

**TO THE HONORABLE MEMBERS OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
ORGANIZATION OF AMERICAN STATES:**

**REQUEST BY THE CENTER FOR CONSTITUTIONAL RIGHTS, THE HUMAN
RIGHTS CLINIC AT COLUMBIA LAW SCHOOL AND THE CENTER FOR JUSTICE
AND INTERNATIONAL LAW FOR PRECAUTIONARY MEASURES UNDER
ARTICLE 25 OF THE COMMISSION'S REGULATIONS**

By the undersigned, appearing as counsel for petitioners under the provisions of Article 23 of the Commission's Regulations:

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I. INTRODUCTION

Petitioners seek the urgent intervention of this Commission in order to prevent continued unlawful acts that threaten the rights of individuals detained by the United States government at its military base at Guantanamo Bay, Cuba. Although, the United States has an obligation and right to arrest and try the perpetrators of the horrendous crimes of September 11, it must do so in compliance with fundamental principles of national, human rights and humanitarian law. It has not done so. The United States' failure to abide by these fundamental principles is setting a precedent for the actions of other states, states that will see U.S. actions as supporting their own violations of international law and human dignity.

Petitioners, therefore, are requesting Precautionary Measures to protect the detainees' rights to be treated as prisoners-of-war (pows), to be free from arbitrary, incommunicado, and prolonged detention, unlawful interrogations, and trials by military commission in which they could be sentenced to death. These rights are protected pursuant to Articles I, XVII, XVIII, XXV, XXVI of the American Declaration on the Rights and Duties of Man (ADRDM), which imposes binding international obligations on the United States.

II. STATEMENT OF FACTS

In the wake of the terrorist attacks of September 11, 2001, the United States of America planned and carried out a massive military campaign against the Taliban regime then in power in Afghanistan and an organization called al Qaida. The U.S. Congress authorized this military action by granting the President authority to "use all necessary and appropriate force against

those nations, organization, or persons he determined” were either involved in the September 11 attacks, aided in their commission, or harbored others who were involved in the attacks.¹

During the course of the campaign, President Bush, Secretary of Defense Rumsfeld, and other members of the United States military acting at their direction repeatedly described the campaign as a “war.” On September 12, 2001, President Bush described the attacks on the World Trade Center as acts of war.² On September 20, 2001, President Bush announced the start of the “war on terror”³ and on September 25, 2001, he stated that “[w]e’re in a war we’re going to win.”⁴

On October 7, 2001, the President announced that the U.S. military had begun air strikes against al Qaida camps and Taliban installations.⁵ U.S ground troops first arrived in Afghanistan on October 20, 2001 and immediately engaged Taliban forces in battle. Following the capture of Kabul and other major cities in November, military operations focused on eliminating bastions of resistance in Kandahar and the Tora Bora caves in early December.⁶

On November 13, 2001, President Bush issued a Military Order authorizing the Secretary of Defense to detain anyone whom the President determined in writing:

- i. is or was a member of the organization known as al Qaida, or
- ii. has engaged in, aided or abetted, or conspired to commit, acts of

¹ S.J. Res. (107th Cong. September 14, 2001). See: **Appendix Doc. 1 (p.2)**

² See <http://USinfo.state.gov/topical/pol/terror/01091208.htm>. See: **Appendix, Doc. 2 (p. 3)**

³ See <http://USinfo.state.gov/topical/pol/terror/01092051.htm>. See: **Appendix, Doc. 3 (p. 5)**

⁴ See <http://USinfo.state.gov/topical/pol/terror/01092512.htm>. See: **Appendix, Doc. 4 (p. 12)**

⁵ See <http://USinfo.state.gov/topical/pol/terror/01100750.htm>. See: **Appendix, Doc. 5 (p. 16)**

⁶ Thom Shanker, *Conduct of War is Defined By Success of Special Forces*, New York Times, Monday, January 21, 2002 at A1, 8. See: **Appendix, Doc. 6 (p. 19)**

international terrorism, or acts in preparation therefore, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

iii. has knowingly harbored any such person.⁷

The Military Order also provides that “if the individual is to be tried,” such trials will be held before military commissions operating in accordance with the basic rules set forth in the Order, which allows the non-unanimous imposition of death sentences. There is no requirement that a detained individual be brought to trial. The Military Order also states that persons detained or tried under its provisions “shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual’s behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.”⁸

