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**REPORT N° 17/12  
PETITION P-900-08  
ADMISSIBILITY  
DJAMEL AMEZIANE  
UNITED STATES**

Approved by the Commission at its session N° 1896  
held on March 20, 2012

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I. SUMMARY

1. On August 6, 2008 the Inter-American Commission on Human Rights (the "Inter-American Commission", or the "IACHR") received a petition and request for precautionary measures presented by the Center for Constitutional Rights (CCR); and the Center for Justice and International Law (CEJIL) (collectively the "petitioners") against the United States of America (the "State" or the "U.S."). The petition was presented on behalf of Djamel Ameziane (hereinafter "Mr. Ameziane" or the "alleged victim"), an Algerian citizen who is currently detained in the U.S. Guantanamo Bay Detention Facility.

2. The petitioners complain that Mr. Ameziane was captured by the U.S. military in Pakistan in 2002; detained at the Kandahar Airbase in Afghanistan for more than a month; and then transferred to the Guantanamo Bay Detention Facility, where he remains to date deprived of his liberty. They allege that during his detention, Mr. Ameziane has been subjected to many acts that amount to torture, cruel and degrading treatment, including the deliberate deprivation of medical attention, religious abuse, and lack of contact with his family; that the legality of his detention has not been determined by a competent court, and therefore he is still subject to arbitrary detention; and that he is at risk of being transferred back to Algeria, where he would be at risk of serious harm. Thus, Mr. Ameziane is currently seeking to have a proper judicial review of the legality of his detention and to be adequately resettled in a safe location.

3. The petitioners allege that, consequently, the State is responsible for violating Mr. Ameziane's rights under Articles I, III, V, VI, XI, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man. They submit that Mr. Ameziane is exempt from the requisite of prior exhaustion of domestic remedies, since there is still no decision on the merits of a *habeas corpus* lodged on February 24, 2005; and because municipal law prevents Mr. Ameziane from pursuing any criminal, civil or administrative action for the harms he has allegedly suffered while in custody.

4. As of the approval of this report, the State has not submitted any written response in this matter.

5. As set forth in this report, the Inter-American Commission has examined the arguments of the petitioners --in the absence of any contentions from the State-- and without prejudging the merits of the matter, concludes that the case is admissible regarding claims concerning the alleged violation of Articles I, II, III, V, VI, XI, XVIII, XXV, and XXVI of the American Declaration, as they meet the requirements provided in Articles 31 to 34 of its Rules of Procedure. Based on the foregoing, the IACHR decides to notify the parties of its decision and to continue with its analysis of the merits, publish this report and include it in its Annual Report to the General Assembly of the OAS.

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\* Commissioner Dinah Shelton did not take part in the discussion or voting on this case, pursuant to Article 17(2) of the Inter-American Commission's Rules of Procedure.

## II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

6. The IACHR received the petition on August 6, 2008; in the same document, the petitioners also requested precautionary measures. Subsequently, on August 20 of the same year, the IACHR granted precautionary measures in favor of Mr. Ameziane, pursuant to Article 25 of its Rules of Procedure, requesting *inter alia* that the State immediately take all measures necessary to ensure that the beneficiary would not be subjected to cruel, inhuman or degrading treatment at any time; and that he would not be transferred or removed to a country where there would be substantial grounds for believing that he would be in danger of being subjected to torture or other mistreatment.

7. On October 7, 2009 the IACHR transmitted the pertinent parts of the petition to the State, with a request for its observations within two months, and informed the petitioners accordingly. The State acknowledged receipt of the petition on October 8, 2009 via email, but did not respond to the request for observations.

8. On October 29, 2010, during its 140<sup>th</sup> ordinary period of sessions, the IACHR held a hearing granted specifically for receiving information on the petition received on August 6, 2008 (P-900-08) on behalf of Mr. Djamel Ameziane. Both parties were in attendance before the IACHR, and both spoke and answered questions from the Commissioners; nevertheless, the representatives of the State did not provide any information on the specific situation of Mr. Ameziane or of his case.

