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On May 27, the Inter-American Commission on Human Rights (IACHR) issued a long-awaited decision in which it held the United States internationally responsible for the torture and refoulement of Djamel Ameziane, a former Guantánamo detainee. The 70-page merits report marks the first time the IACHR has examined the substance of any complaint related to the “war on terror,” and it is the only decision by any supranational human rights body, to date, to comprehensively assess an individual’s allegations of abuse at Guantánamo. It provides a companion piece to the jurisprudence already developed by other human rights courts and monitoring bodies with regard to (mostly European) States’ responsibilities toward detainees held at Guantánamo and CIA black sites. It also applies the IACHR’s previous criticism and recommendations on Guantánamo , conditions of detention there, detainees’ legal status and access to judicial protection , torture , refoulement , and other abuses carried out in the name of counter-terrorism .

The decision is an essential legal and moral vindication for Djamel Ameziane and the 40 people who remain detained at Guantánamo (and at risk, including from COVID-19), although its broader impact remains to be determined. While immediate implementation is unlikely, given the U.S. government’s resistance to human rights oversight, I am hopeful the IACHR’s recommendations will shape public, legal, and political opinion regarding much-needed reforms. On this point, nearly 19 years from 9/11, the decision is a necessary and timely reminder of the war on terror’s dangerous and dominoing consequences in the

absence of accountability, from expanded executive power, to the militarization of policing and borders, and increased Islamophobia. The kinds of abuses and impunity it details are why the International Criminal Court is investigating U.S. war crimes in Afghanistan, despite attacks by the Trump administration on the Court’s personnel. In this way, the Ameziane decision highlights anew the need for continued, multi-pronged advocacy to remedy (and prevent repetition of) the human rights violations of the war on terror, while providing a welcome tool for that struggle.

Djamel Ameziane vs. the United States

The facts are summarized well elsewhere, but include the following: Djamel Ameziane, an Algerian national who had fled that country in 1992, was detained in late 2001 by Pakistani authorities and handed over to the U.S. military in exchange for a bounty. U.S. authorities held Ameziane at the U.S. airbase in Kandahar, Afghanistan and, in 2002, transferred him to the Guantánamo Bay detention facility. There, U.S. agents subjected him to solitary confinement, waterboarding, and many other forms of ill treatment, prohibited regular communication with his family, and interfered with his practice of religion.

In 2008, the Center for Justice and International Law (CEJIL) and the Center for Constitutional Rights (CCR) submitted a petition on Ameziane’s behalf to the IACHR, which granted the accompanying request for precautionary measures and asked that the United States ensure his humane treatment and “make certain that he is not deported to any country where he might be subjected to torture or other mistreatment.” U.S. authorities first cleared Ameziane for transfer from U.S. custody that same year. In 2010, the IACHR convened a hearing on the admissibility of Ameziane’s petition and, in 2012, admitted

the petition.

In 2013, the United States forcibly transferred Ameziane to Algeria — without the money it had confiscated from him and despite his fears of persecution. The United States never charged him with a crime or investigated his allegations of torture, and no court ever reviewed the legality of his detention.

On the basis of its detailed analysis of the facts, relevant U.S. law, and international standards, the IACHR merits report concludes that the United States violated Ameziane’s rights under the American Declaration of the Rights and Duties of Man to: liberty, freedom from torture and inhumane treatment (through specific actions and cumulatively), equality before the law, religious freedom, freedom of expression, protection of private and family life, protection of the family, health (including the right to food), fair trial, assembly, property, petition, and due process.

The decision is worth reading in its entirety, but some passages stand out. The IACHR establishes the “existence of an officially-sanctioned regime of cruel and inhuman treatment for the purposes of interrogation at Guantánamo” that amounted to torture in the case of Ameziane. It concludes that the protection from prosecution enjoyed by alleged perpetrators of torture and other abuses against “enemy combatants” violated Ameziane’s right to due process and an effective remedy, and that these protections also violated the right to truth “against Djamel Ameziane and society as a whole, to the extent that this law acts to prevent society as a whole from learning the truth about grave human rights violations perpetrated in U.S. detention programs, including at Guantánamo Bay.” Moreover, the IACHR finds the State had “aggravated international responsibility” because of its “failure to comply with precautionary measures granted by the IACHR in favor of Mr. Ameziane” and “systematic practice on the part of the State, sanctioned by the highest levels of government” of various abuses in relation to Guantánamo.

The IACHR’s recommendations, which are specific and extensive, include requesting that the United States close Guantánamo, provide material and moral reparation to Ameziane, return his property, investigate the acts of torture against him, and enact the legislative changes and investigations recommended in its 2015 thematic report on Guantánamo.

