Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 and the Independent Expert on the enjoyment of all human rights by older persons

Ref.: AL USA 26/2022
(Please use this reference in your reply)

11 January 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 and Independent Expert on the enjoyment of all human rights by older persons, pursuant to Human Rights Council resolutions 49/10, 51/8, 44/10, 44/5, 51/21, 44/8 and 51/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **continuing deterioration in the physical and mental health of detainee Mr. Nashwan al-Tamir**, **allegedly due to systematic shortcomings in medical expertise, equipment, treatment, and accommodations at the Guantánamo Bay detention facility and naval station**.

Mr. al-Tamir was subject to Opinion No. 29/2006 of the Working Group on Arbitrary Detention. The Working Group determined that his detention in an unknown secret detention facility prior to his transfer to Guantánamo Bay was "arbitrary," contravened article 9 of the International Covenant on Civil and Political Rights and fell "outside of all national and international legal regimes pertaining to the safeguards against arbitrary detention" (Opinion No. 29/2006, paras. 21-22). The Working Group cautioned then that "the secrecy surrounding the detention and the interstate transfer of suspected terrorists may expose the persons affected to torture, forced disappearance, extra-judicial killing and in case they are prosecuted against, to the lack of the guarantees of a fair trial." The Special Procedures mandate-holders have also previously expressed specific and direct concerns regarding the continued detention of individuals at Guantánamo Bay, Cuba—now 35 men in varying stages of judicial proceedings, with some neither charged nor cleared for release—and related allegations of ongoing human rights abuse.[1]

According to the information received:

Mr. Nashwan al-Tamir (also known as Mr. Abd al-Hadi al Iraqi) is a 60-year-old man of Iraqi and Afghan nationality with a permanent physical disability. He was

[1] See, e.g., A/HRC/13/42; A/HRC/49/45 and Annex: Names of the individuals identified in the joint study on global practices in relation to secret detention in the context of countering terrorism; see also U.S. Government replies.

captured by local authorities in Turkey in October 2006 and rendered to a secret detention site, where he was allegedly subject to torture, cruel, inhuman, and degrading treatment and enforced disappearance.[2] He entered a plea agreement with your Excellency's Government in June 2022.

Throughout his years in United States custody, Mr. al-Tamir's physical and mental health have markedly deteriorated. While he was still able to walk independently upon arrival at the Guantánamo Bay detention facility, he now requires the use of a wheelchair. He lives in constant pain due to his degenerative disc disease and spinal stenosis, significant peripheral neuropathy and neuropathic pain, and visible muscle atrophy in his lower limbs. It is alleged that systematic healthcare failures at the Guantánamo Bay detention facility resulted in the significant deterioration in his physical and mental health and disability.

From the outset of his detention at Guantánamo Bay, the United States Joint Task Force ("JTF") charged with operating the detention facility was allegedly made aware of Mr. al-Tamir's spinal condition. Nonetheless, Mr. al-Tamir was allegedly subjected to multiple forcible cell extractions, i.e., he was repeatedly moved from his cell by a team of armed corrections officers using hands-on, aggressive tactics to induce submission. One such extraction allegedly occurred on 9 January 2017, when a new military judge had scheduled a military commission hearing. From the information available to us, we understand that one of the prison guards sent to physically transport Mr. al-Tamir from the holding cell to the court room was female. As such physical contact would violate his sincerely held religious beliefs prohibiting physical contact between unrelated members of the opposite sex, Mr. al-Tamir refused to be transported. It is also alleged that such contact would trigger significant trauma stemming from his prior treatment at the secret detention site. At the prosecution's request, the judge ordered a forcible cell extraction and JTF guards dressed in riot gear and wielding batons, violently beat, restrained, involuntarily shackled, and physically dragged Mr. al-Tamir into the court room.[3] When the hearing started, Mr. al-Tamir, restrained in a strait jacket, was shaking, bleeding, and in so much pain that he could not properly follow the proceedings. Despite Mr. al-Tamir being in great pain, the prosecution allegedly proceeded with the court proceedings, taking a deposition of another witness.

After this alleged forcible cell extraction, Mr. al-Tamir's health reportedly declined. On 3 September 2017, Mr. al-Tamir experienced urinary incontinence and saddle anesthesia, two symptoms of Cauda Equina Syndrome, a neurological condition that involves pressure on and swelling of nerves at the end of the spinal column.[4] Two days later, on 5 September 2017, a neurosurgeon performed an emergency laminectomy on Mr. al-Tamir, removing part of the vertebral bone in an attempt to ease the pressure on his spinal column. Despite the surgery, Mr. al-Tamir's condition continued to decline for two weeks, and a second surgery was performed on 18 September 2017 to fuse and stabilize his vertebrae. Shortly after, Mr. al-Tamir suffered from cervical hardware failure, a life-threatening complication whereby the implanted hardware that

[2] Such treatment included sleep deprivation, constant light and noise, deprivation of food and water, shackling in stress positions, physical and sexual assaults, including by female interrogators, and isolation in a cell barely larger than his body for months without any bed, pillow, or blanket, and only a bucket for a toilet.

[3] See Unofficial Transcript, p. 945, available at https://www.mc.mil/Cases.aspx?caseType=omc&status=1&id=47.