## III. POSITIONS OF THE PARTIES

### A. Position of the petitioners

9. The petition indicates that Mr. Djamel Ameziane was born in 1967 and raised in Kabylie, Algeria, where he worked as a hydraulics technician after finishing the university. The petitioners describe that Kabylie, situated in northern Algeria, is an unstable region known for frequent violent clashes between the Algerian Army and Islamic resistance groups, where government agents are known to subject practicing Muslims, such as Mr. Ameziane, to acts of harassment. Due to this environment of violence and discrimination, he immigrated to Europe in 1992; he applied for a visa in Austria and worked for three years until his visa was denied in 1995. Mr. Ameziane then immigrated to Canada, where he applied for asylum for fear of returning to Algeria; he worked in Canada until his visa was denied in 2000. The petitioners indicate that Mr. Ameziane then immigrated to Afghanistan where he believed he could freely practice his religion.

10. After the war began in 2001, Mr. Ameziane attempted to flee to Pakistan but was captured by Pakistani authorities and turned over to U.S. officials. United States authorities allegedly later told Mr. Ameziane that the Pakistanis had sold him for a bounty. The petitioners allege that in January 2002, Mr. Ameziane was transferred to the U.S. airbase in Kandahar, Afghanistan. It is stated that at this detention facility Mr. Ameziane was subjected to torture and inhumane treatment including, but not limited to: being punched, kicked, slammed to the ground, searched in a forceful and abusive way, threatened with dogs and with firearms, and subject to religious abuse.

11. On or about February 11, 2002, Mr. Ameziane was allegedly forced to board a plane while hooded and shackled and, while chained to the floor, traveled 15 hours to the Guantanamo Bay Detention Facility. Once there, he was chained to a bus and forbidden to speak or move, and was beaten if he swayed with the bus' movement. Once at Guantanamo, the alleged victim was placed at the facility known as Camp X-Ray for almost three months, until April 2002, in a wire mesh cage cell that measured six square feet. The petitioners state that in a letter to his attorneys, Mr. Ameziane described how guards would gratuitously yell obscenities and insults at him every

time they walked by his cell or gave him an order, often for no reason; for example, to demand that he arrange his basic personal items in a certain order.

12. After being detained at Camp X-Ray, the petitioners note that Mr. Ameziane was held in other areas of the detention facility at Guantanamo Bay, including several stints in solitary confinement of up to a month at a time. He has also allegedly suffered deliberate deprivation of sleep and physical mistreatment, including, but not limited to, being sprayed fully with pepper spray, waterboarding, and general other beatings resulting in serious physical injuries. The petitioners additionally contend that Mr. Ameziane was mistreated by being disrupted while praying and witnessing deliberate desecrations of the Qu'ran. Specifically, they submit that during interrogations, Mr. Ameziane was allegedly bound tightly for extended periods of time, which caused his extremities to swell; locked in an interrogation room for up to 30 hours with extremely loud music playing; and threatened with violence.

13. Since March 2007, Mr. Ameziane has been detained in Camp VI, where he was allegedly transferred as punishment for not speaking with his interrogators. He was allegedly housed in a windowless six by twelve feet concrete and steel cell with no openings for natural light or air, where the temperature was kept extremely cold; the only exposure to the outdoors was when he was allowed to spend two hours a day in another cell with two story walls and a wire mesh ceiling. The only staple items Camp VI prisoners were permitted in their cells were a thin mat on which to sleep, a pair of pants, a shirt, and a pair of flip flops. All other items --such as a toothbrush, toothpaste, a Styrofoam cup, and a towel-- were considered "comfort items" and could be taken away for any infraction.

14. As a result of this specific form of detention, it is asserted that the alleged victim suffered serious deterioration of his vision. When he requested to receive optometric care, the request was ignored for almost a year. The glasses he did finally receive were the wrong prescription, which caused him a headache after each use. Additionally, due to the cold temperature in his cell, Mr. Ameziane allegedly suffered from rheumatism in his legs, a condition that was not medically treated.

15. The medical care Mr. Ameziane has received has allegedly been negligent and abusive. The petitioners state that Mr. Ameziane has sought medical treatment for a pain in his head for almost a year, but the doctor who examined him told him there was nothing he could do. On multiple occasions, Mr. Ameziane has requested socks from the infirmary to help him with the rheumatism he suffers in his feet and legs, but was told he would have to ask his interrogator for such items.