On November 16, the Special Rapporteur on the Independence of Judges and Lawyers of the United Nations Commission on Human Rights sent an urgent appeal to the United States government regarding the Military Order signed by President George W. Bush. In his appeal, the Special Rapporteur expressed concern about, among other things, the setting up of military tribunals to try those subject to the Order; the absence of a guarantee of the right to legal representation and advice while in detention; the establishment of an executive review process to replace the right to appeal the conviction and sentence to a higher tribunal; and the exclusion of jurisdiction of any other courts and international tribunals.⁹

⁷ Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57833, Vol. 66, No. 222, Section 2(a) (1) (i) – (iii). See: **Appendix, Doc. 7 (p. 28)**

⁸ *Id.*, Section 7(b)(2). See: **Appendix, Doc. 7 (p. 31)**

⁹ Available at http://www.unog.ch/unog01/files/002_media/f2_cmq.html. See: **Appendix, Doc. 8 (p.32)**

Subsequent to the issuance of the Military Order, thousands of prisoners were captured by U.S. and Northern Alliance forces in Afghanistan. On or about January 11, 2002, the United States military began transporting prisoners captured in Afghanistan to Camp X-Ray at the U.S. Naval Station in Guantanamo Bay, Cuba. It was reported that the transferred prisoners could face trials by military commission under the Military Order and possibly the death penalty.¹⁰ There have been allegations of ill-treatment of the prisoners in transit and at Guantanamo, including reports that they were shackled, hooded and sedated during the 25-hour flight from Afghanistan, their beards and heads forcibly shaved, and that upon arrival at Guantanamo they are housed in small cells that fail to protect against the elements.¹¹

As more shipments of prisoners began arriving at Guantanamo, international bodies such as the European Union, the International Committee of the Red Cross and a number of foreign governments expressed grave concerns over the treatment of the detainees, their confinement conditions and the refusal of the United States to afford them status under the Geneva Conventions.¹²

On January 16, 2002, the United Nations High Commissioner for Human Rights issued a statement regarding the Guantanamo detentions, noting that:

¹⁰ See e.g., Richard Sisk, *Airport Gun Battle Firefight Erupts As Prisoners Are Flown To Cuba*, New York Daily News, Friday, January 11, 2002 at 27. See: **Appendix, Doc. 9 (p. 33)**

¹¹ See e.g., Amnesty International, *USA: AI calls on the USA to end legal limbo of Guantanamo prisoners*, AI Index: AMR 51/009/2002, issued 15/01/2002, at <http://web.amnesty.org/ai.nsf/Index/AMR510092002>. See: **Appendix, Doc. 10 (p. 35)** The detainees have been confined in makeshift eight-by-eight foot cells made of chain link fence, with corrugated metal roofs and concrete slab floors. The open-air cages are surrounded by razor wire and guard towers; prisoners have reportedly been provided with thin foam mattresses and rations in plastic bags. Tony Winton, *Guantanamo Gets Ready to House War Prisoners; Site Once Held Boat People*, The Record, Thursday, January 10, 2002 at A13. See: **Appendix, Doc. 11 (p. 37)** See also: BBC, *Inside Camp X-Ray*, available at http://news.bbc.co.uk/1/hi/english/static/in_depth/americas/2002/inside_camp_xray/default.stm. See: **Appendix, Doc. 12 (p. 39 - 43)**

¹² Lynne Sladky, *More Scrutiny on Suspects' Treatment*, Associated Press, Tuesday January 22, http://dailynews.yahoo.com/h/ap/20020122/wl/guantanamo_prison_38.html. See: **Appendix, Doc. 13 (p. 45 - 46)**

“All persons detained in this context are entitled to the protection of international human rights law and humanitarian law, in particular the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) and the Geneva Conventions of 1949.

The legal status of the detainees, and their entitlement to prisoner-of-war (POW) status, if disputed, must be determined by a competent tribunal, in accordance with the provisions of Article 5 of the Third Geneva Convention.