[4] Declaration of Senior Medical Officer ("SMO"), 1:17-cv-01928 (EGS), Doc. 18-2, pp. 2-3.

was intended to hold his spinal bone together as it fuses failed. He subsequently underwent three additional spinal surgeries within one year.

It is alleged that none of the surgeries returned Mr. al-Tamir to his baseline health, specifically the state of health he experienced prior to his rendition to the Guantánamo Bay detention facility. Rather, we were informed that his health has continued to decline. In September 2021, Mr. al-Tamir suffered from symptoms similar to those he had prior to the 2017 Cauda Equina emergency. After asking multiple times to see the primary medical provider charged with high-value detainees, the Senior Medical Officer, Mr. al-Tamir received a medical appointment and was taken to an examination room. It is alleged that the JFT medical personnel knew that Mr. al-Tamir had a diagnosed spinal condition causing permanent disability, with access to a computerized tomography scan ("CT scan"), a magnetic resonance imaging ("MRI") and an x-ray confirming his degenerative disc disease but subjected him to degrading and embarrassing treatment during this appointment due to their disbelief in his medical history and deteriorating condition. The nurse first asked for his consent to a rectal examination, which Mr. al-Tamir had declined on prior visits and again declined in this instance. The Senior Medical Officer then allegedly decided to test Mr. al-Tamir's physical abilities, directing guards to hold him upright by his shoulders and then directing them to release him to see whether he could stand. Mr. al-Tamir collapsed immediately as he did not have the strength to hold his own body upright.

After Mr. al-Tamir's legal representatives filed several emergency motions in the military commission, the United States Government brought a neurosurgeon in to evaluate Mr. al-Tamir. The government-provided neurosurgeon concluded that Mr. al-Tamir's spinal stenosis would require a sixth surgery. However, based on the information available, the Senior Medical Officer disagreed with this assessment, opining that Mr. al-Tamir was malingering. It is alleged that the Senior Medical Officers—typically trained as primary care physicians—are unable to diagnose and treat the complex medical issues that Mr. al-Tamir presents. Moreover, as military personnel, the Senior Medical Officer rotates out of the position on at least a biannual basis, further inhibiting continuity of care and the capacity to form an expert and sustained assessment, which would further the best medical interests of patients.

On 7 November 2022, it is reported that Mr. al-Tamir requested medical examination after experiencing the loss of neurological sensory and motor tone in the rectal area (symptoms of Cauda Equina Syndrome) for several days. We understand that the JTF brought a neurological team to the Guantanamo detention facility to evaluate him for emergent spinal surgery.[5] After the attending neurosurgeon's evaluation and a diagnostic study, the team determined that urgent surgery was necessary. On 12 November 2022, the detainee received surgical intervention, during which he experienced a complication of a tearing of the dura where the previous surgery had scarred. After he stabilized, he experienced a temporary loss of consciousness, but again stabilized. At the time of this communication, Mr. al-Tamir was undergoing a weeks-long post-operative recovery process.

Although the Chief Medical Officer position was created in 2020 to ensure quality healthcare and continuity of care for all detainees, Mr. al-Tamir's health

[5] Declaration of Senior Medical Officer, Camp V, AE 189AAA, 16 November 2022.

condition seem to have deteriorated due to the lack of medical treatment, equipment, ongoing specialist care, and accommodations available at the Guantánamo Bay detention facility. The MRI machine at Guantánamo Bay was allegedly inoperable until Mr. al-Tamir's most recent surgery in November 2022. Although specialists have recommended since November 2021 that Mr. al-Tamir receive a DEXA scan—an imaging test that evaluates bone density—neither that equipment nor a reasonable alternative has been operationalized.

Moreover, it is alleged that the naval station is not equipped to support neurosurgery; it is only equipped with a hospital with the staffing and resources equivalent to an urgent care medical center. We understand that, whereas the U.S., service members and families based on the Guantanamo detention facility and requiring neurosurgery and other complex medical interventions are sent to a hospital on the mainland United States with the appropriate equipment and staff, per the requisite standard of care. Such transfer is not allowed for detainees. Rather, neurological teams are brought to the island.

Although Mr. al-Tamir has received regular medical appointments, including with physical therapists, this is allegedly insufficient for a return to full functionality, strength, or mobility. Mr. al-Tamir does not have any access to an independent occupational therapist or other disability specialists, who could work with his physical therapist to ensure that his physical abilities are accommodated with sufficient assistive devices that would allow him to function independently and significantly improve his quality of life. Although Mr. al-Tamir has been provided with a wheelchair and walker, modified toilet seat, and raised bed, he does not have a bedside commode or a medical bed that can be raised or lowered to assist him in getting into a sitting position.

Mr. al-Tamir and his counsel allegedly also face the lack of timely, complete, and unclassified medical records, thus limiting their ability to assess the present state of his health and requisite accommodations. It is alleged that the legal representatives of Mr. al-Tamir do not receive timely information about his medical appointments with specialists, testing performed, or even medications and treatments. By way of example, there have allegedly been at least two incidents where Mr. al-Tamir was transported to the naval station hospital without his legal representatives knowing. During those events, Mr. al-Tamir had no ability to communicate with his attorneys to inform them of the situation and of his state of health.