16. The petitioners allege that on one occasion, Mr. Ameziane went into convulsions in his cell, but the guards left him writhing on the floor for hours before taking him to the infirmary. The attending doctor inserted a serum in Mr. Ameziane's arm, and asked one of the soldiers standing watch to assist him by inserting a syringe needle into Mr. Ameziane's vein. The guard stuck the needle into his forearm, which began spurting blood. The doctor and the guards laughed while the alleged victim lay chained to the table.

17. The petitioners allege that during his time in Camps II and III, Mr. Ameziane routinely suffered religious abuse and disruptions. They further submit that guards would yell insults and obscenities at him while he prayed, and would sometimes throw stones at the metal grill window of his cell. In Camp VI, his conditions of isolation allegedly created a structural interference with his religious practice: since he and his fellow inmates could only pray in their separate individual cells, and could not do so communally.

18. As to the impact of the conditions of detention on Mr. Ameziane's private and family life, petitioners state *inter alia* that he has effectively been denied any meaningful contact with his family for over six years, and that he has been deprived of founding his own family and developing his own personal life during some of the prime years of his life. On February 29, 2008, the ICRC facilitated the first telephone call Mr. Ameziane has been permitted to make to a family member or to anyone since 2002. The only other method of communication available to Mr. Ameziane is the mail system, but letters between him and his family have sometimes taken a year or more to reach the other side.

19. The petitioners claim that the alleged victim has been arbitrarily held in detention all these years due the United States' failure to ensure a review of the legality of his detention by a competent court, also violating his right to be tried without undue delay or, otherwise, to be released. In support of this assertion, they argue basically that it was not until June 24, 2004 -- more than two years after the opening and transfer of detainees to Guantanamo-- that the U.S. Supreme Court held in *Rasul v. Bush*, 542 U.S. 466 (2004), that U.S. federal courts have jurisdiction to hear petitions of Guantanamo detainees. Shortly afterwards, the U.S. Congress passed two laws pertinent to the detainees' right to *habeas corpus*: the Detainee Treatment Act ("DTA") on December 2005 and the Military Commissions Act ("MCA") on October 2006, which basically created a legal system that denies the constitutional right to *habeas* to Guantanamo detainees, and only allows a limited review of the procedure before the Combatant Status Review Tribunals (CSRT). In other words, the laws limit access to the courts for the review of the determination of the "combatant status" of the detainees according to the procedures established by the Department of Defense itself.

20. On June 12, 2008, the U.S. Supreme Court ruled in the case of *Boumediene v. Bush* (*Al Odah v. United States*, 553 U.S. 723 (2008), (*Boumediene*)) that the MCA's "habeas-stripping provision" was unconstitutional with respect to Guantanamo detainees and that the review process under the DTA was not an adequate substitute for full *habeas review*. However, according to the information provided by the petitioners, on March 23, 2011, the *habeas corpus* petition lodged by Mr. Ameziane's attorneys on February 24, 2005 has still not been decided on the merits by the D.C. District Court. The petitioners also argue that even taking into account the provisions of International Humanitarian Law (as *lex specialis*), Mr. Ameziane's detention is clearly arbitrary, since the Third and Fourth Geneva Convention lay down that in the context of an international armed conflict, "combatants" may be detained for the duration of the hostilities, so long as the detention serves the purpose of preventing them from continuing to take up arms against the detaining party. Once the conflict has come to an end, prisoners of war and non-combatants must be released, although they may be detained until the end of any criminal proceedings brought against them.

21. Petitioners argue that the basic position of the United States is that it should be able to detain the Guantanamo prisoners as "enemy combatants," without charge or effective access to the courts, for the duration of its "war on terror," which by the government's own admission is a war without end. Furthermore, the government itself has confirmed that the objective of the ongoing detention of Guantanamo detainees is not primarily to prevent any individual from taking up arms against the United States, but to obtain information and intelligence.

22. The petitioners also complain that the alleged victim would be at risk of persecution if he is repatriated to Algeria. The U.S. interrogators at Guantanamo have purportedly threatened to send Mr. Ameziane back to Algeria if he does not cooperate with them, indicating that they understand he would be mistreated there. According to the petitioners, the Algerian Ambassador to the United States has informed the lawyers of Algerian Guantanamo detainees that if their clients are repatriated they will be considered serious security threats and subject to further detention and investigation in Algeria. They quote the Algerian Ambassador as stating that there was no reason

an Algerian citizen who had lived in Canada or Europe would go to Afghanistan except to engage in unlawful activity.