All detainees must at all times be treated humanely, consistent with the provisions of the ICCPR and the Third Geneva Convention.

Any possible trials should be guided by the principles of fair trial, including the presumption of innocence, provided for in the ICCPR and the Third Geneva Convention.”¹³

It is the official position of the United States government that none of the detainees are pows. Instead, officials have repeatedly described the prisoners as “unlawful combatants” who are not subject to the Geneva Conventions.¹⁴ In its most recent statement on the status of those detained at Guantanamo, the government announced that although it would apply the Geneva Conventions to the Taliban prisoners, it would not extend them to members of al Qaida. In addition, the Government stated that the Taliban prisoners did not meet the criteria for pows set forth in the Conventions and that they were therefore not entitled to the protections of the Conventions.¹⁵ This determination was made without the convening of a competent tribunal required by Article 5 of the Third Geneva Convention.¹⁶

¹³ *Statement of High Commissioner for Human Rights on Detention of Taliban and Al Qaida Prisoners at US Base in Guantanamo Bay, Cuba*, 16 January 2002, at: <http://www.unhchr.ch/hurricane/hurricane.nsf/newsroom>. See: **Appendix, Doc. 14 (p.48)**

¹⁴ *Davis Bloom and Soledad O'Brien, Former Defense Secretary William Cohen Discusses the Status of Prisoners Held by US in Guantanamo Bay and Afghanistan*, NBC News, Saturday, January 12, 2002. See: **Appendix, Doc. 15 (p.49 - 50)**

¹⁵ See: <http://www.whitehouse.gov/news/releases/2002/02/20020207-13.html>. See: **Appendix, Doc. 16 (p. 52)**

¹⁶ Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 August 1949 (ratified by the United States without reservation on 2 August 1955) (Geneva III), Article 5.

Although the International Committee of the Red Cross (ICRC) rarely acknowledges publicly differences with governments, it did so with regard to the United States refusal to treat the Taliban and al Quida detainees as pows. On February 8, the day after announcement of the United States' position, Darcy Christen, a spokesperson for the ICRC, said of the detainees: "They were captured in combat [and] we consider them prisoners of war."¹⁷ The ICRC emphasized that it was up to a court to decide if a detainee was not a pow:

You cannot simply...decide what applies to one person and what applies to another. This has to go to a court because it is a legal decision not a political one.¹⁸

In its Press Release of February 9, the ICRC again stated that captured "members of armed forces and militias associated to them" are protected by Geneva III and that there "are divergent views between the United States and the ICRC" as to the procedures "on how to determine that the persons detained are not entitled to prisoner of war status."¹⁹

United States' authorities are now detaining 254 male prisoners representing 25 nationalities at the Guantanamo compound.²⁰ Although the authorities have refused to divulge the identities or nationalities of the detainees, media reports indicate that they include nationals of the United Kingdom, Australia, France, Belgium, Sweden, Algeria, Yemen, Afghanistan,

¹⁷ Richard Waddington, *Guantanamo Inmates Are POWs Despite Bush View - ICRC*, Reuters, February 9, 2002. See: **Appendix, Doc. 17 (p. 54)**

¹⁸ *Id.*

¹⁹ ICRC, Communication to the press No. 02/11, February 9, 2002. See: **Appendix, Doc. 18 (p.56)**

²⁰ John Mintz, *Guantanamo Could Be Terrorist Penal Colony*, Washington Post, February 13, 2002, South Florida Sun-Sentinel.com news, available at www.sun-sentinel.com/news/nationworld/. See: **Appendix, Doc. 19 (p. 57 - 59)**

Saudi Arabia, Kuwait and Pakistan.²¹ The only reported consular visits to Guantánamo have been carried out by British governmental officials.²²

Interrogation of the Guantanamo prisoners began on January 23; none of the detainees were allowed to have lawyers present during questioning by officers from several United States' civilian and military agencies.²³ The U.S. military has reportedly built several windowless plywood structures on the outskirts of the detention center for the purpose of obtaining information from the 254 detainees held there.²⁴

