

27 June 2016

Secretariat to the Committee against Torture  
Human Rights Treaties Division  
Office of the United Nations High Commissioner for Human  
Rights (OHCHR)  
Palais Wilson - 52, rue des Pâquis  
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Sent by e-mail to [cat@ohchr.org](mailto:cat@ohchr.org)

Re: Contribution to the List of Issues Prior to the Submission of  
the Periodic Report of the United States: Failure to  
Investigate Credible Allegations of Ill-treatment

Dear Madam or Sir:

I am learned (death penalty) counsel for Ramzi Bin al Shibh, who is accused in the United States Military Commissions (“Commissions”) in Guantanamo Bay Naval Station, Cuba with various offenses related to the attacks in the United States on September 11, 2001. Mr. Bin al Shibh has been held as a High Value Detainee at Camp VII, Guantanamo Bay Naval Station, since September, 2006. Prior to being detained at Camp VII, Mr. Bin al Shibh was held incommunicado for four years in a series of covert CIA “black sites” maintained by the United States Central Intelligence Agency.

I write on Mr. Bin al Shibh’s behalf requesting that the Committee against Torture question the United States about its failure to fully investigate or allow independent investigation of Mr. Bin al Shibh’s previous and present-day allegations of ill-treatment at Guantanamo in Camp VII. In addition, I urge the Committee to continue to call upon the United States to allow the United Nations Special Rapporteur on Torture to carry out an independent inspection of Joint Task Force Guantanamo Bay (JTF-

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GTMO) and Camp VII in accordance with his mandate.<sup>1</sup> Currently, Mr. Bin al Shibh and his co-accused are joined in a motion before the Commissions to compel the United States Government to allow the United Nations Special Rapporteur on Torture to investigate JTF-GTMO and Camp VII and to interview detainees privately.<sup>2</sup>

## Introduction

During Mr. Bin al Shibh's CIA detention, he was subjected to many forms of torture and ill-treatment.<sup>3</sup> In September of 2006, Mr. al Bin al Shibh was transferred to the control of JTF-GTMO, where he remains in United States custody to this day. He is been charged with capital offenses in a Commissions that was created by the United States for this purpose.

Since being transferred to JTF-GTMO, Mr. Bin al Shibh has made persistent, consistent, and credible allegations that the United States, continues to subject him to adverse environmental manipulations and sleep disruption. Specifically, beginning weeks after his transfer to Guantanamo, unknown United States personnel subjected him to various odors, noises, and vibrations in his cell, recreation areas, and detainee common areas. The noises and vibrations continue to this day.

To my knowledge, the United States has never performed any meaningful investigation into Mr. Bin al Shibh's allegations. Instead, his allegations have been subsumed into his criminal trial, an adversarial proceeding in which any substantiation of his allegations or revelation of a cover-up would weaken the United States' position in its death penalty trial and where the Commissions has limited authority over his housing conditions.

In reports to the Committee, the United States implicitly limits the obligation to investigate detainee allegations of mistreatment: allegations do not require investigation unless they pass a subjective test for the "credibility" of the person making the allegation, or they appear criminal in nature. Under these circumstances, Mr. Bin al Shibh's allegations of mistreatment have not and presumably cannot be properly evaluated by the United States.

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<sup>1</sup> See, e.g., "Concluding observations on the third to fifth periodic reports of United States of America" ("Concluding Observations"), November 20, 2014, (CAT/C/SR. 1276 and 1277) [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cat\\_us\\_concluding\\_observations\\_2014.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cat_us_concluding_observations_2014.pdf) (accessed February 16, 2016), para. 14.

<sup>2</sup> See *United States v. Mohammad et al.*, AE424(AAA) *Mr. al Baluchi's Motion to Compel Joint Task Force-Guantanamo Bay to Permit Access of the United Nations Special Rapporteur on Torture to Camp 7 and the Defendants*, filed 12 May 2016, [http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE424\(AAA\)\).pdf](http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE424(AAA)).pdf).

<sup>3</sup> See, e.g., Section II.f., "The Detention and Interrogation of Ramzi Bin Al-Shibh," at 74-79 of the Executive Summary of the Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, Foreword by Senate Select Committee on Intelligence Chairman Dianne Feinstein; Findings and Conclusions; Executive Summary (approved 13 December 2012) (updated for release 3 April 2014) (declassification revisions 3 December 2014) available at <http://www.feinstein.senate.gov/public/index.cfm/senate-intelligence-committee-study-on-cia-detention-and-interrogation-program> (accessed 23 June 2016).

I respectfully suggest the Committee question the United States about these matters and how they will be remedied.

