

Mandates of 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 right to privacy and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL USA 17/2024
(Please use this reference in your reply)

1 July 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the right to privacy and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 51/21, 55/3 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of **Mr. Mansoor Ahmed Saad Adayfi**, a Yemeni citizen currently a resident of Serbia. Mr. Adayfi arrived at the detention facility at the U.S. Naval Station Guantánamo Bay in February 2002 aged 23. Mr. Adayfi was cleared for release by the Periodic Review Board in October 2015 and transferred to Serbia in 2016, following over a decade of alleged arbitrary detention and torture, inhuman and degrading treatment in U.S. custody. We note that the Periodic Review Board recommended that "any resettlement location include the provision of social and psychological support as appropriate and the opportunity to pursue higher level education".

We are concerned that Mr. Adayfi remains unable to fully exercise his human rights specifically in respect of a right to legal identity and freedom of movement, his right to privacy, and his right to family life.

A technical visit carried out by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to the United States and the detention facility at Guantánamo Bay, Cuba was undertaken in early 2023,¹ and addressed the human rights violations and challenges that former detainees transferred or resettled continue to experience. We acknowledge the report issued on this technical visit and take this opportunity to recognize the positive cooperation of your Excellency's Government during that technical visit. The General Assembly report which followed it (A/78/520) acknowledged the significance and importance of third-country resettlement, in the context of the sustained human rights violations experienced by persons detained at the U.S. Naval Station at Guantánamo Bay. We reaffirm the findings and recommendations set out in that report and underscore the ongoing international law obligations of both the transferring and receiving State in the context of the particular history of rendition and torture, cruel, inhuman and degrading treatment for persons transferred to Guantánamo Bay, Cuba. We recognise that the final decision to resettle Mr. Adayfi evidenced a positive and

¹ See Technical Visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 14 June 2023, available at <https://www.ohchr.org/en/special-procedures/sr-terrorism/us-and-guantanamo-detention-facility>.

constructive approach in addressing his then-indefinite and arbitrary detention, though his inability to return home to Yemen or to have a free and autonomous choice as to where he might be resettled underscores the limitations of the resettlement process to which he was subjected.

According to the information received:

Mr. Mansoor Adayfi is a 41-year-old man holding Yemeni nationality. He was born in the Raimah province of Yemen on 12 December 1982. He was released from the custody of the U.S. military at Guantánamo Bay, Cuba on 10 July 2016 and transferred to Serbia on 11 July 2016. He now resides in the capital of Serbia, Belgrade. He was held at Guantánamo Bay for 14 years and never charged or tried for any crime.

Mr. Adayfi left his home in Yemen aged 18 and traveled to Afghanistan. It is believed that he was captured by the Northern Alliance Afghan forces in late 2001 and was transferred to the control of the United States and detained for a period before he was rendered to Guantánamo Bay in February 2002. His whereabouts and treatment between late 2001 and Spring 2002 while in the custody of the U.S. Government, are not confirmed. He turned 19 years old in U.S. custody. It is alleged that he was subject to sustained torture, cruel, inhuman and degrading treatment during the course of arbitrary detention and during sustained interrogations by multiple agents of the U.S. Government. He was allegedly force-fed and held in solitary confinement for extended periods of time. His conditions of confinement inter alia allegedly included the use of force during cell extractions, extended periods of enforced nakedness, hooding, sensory deprivation during transportation, lack of adequate clothing, extended exposure to extreme heat and extreme cold as an element of both interrogations and confinement conditions, blindfolding during interrogation, extended and painful coerced postures during interrogations and transportation, extended shackling causing significant pain, sleep deprivation, extreme beatings during interrogations and for alleged non-compliance with detention Standard Operating Procedures (SOPs), extended periods of time with no access to religious or prayer materials, and profound psychological harm including humiliation and enforced helplessness during his detention as well as psychological ill-treatment during interrogation including threats of harm.

Mr. Adayfi sought educational qualifications while detained at Guantánamo Bay, Cuba. However, the unique restrictions on detainees in this detention facility due to both its location and the national security classification attached to the detainees, meant that formal university study was unavailable to him.

