

**IN THE  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

---

DJAMEL AMEZIANE,

v.

UNITED STATES.

Case 12.865

---

**MERITS BRIEF**

Dated: September 30, 2015

*Respectfully submitted on behalf of  
Djamel Ameziane:*

J. Wells Dixon  
Omar Farah  
Aliya Hussain  
CENTER FOR CONSTITUTIONAL RIGHTS  
666 Broadway, 7th Floor  
New York, NY 10012  
(Tel) 212-614-6423  
(Fax) 212-614-6499

Viviana Krsticevic  
Francisco Quintana  
Elsa Meany  
CENTER FOR JUSTICE AND  
INTERNATIONAL LAW (CEJIL)  
1630 Connecticut Ave., NW Suite 401  
Washington, D.C. 20009-1053  
(Tel) 202-319-3000  
(Fax) 202-319-3019

## TABLE OF CONTENTS

|  |    |
|--|----|
| 1. Preliminary Statement.....  | 1  |
| 2. Context.....  | 1  |
| 3. Statement of Facts.....   | 4  |
| 3.1 Background.....  | 4  |
| 3.2 Forcible Repatriation and Continuing Violations.....   | 4  |
| 3.3 Judicial Proceedings.....  | 6  |
| 4. Considerations Of Law.....  | 8  |
| 4.1 Relevant Law.....  | 8  |
| 4.2 Aggravated State Responsibility.....   | 9  |
| 5. Violations of the American Declaration of the Rights and Duties of Man.....   | 11 |
| 5.1 Arbitrary Detention Without Prompt Judicial Review (Violations of Articles I and XXV).....                                 | 11 |
| 5.1.1 Mr. Ameziane’s Detention Was Arbitrary.....  | 12 |
| 5.1.2 The State Conceded It Had No Justification for Mr. Ameziane’s Detention.....   | 14 |
| 5.1.3 The State Failed to Ascertain the Legality of Detention Without Delay.....   | 15 |
| 5.2 Torture and Cruel, Inhuman, and Degrading Treatment (Violations of Articles I and XXV in Conjunction with XI and III)..... | 16 |
| 5.2.1 Torture and Cruel, Inhuman, or Degrading Treatment are Absolutely Prohibited under International Law.....                | 17 |
| 5.2.2 Detention Conditions, including Prolonged Incommunicado Detention and Isolation.....                                     | 19 |
| 5.2.3 Other Physical and Verbal Abuse amounting to Torture.....  | 23 |
| 5.2.4 Forced Transfer to Algeria Violated <i>Non-Refoulement</i> Obligations.....  | 26 |
| 5.2.5 Denial of Adequate Medical Care.....   | 27 |
| 5.2.6 Religious Abuse and Interference.....  | 31 |
| 5.3 Right to Private and Family Life and Protection of Personal Reputation (Violations of Articles V and VI).....              | 33 |
| 5.3.1 Mr. Ameziane Was Deprived of Developing His Private and Family Life... ..  | 34 |
| 5.3.2 Mr. Ameziane Suffered Attacks on his Personal Honor and Reputation....   | 37 |
| 5.4 Discrimination and Violation of Equality before the Law (Violation of Article II).....                                     | 38 |
| 5.5 Right to Property (Violation of Article XXIII).....  | 41 |
| 5.6 Right to Truth (Violation of Articles IV and XXVI).....  | 41 |
| 6. Conclusion and Request for Relief.....  | 42 |

## 1. PRELIMINARY STATEMENT

1. Djamel Ameziane was arbitrarily detained at the U.S. Naval Base at Guantánamo Bay, Cuba for nearly twelve years. During this time, Mr. Ameziane was repeatedly subjected to physical and psychological torture and cruel, inhuman and degrading treatment. He was denied necessary medical care, prevented from practicing his religion without interference and insult, stripped of his private and family life, and denied effective legal recourse. These facts, part of a larger pattern of abuse, represent grave violations of Mr. Ameziane's human rights as protected by the American Declaration of the Rights and Duties of Man (American Declaration).

2. On December 4, 2013, Mr. Ameziane was sent on a military cargo plane from Guantánamo to Algeria, in violation of standing precautionary measures issued by the Inter-American Commission on Human Rights (Commission). He was blindfolded, shackled at the waist, and chained to the floor of the plane. Upon arrival the following day, Mr. Ameziane was transported by Air Force Border guards to a police station, where he was interrogated. He was then taken by the Intelligence and Investigation Brigade to the General Directorate of National Security, where he was held and interrogated until December 10, 2013, when he was released because he had become gravely ill.

3. Mr. Ameziane, in very poor health and without income or assets, remains under judicial supervision in Algeria. As described below, he continues to suffer collateral consequences of his prior detention at Guantánamo.

4. The United States has not seriously contested the facts underlying Mr. Ameziane's claims in this procedure, and we request the Commission deem them conceded. The petitioners request that this Commission issue a merits report, finding violations of Articles I, II, III, IV, V, VI, XI, XXIII, XXV, and XXVI of the American Declaration, and recommend reparations, including financial compensation and adequate medical care for Mr. Ameziane for the duration of his life.

## 2. CONTEXT

5. The initial petition detailed the background and context in which the United States created an international network of torture sites and detention facilities, including the U.S. Naval Base at Guantánamo.<sup>1</sup> This context has not been contested for purposes of this case,

---

<sup>1</sup> See Petitioners' August 6, 2008 Communication to the IACHR. See also, e.g., Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition*, 2013, available at <http://www.opensocietyfoundations.org/reports/globalizing-torture-cia-secret-detention-and-extraordinary-rendition>; Michael Hayden, Director, CIA, A Conversation with Michael Hayden, Council on Foreign Relations (Sept. 7, 2007), available at <http://www.cfr.org/terrorism/conversation-michael-hayden-rush-transcript-federal-news-service/p14162>; European Court of Human Rights, *Case of El-Masri v. Macedonia*, Judgment of 13 December 2012, para. 43, available at <http://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2239630/09%22%5D,%22itemid%22:%5B%22001-115621%22%5D%7D>; European Court of Human Rights, *Case of Al-Nashiri v. Poland*, Judgment of 16 February 2015, available at <http://hudoc.echr.coe.int/eng?i=001-146044#%7B%22itemid%22:%5B%22001-146044%22%5D%7D>; European Court of

and the petitioners reiterate all facts included in our August 6, 2008 petition. We also rely on the thousands of pages of written submissions, and other testimony from several hearings and consultations, provided on behalf of Mr. Ameziane over the course of the last seven years, which likewise have not been seriously disputed by the State. In this merits brief, we briefly explain contextual updates affecting this case that have occurred since the 2008 petition.

6. On December 9, 2014, the United States Senate Select Committee on Intelligence released the executive summary of the “Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program,” which confirmed the widespread practice of torture, including at Guantánamo, and which we incorporate herein by reference.<sup>2</sup>

7. On August 5, 2015, the Inter-American Commission published the report “Towards the Closure of Guantánamo,”<sup>3</sup> which contains factual and legal conclusions relevant to this case, and which we incorporate herein by reference. Indeed, Mr. Ameziane’s case is discussed throughout the report, and the report’s findings concerning his treatment as well as the illegality of arbitrary and indefinite detention at Guantánamo under international law are dispositive here.

8. Since our initial petition, and despite this Commission’s repeated exhortations, the United States has perpetuated and entrenched the regime of arbitrary detention, ill-treatment, and impunity at Guantánamo. Although on January 22, 2009, President Obama issued two executive orders for the prompt closure of Guantánamo and the appropriate disposition of detained individuals, and set a deadline of “as soon as practicable, and no later than 1 year” for closure,<sup>4</sup> at present 114 men remain detained in Guantánamo, of whom more than 50 have been approved for transfer by the State itself.<sup>5</sup>

9. The men detained in Guantánamo still have no meaningful or effective judicial remedy to challenge their arbitrary and indefinite detention. Although in *Rasul v. Bush* (2004) and *Hamdan v. Rumsfeld* (2006)<sup>6</sup> the U.S. Supreme Court affirmed U.S. federal courts’ jurisdiction to hear Guantánamo detainees’ *habeas corpus* petitions, and reaffirmed detainees’

---

Human Rights, *Case of Husayn (Abu Zubaydah) v. Poland*, Judgment of 16 February 2015, available at [http://hudoc.echr.coe.int/eng?i=001-146047#\(itemid%22:%22001-146047%22\)](http://hudoc.echr.coe.int/eng?i=001-146047#(itemid%22:%22001-146047%22)); Parliament, TDIP Temporary Committee, *Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners* (Jan. 30, 2007), available at [http://www.europarl.europa.eu/comparl/tempcom/tdip/final\\_report\\_en.pdf](http://www.europarl.europa.eu/comparl/tempcom/tdip/final_report_en.pdf).

<sup>2</sup> United States Senate Select Committee on Intelligence, “Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program,” available at <https://web.archive.org/web/20141209165504/http://www.intelligence.senate.gov/study2014/sscistudy1.pdf>.

<sup>3</sup> Inter-American Commission on Human Rights, “Towards the Closure of Guantánamo.” OAS/Ser. L/V/II, Doc. 20/15, 3 June 2015.

<sup>4</sup> White House. Executive Order 13492 – *Review and Disposition of Individuals detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities*. January 22, 2009, available at: [http://www.whitehouse.gov/the\\_press\\_office/Closure\\_Of\\_Guantanamo\\_Detention\\_Facilities](http://www.whitehouse.gov/the_press_office/Closure_Of_Guantanamo_Detention_Facilities); White House. Executive Order 13493 – *Review of Detention Policy Options*. January 22, 2009, available at: [www.gpo.gov/fdsys/pkg/FR-2009.../E9-1895.pdf](http://www.gpo.gov/fdsys/pkg/FR-2009.../E9-1895.pdf).

<sup>5</sup> See, e.g., Petitioners’ August 15, 2014 Communication in Precautionary Measures No. MC-259-02 (*Detainees in the Guantánamo Bay Naval Base*), United States.

<sup>6</sup> *Rasul v. Bush*, 542 U.S. 466, 467 (2004); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

constitutionally protected right to bring *habeas corpus* petitions in *Boumediene v. Bush* (2008),<sup>7</sup> federal appellate courts have since eroded the due process protections in *Boumediene*.

10. For example, the appeals court has concluded that international law is not binding in Guantánamo detainees' cases, and that hearsay evidence is always admissible against detainees.<sup>8</sup> The court has also concluded that it may reverse factual findings and credibility determinations made by the trial courts, and that the government's evidence must be presumed to be accurate.<sup>9</sup> In sum, the appellate court has effectively authorized the government to hold detainees indefinitely based on little more than its own will, even where, as occurred in Mr. Ameziane's case, the government has determined in the exercise of its own discretion that continued detention is no longer necessary nor serves its intended purpose, whether that purpose was legal or not.

11. Despite the Commission's repeated orders and resolutions, and the State's own representations, Guantánamo remains open.<sup>10</sup> It also appears increasingly unlikely to close before the end of the current U.S. presidential administration, particularly because, as occurred in the case of Mr. Ameziane, the administration inexplicably continues to fight detainees' legal challenges seeking release from Guantánamo, even when the government itself has approved those men for transfer and purports to want to transfer them.<sup>11</sup>

12. In addition, since our 2008 petition, no State agent responsible for torture or ill-treatment of Guantánamo detainees has been prosecuted or punished.<sup>12</sup> The U.S. Congress passed legislation<sup>13</sup> intended to eliminate the right of Guantánamo detainees to pursue domestic judicial remedies for wrongs they suffered at the hands of State agents, in

---

<sup>7</sup> *Boumediene v. Bush*, 553 U.S. 723, 771, 791-92 (2008).

<sup>8</sup> See *Al-Bihani v. Obama*, 590 F.3d 866, 875, 879 (D.C. Cir. 2010) (international law not binding); *Al Odah v. United States*, 611 F.3d 8 (D.C. Cir. 2010) (hearsay evidence always admissible).

<sup>9</sup> *Al Adahi v. Obama*, 613 F.3d 1102, 1111 (D.C. Cir. 2010) (reversing trial court findings); *Latif v. Obama*, 666 F.3d 746 (D.C. Cir. 2011) (presumption of accuracy). See also *Esmail v. Obama*, 639 F.3d 1075, 1077-78 (D.C. Cir. 2011) (concurring opinion admitting judges would not order detainee released over government's objections almost regardless of the evidence against him).

<sup>10</sup> See, e.g., IACHR. Resolution 2/11; Press Releases No. 02/09, 75/10, 37/11, 86/11, 3/12, 29/13, 103/13. See also IACHR. Thematic Hearing: *Situation of the detainees in Guantánamo*. 147 POS. March 12, 2013. Available at: <http://www.oas.org/en/iachr/pdl/decisions/Guantanamo.asp>; IACHR Thematic Hearing: *Human Rights Situation of Detainees at Guantánamo Naval Base*. 149 POS. October 28, 2013, available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=132>.

<sup>11</sup> See, e.g., Savage, Charlie, "Guantánamo Hunger Striker's Petition Divides Officials." *New York Times*, Aug. 7, 2015, available at: [http://www.nytimes.com/2015/08/08/us/guantanamo-hunger-strikers-petition-divides-officials.html?\\_r=0](http://www.nytimes.com/2015/08/08/us/guantanamo-hunger-strikers-petition-divides-officials.html?_r=0).

<sup>12</sup> Although the Obama administration formally opened an investigation into the Central Intelligence Agency's torture and ill-treatment of detainees, after more than three years of inquiries, the United States Attorney General announced on August 31, 2012 that the Department of Justice had ended its investigation without bringing any criminal charges. (Khaki, Ateghah. "DOJ Closes CIA Torture Investigation With No Criminal Charges." American Civil Liberties Union. Aug. 30, 2012, available at: <http://www.aclu.org/blog/human-rights-national-security/doj-closes-cia-torture-investigation-no-criminal-charges>.) It is impossible to reconcile this decision with the government's official acknowledgement that, for example, Guantánamo detainees like Majid Khan were raped in CIA secret detention. See *supra* note 2, at n.584.

<sup>13</sup> The Detainee Treatment Act (DTA) and the Military Commissions Act (MCA) establish broad and retroactive immunity—both civil and criminal—for U.S. agents involved in the detention and interrogation of non-citizens determined by the President or his designees to be "enemy combatants." See DTA, cit., § 1004; MCA, cit., § 8(b)(3).

contravention of longstanding Inter-American jurisprudence prohibiting amnesty laws for grave violations of human rights.<sup>14</sup> This legislation blocked Mr. Ameziane and other detainees from pressing criminal charges or obtaining civil damages.<sup>15</sup>

### 3. STATEMENT OF FACTS

#### 3.1 Background

13. The petitioners restate the facts presented in our initial 2008 petition and subsequent submissions to the Commission. By way of brief summary, Mr. Djamel Ameziane was born on April 14, 1967, in Algiers. In 1992, Mr. Ameziane left his family home and sought a safer life abroad. He obtained a visa and traveled through Italy to Vienna, Austria, where he lived legally for three years. In 1995, Austria enacted restrictive immigration policies that prevented Mr. Ameziane from extending or renewing his visa.

14. Mr. Ameziane went to Canada, where he applied affirmatively for asylum upon arrival. Mr. Ameziane hoped to make Canada his permanent home. When his asylum application was denied in 2000, he had limited choices. Mr. Ameziane went to Afghanistan, where he would likely not face deportation to Algeria. However, war started in Afghanistan in 2001. Mr. Ameziane fled like thousands of other refugees, but while trying to cross the border into Pakistan, he was captured by local authorities, who ultimately turned him over to the U.S. government in exchange for a bounty.

15. Mr. Ameziane was transferred to the United States detention center at the Kandahar, Afghanistan airbase in January 2002, and was then transferred to Guantánamo Bay in February 2002.

16. In 2008, the government conceded in sealed proceedings in U.S. federal court that there was no military rationale to hold Mr. Ameziane, and informed the court that he would be released promptly. He was not. Instead, the government refused to resettle him in countries that expressed interest in offering him refuge, including Luxembourg, and continued to fight his case in court.<sup>16</sup> Ultimately, the government successfully prevented the court from ever issuing a ruling on the legality of his detention over nearly eight years of litigation.

#### 3.2 Forcible Repatriation and Continuing Violations

17. After spending nearly twelve years at Guantánamo without being charged with a crime, on December 4, 2013, Mr. Ameziane was forcibly transferred to Algeria, where he feared persecution based on several factors including his Berber ethnic minority status, in violation of this Commission's precautionary measures. Mr. Ameziane left Guantánamo in the same manner that he had arrived there more than a decade earlier. He was transported in a military

---

<sup>14</sup> See, e.g., I/A Court H.R., *Case of Barrios-Altos v. Peru*, Judgment of March 14, 2001, Ser. C No. 75 at para. 41.

<sup>15</sup> In cases of grave human rights violations, such as torture, the State has an *ex officio* obligation to investigate, an obligation that the United States has failed to discharge for over six years in the present case. See, e.g., I/A Court H.R., *La Cantuta v. Peru*, Judgment of November 29, 2006. Series C No. 162, para. 110. Even if the onus were on Mr. Ameziane to initiate criminal proceedings, which it is not, he is legislatively barred from doing so.

<sup>16</sup> See, e.g., Editorial, "A Bad Decision at Guantanamo," *New York Times*, Dec. 6, 2013, available at [http://www.nytimes.com/2013/12/07/opinion/a-bad-decision-at-guantanamo.html?\\_r=0](http://www.nytimes.com/2013/12/07/opinion/a-bad-decision-at-guantanamo.html?_r=0).

cargo plane, with his feet chained to the floor and his hands to his waist.<sup>17</sup> He was blindfolded and wore noise-cancelling headphones.<sup>18</sup>

18. As described in a sworn statement he provided in U.S. federal court, upon arrival in Algeria, Mr. Ameziane was transported by Air Force Border guards to a police station, where he was interrogated. He was then taken by the Intelligence and Investigation Brigade to the General Directorate of National Security, where he was held and interrogated until December 10, 2013. Mr. Ameziane was already in poor health, and his condition deteriorated during this time. He became gravely ill as a result of poor prison conditions and his compromised immune system, and was bed-ridden for several weeks after his release from detention.<sup>19</sup>

19. He continues to suffer from other physical ailments and psychological trauma resulting from his prior detention, including symptoms that indicate post-traumatic stress and depression. But Mr. Ameziane receives no medical care.