The ranks of the prisoners already held incommunicado at Guantanamo are expected to increase in the near future now that more open-air cells have been constructed.²⁵ There are no indications that the detainees have been informed of their rights under the Geneva Conventions, the ICCPR, the ADRDM, the Vienna Convention on Consular Relations, or any other international instrument which safeguards the fundamental human rights of detainees.²⁶ As a

²¹ See e.g., Tony Winton, *Saudis Want Detainees Returned Home*, Associated Press, Tuesday January 29 at http://dailynews.yahoo.com/h/ap/20020129/wl/guantanamo_detainees_8.html. See: **Appendix, Doc. 20 (p.61)**

²² *Supra* n.12

²³ Jane Sutton, *Prisoners at Guantanamo Bay Face First Questioning*, Reuters, Wednesday January 23, at http://dailynews.yahoo.com/h/nm/20020123/ts/attack_guantanamo_dc_27.html. See: **Appendix, Doc. 21 (p. 64)**

²⁴ Reuters, *'Good Cop, Bad Cop Gets Al Qaeda to Talk*, Friday February 1, at: http://story.news.yahoo.com/news?tmpl=story&u=/nm/20020201/ts_nm/attack_interrogations_dc_1. See: **Appendix, Doc. 22 (p. 67)**

²⁵ Jane Sutton, *U.S. Finishes Camp X-Ray, Awaits More Prisoners*, Reuters, Saturday February 2, 2002, at http://dailynews.yahoo.com/h/nm/20020123/ts/attack_guantanamo_dc_27.html. See: **Appendix, Doc. 23 (p. 69)**

²⁶ See United Nations General Assembly Resolution on the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Resolution 43/173 (9 December 1988), Principle 11; United Nations Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, Cuba, (27 August to 7 September 1990), Principles 1 to 8; Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal for Rwanda and the Former Yugoslavia and Rwanda (As Amended) 29 November 1999, Rules 5, 9, 12 and 67. See: **Appendix, Doc. 24, 25 and 26 (p. 73, 81, 87, 88, 98 and 99)**

result, prisoners at Camp X-Ray are completely unable either to protect or to vindicate violations of their fundamental rights under domestic and international law.

In published statements, both the Secretary of Defense and other officials recently indicated the United States may hold the detainees under these conditions indefinitely.²⁷

III. REQUEST FOR PRECAUTIONARY MEASURES

Petitioners seek the urgent intervention of this Commission, in order to prevent continued unlawful acts by the United States that threaten the Guantanamo detainees' rights under the ADRDM. Under Article 25 of its regulations, the Commission may intercede in "serious and urgent cases, and whenever necessary according to the information available. . . to prevent irreparable harm to persons." This is such an urgent case.

A. The Geneva Convention Violations

The United States has repeatedly refused the entreaties of the international community to treat the detainees under the procedures established under the Geneva Conventions. Geneva III applies to the treatment and legal status of pows. The convention requires that persons captured during an international armed conflict are presumed to be pows until a competent tribunal determines otherwise.²⁸ Instead of following these procedures, which require individual determinations as to whether or not a combatant is a pow, the United States has simply decided en masse that none of the Taliban or al Qaeda detainees is a pow. This non-individualized

²⁷ See, e.g. Time Magazine, *Welcome to Camp X-Ray*, February 3, 2002. **See: Appendix, Doc. 27 (p.104)** Rumsfeld has laid out four options: a military trial, a trial in U.S. criminal courts, return to their home countries for prosecution, or continued detention "while additional intelligence is gathered." A recent "knowledgeable source" stated that "It's become clear that some of the al-Qaida detainees, even if they're not convicted of anything, will have to remain in detention for quite some time." Washington Post, February 13, 2002, *Supra*. n.19. This seems a distinct possibility; the Pentagon plans to build 408 cells at Camp X-Ray. *Id*

²⁸ Geneva III, Articles 4 & 5

determination made by United States officials is contrary to the procedures established by the clear commands of Geneva III.