The public notice of his Periodic Review Board determination was made available on 28 October 2015 and he was cleared for transfer. As a result of a diplomatic agreement between the U.S. Government and the Serbian Government, the latter agreed to resettle Mr. Adayfi. Information was provided to us which confirms that diplomatic assurances were provided in respect of his transfer. Information concerning the guarantee of “humane treatment” was shared at the time with Mr. Adayfi’s habeas counsel. We understand that, inter alia, guarantees of “humane treatment” and certain security guarantees as

recommended by the Periodic Review Board were given in respect of the transfer. Moreover, this agreement was subject to certain financial arrangements to facilitate the Serbian Government's acceptance of and provision for Mr. Adayfi. While the details of these financial arrangements are unknown, the information suggests that this arrangement included housing, and access to education. No provision for ongoing financial support or reparation for violence or harm experienced in United States custody was, we understand, provided in this arrangement, or otherwise.

Mr. Adayfi was given access to immediate medical care following his transfer to Serbia by the U.S. Government. It is positively acknowledged that what appears to be a comprehensive medical assessment of Mr. Adayfi was undertaken in a civilian hospital in Serbia early July 2016. We nonetheless note the significant language barriers in communicating his medical needs since Mr. Adayfi did not speak Serbian and the medical personnel spoke neither English nor Arabic. In late October 2016, Mr. Adayfi commenced a hunger strike. The reasons for the hunger strike appear to be multifaceted in nature but include the alleged failure of the Serbian Government to have a concrete plan to manage his reintegration including language acquisition, educational opportunity as well as addressing his immediate and long-term needs in Serbia. Mr. Adayfi was experiencing a profoundly difficult transition from the detention facility at Guantánamo to a new country without his family or any culturally or socially adequate support system in place or as part of the transfer agreement concluded by your Excellency's government. The hunger-strike lasted 25 days and ended in late November 2016. Moreover, his full medical records from his decade plus detention at Guantánamo Bay, Cuba were not transferred with him. It is alleged that no doctor in Serbia has been able to treat him adequately as they do not have access to his full health records, they do not understand what happened to him at the detention facility at Guantánamo Bay, Cuba, and they lack the requisite resourcing and technical expertise to treat a torture victim survivor. No torture rehabilitation provision appears to have been part of the transfer agreement concluded by your Excellency's Government.

On arrival in Serbia, Mr. Adayfi was given shared two-bedroom housing with another released detainee in a government provided apartment. We understand that the shared housing arrangement was not suitable, and it was neither close to a mosque nor to the faith community that could have provided support and connection for him. In January 2017, hidden camera surveillance was found by Mr. Adayfi in this apartment which is alleged to have been placed at the request of your Excellency's Government. Despite these challenges, Mr. Adayfi settled in, became familiar with his neighborhood and learned to navigate the city. In May 2020, during the pandemic and Ramadan Mr. Adayfi was involuntarily moved to another apartment without consultation. His current studio apartment contains one bedroom with a kitchenette and bathroom is a considerable distance from the city center, his college, and his mosque. Travel to the mosque by public transport, particularly during Ramadan can be difficult. Mr. Adayfi remains insecure concerning the permanence of his housing situation which creates anxiety and apprehension in his life. Mr. Adayfi has allegedly been informed on several occasions by the authorities in Serbia that apartment he currently resides in will not be maintained in the long-term by the Government

and/or that he will be required (without obvious financial resources) to pay rent or find another place to live. His current financial situation makes all these scenarios very challenging for him.

Once resettled to Serbia Mr. Adayfi actively sought educational opportunities being acutely aware that he had not had educational opportunities after leaving Yemen in his teenage years, and particularly as his efforts to pursue educational qualifications were denied by your Excellency's Government at the Guantánamo Bay detention facility. His path to pursue educational opportunities was difficult following his arrival in Serbia in 2016. He was presented with several obstacles to enrollment including testing in the autumn of 2016 which appear to have been designed to exclude him from educational opportunity. Following significant advocacy on his part and supported by his legal team, he subsequently benefited from educational opportunities in Serbia and continues to pursue learning and educational opportunities. We positively acknowledge the value of the pre-college programme and the skills training he was given access to by the Government of Serbia which provided a pathway to his subsequent university studies. He has completed college in Serbia and is now pursuing his Masters' Program. It is alleged that despite all of the exceptional personal and professional strides made by Mr. Adayfi, the long-term harm of torture, cruel, inhuman and degrading treatment ordered and implemented by your Excellency's government make physical and psychological capacity to engage in work challenging. Moreover, the particular and long-term difficulties experienced by torture victim-survivors in resuming a normal life are highlighted, particularly when comprehensive torture rehabilitation has not been provided by your Excellency's Government. As a freelance writer and human rights advocate his financial resources are meager, and he faces long-term financial insecurity, compounded by the years of lost access to education and no income whatsoever while held in arbitrary detention have made his long-term economic situation precarious.