20. Djamel Ameziane also remains under judicial supervision in Algeria, and has previously been required to report monthly to local authorities.<sup>20</sup> Although he has not been harmed physically or mistreated by Algerian authorities since his release from detention, it appears that he continues to be monitored closely by the security services. He is also badly stigmatized by his prior detention at Guantánamo.

21. Mr. Ameziane continues to suffer economic and social hardship resulting from his prior detention.<sup>21</sup> He has no employment or prospect of future employment; he is essentially unemployable because of his detention at Guantánamo. As a consequence, he is completely dependent upon others for his most basic human needs, including shelter, food and clothing. Without assets or income, his economic situation is dire. He is unable to afford basic living expenses, and is close to homelessness. The Algerian government has also indicated to Mr. Ameziane he is not eligible for aid or public assistance.

22. Adding insult to injury, the State has refused to return to Mr. Ameziane property – specifically, money – that was taken from him before entering Guantánamo. At the time of his capture, Mr. Ameziane had a small amount of savings from his time working in Canada. This money, which he desperately needs to survive, is currently in the possession of the United States government, which has refused to return it to him on the ground that money belonging to former detainees could be used for terrorist activities (because, the government claims, all men held at Guantánamo were properly detained as terrorists, even if they successfully challenged their detention, and terrorists need money to fund their criminal activities).<sup>22</sup> His legal representatives brought civil suit in the United States to recover his belongings from the United States government, but the suit was deemed inadmissible.<sup>23</sup>

---

<sup>17</sup> Declaration of Djamel Ameziane, 13 February 2014, ANNEX 1.

<sup>18</sup> Declaration of Djamel Ameziane, 13 February 2014, ANNEX 1.

<sup>19</sup> Declaration of Djamel Ameziane, 13 February 2014, ANNEX 1.

<sup>20</sup> Declaration of Djamel Ameziane, 13 February 2014, ANNEX 1.

<sup>21</sup> Declaration of Djamel Ameziane, 13 February 2014, ANNEX 1.

<sup>22</sup> Declaration of Jay Liotta, Principal Director for the Office of Rule of Law and Detainee Policy in the Office of the Undersecretary of Defense for Policy, Department of Defense, 11 April 2014, ANNEX 2.

<sup>23</sup> Mem. Op., *Ameziane v. Obama*, No. 05-cv-392 (ESH) (D.D.C. July 21, 2014) (dkt. no. 364) (denying request for return of property and dismissing *habeas* case as moot). ANNEX 3.

### 3.3 Judicial Proceedings

23. As noted in our initial petition, Mr. Ameziane did not participate in his Combatant Status Review Tribunal (CSRT) procedure in 2004 or his subsequent Administrative Review Board (ARB) procedures, because he found, as did this Commission in its Admissibility Report, that these administrative proceedings lacked due process guarantees that could provide him an adequate remedy for his arbitrary and indefinite detention.

24. On February 24, 2005, Mr. Ameziane filed a petition for *habeas corpus* in the U.S. District Court for the District of Columbia (District Court).<sup>24</sup> Mr. Ameziane's case was stayed indefinitely in May 2009, over his objections, without a ruling on the merits regarding the legality of his ongoing detention at Guantánamo.<sup>25</sup> Initially, the government sought to seal the reason for the stay. The District Court rejected that request and ordered the basis for the stay unsealed at Mr. Ameziane's request.

25. Immediately following the court's ruling authorizing Mr. Ameziane to reveal the basis for the stay, the government appealed to the U.S. Court of Appeals for the District of Columbia Circuit and obtained an order reversing the District Court's unsealing order. In other words, having successfully obtained a stay of Mr. Ameziane's *habeas* case challenging the legality of his detention, over his objections, the United States government succeeded in keeping the reason for the stay secret.<sup>26</sup> Mr. Ameziane's *habeas corpus* case was thus shrouded in secrecy.

26. On October 5, 2012, at the request of the United States government, the appeals court ordered the entire appellate record unsealed for public disclosure.<sup>27</sup> The unsealed record shows that Mr. Ameziane was cleared for transfer by the Executive in October 2008, that the United States attempted to forcibly transfer Mr. Ameziane to Algeria at that time, which was enjoined by the District Court in part due to *non-refoulement* concerns, and that the United States attempted thereafter to avoid litigating Mr. Ameziane's *habeas corpus* case in December 2008 by arguing that the court should stay proceedings because there were no "military rationales" for Mr. Ameziane's continued detention at Guantánamo. According to the government, "the only issue truly remaining [was] the country to which [he] should be sent."<sup>28</sup>

27. In May 2009, Mr. Ameziane was again approved for transfer and the United States renewed its request for a stay of *habeas corpus* proceedings, citing the Obama administration's inter-agency task force's unanimous decision to approve Mr. Ameziane for transfer.<sup>29</sup> This time, the court ordered a stay. The District Court then expressed disappointment with Mr. Ameziane's continued detention and the U.S. government's insistence on attempting to forcibly return him to Algeria. On record, the judge stated:

---

<sup>24</sup> See Petition for Writ of Habeas Corpus in *Ameziane v. Bush*, Civil Action No. 05-392 (D.D.C.).

<sup>25</sup> See *Ameziane v. Obama*, No. 05-cv-392 (ESH) (D.D.C.).

<sup>26</sup> See *Ameziane v. Obama*, No. 09-5236 (D.C. Cir.).

<sup>27</sup> See Petitioners' October 29, 2012 Communication, pages 1 – 3.

<sup>28</sup> See Petitioners' October 29, 2012 Communication. Exhibit C (App. 41, 42) ("App." refers to the Appellant's Appendix included in Exhibit C).

<sup>29</sup> See Final Report, Guantanamo Review Task Force (Jan. 22, 2010), available at: <http://www.justice.gov/sites/default/files/ag/legacy/2010/06/02/guantanamo-review-final-report.pdf>.



I'm appalled at the situation here . . . I don't know why in the world the only thing that the government can see here is Algeria.<sup>30</sup>

He has now been there seven years thanks to the United States government. Why they want to stand in the way of any possible hope of something better for him baffles me. . . I think it's our duty to try to do something about these people down there and not just say, okay, go to where you came from. We put you down there, and we're going to try better.<sup>31</sup>

This gentleman has the perhaps glimmer of hope that something could get slightly better . . . . Why should we stand in the way after the way we've treated him for these seven years?<sup>32</sup>

28. The court also noted the “outrageous activities committed in Guantánamo,” expressed hope that Mr. Ameziane would not suffer retribution for seeking third-country resettlement, and acknowledged that “no efforts have been made [by the United States] to put this gentleman anywhere else than the very country he fled from back in 1990.”<sup>33</sup> The judge concluded:

No one can give me a good reason why . . . this gentleman . . . is going to sit down there [in Guantánamo] for as long as humanly possible. . . . He gave up his habeas [corpus], not voluntarily but because you wanted a stay, and I agreed that it ought to be stayed because it's a waste of everyone's time. But for him to give that right up and be in a worse position than somebody who exercises their habeas rights, you can't have it both ways. It's just not fair.<sup>34</sup>

29. During friendly settlement negotiations supervised by the Commission during working meetings on November 3, 2012 and March 13, 2013, the United States stated that it was working “diligently” to safely resettle Mr. Ameziane, and that he could expedite safe resettlement by reopening his *habeas corpus* proceedings.<sup>35</sup> The State also represented that “the United States will not oppose a motion by Mr. Ameziane to lift the stay on his *habeas* case in order to litigate the lawfulness of his detention.”<sup>36</sup>

---

<sup>30</sup> See Petitioners' October 29, 2012 Communication. Exhibit C (App. 81) (“App.” refers to the Appellant's Appendix included in Exhibit C).

<sup>31</sup> See Petitioners' October 29, 2012 Communication. Exhibit C (App. 82) (“App.” refers to the Appellant's Appendix included in Exhibit C).

<sup>32</sup> See Petitioners' October 29, 2012 Communication. Exhibit C, App. 82 (“App.” refers to the Appellant's Appendix included in Exhibit C).

<sup>33</sup> See Petitioners' October 29, 2012 Communication. Exhibit C, App. 98 (“App.” refers to the Appellant's Appendix included in Exhibit C).

<sup>34</sup> See Petitioners' October 29, 2012 Communication. Exhibit C, App. 104, 112-13 (“App.” refers to the Appellant's Appendix included in Exhibit C).

<sup>35</sup> See Petitioners' December 7, 2013 Communication; State's December 20, 2012 Communication; State's May 15, 2013 Communication.

<sup>36</sup> See Response of the United State to Questions from the March 13, 2013 Working Meeting on Djamel Ameziane (Case No. 12.865), May 15, 2013, p. 1. Nonetheless, as Petitioners reported in our June 14, 2013 letter, the State later made clear that once *habeas corpus* proceedings were reopened it would oppose any court order granting the relief it had promised Mr. Ameziane in 2008 and again in 2009 – release.

30. Shortly thereafter, in response to litigation concerning an incident in which the government confiscated all of Mr. Ameziane's attorney-client privileged legal materials, the D.C. District Court convened a hearing for August 14, 2013 to address not only the legal mail seizure but also the State's "efforts to transfer Mr. Ameziane over the past four years, what it expects will happen in the near future regarding his release from Guantánamo, and its efforts to identify and return legal materials to Mr. Ameziane."<sup>37</sup> The hearing was closed to the public.

31. In addition, on August 12, 2013, Mr. Ameziane filed a motion for release from Guantánamo.<sup>38</sup> The government opposed that motion, and, once again, convinced the court to delay its consideration of Mr. Ameziane's legal challenge and ultimately not to decide the issues on the merits. Instead, as explained above, Mr. Ameziane was forcibly repatriated to Algeria in December 2013.

## 4. CONSIDERATIONS OF LAW

### 4.1 Relevant Law

32. The American Declaration contains binding legal obligations for Organization of American States (OAS) Member States. The Commission recently articulated this with respect to legal obligations regarding Guantánamo:

These obligations are considered to flow from the human rights obligations of Member States under the OAS Charter. Articles 106 and 150 of the Charter authorize the Inter-American Commission to protect those human rights enunciated and defined in the American Declaration. This competence is expressly set forth in Article 1 of the Commission's Statute, approved in 1979 by PAS General Assembly Resolution No. 447.<sup>39</sup>

33. The Commission has stated that in addressing violations of the rights protected by the American Declaration, it is necessary to consider the "context of the international and Inter-American human rights systems more broadly."<sup>40</sup> The American Declaration is a constantly evolving instrument that should be interpreted in conjunction with international customary law and other prevailing international and regional human rights instruments.<sup>41</sup>

34. In this regard, the American Convention on Human Rights has been "considered to represent an authoritative expression of the fundamental principles set forth in the American

---

<sup>37</sup> Petitioners' Motion for Status Conference, filed July 26, 2013, cited the United States' July 24, 2012 communication to the IACHR. ANNEX 4.

<sup>38</sup> See Motion for Order of Release and Other Relief, *Ameziane v. Obama*, No. 05-cv-392 (ESH) (D.D.C, Aug. 12, 2013) (dkt. no. 343-1) (Redacted for Public Release), ANNEX 5.

<sup>39</sup> Inter-American Commission on Human Rights, "Towards the Closure of Guantánamo." OAS/Ser. L/V/II, Doc. 20/15, 3 June 2015. Para 18.

<sup>40</sup> *Jessica Lenahan (Gonzales) et al. v. United States*, Case 12.626, Inter-Am. C.H.R., Report No. 80/11, at para. 118; See, e.g., *Juan Raul Garza v. United States*, Case 12.243, Inter-Am. C.H.R., Report No. 52/01, at para. 88, 89 (2001) (citing Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of July 14, 1989, Inter-Am. Ct. H.R. (Ser. A) N° 10 (1989), at para. 37). See also Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. C.H.R., OEA/Ser.L/V/II.106, doc. 40 rev., at para. 38 (2000)

<sup>41</sup> *Jessica Lenahan (Gonzales) et al. v. United States*, Case 12.626, Inter-Am. C.H.R., Report No. 80/11, at para. 118.

Declaration.”<sup>42</sup> In cases brought against states that have not ratified the American Convention, the IACHR has clarified that “[w]hile the Commission clearly does not apply the American Convention in relation to member states that have yet to ratify that treaty, its provisions may well be relevant in informing an interpretation of the principles of the Declaration.”<sup>43</sup>

35. Accordingly, the following sections will reference the American Convention, as well as various international instruments and judgments that interpret relevant human rights obligations protected by the American Declaration, with an emphasis on the jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

36. The Commission has also addressed the role of international human rights law and international humanitarian law with respect to Guantánamo. The Commission determined that they may draw on both bodies of law in analyzing the rights violations committed in this context:

Therefore, when assessing the human rights situation of the detainees at Guantánamo Bay, the Inter-American Commission may be required to interpret and apply international human rights law in light of the *lex specialis* of international humanitarian law governing non-international armed conflicts. As the IACHR has previously stated, in this type of conflict, States’ international obligations are governed by both the rules of international human rights law and those of IHL. Both regimes of human rights protection must be interpreted and applied in an integral way within the applicable rules of international law to afford individuals the most favorable standards of protection available under applicable law.<sup>44</sup>

## 4.2 Aggravated State Responsibility

37. The United States has incurred aggravated responsibility in Mr. Ameziane’s case because the human rights violations against him (1) occurred as part of a systematic and generalized practice, and (2) arose out of direct defiance of the IACHR’s precautionary measures.

38. The worldwide pattern of rendition and subsequent detention in military or intelligence installations, for the purpose of subjecting persons accused of terrorist activities to torture and ill-treatment outside the scrutiny of the law, has been well documented and reported.<sup>45</sup> State agents used United States military aircraft to transport detainees such as Mr.

---

<sup>42</sup> Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. C.H.R., OEA/Ser.L/V/II.106, doc. 40 rev., at para. 38 (2000).

<sup>43</sup> *Id.*

<sup>44</sup> Inter-American Commission on Human Rights, “Towards the Closure of Guantánamo.” OAS/Ser. L/V/II, Doc. 20/15, 3 June 2015. Para 84.

<sup>45</sup> Inter-American Commission on Human Rights, “Towards the Closure of Guantánamo.” OAS/Ser. L/V/II, Doc. 20/15, 3 June 2015; United States Senate Select Committee on Intelligence, “Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program,” available at <https://web.archive.org/web/20141209165504/http://www.intelligence.senate.gov/study2014/sscistudy1.pdf>; e.g., Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition*, 2013, available at <http://www.opensocietyfoundations.org/reports/globalizing-torture-cia-secret-detention-and-extraordinary-rendition>; Michael Hayden, Director, CIA, A Conversation with Michael Hayden, Council on Foreign Relations (Sept. 7, 2007), available at <http://www.cfr.org/terrorism/conversation-michael-hayden-rush-transcript-federal-news-service/p14162>; European Court of Human Rights, *Case of El-Masri v. Macedonia*, Judgment of 13 December 2012, para. 43, available at <http://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2239630/09%22%5D,%22itemid%22:%5B%22001-115621%22%5D%7D>; European Court of Human Rights, *Case of Al-Nashiri v. Poland*, Judgment of 16 February 2015, available at

Ameziane to Guantánamo Bay, Cuba, and other detention centers around the world. The International Committee of the Red Cross (ICRC) has described the entire detention regime at Guantánamo as an “intentional system of cruel and degrading treatment and a form of torture.”<sup>46</sup> The Commission has reached similar conclusions in its recent thematic report on Guantánamo.

39. The United States government authorized the systematic and generalized practice of torture by redefining torture under its domestic law. Lawyers at the Department of Justice Office of Legal Counsel (OLC) authored memoranda that disregarded international standards in authorizing numerous practices which have long been recognized as torture under international law, which were then implemented at Guantánamo and other detention sites that OLC further determined were outside the reach of U.S. or international law.<sup>47</sup>

40. This resulted in the systematic, officially-sanctioned policy and practice of torture and ill-treatment, perpetrated by State agents, against a targeted group of individuals, including Mr. Ameziane. As the Commission has noted, all individuals detained at Guantánamo were foreign Muslim men and boys.<sup>48</sup> Amnesty International correctly characterized Guantánamo Bay as “the gulag of our times.”<sup>49</sup>

41. The State additionally has aggravated international responsibility because Mr. Ameziane’s human rights were continually violated despite precautionary measures issued by this Commission. This Commission already determined that the State’s violation of collective precautionary measures (PM 259/02) resulted in irreparable harm to Mr. Ameziane and the other men detained at Guantánamo.<sup>50</sup>

---

[http://hudoc.echr.coe.int/eng?i=001-146044#{%22itemid%22:\[%22001-146044%22\]}](http://hudoc.echr.coe.int/eng?i=001-146044#{%22itemid%22:[%22001-146044%22]}); European Court of Human Rights, *Case of Husayn (Abu Zubaydah) v. Poland*, Judgment of 16 February 2015, available at [http://hudoc.echr.coe.int/eng?i=001-146047#{%22itemid%22:\[%22001-146047%22\]}](http://hudoc.echr.coe.int/eng?i=001-146047#{%22itemid%22:[%22001-146047%22]}); Parliament, TDIP Temporary Committee, *Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners* (Jan. 30, 2007), available at [http://www.europarl.europa.eu/comparl/tempcom/tdip/final\\_report\\_en.pdf](http://www.europarl.europa.eu/comparl/tempcom/tdip/final_report_en.pdf).