As a result none of the detainees are receiving the protections afforded prisoners of war – protections to which they are entitled-- until the United States convenes a competent tribunal to determine their status.²⁹ These include a prisoner’s right under Articles 70 and 71 of Geneva III to write directly to his family “informing his relatives of his capture, address and state of health” and to send and receive correspondence. Pows are also entitled to treatment and housing similar to that of U.S. soldiers, issuance of identity cards, protection from interrogation camps (which is what Guantanamo appears to be) and the use of coercion during interrogation. A pow also has the right to engage in hostilities without criminal penalty and valuable procedural protections in any prosecution for war crimes-- protections equivalent to those given to a U.S. soldier during a court-martial.³⁰ As military commissions cannot try U.S. soldiers, neither can they try the detainees at Guantanamo.

B. Human Rights Violations Relating To the Arbitrary, Incommunicado, and Prolonged Detention of the Guantanamo Prisoners

As described above, the United States’ treatment of the Guantanamo detainees violates norms of international humanitarian law relating to the treatment of individuals detained during times of international armed conflict. United States’ actions violate international human rights norms as well. As this Commission has observed, the application of international humanitarian law does not “exclude or displace” the application of international human rights law, since both share a

²⁹ *Id.* Article 5

³⁰ Pows can be charged with war crimes committed both before and during hostilities, Art.85, but the trials of such crimes must be before the same courts employing the same procedures as those of the detaining power. Art. 102, Geneva III.

“common nucleus of non-derogable rights and a common purpose of protecting human life and dignity.”³¹

The United States’ detention of the Guantanamo prisoners is arbitrary. The prohibition against arbitrary detention is a norm of customary international law, and has the status of *jus cogens*.³² In determining what constitutes an “arbitrary” detention, this Commission should consider several factors, beginning with the text of Article XXV, which provides:

1. No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law;
2. Each individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court; and
3. All detainees have the right to be tried without undue delay or released.

The provisions of Article XXV indicate the *minimal* procedural guarantees that must be followed. They are not, however, the exclusive source of international norms relating to this inquiry. In evaluating whether the incommunicado and prolonged detention of the Guantanamo prisoners violates international law, this Commission should also consider whether the United States has observed other norms of international law relating to pre-trial detention.³³ For example, international law requires that a detained person be permitted to communicate with family, consult counsel, and meet with consular representatives. The provisions of article 9 of the ICCPR, which require that all detainees be brought promptly before a judge or other officer

³¹ Coard et al v United States, Case 10,951, Inter-Am. C.H.R. Report No. 109/99, (1999), para.39.

³² See, e.g., *Rodriguez-Fernandez v. Wilkinson*, 505 F.Supp. 787, 798 (D. Kan. 1980) noting, that “[n]o principle of international law is more fundamental than the concept that human beings should be free from arbitrary imprisonment.”).

³³ See *Coard case Supra*. n. 31, para. 40.

authorized by law, and that they be allowed access to a court that will decide without delay on the lawfulness of their detentions, must also be considered. An individual's detention is arbitrary if she or he is denied these procedural guarantees.

The United States' treatment of the Guantanamo detainees violates virtually every human rights norm relating to preventive detention. As described in the statement of facts above the United States has denied the detainees access to counsel, consular representatives, and family members, has failed to notify them of the charges they are facing, has refused to allow for judicial review of the detentions, and has expressed its intent to hold the detainees indefinitely. Meanwhile, the United States has continued to interrogate the prisoners.

C. Violations Relating to Trial Before Military Commissions

The United States intends to subject certain detainees to trial before military commissions, in which they could face the death penalty. The commissions could begin processing cases at any time. Meanwhile, the detainees have been given no facilities to begin preparing their defense, and no court has reviewed the validity of their prolonged detention.

As noted above, the United States has cited the Military Order as justification for the detentions of the Guantanamo prisoners. This same Order authorizes the trial by military commission for certain detainees. The military commissions authorized by the Order violate several established principles of international law, including Articles I, XVII, XVIII, XXV, and XXVI of the ADRDM.

First, the military commissions fail to provide minimal guarantees of due process. Instead, the commissions are designed to ensure swift convictions and possible death sentences based on secret evidence. Only the executive branch of the United States' government would

review the convictions and death sentences, with no right to judicial review, and no right to appeal. In short, trials before the military commissions would be skewed in favor of the government, would fail to provide adequate due process protections, and would violate established canons of due process.

Second, the military commissions do not constitute “courts previously established in accordance with pre-existing laws” as required pursuant to Article XXVI of the ADRDM.

Finally, as this Commission is well aware, the United States has reserved the right to execute those convicted by the military commissions. There can be no question that capital proceedings by military commission would violate the most fundamental human rights of the detainees, including the right to life. Because of these myriad defects, petitioners are requesting that the Commission issue Precautionary Measures, directing the United States to refrain from subjecting any detainee to trial by military commission.

Based on these facts, petitioners have amply demonstrated the detainees will suffer irreparable harm, if this Commission fails to issue Precautionary Measures.

IV. PRECAUTIONARY MEASURES ARE NECESSARY TO AVERT “IRREPARABLE HARM”

Although Precautionary Measures are warranted when an individual’s liberty or her or his life is at risk, this Commission has also found Precautionary Measures justified where the rights at stake involve the protection of an individual’s property.³⁴

In determining the meaning of “irreparable harm,” this Commission should take into consideration not only its previous decisions on Precautionary Measures but also the jurisprudence of the Inter-American Court on Human Rights on the grant of Provisional

³⁴ Mary and Carrie Dann v. United States (Dann Band of the Western Shoshone Nation), Case 11.140, No. 99/99.

Measures.³⁵ This is especially so given that the Court’s authority to issue the latter derives from Article 63(2) of the American Convention on Human Rights, which contains language virtually identical to that of Article 25 of this Commission’s Rules of Procedure.³⁶

Precautionary Measures are warranted whenever a petitioner faces a serious threat to his or her physical, psychological or moral integrity.³⁷ In the *Loayza Tamayo case*, the Court issued Provisional Measures to end solitary confinement and incommunicado detention imposed on a person who had been committed for the crime of terrorism against Peru.

Although “irreparable harm” may be shown by demonstrating the existence of a serious risk to life or personal integrity,³⁸ neither the wording nor the spirit of Article 25 of the Commission’s Rules of Procedure require such a showing.³⁹ To the contrary, the Court has held that an imminent risk to freedom of expression and democratic values can constitute “irreparable harm.”⁴⁰

³⁵ Although the United States is not a party to the Convention, and thus Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights applies rather than Article 63 of the Inter-American Convention on Human Rights, due to the similarity between these two provisions, jurisprudence interpreting Article 63(2) is relevant in interpreting the meaning of the term “irreparable harm.”

³⁶ Article 63 of that Convention relevantly provides that: “In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not submitted to the Court, it may act at the request of the Commission.”

³⁷ *Loayza Tamayo Case*, Provisional Measures, Inter-Am. Ct. H.R. July 2, 1996.

³⁸ See, e.g., *Loayza Tamayo case*, Provisional Measures, Inter-Am. Ct. H.R., February 3, 2001.

³⁹ See: *Case of Haitians and Dominicans of Haitian Origin in the Dominican Republic*, Provisional Measures. Inter-Am. Ct. H.R., August 18, 2000.

⁴⁰ *The La Nación Newspaper case*, Provisional Measures, Inter-Am. Ct. H.R., May 23, 2001. In this case, the Court held that if a libel judgment was executed against a journalist, it might cause effects that could never be eliminated retroactively and/or cause unnecessary prolongation of a harmful situation. It also considered that these effects could include impingement on the journalist’s freedom of expression as well as the freedom of expression of Costa Rican society generally, that the petitioner’s name would be registered in the Judicial Register of Offenders,

Restrictions on access to counsel and other impingements on due process rights can also constitute “irreparable harm.” Thus, in *Manriquez v. Mexico*,⁴¹ when the Mexican authorities denied a prisoner’s attorney access to her client because she refused to subject herself to a strip search, the Commission asked Mexico to adopt Precautionary Measures to allow the full exercise of the prisoner’s due process rights and judicial guarantees, including allowing his attorney to visit him to prepare his defense, to ensure confidentiality in attorney-client conversations and to afford his attorney dignified and non-discriminatory treatment.

