

UNITED STATES OF AMERICA

SUBMISSION TO THE UN
COMMITTEE AGAINST
TORTURE

FOLLOW-UP, MARCH 2016

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2016 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2016

Index: AMR 51/3553/2016
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

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Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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INTRODUCTION

In advance of the review, by the United Nations (UN) Committee against Torture, of the follow-up information to the Concluding Observations (CAT/C/USA/CO/3-5) provided by the Government of the United States of America (USA) on 26 November 2015, Amnesty International would like to provide the following information in relation to 12 (a), 14, 17, 26 (c) and (d) of the Concluding Observations.

INQUIRIES INTO ALLEGATIONS OF TORTURE OVERSEAS (PARAGRAPH 12(A))

Despite past court martials of some mostly low-ranking soldiers and findings of congressional investigations into detainee abuse, the USA remains in serious breach of its obligations on truth, accountability and remedy in relation to torture and other ill-treatment inflicted on detainees in Iraq, Afghanistan and locations across the world. Senior officials and former officials have escaped investigation or prosecution by US authorities even when they have themselves disclosed information about their own or others' alleged involvement. Specific individuals may have further facilitated and perpetuated this impunity, such as by destroying videotapes that provided direct evidence of specific acts of torture and other cruel, inhuman or degrading treatment being committed against detainees.

In December 2014, the US Senate Intelligence Committee published a declassified version of the summary report of its study into the secret detention program operated by the Central Intelligence Agency (CIA) under presidential authority granted in September 2001. The full Senate report remains classified and the Obama administration has sought to block a public records request for it.¹ The full 6,700 page report provides “substantially more detail” and is “far more extensive” than the 500-page summary.² Although the summary did contain some new information about torture and other ill-treatment, the full “excruciating” details on “each of the 119 known individuals who were held in CIA custody” are contained in Volume III of the full report.³ Amnesty International considers that most if not all of these detainees were subjected to enforced disappearance, regardless of the interrogation techniques or conditions of detention to which they were subjected.

¹ *Am. Civil Liberties Union v. Cent. Intelligence Agency*, No. 1:13-cv-01870, 2015 WL 2406825 (D.D.C. May 20, 2015).

² Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, Executive Summary, Foreword by Senator Dianne Feinstein, http://www.intelligence.senate.gov/sites/default/files/press/executive-summary_0.pdf.

³ *Id.*

The US Department of Justice (“Justice Department”), which is charged with identifying misconduct by federal officials and investigating and prosecuting crimes including torture, has stated in litigation that it has not reviewed the full report.⁴ It has not established a process for assessing any new evidence of criminal wrongdoing that the full report provides.⁵ It has sometimes implied that it previously had access to the information presented in the Senate report summary, which may be further detailed in the classified full report.

It was known, even before publication of the Senate Committee’s summary, that detainees were subjected to the crimes under international law of enforced disappearance and torture in this CIA programme, and that secret “rendition” of detainees to and between CIA “black sites” facilitated such crimes. The continued failure, even after the Senate Committee has added further detail to this existing knowledge (both in the summary and full report), of the Justice Department to conduct a criminal investigation beyond two cases involving deaths in custody or to bring any criminal charges in any case suggests that it did not regard the CIA’s activities as unlawful, when they unequivocally were. The USA has told the Committee in paragraph 10 of its follow-up to the Concluding Observations that “The United States upholds the bedrock principle that torture and cruel, inhuman, and degrading treatment or punishment are categorically and legally prohibited always and everywhere, violate US and international law, and offend human dignity”), yet it completely failed to duly investigate and prosecute crimes under international law, including acts of enforced disappearance and torture.

The impunity associated with the CIA programme is deplorable, whether or not the Justice Department previously had access to the information in the full Senate report. If it did not, then at the very least it should by now have assessed whether the information compiled by the Senate Committee differed substantially from that which it had previously reviewed. It has apparently failed to do even this.

