

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/20 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the severe deterioration of the mental health of Mr. Nizar Abdelaziz Trabelsi, due to his continued detention in solitary confinement, since his extradition from Belgium to the United States, in 2013, on charges of terrorism-related offences.

Mr. Trabelsi was extradited from Belgium to the United States in breach of interim measures ordered by the European Court of Human Rights (ECtHR), based on the potential risk of violating article 3 of the European Convention on Human Rights, on the prohibition of torture and ill-treatment.

According to the information received:

Nizar Ben Abdelaziz Trabelsi (نزار بن عبد العزيز الطرابلسي), is a Tunisian national born in July 1970 in Sfax, Tunisia. He moved to Germany in 1989, where he joined the *Fortuna* football team at Dusseldorf. In 1994, he was prosecuted in Germany for drug-related offenses and sentenced to a term of probation. His professional career in football ended shortly afterwards.

Arrest, detention and extradition procedures

Mr. Trabelsi moved to Belgium in July 2001, and was arrested by the Belgian police, on 13 September 2001, in his apartment in Uccle, on charges of attempting to carry out a suicide-bombing attack on the Kleine Brogel military base, a NATO infrastructure that housed United States (US) military personnel. On 30 September 2003, Mr. Trabelsi was convicted and sentenced to 10 years imprisonment, which was confirmed by the Court of Appeal on 9 June 2004, for planning a suicide-bombing attack with a truck bomb against the Belgian air base of Kleine-Brogel, for illegal possession of weapons and for belonging to a paramilitary group, among other charges. He had admitted during the trial that he intended to kill US soldiers stationed on this base and had affirmed his allegiance to Al-Qaida terrorist group.

On 26 January 2005, Mr. Trabelsi was reportedly sentenced in absentia by a Tunisian military court to ten years' imprisonment for belonging to a terrorist

organisation abroad in peacetime. On that basis, the Permanent Military Court in Tunis issued a warrant against Mr. Trabelsi, on 29 June 2009, for which an application for enforcement was submitted to the Belgian authorities by diplomatic note on 10 September 2009.

Simultaneously, the United States requested the extradition of Mr. Trabelsi, by a diplomatic note on 8 April 2008, under the Extradition Treaty concluded between the Kingdom of Belgium and the United States of America on 27 April 1987. The reasons for the request were the indictment issued by the District Court of the District of Columbia (Washington D.C.), on 16 November 2007, charging Mr. Trabelsi of four criminal offenses, as follows:

- Conspiracy to kill United States nationals outside of the United States;
- Conspiracy and attempt to use of weapons of mass destruction;
- Conspiracy to provide material support and resources to a foreign terrorist organisation; and
- Providing material support and resources to a foreign terrorist organisation.

According to the US authorities, the conviction of each of the two first offenses would incur a life imprisonment sentence, and 15 years imprisonment for the third and fourth.

On 4 June 2008, the Federal Attorney transmitted to the “chambre du conseil” of the Nivelles Regional Court a request for enforcement of the US arrest warrant against Mr. Trabelsi. The Court approved this request, on 19 November 2008, and declared the arrest warrant enforceable, with the exception of “overt acts” corresponding to offenses committed in Belgian territory for which Mr. Trabelsi was prosecuted and convicted in Belgium, by virtue of the *non bis in idem* principle.

Consequent appeals lodged by Mr. Trabelsi, raising concerns at the risk of treatment incompatible with article 3 of the European Convention on Human Rights and the risk of a flagrant denial of justice, were dismissed by the Court of Cassation. On 10 June 2010, the Indictments Division of the Court of Appeal issued a favourable opinion on Mr. Trabelsi’s extradition, on condition that the death penalty is not imposed or enforced; any life sentence is accompanied by the possibility of commutation; and that any request for further extradition to a third country, notably Tunisia, must be agreed by Belgium.

In this respect, the US authorities provided a range of assurances to the Belgian Government, according to which Mr. Trabelsi would not be prosecuted before a military commission in the United States and would be incarcerated in a civilian facility; would not face the death penalty; the possibility of commutation of the life imprisonment sentence by court; would have the right to appeal and habeas corpus, including the statutory basis for sentence reduction for substantial assistance in the investigation or prosecution of a third party; and

finally that he could request clemency from the US President. The US authorities further ascertained that Mr. Trabelsi could not be extradited from the United States to a third country without the approval of Belgium, as an act of assurance against a possible future extradition to Tunisia.