## Background

Mr. Bin al Shibh is held in the most secretive and restrictive facility at the High Value Detainee prison known as Camp VII, Guantanamo Bay. In its 2014 Concluding Observations on the Third to Fifth periodic reports of United States of America, the Committee expressed ongoing concern about the secrecy surrounding conditions of confinement, especially in Camp VII.<sup>4</sup> Camp VII operations are overseen by the Department of Defense, Joint Task Force-Guantanamo Commander (JTF-GTMO CC).

Within three weeks of arriving at Camp VII, Mr. Bin al Shibh began experiencing obnoxious odors, noises, and vibrations. This type of environmental manipulation, for sounds and vibrations, has been ongoing for the past 10 years. Mr. Bin al Shibh has described the effects of this abuse in open court<sup>5</sup> and stated that he cannot concentrate and assist in his own defense. They are so destructive that “[he] cannot sleep, [he] cannot read, [he] cannot pray, [he] cannot do anything.” These same noises and vibrations are being used to adversely affect other detainees. These detainees are willing and have corroborated the abuse by noises and vibrations that is ongoing and a continuation of the torture detainees experienced at the CIA “black sites.”<sup>6</sup> One detainee testified in open court that he too witnessed the harassment of Mr. Bin al Shibh by noises and vibrations.<sup>7</sup>

On 21 June 2013, the Military Commission orally ordered the government to cease using

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<sup>4</sup> See Concluding Observations, para. 14.

<sup>5</sup> See Transcript, *United States v. Mohammad et al.*, [24 February 2016 AM1] Testimony of Mr. Ramzi Bin al Shibh, at 11124-11129, available at [http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(TRANS24Feb2016-AM1\).pdf](http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(TRANS24Feb2016-AM1).pdf).

<sup>6</sup> See, e.g., John Ryan, Lawdragon, Detainee Testifies Mental Torture of 9/11 Defendants Persists (4 June 2016), available at <http://www.lawdragon.com/2016/06/02/detainee-testifies-mental-torture-911-defendants-persists/> (accessed 23 June 2016) (“A detainee from Guantanamo Bay’s clandestine Camp 7 prison facility added his support to claims of ongoing mental torture of the Sept. 11 defendants Thursday – testifying that he’s endured similar “noises and vibrations” to those alleged by one of the 9/11 military commission defendants.”); Carol Rosenberg, Miami Herald, “Abu Zubaydah makes it to door of Guantánamo war court but does not step inside 2 June 2016, available at <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article81333597.html#storylink=cpy> (accessed 23 June 2016) (“Abu Zubaydah, 45, whose real name is Zayn al Abideen al Hussein, made it all the way to the war court door but never stepped inside to testify about conditions in Guantánamo’s clandestine Camp 7... The upset came hours after another former CIA black-site captive appeared at a hearing in the Sept. 11 case on a very narrow issue: to vouch for 9/11 defendant Ramzi bin al Shibh’s account of intentional noises and vibrations at Camp 7.”).

<sup>7</sup> See Transcript, *United States v. Mohammad et al.*, [2 June 2016, AM1] Testimony of Mr. Gouled Hassan Dourad available at [http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(TRANS2June2016-AM1\).pdf](http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(TRANS2June2016-AM1).pdf).

vibrations and noises to harass Mr. Bin al Shibh.<sup>8</sup> The environmental abuse continued and intensified when Mr. Bin al Shibh attempted to work on his capital case and escalates on nights leading up to scheduled meetings with his attorneys. On 2 November 2015, Commissions' Judge issued a written order that the JTF-GTMO would not subject Mr. Bin al Shibh to disruptive and harassing noises and vibrations.<sup>9</sup>

On 11 December 2015, I gave notice to the Military Commission that Mr. Bin al Shibh was still being abused through the use of environmental manipulation and requested the Commissions' Judge to hold JTF-GTMO guard force personnel in contempt for violating his order.<sup>10</sup> It was not until the Military Commission decided to hear evidence in support of this motion that Mr. Bin al Shibh's counsel was allowed to interview any of the guards, supervisors, or commanders. The guards we have attempted to talk to have either refused to talk to us or have been ordered not to talk to us.

I have repeatedly urged for a proper investigation of Mr. Bin al Shibh's allegations in the only judicial forum, the Commissions, which will hear his allegations. Unfortunately, this forum is the same forum that was created by the United States to convict and sentence Mr. Bin al Shibh to death. To date there has been no impartial or thorough investigation into these allegations of detainee abuse. Mr. Bin al Shibh has written dozens of letters to the Camp Commander, Watch Commanders, Tier Superintendents, and the Commissions requesting that the noises and vibrations be investigated and stopped.