23. Thus, the association of Mr. Ameziane with Guantanamo and Afghanistan alone would be enough to create a substantial risk that he would be subjected to abuse or torture in detention and during interrogations upon his return, and perhaps convicted and sentenced to several years of imprisonment. Petitioners add that the Ameziane family has been suspected of terrorist ties since Mr. Ameziane has been detained. Moreover, the fact that he and his family are observant Muslims increases the risk of further aggression in Algeria.

24. In the course of a meeting held with the Rapporteur on Persons Deprived of Liberty on March 23, 2011, petitioners informed that Mr. Ameziane had been recently transferred to Camp IV. This area is a collective section intended for good behavior detainees, in which the alleged victim has some opportunities to exercise, improve his language skills and learn painting. Due to this and other conditions, he is in better health than in the past. On this occasion, petitioners informed that the *habeas corpus* lodged by the counsel of Mr. Ameziane on 2005 is still pending for a decision on the merits.

#### B. Position of the State

25. The United States has, to date, not filed any response with the Inter-American Commission on this matter. However, the long-standing legal position of the United States with regards to the situation of the Guantanamo detainees is that the Inter-American Commission lacks jurisdiction with respect to detention operations at Guantanamo<sup>1</sup>.

26. During the hearing on October 29, 2010, the State had the opportunity to rebut the arguments of the petitioners and to provide information and evidence on the case. However, the United States did not discuss the petitioner or mention him by name at that hearing. The State's representatives addressed the alleged general condition of all Guantanamo detainees; when asked about the condition of the petitioner specifically, they declined to provide information<sup>2</sup>.

### IV. ANALYSIS OF ADMISSIBILITY

#### A. Competence

27. Upon considering the record before it, the Inter-American Commission finds that it is competent *ratione personae* to analyze the claims in the present petition. Under Article 23 of the IACHR Rules of Procedure, the petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration. The alleged victim is a person whose rights are protected under that international instrument. The State is bound to respect the provisions of the American Declaration, and the IACHR is competent to receive petitions alleging violations of that instrument by the State by virtue of its ratification of the OAS Charter on June 19, 1951 and in conformity with Article 20 of the IACHR's Statute and Article 49 of its Rules of Procedure.<sup>3</sup>

<sup>1</sup> Lately expressed in a letter sent by the Department of State on August 26, 2011 in regard to the last request for an *in site* visit submitted by the IACHR.

<sup>2</sup> The recordings of that hearing are available at the official IACHR website, specifically the following link: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=120&page=2>

<sup>3</sup> Article 20(b) of the IACHR's Statute; Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150; IACHR's Rules of Procedure, Arts. 49, 50; I/A Court H.R., Advisory Opinion OC-10/B "Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," Jul. 14, 1989, Ser.A n°10 (1989), paras.35-45; and IACHR, James Terry Roach and Jay Pinkerton (United States) Case 9647, Res.3/87, Sept.22, 1987, Annual Report 1986-87, paras.46-49.

28. The IACHR is also competent *ratione temporis* because the obligation to respect and guarantee the rights protected in the American Declaration was already in effect for the United States on the date on which the facts alleged in the petition were said to have occurred. Finally, the Inter-American Commission is competent *ratione materiae* because the petitioner alleges possible violations of human rights protected by the American Declaration. In this regard, the IACHR has consistently asserted that in situations of armed conflict, both international human rights law and international humanitarian law apply. Although international humanitarian law is the *lex specialis* for determining states' obligations in these situations, in certain circumstances, its norms may not provide sufficient protection for the rights of the persons affected.<sup>4</sup>

29. Regarding jurisdiction *ratione loci*, the IACHR observes three different moments that should be assessed: the apprehension of Mr. Ameziane by U.S. officials in Pakistan (regardless if he was transferred for a "bounty" or otherwise captured from the Pakistanis); the period of more than one month Mr. Ameziane was held in the U.S. airbase in Kandahar; and his detention for more than a decade in the U.S. detention facility at Guantanamo Bay.