Furthermore, it is reported that Mr. al-Tamir does not have a full understanding of his health condition due to the United States classification system. His medical records are often marked "NOFORN," a security designation meaning "not releasable to foreign nationals", a category under which Mr. al-Tamir falls as an Iraqi and Afghan national. At one scheduled session of the Military Commission where the accommodations for Mr. al-Tamir's disability were being discussed, Mr. al-Tamir and his legal representatives were excluded from the hearing session at the request of the Government and not further consulted. As a result, it is impossible for Mr. al-Tamir's advocates to know if the records provided to the Commission are accurate. Moreover, disclosure restrictions may limit the legal representatives from presenting items like examination results or advanced imaging to medical experts.

As of the time of communication, Mr. al-Tamir was still recovering from his November 2022 surgery. We understand that even before his most recent surgery, Mr. al-Tamir could not walk by himself. Nor did he have the strength to open the heavy doors to his cell. He allegedly relies on other detainees to perform everyday tasks. His present medication regimen[6] also negatively affects him in several ways. One of the Government neurosurgeons who evaluated Mr. al-Tamir has noted that the Percocet he has been prescribed could cause drowsiness and sleepiness and observed that Mr. al-Tamir is "particularly susceptible to pain medications."[7] Even though his need for medications is known to the JTF, it is alleged that they still, on occasion, fail to provide them to Mr. al-Tamir in a timely fashion, causing unnecessarily suffering.[8] In some instances, despite the medication, Mr. al-Tamir's pain prevents him from attending hearings or is debilitating to such a degree that he "cannot focus on what is being said in court."[9] Due to the number of medications that Mr. al-Tamir must take, his legal representatives have requested a medical expert to determine how Mr. al-Tamir's medications interact and influence his cognition. Concerns also arise as to whether Mr. al-Tamir has been given full information concerning his own medical condition and whether he is thus in a position to fully consent to treatment as provided. We understand that this request was denied. As a result, the defense filed pretrial motions seeking the expert input of a psychopharmacology expert.[10]

The above challenges have allegedly coincided with significant deterioration in Mr. al-Tamir's mental health. Today, Mr. al-Tamir expresses fear and desperation about his current health conditions. He allegedly fears retaliation if he complains or even if his legal representatives raise these health-related issues in litigation or before the United Nations, although he has consented to the present communication. It is reported that he is especially anxious that the medical personnel have dual loyalties (to the military and to him) and that lodging any complaints could impact his medical treatment.

General human rights concerns

Before turning to the present allegations, we reiterate our serious concerns about the ongoing detention of the alleged victim and the other remaining detainees at the Guantánamo Bay detention facility. We underline the profound psychological and physical trauma of torture and other cruel, inhuman and degrading treatment[11] and

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6 See Unofficial Transcript, p. 2407, lines 9-19 (stating "So he takes -- I have my list here of his PRN medications. So the ones that he takes specifically for pain, he has -- he has two that I recommend that he take regularly for lower-level pain, which is Tylenol and ibuprofen. And then he has Percocet for higher-level pain. For muscle spasms and stiffness, he has Flexeril for lower-level muscle spasms or stiffness. And he takes Valium if he has worse stiffness or spasm" and noting that he takes Tylenol "very regularly.").

7 See Unofficial Transcript, p. 1759, lines 4-5.

8 See AE 189H ("AE" Refers to Appellate Exhibit, documents that are available on https://www.mc.mil/Cases.aspx?caseType=omc&status=1&id=47).

9 See Unofficial Transcript, p. 2777, line 21.

10 See AE 172E.

11 We recognize that pursuant to the reservation of your Excellency's Government to the ICCPR, "the United States considers itself bound by article 7 to the extent that 'cruel, inhuman or degrading treatment or punishment' means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States." See also Convention Against Torture, United States Reservation (I)(1).

enforced disappearance that these men including Mr. al-Tamir have endured while being held at the very site of prior human rights violations.

We also emphasize the interdependence between the right to health and other fundamental rights. In this context, we reaffirm the finding of the Special Rapporteur on the right to health that "[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life" (A/HRC/38/36, para. 18). In addition, and as also indicated by the High Commissioner for Human Rights, infringements of the right to health may contribute to deaths in situations of deprivation of liberty (A/HRC/42/20).