The only investigations made into these allegations were internal, cursory, and conclusory in nature and conducted by two successive JTF-GTMO Camp Commanders. These investigations were not thorough nor conducted impartially. As one former Camp Commander stated: "at the beginning of [my] deployment...it was briefed to me that [Mr. Bin al Shibh's] complaints were not credible."<sup>11</sup> This Camp Commander made a determination not to investigate Mr. Bin al Shibh's allegations before he even started his duties as the Camp Commander. If the Camp Commander had not made this premature and biased opinion, he would have "requested the commander of the Joint Detention Group to do an investigation."<sup>12</sup> At no point, however, in the Mr. Bin al Shibh ten years of complaining of his treatment has there ever been the appointment of an independent investigator. While the Camp Commander stated that he personally

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<sup>8</sup> See Transcript, *United States v. Mohammad et al.*, [21 June 2013, PM2] at 3986, available at [http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(TRANS21June2013-PM2\).pdf](http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(TRANS21June2013-PM2).pdf).

<sup>9</sup> See *United States v. Mohammad et al.*, AE152HH(ORDER) *Do Not Subject Mr. Bin al Shibh to Disruptive and Harassing Noises and Vibrations*, filed 2 November 2015, available at [http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE152HH\).pdf](http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE152HH).pdf)

<sup>10</sup> See Transcript, *United States v. Mohammad et al.*, [11 December 2015, AM1] at 9982 available at [http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(TRANS11Dec2015-AM1\).pdf](http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(TRANS11Dec2015-AM1).pdf)

<sup>11</sup> See Transcript, *United States v. Mohammad et al.*, [3 June 2016, AM] Testimony of "Current Camp Commander," at 12366 available at [http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(TRANS3June2016-AM\).pdf](http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(TRANS3June2016-AM).pdf).

<sup>12</sup> See Transcript, *United States v. Mohammad et al.*, Testimony of "Current Camp Commander," at 12364.

investigated the allegations, when questioned in open court, it was uncovered that he never actually went into Mr. Bin al Shibh's cell, the location of alleged environmental manipulation, nor had any skills, background, or training to do the investigation.<sup>13</sup>

During the hearing before the Commissions involving Mr. Bin al Shibh's allegations of detainee abuse, it was clear that the United States government is interested in defending itself rather than seeking to uncover the truth behind current confinement conditions at Camp VII. The prosecutor stated that Mr. Bin al Shibh was "lying" and "fighting the jihad against the guards in the camp."<sup>14</sup> The prosecutor asserted that "the government's defending itself, quite frankly, against the allegations that are being made by Mr. Bin al Shibh in Camp VII."<sup>15</sup> Rather than attempting to defend itself against allegations, the United States should allow an independent investigator, such as the United Nations Special Rapporteur on Torture, to conduct an impartial meaningful investigation into these allegations of detainee mistreatment.

In questions submitted to the United States in 2010, the Committee requested information on "steps taken to ensure that all forms of torture and ill-treatment of detainees by its military or civilian personnel, in any territory under its de facto and de jure jurisdiction, as well as in any other place under its effective control, is promptly, impartially and thoroughly investigated (emphasis added)..."<sup>16</sup> In the combined third to fifth periodic report of the United States of America, the United States described criminal investigations and investigations into "credible allegations" of torture or ill-treatment.<sup>17</sup> For example:

The U.S. Armed Forces conduct prompt and independent investigations into all credible allegations concerning mistreatment of detainees. Detention facilities are inspected on a regular basis to ensure compliance with DoD regulations and to determine if improvements in operations are necessary. In addition, the U.S. Armed Forces have several independent criminal investigative agencies, whose function is to investigate allegations of criminal behavior. The U.S. Government has attempted to address all credible allegations as quickly and as fully as possible.

These are investigations that are triggered by a determination that a detainee's allegation has met some threshold of credibility or that the acts alleged are criminal in nature. There has been, however, no independent investigation into the allegations concerning mistreatment of Mr. Bin al

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<sup>13</sup> See Transcript, *United States v. Mohammad et al.*, Testimony of "Current Camp Commander," at 12380.

<sup>14</sup> Transcript, *United States v. Mohammad et al.*, Testimony of Mr. Ramzi Bin al Shibh, at 11181 – 11182.

<sup>15</sup> Transcript, *United States v. Mohammad et al.*, Testimony of Mr. Ramzi Bin al Shibh, at 11182.

<sup>16</sup> UN Committee against Torture, "55 questions prepared by the Committee and transmitted to the United States on January 10, 2010" (CAT/C/USA/Q/5) <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.USA.Q.5.pdf>, Question 23(a).

<sup>17</sup> United States, "United Nations Committee against Torture Convention against Torture Periodic Report of the United States of America" ("U.S. Periodic Report") (CAT/C/USA/3-5), available at <http://www.state.gov/documents/organization/234772.pdf> (accessed 22 June 2016), at para. 127-134.