30. Regarding the extraterritorial application of the American Declaration, the IACHR has held that even though a State's duty to protect the rights of any person is based on its territory, that duty may, under given circumstances, refer to conduct with an extraterritorial locus where the person concerned is present in the territory of one State, but subject to the control of another State, usually through the acts of the latter's agents abroad. In these cases, the inquiry turns on whether the alleged victim was subject to the authority and control of the acting State.<sup>5</sup>

31. In regard to the apprehension of Mr. Ameziane, the IACHR observes that those actions implied an exercise of physical power and control over the person in question performed by agents of the United States, which is the decisive element to establish the jurisdiction of the State over those facts.<sup>6</sup> The agents of the United States, even though operating outside its territory, brought Mr. Ameziane under U.S. jurisdiction when taking him into their custody.

32. By virtue of the same reasoning, the IACHR considers that the alleged acts committed against Mr. Ameziane during his detention at the U.S. airbase in Kandahar, Afghanistan also fall within the jurisdiction of the United States. As the petitioners informed, and as is publicly known, during the first week of December 2001, in the later stages of the U.S. invasion of Afghanistan, U.S. Marines took control of the international airport in Kandahar and established a temporary U.S. base including a prison reportedly capable of holding 100 detainees.<sup>7</sup> During this period, the alleged victim fell within the jurisdiction of the United States, since the U.S. exercised total and exclusive *de facto* control over this prison and the individuals detained there.<sup>8</sup>

<sup>4</sup> IACHR, Press Release 3/12, *10 Years After Detentions in Guantanamo Began, the IACHR Repeats its Call to Close the Detention Center*, January 11, 2012; IACHR, Resolution No. 2/11, *Regarding the Situation of Detainees at Guantanamo Bay*, July 22, 2011; IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. (2002), paras. 61, 146; IACHR, Third Report on the Human Rights Situation in Colombia, OEA/Ser.L/V/II.102 Doc. 9 rev. 1 (1999), Chapter IV, para. 11; IACHR, Report No. 5/97, Case 11.137, Merits, Juan Carlos Abella, Argentina, November 18, 1997, paras. 158-66.

<sup>6</sup> IACHR, Report No. 109/99, Case 10.951 Coard et al., United States, Merits, September 29, 1999, para. 37; IACHR, Report No. 86/99, Case 11.589 Armando Alejandro Jr., Carlos Costa, Mario de la Peña y Pablo Morales, Cuba, September 29, 1999, para. 23.

<sup>8</sup> ECHR, Grand Chamber, Case of Al-Skeini and Others v. The United Kingdom (Application n. 5572/07), Judgment of July 7, 2011, paras. 136-137.

<sup>7</sup> See Press Release, U.S. Department of Defense, *U.S. to Question Detainees* (Dec. 18, 2001), available at: <http://www.defense.gov/news/newarticle.aspx?id=44340>

<sup>8</sup> See generally: ECHR, Fourth Section, Case of Al-Saadoon and Mufdhi v. The United Kingdom (Application no. 61498-08), Decision of June 30, 2009, paras. 86-89. It is worth noting that in the above cited Case of Al-Skeini and Others, continue.../

33. With regard to the events that have taken place in the U.S. Detention Facility in Guantanamo Bay, it appears clear to the Commission that the United States has been exercising its jurisdiction there (*de jure* and *de facto*) for more than a century. Actually, as the petitioners mention, Justice Kennedy said in his concurring opinion in *Rasul v. Bush*, that "Guantanamo Bay is in every practical respect a United States territory" over which the United States has long exercised "unchallenged and indefinite control". The United States, through the signing of the Cuban-American Treaty in 1903 at the close of the Spanish American War, agreed that "during the period of the occupation by the United States of [Guantanamo Bay] the United States shall exercise complete jurisdiction and control."<sup>10</sup> Thus, it is clear that the State exercises its jurisdiction over its Military facilities at Guantanamo Bay.

34. Furthermore, the issuance of precautionary measure MC 259-02 in 2002, directed at all prisoners detained in the Guantanamo Bay Detention Facility at that time, reflects the IACHR's understanding that Guantanamo Bay falls under the jurisdiction of the United States.

35. In light of these considerations, the Inter-American Commission is competent *ratione loci* to take cognizance of the petition inasmuch as it alleges violations of rights protected by the American Declaration said to have occurred within the jurisdiction of the United States.

## **B. Admissibility requirements**

### **1. Exhaustion of domestic remedies**

36. Article 31(1) of the Commission's Rules of Procedure provides that in order for a petition filed with the Commission to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.<sup>11</sup> Article 31(2), however, provides three distinct exceptions to this rule applicable when (a) the state does not afford due process for the protection of the allegedly violated right, (b) the party has been denied access to the available remedies and (c) there has been unwarranted delay in rendering a judgment under these remedies.