On 23 November 2011, the Belgian Minister of Justice adopted a ministerial decree granting Mr. Trabelsi's extradition to the US Government. Upon notification, Mr. Trabelsi lodged a request with the European Court of Human Rights (ECtHR) for the indication of an interim measure pursuant to the Rules of Court (Rule 39) in order to suspend his extradition. The Court granted the request indicating to the Belgian Government that in the interests of the proper conduct of proceedings, it should not extradite Mr. Trabelsi to the US. Subsequent requests made by the Belgian Government, between December 2011 and July 2013, to lift the interim measures were dismissed by Court.

At the end of his sentence, on 24 June 2012, Mr. Trabelsi remained in custody pending extradition pursuant to article 3 of the Belgian Extradition Act, and his four requests for release were dismissed by Court.

On 3 October 2013, while Mr. Trabelsi was informed that he was being transferred from Bruges Prison to Ittre Prison, he was in fact being taken to Melsbroek military airport, where agents from the US Federal Bureau of Investigation (FBI) were waiting for him and he was extradited to the US. Shortly after, the Minister of Justice issued a public statement announcing Mr. Trabelsi's extradition.

On 4 September 2014, the ECtHR decided that the extradition of Mr. Trabelsi by the Belgian authorities violated articles 3 and 34 of the European Convention on Human Rights and ordered Belgium to pay Mr. Trabelsi a compensation amounting to EUR 90.000, within three months from the date on which the judgment becomes final.

The ECtHR considered that in this case "the risk of ill-treatment derives not from concrete facts such as torture during the applicant's interrogation or denial of access to a lawyer, but from the mere idea that his life sentence might appear irreducible to him at the time of sentencing, thus depriving him of a "right to hope" inherent in human dignity".

Judicial procedures in the US

Upon arrival in the US, Mr. Trabelsi was immediately placed in custody. He was brought before the District Court of the District of Columbia, in presence of his ex-officio lawyer, on 7 October 2013, where he was informed on charges against him.

According to his lawyer, the charges against Mr. Trabelsi are motivated by his unwillingness to cooperate with the US Government and to testify against third parties. In April 2018, the US authorities made a plea offer to Mr. Trabelsi, according to which he should plead guilty of the two first offenses against a 48-year imprisonment sentence and an acquittal of other charges. Mr. Trabelsi

refused this offer and appealed the indictment on the basis of the violation of article 5 of the Extradition Treaty with Belgium and the principle of *non bis in idem*, which was dismissed by the District Court, most recently on 13 March 2020.

Following the District Court rejection of the appeals to the indictments, an evidentiary hearing to present evidence and witnesses in support of the allegations was scheduled from 1 to 3 December 2020. However, the hearing was postponed, until further notice, without justification.

It is reported that this postponement could be justified by the difficulty of holding on-site hearings during the Covid-19 pandemic, but also by procedural and legal issues that remain unresolved, including the request of the defence to reconsider the court's decision of 13 March 2020. This latter refused to recognise the limitations imposed by the Extradition Treaty, notably the application of the principle of *non-bis in idem*.

On 8 August 2019, the Court of Appeal in Brussels had reminded the Belgian Government of its obligations under article 5 of the Extradition Treaty, which restricted the prosecution of Mr. Trabelsi for acts related to the attempted bombing of the Kleine Brogel military base, considering them "overt acts". The Court also instructed the Belgian state to officially notify the United States authorities of this decision.

Conditions of detention in the US and concerns on mental health

Prior to his extradition to the US, Mr. Trabelsi's mental health had severely deteriorated due to his detention under high security conditions since his arrest in 2001. In a medical report, in November 2011, his neuropsychiatrist diagnosed Mr. Trabelsi with high intensity depressive disorder; post-traumatic stress disease; generalized anxiety disorder; migraines and gastric ulcers possibly resulting from chronic anxiety and sleep deprivation; loss of the sense of time and space; loss of social skills; loss of circadian rhythms; procrastination tendencies; difficulties in concentration; perplexity, and inadequate emotional reactions fluctuating between dullness and exaggerated expressions.