<sup>46</sup> The New York Times, “Red Cross Finds Detainee Abuse in Guantánamo”, by Neil A. Lewis, November 30, 2004 (available at: [http://www.nytimes.com/2004/11/30/politics/30gitmo.htm?\\_r=1](http://www.nytimes.com/2004/11/30/politics/30gitmo.htm?_r=1)).

<sup>47</sup> Memorandum from Jay S. Bybee, assistant attorney general, to John Rizzo, acting general counsel of the CIA, entitled “Interrogation of al Qaeda Operative,” August 1, 2001 (“Second Bybee Memo”), pp. 2, 10-11. Available at: [dspace.wrlc.org/doc/bitstream/20141/70867/00355\\_020801\\_004display.pdf](https://dspace.wrlc.org/doc/bitstream/20141/70867/00355_020801_004display.pdf); Alberto Gonzales, White House Counsel, Memorandum for the President, “Decision re: application of the Geneva Convention on prisoners of war to the conflict with al Qaeda and the Taliban” (Jan. 25, 2002) (draft), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.25.pdf>; see also David Cole (ed.), THE TORTURE MEMOS: RATIONALIZING THE UNTHINKABLE (New York Press 2009); et al.

<sup>48</sup> Inter-American Commission on Human Rights, “Towards the Closure of Guantánamo.” OAS/Ser. L/V/II, Doc. 20/15, 3 June 2015 Para 221.

<sup>49</sup> Amnesty International Report 2005: The State of the World’s Human Rights, Index No. POL 10/001/2005 (May, 25 2005) (Foreword by Irene Khan, Secretary General).

<sup>50</sup> See Precautionary Measures No. MC-259-02 (March 12, 2002) (ordering United States to take urgent measures to have rights of the detainees determined by a competent tribunal); Precautionary Measure No. MC-259-13 (July 23, 2013) (noting “failure of the United States to comply with the precautionary measures already in force in favor of the detainees since 2002”); IACHR Resolutions No. 2/11 and 2/06.

42. The State further disregarded the Commission on December 5, 2013, when it forcibly transferred Mr. Ameziane to Algeria in flagrant defiance of the international *non-refoulement* obligations specifically set forth in Precautionary Measures 211/08 and 259/02.<sup>51</sup>

43. In consideration of the systematic nature of violations and non-compliance with precautionary measures, and as the Inter-American Court and Commission have done in similar cases,<sup>52</sup> the Inter-American Commission should declare the State bears aggravated responsibility for the human rights violations in this case.

## 5. VIOLATIONS OF THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

44. The U.S. Government is responsible for violating Mr. Ameziane's rights under Articles I, II, III, IV, V, VI, XI, XXIII, XXV, and XXVI of the American Declaration due to his arbitrary and indefinite detention, lack of access to effective review of the legality of his detention, suffering torture, and cruel, inhuman and degrading treatment in U.S. custody, deprivation of his right to private and family life, violation of non-discrimination based on race and religion, and the right to truth. The United States further failed to investigate, prosecute and punish those responsible for human rights violations and provide him adequate redress.

### 5.1 Arbitrary Detention Without Prompt Judicial Review (Violations of Articles I and XXV)

45. Mr. Ameziane's prolonged detention without charge in Guantánamo Bay constitutes an arbitrary deprivation of his liberty and a denial of his right to a prompt judicial review of his detention in violation of Articles I and XXV of the American Declaration.

46. Article I of the American Declaration provides:

Every human being has the right to life, liberty, and the security of his person.<sup>53</sup>

47. Article XXV of the American Declaration provides:

No one may be deprived of his liberty except ... according to the procedures established by pre-existing law.

[ . . . ]

Every individual who has been deprived of his liberty has the right to have the legality of this detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. [ . . . ]<sup>54</sup>

---

<sup>51</sup> See Extension of Precautionary Measures No. MC-259-13 (July 23, 2013) (ordering the United States to "transfer the detainees to home or third countries in observance of human rights guarantees, principally the obligation of *non-refoulement*"); MC-211-08 (August 20, 2008) (ordering the State to "make certain that he is not deported to any country where he might be subjected to torture or other mistreatment"); IACHR Press Release, Dec.19, 2013, "IACHR Condemns Forced Transfer of Djamel Ameziane from Guantanamo to Algeria."

<sup>52</sup> See, e.g., I/A Court H. R., *Case of Myrna Mack Chang*, Judgment of November 25, 2003. Series C No. 101, para. 139 (Court found aggravated violation due to systematic nature of violations); I/A Court H.R., *Case of La Cantuta*, Judgment of November 29, 2006. Series C No. 162, para. 115 (Court found aggravated violation due to systematic nature of violations); I/A Comm'n H.R., *Family Barrios Case* Merits Report 12,488, Par. 381 (Commission found aggravated violations because petitioners suffered continued violations despite having precautionary measures in their favor).

<sup>53</sup> American Declaration of the Rights and Duties of Man, Mar. 30-May 2, 1948, O.A.S. Res. XXX, OEA/Ser.LV/II.82 doc 6 rev. 1, Article I.

48. In the context of armed conflict, international humanitarian law may serve as the *lex specialis* for interpreting international human rights instruments, such as the American Declaration.<sup>55</sup> The Inter-American Commission has made it clear in any event that Guantánamo detainees, including Mr. Ameziane, are entitled to be free from arbitrary, indefinite detention.<sup>56</sup> Despite the Commission’s admonitions, the United States continuously failed to determine Mr. Ameziane’s legal status in accordance with international law – and indeed sought repeatedly, and ultimately successfully, to prevent the courts from issuing any ruling on the legality of his detention – causing extensive and irreparable harm to Mr. Ameziane.<sup>57</sup>

### 5.1.1 Mr. Ameziane’s Detention Was Arbitrary

49. The United States plainly violated Mr. Ameziane’s right to not be arbitrarily deprived of his liberty by imprisoning him for more than eleven years without charge. Under international human rights law, prolonged or indefinite detention without charge or prompt judicial review violates established norms.<sup>58</sup> Alternatively, for detainees where international humanitarian law is the *lex specialis*, the United States’ failure to make proper status determinations, and to try detainees thought to have committed crimes or release detainees who pose no imperative security threat, constitutes an arbitrary deprivation of liberty.

50. In the initial petition, we explained in detail that from the beginning, the proper determination of Mr. Ameziane’s legal status was rendered virtually impossible by the U.S. government’s ambiguous definition of “enemy combatant” and the inadequacy of its administrative review processes. The Petitioners reaffirm these arguments in full.<sup>59</sup>

51. Mr. Ameziane was abducted and transported to United States detention facilities in Kandahar, Afghanistan, and subsequently transported to detention facilities in Guantánamo Bay, all while under the effective control of United States agents. This chain of custody and detention was designed to deprive prisoners like Mr. Ameziane of effective judicial review and facilitate torture and ill-treatment.<sup>60</sup> Indeed, Guantánamo was chosen because it was thought to

---

<sup>54</sup> American Declaration of the Rights and Duties of Man, Mar. 30-May 2, 1948, O.A.S. Res. XXX, OEA/Ser.L/V/II.82 doc 6 rev. 1, Article XXV.

<sup>55</sup> See, e.g., IACHR Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., para. 61 (Oct. 22, 2002), available at <http://www.cidh.org/terrorism/eng/toc.htm>; Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, para. 7 (Nov. 22, 2007) [hereinafter “2007 Scheinin Report”], available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/149/55/PDF/G0714955.pdf?OpenElement>.

<sup>56</sup> Organization of American States (OAS), Res. No. 2/11 “Regarding the Situation of the Detainees at Guantánamo Bay, United States.” MC 259-02. (July 22, 2011); see, e.g., American Declaration on the Rights and Duties of Man, O.A.S. Res. XXX (1948), Article XXV; IACHR, Report No. 51/01, Case 9903, Rafael Ferrer-Mazorra et al, United States, April 4, 2001, paras. 209 *et seq.*

<sup>57</sup> See Precautionary Measures No. 259/13, 259/02 (July 23, 2013) (citing “the failure of the United States to comply with the precautionary measures already in force”); see also IACHR Precautionary Measures No. 259 (March 12, 2002), at 3 (citing Article 5 of the Third Geneva Convention); *et al.*

<sup>58</sup> See IACHR Report on Terrorism and Human Rights, *cit.*, at paras. 139-40.

<sup>59</sup> See Petition of August 6, 2008, Section 5.A, pages 51 to 64.

<sup>60</sup> As noted above, it has been established that there is a worldwide network of secret detentions and “extraordinary renditions” in CIA “black sites” and in military or intelligence installations, for the purpose of subjecting suspected terrorists to torture and ill-treatment outside the scope of legal protections, which

be a “legal black hole,” or “the legal equivalent of outer space.” It was designed to be “a place where no laws applied,” where military, intelligence and law enforcement officials could detain and interrogate suspected fighters or terrorists without scrutiny or interference from the courts or the public.<sup>61</sup>

52. In 2004, the U.S. Supreme Court rejected that notion and found that the U.S. government exerts “complete jurisdiction and control” over Guantánamo Bay, thereby triggering the application of *habeas corpus* rights, which the Court deemed to be independent of citizenship status.<sup>62</sup> The Supreme Court reaffirmed this finding in 2008, when it once again held in *Boumediene v. Bush*<sup>63</sup> that Guantánamo detainees are entitled to file writs of *habeas corpus* to challenge their detention and that U.S. federal courts have jurisdiction over such detentions.

53. Despite its theoretical availability, during nearly twelve years of arbitrary detention – at least five of those after being approved for transfer – *habeas corpus* relief did not provide adequate remedy for Mr. Ameziane. His *habeas corpus* case was stayed for years over his objections, with much of the record sealed, on the premise that he would be subject to a safe transfer that never came. His detention was arbitrary by any measure.

54. It is not disputed that as a matter of international humanitarian law and human rights law, the United States has the obligation to determine the legal status of Guantánamo detainees and provide them with an opportunity to challenge that classification. It failed to satisfy this obligation by using the ambiguous definition of “enemy combatant,” and later “unprivileged enemy belligerent,”<sup>64</sup> incorrectly applying these terms to Mr. Ameziane, and creating a flawed administrative mechanism to review detainee status.

55. Since it first adopted precautionary measures in March 2002, the Commission has insisted that the United States take the “urgent measures necessary to have the legal status of the detainees at Guantánamo Bay determined by a competent tribunal,” expressing concern that “it remains entirely unclear from their treatment by the United States what minimum rights under international human rights and humanitarian law the detainees are entitled to.”<sup>65</sup> The Commission reiterated this request in 2003, 2004 and 2005.<sup>66</sup> As the Commission has explained, determining detainees’ statuses is indispensable to identifying the scope of their rights and assessing whether their rights have been respected.<sup>67</sup>

56. As explained in the initial petition, the State compounded these errors by creating a fundamentally flawed administrative review processes, termed the Combatant Status Review Tribunals and the Administrative Review Boards, which were intended and implemented to

---

involves the use of United States military aircraft to transport detainees to Guantánamo Bay, Cuba, and other detention centers.

<sup>61</sup> Joseph Margulies, *Guantánamo and the Abuse of Presidential Power* 11, 45 (2006).

<sup>62</sup> *Rasul v. Bush*, 542 U.S. 466, 467 (2004).

<sup>63</sup> *Boumediene v. Bush*, 553 U.S. 723, 771, 791-92 (2008).

<sup>64</sup> Military Commissions Act of 2009, 10 U.S.C 948a(7).

<sup>65</sup> See IACHR Precautionary Measures No. 259 (March 12, 2002).

<sup>66</sup> See IACHR Precautionary Measures No. 259/02 and 259/13 (March 18, 2003; July 29, 2004; Oct. 28, 2005; July 23, 2013).

<sup>67</sup> See, e.g., IACHR Precautionary Measures No. 259 (March 12, 2002), at 3.

entrench indefinite detention without due process of law, and which were ultimately rejected as an adequate substitute for *habeas corpus* by the U.S. Supreme Court in its 2008 *Boumediene* decision. As described above, these errors were further compounded by the State's attempts to block Mr. Ameziane from obtaining a judicial ruling on the legality of his detention.

### 5.1.2 The State Conceded It Had No Justification for Mr. Ameziane's Detention

57. As explained above, in 2009, over Mr. Ameziane's objections, a federal district court indefinitely stayed his *habeas corpus* petition on motion of the U.S. government, for reasons that were not made public until October 5, 2012, when the appeals court unsealed the record.<sup>68</sup>

58. These records show that the stay was predicated on Mr. Ameziane's unanimous approval for transfer from Guantánamo by all U.S. government agencies with a stake in Guantánamo in 2008 (by the Bush Administration) and again in 2009 (by the Obama Administration).<sup>69</sup> In its written arguments, U.S. government counsel stated there were no "military rationales" for his detention, and argued *habeas corpus* is not an effective remedy for Mr. Ameziane:

In the absence of a stay, Respondents, the Court, and opposing counsel will have to dedicate limited time and resources to a habeas proceeding concerning the detention of a petitioner whom [the Government] no longer wish[es] to detain. [...] The only issue truly remaining is the country to which Petitioner should be sent.<sup>70</sup>

59. Mr. Ameziane was prohibited from pursuing his domestic *habeas corpus* case based on the State's promise of a safe transfer that never happened.<sup>71</sup> The State thus simultaneously foreclosed the sole judicial remedy available to Mr. Ameziane while it continued to illegally and arbitrarily detain him for years until it forcibly transferred him to Algeria. This incongruent, bad-faith position resulted in Mr. Ameziane losing years of his life in Guantánamo.

60. Moreover, as explained above, adding insult to injury, the U.S. government continued to imply without legitimate factual basis that Mr. Ameziane was a terrorist merely because he had been detained at Guantánamo. On that basis the government refused to return his personal property, including his life savings, which he desperately needs in order to survive.<sup>72</sup>

61. Again, it bears emphasis that these facts are not seriously disputed by the State.

---

<sup>68</sup> See Petitioners' October 29, 2012 Communication and Annex C to that Communication.

<sup>69</sup> See Petitioners' October 29, 2012 Communication and Annex C to that Communication.

<sup>70</sup> Respondent's Motion to Stay All Proceedings for Petitioner who is Approved for Transfer or Release. U.S. District Court for the District of Columbia, In RE: Guantánamo Bay Litigation. Misc. No. 08-442 (TFH) Civil No. 05-392 (ESH) (December 17, 2008), pp. 4-5.

<sup>71</sup> As the federal judge hearing the case noted in 2009, Mr. Ameziane paradoxically could now be in a worse position by being cleared for transfer than by having an adjudication of his *habeas* case. See Memorandum Opinion and Order, U.S. District Court for the District of Columbia. *Ameziane v. Obama*. Civil Action No. 05-cv-0392 (ESH) (July 8, 2009), p.6, See Petitioners' October 29, 2012 Communication and Annex C to that Communication.

<sup>72</sup> Mem. Op., *Ameziane v. Obama*, No. 05-cv-392 (ESH) (D.D.C. July 21, 2014) (dkt. no. 364) (denying request for return of property and dismissing *habeas* case as moot). ANNEX 3.



### 5.1.3 The State Failed to Ascertain the Legality of Detention Without Delay

62. As stated above, Article XXV of the Declaration provides that anyone “deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court.”<sup>73</sup> Article 7(6) of the American Convention, which protects the right to personal liberty and the remedy of *habeas corpus*, echoes this guarantee, providing that anyone who is deprived of his liberty “shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.”<sup>74</sup> Moreover, in its precautionary measures in favor of Guantánamo detainees, the Commission has particularly emphasized “the longstanding and fundamental role that the writ of *habeas corpus* plays as a means of reviewing Executive detention.”<sup>75</sup>

63. The Commission has emphasized that the right to *habeas corpus* is intended to be a timely remedy.<sup>76</sup> In ordinary circumstances, the Commission has suggested that a delay of more than two or three days in bringing a detainee before a judicial authority would generally be considered unreasonable.<sup>77</sup> In a case against the United States relating to military operations in Grenada, the Commission stated that a detention of “six to nine days after the cessation of hostilities without access to any review of the legality of [the] detention” was incompatible with the terms of the American Declaration.<sup>78</sup> In the context of alleged terrorism, both the Commission and the Court have found that holding an individual suspected of terrorism for 20 days without charge or judicial review violated the right to be free from arbitrary detention.<sup>79</sup>

64. According to customary international law, a person deprived of liberty should be given an opportunity to challenge the lawfulness of their detention through an effective writ of *habeas corpus*. The jurisprudence of the Inter-American System clearly establishes that certain fundamental aspects of the right to personal liberty, including the right to a writ of *habeas corpus*, are non-derogable even in times of emergency or imminent threats to national security<sup>80</sup>

---

<sup>73</sup> American Declaration of the Rights and Duties of Man, Mar. 30-May 2, 1948, O.A.S. Res. XXX, OEA/Ser.L/V/II.82 doc 6 rev. 1, Art. XXV.

<sup>74</sup> American Convention, Art. 7.6. See also ICCPR, art. 9(4) (“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”).

<sup>75</sup> IACHR Precautionary Measures No. 259 (Oct. 28, 2005), at 8.

<sup>76</sup> See, e.g., IACHR Precautionary Measures No. 259 (Oct. 28, 2005), at 8 (*citing* Castillo Paez Case, Inter-Am. Ct. H.R., Judgment of November 3, 1997 (Ser. C) No. 34, para. 83).

<sup>77</sup> IACHR Report on Terrorism and Human Rights, *cit.*, at para. 122, n. 334. See also *Suarez-Rosero v. Ecuador*, Inter-Am. Ct. H.R., Judgment of November 12, 1997 (Ser. C) No. 35 (finding that a judicial proceeding occurring one month after a defendant’s arrest constituted arbitrary detention), available at <http://www1unm.edu/humanrts/Inter-Am.C.H.R./C/35-ing.html>.

<sup>78</sup> IACHR, *Coard et al. v. United States*, Case No. 10.951, Report No. 109/99, Annual Report of the IACHR 1999, para. 57.