In summary, the publicly available summary of the Senate Committee report adds to evidence of human rights violations collected by Amnesty International and other human rights organizations over more than a decade. It includes significant new information relating to the commission of crimes under international law, including torture. It provides new information about the nature of abuse inflicted on the CIA’s detainees; the number of detainees subjected to that abuse; and the decisions that led to infliction of that abuse.⁶

⁴ Declaration of Peter J. Kadzik, *ACLU v. CIA*, No. 1:13-cv-01870, (D.D.C. Jan. 21, 2015), ECF No. 39-4, https://www.aclu.org/sites/default/files/field_document/SSCI%20FOIA_Kadzik%20Decl..pdf; See also Julian Hattam, *FBI chief is not sure where ‘torture report’ is*, THE HILL, March 12, 2015, <http://thehill.com/policy/defense/235567-fbi-head-i-dont-know-location-of-controversial-spy-doc>.

⁴ Government’s Reply in Further Support of Motion to Dismiss, *ACLU v. CIA*, No. 1:13-cv-01870, (D.D.C. Mar. 4, 2015), ECF No. 49, https://www.aclu.org/sites/default/files/field_document/ssci_foia_gov_mtd_reply.pdf.

⁵ See Amnesty International USA, Complaint and Request for Immediate Review to the Department of Justice Office of Inspector General, 21 September 2015, <https://www.amnestyusa.org/pdfs/OIGComplaintAmnestyInternationalUSA.pdf>.

⁶ See Letter from Amnesty International, ACLU and Human Rights Watch to Attorney General Loretta Lynch (June 23, 2015), http://www.hrw.org/sites/default/files/related_material/Letter-to-AG-Lynch-Special-Prosecutor-Torture.pdf.

By failing to establish a process for assessing this evidence, the Justice Department has not only acted contrary to its obligations to investigate such acts, it has set a dangerous example of impunity with far-reaching implications. Abusive governments around the world can only be encouraged to use US inaction on enforced disappearance, torture and other human rights violations to justify their own crimes, and impunity for them. With a record of no charges, no prosecutions, no trials, no punishment, and no redress for crimes under international law committed in and around the CIA detention programme, the USA will continue to lose credibility when it speaks out for human rights.

GUANTÁNAMO BAY DETENTION FACILITIES (PARAGRAPH 14)

The USA continues to deny access to critical information about the conditions of detention and treatment of detainees at Guantánamo, including those on hunger strike, and particularly regarding Camp 7.

ACCESS TO MEDICAL TREATMENT AND REHABILITATIVE CARE

One of the detainees held at Camp 7 is Mustafa al-Hawsawi, who was brought to Guantánamo on 4 September 2006 after nearly 1,300 days in secret CIA custody. Mustafa al-Hawsawi is reported to be suffering chronic and potentially life-threatening illness. The USA should provide full and on-going medical treatment and rehabilitation for the detainees, including Mustafa al-Hawsawi.

Mustafa al-Hawsawi has been diagnosed with rectal prolapse, anal fissure (torn rectum) and chronic haemorrhoids. These ailments are so severe that he is forced, in spite of excruciating pain, to manually re-insert the prolapsing tissue back into his rectal cavity with his fingers whenever he defecates or strains. This painful and humiliating condition may well be the result of torture by US government personnel: namely sodomy with a foreign object while in CIA custody. This abuse is described in the Senate Intelligence Committee report on the CIA detention programme. This summary cites CIA internal communications about rectal examinations conducted with “excessive force” on Mustafa al-Hawsawi.⁷

According to his lawyers, Mustafa al-Hawsawi suffers severe pain and exhaustion every time he defecates because of the severity of his rectal condition. He limits his intake of food and liquids in an attempt to reduce the number of times he will have to defecate.

Mustafa al-Hawsawi has sought medical treatment for these conditions. His lawyers, through letters to U.S. Department of Defense authorities and litigation, report that he has received only minimal symptomatic treatment, such as over-the-counter pain medicine, for many of his conditions. Neither he nor his lawyers have consistent access to his complete laboratory

⁷ Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program, 100 (approved 13 December 2012; declassification revisions 3 December 2014), http://www.intelligence.senate.gov/sites/default/files/press/executive-summary_0.pdf.

reports and his medical records, preventing them from properly assessing his medical needs. This has implications for accurate diagnosis of his multiple medical problems.

Mustafa al-Hawsawi, through his lawyers, also alleges that his medical care at Guantánamo is too irregular and inconsistent to meet basic standards of care. His lawyers report that the military physicians at the detention site rotate frequently, approximately every six months, inhibiting the formation of a trusting doctor-patient relationship. In addition, his lawyers report that medical records reveal the same symptomatic treatment measures are employed time and again, as opposed to a progressive plan of care to address the chronic, painful and potentially life-threatening conditions. His lawyers report that they fear that the doctors themselves may not be fully informed of his conditions. In addition, they state that a surgical consultation requested six months ago for possible repair of his torn rectum has not yet occurred.

While Amnesty International is not in a position to know the full details of Mustafa al-Hawsawi's access to qualified medical personnel at Guantánamo, what is evident from available information is that he has not received adequate treatment for his serious medical conditions. He continues to suffer pain, humiliation and on-going physical and mental trauma arising from his treatment in CIA custody, with the mental trauma possibly exacerbated by his detention at Guantánamo.

The US government's continuing failure to act to ensure full and on-going medical treatment and rehabilitative care contravenes U.S. international legal obligations. These include, under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that the US government is required to provide access to medical treatment and other rehabilitation services to victims of torture or other ill-treatment.⁸

In a 7 July 2015 resolution, the Inter-American Commission requested that the USA "adopt necessary measures" to, inter alia, "ensure access to medical care and treatment" for Mustafa al Hawsawi. It found that his "health may rapidly deteriorate." It considered "prima facie that the rights to life and physical integrity of Mr. Al-Hawsawi are at serious risk." It requested that the US government provide information on the adoption of precautionary measures within 15 days of the resolution's issuance. Amnesty International is not aware of any response from the US government to date.⁹

Amnesty International has urged the US government to ensure that Mustafa al-Hawsawi receives full and continuing access to independent medical assessment and care, including prompt medical treatment for excruciatingly painful conditions apparently resulting from his torture in US custody, and other severe and chronic conditions. He should be granted access to further blood testing, including to determine whether or not he is suffering from cancer, as he has requested through counsel. His lawyers should receive full responses to requests to Department of Defense authorities and be kept fully informed about developments related to

⁸ See UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14, opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force June 26, 1987); UN Committee against Torture, General Comment No. 3, UN Doc. CAT/C/GC/3, http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf.

⁹ Inter-American Commission on Human rights, Resolution 24/2015, Precautionary Measure No. 422-14, Matter of Mustafa Adam Al-Hawsawi regarding the United States of America, 7 July 2015.

the health and well-being of their client. Furthermore, Mustafa al-Hawsawi and his counsel should have full and prompt access to his medical records and laboratory test results.

In light of Mustafa al-Hawsawi's reported inadequate treatment and allegations made by other Guantánamo detainees, Amnesty International has also called upon the US government to conduct a full review of current standards and practices regarding medical assessments and treatment, including all relevant Standard Operating Procedures, at all Guantánamo detention sites.

CONTINUING INDEFINITE DETENTION

The backdrop to this issue is the US government's continued failure to put human rights principles front and centre – or indeed anywhere – in its promise to resolve the Guantánamo detentions and close the facility. More than 14 years into the detentions, 91 individuals remain held at Guantánamo. Eighty-one are held without charge and ten detainees have been or are being subjected to the military commission process. Six are facing capital trials by military commission in proceedings that by design cannot meet international fair trial standards, as the Committee Against Torture has itself noted.

On 23 February 2016, the Obama administration released its "Plan for Closing the Guantánamo Bay Detention Facility". As long anticipated, the plan makes no explicit reference to human rights principles, remains framed under its "global war" theory underpinned by the broad 2001 Authorization for Use of Military Force (AUMF), maintains military commissions as a forum for prosecutions, and includes a proposal not to end the detentions but to relocate at least some of the detainees to "law-of-war detention in the United States" – that is, indefinite detention without charge – at an as yet to be identified and modified "secure detention facility" on the US mainland.¹⁰ Bringing to the USA a system of indefinite detention, including by basing it on the premise of an essentially permanent and global "war," would entrench the fundamental flaws of Guantánamo and further perpetuate the violations of international law associated with it.

In his 23 February 2016 speech announcing the plan for closing the Guantánamo detention facility, President Obama reiterated that his administration's "preferred option" for prosecutions was the ordinary federal courts and he levelled some criticism at the military commission process. The USA must abandon the military commissions altogether. However, the administration's plan keeps military commissions as an option, including in the cases in which they are already being used. It also makes it clear that beyond the question of those detainees currently held at the base, the USA will continue to reserve the option to use military commissions or indefinite "law of war detention" for "new captures" in "appropriate cases". The damage done to human rights by an approach to detentions in what the administration of George W. Bush dubbed the "global war on terror" and pursued in all but name under the administration of Barack Obama is deep.

Neither the plan released by the Obama administration, nor the actions of the administration to date, have included a commitment to ensure truth, accountability and remedy for the

¹⁰ See http://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf. See also, Amnesty International, Hold the applause on the Guantánamo closure plan, 31 July 2015, <https://www.amnesty.org/en/documents/amr51/2198/2015/en/>.

human rights violations, including enforced disappearance, torture and other ill-treatment committed against detainees held at Guantánamo. Indeed, the administration's actions in litigation and elsewhere have served to block accountability and the pursuit of remedy sought by detainees.

EXCESSIVE USE OF FORCE AND POLICE BRUTALITY (PARAGRAPH 26)

US law enforcement and correctional agencies generally operate under professional standards. However, there are frequent reports of ill-treatment and excessive use of force by police and custody officials. Such officials are rarely held to account for such abuses and some law enforcement agencies, as well as many prisons and jails, lack effective independent oversight bodies. Racial minorities continue to be disproportionately represented in complaints of police ill-treatment. National data on the excessive use of force by police does not exist. Lesbian, gay, bisexual, transgender and intersex people are also at risk of discrimination and ill-treatment by police.

The US government has failed to track use of force incidents, including how many people are killed by law enforcement each year. The Guardian News agency conducted an informal review of media articles to document 1140 cases where individuals died following interactions with law enforcement in the USA. 1015 of those cases involved police use of firearms.¹¹ Currently no state has laws governing the use of force which meet international standards on necessity and proportionality. Similarly, all 50 states and Washington, DC fail to meet international standards on use of lethal force, with laws that are far too permissive and contribute to the inability to hold officers accountable.¹² Amnesty International is calling for comprehensive reforms which include a national review of all laws and policies on police use of force as well as policing policies and the criminal justice system more generally.

PASSAGE OF THE ORDINANCE ENTITLED REPARATIONS FOR THE CHICAGO POLICE TORTURE SURVIVORS

Despite no officer ever being prosecuted for any acts of torture committed by members of the Chicago Police Department, in 2015, the Chicago City Council passed and the Mayor of Chicago signed landmark reparations legislation. The ordinance will provide a formal apology

¹¹ The Counted, The Guardian website, available at <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database#>

¹² See USA: Deadly Force: Police use of lethal force in the United States, 18 June 2015, <http://www.amnestyusa.org/research/reports/deadly-force-police-use-of-lethal-force-in-the-united-states>

from the city; specialized counselling services to survivors and their families at a dedicated center on the South Side of Chicago; free enrolment or job training in City Colleges; a requirement that the Burge torture cases and police brutality be taught as part of Chicago public schools history curriculum; and a permanent public memorial to torture survivors. The ordinance will also create a \$5.5 million dollar fund, meant to ensure that living survivors of Burge torture will receive some measure of the financial compensation they deserve.

However, in 2015, allegations have emerged surrounding Chicago Police Department practices at a facility known as Homan Square. Individuals allege that they were subject to abuses including beatings, disappearances, and denial of counsel while held at the facility. Amnesty International is gravely concerned that many of these practices are not unique to the Homan Square facility but may point to larger issues within the Chicago Police Department. While the December 2015 announcement that the US Department of Justice would initiate a civil pattern or practice investigation into the Chicago Police Department is a welcome development, Amnesty International is urging the Justice Department to respond to the resolution passed unanimously by the Cook County Board of Commissioners in January 2016, requesting the Justice Department expand its probe to include the Homan Square facility.

ELECTRICAL DISCHARGE WEAPONS (TASERS)

US law enforcement agencies continue to allow use of 'Tasers' at far below the threshold for use of lethal force. Many authorize them as an "intermediate" force tool where they may be applied to avoid the use of impact weapons or even hands-on force. Since 2001, at least 670 individuals have died after being shocked by 'Tasers' during arrest or while in jail. National guidelines on Taser use are non-existent and policies on their use can vary from law enforcement agency to law enforcement agency.

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