requested information from the State with a 7-day deadline, namely its observations on the applicants’ report. To date, no answer has been received by the United States.

III. PRELIMINARY CONSIDERATIONS ON THE PRESENT SITUATION

5. The Commission has been closely monitoring the situation of the Guantánamo Bay detainees since it first issued precautionary measures in their favor in 2002. The measures were initially issued to request

that the United States ensure that a competent tribunal would determine their legal status. The measures have been extended multiple times in light of allegations of abuse and mistreatment, prompting the Commission to request that the United States investigate alleged cases of torture and ill treatment, and prosecute and punish those found responsible. The Commission has also requested that the United States give due attention to the human rights of any person transferred to a home or third country in order to avoid transfer to a situation of risk and ensure respect for the principle of non-refoulement.

6. The Commission has also devoted attention to the situation of the Guantánamo Bay detainees through its other mechanisms. The Commission issued Resolution 2/06 in July 2006 on the situation of the detainees, and among other considerations, it indicated that the United States' failure to give effect to the precautionary measures had resulted in irreparable harm to their fundamental rights. The Commission called upon the Government to close the detention facility and transfer the detainees through a process carried out in compliance with its obligations under international law. In its Resolution 2/11 of July 2011 on the situation of the detainees, the Commission reviewed the evolution of the situation and detailed specific concerns with respect to the prolonged detention, conditions of detention and inadequate judicial protection. The Commission reiterated that the failure to comply with the precautionary measures had resulted in irreparable harm to the rights of the detainees and urged the United States to close the facility without delay and release the detainees or try them in accordance with due process guarantees.

7. On July 22, 2013, taking into account the human rights obligations of the United States as a Member State of the OAS, and given the ongoing risk of irreparable harm to the rights of detainees that is aggravated with the continuation of their detention, the Inter-American Commission decided to extend the scope of these precautionary measures and require the Government of the United States: a) to proceed to immediately close the detention facilities at the Naval Station at Guantánamo Bay; b) that the detainees be transferred to home or third countries in observance of human rights guarantees, mainly the obligation of *non-refoulement*; c) that the release of those who have already been cleared for transfer be expedited; d) that any detainees subject to trial be housed in appropriate conditions and accorded applicable due process rights.

8. Although all detainees including Mr. Moath al-Alwi are covered by those measures, taking into account the particular situation of Mr. Moath al-Alwi, the detailed information presented by the applicants, and the opportunity to evaluate his specific situation, the IACHR considers it pertinent to give specific consideration to the present request.

IV. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABLE HARM

9. The mechanism of precautionary measures 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 American Convention on Human Rights and Article 18 of the Commission's Statute. The mechanism of precautionary measures is set out in Article 25 of the Commission's Rules of Procedure. According to this 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.

10. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that precautionary and provisional 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 a legal situation 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 purposes of making a decision, and 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.

11. In the current situation, the Commission considers that the requirement of seriousness is met, in view of the dire detention conditions alleged by the applicants. In this sense, the information submitted by the applicants suggests that the proposed beneficiary, who to date apparently remains deprived of liberty in the U.S. Naval Station at Guantánamo Bay for more than 12 years without charges against him, is retained in severe circumstances which include a wide range of measures including alleged threats, humiliations, sexual abuse, physical and psychological attacks, as well as lack of adequate medical care. In particular, the Commission is concerned about the practice of force-feeding, as well as the alleged confinement measures imposed upon Mr. Moath al-Alwi, which have supposedly damaged his health.

12. In this regard, the allegations presented by the applicants appear to be consistent with contextual and general information acknowledged by the IACHR, which indicates that detainees were allegedly subject to cramped confinement ("placement of the individual in a confined space [usually dark], the dimensions of which restrict the individual's movement"); wall standing (the individual's "arms are stretched out in front of him, with his fingers resting on the wall. His fingers support all of his body weight. The individual is not allowed to move or reposition his hands or feet"); stress positions ("designed to produce the physical discomfort associated with muscle fatigue"); sleep deprivation; and waterboarding.² In addition, the Inter-American Commission received information regarding reported sensory deprivation, severe beatings, electric shocks and induced hypothermia during interrogations,³ as well as force-feeding processes,⁴ which is described to be as "having a dagger shoved down your throat,"⁵ among other extremely concerning information.

² Memorandum for John Rizzo, Acting General Counsel of the Central Intelligence Agency, Re: Interrogation of al Qaeda Operative, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, August 1, 2002, pp. 2-3.

³ Stephen Lendman, Torture As Official US Policy, Global Research, July 18, 2008. Available at: <http://www.globalresearch.ca/torture-as-official-us-policy/9610>

⁴ IACHR's hearing, Situation of the detainees in Guantánamo, 147 Period of Sessions of the IACHR, March 12, 2013.