<sup>79</sup> See, e.g., *Cantoral Benavides v. Peru*, Inter-Am. Ct. H.R., Judgment of August 18, 2000 (Ser. C) No. 69, at paras. 63, 66, 74.

<sup>80</sup> IACHR Report on Terrorism and Human Rights, *cit.*, at paras. 127, 139. The Inter-American Court has ruled that the right to *habeas corpus* under Article 7(6) may not be subject to derogation in the Inter-American System. *Id.* at para. 126, n. 342.; Inter-Am. Ct. H.R., Advisory Opinion, OC 8/87, of January 30 1987, *Habeas Corpus in Emergency Situations*, para. 42.

– a position supported by the U.N. Human Rights Committee.<sup>81</sup> The Inter-American Court has also emphasized that judicial review is “a fundamental requirement to guarantee an adequate control and scrutiny of the administrative acts that affect fundamental rights”<sup>82</sup> and that “these remedies must not only formally exist in the legislation but they must be effective, that is to say, must comply with the purpose of obtaining, without delay, a decision on the lawfulness of the arrest or detention.”<sup>83</sup>

65. Mr. Ameziane was transferred to Guantánamo in February 2002, purportedly on the basis of a unilateral determination by the Executive that he is an “enemy combatant.” He was held without charge and without effective judicial review of the lawfulness of his detention during the more than eleven intervening years until December 5, 2013, when he was forcibly transferred to Algeria.

66. For the first two years of his detention, Mr. Ameziane was held virtually *incommunicado*, without access to counsel or administrative review of his status and detention. In June 2004, following the U.S. Supreme Court’s ruling in *Rasul*,<sup>84</sup> he and other detainees were, for the first time, afforded access to lawyers and the right to *habeas corpus* in U.S. courts. The right to *habeas*, however, never proved an effective remedy.

67. Notwithstanding Mr. Ameziane’s efforts to reopen his domestic case in 2008,<sup>85</sup> when *Boumediene* once again made the right to *habeas corpus* theoretically available to detainees, Mr. Ameziane was unable to access the *habeas* remedy.<sup>86</sup>

68. Mr. Ameziane’s imprisonment for over eleven years without charge and without prompt judicial review constitutes a clear and indisputable violation of his rights under international human rights law, as embodied by Articles I and XXV of the American Declaration.

## **5.2 Torture and Cruel, Inhuman, and Degrading Treatment (Violations of Articles I and XXV in Conjunction with XI and III)**

69. In recognition of the absolute prohibition of torture in customary international law, the instruments and jurisprudence of the Inter-American System establish the absolute prohibition of the use of torture and cruel, inhuman, or degrading treatment or punishment (“CIDT”) for any purpose and in all circumstances.<sup>87</sup> It is well established that the detention

---

<sup>81</sup> See U.N. Human Rights Committee, General Comment No. 29 (2001), para. 11 (explaining that Article 9(4) is non-derogable even in times of emergency); 2007 Scheinin Report, *supra* note 55, para. 14.

<sup>82</sup> I/A Court H.R., *Case of Vélez Loo v. Panama*. Preliminary Objections, Merits, Reparations, and Costs, Judgement of November 23, 2010, Series C No. 218, at para. 126.

<sup>83</sup> I/A Court H.R., *Case of Vélez Loo v. Panama*, *cit.*, at par. 129

<sup>84</sup> *Rasul v. Bush*, 542 U.S. 466 (2004).

<sup>85</sup> See Motion for status conference to address the government’s seizure of legal materials. *Ameziane v. Obama*. Civil Action No. 05-392 (ESH) (July 26, 2013). ANNEX 4; Letter from Petitioners to Commissioner Robinson, dated August 9, 2013.

<sup>86</sup> Indeed, the State itself conceded that even if Mr. Ameziane’s case were resolved in his favor, he would have been “basically in the same position” as regards his transfer and release. Transcript of Motion Hearing, U.S. District Court for the District of Columbia. *Ameziane v. Obama*. Civil Action No. 05-cv-0392 (ESH) (June 30, 2009), p. 17.

<sup>87</sup> The System’s prohibitions are embodied in the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights; the Inter-American Convention to Prevent and Punish Torture; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

conditions and interrogation techniques sanctioned and imposed at Guantánamo as part of a systematic *modus operandi* amounted to torture.<sup>88</sup>

70. As documented in numerous submissions to the Commission over several years, none of which has been contested by the State, Mr. Ameziane was subjected to conditions of confinement and mistreatment that this Commission, along with other international bodies, recognizes as torture and other inhuman treatment. The appalling conditions and treatment that Mr. Ameziane was subjected to constitute aggravated violations of Articles I and XXV of the American Declaration as part of a deliberate and purposeful system of torture and ill-treatment authorized and carried out by U.S. government officials and agents.

### **5.2.1 Torture and Cruel, Inhuman, or Degrading Treatment are Absolutely Prohibited under International Law**

71. The absolute prohibition of torture is a peremptory norm, meaning that it is binding on all States regardless of treaty ratification status, from which no derogation is permitted.<sup>89</sup> The Inter-American Commission has recognized the prohibition of torture to be a *jus cogens* norm.<sup>90</sup> The Inter-American Court, for its part, has established that in addition to the *jus cogens* nature of torture prohibition,<sup>91</sup> other forms of CIDT are similarly prohibited under customary international law.<sup>92</sup>

72. The American Declaration reflects this prohibition in at least two articles. Article I protects the right of “[e]very human being ... to life, liberty and the security of his person.”<sup>93</sup> Article XXV of the American Declaration specifically protects the right of persons in state custody to humane treatment: “[e]very individual who has been deprived of his liberty ... has the

---

See also I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, paras. 142 – 150 (noting that these conventions form an Inter-American *corpus juris* prohibiting torture); *et al.*

<sup>88</sup> The ICRC has described the entire detention regime at Guantánamo as an “intentional system of cruel and degrading treatment and a form of torture.” The New York Times, “Red Cross Finds Detainee Abuse in Guantánamo”, by Neil A. Lewis, November 30, 2004, available at [http://www.nytimes.com/2004/11/30/politics/30gitmo.htm?\\_r=1](http://www.nytimes.com/2004/11/30/politics/30gitmo.htm?_r=1).

<sup>89</sup> See, e.g., Restatement of Foreign Relations Law of the United States (Third), § 702; Vienna Convention on the Law of Treaties, art. 53; Sir Ian Sinclair, *The Vienna Convention on the Law of Treaties*, Manchester University Press, 1973, p. 208.

<sup>90</sup> See IACHR, Report on the Situation of Human Rights Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, doc. 40 rev., para. 154 (Feb. 28, 2000); *Case of Lori Berenson-Mejía*, cit., at para. 100. The Court has stated that “the fact that a State is confronted with terrorism [or a situation of internal upheaval] should not lead to restrictions on the protection of the physical integrity of the person.” See *Case of Gomez Paquiyauri*, cit., at para. 37; *Case of Cantoral Benavidez*, cit., at para. 143; *Case of Castro*, cit., at para. 271; *Caesar v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 123, para. 70 (Mar. 11, 2005).

<sup>91</sup> *Goiburú v. Paraguay*, Inter-Am. Ct. H.R. (ser. C) No. 154, para. 128 (Sept. 26, 2006); *Case of Tibi*, cit., at para. 143; *Gómez-Paquiyauri Brothers v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 110, para. 112 (July 8, 2004); *Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 103, para. 92 (Nov. 27, 2003).

<sup>92</sup> *Ximenes-Lopes v. Brazil*, Inter-Am. Ct. H.R. (ser. C) No. 139, para. 127 (Nov. 30, 2005).

<sup>93</sup> American Declaration, art. I.

right to humane treatment during the time he is in custody.”<sup>94</sup> The Commission has consistently interpreted personal security to include the right to humane treatment and has further specified that “[a]n essential aspect of the right to personal security is the absolute prohibition of torture.”<sup>95</sup>

73. In interpreting and applying the absolute prohibition of torture, the Inter-American Commission has generally looked to the American Convention on Human Rights<sup>96</sup> and the Inter-American Convention to Prevent and Punish Torture (“Inter-American Torture Convention”). The Commission has interpreted Article I of the American Declaration as containing a prohibition similar to that under the American Convention.<sup>97</sup>

74. Consonant with the international definition of torture,<sup>98</sup> the Commission has indicated that torture consists in the following elements: (1) it must produce physical or mental pain and suffering in a person; (2) it must be committed with a purpose or intent (such as obtaining information, punishment, intimidation, discrimination, or any other purpose); and (3) it must be committed by a public official or by a private person acting at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>99</sup>

75. The key factor that distinguishes torture from other cruel, inhuman or degrading treatment or punishment<sup>100</sup> is “the intensity of the suffering inflicted.”<sup>101</sup> For treatment to be considered cruel, inhuman or degrading, it must attain a minimum level of severity, which the Commission has held is a relative measurement and dependent on the specific circumstances of each case, including the duration of the treatment, its physical and mental effects, and the sex, age and health of the victim, among other factors.<sup>102</sup>

76. In order to establish a state’s international responsibility for acts of torture it is “not necessary to determine the perpetrators’ culpability or intentionality, nor is it essential to

---

<sup>94</sup> American Declaration, art. XXV. The Commission has found that, by depriving a person of his liberty, the state “places itself in the unique position of guarantor of his right to life and to humane treatment.” *Minors in Detention v. Honduras*, Case 11.491, Inter-Am. C.H.R., Report No. 41/99, OEA/Ser.L/V/II.102, doc. 6 rev., para. 135 (1998).

<sup>95</sup> See IACHR Report on Terrorism and Human Rights, at para. 155, n.389; see also *Ovelario Tames v. Brazil*, Case 11.516, Inter-Am. C.H.R., Report No. 60/99, OEA/Ser. L/V/II.102, doc. 6 rev. , para. 39 (1998).

<sup>96</sup> Article 5 of the American Convention, the equivalent of Article I of the Declaration, U.S.es even more explicit terms than the American Declaration in guaranteeing the right of “[e]very person ... to have his physical, mental, and moral integrity respected. ... No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.” American Convention, art. 5.

<sup>97</sup> See IACHR Report on Terrorism and Human Rights, at para. 155 n.388.

<sup>98</sup> See, e.g., Inter-American Convention to Prevent and Punish Torture, art. 2.1; United Nations Convention Against Torture (“CAT”), Art. 1.1.

<sup>99</sup> See IACHR, Report on Terrorism and Human Rights, at para. 154 n.385; see also Robert K. Goldman, *Trivializing Torture: The Office of Legal Counsel’s 2002 Opinion Letter and International Law Against Torture*, in 12 No. 1 Hum. Rts. Brief (2004).

<sup>100</sup> All forms of CIDT are, in any case, prohibited under international law.

<sup>101</sup> IACHR, Report on Terrorism and Human Rights, cit., at para. 158 (citing *Case of Luis Lizardo Cabrera*, at para. 80); see also *Caesar v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 123, para. 70 (Mar. 11, 2005); *Lori Berenson-Mejia v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 119, para. 100 (Nov. 25, 2004).

<sup>102</sup> IACHR, Report on Terrorism and Human Rights, cit., at para. 157; see also *Case of Hermanos Gomez – Paquiyaauri*, cit.; *Case of Loayza Tamayo*, cit.; *Case of Jailton Neri da Fonseca v. Brazil*, cit.

identify individually the agents to whom the acts of violation are attributed.”<sup>103</sup> Instead, it need only be shown that state authorities supported or tolerated the infringement of the rights protected, “or that the state did not take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of those violations.”<sup>104</sup> In this case, Mr. Ameziane was subjected to torture and CIDT by state agents as part of State policy and practice.

77. During his more than eleven years in arbitrary and indefinite detention, Mr. Ameziane was subjected to numerous forms of torture and cruel, inhuman and degrading treatment by State agents. In particular, the United States subjected Mr. Ameziane to: (1) prolonged incommunicado detention and isolation; (2) other physical and verbal abuse amounting to torture; (3) attempted transfer to Algeria in violation of *non-refoulement* obligations; (4) threats of force feeding; (5) denial of adequate medical care; and (6) religious abuse and interference, in violation of Articles I and XXV of the American Declaration.

### 5.2.2 Detention Conditions, including Prolonged Incommunicado Detention and Isolation

78. Mr. Ameziane’s conditions of detention at Guantánamo, including in particular his solitary confinement in Camp VI starting in March 2007, and after April 2013 when he was punitively forced into solitary confinement in retaliation for his participation in a mass hunger strike,<sup>105</sup> fail to meet the basic standards required by the American Declaration for the personal security and humane treatment of persons in state custody, as well as by other sources of international law the Commission uses in interpreting the Declaration’s provisions. As the ICRC has said of the conditions of detention at Guantánamo, “the construction of [the detention facilities], whose stated purpose is the production of intelligence, cannot be considered other than an intentional system of cruel, unusual and degrading treatment and a form of torture.”<sup>106</sup>

79. The Inter-American System’s jurisprudence on the right to humane treatment establishes that persons deprived of their liberty have the right to conditions of detention that respect their personal dignity and that the State, as the primary entity responsible for prisons, must ensure conditions that safeguard prisoners’ fundamental rights.<sup>107</sup> In previous cases, the Commission and the Court have specifically found that detention conditions similar to those in which Mr. Ameziane was held amount to torture and inhuman treatment.

80. In *Lori Berenson-Mejia v. Peru*, a case of an American citizen detained in Peru,<sup>108</sup> both the Inter-American Court and the U.N. Committee against Torture<sup>109</sup> found that a

---

<sup>103</sup> IACHR, *Sebastião Camargo Filho v. Brazil*, Case 12.310, Report 25/09, Admissibility and Merits (March 19, 2009), para.76.

<sup>104</sup> *Id.*

<sup>105</sup> See, e.g., “Djamel Ameziane's Decade in Guantanamo,” Center for Constitutional Rights, available online at <https://www.youtube.com/watch?v=7gFqPtqJlaE>.

<sup>106</sup> ICRC, *The ICRC's Work at Guantánamo Bay* (Nov. 30, 2004), available at <http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList4/C5667B446C9A4DF7C1256F5C00403967>.

<sup>107</sup> *IACHR, Nelson Ivan Serrano Saenz v. Ecuador*, Case 12.525, Report No. 84/09 (Merits), AugU.S.t 6, 2009, para. 53; See also: *Case of Bulacio*, cit., at para. 126; *Case of Cantoral Benavides*, cit., at para. 87; *Case of Lori Berenson Mejia*, cit., at para. 102; *Case of Tibi*, cit., at para. 150; *Case of the “Juvenile Reeducation Institute”*, cit., at para. 151; IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, 31 December 2011, paras. 49-50.

<sup>108</sup> Congressional representatives, the State Department and U.S. Presidents Clinton and Bush have sought to intervene on Lori Berenson’s behalf before the Peruvian government in response to the conditions of her

detention regime whose conditions, in many respects, closely resembled those of Mr. Ameziane's imprisonment – including continuous solitary confinement for one year in a small cell without ventilation, natural lighting, heating, adequate food, sanitary facilities or necessary medical care (for vision problems resulting from the lack of natural light in the small cell), coupled with severe restrictions on receiving visitors – constituted cruel, inhuman and degrading treatment.<sup>110</sup>

81. Inter-American case law has also specifically established that solitary confinement constitutes CIDT, and torture under certain circumstances. For example, in the *Velasquez-Rodriguez* case, the Court held that “[p]rolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being,” a position that the Court and the Commission have consistently held in regards to prisoners’ rights to humane treatment.<sup>111</sup>

82. In *Cantoral-Benavides v. Peru*, the Court reaffirmed its previous findings in holding that solitary confinement in a small cell with no ventilation or natural light, and in a restrictive prison regime, may cause severe bodily injury and emotional suffering.<sup>112</sup> It consequently concluded that such conditions of detention, or even *threats* of such detention,<sup>113</sup> when coupled with other forms of aggression, may constitute torture.<sup>114</sup>

---

detention. See ABC News, *Lori Berenson May Be Lesson for Amanda Knox*, Dec. 8, 2009, available at <http://abcnews.go.com/WN/AmandaKnox/lori-berenson-prisoner-peru-lessons-amanda-knox/story?id=9272476>.

<sup>109</sup> See *Case of Lori Berenson*, cit., at para. 107 (citing U.N. Committee Against Torture, Investigation in relation to Article 20: Peru, A/56/44, paras. 144-93 (May 16, 2001); Inquiry under Article 20, paras. 183-84).

<sup>110</sup> *Case of Lori Berenson*, cit., at paras. 106, 109; see also *Case of Tibi*, cit., at para. 150; *Case of the “Juvenile Reeducation Institute*, cit., at para. 151; *Case of Cantoral Benavides*, cit., at para. 89; *Martín Javier Roca Casas v. Peru*, Case 11.233, Inter-Am. C.H.R., Report No. 39/97, OEA/Ser.L/V/II.98, doc. 6 rev., para. 90 (1997); *Case of Loayza Tamayo*, cit., at paras. 57-58; *Case of Castillo-Petruzzi*, cit., at para. 197; Nicaragua, Case 9170, Inter-Am. C.H.R. (1986) (holding that a man who had been kept in isolation for nine months had been denied his right to humane treatment, in violation of Article 5 of the American Convention). See also First United Nations Congress on the Prevention of Crime and Treatment of Offenders, Aug. 22-Sept. 3, 1995, U.N. Standard Minimum Rules for the Treatment of Prisoners, adopted by U.N. Econ. & Soc. Council, Res. 663C (XXIV) (July 31, 1957) and Res. 2076 (LXII) (May 13, 1977) [hereinafter “UN Minimum Rules for the Treatment of Prisoners”]. The fact that some of these conditions, such as the continuous solitary confinement, changed or improved after a certain period of time, did not affect the Court’s finding. See *Case of Lori Berenson*, cit., at para. 108; see also *Case of Loayza Tamayo*, cit., at paras. 57-58; *Case of Castillo-Petruzzi*, cit., at para. 197

<sup>111</sup> *Velasquez Rodriguez case*, (ser. C) No. 4, para. 156 (July 28, 1988); see also *Godínez Cruz case*, (ser. C) No. 5, para. 164 (Jan. 20, 1989); *Camilo Alarcon Espinoza v. Peru*, Cases 10.941, 10.942, 10.944, 10.945, Inter-Am. C.H.R., Report No. 40/97, OEA/Ser.L/V/II.98, doc. 6 rev., para. 83 (1997); *Case of Lori Berenson*, cit., at para. 103; IACHR, Report on Terrorism and Human Rights, cit., at para. 162.

