

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 24/6, 26/7, 22/8, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of **Mr. Mustafa al-Hawsawi**, a detainee held in Department of Defense custody at the US naval station at Guantánamo Bay in Cuba since September 2006.

Mr. al-Hawsawi is one of five individuals who were charged by the US Military Commission in connection with the attacks of 11 September 2001.

He was subject of a previous communication sent on 30 November 2012, see A/HRC/22/67, case no. USA 31/2012. We acknowledge receipt of the response of your Excellency's Government dated 19 December 2013, but wish to highlight our continued concerns. Mr. al-Hawsawi was further the subject of the Opinion No.50/2014 (United

Her Excellency  
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Ambassador  
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States of America and Cuba) of the Working Group on Arbitrary Detention whereby the Working Group found that the deprivation of liberty of Mr. al-Hawsawi is arbitrary falling into categories I, III and V of the categories applicable to the consideration of the cases submitted to the Working Group.

According to the information received:

Mr. al-Hawsawi was captured in Pakistan in 2003 and was detained in the Central Intelligence Agency's (CIA) Rendition, Detention and Interrogation (RDI) Programme until 2006, when the U.S. Government finally acknowledged his detention. Since 2006 Mr. al-Hawsawi has been detained at a severely restricted-access facility at Guantánamo Bay, remaining in the custody of the U.S. Government.

Health condition

Mr. al-Hawsawi has injuries sustained during torture and cruel, inhuman and degrading treatment, including so-called enhanced interrogation techniques he endured while in the custody of the CIA between 2003 and 2006. The Executive Summary of the Report of the Senate Intelligence Committee mentions Mr. al-Hawsawi as one of the detainees that were subjected to [REDACTED] without evidence of medical necessity. The report mentions allegations about [REDACTED] conducted with "excessive force" on two detainees at detention site COBALT and that al-Hawsawi, was later diagnosed with chronic [REDACTED]. Today, he is suffering from a number of serious medical conditions, potentially as a result of the treatment suffered, and is in chronic physical pain.

Mr. al-Hawsawi has been diagnosed with [REDACTED] and chronic [REDACTED]. These ailments are so severe that he is forced, in spite of excruciating pain, to [REDACTED]. Mr. al-Hawsawi suffers severe pain and exhaustion every time he [REDACTED]. As a consequence of his condition, he limits his intake of food and liquids in an attempt to [REDACTED].

Mr. al-Hawsawi furthermore suffers from other illnesses, namely from [REDACTED], diagnosed since at least September 2006; an undiagnosed condition since July 2014 which causes him significant pain and consistently accompanied by the [REDACTED]

[REDACTED] which causes him severe pain.

Mr. al-Hawsawi requires appropriate and ongoing medical treatment for these conditions, but reportedly only receives minimal symptomatic treatment such as over-the-counter pain medicine, for many of his conditions. It is alleged that the medical care he receives at Guantánamo is too irregular and inconsistent to meet basic standards of care. In addition, it is reported that a surgical consultation requested six months ago for possible repair of [REDACTED] has not yet occurred. Mr. al-Hawsawi's health is consequently deteriorating.

*Legal representation*

It is further alleged that Mr. al-Hawsawi's legal team continues to face significant obstacles in their work. National security restrictions and the classification of information, reportedly prevent Mr. al-Hawsawi and his lawyers from receiving, discussing and using information relevant to his legal representation. Without access to essential information, as for example his medical records and the full report of the Senate Intelligence Committee, and without the possibility to communicate confidentially with their client, the ability of Mr. al-Hawsawi's lawyers to represent him effectively may be seriously impeded.

While we do not wish to prejudge the accuracy of these allegations, **serious concern** is expressed about the denial of adequate medical care of Mr. al-Hawsawi leading to the deterioration of his state of health and inhuman detention conditions. Further serious concern is expressed that the continuing interference in the work of Mr. Hawsawi's legal team appears to unduly limit his due process and fair trial rights.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under international human rights law, in particular the absolute prohibition of torture and other forms of ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). We furthermore would like to stress that conditions of detention as described above can amount to inhuman and degrading treatment, as consistently found by, among others, the Human Rights Committee.

We would like to also refer your Excellency's Government to Principle 9 of the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, indicating that all prisoners should have access to the health services available in the country. Moreover, as outlined by the UN Standard Minimum Rules for the Treatment of Prisoners (see the revised version adopted on 5 November 2015 and renamed "Mandela Rules"), the provision of health care is the responsibility of the state authorities and prisoners should enjoy the same standards of health care that are available in the community (Rule 24(1)). Rule 27(1) furthermore provides that all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately

staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

We would furthermore like to draw the attention of your Excellency's Government to article 12 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment (CAT), which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

We would like to refer to articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the US in 1992, providing for the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal.

In particular, with regards to the obstacles to the work of Mr. al-Hawsawi's legal team, we would like to refer Excellency's Government to article 14 (3) (b) of the ICCPR, which provides that an accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. According to the Human Rights Committee, this provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms. General Comment No. 32 stipulates that: "adequate facilities" must include access to documents and other evidence that could assist the defence; counsel should be able to meet and communicate with the accused in full confidentiality; and that lawyers should be able to advise and to represent persons charged with a criminal offence "without restrictions, influence, pressure or undue interference from any quarter". Similar guarantees are also provided in the Basic Principles on the Role of Lawyers, particularly in principles 8; 16; and 21.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. al-Hawsawi in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. We would like to reiterate the finding in the Opinion 50/2014 (United States of America and Cuba) whereby the Working Group on Arbitrary Detention considers that the adequate remedy would be to release Mr. al

Hawsawi and accord him an enforceable right to compensation in accordance with article 9(5) of the International Covenant on Civil and Political Rights. We would appreciate the response on the status of implementation of the aforementioned recommendation.

3. Please provide information concerning the measures taken to ensure the physical and psychological integrity of Mr. al-Hawsawi, and in particular what additional remedial measures have been taken to ensure his access to adequate medical care taking his serious medical conditions into account.
4. Please provide detailed information regarding the legal proceedings against Mr. al-Hawsawi and explain how they comply with the right to fair trial and due process. In particular, please provide legal justification, if any, for the restrictions imposed on Mr. al-Hawsawi's legal team.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights of Mr. al-Hawsawi, in the event that your investigations support or suggest the above allegations to be correct, we request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

José Guevara

First Vice-Chair on behalf of the Working Group on Arbitrary Detention

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