

Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA USA 22/2017

4 October 2017

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 34/19.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the situation of Mr. Ammar al Baluchi, also known as Ali Abdul Aziz Ali, a detainee held in the custody of the Department of Defense the US naval station at Guantanamo Bay in Cuba since September 2006.**

Mr. al Baluchi is a defendant before the Guantanamo Bay military commission, where he potentially faces the death penalty.

Under the name of Ali Abdul Aziz Ali, Mr. al Baluchi was the subject of a previous communication sent on 30 November 2012 (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.

According to the information received:

Torture and ill-treatment

Mr. al Baluchi was arrested in Pakistan on 29 April 2003, and shortly thereafter entered CIA custody. He was held incommunicado for 3.5 years by the CIA in several of its secret prisons or "black sites", where he was tortured. In 2006 Mr. al Baluchi was transferred to a severely restricted-access facility at Guantanamo Bay, and has remained since in the custody of the U.S. Government.

While in the custody of the CIA (between 2003 and 2006), Mr. al Baluchi suffered repeated torture through water dousing, prolonged shackling in stress positions, forced nudity, extreme temperatures, prolonged sleep deprivation in the form of loud music and constant light for over three years, and beatings severe enough to cause a traumatic brain injury. Mr. al Baluchi's head was repeatedly

slammed against a wall until he lost consciousness while he was in CIA custody in 2003. He is named 153 times in the redacted Executive Summary of the Senate Select Committee on Intelligence's Report on the CIA's Rendition, Detention, and Interrogation Program published in 2014 ('Senate Committee Report').

Mr. al Baluchi's ill-treatment reportedly continues at Guantanamo Bay. He has been reportedly held in near-solitary confinement or isolation for more than a decade. It is also reported that the guard force currently uses noise and vibrations to replicate the techniques used in the past against CIA detainees, which result in constant sleep deprivation and the related physical and mental disorders.

Health condition

Mr. al Baluchi is currently suffering from a number of serious medical conditions, most likely as a result of the so-called 'enhanced interrogation techniques' described above, which clearly amount to torture or other cruel, inhuman or degrading treatment or punishment. It is alleged that he is not being given the proper medical care required by his conditions.

In particular, as a consequence of prolonged shackling in stress positions, Mr. al Baluchi is said to suffer from permanent nerve damage in his arms and legs. He has also been diagnosed by different doctors at various times with mental and cognitive impairments such as anxiety, depression, memory loss, severe and permanent sleep problems, and an extreme sensitivity to light. Mr. al Baluchi has also been severely affected by sleep deprivation and continues to suffer severe sleep disorder: he is unable to sleep for more than 2-3 hours at a time and sometimes spends several days without being able to sleep.

Mr. al Baluchi requires appropriate and continuous medical treatment for these conditions, but he reportedly only receives minimal symptomatic treatment such as pain relief analgesics. Medical doctors working at the detention facility in Guantanamo have reportedly been reluctant to establish a complete medical history of Mr. al Baluchi, in particular as far as the causes of his current medical conditions and the consequences of his ill-treatment are concerned. In addition, over the past seven years, Mr. al Baluchi has repeatedly requested an MRI to assess the brain damage resulting from the ill-treatment described above, to no avail. It is also reported that no psychological care is available to Mr. al Baluchi.

Legal representation

We understand that Mr. al Baluchi's legal team continues to face significant obstruction in their work. National security restrictions and the classification of information prevent Mr. al Baluchi and his lawyers from accessing, receiving,

discussing and using information relevant to his legal defence. Thus, Mr. al Baluchi's legal team has been denied access to crucial exculpatory or mitigating information because it was either withheld or destroyed. In February 2016, it was discovered that one of the black site prisons where Mr. al Baluchi had previously been held had been destroyed despite it being subject to a protective order. This has precluded Mr. al Baluchi's legal team from obtaining essential forensic evidence that could have been exculpatory or mitigating. Furthermore, all potentially exculpatory and mitigating information that is still available regarding the torture of Mr. al Baluchi has been withheld from his legal team on the basis that it is allegedly not relevant to the eventual trial.

We understand that statements extracted from Mr. al Baluchi under torture and during the course of his detention will be relied upon at his upcoming personal jurisdiction hearing, and that such statements are considered to be admissible under the 2009 Military Commissions Act, as long as they constitute so-called "clean statements" obtained by re-interrogating detainees who were previously tortured.