<sup>112</sup> *Case of Cantoral Benavides v. Peru*, Inter-Am. Ct. H.R. (Series C) No. 69, para. 91 (August 18, 2000).

<sup>113</sup> *Case of the “Juvenile Reeducation Institute,”* cit., at para. 167.

<sup>114</sup> *Case of Cantoral Benavides v. Peru*, Inter-Am. Ct. H.R. (Series C) No. 69, para. 104 (AugU.S.t 18, 2000); See also: Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment , Doc A/66/268, 5 AugU.S.t 2011, para.38.

83. Reinforcing this notion, the U.N. Special Rapporteur on Torture Juan Mendéz has stressed that “considering the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment, during pre-trial detention, indefinitely or for a prolonged period,”<sup>115</sup> and thus its use in excess of 15 days should be prohibited.<sup>116</sup> The European Court of Human Rights has likewise stated that, even in the absence of any physical abuse, solitary confinement alone can violate the European Convention on Human Rights.<sup>117</sup> In sum, solitary confinement may only be used as a measure of absolute last resort, and it should never exceed 15 days.

84. The Court has found that solitary confinement places individuals at increased risk to suffer violent or debasing acts given the limited oversight inherent in isolated detention.<sup>118</sup> As a result, solitary confinement may only be used “during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality,” and other minimum standards for detention conditions still apply.<sup>119</sup>

85. The Commission’s interpretation of Article XXV’s guarantee of humane treatment for individuals in state custody is consistent with, and references, the standards set forth in other international instruments concerning the confinement and treatment of prisoners. In *Oscar Elias Biscet v. Cuba*, the Commission specifically referred to the standards<sup>120</sup> prescribed by the United Nations’ Standard Minimum Rules for the Treatment of Prisoners in the areas of accommodations,<sup>121</sup> hygiene,<sup>122</sup> clothing and bedding,<sup>123</sup> exercise and sport,<sup>124</sup> discipline, punishment and instruments of restraint,<sup>125</sup> and contact with the outside world.<sup>126</sup>

---

<sup>115</sup> UN News Centre, “Solitary Confinement should be banned in most cases, UN expert says”, 18 October 2011, available at <http://www.un.org/apps/news/story.asp?NewsID=40097>.

<sup>116</sup> Torture and other cruel, inhuman or degrading treatment or punishment, A/66/268, 5 August 2011, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement>.

<sup>117</sup> *El-Masri v. Former Yugoslav Republic of Macedonia*, App. No. 39630/09, Eur. Ct. H.R., para. 202.

<sup>118</sup> *Bámaca-Velásquez v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 70, para. 150 (Nov. 25, 2000). See also *De la Cruz Flores v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 115, para. 129 (Nov. 18, 2004); *Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 103, para. 87 (Nov. 27, 2003); *Castillo Petruzzi v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 52, para. 195 (May 30, 1999); *Suárez-Rosero v. Ecuador*, Inter-Am. Ct. H.R. (Series C) No. 35, para. 90 (Nov. 12, 1997); *Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 160, para. 323 (Nov. 25, 2006).

<sup>119</sup> *Montero-Aranguren v. Venezuela*, Inter-Am. Ct. H.R. (ser. C) No. 150, para. 94 (July 5, 2006). The Inter-American Court specifically referred to other international instances in this regard, including the report of the UN Committee Against Torture on Turkey, the U.N. Standard Minimum Rules for the Treatment of Prisoners and the findings of the European Court in *Mathew v. Netherlands*, No. 24919/03, Eur. Ct. H.R. (2005).

<sup>120</sup> *Oscar Elias Biscet et al. v. Cuba*, Case 12.476, Inter-Am. C.H.R., Report No. 67/06, at paras. 153-58 (2006). See also *Paul Lallion v. Grenada*, Case 11.765, Inter-Am. C.H.R., Report No. 55/02, at para. 86 (2003); *Benedict Jacob v. Grenada*, Case 12.158, Inter-Am. C.H.R., Report No. 56/02, at para. 43 (2003). See also IACHR Report on Terrorism and Human Rights, cit., at para. 167.

<sup>121</sup> “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.” U.N. Minimum Rules for the Treatment of Prisoners, rule 10. “In all places where prisoners are required to live or work, a) the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; [and] b) [a]rtificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.” *Id.* at rule 11.

86. Despite the prohibitions and restrictions on prolonged incommunicado detention and isolation in international law, for the first few years of his imprisonment at Guantánamo, Mr. Ameziane and other prisoners were largely cut off from the outside world, with their existence known to few. The U.S. government denied anyone except military and government officials and the ICRC access to the base, and even refused to publicly disclose the names and nationalities of the prisoners being held until four years after they were first brought to Guantánamo. Lawyers were finally permitted to visit the base in June 2004, although Mr. Ameziane did not meet with a lawyer until several months later. To this day, prisoners' access to any outside news or information remains extremely restricted, as does their ability to communicate with lawyers and family.

87. Letters from Mr. Ameziane to his family often did not reach them for a year or more, while letters to Mr. Ameziane from his attorneys were often held for weeks. Following an April 2013 raid on Camp VI, the State confiscated all his mail, including legal mail and correspondence with counsel.<sup>127</sup> Incommunicado detention has been the norm at Guantánamo for over eleven years despite Inter-American jurisprudence warning that “[i]ncommunicado may only be used exceptionally” due to the moral suffering, mental stress, and exacerbated situation of vulnerability it engenders.<sup>128</sup>

88. In addition to the general isolation of prisoners at Guantánamo from the outside world, Mr. Ameziane's solitary confinement in Camp VI for over a year further isolated him by restricting his contact with other prisoners. During this time, Mr. Ameziane was held in a small, cold cell that was completely sealed, preventing the entry of natural light and outside air. The only openings were two thin “windows” that faced the interior of the prison and allowed guards to look in and keep watch day and night, as well as a food slot in his door through which he was able to crouch down and yell to other prisoners in his block – one of the few, if not only ways in which they could communicate.

---

<sup>122</sup> “The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.” *Id.* at rule 12. “Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.” *Id.* at rule 13.

<sup>123</sup> “Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health.” *Id.* at rule 17(1).

<sup>124</sup> “Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.” *Id.* at rule. 21(1).

<sup>125</sup> “Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.” *Id.* at rule 27.

<sup>126</sup> “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.” *Id.* at rule 37. “Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications....” *Id.*

<sup>127</sup> In 2013, the United States District Court for the District of Columbia held a hearing, partly under seal, on the seizure of his mail and indefinite detention. See July 26, 2013 Motion for the hearing, *available at* <http://ccrjustice.org/files/AmezianeMotStatusConference%28Jul262013%29.pdf>.

<sup>128</sup> *Case of Lori Berenson*, cit., at para. 104; cf. I/A Court H.R., *Case of Maritza Urrutia v. Guatemala*, Judgment of November 27, 2003, Series C No. 103, at para. 87; *Case of Bámaca-Velásquez*, cit., at para. 150; *Case of Cantoral Benavides*, cit., at para. 84.



89. Mr. Ameziane was forced to use the same small space to sleep, eat and use the toilet; he was unable to clean the space because he was denied the use of cleaning supplies. He was confined to this space for the great majority of every day, being let out only for a five minute shower, often without any hot water, and a short “recreation” time, during which he was shuffled outside in chains to a small fenced-in area surrounded by walls five meters high and covered in wire mesh. Even outside, Mr. Ameziane’s only view of the sky was through metal wires.

90. Mr. Ameziane’s confinement in these conditions took a heavy physical and psychological toll. Specifically, Mr. Ameziane’s deteriorating eyesight and rheumatism are some of the physical manifestations that can be directly attributed to being held in solitary confinement for so long. Though his psychological scars are less visible, they are no less profound. In previous cases, the Court has held that such consequences of imprisonment are a clear human rights violation, finding that “the injuries, sufferings, damage to health or prejudices suffered by an individual while he is deprived of liberty may become a form of cruel punishment when, owing to the circumstances of his imprisonment, there is a deterioration in his physical, mental and moral integrity.”<sup>129</sup>

91. Given the length and severity of Mr. Ameziane’s incommunicado and solitary confinement at Guantánamo in general,<sup>130</sup> and in Camp VI more specifically, along with their intentional and purposeful nature (whether to produce intelligence and/or to punish and torture) and their authorization and enforcement by U.S. government officials and agents, Mr. Ameziane’s conditions of detention at Guantánamo rise to the level of torture in violation of Articles I and XXV of the American Declaration.

92. It also bears emphasis that continuing indefinite detention under circumstances where one has been approved for transfer for several years constitutes torture or other cruel treatment that violates international law.<sup>131</sup> This is a point that some U.S. officials appear to recognize.<sup>132</sup>

### **5.2.3 Other Physical and Verbal Abuse amounting to Torture**

93. In addition to his detention conditions at Guantánamo, including prolonged incommunicado detention and solitary confinement, Mr. Ameziane was also subjected to specific acts of torture and abuse that constitute additional violations of Articles I and XXV of the American Declaration.

---

<sup>129</sup> *Case of Lori Berenson*, cit., at para. 102. See also *Case of “Juvenile Reeducation Institute,”* cit., at para. 168 (finding that the subhuman and degrading detention conditions that inmates were forced to endure inevitably affected their mental health, with adverse consequences for the psychological growth and development of their lives and mental health).

<sup>130</sup> Declaration of Djamel Ameziane, 17 January 2009, ANNEX 6.

<sup>131</sup> Physicians for Human Rights, *Punishment Before Justice: Indefinite Detention in the US* (June 2011) (indefinite detention can rise to the level of torture) (available online at [https://s3.amazonaws.com/PHR\\_Reports/indefinite-detention-june2011.pdf](https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf)).

<sup>132</sup> ADM Patrick Walsh, USN, Vice Chief of Naval Operations, *Review of Department Compliance with President’s Executive Order on Detainee Conditions of Confinement 74* (2009) (indefinite detention of cleared detainees impacts the long-term ability to comply with Common Article 3 of the Geneva Conventions), available at <http://goo.gl/dX8LT5>.

94. Inter-American jurisprudence has held that many of the acts to which Mr. Ameziane was subjected constitute torture or inhuman treatment, including beatings,<sup>133</sup> holding a person's head under water until the point of drowning,<sup>134</sup> mock executions,<sup>135</sup> threats of a behavior that would constitute inhuman treatment,<sup>136</sup> death threats,<sup>137</sup> and standing or walking on top of individuals.<sup>138</sup> More broadly, the Court has held that "any use of force that is not strictly necessary to ensure proper behavior [by] the detainee constitutes an assault on the dignity of the person in violation of Article 5 of the American Convention."<sup>139</sup>

95. International authorities also provide guidance for identifying specific acts that constitute torture or other inhuman treatment. The U.N. Committee Against Torture, for instance, has concluded that methods including (1) physical restraint in very painful conditions, (2) hooding under special conditions, (3) playing loud music for prolonged periods of time, (4) prolonged periods of sleep deprivation, (5) threats, including death threats, (6) violent shaking, and (7) the use of cold air to chill, "constitute torture as defined in Article 1 of the Convention [Against Torture]. This conclusion is particularly evident where such methods of interrogation are used in combination."<sup>140</sup>

96. The U.N. Special Rapporteur on Torture has identified similar and additional acts that involve the infliction of suffering severe enough to constitute torture, including beating, suspension, suffocation, exposure to excessive light or noise, prolonged denial of rest, sleep or medical assistance, total isolation and sensory deprivation, and being held in constant uncertainty in terms of space and time.<sup>141</sup>

97. The Commission and the Court have also relied on jurisprudence from the European Court of Human Rights establishing that similar techniques, including forcing detainees to remain in stress positions for periods of several hours, hooding, subjecting detainees to continuous loud noise and depriving detainees of sleep pending their

---

<sup>133</sup> IACHR Report on Terrorism and Human Rights, cit., at para. 161 n.405.

<sup>134</sup> *Roslik vs. Uruguay*, Case 9274, Resolution No. 11/84, Annual Report of the IACHR (1984-85), the IACHR considered that the method known as "the submarine" which consisted in holding a person's head in water until the point of drowning constitutes torture.

<sup>135</sup> IACHR Report on Terrorism and Human Rights, cit., at para. 161 n. 409.

<sup>136</sup> *Id.* at para. 161 n. 410.

<sup>137</sup> *Id.* at para. 161 n.412.

<sup>138</sup> *Id.* at para. 161 n.404.

<sup>139</sup> I/A Court H.R. *Case of Loayza Tamayo v. Peru*, Judgment of September 17, 1997, Series C No. 33, para. 57.

<sup>140</sup> See Office of the High Commissioner for Human Rights, Concluding Observations of the Committee Against Torture: Israel, A/52/44, para. 257 (Sept. 5, 1997) [hereinafter "Concluding Observations: Israel"] (*available at* <http://www.unhchr.ch/tbs/doc.nsf/0/de75e94f920bd0a0802565a600537744?Opendocument>). The Committee does not state what constitutes a "prolonged period"; however, in making this determination, the Committee considered a case in which the detainee was "interrogated and tortured over the course of the next 30 days" while another detainee was "forced to sit handcuffed and hooded in painful and contorted positions, subjected to prolonged sleep deprivation and beaten over the course of three weeks." Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted to the UN Commission on Human Rights, E/CN.4/1998/38/Add.1 (Dec. 24, 1997).

<sup>141</sup> See "Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", Report by the Special Rapporteur, Mr. P. Kooijmans, appointed pursuant to Commission on Human Rights resolution 1985/33, E/CN.4/1986/15, 19 February 1986, para. 119, *available at* [http://ap.ohchr.org/documents/E/CHR/report/E-CN\\_4-1986-15.pdf](http://ap.ohchr.org/documents/E/CHR/report/E-CN_4-1986-15.pdf).

interrogations, are prohibited tactics in any interrogation by state agents.<sup>142</sup> The European Court has also found that shackling a prisoner, where shackling causes pain and discomfort, constitutes a breach of Article 3 of the European Convention,<sup>143</sup> as do hooding and forcible undressing.<sup>144</sup>

98. Mr. Ameziane has been subjected to numerous acts of mistreatment at the hands of the U.S. military at Guantánamo that this Commission and other international bodies recognize as torture or other inhuman treatment. U.S. government agents subjected Mr. Ameziane to physical beatings resulting in injuries, verbal abuse, abusive searches, simulated drowning, 30-hour interrogation sessions, prolonged periods of sleep deprivation, use of stress positions, exposure to extreme temperatures, threats of rendition, and menacing with military dogs and rifles. These methods were often applied in combination, compounding his suffering.

99. Specifically, during his transfer from Kandahar to Guantánamo, Mr. Ameziane remained hooded and in shackles for the duration of the flight. After arriving at Guantánamo, Mr. Ameziane endured violent beatings and head bashings that resulted in physical injuries, including a dislocated jaw, a bloody nose and a split lip. Mr. Ameziane was subjected to a method tantamount to water torture, whereby guards held his head back and placed a hose of running water between his nose and mouth for several minutes, giving him the sensation “that [his] head was sinking in water.”<sup>145</sup> He was denied sleep for stretches of time, and was subjected to dozens, if not hundreds, of interrogations, some of which lasted more than 25 to 30 hours. During one such session, Mr. Ameziane was chained to the floor and held in a freezing room while techno music blasted his eardrums. Interrogators also attempted to coerce Mr. Ameziane into cooperating by threatening to return him to Algeria, where they insinuated he would be tortured.<sup>146</sup> One of his interrogators forced him to sit through hours of insults and threats during which he used obscenities and blew smoke in Mr. Ameziane’s face.

100. Mr. Ameziane was additionally subjected to brutal searches at Guantánamo, wherein guards oftentimes were accompanied by military dogs. Guards routinely subjected prisoners to invasive genital searches before allowing them to meet with their lawyers, a practice that even a U.S. district judge declared was meant to deter prisoners from meeting with their lawyers rather than protect security.<sup>147</sup>

---

<sup>142</sup> IACHR Report on Terrorism and Human Rights, cit., at para. 164 n. 419-22.

<sup>143</sup> See *Henaf v. France*, App. No. 65436/01, 2003-XI Eur. Ct. H.R., para. 56.

<sup>144</sup> See *El-Masri v. Former Yugoslav Republic of Macedonia*, App. No. 39630/09, Eur. Ct. H.R., paras. 208-9; *Wieser v. AU.S.tria*, App. No. 2293/03, Eur. Ct. H.R. paras. 39-42.

<sup>145</sup> Letter from Djamel Ameziane to Wells Dixon, (undated, but received on March 17, 2008) (unclassified) On file with CCR.

<sup>146</sup> Sadly, this threat materialized on December 5, 2013, when the United States shackled Mr. Ameziane and transported him in a cargo plane to Algeria, where he suffered immensely in clandestine detention at the hands of the Algerian government for five days, and at present continues to be harassed and threatened by Algerian officials.

<sup>147</sup> See *In re Guantanamo Bay Detainee Continued Access to Counsel*, Misc. No. 12-mc-398 (RCL) (D.C. Cir. 2013) (halting genital searches). The practice was reinstated pending appeal.