U.S. Engagement with the IACHR

Separately, the procedural history of the case highlights fundamental similarities between the Trump administration and its predecessors in their engagement with the IACHR, even if the optics can be quite different. For example, while the Obama administration sent high-level officials to represent it in the 2010 admissibility hearing before the IACHR, those officials cited “active litigation” (at minute 1:03:26 of the audio) in declining to discuss the specifics of Ameziane’s case. We have since heard this justification from the Trump administration, which early on declined to send representatives to participate in some hearings before the Commission. The U.S. government’s responsiveness was spotty throughout the complaint process and, when it did respond, it largely did so to contest the IACHR’s jurisdiction. In fact, the petitioners withdrew from friendly settlement negotiations in 2013, “citing a lack of concrete advances.”

In the 2017 merits hearing, the U.S. government representatives expressed support for the IACHR but criticized its decision to grant a hearing. The government also reiterated its long-standing position that the American Declaration of the Rights and Duties of Man does not create binding obligations, and therefore the IACHR’s decisions and recommendations are nonbinding.

In its merits brief, the U.S. government belatedly contested the IACHR’s jurisdiction over Ameziane’s case, both on territorial and subject-matter grounds, arguing that the Commission lacked authority to examine the situation in Guantánamo or to interpret international humanitarian law. The IACHR anticipated and dealt with these arguments in its 2012 admissibility decision. In its recent merits report, the Commission reiterates its understanding that “international human rights law is in no way displaced by the law of armed conflict,” and that the latter serves as a complementary source for interpreting the American Declaration in situations of armed conflict. Its analysis of Ameziane’s arbitrary detention wrestles with the nuance of this relationship.

While welcoming the Obama administration’s policy changes regarding detainees, the IACHR’s merits report chides the State for its “deeply concerning” failure to address the pre-2009 conditions at Guantánamo during the course of the complaint proceeding, stating, “it recalls that inter-American human rights law is concerned with the responsibility of States, and not particular government administrations.”

The United States failed to comply with the recommendations in the IACHR’s confidential merits report, communicated to the State on February 26, 2019. Per its mandate, the IACHR then published the final decision on its website, on May 27, 2020.

Human Rights Oversight of the “War on Terror”

Given its broad thematic mandate, complaints process, and jurisdiction over the United States, the IACHR is uniquely positioned to fully analyze the American government’s human rights abuses at Guantánamo. Nonetheless, it is not alone in condemning those abuses or governments’ actions in filling Guantánamo’s cells (and CIA black sites) with nationals of 49 countries .

The U.N. Working Group on Arbitrary Detention (WGAD) (the only other body that receives individual human rights complaints against the United States) has repeatedly found the detentions at Guantánamo to be arbitrary, beginning in 2003 with an opinion concerning four European citizens and most recently with regard to Mohammed al Qahtani . It has also addressed U.S. extraordinary rendition and black sites, including in a 2006 decision involving 26 detainees (see page 103, here).

Much of the human rights litigation concerning the “war on terror” has sought to hold *other* States responsible for their roles in the transfer or extraordinary rendition of terrorism suspects to U.S. custody. These include the U.N. Human Rights Committee and U.N. Committee against Torture decisions, in 2005 and 2006, in the Alzery and Agiza complaints against Sweden. In subsequent years, the European Court of Human Rights (ECtHR) began issuing multiple judgments condemning European States’ participation in extraordinary rendition, including its landmark 2012 judgment in El-Masri v. Macedonia , and the Al Nashiri v. Poland

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Husayn (Abu Zubaydah) v. Poland
,
Abu Zubaydah v. Lithuania
and
Al Nashiri v. Romania
judgments
holding those States responsible
for the detention and ill treatment of two terrorism suspects at CIA black sites (before they were transferred to Guantánamo, where
they remain
). In 2016, the ECtHR’s judgment in
Nasr and Ghali v. Italy
held Italy responsible for its
failure to punish
American and Italian agents for the extraordinary rendition of an Egyptian national.

Some cases have addressed States’ continued detention or prosecution of individuals after they have been released from U.S. custody. These include a 2005 U.N. WGAD opinion against Yemen , and the U.N. Human Rights Committee’s 2016 views on Australia ’s treatment of former Guantánamo detainee David Hicks.

So far, the African human rights system has not addressed the merits of any “war on terror” claims, though some of its Member States are among the countries that assisted in extraordinary rendition. In 2014, the African Commission on Human and Peoples’ Rights
rejected
as
inadmissible
Mohammed Abdullah Saleh Al-Asad’s complaint against Djibouti, finding that he had not “conclusively” demonstrated that he had been held in Djibouti before being flown to U.S. detention facilities elsewhere.