Specific Human Rights Issues

a) Access to healthcare

We express our concern regarding the deteriorating health situation of Mr. al-Tamir stemming from the alleged lack of available, accessible and adequate healthcare services, treatment, diagnostics, and reasonable accommodations required because of his disability, mental and physical trauma, older age, religion, and nationality, among others. We note that Mr. al-Tamir may be particularly vulnerable to abuse due to these intersecting factors, and we emphasize in this regard that Rule 25 of the Mandela Rules requires a health-care service to be in place "tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, *paying particular attention to prisoners with special health-care needs* or with health issues that hamper their rehabilitation." The mental health needs of Mr. al-Tamir, as an older person with disabilities who has been subject to alleged acts of torture, cruel, inhuman, or degrading treatments may especially need to be addressed differently. We recall the observations of the Independent Expert on the enjoyment of all human rights by older persons that "[d]etention facilities are often not designed to accommodate older persons or to respond to their needs as they are generally planned for younger detainees" and therefore she recommended that "[a]ge-friendly detention environments, including appropriate infrastructure, accommodations and living conditions, and age-sensitive training for custodial staff to foster respectful communication and informed decision-making should be ensured" (A/HRC/51/27, paras. 44, 48 b) and c)). We also flag that the notion of the relativity of older age is crucial when addressing the situation of older persons deprived of liberty, especially in the context of the criminal justice system. Due to the several years of detention since 2006, during which he suffered from alleged acts amounting to torture, cruel, inhuman, and degrading treatment, Mr. al-Tamir appears to have displayed biological signs of ageing earlier than those who living in society. As mentioned by the Independent Expert on the enjoyment of all human rights by older persons, "[p]oor socioeconomic and health backgrounds, along with the harmful effect of imprisonment on health and well-being, tend to accelerate the ageing process in prison" (A/HRC/51/27, para. 26). Therefore, due to this phenomenon of "accelerated ageing", we recognize that the non-discrimination principle under international law necessitates specific attention to the needs of certain groups of prisoners, including older detainees, to ensure they are not discriminated against in their enjoyment of

human rights and fundamental freedoms (see UNODC, Handbook on Prisoners with Special Needs, p. 5).

We further echo the pertinent observations of the former Special Rapporteur on the right to health regarding the complexities and sensitivities that make meeting the right to health particularly difficult in detention settings, which are "often characterized by inhumane physical and psychosocial environments and unequal structures of power frequently rooted within racist and violent pasts" (A/HRC/38/36, para. 35).

Given the unique political, social, and cultural sensitivities at the Guantánamo Bay detention facility, we believe it is of utmost importance that your Excellency's Government ensure a human rights-based and gender and culturally-sensitive approach to the provision of healthcare services to all detainees, including Mr. al-Tamir. Ultimately, in order to facilitate the "highest attainable standard of physical and mental health" as required under international law, healthcare services must be made "available, accessible, acceptable, and of good quality" (A/HRC/38/36, para. 34).

Regarding medical expertise, we underline the importance of independent and specialized expertise as part of an interdisciplinary team of medical personnel (Mandela Rules 24-25). We are concerned that according to the information received, the Senior Medical Officer challenged an expert neurosurgeon's conclusion that Mr. al-Tamir's spinal stenosis would require another surgery and opined that Mr. al-Tamir was malingering. We note that Senior Medical Officers are typically general practitioner physicians and lack the same level of specialized medical expertise as neurosurgeons. We are particularly worried that the Senior Medical Officer's inexpert opinion may have superseded the expert opinion of a neurosurgeon specialist and in fact precluded the facilitation of an urgent surgical operation—as confirmed by the eventual surgery in November 2022.

We would like to appeal to your Excellency's Government to take all necessary measures in line with international human rights norms and obligations to ensure that Mr. al-Tamir and the remaining detainees at Guantánamo Bay are guaranteed sufficiently independent medical expertise and treatment. The Committee against Torture has emphasized the importance of ensuring the right to access to independent medical assistance, including from the outset of detention (CAT/C/AMB/CO/2, para. 11). Crucially, protecting the independence of medical expertise requires adequate separation from penal-oriented administrators (see A/HRC/38/36, para. 36). In this regard, we observe that the World Medical Association's Declaration of Tokyo Guidelines for Physicians concerning Torture and Other Cruel, Inhuman or Degrading Treatment requires the "complete clinical independence" of physicians in "deciding upon the care of a person for whom he or she is medically responsible" and emphasizes that it is the physician's purpose "to alleviate the distress of his or her fellow human beings, and no motive, whether personal, collective or political, shall prevail against this higher purpose." We also emphasize the importance of ensuring the requisite continuity of independent, adequate healthcare, in line with Mandela Rule 24.

We further express concerns regarding the lack of adequate medical equipment at Guantánamo Bay, including the previously inoperable MRI machine and the still unavailable DEXA scan o, and the further allegation that the naval station is not equipped to support neurosurgery. We reaffirm the well-settled provision under

international law, including pursuant to the Geneva Conventions (Third Geneva Convention, art. 31) and Mandela Rules (Rule 27), that individuals in detention must be granted access to specialized medical diagnoses and treatment as needed, even where that requires transfer outside of the place of detention. The Human Rights Committee has found that the failure of prison authorities to provide a "properly functioning medical service" to diagnose and treat a prisoner's medical condition can constitute a violation of the individual's right to life, where the individual subsequently died in custody (CCPR/C/74/763/1997, para. 9.2).

The Human Rights Committee has also found that the denial of medical treatment following torture and solitary confinement—including the failure of military authorities to transfer a detainee to a hospital for an operation for his hernia, despite a medical order recommending such treatment—constituted violations of the right to be treated with humanity and with respect for the inherent dignity of the human person, as well as the article 7 prohibition of torture, cruel, inhuman and degrading treatment (CCPR/C/14/D/63/1979, para. 20). In contrast, such rights violations have not been found where authorities facilitated sufficient medical treatment, including through visits to various external hospitals with specialized medical treatment capabilities (see, e.g., CCPR/C/57/D/571/1994, para. 9.5).