101. These acts inflicted not only severe physical pain and injuries, but also lasting psychological trauma. Of his water torture experience, for example, Mr. Ameziane writes, “I still have psychological injuries, up to this day. Simply thinking of it gives me chills.”<sup>148</sup>

102. These acts were all intentionally and purposefully inflicted upon Mr. Ameziane, whether for interrogation purposes or as a means of punishment or intimidation, and they were all carried out by State agents, and instigated or tolerated at the highest levels of government as a matter of policy.<sup>149</sup>

#### **5.2.4 Forced Transfer to Algeria Violated *Non-Refoulement* Obligations**

103. The absolute, universal prohibition of torture also includes the obligation of *non-refoulement*, which precludes expelling, returning, transferring, “rendering,” or extraditing a person to a state where there are substantial grounds to believe the person would be in danger of being tortured.<sup>150</sup>

104. When Mr. Ameziane left Algeria in 1990, he was fleeing persecution, and both the asylum claims he filed while abroad and his status as a former Guantánamo detainee made him a target in Algeria. In view of Mr. Ameziane’s very real fear of persecution, torture or other ill-treatment if returned to Algeria, the Commission specifically ordered the United States to “make certain that he is not deported to any country where he might be subjected to torture or other mistreatment.”<sup>151</sup>

105. The United States violated this obligation when it forcibly transferred Mr. Ameziane to Algerian government custody on December 5, 2013, in contravention of the individual and collective precautionary measures.

106. As explained above, once turned over to Algerian custody on December 5, 2013, Mr. Ameziane spent his first six days in Algeria detained in sub-standard conditions, subject to interrogations by Algerian security forces. During this time, he became very ill. Since his release from secret detention, Djamel Ameziane has remained under judicial supervision, and continues to experience great hardship as a result of his prior detention at Guantánamo.<sup>152</sup>

---

<sup>148</sup> Letter from Djamel Ameziane to Wells Dixon, (undated, received on March 17, 2008) (unclassified) (on file with CCR). On file with CCR.

<sup>149</sup> Although in 2009, the Obama administration acknowledged the U.S. government’s use of such methods under the previous administration, formally condemning and publicly outlawing their continued use of torture on Guantánamo detainees, to date no perpetrators of these practices have been investigated, prosecuted and punished and there is no indication this is a permanent break with State-sanctioned torture. History repeats itself, and just as the missed January 22, 2010 deadline for closing Guantánamo has largely been forgotten, so too could the Executive Order of January 22, 2009 prohibiting “enhanced interrogation techniques” amounting to torture and ill-treatment be forgotten if a future U.S. President decides that torture is once again expedient for national security. See Executive Order 13491 (“Ensuring Lawful Interrogations”) of January 22, 2009, *available at* <http://www.gpo.gov/fdsys/pkg/FR-2009-01-27/pdf/E9-1885.pdf>. See also “Guantánamo: A Decade of Damage to Human Rights.” Amnesty International. Dec. 16, 2011. Pg. 12; Shane, Scott, et al. “Obama Reverses Key Bush Security Policies,” *New York Times*. Jan. 22, 2009, *available at* <http://www.nytimes.com/2009/01/23/U.S./politics/23obama.html?pagewanted=all>.

<sup>150</sup> See, e.g., Art. 3, Convention against Torture; see also Robert K. Goldman, *Trivializing Torture: The Office of Legal Counsel’s 2002 Opinion Letter and International Law Against Torture*, in 12 No. 1 *Hum. Rts. Brief* (2004); cf. Jean Allain, “The Jus Cogens Nature of Non-Refoulement,” 13(4) *Int. J. Refugee Law* (2001), pp. 533-558.

<sup>151</sup> IACHR, Precautionary Measures No. 211-08 Djamel Ameziane, United States.

<sup>152</sup> Declaration of Djamel Ameziane, 13 February 2014, ANNEX 1.

107. Mr. Ameziane's forcible transfer to Algeria violated standing precautionary measures.<sup>153</sup> In the Commission's recent Guantánamo report, Mr. Ameziane's transfer was determined to violate the principle of non-refoulement,<sup>154</sup> as guaranteed by in Articles I and XXV of the American Declaration.

### 5.2.5 Denial of Adequate Medical Care

108. Mr. Ameziane sustained specific injuries and developed chronic health conditions as a result of the ill-treatment and inhuman detention conditions at Guantánamo, for which he has never received adequate medical treatment. The deterioration of his physical and psychological health over the course of more than eleven years of arbitrary detention, together with the denial of medical care to address the injuries and effects of his imprisonment, constitute additional violations under Articles I and XXV of the Declaration, in conjunction with the right to health under Article XI.<sup>155</sup>

109. Inter-American jurisprudence has consistently established that the denial of regular and adequate medical care to prisoners in state custody constitutes a violation of their internationally-recognized right to humane treatment. In *Tibi v. Ecuador*, the Inter-American Court cited U.N. standards, European Court case law, and its own jurisprudence in holding that a prisoner who was physically beaten, on one occasion had his head submerged in a water tank during interrogation by State agents, and was denied a proper medical examination and treatment for injuries resulting from his abuse, had been denied his right to adequate medical care under Article 5 of the American Convention.<sup>156</sup>

110. Inter-American jurisprudence has additionally established that states have an international responsibility to uphold the rights of detainees<sup>157</sup> and must take the necessary measures to protect the prisoner's health and life,<sup>158</sup> including by providing the required treatments for illnesses,<sup>159</sup> transferring the prisoner to a hospital when necessary, and acting with a reasonable level of diligence.<sup>160</sup>

---

<sup>153</sup> See IACHR, Precautionary Measures No. 211-08 Djamel Ameziane, United States; IACHR, Precautionary Measures No. 259-13 Detainees in the Guantánamo Bay Military Base, United States.

<sup>154</sup> Inter-American Commission on Human Rights, "Towards the Closure of Guantánamo." OAS/Ser. L/V/II, Doc. 20/15, 3 June 2015. Para 35.

<sup>155</sup> Article XI of the American Declaration guarantees "every person ... the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources."

<sup>156</sup> *Case of Tibi*, cit., at paras. 154-157 (citing UN Office of the High Commissioner for Human Rights, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173, Dec. 9, 1988, Principle 24). See *Kudla v. Poland*, No. 30210/96, 2000-XI Eur. Ct. H.R., para. 93-94; *Case of Bulacio*, cit., at para. 131; *De La Cruz-Flores*, cit., at paras. 131-34, 136.

<sup>157</sup> I/A Court H.R., *Case of Miguel Castro-Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, para. 259.f.

<sup>158</sup> *Id.* at paras. 58-60.

<sup>159</sup> See *Juan Hernández v. Guatemala*, Case No. 11.297, Inter-Am. C.H.R., Report No. 28/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1997) (in which a prisoner incarcerated in a Guatemalan jail died from a common and easily curable case of cholera when prison authorities neglected to provide treatment).

<sup>160</sup> *Id.* at para. 61.

111. In *Montero-Aranguren v. Venezuela*, the Inter-American Court emphasized that the right to humane treatment may not be suspended under any circumstances, even during times of war,<sup>161</sup> and that the State, as guarantor of the rights of persons deprived of liberty, has the duty to regularly provide medical assistance.<sup>162</sup> Recent decisions have also stressed that services should be given in a timely, adequate and complete manner<sup>163</sup> by a doctor *without* ties to the detention center.<sup>164</sup> This requirement constitutes “an important safeguard against torture and physical or mental ill-treatment of inmates” to secure the protection of prisoners’ rights to humane treatment.<sup>165</sup>

112. The Commission has also held that making the provision of care contingent on prisoners’ compliance with authorities’ demands, such that if prisoners refuse to cooperate their needs for medical treatment are also refused, constitutes a violation of prisoners’ right to humane treatment under Article XXV of the Declaration, as well as a separate violation of the right to the preservation of health and well-being under Article XI.<sup>166</sup>

113. The Commission’s precautionary measures, regularly issued to protect prisoners’ health by addressing inadequate medical care and recommending provision of necessary medical exams and specialized care to detainees,<sup>167</sup> provide additional guidance in determining the scope of states’ obligations to protect prisoners’ rights to humane treatment and health. In the precautionary measures granted in *Egberto Ángel Escobedo-Morales*, the Commission required the government of Cuba to “conduct medical tests to evaluate the [detainee’s] health and provide him with adequate treatment.”<sup>168</sup> In another case, the Commission again underscored the importance of independent medical care in asking the state, *inter alia*, “to allow access and health treatment and monitoring by a doctor trusted by [the victim] or by an international organization.”<sup>169</sup>

114. The Inter-American Commission’s Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas establish that:

All persons deprived of liberty shall be entitled to an impartial and confidential medical or psychological examination, carried out by [appropriate] medical personnel immediately

---

<sup>161</sup> I/A Court H.R., *Case of Montero-Aranguren v. Venezuela*, Judgment of July 5, 2006, Series C No. 150, para. 85.

<sup>162</sup> *Id.* at para. 87, 88, 102.

<sup>163</sup> I/A Court H.R., *Vélez Loor v. Panama*, Judgment of November 23, 2010, Series C No. 218, para. 223.

<sup>164</sup> I/A Court H.R., *Cabrera García and Montiel Flores v. México*, Judgment of November 26, 2010, Series C No. 220, para. 135; *Case of Vélez Loor v. Panama*, *cit.*, at para. 220.

<sup>165</sup> *Case of Montero-Aranguren*, *cit.*, at para. 102. The Court made reference to the findings of the European Court in *Mathew v. Netherlands* (2005) in this respect.

<sup>166</sup> See Cuba, Case No. 6091, Inter-Am. C.H.R., Res. No. 3/82, OEA/Ser.LV/II.57, doc. 6 rev. 1 (1982).

<sup>167</sup> See IACHR. *Precautionary Measures 2005*. para. 43. Available at: <http://www.cidh.oas.org/medidas/2005.eng.htm> (In *Díaz Peña v. Venezuela*, the Commission granted precautionary measures in which it asked the Venezuelan State to carry out medical examinations and provide the necessary specialized treatment required by Mr. Díaz Peña during his detention).

<sup>168</sup> See IACHR. *Precautionary Measures granted by the IACHR. Rapporteurship on the Rights of Persons Deprived of Liberty*. 2010. P 179/10. Egberto Ángel Escobedo Morales. Cuba. Available at: <http://www.oas.org/en/iachr/pdl/protection/precautionary.asp>.

<sup>169</sup> See IACHR. *Precautionary Measures granted by the IACHR. Rapporteurship on the Rights of Persons Deprived of Liberty*. 2011. P 13/11. Néstor Rodríguez Lobaina and Family. Cuba, available at <http://www.oas.org/en/iachr/pdl/protection/precautionary.asp>.

following their admission to the place of imprisonment or commitment, in order to verify their state of physical or mental health and the existence of any mental or physical injury or damage; to ensure the diagnosis and treatment of any relevant health problem; or to investigate complaints of possible ill-treatment or torture.<sup>170</sup>

115. Similarly, the Commission has often looked to analogous U.N. standards in supporting the finding that states have a duty to provide adequate medical care to prisoners in their custody.<sup>171</sup> The U.N. Body of Principles for the Protection of Persons under Detention or Imprisonment provides that “[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.”<sup>172</sup> The U.N.’s Standard Minimum Rules for the Treatment of Prisoners further define the scope and content of the rights of persons deprived of their liberty to medical treatment, providing for example:

Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.<sup>173</sup>

The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures ...<sup>174</sup>

The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed; and (2) The medical officer shall report to the director whenever he considers that a prisoner’s physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.<sup>175</sup>

116. The conditions of Mr. Ameziane’s detention in Guantánamo and the torture and abuse he endured are directly responsible for the deterioration of his physical and psychological health and well-being for more than a decade. His failing vision, convulsions, and rheumatism were some of the physical manifestations of his declining health. Like other detainees, his conditions of detention and the reality of indefinite detention also caused enduring psychological trauma, including acute psychological trauma and post-traumatic stress disorder (PTSD).

---

<sup>170</sup> IACHR Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle IX.3, available at [http://www.cidh.oas.org/pdf%20files/RESOLUTION%201\\_08%20-%20PRINCIPLES%20PPL%20FINAL.pdf](http://www.cidh.oas.org/pdf%20files/RESOLUTION%201_08%20-%20PRINCIPLES%20PPL%20FINAL.pdf).

<sup>171</sup> *Tibi v. Ecuador*, paragraphs 154 – 157; *Miguel Castro-Castro Prison v. Peru*, paras. 301-02; *Montero-Aranguren et al v. Venezuela*, paragraphs 101 – 103.

<sup>172</sup> UN Office of the High Commissioner for Human Rights, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173, Dec. 9, 1988, Principle 24.

<sup>173</sup> UN Minimum Rules for the Treatment of Prisoners, rule 22(2).

<sup>174</sup> *Id.* rule 24.

<sup>175</sup> *Id.* rule 25(1).

117. In response to Mr. Ameziane's need for medical care, the United States either deliberately denied him care or provided him with wholly incompetent care. His repeated requests for a simple eye exam to address his deteriorating eyesight were denied for almost a year and, after finally being granted the exam, he was given eyeglasses with the wrong prescription that gave him headaches. Mr. Ameziane never obtained eyeglasses with the correct prescription. Despite being transferred from Camp VI, Mr. Ameziane did not receive any care for the rheumatism he developed in his legs as a result of the cold temperatures in his prison cell.

118. His requests for health care were often met with a response to ask his interrogator, thus conditioning the provision of care on his cooperation in interrogations, which is unlawful per the Commission's jurisprudence<sup>176</sup> and precautionary measures.<sup>177</sup>

119. The overall detention conditions, the interrogation methods used, and the arbitrary and indefinite nature of his detention all caused Mr. Ameziane severe psychological suffering that has only amplified with time. These grave detriments to Mr. Ameziane's mental health therefore also constitute torture and CIDT, given that "the prohibition of torture relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim."<sup>178</sup>

120. The right to humane treatment, together with the Declaration's Article XI right to health, creates a duty for states, not only to provide adequate medical care to persons in their custody, but to take other affirmative measures to ensure their health and well-being. Under Inter-American and international human rights standards, the right to health is not confined to the right to medical care, but should be "understood to mean the enjoyment of the highest level of physical, mental and social well-being."<sup>179</sup>

121. Additionally, it has been established that medical professionals employed by the State supervised and participated in torture and ill-treatment of Guantánamo detainees.<sup>180</sup> Once the patient-doctor relationship has been shattered through medical personnel violating the oath to "do no harm" to patients, by instigating or acquiescing in torture, medical professionals employed by the State could no longer maintain a productive patient-doctor relationship. For this reason, most Guantánamo detainees distrust the state agents assigned to provide them medical care in the prison facilities.

---

<sup>176</sup> See, e.g., Cuba, Case No. 6091, Inter-Am. C.H.R., Res. No. 3/82, OEA/Ser.LV/II.57, doc. 6 rev. 1 (1982).

<sup>177</sup> See IACHR. *Precautionary Measures granted by the IACHR. Rapporteurship on the Rights of Persons Deprived of Liberty*. 2006. PM 8/06. Omar Khadr. United States, available at <http://www.oas.org/en/iachr/pdl/protection/precautionary.asp>.

<sup>178</sup> "Question of torture and other cruel, inhuman or degrading treatment or punishment", Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly, Fifty-sixth session, Doc. A/56/156 (3 July 2001), available at <http://www.un.org/documents/ga/docs/56/a56156.pdf>.

<sup>179</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," art. 10(1). See also Committee on Economic, Social and Cultural Rights, General Comment 14 (2000), para. 1 ("[E]very human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.").

<sup>180</sup> See Physicians for Human Rights, *Doing Harm: Health Professionals' Central Role in the CIA Torture Program* (December 2014), available at <http://physiciansforhumanrights.org/library/reports/doing-harm-health-professionals-central-role-in-the-cia-torture-program.html>; Physicians for Human Rights, *Aiding Torture: Health Professionals' Ethics and human Rights Violations Demonstrated in the May 2004 CIA Inspector General's Report* (August 2009), available at <http://physiciansforhumanrights.org/library/reports/aiding-torture-2009.html>.



122. Mr. Ameziane's current poor state of health – a direct result of his prior prison conditions and inhuman treatment at Guantánamo, as well as of the denial of adequate medical care for his injuries and ailments – falls far short of the standard of health envisioned by this system and other international bodies. The poor level of care, the link between receiving care and participating in interrogations, and the participation of health professionals in torture and ill-treatment constitute violations of Mr. Ameziane's rights to humane treatment under Articles I and XXV, in conjunction with the right to health under Article XI.

123. Moreover, by refusing to return Mr. Ameziane's personal property since his release the State has prevented him from obtaining urgently needed medical care.

### 5.2.6 Religious Abuse and Interference

124. During his imprisonment at Guantánamo, Mr. Ameziane was unable to practice his religion freely and without insult and humiliation, constituting an additional violation of his right to humane treatment under Article XXV, in conjunction with his right to religious freedom under Article III. The Commission has held the right to humane treatment to include freedom from degrading treatment,<sup>181</sup> described as "the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance," which can be felt even more intensely by a person unlawfully detained.

125. Moreover, the express right to be free from religious abuse and interference is set forth in Article III of the American Declaration, which provides that "[e]very person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private."<sup>182</sup> Article 12 of the American Convention more explicitly provides that the right to profess one's religion or beliefs may be done individually or together with others and shall not be impaired by restrictions, and that any permissible restrictions of this right must be prescribed by law and necessary to protect public safety, order, health or morals, or the rights or freedoms of others.<sup>183</sup>

126. The IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas establish that

Persons deprived of liberty shall have the right to freedom of conscience and of religion, including the right to profess, manifest, practice, maintain or change their religion, in line with their beliefs; the right to participate in religious and spiritual activities and to practice traditional rites; as well as the right to receive visits from religious or spiritual representatives.<sup>184</sup>

127. Providing additional guidance, Principles 41 and 42 of the United Nations' Standard Minimum Rules for Treatment of Prisoners, referenced by the Commission,<sup>185</sup> include the appointment of a religious representative to hold regular services and provide visits to

---

<sup>181</sup> See *Case of Luis Lizardo Cabrera*, cit., at para. 79 (citing the *Greek Case*, cit., at para. 186).

<sup>182</sup> American Declaration, cit., Art. III.

