Findings of the Inter-American Commission on Human Rights

Pertinent Parts of October 28, 2005 Reiteration and Further Amplification of Precautionary Measures (Detainees in Guantanamo Bay, Cuba)


After considering the observations of the parties, the Commission has made the following findings concerning its precautionary measures granted in favor of the detainees at Guantanamo Bay.

With respect to the Commission’s request for the State to take the urgent measures necessary to have the legal status of the detainees at Guantanamo Bay determined by a competent tribunal, the State has argued that the actions of the various tribunals established at Guantanamo Bay as well as the federal courts of the United States are addressing the concerns raised by the Commission and therefore that it is “wholly unnecessary and improper for the Commission to retain jurisdiction over this proceeding.” In this respect, the Commission observes that … the urgency of the matter arose from the fact that according to available information, the detainees at Guantanamo Bay remained entirely at the unfettered discretion of the United States government. As no person under the authority and control of a state, regardless of his or her circumstances, is devoid of legal protection for his or her fundamental and non-derogable human rights, the Commission considered that the rights and protections to which the detainees may be entitled under international or domestic law could not be said to be the subject of effective legal protection by the State absent clarification of the legal status of the detainees. Over two years later, the U.S. Supreme Court reached essentially the same conclusion in its judgment in the case of *Rasul v. Bush* [below]. … Mr. Justice Stevens … quoted [an earlier case acknowledging] … that Executive imprisonment has long been considered oppressive and lawless since John, at Runnymede, pledged that no free man should be imprisoned, dispossessed, outlawed, or exiled save by the judgment of his peers or by the law of the land. The judges of England developed the writ of habeas corpus largely to preserve these immunities from executive restraint.

The Commission has also requested that the State conduct thorough and impartial investigations into all allegations of torture and other ill treatment of detainees under its authority and control and to prosecute individuals who may be responsible for such conduct, including those who may be implicated through the doctrine of superior responsibility. In this regard, it has long been emphasized within the inter-American human rights system that states must use the means at their disposal to prevent human rights violations and to provide effective remedies for any violations that do occur, including undertaking thorough and effective investigations capable of identifying and punishing persons responsible for human rights infringements. In response to the Commission’s request, the State has indicated, without significant detail, that several official reviews of conditions of detention at Guantanamo and elsewhere have been undertaken and that allegations of detainee abuse are investigated and those who commit wrongdoing are punished … [and has] documented eight instances of *infractions* which have resulted in action ranging from admonishment to court-marshal [italics added].
With respect to the Petitioners’ allegations concerning the transfer or removal of detainees to third countries in circumstances which do not adequately protect against the possibility that the transferees may be subjected to torture or other inhuman treatment, the State has indicated that it takes seriously the principle of non-refoulement [textbook §4.2.C.2.], and that its policy is to obtain specific assurances from a receiving country that it will not torture the individual being transferred to that country and would not transfer a detainee where those assurances are not sufficient when balanced against an individual’s specific claim [§5.3.C.3]. …

On this issue, the Commission has previously stated that the obligation of non-refoulement under applicable international instruments is absolute and does not depend upon a claimant's status as a refugee. …

From the information available to the Commission, which includes judicial decisions from courts in the United States and findings by the U.S. government itself, at least some of the detainees at Guantanamo face real risks of torture and other mistreatment if removed or transferred to other governments. Further, the information presented indicates that although the United States government may request assurances from the receiving state, it has no method of enforcing or monitoring compliance with these assurances once the detainee is removed, a defect that has been criticized by other international human rights authorities.

Finally, the Commission respectfully requests that the United States provide information concerning the Petitioners’ allegation that juveniles under the age of 18 continue to be held by the United States at Guantanamo Bay and that they have not been segregated from the adult population or provided with education or rehabilitation assistance [§10.3.C.]