We also note that further health complications have allegedly stemmed from the limited accommodations made for Mr. al-Tamir's physical disabilities, in potential violation of the Convention on the Rights of Persons with Disabilities. Although certain accommodations have been made to date, including through the provision of a walker and wheelchair, Mr. al-Tamir has not had the opportunity to consult with an occupational therapist, who could help to identify additional measures, including assistive devices like a medical bed and bedside commode. The process of individualizing and tailoring reasonable accommodation necessarily involves active consultation. Such tools might significantly help to ensure that his health needs are being met. Indeed, we emphasize that in addition to his disability, Mr. al-Tamir has specific needs as an older prisoner. According to article 13 of the UN Principles for Older Persons, older persons, including prisoners, "should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment."

Based on the above-mentioned allegations, we are concerned that Mr. al-Tamir's right to health is being violated under international human rights law, and that there may be deep, structural challenges entrenched in the Guantánamo Bay detention facility's healthcare system that render your Excellency's Government vulnerable to further violations under international law.

b) Mental Health

We understand that Mr. al-Tamir physical deterioration has coincided with a deterioration in his mental health. We emphasize that the right to health encompasses the right to the highest attainable standard of both physical and mental health, and we caution that prisoners with disabilities are often particularly vulnerable to mental health challenges due to the additional difficulties associated with coping with their disability in a prison setting. We reaffirm in this context the term for mental disability adopted by the former Special Rapporteur on the right to health, encompassing major psychiatric

disabilities, such as schizophrenia, and more minor mental health problems or psychological problems, such as mild anxiety disorders (E/CN.4/2005/51, para. 19).

We emphasize that your Excellency's Government must offer regular and adequate access to specialist healthcare, including psychiatric and psychological care (see Mandela Rule 78) and torture rehabilitation (Convention against Torture, art. 14). We observe that the Human Rights Committee has found violations of the right to be treated with humanity and with respect for the inherent dignity of the human person where prison conditions failed to provide adequate psychiatric treatment (CCPR/C/684/1996, para. 7.3). Further, specific to Mr. al-Tamir's case, we agree with the importance of an independent assessment of Mr. al-Tamir's present medication regime, especially given the observations of the former Special Rapporteur on the right to health that over-prescription of psychotropic medications is a common means of behavior control in detention (A/HRC/38/36, para. 39).

We are also concerned by the potential toll on Mr. al-Tamir's mental health stemming from his fear of reprisals and retaliation, including for putting forward the present submission. In this context, we remind your Excellency's Government that the freedom to engage with the United Nations is a basic exercise of fundamental freedoms and rights of all and must be respected and protected.

c) Use of Force and Degrading Treatment

In relation to the alleged use of force against Mr. al-Tamir, including multiple forcible cell extractions and subsequent coercive means of restraint through shackling and a strait jacket, we respectfully refer your Excellency's Government to the observations of the UN Open-ended Intergovernmental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners, according to which, "international law only permits the use of force and restraints in very narrow and exceptional circumstances, in line with the principles of legality, necessity and proportionality and when all other methods have been exhausted and no alternatives remain."[12] On the basis of the allegations presented, it is not clear whether these robust international law requirements were met in the reported instances of cell extractions. We note with concern that the deployment of the JTF authorities in riot gear, wielding batons and violently beating and restraining the victim during the 9 January 2017 extraction in particular appears to be disproportionate to and unnecessary given Mr. al-Tamir's legitimate refusal to be escorted by a female guard on the basis of deeply held religious freedom and belief, in line with the right to manifest religion or belief, including in detention settings (General Comment No. 22, para. 8). Indeed, it has not been established whether any efforts were made to deescalate and mediate the situation—for instance, an obvious alternative solution would have been for the JTF to send an all-male group of guards instead. We emphasize the importance of facilitating adequate training on a human rights-based approach to the use of force and instruments of restraint, "with due consideration of preventive and defusing techniques, such as negotiation and mediation" (Mandela Rule 76).

We also note with concern that despite the fact that Mr. al-Tamir allegedly made multiple requests for medical attention, several requests were refused before he was

[12] Second Report of Essex Expert Group on the Review of the Standard Minimum Rules for the Treatment of Prisoners, 20 March 2014.

granted a medical appointment. We recall that the failure to provide urgent care to detainees on an as-needed basis may contravene the requirement for regular and accessible medical attention under international law. We draw the attention of your Excellency's Government to the Inter-American Commission on Human Rights' finding of "inadequate medical care" where "visits from the doctor are not regular and it is not clear whether [the applicant] will be able to see a doctor when necessary."[13] In some cases, such shortcomings have contributed to legal determinations of cruel, inhuman or degrading treatment.[14]

We are especially concerned by the allegations of humiliating and degrading treatment by medical personnel, including at Mr. al-Tamir's medical appointment in September 2021. Pursuant to article 10 of the International Covenant on Civil and Political Rights all "persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." We find that the nurse's request to perform a rectal examination, as well as the Senior Medical Officer's test of Mr. al-Tamir's ability to stand on his own—despite the alleged availability of the record of his medical history and condition of disability—may constitute violations of, among others, the right to be treated with humanity and respect for the inherent dignity of the human person, and may also raise concerns regarding the applicable ethical and professional standards under the Mandela Rules (Rule 32).