37. In addressing the legal remedies afforded to persons detained at Guantanamo Bay, such as Mr. Ameziane, the petitioners note several obstacles to the exhaustion of remedies. The petitioners allege that the appropriate remedy for the alleged wrongs Mr. Ameziane has suffered would be *habeas corpus* and access to the criminal courts of the United States. Mr. Ameziane, it is claimed, has been denied these remedies.

38. The petitioners claim that the Supreme Court decision in *Rasul v. Bush* in 2004, determining that *habeas corpus* must be available to Guantanamo Bay detainees, was, for all intents and purposes, overruled by the 2005 passing of the Detainees Treatment Act (DTA). The DTA provided an alternative to *habeas corpus* by instead only allowing detainees a limited remedy by which they could request a review of the Combat Status Review Tribunal (CSRT) hearings, the

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the respondent State did not contend the admissibility of the claims regarding the killing of one of the victims that occurred in a United Kingdom-run military detention facility located in a United Kingdom base. During the domestic procedures the Divisional Court and subsequently Lords Brown, Rodgers and Carswell and Baroness Hale agreed that the extra-territorial exception made for embassies apply by analogy to the said military facility (*see paras. 101 and 118*).

<sup>9</sup> *Rasul*, 542 U.S. at 487 (Kennedy, J., concurring).

<sup>10</sup> Agreement Between the United States and Cuba for the Lease of Lands for Coaling and Naval Stations; February 23, 1903.

<sup>11</sup> *See* IACHR Rules of Procedure, Art. 31.



tribunals that determine the status of the prisoners' detention, to determine compliance with the rules of procedure of CSRT hearings. This remedy allows for no questioning of the incarceration; it only reviews if the procedures of the Tribunals were appropriately conducted according to the rules the tribunals established for themselves. Additionally, of the many DTA CSRT-appeal cases brought, given jurisdiction in the D.C. Circuit Court of Appeals, only one has been heard by the Court since 2005.

39. Petitioners note that, in 2006, when the Military Commissions Act (MCA) was passed by the United States, its aim was to entirely and explicitly deny the right of *habeas corpus* to the men detained at Guantanamo Bay. In the 2008 decision in the *Boumediene* case, the U.S. Supreme Court deemed this legislation unconstitutional and established, once again, that the Guantanamo Bay detainees were eligible to file for *habeas corpus* under the United States Constitution. To date, despite this ruling, Mr. Ameziane's request for *habeas corpus* has not been heard by any U.S. civil court. Therefore, the IACHR concludes that there has clearly been an unwarranted delay in rendering a final judgment in a remedy that by its own nature must be promptly decided.

40. The alleged victim has also not been allowed access to any U.S. criminal court to file any charges he may wish to pursue with respect to his alleged mistreatment in either Guantanamo or Kandahar, because U.S. legislation currently provides ongoing and retroactive immunity to the State agents responsible for Mr. Ameziane's mistreatment.

41. In this regard, petitioners argue that the DTA establishes that in a civil or criminal action against a U.S. agent engaged in the "detention and interrogation of aliens" determined by the President or his designees to be engaged in terrorism, a finding that the activities were "officially authorized and determined to be lawful at the time that they were conducted" and that the agent "did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful" shall act as a complete defense to the civil or criminal action. The MCA exacerbates this immunity provision by making it retroactive for both civil actions and criminal prosecutions related to actions occurring between September 11, 2001 and the enactment of the DTA on December 30, 2005. The IACHR deems that the existing legal framework applicable to Mr. Ameziane as an "enemy combatant" prevents him from successfully pursuing any criminal action against U.S. officials. Thus, he is exempted from exhausting that remedy.

42. Moreover, the United States did not controvert the admissibility of the present case.

43. Hence, the Inter-American Commission concludes that, in the instant case, domestic remedies were adequately pursued to the extent available, but cannot be exhausted for reasons that constitute exceptions listed in Articles 31(2)(b) and 31(2)(c) of its Rules of Procedure.