<sup>183</sup> American Convention, Arts. 12(1)-(3).

<sup>184</sup> See IACHR Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XV.

<sup>185</sup> Merits Report 47/01. Case 12.028. *Donnason Knights v. Grenada*. April 4, 2001. Paragraph 127.

prisoners, access to religious representatives and services provided in the institution, and permission to possess religious books.<sup>186</sup>

128. Echoing these standards, the U.N. Human Rights Committee stated that “persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint.”<sup>187</sup> Consequently, the Committee determined that a detainee had been denied the right to religious freedom where his captors had forcibly shaved him, removed his prayer books and prevented him from participating in religious services.<sup>188</sup>

129. According to reports, there is currently no Muslim chaplain at Guantánamo, despite the fact that every single prisoner is Muslim. Currently, the detention center only has a “Muslim advisor” appointed and paid by the Pentagon.<sup>189</sup> The absence of a Muslim chaplain leaves detainees with no way to ascertain whether the prison food meets religious dietary requirements. The lack of a religious representative to adequately visit or advise the detainees thus violates Inter-American and U.N. standards.

130. While the Commission has not considered the right to religious freedom in the context of a case such as Mr. Ameziane’s, it has emphasized that measures to prevent and punish terrorism must be carefully tailored to recognize and respect the right to freedom of conscience and religion.<sup>190</sup> Prohibiting the free practice of religion and even acting with the intent to maliciously insult prisoners’ religious beliefs, as State agents did in Mr. Ameziane’s case, are methods of subjugation and intimidation intended to humiliate and degrade prisoners.

131. Regarding Mr. Ameziane’s conditions of detention, a report issued by five U.N. independent experts on the situation of detainees at Guantánamo Bay found that “certain interrogation techniques that were especially degrading for members of certain religions were authorized by the United States authorities” and that “[o]ther treatments which may have been specifically designed to offend the religious sensitivities of the detainees, were repeatedly used by those involved in the custody, interrogation and treatment of detainees.”<sup>191</sup> The report further found that the removal of religious items, which was permitted under official interrogation

---

<sup>186</sup> Merits Report 47/01. Case 12.028. *Donnason Knights v. Grenada*. April 4, 2001, para. 127.

<sup>187</sup> Human Rights Committee, General Comment 22 (1993), CCPR/C/21/Rev.1/Add.4, para 8.

<sup>188</sup> See *Clement Boodoo v. Trinidad and Tobago*, Communication No. 721/1996, para. 6.6, UN Doc. CCPR/C/74/D/721/1996 (Apr. 2, 2002).

<sup>189</sup> Inter-American Commission on Human Rights, “Towards the Closure of Guantánamo.” OAS/Ser. L/V/II, Doc. 20/15, 3 June 2015, Para 130; The former chaplain was arrested on allegations of “espionage” and held in solitary confinement for 76 days before charges were dismissed; the former Army captain was reportedly warned, “This is not a friendly environment for Muslims, and I don’t just mean the prisoners.” NBC News, *Muslim chaplain writes of Guantánamo ordeal*, October 5, 2005, available at [http://www.nbcnews.com/id/9594441/ns/world\\_news-terrorism/t/mU.S.lim-chaplain-writes-guantanamo-ordeal/#.UliQTeK2qM0](http://www.nbcnews.com/id/9594441/ns/world_news-terrorism/t/mU.S.lim-chaplain-writes-guantanamo-ordeal/#.UliQTeK2qM0).

<sup>190</sup> See IACHR, Report on Terrorism and Human Rights, cit., at para. 363.

<sup>191</sup> Situation of Detainees at Guantánamo Bay, Report of the Chairperson of the Working Group on Arbitrary Detention, Ms. Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy; the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt, UN Commission on Human Rights, Doc. E/CN.4/2006/120 (15 February 2006), at para 60, available at [http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16\\_02\\_06\\_un\\_guantanamo.pdf](http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_02_06_un_guantanamo.pdf).

techniques, “constitutes an impermissible limitation on the right to freedom of religion or belief of detainees.”<sup>192</sup>

132. The verbal and physical abuse to which the U.S. government subjected Mr. Ameziane with respect to his Muslim faith has had the purpose and effect of humiliating and demoralizing him. Mr. Ameziane has described how prison guards screamed insults and obscenities at him during his daily prayers and imitated howling dogs during the distinctive Muslim call to prayer. He has witnessed guards shave crosses into Muslim detainees’ hair. In addition to harming his personal dignity and security, the religious mistreatment endured by Mr. Ameziane has interfered with the free and peaceful practice of his religion.

133. As such, the religious abuse Mr. Ameziane suffered amounts to inhuman treatment and interference with his right to freedom of religion, thereby violating Articles I and XXV in conjunction with Article III of the American Declaration. The existence of Guantánamo is synonymous with the persecution of Muslim men and boys by the United States of America.

### **5.3 Right to Private and Family Life and Protection of Personal Reputation (Violations of Articles V and VI)**

134. Mr. Ameziane’s imprisonment at Guantánamo profoundly impacted his private and family life. He was denied meaningful contact with his family for over eleven years, and additionally was deprived of starting his own family and developing his own personal life during the prime years of his life. The stigma of being labeled an “enemy combatant” and “terrorist” has damaged his and his family’s good name and reputation, and has continued to harm him after his release. The deprivations and stigma of his imprisonment, particularly in light of the fact that he was unlawfully detained, amount to arbitrary and illegal interference with his rights under Articles V and VI of the American Declaration.

135. Article V of the American Declaration provides:

Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation and his private and family life.

136. Article VI of the Declaration provides:

Every person has the right to establish a family, the basic element of society, and to receive protection therefore.

137. The Commission has established that, taken together, Articles V and VI of the American Declaration prohibit arbitrary or illegal government interference with family life.<sup>193</sup> In this context, “arbitrary interference” refers to elements of “injustice, unpredictability and unreasonableness.”<sup>194</sup> Thus, while the rights to private and family life are not absolute, they may

---

<sup>192</sup> the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt, UN Commission on Human Rights, Doc. E/CN.4/2006/120 (15 February 2006), at para 61, available at [http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16\\_02\\_06\\_un\\_guantanamo.pdf](http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_02_06_un_guantanamo.pdf).

<sup>193</sup> IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Feb. 28, 2000, para. 162.

<sup>194</sup> *X and Y v. Argentina*, Case No. 10.506, Inter-Am. C.H.R., Report. No. 38/96, para. 92 (1996).

only be circumscribed where restrictions are prescribed by law, necessary to protect public order, and proportional to that end.<sup>195</sup>

138. Moreover, with regard to Article VI specifically, the Commission has noted that the right to establish and protect the family cannot be derogated under any circumstances, however extreme.<sup>196</sup> Although situations such as incarceration or military service inevitably restrict the exercise and enjoyment of the right, they may not suspend it.<sup>197</sup>

139. The United States, in unlawfully and arbitrarily detaining Mr. Ameziane, denying him meaningful contact with his family and labeling him an “enemy combatant” and a “terrorist,” violated Articles V and VI of the American Declaration by (1) depriving Mr. Ameziane of his private and family life; and (2) not only failing to protect, but in fact perpetrating abusive attacks against Mr. Ameziane’s personal honor and reputation with far-reaching consequences for his life after Guantánamo.

### 5.3.1 Mr. Ameziane Was Deprived of Developing His Private and Family Life

140. The Commission has consistently held that the State is obligated to facilitate contact between a prisoner and his family, notwithstanding the restrictions of personal liberty implicit in the condition of imprisonment.<sup>198</sup> In this respect, the Commission has repeatedly indicated that visiting rights are a fundamental requirement for ensuring the rights of prisoners and their families.<sup>199</sup> The Commission has stated that because of the exceptional circumstances of imprisonment, the State must take affirmative steps to guarantee prisoners’ right to maintain and develop family relations.<sup>200</sup> The IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas establish:

Persons deprived of liberty shall have the right to [...] maintain direct and personal contact through regular visits with members of their family, legal representatives, especially their parents, sons and daughters, and their respective partners.<sup>201</sup>

141. Similarly, the European Court of Human Rights has held that a total prohibition on visits by a detainee’s family constitutes a violation of the right to private and family life,<sup>202</sup> and

---

<sup>195</sup> IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, cit., at para 166; *Case of X and Y v. Argentina*, cit., at para. 92.

<sup>196</sup> See *Case of X and Y v. Argentina*, cit., at para 96; see also *Case of Biscet et al.*, cit., at para 236.

<sup>197</sup> See *Case of X and Y v. Argentina*, cit., at para 96.

<sup>198</sup> See *Case of X and Y v. Argentina*, cit., at para. 98.

<sup>199</sup> See *Case of Biscet*, cit., at para 237; *Case of X and Y v. Argentina*, cit., at para. 98. See also IACHR, The Situation of Human Rights in Cuba Seventh Report at Chap. III, para. 25 (1983); IACHR, Annual Report of the Inter-American Commission on Human Rights (Uruguay) Chap. IV, para. 10 (1983-1984).

<sup>200</sup> See *Case of X and Y v. Argentina*, cit., at para. 98; *Case of Biscet*, cit., at para. 237.

<sup>201</sup> Resolution 1/08, IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XVIII.

<sup>202</sup> See *McVeigh, O’Neill and Evans v. United Kingdom*, App. Nos. 8022/77, 8025/77 and 8027/77, 5 Eur. Ct. H.R. 71, at paras. 52-53 (1983) (Commission Report), in which the European Commission on Human Rights held that a failure to allow persons detained under anti-terrorism legislation to communicate with their spouses constituted a denial of private and family life contrary to Article 8 of the European Convention on Human Rights. Similarly, in *PK, MK and BK v. United Kingdom*, App. No. 19086/91 (1992), the European Commission noted, whilst finding no violation in the instant case, that significant limits on visits from family members may well raise Article 8 issues.

has further recognized states' positive obligation to assist the detainee in maintaining that contact.<sup>203</sup> The European Court has also held that each detainee's interest in meeting with family must be "properly balanced against the public interest in restricting prisoners' contact with the outside world" and states must assess the particular situation of each detainee."<sup>204</sup>

142. Article 37 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that "[p]risoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and receiving visits."<sup>205</sup> Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that "[a] detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions, as specified by law or lawful regulation."<sup>206</sup>

143. In this regard, the Commission has found that deliberately incarcerating victims in remote prisons in order to make communications with families, attorneys and the media difficult constitutes a violation of Article VI.<sup>207</sup>

144. Starting when he was taken into U.S. custody in 2002, Mr. Ameziane was deprived of virtually all communication with his family for a decade. He was kept in an isolated detention facility thousands of miles from his home and has not seen his parents, seven brothers and sisters, or nieces and nephews for over eleven years due to the prohibition on family visits at Guantánamo.

145. During the first six years of Mr. Ameziane's imprisonment, even telephone calls between detainees and their families were prohibited. It was not until March 2008 that the U.S. Department of Defense announced that it would allow detainees an hour-long telephone call up to twice a year to a family member.<sup>208</sup> On February 29, 2008, the ICRC facilitated the first telephone call Mr. Ameziane was permitted to make to a family member or to anyone since 2002. The only other more "regular" method of communication available to Mr. Ameziane is the mail system, but letters between him and his family sometimes took a year or more to reach the intended recipient.

146. In 2007, Mr. Ameziane's father passed away. Mr. Ameziane's unlawful and arbitrary detention in Guantánamo deprived him of the opportunity to see or speak to his father before his death, and to attend his father's funeral, paying his respects and being with his family during an emotionally difficult time. Instead, Mr. Ameziane was forced to mourn his father in complete isolation in a cell thousands of miles away from his family. The European Court has found that a refusal to permit a prisoner to attend his parents' funeral constitutes unjustified

---

<sup>203</sup> *X v. United Kingdom*, App. No. 9054/80 30 DR 113 (Oct. 8, 1982); *Baginski v. Poland*, App. No. 37444/97, Eur. Ct. H.R., at para. 89 (Oct. 11, 2005).

<sup>204</sup> *Trosin v. Ukraine*, App. No. 39758/05, Eur. Ct. H.R., Press Release (2012).

<sup>205</sup> U.N. Minimum Rules for the Treatment of Prisoners, cit.

<sup>206</sup> UN Office of the High Commissioner for Human Rights, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173, Dec. 9, 1988, Principle 19.

<sup>207</sup> *Oscar Elias Biscet et al. v. Cuba*, Case 12.476, Inter-Am. C.H.R., Report No. 67/06 (2007).

<sup>208</sup> Reuters, *U.S. says some Guantánamo prisoners can phone home*, Mar. 12, 2008, available at <http://www.reuters.com/article/latestCrisis/idU.S.N12190031>.

interference with his private and family life,<sup>209</sup> and the state must afford him an alternate opportunity to bid farewell to his dying father; a failure to do so constitutes a violation of this right.<sup>210</sup>

147. In addition to being deprived of all meaningful contact with his family, Mr. Ameziane's more than eleven years of detention at Guantánamo prevented him from developing other aspects of his life, including personal relationships, during what would have otherwise been the prime years of his life. As the European Court has held, the concept of private life "encompasses the right for an individual to form and develop relationships with other human beings"<sup>211</sup> and should be interpreted broadly.<sup>212</sup> During his detention, the only individuals Mr. Ameziane saw or spoke to were his prison guards, his interrogators, his fellow prisoners, his lawyers and the ICRC. Because of the security regime at Guantánamo and his isolation in Camp VI, even his contact with other prisoners and his lawyers was extremely restricted.

148. Beyond arresting his ability to develop personal and social relationships, Mr. Ameziane's imprisonment at Guantánamo also deprived him of opportunities for educational and vocational development. To fill this void, Mr. Ameziane's lawyers were only permitted to mail a very restricted range of books and magazines, which went to a general detainee library, thereby taking months to reach Mr. Ameziane, if at all. Additionally, on numerous occasions State agents confiscated all of Mr. Ameziane's personal effects, including legal materials and correspondence with family members.<sup>213</sup> Mr. Ameziane also took it upon himself to teach himself English, a painstaking process which he described in a letter to his lawyers:

Since we weren't allowed to have a dictionary and we didn't have the right to keep more than one book in our cells, the library had some 'Harry Potter' books in English and French, so I took out a Harry Potter book in English and copied a hundred and seventy pages from the book onto sheets of paper, then I returned the book and took out the same book in French. I would read a sentence in French, translate it myself into English, then compare my translation with the one on the paper that I had copied and correct my mistakes. I would move on to the next sentence, translate it, and compare my translation to that on paper, and so on, sentence by sentence until I had finished the hundred and seventy pages. When the guards who walked by my cell asked what I was doing, seeing my copy from the book, I answered that I was an illiterate and that I was learning how to write. I told them that because I was afraid that if they knew my real intentions, they would talk about them to their superiors who would confiscate my papers.<sup>214</sup>

149. In depriving him of meaningful communication with his family and the ability to develop the personal and professional aspects of his life, the United States plainly violated Mr. Ameziane's rights to private and family life under Articles V and VI of the American Declaration.

---

<sup>209</sup> *Ploski v. Poland*, App. No. 26761/95, Eur. Ct. H.R., at para. 39 (2002).

<sup>210</sup> *Lind v. Russia*, App. No. 25664/05, Eur. Ct. H.R., at para. 98 (2007).

<sup>211</sup> *C v. Belgium*, App. No. 21794/93, Eur. Ct. H.R., at para. 25 (1996).

<sup>212</sup> *Niemietz v. Germany*, App. No. 13710/88, 16 Eur. Ct. H.R. 97, at para. 29 (1992).

<sup>213</sup> For example, in April 2013, State agents seized all of Mr. Ameziane's mail, including privileged and confidential attorney-client communications regarding his ongoing legal proceedings. See Motion for Status Conference to Address the Government's Seizure of Legal Materials, *Ameziane v. Obama*, Civil Action No. 05-392.

<sup>214</sup> Letter from Djamel Ameziane to Wells Dixon, June 15, 2008 (unclassified) (on file with CCR).

### 5.3.2 Mr. Ameziane Suffered Attacks on his Personal Honor and Reputation

150. According to the Commission, the imposition of a penalty that the State recognizes as “arbitrary” harms the victim’s honor and reputation.<sup>215</sup> The Commission has held that branding victims “counter-revolutionaries” in order to “discredit the victims and damage their reputations and good name vis-à-vis the public” constitutes a violation under Article V of the Declaration, guaranteeing the right to protection of honor and personal reputation.<sup>216</sup>

151. The Inter-American Court has similarly found that states’ classification of detainees as “terrorists” in circumstances in which they have not been convicted of a criminal offence “implied an insult to the honor, dignity, and reputation” of the inmates and of their next of kin under Article 11 of the American Convention, which guarantees that “[n]o one may be the object of...unlawful attacks on his honor or reputation.”<sup>217</sup>

152. The United States held Mr. Ameziane at Guantánamo Bay for over eleven years under the classification of “enemy combatant,” a label synonymous with “terrorist” that designated him as an individual who was a member of, or associated with, al Qaeda or the Taliban, and who committed or was otherwise involved in hostilities against the United States or its allies. Despite the gravity of this classification, Mr. Ameziane was never charged with any crime, nor was he permitted to see the government’s purported evidence against him, mount his own defense, or obtain effective judicial review of his status and the legality of his detention. Rather, Mr. Ameziane was designated an enemy combatant solely on the basis of a unilateral determination by the President and a subsequent review by a CSRT which was, in effect, designed to merely confirm the original designation. Despite these facts, the United States has persisted in describing Mr. Ameziane and other Guantánamo detainees as “dangerous terrorists,”<sup>218</sup> thereby fueling public misconceptions.

153. Although it is now public information that Mr. Ameziane was cleared for release in 2008, and the State itself has admitted it had no justification for his arbitrary and indefinite detention, the United States government has issued no public or private apology, or rectified its attacks on his honor and reputation. Even after being transferred out of the detention center, the stigma of Guantánamo will still continue to follow him and his family until and unless his name is cleared publicly. This will forever impact his life in many ways, including in his social relationships, his employment prospects, his mobility and ability to travel, and his safety, among others.