In addition to their essentially preventive nature, the purpose of Provisional Measures is to provide effective protection for fundamental rights, inasmuch as they seek to avoid irreparable damage to persons. Thus, in the *Ivcher Bronstein case*,⁴² the Court ordered Provisional Measures to protect the petitioners’ physical, psychological and moral integrity, and preserve their right to due process. In that case, the Peruvian government stripped one of the petitioners of his naturalized Peruvian citizenship and divested him of his ownership of a television station ostensibly because that station had broadcast programs critical of influential government officials. The Court concluded that the damage one of the petitioners had sustained, in part *due to the failure to accord due process*, was of enormous magnitude, would be very difficult to redress in full and was being aggravated on a daily basis.⁴³

reparation might never make the petitioner whole again, and the Court’s decision on the merits might be without useful effect.

⁴¹ Case 11.509, Report No. 2/99, Inter-Am. C.H.R. (1999)

⁴² Provisional Measures, Inter-Am. Ct. H.R., November 23, 2000

⁴³ See also *Paniagua Morales case*, Provisional Measures, Inter-Am. Ct. H.R., January 29, 2001 (provisional measures warranted because of risk to the life and personal safety of a witness).

When seeking Precautionary Measures, there is usually a need to identify individually the people who are in danger of suffering irreparable harm.⁴⁴ This does not always have to be the case, however. In the *Peace Community of San José de Apartadó case*, the Court did not require that each individual be identified since they formed part of an organized community, located in a determined geographic place, whose members could be identified and individualized and who, due to their membership in the community, faced a similar risk of suffering acts of aggression against their personal integrity and lives. Thus, the community could be dealt with collectively. In the present case, the Guantanamo detainees are located in a determined geographic place and, by virtue of their detention their identities are known to the United States. In addition, they are all in a situation of similar risk of continuing injury to their fundamental rights. Precautionary Measures may therefore be issued for them as a group. This is especially important given the continuing refusal of the United States to release the names and nationalities of the detainees.

The Guantanamo detainees will suffer irreparable harm if the Precautionary Measures requested are not ordered. The requested Measures are directed and narrowly tailored toward the avoidance of that harm. Among other things, the United States is failing to provide access to any judicial procedures to determine the legality of their continued detention and is taking advantage of the detainees' isolation from legal counsel, family, and consular representatives to subject them to prolonged interrogations.

The facts set forth in this Request for Precautionary Measures establish *prima facie* violations of Articles I, XVII, XVIII, XXV and XXVI of the ADRDM and the risk of irreparable harm.

⁴⁴ See e.g. *Case of Haitians and Dominicans of Haitian Origin case*, Supra n. 39

**V. THE COMMISSION SHOULD TAKE PRECAUTIONARY MEASURES
TO ASSIST THE GUANTANAMO DETAINEES**

The petitioners respectfully seek the Commission's intervention and the issuance of the following Precautionary Measures, requesting that the United States government:

1. Adopt those measures necessary to protect the right to personal integrity and fair trial of the detainees at Guantanamo.
2. Treat each detainee as a POW until any doubt regarding such status is determined by a competent tribunal pursuant to Article 5 of Geneva III, as mandated by pre-existing law, including international humanitarian law.
3. Afford each detainee the right and liberties guaranteed by the ADRDM as mandated by pre-existing law, including international humanitarian law. These guarantees should include the following:
 - a. Notification in writing of the charges faced by each detainee;
 - b. Access to legal counsel, and confidentiality of attorney-client communications;
 - c. Access to judicial review of those determinations affecting their rights and status.
4. Identify the detainees by name, nationality, and address, where known.
5. Notify all detainees of their rights under Article 36 of the Vienna Convention on Consular Relations, and grant them access to consular representatives.
6. Suspend the interrogation of the detainees until the rights of the detainees are fully guaranteed.

7. Stay any proceeding before military commissions, pending resolution of the prisoners' status and until such commissions comply with pre-existing law and due process.
8. Permit the Commission to conduct an on-site investigation, through a Special Commission named under Articles 40 and 51-55 of its Regulations.
9. Petitioners further urge this Commission to find that any order of Precautionary Measures is binding on the United States. *See: LaGrand Case (Germany v. United States)*, 2001 ICJ 104, (Judgment) paras. 109, 128(5).

Dated: February 25, 2001

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