Shibh despite the fact that he has testified in open court; one other detainee has also confirmed this in open court; and another detainee will be testifying in future hearings in open court that there is ongoing adverse environment manipulation and sleep disruption and deprivation resulting in continued mistreatment of detainees.

In the concluding observations on the third to fifth periodic reports of United States, the Committee called upon the United States to take immediate and effective measures to “investigate allegations of detainee abuse, including torture and ill-treatment, appropriately prosecute those responsible, and ensure effective redress for victims.”<sup>18</sup> In the one-year follow-up response of the United States to recommendations of the Committee, the United States reiterated its commitment to investigation of “credible” allegations at least six times.<sup>19</sup>

The United States has affirmed in public statements that investigating allegations from former CIA detainees who now face capital charges would “weaken” the prosecution. This refusal to investigate for the sole purpose of advancing criminal prosecutions is just another form of a cover up to hide the truth.<sup>20</sup>

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<sup>18</sup> Concluding Observations, at 14.

<sup>19</sup> See “One-Year Follow-up Response of the United States of America to Recommendations of the Committee against Torture on its Combined Third to Fifth Periodic Reports on Implementation of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment” (“US Follow-up Report”), November 27, 2015, <http://www.state.gov/j/drl/rls/250342.htm> (accessed February 19, 2016), at para. 11; at para. 21 (“...The U.S. Armed Forces conduct prompt and independent investigations into all credible allegations concerning mistreatment of detainees....”); at para. 22 (“The U.S. government works to address credible allegations as quickly and as fully as possible....”); at para. 26 (“The United States has mechanisms in place to investigate credible allegations of detainee abuse regardless of the location, including at Guantanamo Bay, and to prosecute or take other action against those responsible where warranted....”); at para. 28 (“The Department of Defense does not tolerate the abuse of detainees, and credible allegations are thoroughly investigated, and appropriate disciplinary action taken if allegations are substantiated...”). See also *id.* at para. 29:

Department of Defense Directive 3115 .09 (Department of Defense Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning) provides that “[a]ll reportable incidents allegedly committed by any Department of Defense personnel or ... contractor personnel shall be . . . (promptly reported ... (promptly and thoroughly investigated by proper authorities ... and ... [r]emedied by disciplinary or administrative action, when appropriate” (paragraph 3b). A reportable incident in this directive is defined as “[a]ny suspected or alleged violation of Department of Defense policy, procedures, or applicable law relating to intelligence interrogations, detainee debriefings, or tactical questioning for which there is credible information.

<sup>20</sup> See Morris Davis, “Historical Perspective on Guantanamo Bay: The Arrival of the High Value Detainees,” available at <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1189&context=jil>, (last access 27 June 2016) discussing the use of “clean teams” to re-interview detainees to avoid discussion of torture because it would weaken the prosecution’s case; See Glenn Greenwald, “Obama’s Justice Department Grants Final Immunity to Bush’s CIA torturers,” available at <https://www.theguardian.com/commentisfree/2012/aug/31/obama-justice-department-immunity-bush-cia-torturer>, (last accessed 27 June 2016) discussing the use of immunity to shield CIA interrogators from justice department.

## Questions for the list of issues presented to the United States

In light of these facts, I respectfully request the Committee present this or a similar query to the United States:

Considering the events described by Defense Counsel for Mr. Ramzi Bin al Shibh, can you please provide detailed information about all allegations from any detainee that has previously or currently resides within Camp VII regarding the use of noises, vibrations, odors, or other methods of adverse environmental manipulations and sleep disruption?

Can you please explain what the United States did in response to every allegation made by detainees, past and present, residing within Camp VII regarding complaints of adverse environmental manipulation and sleep disruption? If no investigation was done, please explain the substantive reasons that such allegations were not investigated.

Can you please provide detailed information regarding the resources and access to either information or facilities in and around Camp VII that has or will be given to defense counsel for past or current detainees to fully investigate allegations and potential cover-ups regarding complaints of adverse environmental manipulations and sleep disruption by the United States on the detainees within Camp VII?

Can you please provide detailed information on how the United States plans to publically disclose their responses to the above inquires?

Considering the events described by Defense Counsel for Mr. Ramzi Bin al Shibh regarding allegations of adverse environmental manipulations and sleep disruption that he has been and continues to be subjected to while in the care of the United States, the Committee asks again, with greater concern, whether the United States will allow the United Nations Special Rapporteur on Torture to investigate the conditions and operations of Camp VII in accordance with their mandate?

Very truly yours,  
harrington ✿ mahoney

By:

James P. Harrington