## 2. Timeliness of the petition

44. Article 32(2) of the IACHR's Rules of Procedure states that in cases in which the exceptions to the prior exhaustion requirement are applicable, the petition must be presented within what the IACHR deems to be a reasonable period of time. For this purpose, the IACHR shall consider the date on which the alleged human right violation occurred and the circumstances of each case.

45. The Inter-American Commission has already determined that an exception to the rule requiring the prior exhaustion of domestic remedies is applicable in this case. Consequently, it must determine whether the petition was lodged within a reasonable time, as required by Article 32.2 of its Rules of Procedure. The record before the IACHR indicates that the alleged violations of Mr. Ameziane's human rights are of an ongoing nature, as they began with the detention of Mr.

Ameziane in Afghanistan and continue today, as he is still incarcerated in Guantanamo Bay. Moreover, the IACHR observes that the petition was submitted three and a half years after Mr. Ameziane's counsel lodged the petition of habeas corpus, and six and a half years since his detention by U.S. officials, a period of time that the IACHR considers reasonable in terms of Article 32(2) of its Rules, and consistent with its own precedents. Thus, the IACHR concludes that the petition was lodged before it within a reasonable time.

### 3. Duplication of proceedings

46. There is no information in the record indicating that the subject of this petition is pending settlement in another procedure under an international government organization of which the State is a member, or that the case essentially duplicates a petition pending or already examined and settled by the IACHR or another international governmental organization of which the State is a member. The Inter-American Commission therefore finds no bar to the admissibility of the petitioners' claims under Article 33 of its Rules of Procedure.

### 4. Colorable claim

47. Article 27 of the IACHR Rules of Procedure mandates that petitions state facts "regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments" such as the American Declaration. In addition, Article 34(a) of the Rules requires the Inter-American Commission to declare a petition inadmissible when it does not state facts that tend to establish a violation of the rights referred to in Article 27 of the Rules.

48. In the present case, the petitioners allege that the State is responsible for violations of Mr. Ameziane's rights under Articles I, III, V, VI, XI, XVIII, XXV, and XXVI of the American Declaration, fundamentally on the basis of failure to adequately determine Mr. Ameziane's legal status; his arbitrary imprisonment during a decade without charge or judicial review; the acts of physical and psychological torture and cruel, inhuman, and degrading treatment he has allegedly suffered while in Kandahar and Guantanamo; the deprivation of developing his private and family life; and the lack of adequate and effective judicial remedies for the violations he has allegedly suffered. The State has not provided any specific observations or information on the violations alleged in the petition presented on behalf of Mr. Ameziane.

49. Neither the American Declaration nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements. In the instant case, the IACHR will also consider at the merits stage the possible violation of Article II of the American Declaration, in light of the potential discrimination based *inter alia* on Mr. Ameziane's national and ethnic origin, culture and religion.

50. Based on the foregoing, the IACHR considers that the petition is not manifestly groundless or out of order and concludes, pursuant to Article 34 of its Rules of Procedure, that it should be declared admissible with regard to alleged violations of Articles I, II, III, V, VI, XI, XVIII, XXV, and XXVI of the American Declaration.

**V. CONCLUSION**

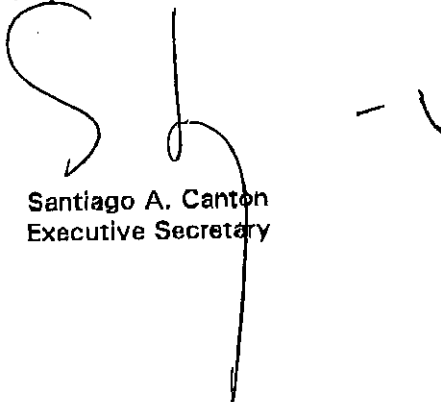
51. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES TO:**

1. Declare the present petition admissible with respect to Articles I, II, III, V, VI, XI, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man;
2. Notify the parties of this decision;
3. Continue with the analysis of the merits of the case; and
4. Publish this report in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 20 day of the month of March, 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Rodrigo Escobar Gil, Rosa María Ortiz and Rose-Marie Antoine, Commissioners.

The undersigned, Santiago A. Canton, Executive Secretary of the Inter-American Commission on Human Rights, in keeping with Article 47 of the Commission's Rules of Procedure, certifies that this is an accurate copy of the original deposited in the archives of the IACHR Secretariat.



Santiago A. Canton  
Executive Secretary