154. As explained above, as a purported justification for its refusal to return his personal property, the State has continued to imply or suggest that Mr. Ameziane is a terrorist or might commit terrorist acts merely because he was previously detained at Guantánamo. In this respect, the stigma of Guantánamo is rich and seemingly unending. It certainly does nothing to help his employment prospects or help him achieve any measure of self-sufficiency or normalcy after more than a decade of detention without charge.

---

<sup>215</sup> *Cirio v. Uruguay*, Case 11.500, Inter-Am. C.H.R., Report No. 124/06 (2006).

<sup>216</sup> *Oscar Elias Biscet et al. v. Cuba*, Case 12.476, Inter-Am. C.H.R., Report No. 67/06, at paras. 233 - 234.

<sup>217</sup> I/A Court H.R., *Case of Miguel Castro-Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, para. 359.

<sup>218</sup> In a speech, then-Secretary of State Donald Rumsfeld referred to those detained in Guantánamo Bay as “the 700 most dangerous terrorists on the face of the earth.”

155. By arbitrarily imprisoning Mr. Ameziane at Guantánamo, labeling him an “enemy combatant” in an unfair process, persisting in portraying him as a terrorist despite the lack of any criminal charge or any meaningful judicial review of his status or the legality of his detention, the United States has irreparably damaged Mr. Ameziane’s honor and reputation in violation of Article V of the Declaration.

#### 5.4 Discrimination and Violation of Equality before the Law (Violation of Article II)

156. Guantánamo Bay operates as a facility exclusively for Muslim men and boys, whom the United States intentionally tried to deprive of any protection under U.S. and international law, including the American Declaration. Like the hundreds of other men and boys who have been detained in Guantánamo, Mr. Ameziane was discriminated against on the basis of his identity as a Muslim male. As the Commission already highlighted, all individuals detained at Guantánamo were foreign Muslim men.<sup>219</sup>

157. Article II of the American Declaration states that “[a]ll persons are equal before the law and have the rights and duties established in [the American Declaration], without distinction as to race, sex, language, creed or any other factor.”<sup>220</sup> The Commission has identified the principle of nondiscrimination as paramount to the protection of human rights under domestic and international law.<sup>221</sup> Moreover, states’ duty to guarantee the protection of human rights without discrimination of any kind is also a non-derogable obligation under international human rights and humanitarian law.<sup>222</sup>

158. The general principle of equality before the law and nondiscrimination is widely affirmed by numerous international human rights instruments as well as customary international law.<sup>223</sup> Indeed, the Inter-American Court has recognized that the principle of nondiscrimination and equality before the law is *jus cogens*, “because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws.”<sup>224</sup>

159. Although the American Declaration and the American Convention do not contain a specific definition for discrimination, the Commission, the Inter-American Court and the U.N.

---

<sup>219</sup> Inter-American Commission on Human Rights, “Towards the Closure of Guantánamo.” OAS/Ser. L/V/II, Doc. 20/15, 3 June 2015 Para 221.

<sup>220</sup> American Declaration, Art. II.

<sup>221</sup> IACHR, Report on Terrorism and Human Rights, OEA.Ser.L/V/II.116 (22 October 2002), para. 335.

<sup>222</sup> *Id.* at para. 351.

<sup>223</sup> Various international instruments explicitly protect the right to non-discrimination and equality before the law: American Convention on Human Rights (Articles 1 and 24); American Declaration on the Rights and Duties of Man (Article 2); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” (Article 3); Charter of the United Nations (Article 1(3)); Universal Declaration of Human Rights (Articles 2 and 7); International Covenant on Economic, Social and Cultural Rights (Articles 2(2) and 3); International Covenant on Civil and Political Rights (Articles 2 and 26); International Convention on the Elimination of All Forms of Racial Discrimination (Article 2); Convention on the Rights of the Child (Article 2); Declaration on the Rights of the Child (Principle 1); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Articles 1, 7, 18(1), 25, 27, 28, 43, 45(1), 48, 55 and 70); Convention on the Elimination of All Forms of Discrimination against Women (Articles 2, 3, 5 to 16); Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Beliefs (Articles 2 and 4); (among many others).

<sup>224</sup> I/A Court H. R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 101; See also: IACHR Report, The situation of people of African descent in the Americas, OEA/Ser.L/V/II., Doc.62 (5 December 2011), para. 94.



Human Rights Committee have drawn from the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, to state that discrimination entails:

[a]ny distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>225</sup>

160. The Commission has stated that a law can be discriminatory either through its explicit intent (purpose) or by its effect (impact) if it “imposes a disadvantage on the members of [some] groups that it does not impose on other members of society.”<sup>226</sup> Therefore, when examining a law under the principle of equality and nondiscrimination, the Commission may determine a law to be discriminatory due to its *impact*, even if the formulation itself is neutral.<sup>227</sup> This concept is echoed by the European Court of Human Rights,<sup>228</sup> which has further established that in a case where the applicant has proven the existence of differentiated treatment, the burden of proof shifts to the State, which must then demonstrate such treatment is justified.<sup>229</sup>

161. The Inter-American System has also developed specific state obligations deriving from the right to equal protection and non-discrimination. In the *Case of the Girls Yean and Bosico*, the Court streamlined these obligations as the duty to: (i) refrain from introducing regulations that are discriminatory or have discriminatory effects on different groups of the population, (ii) do away with discriminatory regulations, (iii) fight discriminatory practices, and (iv) establish rules and adopt the measures necessary for recognizing and ensuring effective equality of all persons before the law.<sup>230</sup>

162. Additionally, on the topic of discrimination, the Commission has specifically addressed the notion of racial profiling, and has determined that it is a

---

<sup>225</sup> U.N. Human Rights Committee, General Comment 18, Non-discrimination, 11/10/89, CCPR/C/37, para. 7, *available* at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument).

<sup>226</sup> IACHR Report, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II. Doc. 68, 20 January 2007, para. 93.

<sup>227</sup> *Id.* at para. 91-92. “If the effect of a law or regulation is direct discrimination, all that need be done to prove the discrimination is to show that the legal distinction U.S.es a prohibited factor [...]. If the effect is one of indirect discrimination, the disproportionately prejudicial effect or result that the provision has on a group has to be shown.”

<sup>228</sup> Case of Kuric and others v. Slovenia, ECHR, Application no. 26828/06, Judgment (Merits and J.U.S.t Satisfaction), Court Grand Chamber, 26 June 2012, para. 388; *see also* IACHR, Report No. 85/10. Case 12.361 (Merits), Gretel Artavia Murillo y otros (“In Vitro Fertilization”), 14 July 2010, para. 124. “A general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group, and that discrimination potentially contrary to the Convention may result from a *de facto* situation.”

<sup>229</sup> Kuric and others, *id.* at para. 389.

<sup>230</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 8, 2005. Series C No. 130, para. 141; *see also*, I/A Court H.R., *Case of López Álvarez*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of February 1, 2006. Series C No. 141, para. 170; IACHR Report, Legal standards related to gender equality and women’s rights in the Inter-American Human Rights System: development and application, OEA/Ser.L/V/II.143, Doc. 60 (3 November 2011), at para. 141.

tactic [...] adopted for supposed reasons of public safety and protection and is motivated by stereotypes based on race, color, ethnicity, language, descent, religion, nationality, place of birth, or a combination of these factors, rather than on objective suspicions, and it tends to single out individuals or groups in a discriminatory way based on the erroneous assumption that people with such characteristics are prone to engage in specific types of crimes.<sup>231</sup>

163. The Inter-American Commission and Court have held that States must honor detainees' rights to nondiscrimination and equality before the law, and detention and interrogation conditions may not be "designed or implemented in a way that distinguishes to their detriment members of a group based upon a prohibited ground of discrimination, such as religious beliefs."<sup>232</sup> U.S. courts have also specifically acknowledged the right to nondiscrimination and equality before the law in correctional facilities, including on the basis of both race and religion.<sup>233</sup>

164. Mr. Ameziane and other detainees at Guantánamo Bay share racial and religious characteristics that have made them vulnerable to discriminatory treatment during detention. In fact, every man and boy who has been detained at Guantánamo has been male, young, and of Muslim faith. In the absence of viable evidence linking Mr. Ameziane to any active involvement in hostilities, his detention was informed by his identity as a Muslim male – a specific racial and religious profile that has been utilized by the U.S. government to target persons suspected of terrorism.

165. While in detention, the overall treatment of Mr. Ameziane was discriminatory and abusive, a fact that is illustrated through his accounts of offensive and intentionally disrespectful acts against his Islamic beliefs and practices. Mr. Ameziane has described numerous instances in which guards ridiculed the Muslim call to prayer, yelled obscenities at him, threw stones at his cell during prayer, and even desecrated Qur'ans in Mr. Ameziane's presence, by stepping on them, scrawling obscenities into them, ripping their pages, and throwing them into a tank full of excrement, among other acts.

166. The State has not provided justification for this disparate impact. As the Commission noted:

In the situation under analysis, the Government of the United States decided to set up a detention facility outside the territory of the United States for the exclusive purpose of

---

<sup>231</sup> IACHR, Report No. 26/09 (Admissibility and Merits), Case 12.440, Wallace de Almeida (Brazil), March 20 2009, para. 143; *see also* IACHR Report, The situation of people of African Descent in the Americas, OEA/Ser.L/V/II., Doc.62, 5 December 2011, para. 143, *available at* [http://www.oas.org/en/iachr/afro-descendants/docs/pdf/AFROS\\_2011\\_ENG.pdf](http://www.oas.org/en/iachr/afro-descendants/docs/pdf/AFROS_2011_ENG.pdf).

<sup>232</sup> IACHR Report on Terrorism and Human Rights, *cit.*, at para. 262-64; *cf.*, *mutatis mutandis*, I/A Court H.R., *Case of López-Alvarez v. Honduras*. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, paras. 170-173 (holding that restricting detainee's use of native language is impermissible discrimination).

<sup>233</sup> The U.S. Supreme Court has held that "[c]omplying with the equal protection of the 14th Amendment is not only in line with correct prison administration, but also legitimizes the criminal justice system," and prisons' failure to comply with strict requirements of racial nondiscrimination and equality before the law "undercuts efforts to wipe out racism in the criminal justice system. *Johnson v. California*, 543 U.S. 499 (2005). The Supreme Court has also held that denying a prisoner the right to practice his religion by refusing him the use of the prison chapel, prohibiting him from writing to his religious advisor, and placing him in solitary confinement for disseminating religious materials constituted discrimination, and that the First Amendment prohibits government from "prohibiting the free exercise of religion" of detainees. *Cruz v. Beto*, 405 U.S. 319 (1972).

detaining aliens suspected of terrorism, all of whom are Muslim. It also designed a special system of military commissions to try them, without the procedural guarantees available in federal courts. Therefore, it is a fact that the United States gives these prisoners a different treatment than that given to other prisoners under its custody, whether nationals or aliens. The United States has justified the creation of this separate regime, characterized by indefinite detention, limited or no access to judicial protection, and trial absent basic elements of due process, by invoking the exigencies of the war on terror. It has provided no clear justification for the exclusive application of this regime to foreign Muslim men, presenting the apparent targeting of individuals in relation to nationality, ethnicity and religion.<sup>234</sup>

167. The shared characteristics of Guantánamo detainees and the particular legal regime used to try these detainees without justification show violations of Mr. Ameziane's right to non-discrimination and equality before the law, as guaranteed by Article II of the American Declaration.

168. The conditions of detention, including religious abuse, torture, and inhuman treatment inflicted upon Mr. Ameziane constitute an additional violation of his right to nondiscrimination and equality before the law, as protected under Article II of the American Declaration

## **5.5 Right to Property (Violation of Article XXIII)**

169. The United States has additionally violated Mr. Ameziane's right to own private property, in violation of Article XXIII of the American Declaration. The State confiscated Mr. Ameziane's clothing, identification documents, money, and other personal belongings upon detaining him. When he was forcibly transferred to Algeria, Mr. Ameziane arrived without much of his personal property or any identification documents.

170. He filed civil suit to have his personal property returned to him, but was denied an effective judicial remedy to recover his personal items, all of which placed him in greater vulnerability when he was sent to Algeria, and he was never compensated for this deprivation of property.<sup>235</sup> For these reasons, the United States' arbitrary interference with Mr. Ameziane's personal property constitutes a violation of the rights enshrined in Article XXIII of the Declaration.

## **5.6 Right to Truth (Violation of Articles IV and XXVI)**

171. In addition to the aforementioned human rights violations, the United States has also violated the right to truth, which constitutes an additional violation of Articles IV and XXVI of the American Declaration, protecting the right to freedom of investigation, opinion, expression and dissemination and the right to due process respectively.

172. The right to truth has an autonomous character from other rights, since it implicates the right to access information, including the right of family members of victims of human rights violations to know their whereabouts, and well as the right of society as a whole to

---

<sup>234</sup> Inter-American Commission on Human Rights, "Towards the Closure of Guantánamo." OAS/Ser. L/V/II, Doc. 20/15, 3 June 2015 at para. 224.

<sup>235</sup> Mem. Op., *Ameziane v. Obama*, No. 05-cv-392 (ESH) (D.D.C. July 21, 2014) (dkt. no. 364), ANNEX 3; See, *mutatis mutandis*, IA Court HR. *Case of Tibi v. Ecuador*. Judgment of 7 September 2004, Ser. C, No. 114, para. 221; *inter alia*.

know the truth about vital matters of public interest, such as grave and systematic human rights violations.<sup>236</sup>

173. The State kept secret the entire *modus operandi* of State agents subjecting Mr. Ameziane and others to arbitrary and indefinite detention, torture, and other serious human rights violations and legal proceedings regarding these violations. Although certain aspects of the violations of human rights to which Mr. Ameziane has been subjected have now come to light as details of this detention regime are declassified, countless other facts are still unknown. To date, the United States has consistently refused to grant this Commission or United Nations Special Mandate Holders full access to detainees held in Guantánamo, and has prosecuted those who publicly divulge classified information regarding these human rights violations.

174. More fundamentally, it is important to remember that the 780 men and boys who were rendered to Guantánamo between 2002 and 2008 were declared by U.S. officials to be the “worst of the worst,” “vicious killers” who deserved to be deprived of their most basic human rights. These characterizations were lies, as the government’s own representations to the District Court in Mr. Ameziane’s case showed many years later.

175. Mr. Ameziane is not and has never been a terrorist or terrorist sympathizer. Like most of the men who remain at Guantánamo, he is a victim of the United States’ so-called “war on terror” who have failed to achieve justice in U.S. courts and instead look now to international bodies such as this Commission to correct the historical record and obtain other meaningful relief.

176. Accordingly, the Commission should conclude that the foregoing facts set out in this petition additionally constitute a violation of the right to truth.

## 6. CONCLUSION AND REQUEST FOR RELIEF

177. For the aforementioned reasons, Petitioners respectfully request that the Honorable Commission declare that the United States committed aggravated violations of Mr. Ameziane’s rights enshrined in Articles I, II, III, IV, V, VI, XI, XXIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man, and recommend the State:

- 1) Adopt all measures necessary to guarantee the safety and integrity of all men remaining at the Naval Base at Guantánamo, including revision of guidelines on solitary confinement.
- 2) Adopt all measures necessary to provide, without delay, an adequate, prompt, independent, and efficient judicial remedy whereby Mr. Ameziane, and other Guantánamo detainees like him, can challenge the lawfulness of their detention, including post-transfer, in order to remedy the collateral consequences of their prior detention at Guantánamo.
- 3) Immediately adopt a transparent, public judicial remedy for detainee status determinations, including guarantees of the principle of *non-*

---

<sup>236</sup> See IACHR, Case 11.481, Report N° 37/00, El Salvador, Monsignor Oscar Arnulfo Romero y Galdámez, April 13, 2000; IACHR, Cases 11.505, 11.532, 11.541, 11.546, 11.549, 11.569, 11.572, 11.573, 11.583, 11.595, 11.657, 11.705, Report N° 25/98, Chile, Alfonso René Chanfeau Orayce, April 7, 1998; I/A Court H.R., Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219.

*refoulement* for men transferred out of the Naval Base at Guantánamo Bay.

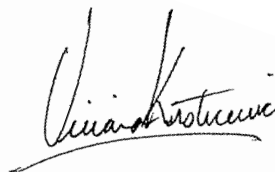
- 4) Adopt all necessary legislative, administrative, judicial and other measures to ensure the effective investigation, prosecution and punishment of all parties responsible for torture, ill-treatment and other human rights violations, including but not limited to the immediate derogation of the immunity provisions in the Detainee Treatment Act (DTA) and the Military Commissions Act (MCA).
- 5) Provide adequate compensation and all other relevant measures of integral reparation to Mr. Ameziane and his family members, including access to adequate health care and immediate financial assistance to meet basic needs for the duration of his lifetime, and guarantees of non-repetition and measures of restitution for the aforementioned human rights violations.
- 6) Return Mr. Ameziane's personal property retained upon his departure from Guantánamo.
- 7) Fully establish the facts of Mr. Ameziane's case, publicly accept international responsibility, and offer public and private apologies to Mr. Ameziane in consultation with the victim and his representatives.

The Petitioners thank the Commission for its careful attention to this pressing matter.

Dated: September 30, 2015

Respectfully submitted,

p/Wells Dixon



J. Wells Dixon  
Omar Farah  
Aliya Hussain  
CENTER FOR CONSTITUTIONAL RIGHTS  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012  
(Tel) 212-614-6423  
(Fax) 212-614-6499

Viviana Krsticevic  
Francisco Quintana  
Elsa Meany  
CENTER FOR JUSTICE AND  
INTERNATIONAL LAW (CEJIL)  
1630 Connecticut Ave, NW, Suite 401  
Washington, D.C. 20009  
(Tel) 202-319-3000  
(Fax) 202-319-3019