The adequacy of the arrangement for the medical, social, economic, and familial needs of Mr. Adayfi are disputed, particularly given the challenges faced in integration into Serbian society. It is alleged that despite Mr. Adayfi's efforts, and by the logic of the initial security arrangements agreed by your Excellency's government with the Serbian Government, Mr. Adayfi was initially treated with suspicion and as a threat in society. As a result, his capacity to engage with other persons, cultivate close relationships and ties, were limited by the negative consequences perceived and actual of association with him as a former detainee, despite the lack of any charge or conviction against him. Positively, there has been no state interference in Mr. Adayfi's communications with his lawyers and he maintains access to pro bono legal services in Serbia.

It is worth noting that Belgrade is primarily a Christian-majority town, with few Muslims or other diverse religious or ethnic groups living there making the choice by your Excellency's Government to resettle him there a non-obvious one from the perspective of his best interests as a torture survivor. Integration was initially highly challenging given the ongoing security surveillance allegedly required by your Excellency's Government as well as the obvious religious and ethnic differences in a highly homogenous society. Notably,

through his own efforts and warm nature, social interactions have increased positively over time. It now appears that Mr. Adayfi's global reputation as a human rights advocate and writer of note is better understood in Serbian society. He has, in recent years, been able to undertake high-profile activities inside Serbia without difficulty.

Mr. Adayfi has permanent residence of Serbia, but he does not have a Serbian nationality. He is in the process of seeking Serbian citizenship and continues to work to meet the paperwork requirements of the Government. For many years, he was unable to travel, and it is alleged that non-travel may have been at the request of your Excellency's Government and a condition of his transfer. Through the efforts of his lawyers, the recent provision of a Yemeni passport has allowed him to travel extensively in Europe. His stature as a human rights advocate is demonstrated by several European countries giving him visa status to visit their countries (UK, Ireland, Belgium, Germany and Norway). He has also addressed or met with members of the European Parliament, the British Parliament and the Irish Parliament.

Despite his stature as a public intellectual and human rights advocate, he continues to experience difficulties in travel out of Serbia. It is alleged that these difficulties are related to the ongoing security guarantees placed on his resettlement by your Excellency's Government. It is alleged that each time he departs from and arrives in Serbia from any other country he is subject to substantial delays. He is generally taken to a side room and interviewed with every departure and arrival. It is positively noted that access to his lawyers, to local Belgrade police officials, and to human rights advocates have been facilitated during these delays and questioning. Dates of airport detention and extended security screening at Belgrade airport highlighted include:

- Departure to Norway 3 June 2023.
- Return from Norway 5 June 2023.
- Departure on 25 September 2023 for Brussels.
- Return from Brussels on 30 September 2023.
- Departure for Warsaw on 4 October 2023.
- Return from Warsaw on 7 October 2023.
- Departure to Dublin, Ireland on 24 November 2023.
- Return from Dublin, Ireland on 28 January 2024.
- Departure to Brussels on 1 April 2024.
- Return from Brussels on 6 April 2024.

Despite valid visas and often letters of invitation from the highest authorities in the countries he is traveling to, he is subject to a process of screening that is humiliating. It is alleged that that these security processes are intended as a form of pejorative treatment to him as a former Guantánamo detainee, intended to limit his participation in public affairs, and to limit his public expression of his experiences as a former detainee and present human rights advocate. These practices instill fear and insecurity in him and set him apart from other travellers. The basis for such constant surveillance and intrusions appear to be correlated to the security guarantees required by the U.S. Government. Given the important legal and advocacy contributions made by Mr. Adayfi his security challenges

appear to be inconsistent with the guarantees of ‘humane treatment’ that was the agreed basis of his transfer.