⁵ IACHR's Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantánamo Bay, Washington DC, October 3, 2013. See also, Poems from Guantánamo, Amnesty International Magazine, Fall 2007, by Mark Falcoff. Available at:

13. Additionally, as part of its ongoing efforts to monitor the precautionary measures, the IACHR has held 2 working meetings and 11 hearings on the matter from 2002 to 2015. It has published 9 press releases specifically concerning the situation of the detainees held at Guantánamo Bay and the serious human rights concerns raised by their ongoing detention.⁶ Moreover, the Commission has twice requested permission to carry out an onsite visit to the Guantanamo Bay detention facility in order to observe the conditions first hand and freely interview the detainees. Because the Government has conditioned such a visit on restricted access to interview those present in the facility, the Commission has been unable to carry out such a visit. To date, the IACHR continues to be interested in conducting a visit to the U.S. detention center in Guantánamo, including direct and private access to the detainees, and without any other conditions. For its part, the United Nations Committee against Torture has condemned prisoners' treatment at Guantánamo, noting that indefinite detention constitutes *per se* a violation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁷ In addition, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, has reiterated that "all detentions that take place away from the field of battle should be covered by the international law of human rights --which prohibits prolonged arbitrary detention-- even if they are carried out under a rhetorical "war on terror.""⁸ The Special Rapporteur finds that the U.S. practice of holding detainees indefinitely if it is determined that they pose a significant threat to the security of the United States is a violation of the prohibition of torture and ill-treatment under Article 7 of the ICCPR and CAT Articles 1 and 16, as well as of relevant provisions of the American Declaration, as incorporated in the Charter of the Organization of American States.⁹

14. Taking into consideration the information provided and the particular context in which it is presented, the Commission considers *prima facie* that the rights to life and physical integrity of Mr. Moath al-Alwi are at serious risk.

15. Regarding the requirement of urgency, the IACHR sustains that it is satisfied, given that the proposed beneficiary remains currently deprived of liberty in the U.S. Naval Station at Guantánamo Bay under allegedly extreme detention conditions for an indefinite period of time. In this sense, the information provided by the applicants suggests that the proposed beneficiary's life and personal integrity are subject to constant risk as there is apparently no available mechanism to effectively remove or mitigate the above-stated risk factors. Moreover, the proposed beneficiary's health may rapidly deteriorate since the military personnel allegedly continues force-feeding and maintaining him in isolation with no access to adequate medical treatment. On this point, the applicants affirm that the proposed beneficiary currently weighs around 96 pounds. In addition, to date, the State had not submitted its observations before the Commission so as to determine whether internal measures have been adopted in light of the situation of risk.

<http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/prisoner-testimonies/poems-from-guantanamo>

⁶ A list of the public hearings and working meetings, press releases, and requests to conduct a visit is available at: <http://www.oas.org/en/iachr/pdl/decisions/Guantanamo.asp#Resol>.

⁷ UN Committee Against Torture (CAT), *UN Committee against Torture: Conclusions and Recommendations, United States of America*, 25 July 2006, CAT/C/USA/CO/2, para 22.

⁸ Statement of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, IACHR's Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantanamo Bay, Washington DC, October 3, 2013, p. 4.

⁹ Statement of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, IACHR's Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantanamo Bay, Washington DC, October 3, 2013, p. 5.

16. Regarding the requirement of irreparable harm, the Commission considers that it is fulfilled, to the extent that the possible effect on the right to life and physical integrity represents the highest irreparable situation.

V. BENEFICIARIES

17. The request has been presented in favor of Mr. Moath al-Alwi.

VI. DECISION

18. Taking into account that despite the IACHR's request to immediately close the detention facilities at the Naval Station at Guantánamo Bay Moath al-Alwi is still deprived of liberty in such detention center, in accordance with article 25 of the Rules of Procedure, the Commission requests that the United States of America:

- a) adopt the necessary measures to protect the life and personal integrity of Mr. al-Alwi;
- b) adopt the necessary measures to guarantee that the detention conditions are adequate in accordance with applicable international standards;
- c) adopt the necessary measures to ensure access to medical care and treatment; and
- d) report on the actions taken to investigate the presumed facts that led to the adoption of this precautionary measure to avoid the repetition of the alleged circumstances.

19. The Commission also requests that the Government of His Excellency provide information within a period of time limit of 15 days from the date that the present resolution is issued on the adoption of precautionary measures and provide updated information periodically.

20. The Commission wishes to point out that in accordance with Article 25(8) of its Regulations, the granting of precautionary measures and their adoption by the State shall not constitute a prejudging of any violation of the rights protected in the American Declaration on the Rights and Duties of Man or any other applicable instrument.

21. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the United States of America and to the petitioners.

22. Approved on March 31, 2015 by: Rose-Marie Belle Antoine, President; José de Jesús Orozco Henríquez, Second Vice-President; Felipe González, Rosa María Ortiz, Tracy Robinson, Paulo Vannuchi, members of the IACHR.



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