On March 3, 2006, the Inter-American Commission on Human Rights convened its first ever hearing on the impact of mandatory minimum sentences in the federal criminal justice system of the United States. Spurred by a petition from the Justice Roundtable and a supporting letter from the American Bar Association, the Commission heard riveting testimony that mandatory minimums are applied in a discriminatory fashion and lead to increased arbitrariness in federal sentencing. The May 3 proceeding, during the Commission’s 124th Period of Sessions, was heard by Commissioners Paulo Sergio Pinheiro, First Vice President and Rapporteur on the United States; Florentin Melendez, Second Vice President and Rapporteur on the rights of persons deprived of liberty; and Clare K. Roberts, Commissioner and Rapporteur against racial discrimination. The U.S. government was represented by the U.S. Department of State, which declined to make an official statement.

The Inter-American Commission on Human Rights is an autonomous organ of the Organization of American States, whose members are elected by the OAS General Assembly. One of its main functions is to address the complaints or petitions received from individuals, groups of individuals, or organizations that allege human rights violations committed in OAS member countries. Its recommendations have led States to modify sentencing procedures, eliminate discriminatory laws, and strengthen protections of basic rights.

As convener of the Justice Roundtable, a broad network of over fifty civil society advocacy groups seeking reform of the U.S. justice system, I was honored to moderate an illustrious panel. The Honorable Patricia Wald, former Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit and judge on the International Criminal Tribunal for the Former Yugoslavia (1999-2001), testified on behalf of the American Bar Association (ABA), the world’s largest voluntary professional organization. Judge Wald addressed ABA policy on mandatory minimum sentences, the weight of opinion within the U.S. judiciary, and her own personal observations on this issue. Professor Charles Ogletree, Founder and Executive Director of Harvard Law School’s Charles Hamilton Houston Institute on Race and Justice, testified on behalf of the Justice Roundtable. His comments centered on an egregious example of mandatory sentencing—the disparity between crack and powder cocaine sentencing. Ms. Kemba Smith testified next. She was directly impacted by mandatory minimum sentencing, having been sentenced, at age twenty-four, to nearly a quarter of a century for her minor role in a drug conspiracy. She served 6.5 years before President Clinton granted her clemency in 2000. Finally, Attorney Gay McDougall, Executive Director of Global Rights and the first United Nations Independent Expert on Minority Issues, testified on the provisions of international human rights law that are relevant to the impact of mandatory minimum sentencing laws in the United States. The four witnesses were joined by two expert resource persons—Marc Mauer, Executive Director of the Sentencing Project, and Eric Sterling, President of the Criminal Justice Policy Foundation and former counsel to the House Judiciary Committee during the passage of mandatory minimum sentencing laws in the 1980s.

The Roundtable’s witnesses told the Commission that mandatory minimum sentences—prison terms predeter mined by Congress and automatically levied primarily for drug and gun crimes—have resulted in excessively severe and arbitrary sentences, undermine judicial discretion, and result in disastrous social consequences. The witnesses argued that the laws are violations of protected human rights found in the American Declaration on the Rights and Duties of Man—specifically, the right to equal protection of the law, the right to a fair trial, and the right to judicial protection against violations of fundamental rights. The witnesses argued that the International Convention on the Elimination of All Forms of Racial Discrimination further elaborates on the provisions of the American Declaration and, thus, should provide guidance to the Commission as well. The witnesses cited the 100-to-1 quantity ratio between crack and powder cocaine as the most flagrant example of how mandatory minimums have a racially discriminatory impact, as harsh sentences for crack cocaine convictions fall disproportionately on African Americans.

Pursuant to a query from the Commissioners, several Justice Roundtable participants, including the American
Civil Liberties Union and the NAACP Legal Defense and Educational Fund, are exploring the feasibility of filing a petition in an individual case involving the discriminatory impact of mandatory minimum sentences, for the Commission’s review.

Perhaps the most poignant part of the March 3 proceedings were the closing words of Judge Wald, who concluded,

Unduly long and punitive sentences are counterproductive, and candidly many of our mandatory minimums approach the cruel and unusual level as compared to other countries as well as to our own past practices. On a personal note, let me say that on the Yugoslavia War Crimes Tribunal I was saddened to see that the sentences imposed on war crimes perpetrators responsible for the deaths and suffering of hundreds of innocent civilians often did not come near those imposed in my own country for dealing in a few bags of illegal drugs. These are genuine human rights concerns that I believe merit your interest and attention.

In addition to oral witness testimony at the hearing, three members of Congress submitted written statements—Congressman Charles Rangel, Ranking Member of the House Ways and Means Committee; Congressman Robert “Bobby” Scott, Ranking Member of the House Crime Subcommittee; and Congresswoman Maxine Waters, member of the House Judiciary Committee. Wade Henderson, Executive Director of the Leadership Conference on Civil Rights, also submitted a written statement as did Families Against Mandatory Minimums together with the National Council of La Raza.

Organizational signees to the Justice Roundtable’s historic petition for hearing and/or written testimony included the American Civil Liberties Union, The Sentencing Project, the Criminal Justice Policy Foundation, Penal Reform International, Global Rights, the Charles Hamilton Houston Institute for Race and Justice, International Citizens United for the Rehabilitation of Errants, the Justice Policy Institute, Law Enforcement Against Prohibition, the Lawyers’ Committee for Civil Rights Under Law, the Leadership Conference on Civil Rights, the National Association for the Advancement of Colored People, the NAACP Legal Defense and Educational Fund, the National Black Police Association, Human Rights Watch, the U.S. Human Rights Network, the National Council of La Raza, Families Against Mandatory Minimums, the National Association of Criminal Defense Lawyers, the Drug Policy Alliance, the Washington Bar Association, Break the Chains: Communities of Color and the War on Drugs, the Interfaith Drug Policy Initiative, the Unitarian Universalists for Drug Policy Reform, and the Open Society Policy Center.