Upon arrival in the US, Mr. Trabelsi's belongings were confiscated, including family photos, and he could only recover his eyeglasses a week later. Mr. Trabelsi was initially detained at the Rappahannock Regional Jail, in the State of Virginia, in a division called "the hole", where prisoners are often held for a few days, as a disciplinary measure. In the case of Mr. Trabelsi, he was held in solitary confinement 24 hours a day, in a cell with permanent bright lighting, under the so-called Special Administrative Measures (SAMs). This detention regime restricts all contacts including with other inmates and puts all mail, phone calls, and visits under surveillance.

At the beginning of his detention, Mr. Trabelsi could call his partner twice a month, for a maximum of one hour interrupted every 15 minutes, in the presence of a FBI agent. He was forbidden to discuss any details related to his judicial proceedings or detention conditions or otherwise be deprived of all contacts with

the outside world. Between February and May 2015, all calls to his partner were suspended and again from August 2018 until present-day (the date of drafting this communication). In this sense, for more than two years, the only contact Mr. Trabelsi had was with his US lawyers, assisted by a translator. Few months following his detention, Mr. Trabelsi was authorised one hour outside his cell, with a security belt around his waist to which handcuffs were attached.

On 3 October 2018, a psychiatrist evaluated the effects of Mr. Trabelsi's five years solitary confinement under SAMs and reported that he was showing psychological symptoms such as psychotic symptoms, self-harm and symptoms mimicking trauma reactions. Mr. Trabelsi mentioned hearing voices, seeing things that do not exist, having paranoid beliefs including that his lawyers are traitors and his food is tampered, he has been experiencing nightmares, and passive thoughts of death. He has sporadically harmed himself by banging his head against the wall until it bleeds. Other symptoms included chronic headaches, difficulty sleeping, lack of appetite and digestive difficulties.

Later in 2018, Mr. Trabelsi was transferred to the Northern Neck Regional Jail, where he continued to be detained in solitary confinement under SAMs, he cannot see or hear anyone else, the light is permanently kept on, and letters between him and his wife and children are restricted in volume and frequency and are held up to three months for analysis. Two improvements were noted, namely having a television that he can watch several hours a day and access to hot shower twice a week. The psychologist reported, on 30 October 2020, that Mr. Trabelsi continued to show psychotic symptoms, self-harm, paranoia, obsessional preoccupations and social discomfort, and particularly hearing voices, seeing animals and insects in his cell as well as shadows, which induced panic, and experienced nightmares that reflected his feelings of humiliation and persecution. He was further affected by the lack of in-person visits by his lawyers, due to the Covid-19 pandemic measures and showed a mistrust and resentment of interaction with his legal team. The psychologist concluded that Mr. Trabelsi "evidences numerous symptoms associated with his experience of solitary confinement which negatively impact his functioning, including his interactions with his attorneys and may compromise his long-term psychological adjustment".

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned by Mr. Trabelsi's excessive solitary confinement, for seven years in the United States, under "Special Administrative Measures" (SAM) restricting all contacts with the outside world, including with family and severely affecting his mental and physical health, which may amount to torture and cruel, inhuman or degrading treatment or punishment.

We would also like to raise concern at the extradition of Mr. Trabelsi despite the interim measures instructed by the ECtHR, which exacerbated his vulnerability and the risk of exposing him to torture and other ill-treatment.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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. Please provide detailed information on the charges maintained against Mr. Trabelsi by the District Court of the District of Colombia, and how those charges respect the principle of *non bis in idem*, as instructed by the Court of First Instance in Belgium and the Extradition Treaty between the United States and Belgium.
3. Please provide legal and factual grounds for the excessive use of Special Administrative Measures for prolonged periods. Also, explain how those measures comply with international human rights law and standards, in light of their mental health effects.
4. Please provide information on measures undertaken, or planned, to review high security and disciplinary measures allowing excessive use of solitary confinement, and measures to bring detention regimes in the US in conformity with international human rights standards.
5. Please provide detailed information on the available mechanisms of reduction of sentences, namely life imprisonment sentences, in particular with regard to terrorism offenses, and the modalities of their implementation in practice.
6. Please explain measures that are undertaken, or planned, to provide adequate medical care, including psychological support, to Mr. Trabelsi, in light of his deteriorating mental health.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism have written a similar letter to the Government of Belgium.