Investigation, prosecution and redress

Finally, in more general terms, despite the express public acknowledgment in the 'Senate Committee Report', among other sources, that CIA agents have engaged in the systematic torture of detainees held incommunicado for several years, no investigation or prosecution seems to have been initiated against the perpetrators, and no redress, compensation or rehabilitation has been offered to the victims.

While I do not wish to prejudge the accuracy of these allegations, I reiterate **my serious concern** at the treatment and conditions which Mr. al Baluchi has reportedly been subjected to since his arrest in 2003, including torture and other forms of ill-treatment, prolonged solitary confinement and isolation for more than a decade, denial of required medical care, and violation of his due process rights in a death penalty trial.

I would like to take this opportunity to remind your Excellency's Government that the absolute prohibition of torture constitutes one of the few universally recognized peremptory norms of international law. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment has been codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as in article 7 of the ICCPR. The human right to be free from torture and other ill-treatment is non-derogable and, therefore, continues to apply in situations of armed conflict, a conclusion reinforced not only by the relevant provisions of international humanitarian law, but also the United States War Crimes Act.

I further would like to remind your Excellency's Government that article 12 of the CAT requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that acts of torture have been committed. Articles 5 and 7 require States party to the Convention to establish jurisdiction and to prosecute suspected perpetrators of torture. It is therefore a **concern of the utmost gravity** that, despite express and public acknowledgement by your Excellency's Government of numerous systematic acts of torture at the hands of state officials - all of which constitute serious violations of international law and may well amount to war crimes under both national and customary international law - no investigation or prosecution has been initiated against the perpetrators and no redress, compensation and rehabilitation has been afforded to the victims.

Moreover, article 15 provides that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made", and article 14(3)(g) of the International Covenant on Civil and Political Rights states that the accused "should not be compelled to testify against himself or to confess guilt." It is therefore a matter of **serious concern** that, as reported by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/63/223, para. 32), "in trial before the military commission at Guantanamo Bay, testimony obtained through abusive interrogation techniques that were used prior to the Detainee Treatment Act of 2005 may be used as evidence if found to be "reliable" and its use in the "interest of justice" and that even though evidence obtained by torture is now categorically inadmissible, evidence obtained by other forms of coercion may, by determination of a military judge, be admitted into evidence".

With regard to the prolonged solitary confinement suffered by Mr. al Baluchi, I would like to recall that, according to the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015), prolonged solitary confinement beyond 15 days is prohibited, as it may cause severe mental and physical pain or suffering.

Finally, Principle 9 of the Basic Principles for the Treatment of Prisoners, proclaimed by General Assembly resolution 45/111, asserts that all prisoners should have access to the health services available in the country. As stated in the 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. 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.

The full texts of the human rights instruments and standards referred to above are available on www.ohchr.org or can be provided upon request.

In view of the seriousness of the matter, I would appreciate a response on the steps taken by your Excellency's Government to safeguard the rights of Mr. al Baluchi in compliance with international human rights obligations of the United States.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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. Please provide information concerning the measures taken to ensure that Mr. Baluchi is provided with adequate medical care without delay, taking into account his serious medical condition.
3. Please provide information regarding the legal proceedings against Mr. al Baluchi and explain how they comply with the right to fair trial and due process. In particular, please explain the restrictions imposed on Mr. al Baluchi's legal team in terms of access to information in the possession of the Prosecution that would enable him to properly prepare his defence in court. Also, please provide information as to how the exclusionary clause of article 12 of the CAT is complied with in the context of the proceedings against Mr. al Baluchi.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case, and in particular with regard to the ill-treatment that he was reportedly subjected to since his arrest. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide full details of any penal, disciplinary, administrative or other measures taken by your Excellency's Government in compliance with its duty to investigate, prosecute and punish all acts of torture committed by or with the involvement of its officials, in particular as publicly acknowledged in the so-called 'Senate Committee Report' of 2014. If no legal proceedings have taken place please explain why, and how this is consistent with the relevant international legal obligations of the United States.
6. Please indicate what measures, if any, have been taken by your Excellency's Government in compliance with its duty to provide redress, compensation and

rehabilitation to Mr. al Baluchi, and other victims of torture and other forms of ill-treatment.

While awaiting your response, I respectfully urge your Excellency's Government to take all necessary measures to guarantee the full range of rights of Mr. al Baluchi. In the event that independent investigations confirm the accuracy of the above allegations, effective measures should be taken to address the violations committed and to prevent their recurrence.

As per usual practice, this communication and Your Excellency's Government's response will feature in the periodic report to the Human Rights Council for its consideration. Moreover, given the importance and urgency of this matter, I may decide to express my concerns publicly in the near future.

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment