



*Stopping torture and other
human rights abuses through
bold and innovative litigation*

January 25, 2009

Dr. Santiago Canton
Executive Secretary
Inter-American Commission on Human Rights
Washington, D.C. 20006

Re: Request for Thematic Hearing Regarding Accountability for Human Rights Violations

Dear Dr. Canton:

Pursuant to Article 64 of the Regulations of the Inter-American Commission, the undersigned nongovernmental organizations write to request that the Inter-American Commission on Human Rights (“the Commission”) hold a hearing during its 134th session to examine the issue of accountability for torture and cruel, inhuman, and degrading treatment committed by United States government officials. This issue has implications throughout the OAS system as the approach to justice in one Member State sets precedent for all Member States.

Purpose of the Hearing

The purpose of this hearing is to provide the Commission with information regarding the types of accountability mechanisms President Obama’s administration must establish in order to comply with the government’s obligations under the American Declaration of the Rights and Duties of Man (“American Declaration”) and international law to investigate, prosecute, and punish international crimes, including torture. We seek an investigation into these developments, to be explained more fully below, and ask the Commission to issue recommendations, pursuant to Articles 56-58 and 64 of the Commission’s Rules of Procedure, that the United States government (1) initiate criminal investigations, prosecutions, and punishment for torture and cruel, inhuman and degrading treatment committed during the so-called “war on terror,” and (2) reform any laws that prevent victims of those crimes from pursuing justice in U.S. courts.

A thematic hearing on the obligation of the United States to hold perpetrators of serious human rights abuses accountable is particularly timely for the 134th Session in March 2009. The Commission has previously expressed its grave concern that United States officials committed torture and cruel, inhuman, and degrading treatment against terror suspects, and has directed the

United States government to investigate, prosecute, and punish those human rights violations.¹ Since then, official representatives of the United States government have publicly stated that the United States government used torture during the war on terror.² This admission of culpability for serious international crimes, when considered against newly available evidence that the orders to commit torture originated at the very highest level of President Bush's administration,³ triggers the United States' obligation, under Articles I, II, XVIII, XXV and XXVI of the American Declaration, and more broadly under international law, to conduct a timely, efficient, and impartial investigation into these crimes, and to prosecute and punish those found guilty.

Within the United States, recent discussion has centered on the question of whether the United States government will, under the new administration, initiate criminal investigations and prosecutions for these crimes, convene a fact-finding commission, or both.⁴ While fact-finding or truth commissions are often useful in supporting the right to thorough investigation of atrocities and information about government actions, criminal investigations, prosecutions, and punishments are necessary to completely fulfill a State's obligation to uphold the international prohibitions of torture and cruel, inhuman, and degrading treatment.

What happens next in the United States will affect how other States, both within and outside of the Americas, approach their own legal duty to punish serious human rights violations. The United States' approach to accountability for torture is important for the region and for the world. The Commission should conduct a thematic hearing on the issue to engage the new administration in a discussion and to provide guidance regarding the United States' obligations to prohibit torture and cruel, inhuman, and degrading treatment under Articles I, II, XVIII, XXV and XXVI of the American Declaration.

Testimony to be Presented

At the requested hearing, experts from civil society organizations will present testimony on the efforts taken during the first months of the Obama administration to hold torturers accountable, the new administration's anticipated actions, and any additional steps that must be

¹ Inter-Am. Comm. H.R., Res. No. 2/06 on Guantanamo Bay Precautionary Measures, July 28, 2006.

² See, e.g., Bob Woodward, *Detainee Tortured, Says U.S. Official*, Washington Post, A01, Jan. 14, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html?hpid=topnews>. Susan J. Woodward, Convening Authority of Military Commissions at Guantanamo Bay, most recently confessed to the United States government's transgressions, stating: "[w]e tortured [Mohammed al-] Qahtani... His treatment met the legal definition of torture."

³ See e.g., Michael Ratner, *THE TRIAL OF DONALD RUMSFELD: A PROSECUTION BY BOOK* (2008); Jane Mayer, *THE DARK SIDE: THE INSIDE STORY OF HOW THE WAR ON TERROR TURNED INTO A WAR ON AMERICAN IDEALS* (2008).

⁴ Compare Mark Benjamin, Obama's plans for probing Bush torture, Salon Magazine, Nov. 13, 2008, available at http://www.salon.com/news/feature/2008/11/13/torture_commission/ ("The Obama plan, first revealed by Salon in August, would emphasize fact-finding investigation over prosecution.") and Transcript: *George Stephanopoulos' Exclusive Interview with President-Elect Barack Obama*, ABC News, Jan. 11, 2009, at p. 3, available at <http://abcnews.go.com/ThisWeek/Economy/Story?id=6618199&page=3> ("OBAMA: We're still evaluating how we're going to approach the whole issue of interrogations, detentions, and so forth. And obviously we're going to be looking at past practices and I don't believe that anybody is above the law. On the other hand I also have a belief that we need to look forward as opposed to looking backwards.") with Lara Jakes Jordan, *Obama Advisers: Torture Prosecutions Not Likely*, The Huffington Post, Nov. 18, 2008, available at http://www.huffingtonpost.com/2008/11/18/obama-advisers-torture-pr_n_144540.html ("Two Obama advisers said there's little _ if any _ chance that the incoming president's Justice Department will go after anyone involved in authorizing or carrying out interrogations that provoked worldwide outrage.").

taken to comport with applicable human rights law. Experts will also testify regarding the Military Commissions Act, Detainee Treatment Act, and other federal statutes that include provisions former officials will likely argue grant them immunity from prosecution and civil liability for human rights abuses in the U.S. court system. The proposed testimony will describe how legal mechanisms that would fail to take into account the rights and needs of victims are inconsistent with human rights principles found in international and regional human rights standards.

We will provide your office with the specific names of our expert panelists in future communications. Should this request for a thematic hearing be granted, we ask that representatives of the United States government attend the hearing. We appreciate your consideration of our request. Please let us know if we can provide any additional information to aid your decision.

Respectfully submitted,

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