The nurse's alleged request to perform a rectal examination is particularly worrying given Mr. al-Tamir's prior refusals to consent, and considering the rectal abuse and other torture, cruel, inhuman, and degrading treatment that he allegedly suffered in secret detention sites. We respectfully refer your Excellency's Government to the observations of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, according to which the torture and other cruel, inhuman and degrading treatment or punishment systematically carried out during secret detention under the rubric of the "global war on terror" reportedly included sexual ridicule, taunting and humiliation—including touching and harming private sexual organs and anally penetrating victims with objects—as well as taunting and humiliation on the basis of detainees' religious beliefs and practices (A/HRC/49/45, para. 7). Medical personnel reportedly enabled and sustained such unlawful practices (id.). In this manner, the nurse's recent request risked triggering serious past traumatic experiences, belying any sensitivity to trauma-informed healthcare. We note in this regard that pursuant to the Convention against Torture, States must "ensure practical training for medical personnel to detect signs of torture and ill-treatment" (CAT/C/AMB/CO/2, para. 24).[15]

d) Administration of justice and accountability

In addition to the inherent challenges of Mr. al-Tamir's deterioration in physical and mental health, we express serious concern regarding the potential negative impacts of his health condition on his access to justice and right to a full defense. We underline the importance of protecting and facilitating the full range of due process and fair trial

[13] Lallion v. Grenada (Judgment) Inter-American Commission on Human Rights Case 11.765 (21 October 2002) para 87; Jacob v. Grenada (Judgment) Inter-American Commission on Human Rights Case 12.158 (21 October 2002) para 94.

[14] Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Case (Judgment) Inter-American Court of Human Rights Ser C No. 94 (21 June 2002) para 84(m).

[15] See also Istanbul Protocol and Declaration of Tokyo.

safeguards under international human rights law, and ensuring that all persons with disabilities, including Mr. al-Tamir, have access to the requisite accommodations in the ongoing Military Commission and other judicial proceedings. We note, for instance, that article 13 of the Convention on the Rights of Persons with Disabilities stipulates that States parties "shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations […] in all legal proceedings." We are particularly troubled by the lack of reasonable accommodations in response to the allegations of Mr. al-Tamir's debilitating pain during Military Commission proceedings, rendering him unable to even understand the state of the proceedings. The right to a full defense requires that individuals have the ability to be heard by the court.

We are further concerned by Mr. al-Tamir's allegations that he could not provide timely notice to his attorneys of the medical procedures or medications he has been provided. Because Mr. al-Tamir's medical condition is directly impacting his ability to prepare and mount a defense, such interference with legal notification is troubling. We urge your Excellency's Government to ensure that Mr. al-Tamir can keep his lawyers fully informed of his medical condition, including through information about specific procedures, treatments, and medications.

We are also concerned by the alleged failure of your Excellency's Government to disclose timely and complete medical records—including the non-disclosure of certain classified information on the basis of Mr. al-Tamir's foreign nationality. We caution against the significant harms that such continuing non-disclosure may cause in Mr. al-Tamir's case. We urge your Excellency's Government to ensure Mr. al-Tamir is able to access his own medical files upon request, as stipulated under Rule 26 of the Mandela Rules.

Lastly, we remind your Excellency's Government of the obligation to provide adequate redress and reparation for any human rights abuse and other international law violations committed in the delivery of detainee healthcare. We conclude by echoing the Special Rapporteur on the right to health's observations that:

> Accountability for the realization of the right to health requires three elements: monitoring; review, including by judicial, quasi-judicial and political or administrative bodies and social accountability mechanisms; and remedies and redress. Accountability is vital if the right to health inside prisons and other confinement settings is to be realized in practice (A/HRC/38/36, para. 43).

In line with these principles, we appeal to your Excellency's Government to ensure that any existing monitoring, evaluation, and accountability mechanisms in place vis-à-vis the healthcare services at the Guantánamo Bay detention facility are in full compliance with your obligations under international law.

We remain available to provide technical assistance to your Excellency's Government in order to support full compliance with your obligations under international law, including international human rights law, international humanitarian law, and international refugee law.

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 information on the current state of Mr. al-Tamir's physical and mental health condition, and any immediate medical diagnostic or treatment plans, including for post-operative recovery, scheduled appointments with medical specialists, and use of relevant medical diagnostics and accommodations. In this regard, please also indicate whether measures have been taken to ensure that Mr. al-Tamir and his legal counsel are granted access to information, including in respect of his medical records.

3. Please provide any information about regulations, policies, and programming that are in place to ensure detainee healthcare at the Guantánamo Bay detention facility accommodates the needs of people in vulnerable situations—including physical, psychosocial and intellectual disabilities, older age, and religion—as well as any training and curricula for the JTF, including medical personnel, to facilitate procedural, age, gender, and culturally appropriate services.