Finally, numerous cases have yet to be decided. Multiple complaints concerning U.S. treatment of terrorism detainees remain pending before the IACHR, including petitions submitted by the ACLU on behalf of: Khaled El-Masri (in 2008); five victims of extraordinary rendition to black sites and Guantánamo (in 2011);
six Afghan and Iraqi citizens
allegedly tortured at U.S. detention facilities in those countries (in 2012); and
Jose Padilla
, an American citizen held without charge as an “enemy combatant” (in 2012). With regard to

these and other similar petitions, the IACHR has only published an admissibility decision on the El-Masri petition.

Among the relevant applications pending before the ECtHR is al-Hawsawi v. Lithuania, concerning the CIA’s alleged extraordinary rendition, arbitrary detention, and ill treatment of a current Guantánamo detainee. The IACHR issued precautionary measures in favor of al-Hawsawi in 2005 and, in 2014, the U.N. WGAD concluded his detention at Guantánamo was arbitrary. Yet, there he remains.

Lack of Compliance: Expected and Pervasive

Based on the U.S. government’s past practice, we can anticipate partial or no compliance with the IACHR’s Ameziane decision, as well. It would be naive to expect the government to immediately and totally abandon its rejection of the allegations and of the IACHR’s competence because of this outcome. After all, the United States has had many other opportunities to receive and heed guidance on adhering its conduct in the “war on terror” to international human rights standards.

The U.S. government’s refusal to be held to international human rights standards in Guantánamo also obstructs other States’ compliance with those standards. For example, the Council of Europe Committee of Ministers is continuing its “enhanced supervision” of Poland’s implementation of the ECtHR’s Al Nashiri and Abu Zubaydah judgments, pursuant to which Poland must seek diplomatic assurances from the United States that the detainees will not be subjected to the death penalty or “any flagrant denial of justice.” Poland sought such assurances, and the United States responded that “these requests could not be granted, in particular because the European Convention on Human Rights and decisions of the European Court of Human Rights do not reflect the obligations of the United States under international law.” The conditions at Guantánamo have also made it impossible for Abu Zubaydah to receive the ECtHR’s award of costs and expenses. (See future updates from Human Rights in Practice, which represents Abu Zubaydah.)

Other countries cannot blame the United States alone for their lack of compliance, even with unequivocally binding obligations, however. The Committee of Ministers has also called out Poland, Lithuania, and Romania for their ongoing failure to expeditiously investigate abuses by their own authorities in the extraordinary rendition program and to implement reforms to prevent future abuses. Similarly, Italy’s execution of the Nasr and Ghali judgment is under enhanced supervision because of Italy’s failure to effectively hold accountable the Italian and American agents involved.

Broader Impact Beyond Immediate Implementation

Given this history of poor compliance, what impact will the Ameziane decision have? It is too early, lo all these years later, to say. Much depends on how it is used. As in any area of advocacy that seeks to expand the legal recognition of rights or to reform government practice or policy, litigation alone is unlikely to be a silver bullet. Political will, a shift in the culture, legislative advocacy, and public and media attention are some of the intertwined components of securing real protection of fundamental rights. As I have written previously, human rights oversight can be very useful in igniting and shaping public and media interest, thereby increasing pressure for reform. This decision adds to the tools available for that purpose.

Moreover, there is legal value in this decision beyond the vindication of Ameziane’s rights (which is, itself, no small thing). The IACHR definitively and concretely rejects the notion that Guantánamo is, or ever could be, a “legal black hole” where international human rights law does not apply. The decision is also the first to clarify and reinforce the plethora of international standards that apply to the detention and treatment of Guantánamo detainees, going beyond the familiar, broad rights and obligations to deal with, for example, the impact on Ameziane’s psychological wellbeing, worship, reputation, and family relationships.

Even where the United States rejects, or fails to comply with, international human rights standards, their continued elucidation makes them increasingly harder to evade. For example, a recent Guantánamo military commission ruling (discussed on *Just Security*) cites to an Inter-American Court of Human Rights judgment, among many other international sources, in confirming the universal prohibition against torture and its relevance to whether a detainee’s sentence should be reduced. To the extent that relevant authorities become aware of the

Ameziane decision, it will be useful to those interested in recognizing and protecting detainees’ rights.

While the chapter on the Guantánamo Bay prison may be closed in many Americans’ minds, it is clearly still being written. The IACHR’s recent decision, and those that preceded it, remind us of the importance of halting and repairing the abuses of the war on terror, lest their ricochet continue.