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

Nils Melzer

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

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of jus cogens, is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

In this connection, we would like to bring to your Excellency's Government attention the comment of the Committee Against Torture stating that "while the State party has indicated that there is no systematic use of solitary confinement in the United States", the Committee remains concerned about reports of extensive use of solitary confinement and other forms of isolation in United States prisons, jails and other detention centres, for purposes of punishment, discipline and protection, as well as for health-related reasons." The Committee also raised concern about the use of solitary confinement for indefinite periods of time and its use with respect to juveniles and individuals with mental disabilities, stating that full isolation of 22 to 23 hours a day in super-maximum security prisons is unacceptable (art. 16). CAT/C/USA/CO/3-5 (CAT 2014).

In the Rapporteur's interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days under conditions of total isolation) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156. Prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

Furthermore, the Special Rapporteur on Torture stressed that "[E]ven if permitted by domestic law, none of the following methods of inflicting mental pain or suffering can be regarded as "lawful sanctions": prolonged or indefinite solitary confinement; placement in a dark or constantly lit cell; collective punishment; and prohibition of family contacts. (In accordance with the Nelson Mandela Rule n.43). Even more extreme than solitary confinement is "incommunicado detention", which

deprives the inmate of any contact with the outside world, in particular with medical doctors, lawyers and relatives and has repeatedly been recognized as a form of torture.

We would also like to underline conclusion of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, calling on States to “[E]nsure that all detainees are held in accordance with international human rights standards, including the requirement that all detainees be held in regularized facilities, that they be registered, that they be allowed contact with the outside world (lawyers, International Committee of the Red Cross, where applicable, family), and that any form of detention is subject to accessible and effective court review, which entails the possibility of release”.

We would also like to reiterate the Ruling of the European Court of Human Rights in *Vinter and Others v UK (2013)*, which concluded that “[A] whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration. The Court elaborated on this standard in the *Trabelsi v Belgium* (September 2014) by holding that the necessary review mechanism must enable the national authorities to ascertain, on the basis of objective, pre-established criteria of which the prisoner had precise cognisance at the time of imposition of the life sentence, whether, while serving his sentence, the prisoner has changed and progressed to such an extent that continued detention can no longer be justified on legitimate penological grounds.

We would also like to recall that the Special Rapporteur on Torture, in his report A/60/316, has stated that “diplomatic assurances are unreliable and ineffective in the protection against torture and ill-treatment: such assurances are sought usually from States where the practice of torture is systematic; post-return monitoring mechanisms have proven to be no guarantee against torture; diplomatic assurances are not legally binding, therefore they carry no legal effect and no accountability if breached; and the person whom the assurances aim to protect has no recourse if the assurances are violated. The Special Rapporteur is therefore of the opinion that States cannot resort to diplomatic assurances as a safeguard against torture and ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return” and called “on Governments to observe the principle of non-refoulement scrupulously and not expel any person to frontiers or territories where they might run the risk of human rights violations, regardless of whether they have officially been recognized as refugees.” (paras 51 and 52).

Finally, we would like to recall that, in line with UN Security Council resolutions, the Special Rapporteur on human rights while countering terrorism has, on numerous occasions, noted that all measures adopted in the context of countering terrorism, including those dealing with the rights of non-nationals, deportations and extradition must comply with international human rights law. Therefore, any transfer of a terrorism suspect or convict from one State to another must be based on law and follow the procedures set forth in law. Further, there is a right to an effective review mechanism for any decision to expel, deport or extradite. Article 13 of the International

Covenant on Civil and Political Rights provides that “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” The Human Rights Committee has clearly stated that the right to challenge an expulsion decision and to have one’s case reviewed applies not only to expulsion and deportation decisions, but also to extradition, including when the State invokes reasons linked to national security. The review proceedings must provide a real opportunity to submit reasons against deportation or extradition (Human Rights Committee, *Pierre Giry v. Dominican Republic*, Communication No. 193/1985, U.N. Doc. CCPR/C/39/D/193/1985 (1990)). The right to be expelled, deported or extradited only on the basis of a decision adopted in accordance with the applicable law, and to submit reasons against expulsion and to have them examined, applies also in the case of terrorism suspects. Similarly, all aspect of the right to a fair trial must be respected, even when dealing with acts of terrorism. This includes the application of the rule *ne bis in idem*, guaranteed under article 14(7) of the International Covenant on Civil and Political Rights.