4. Please provide any information on the ongoing monitoring and evaluation of the healthcare and rehabilitation services provided to detainees at the Guantánamo Bay detention facility, including to Mr. al-Tamir. Please describe the availability of any redress and remedies for potential violations of the right to health and explain whether such mechanisms have been utilized to date.

5. Please provide any information concerning specific treatment and care, including health care, geriatric care, long term care and palliative care for older detainees, in line with the specific needs and human rights of older persons, including with regards to the protection of their right to life.

We would appreciate receiving a response within 60 days. Past 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.

Finally, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit cases through its regular procedure in order to render an opinion on whether a deprivation of liberty is arbitrary or not. The present communication in no way prejudges any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

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

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Claudia Mahler
Independent Expert on the enjoyment of all human rights by older persons

Annex

Reference to international human rights law

In connection with the above-alleged facts and concerns, we would like to refer your Excellency's Government to the international norms and standards applicable to the present case.

We refer to articles 2 (3), 6 (1), 7, 9, 14, and 16 and 19 (2) of the International Covenant on Civil and Political Rights (ICCPR), which the United States ratified on 8 June 1992, and which provides that every individual has the right to an effective remedy, the right to life, the right to be free from torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and security of a person, the right to adequate time and facilities to mount a defense and to communicate with counsel, the right to recognition everywhere as a person before the law and the right to seek information. We underscore that the right to life constitutes an international customary law and *jus cogens* norm from which no derogation may be made by invoking exceptional circumstances as provided for in article 4(2) ICCPR. We would further like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, and as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. We underline that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. We also refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

We respectfully emphasize your Excellency's Government obligations to respect, promote, and fulfill the well-settled right to health under international law—without discrimination due to legal status or any other ground. We underscore the protections provided under international law for the right to health and the right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person. These rights are established by multiple treaties including by your Excellency's Government's obligations as a State party to the ICCPR, Convention against Torture (21 October 1994), and Geneva Conventions, namely the Third Convention relative to the Treatment of Prisoners of War (2 August 1955), and as a signatory[16] to the International Covenant on Economic, Social and Cultural Rights (5 October 1977) and Convention on the Rights of Persons with Disabilities (30 July 2009).

The right to health dates back at least to the provision of conditions "adequate for the health and well-being of himself and his family, including medical care" in the Universal Declaration of Human Rights (art. 25). Since then, the right to health has

[16] While the United States Government has not ratified these treaties, as a signatory your Excellency's Government agreed to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the international instrument, pending a decision on ratification.

been repeatedly entrenched and reinforced under international law. As set out in the preambular text of the Constitution of the World Health Organization, which the United States accepted on 21 June 1948, "[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." The WHO Constitution defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". Article 12 of the International Covenant on Economic, Social and Cultural Rights affirms "the right of everyone, including people prisoners and detainees to the enjoyment of the highest attainable standard of physical and mental health."[17] The Human Rights Committee has also recognized that the right to health is an essential aspect of the "inherent right to life" stipulated by article 6 of the International Covenant on Civil and Political Rights (see CCPR General Comment No. 36).

The right to health is universal and applies equally in places of detention, without discrimination. The Human Rights Committee has explained that with regard to the inherent right to life of every human being, States parties have a "heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State," including by "providing them with the necessary medical care and appropriately regular monitoring of their health, shielding them from inter-prisoner violence, preventing suicides and providing reasonable accommodation for persons with disabilities" (CCPR General Comment No. 36, para. 25). The Committee on Economic, Social, and Cultural Rights has further explained with regard to the right to health that "States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, *including prisoners or detainees* ... [to] curative and palliative health services" (CESCR General Comment No. 14, para. 34). The requirement of non-discrimination in relation to health facilities and services is a legally enforcement component of the right to health (id., para. 1, n. 1). Several international human rights law instruments and guidelines reaffirm the equal applicability of the right to health in detention settings. For instance, the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 and the Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules") adopted by General Assembly resolution 70/175 in December 2015 stipulate that all prisoners should enjoy access to healthcare services "without discrimination on the grounds of their legal situation [or status]." Along similar lines, the UN Principles of Medical Ethics provide that all health personnel working with prisoners "have a duty to provide them with … treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained".

The right to health of prisoners of war in particular is further protected under international humanitarian law. It is our position that in the present case, both international humanitarian law and international human rights law protections apply to the detainees, notwithstanding the United States Government's continued lack of clarity regarding their legal status and the basis for their continued detention.[18] Article 13 of the Third Geneva Convention relative to the Treatment of Prisoners of War specifies

[17] See also Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 'Protocol of San Salvador,' art. 10 ("Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.").

[18] See A/75/337, section III.

that prisoners of war "must at all times be humanely treated"[19] and prohibits "[a]ny unlawful act of omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody." Similarly, article 75 of Additional Protocol I to the Geneva Conventions prohibits "violence to the life, health, or physical or mental well-being of persons" in custody during situations of armed conflict.

The right to health and States' obligations therein are expansive. The International Covenant on Economic, Social and Cultural Rights stipulates that the "creation of conditions which would assure to all medical service and medical attention in the event of sickness" is a core step among those needed for States to achieve the full realization of the right to health (ICESCR, art. 12(2)). The Special Rapporteur on the right to health has further clarified that "the right to health is not the right to be healthy, but a right to both conditions and services that are conducive to a life of dignity and equality, and nondiscrimination in relation to health" (A/HRC/38/36, para. 11). States are obligated to ensure that healthcare facilities, goods, and services in detention centers are "available, accessible, acceptable, and of good quality" (id., para. 34). The Third Geneva Convention provides for specific medical and mental health standards and protocols that must be observed, including regular medical inspections and transfer to military or civilian medical units where special treatment and surgical operations can be provided as needed (Third Geneva Convention, arts. 30–31). The Mandela Rules provide further specificity regarding State healthcare obligations in places of detention. Among others, States must ensure:

- "the same standards of health care that are available in the community," including continuity of treatment and care" (Rule 24);
- "an interdisciplinary team" of healthcare professionals "with sufficient qualified personnel acting in full clinical independence" and including sufficient expertise in psychology and psychiatry" (Rule 25);
- "accurate, up-to-date and confidential individual medical files on all prisoners" (Rule 26);
- "prompt access to medical attention in urgent case," including transfer to specialized institutions for specialized treatment or surgery (Rule 27);
- "the same ethical and professional standards" governing the healthcare professional and prisoner relationship "as those applicable to patients in the community" (Rule 32)

Pursuant to the Convention on the Rights of Persons with Disabilities, States are obligated to "take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation" (art. 25). Article 1 of the Convention defines persons with disabilities as "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Further, article 17 recognizes that persons with

[19] See also ICRC Rule 87 Customary Study: Humane Treatment; Rule 99 Customary Study: Deprivation of Liberty.

disabilities have the right to respect for their physical and mental integrity "on an equal basis with others" and article 15 upholds the right of all persons with disabilities to be free from torture or other cruel, inhuman and degrading treatment or punishment. With regard to persons with disabilities in detention, article 14 provides that "States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation." Finally, article 20 recognizes the right to personal mobility for persons with disabilities.

We also refer to the 'International Principles and Guidelines on Access to Justice for Persons with Disabilities', published by the UN Special Rapporteur on the Rights of Persons with Disabilities in 2020, and which state that all persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and that States must provide the necessary accommodations to guarantee due process.

As regards the allegations concerning Mr. al-Tamir's rendition and secret detention, we would like to recall that the failure to acknowledge deprivation of liberty by State agents and the refusal to acknowledge detention constitute an enforced disappearance under international human rights law. In this respect, we refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which sets out the necessary protections with respect to the responsibility of the State; in particular that no State shall practice, permit or tolerate enforced disappearances (article 2), that all transnational transfers must respect the non-refoulement obligations of the host State (article 8; see also A/HRC/48/57); that any person deprived of liberty shall be held in an officially recognized place of detention (article 10.1) and that an official up-to date register of all persons deprived of their liberty shall be maintained in every place of detention (article 10.3). Article 19 of the Declaration provides that the victims of acts of enforced disappearance and their families shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible.

We also refer to paragraph 19 of the report of the Working Group on enforced or involuntary disappearances and economic, social and cultural rights (A/HRC/30/38/Add.5), which notes that in circumstances where persons are detained in unofficial or clandestine places of deprivation of liberty, their right to the enjoyment of the highest attainable standard of physical and mental health is also violated, which may result in lasting impairment of their physical and mental integrity.

We also bring to the attention of your Excellency's Government the findings of the Joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42), by a group of Special Procedures mandate holders. The report recalls, *inter alia*, that victims of secret detention should be provided with judicial remedies and reparation in accordance with relevant international norms. These international standards recognize the right of victims to adequate, effective and prompt reparation, which should be proportionate to the gravity of the violations and the harm suffered. As families of disappeared persons have been recognized as victims

under international law, they should also benefit from rehabilitation and compensation (A/HRC/13/42 para. 292(H)).

Concerning Mr. al-Tamir's alleged inability to understand certain proceedings against him due to his medical condition, we remind your Excellency's Government that the Human Rights Committee has found that adjournments and suspensions are appropriate when an individual is unable to advance their defense as guaranteed in article 14.3 of the ICCPR (CCPR/C/118/D/2465/2014, para. 9.6). The same article guarantees individuals the right to communicate with counsel, a right that includes "prompt access" to an individual's lawyer (CCPR/C/GC/32 para. 34). We are concerned Mr. al-Tamir may not have had access to means of communication sufficient to keep his attorneys apprised of his condition.

Finally, we would like to draw the attention of your Excellency's Government to States' obligations to provide victims of human rights violations with effective remedies. International standards recognize the right of victims—including families of disappeared persons—to adequate, effective and prompt reparation, which should be proportionate to the gravity of the violations and the harm suffered (id., para. 292(H)). The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or of a serious violation of international humanitarian law must be guaranteed equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. We also bring to the attention of your Excellency's Government the right to a remedy for victims pursuant to article 13 of the Convention Against Torture. Here we draw the attention to paragraph 7 (b) and (e) of Human Rights Council Resolution 16/23 adopted in April 2011, which urges States "(t)o take persistent, determined and effective measures to have all allegations of cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence…; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture," and "(t)o ensure that victims of cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation."