

WRITTEN TESTIMONY OF STEPHEN K. MOORE

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BEFORE THE HOUSE FOREIGN AFFAIRS SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS
HEARING "SEEKING FREEDOM FOR AN AMERICAN TRAPPED IN A BOLIVIAN PRISON"

AUGUST 1, 2012

Chairman Smith, distinguished members of the committee, I sincerely appreciate your efforts on this matter and your interest in my observations on this case.

WHAT SHOULD BE THE RESPONSE OF THE UNITED STATES GOVERNMENT TO JACOB OSTREICHER'S IMPRISONMENT?

When I testified before this committee in June, I referred to State Department's "toolkit" and deferred to their best judgment. Their judgment apparently told them that it would be better for them to do the absolute minimum they could do. Their best judgment apparently told them that advocating for the release of a man who is otherwise likely to die thousands of miles from America in a swampy, disease-infested prison, is not in the State Department's best interest.

In June of this year, a report was submitted to the UN High Commissioner on Human Rights (UNCHR), by members of this committee. Major violations of international standards of detention and human rights were clearly documented. To wit:

According to the First UN Congress of 1955:

Paragraph 8(b)

"Untried prisoners shall be kept separate from convicted prisoners."

INVESTIGATIVE FINDINGS:

Palmasola Prison operates in direct contravention of the First UN Congress of Detention, paragraph 8(b).

Jacob and other untried prisoners are intermingled with the entire prison population. Within the

small cell block (or “pavilion”) in which he must pay to live, there are several untried political prisoners, as well as a wide variety of mass murderers, single murderers, serial rapists and violent drug offenders. This is in stark contravention of the UN requirement.

Paragraph 9(1)

“Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself.”

Paragraph 9(2)

“There shall be regular supervision by night, in keeping with the nature of the institution.”

Paragraph 10

“All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”

Paragraph 28(1)

“No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.”

INVESTIGATIVE FINDINGS:

Palmasola Prison operates in direct contravention of Paragraphs 9(1), 9(2), 10 and 28(1), of the First UN Congress on Detention.

Prisoners at Palmasola are provided no cell, no indoor sleeping accommodations, nor any bedding or blankets. All prisoners are required to purchase or rent cells by the cartel of prisoners who run the prison from the inside.

When Jacob Ostreicher was transferred to Palmasola, he was literally “thrown into” the prison. The door to the men’s pavilion was opened and he was pushed in, with the door closing behind him. For five nights, Jacob was forced by prisoners to sleep outside, atop a mound of garbage at the far rear of the prison without bedding or shelter of any kind. During this time, he contracted a severe gastro-intestinal infection causing him diarrhea and vomiting for several days. He was unable to move from the garbage pile. No medical care was provided, no cell was provided during this time, and no help of any kind was offered during this first week of incarceration.

At the conclusion of the week, a prisoner had pity on Jacob and arranged for him to sleep in a "cell" which was exactly the size of a single mattress. This "cell" was in a highly-crowded sleeping area. This investigator talked to prisoners from Canada, South Africa and the United Kingdom. Most were unable to "afford" to rent or buy a cell, (there are not enough cells and inside sleeping accommodations for all the prisoners), and therefore they sleep in the streets at night, or occasionally sleep in the Catholic chapel, in return for participating in services for a religion they do not follow.

"Supervision" at night, as well as during the day, is conducted by prisoners and not hired guards, in violation of the Geneva accords. Uniformed professional guards man only checkpoints and entry points to the individual prison wards of the facility. They venture into the prison only during meal hour and at roll call. This investigator never saw a uniformed officer inside the men's prison in the three days he was inside the prison; except during meal and roll-call. However, roll-call is an activity which a prisoner may pay to avoid. Only those prisoners without the financial wherewithal to pay for exemption from roll-call are required to be counted. It leaves open the question as to whether roll-call itself is for prisoner accountability or for prison guard income purposes.

A prisoner-run organization known as "Disciplina Interna" (Internal Discipline) provides order and "security" inside the prison. The requirement for membership in the "Disciplina" is that the prisoner is a "lifer" or 'prisoner sentenced to life in prison.' The reason for this is apparently that it provides the prison cartel increased control over their security force. It also ensures that the very persons responsible for order and security inside the prison are in fact the most violent persons inside the prison. This investigator became aware that 'Disciplina' operatives were conducting surveillance on visitors and prisoners, providing a source of internal information for the prisoner cartel, charging money to ensure the safety of prisoners, stealing cash and valuables from other prisoners, and administering regular and routine physical beatings as part of their role in "maintaining order." During the three day investigative foray into the prison, this investigator was approached by a 'Disciplina' operative (a murderer) who demanded money from him in order to ensure his safety and security while in the prison.

Prisoners who do not pay "protection" money are in grave danger. Statistically, between one and four prisoners are murdered at Palmasola (out of a population of 3,500) each month. These killings are predominantly categorized as "suicides," though anecdotal evidence (stab wounds in the back, etc.) indicates that few if any are suicides. The day prior to the arrival of this investigator, another killing had occurred in the pavilion.

Paragraph 14:

“All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulous clean at all times.”

Paragraph 31:

“Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offenses.”

Paragraph 32(1):

“Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

Paragraph 32(3):

“The medical officer shall visit daily prisoners undergoing such punishments....”

INVESTIGATIVE FINDINGS:

Palmasola Prison operates in direct contravention of Paragraph 14, 31, 32(1) and (3) of the First UN Congress on Detention.

Palmasola Prison is filthy. Raw sewage runs through the center of some of the streets, open garbage pits have been created throughout the institution, insects of all kinds, (especially mosquitoes) are rife. There are no apparent sanitary precautions in the creation of the prison food; a gruel-like soup made in an open-air kitchen over open fires, immediately adjacent to the main prison garbage dump.

None of the discipline cells, where this investigator witnessed as many as a dozen unfed inmates being held, have latrine facilities, running water, or light. No prisoners in the cells are fed, and they depend upon the concern of fellow prisoners to obtain food. This investigator could find not a single prisoner who believed that there was a doctor assigned to the prison in any capacity, with the possible exception that one of the prisoners might have been a doctor at one point.

Not ONE of the these allegations in the report were discussed with the UNHCHR by State.

UN RESPONSE TO THE STATE DEPARTMENT AND STATE RESPONSE TO JACOB'S FAMILY:

From: "Lynch, Felicia D"

Date: July 12, 2012 11:43:41 AM EDT

To: "Miriam Ungar "

Subject: Report on Meeting with UNHCHR

Miriam/Sheri –

Below you will find the report from our meeting with Roberto Desogus from UNHCHR last week. Please let me know if you have any questions.

Regrads, (sic)

Felicia

On Thursday July 5, 2012, representatives of the Consular Section of the US Embassy in La Paz met with Mr. Roberto Desogus of the United Nations High Commission on Human Rights. The meeting was regarding the detention of Jacob Ostreicher, a US citizen presently detained in Palmasol prison in Santa Cruz, Bolivia. Below are some of the main points from the meeting:

Judicial Procedural Delays are Common in Bolivia

According to the UNHCHR office in Bolivia, many of the procedural delays that have occurred in Ostreicher's case are commonplace throughout the Bolivian judicial system. While in the US, the recusal of a judge only occurs in exceptional cases where a severe conflict of interest exists, recusals are quite common in Bolivia. Additionally, frequent reassignment of prosecutors is also common. Each time a new prosecutor is assigned, the judge will typically grant extensions to hearings and proceeding in order for the new prosecutor to become acquainted with the case. The delays which have occurred in Mr. Ostreicher's case are not unusual.

Bolivian Judicial Branch Lacks Resources

The judicial entities in Bolivia lack the resources necessary to conduct in-depth investigations. It is common for victims of crimes to pay the costs of prosecutors to conduct investigations. In Mr. Ostreicher's case, there are no direct victims. In such a case, it is common for prosecutors to simply go to trial with the same evidence which was collected at the initial arrest and seizures. In many cases, no real investigation actually takes place during the investigative period.

Prosecutors have Significant Discretion in Investigative Period

Prosecutors are given a significant amount of discretion during the investigative and preventative detention period. It is typical for judges to yield to a prosecutor's discretion. The result is that in many instances prosecutors are taken at their word and little evidence need be presented to a judge. Moreover, the burden of proof in order to place an individual in preventative detention is that there are "indications of criminal activity". As a practical matter, suspicious or even irregular behavior is enough to place an individual in preventative custody. This appears to be the case for Mr. Ostreicher. While there is no direct evidence implicating Mr. Ostreicher in criminal activity in the Investigative File, his link to Liliana Rodriguez, meetings with Maximiliano Dorado, and investments in Bolivia appear to be out of the ordinary.

Preventative Detention

The preventative detention period may last anywhere from six to thirty-six months depending on a variety of factors in the case. The detention period may be extended at the prosecutor's request. In a complex case, such as money laundering, a judge will typically grant a prosecutor's motion for extension of detention. Additionally, if a new charge is presented during the preventative detention period, the detention period for that particular charge restarts. It may take four to six years for a case such as Mr. Ostreicher's to actually go to trial. However, the preventative detention period may not exceed the amount of time of the maximum sentence which may be given for the particular charge of which an individual is being accused. Statutes of limitation will also prevent the detention period from lasting indefinitely. Typically, the preventative detention period will count as time-served towards the final sentence.

Conclusion

It is the opinion of the UNHCHR office in Bolivia that Mr. Ostreicher is not being persecuted or targeted by the government but rather he is yet another victim of a brutally slow, inefficient, underfunded and corrupt judicial system. The procedural delays, the rotation of prosecutors, the recusal of judges, and the apparent lack of hard evidence in Mr. Ostreicher's case are all factors which are common in the majority of cases in the Bolivian judicial system.

Taking it piece by piece

Moreover, the burden of proof in order to place an individual in preventative detention is that there are "indications of criminal activity". As a practical matter, *suspicious or even irregular behavior is enough to place an individual in preventative custody*. This appears to be the case for Mr. Ostreicher.

UNHCHR RESPONSE:

The UNHCHR agrees that “...there is no direct evidence implicating Mr. Ostreicher in criminal activity in the Investigative File...”

The State Department memo states that “[Jacob’s] link to Liliana Rodriguez, meetings with Maximiliano Dorado, and investments in Bolivia appear to be out of the ordinary.” However:

1. Jacob never met with Maxmiliano Dorado
2. The response assumes that business/agricultural investments in Bolivia are “out of the ordinary?”
3. The only thing that is “unusual” about Jacob’s case is that he knows a person in Bolivia who knows someone who dealt drugs. How unusual is this really?

The memo continued; “[Jacob] is yet another victim of a brutally slow, inefficient, underfunded and corrupt judicial system.”

When is it acceptable that an American is kept in an inhumane prison by a corrupt judicial system on no hard evidence? Isn’t that the definition of a situation in which State should be demanding the person’s release?

Indeed, the State Department, in a statement currently on their website, declares:

“We work ... to ensure that Americans are afforded due process under local laws.” If the system is corrupt, as State is saying, are these then acceptable hands in which to leave Americans? Is a system which is “brutally slow, inefficient and underfunded” okay with State?

Neither State or the UNHCHR have answered in any way the violations of international treaties as it relates to Jacob’s confinement (let alone his case). They didn’t just “forget” more than half the report. This answer from State is incomplete, unacceptable and an insult to Jacob, his family, and this committee. It raises questions about either their core competence or their motives. They should be compelled to answer ALL the questions the report raised.

Also from the State Department website this month: “The State Department is committed to ensuring fair and humane treatment for American citizens imprisoned overseas.”

If it weren’t so tragic, this would be comical. Not only are they NOT committed to ensuring fair and humane treatment for an American citizen named Jacob, they are not acting with even minimum care. Their attitude and actions are characterized by indifference, laziness, self-interest and neglect, as well as contempt for their own role in our government.

Imagine that a person happens upon a burning house and hears a baby crying. By the letter of the law, they are required to do nothing. They know that to do something to save the baby

would be risky, but to do nothing would mean the death of the child. The person makes a bold decision—they will call 9-1-1. But when they call, the line is busy. Satisfied that they have fulfilled their duty, they continue on their walk with a clear conscience, knowing that they've done what the law required. Legally, they are pure as the driven snow. Morally and ethically, they have blood on their hands.

I could say that this is where we find ourselves with State and Bolivia, except that in our situation, State hasn't done even what they are required to do. If Jacob Ostreicher dies in Palmasola prison, both the Bolivian government and the United States Department of State will have his blood on their hands.