In addition, as regards freedom of movement, it is alleged that Mr. Adayfi cannot procure a driving license in Serbia. It is alleged that his attempts to procure a driving license have been subject to consistent administrative obstacles. Mr. Adayfi first applied for a drivers’ license in 2017. It is alleged that he was informally informed by security authorities in 2018 that he would never have access to a driving license in Serbia. It is alleged that this barrier to legal documentation and capacity to travel may have been a requirement of his transfer agreement. He has now received his Yemeni driving license and is in process of submitting his application again to the Serbian authorities.

It is alleged that surveillance of his activities and day-to-day life was a sustained feature of his initial resettlement period and remains present today. In January 2017, he identified surveillance cameras in his apartment. He dismantled the cameras, and it is alleged that a group of individuals associated with the State entered his apartment. This interaction was live-streamed to a reporter from the PBS Frontline documentary series. In the years after he was resettled, Mr. Adayfi was consistently accompanied by a security presence from the day he landed until approximately 21 April 2022, when his case management appears to have been transferred to the police. It is alleged that this constant surveillance was a condition of his transfer and demanded by your Excellency’s Government. Such surveillance had a direct impact on his freedom of movement, his privacy and his family life. He experienced such surveillance to extend almost seamlessly from the experience of incarceration from Guantánamo Bay into the present and set him apart from other members of the community he lives with, making him an object of communal suspicion. This has had significant consequences for his capacity to fully integrate and be fully accepted by the community in Serbia.

Mr. Adayfi has been unable to see his family since his transfer to Serbia and lost access to his family for the years of his arbitrary detention at Guantánamo Bay, Cuba. Despite assurances that family reunification and meaningful connection would be a part of a ‘humane’ resettlement for torture victim survivors, no such accommodation has been made. Family visits have been facilitated in other countries by the International Committee of the Red Cross, and for a period Mr. Adayfi was able to speak with his elderly parents through intermediary support in Sana’a. Such support is no longer provided. Mr. Adayfi is profoundly connected to his family, and the loss of family has been a resounding and sustained harm to him since 2002 and continues to cause him pain and suffering.

According to the information received, your Excellency’s Government, through its officials, did not make contact with Mr. Adayfi immediately after his resettlement and any contact since his resettlement has been initiated by Mr. Adayfi or by his legal counsel. His legal counsel met with your Excellency’s Ambassador in 2016 and 2017 in Belgrade to address his medical, educational, housing, financial or social situation and no satisfactory legal outcomes or guarantees allegedly emerged from those meetings. Despite several efforts over the years since he was transferred to engage the U.S. Government including the

U.S. Embassy in Belgrade and the State Department on his situation no adequate response has been forthcoming, including on the current challenges he faces in respect of the full respect of his human rights which are the direct result of arbitrary detention and allegations of torture, cruel, inhuman and degrading treatment while in your custody.

Mr. Adayfi is now a writer and globally recognized human rights advocate. His essays have appeared in the *New York Times* “Modern Love” column and Op Ed pages of prominent newspapers and the edited collection, *Witnessing Torture: Perspectives of Torture Survivors and Human Rights Workers* (Palgrave Macmillan 2019), *The Guantánamo Artwork and Testimony of Moath al-Alwi: Deaf Walls Speak* (Palgrave Macmillan 2023) and the “Ode to the Sea” art exhibition catalogue. He has contributed to radio documentaries for the BBC, CBC and NPR. In 2019, he was awarded the Richard J. Margolis Award for non-fiction writing that illuminates issues of social justice. His memoir of his detention at Guantánamo, *Don’t Forget Us Here*, was published to critical acclaim in 2021 (Hachette). His work as a globally-recognized advocate on counter-terrorism and human rights concerns, and advocacy on behalf of the hundreds of men who were rendered and subject to torture, cruel, inhuman and degrading treatment underscores the extent to which legal and political impediments to his living a life of dignity are incongruent with this experience as a victim of state violence and his ongoing work as a human rights defender. He lectures widely at prestigious Universities including the Geneva Academy, the University of Minnesota Law School, University College Dublin, and University College Galway. He has conducted well-received book tours and events in several European countries and several more are forthcoming.

While we do not prejudge the accuracy of these allegations, we express concern about the contemporary legacy of arbitrary detention, torture, cruel, inhuman and degrading treatment and punishment to which Mr. Adayfi was subjected to 14 years in Guantánamo Bay, Cuba, and specifically highlight concerns that the transfer agreements are not international law compliant.

We take the view that the U.S. Government continues to have ongoing human rights obligations to persons it subject to unlawful rendition, torture, cruel, inhuman and degrading treatment under international law.

While recognizing several positive aspects of Mr. Adayfi’s resettlement, particularly the efforts he has made to secure education and become a powerful global voice on the rights of former detainees we note with concern that Mr. Adayfi remains subject to legal uncertainties. We are concerned that the United States has failed to honour its international legal obligations to torture victims survivors, failed to put in place ‘humane treatment’ in transfer agreements that comport to international law standards, failed to provide the economic support to torture victim survivors so that they can live their lives in dignity, and most profoundly failed to address the further violations of human rights experienced by former resettled detainees, noting that such violations are often premised on the ‘security’ requirements of the U.S. Government by the receiving State. We are concerned that the inability or unwillingness of your Excellency's Government ensure that all former Guantánamo detainees that have been transferred are treated in full respect of their human rights and that your Excellency’s

government will take a required proactive stance to ensure respect for their enjoyment of other civil, political, economic and social rights, such as Mr. Adayfi's right to family life, health, privacy and his freedom of movement. We highlight for example that security of housing for torture victim survivors is an essential basis from which recovery, maintenance of health and all other social capacities derive.

Furthermore, we note with concern that during his transfer from Guantánamo to Serbia, the U.S. Government did not transfer his medical records and that, to this day, Mr. Adayfi does not have access to his full medical records, which has significant consequences for his physical and psychological health and prevents him from accessing adequate medical care.

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 what steps have been taken to safeguard the right to legal identity and legal status for Mr. Adayfi before and since his transfer to Serbia.
3. Please provide detailed information on what diplomatic assurances and human rights safeguards were included in the transfer agreement between your Excellency's Government and the Government of Serbia in respect of Mr. Adayfi, and what ongoing efforts being made by your Excellency's Government to ensure all such assurances are fully implemented.
4. Please provide information on measures taken or foreseen by your Excellency's Government to provide, in coordination with the Government of Serbia, for long-term security including housing and comprehensive medical care which supports torture rehabilitation for Mr. Adayfi.
5. Please provide information on what assurances were given in respect of family reunification and access for Mr. Adayfi, and what steps are being taken to ensure that the family rights of Mr. Adayfi are respected and enforced.
6. Please provide information on the criteria for alleged continued security surveillance of Mr. Adayfi and what legal avenues exist for him to challenge or provide exculpatory evidence to any such claims, particularly if that request was made and remains in place by your Excellency's Government.

In addition, we respectfully urge your Excellency's Government to safeguard the rights of Mr. Adayfi in compliance with international instruments, to provide all support legal and material to ensure his capacity to live a dignified life in his country of resettlement, and to facilitate an ongoing review and reconsideration of the laws and policies that affect the rights and freedoms of all former Guantánamo detainees resettled and repatriated.

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.

Please be informed that a letter on this subject has also been sent to the Government of the Republic of Serbia.

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

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standard of physical and mental health

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Annex

Reference to international human rights law

We recall the absolute and non-derogable prohibition on torture, cruel, inhuman and degrading treatment. We note that your Excellency's Government is a party to both the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²(CAT). The absolute and non-derogable³ character of the prohibition against torture is reinforced by article 2 of the CAT which was elaborated on in General Comment No. 2 (2007) of the Committee against Torture. The CAT also recognizes universal jurisdiction for the crime of torture. The prohibition of torture applies extraterritorially, and States' obligations flowing from the absolute nature of the prohibition – including the obligations to investigate, prosecute and punish acts of torture – are rules of customary international law. The prohibition against cruel, inhuman or degrading treatment or punishment (ill-treatment) is similarly absolute under both treaty and customary international law.⁴

The corollary of the prohibition on torture is the legal obligations owed towards persons who have endured torture and cruel, inhuman or degrading treatment. Ensuring that victims of torture have access to redress and an enforceable right to fair and adequate compensation is an essential aspect of a State's obligation under the CAT.⁵ All detainees rendered to the detention facility at Guantánamo Bay Cuba were subject to secret and arbitrary detention⁶ as well as to acts including solitary confinement and forced feeding that *inter alia* amounted to torture, cruel, inhuman and degrading treatment.⁷ All, without exception, whether returned to countries of citizenship or resettled in third countries are entitled to the full panoply of protection and remedy set out in the CAT. Redress for victims of rendition, detention and torture or cruel, inhuman or degrading treatment must include effective remedy and reparation. Comprehensive reparation refers to the full scope of measures required to redress violations under the Convention against Torture and includes “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”⁸ This means that persons transferred from the Guantánamo detention facility are entitled to these measures. Diplomatic agreements conclude between transferring and receiving States do not absolve States

² The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 10 December 1984), United Nations, Treaty Series, vol. 1465, No. 24841, p. 85, entered into force on 26 June 1987.

³ The absolute and non-derogable nature of the prohibition of torture is expressly stated in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3; the Convention against Torture, art. 2 (2); and the Inter-American Convention to Prevent and Punish Torture, art. 5. Furthermore, the right to be free from torture is non-derogable during states of emergency. “The prohibition of torture or ill-treatment could hardly be formulated in more absolute terms. In the words of the official commentary on the text by the International Committee of the Red Cross (ICRC), ‘no possible loophole is left; there can be no excuse, no attenuating circumstances’. Sir Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law*, 3rd ed. (Oxford, Oxford University Press, 2009), p. 60.

⁴ In its General Comment No. 2 (2007), para. 6, the Committee against Torture elaborates that prohibitions against torture are likewise applied to ill-treatment, including those articles of the Convention that establish universal jurisdiction (arts. 5–9).

⁵ Convention against Torture, arts. 13–14; and Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 11.

⁶ Which in themselves have been found to reach the threshold for torture under international law see Joint Study (2010) on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism (A/HRC/22/52).

⁷ Concerning the prohibition on solitary confinement as an aspect of torture A/63/175; and A/66/268.

⁸ Committee against Torture, General Comment No. 3 (2012), para. 2.

from their specific and absolute obligations under the CAT. Access to medical records,⁹ and adequate torture rehabilitation are an essential component of rehabilitation. As the Istanbul Protocol establishes, for clinical practitioners to do their necessary work they must be able to have full information about what has happened to their patients.¹⁰ We underscore that “humane treatment” guarantees that fall below the specificity of obligations agreed by States by ratification of the CAT, fall short of your Excellency’s Government obligations to prevent and remedy torture.

We respectfully emphasize your Excellency’s Government’s obligations to respect, promote, and fulfill the right to health under international law (article 12, International Covenant on Economic, Social and Cultural Rights), without discrimination due to legal status or any other ground. Article 12 of the ICESCR guarantees “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” We emphasize the interdependence between the right to health and other fundamental rights. We also underscore 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 (ratified 8 June 1992), CAT (ratified 21 October 1994), and the Third Convention relative to the Treatment of Prisoners of War (ratified 2 August 1955). The United States also signed (but has not ratified) the ICESCR on 5 October 1977 and the and Convention on the Rights of Persons with Disabilities on 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). As a signatory to the ICESCR, your Excellency’s Government agreed to bind itself in good faith to ensure that nothing is done that would defeat its object and purpose. As set out in the preambular text of the Constitution of the World Health Organization, “[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”. The Human Rights Committee has also recognized that the right to health is an essential aspect of the “inherent right to life” in article 6 of the ICCPR (see General Comment No. 36).

We recall that timely access to complete medical records is a corollary of the right to health as protected by international law. These rights apply to persons in detention, but also persons who have ceased to be detained. We highlight the relevance of rule 26 of the Mandela Rules on access to medical records both during and following detention. The right of access to medical information is the basis upon which the right to rehabilitation from torture is elucidated in the Istanbul Protocol.

We recall that freedom of movement is protected by international law (article 12, ICCPR), including the right to have liberty of movement in a territory and the right

⁹ Notably the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition), highlights the essential role that medical information plays in preventing and providing rehabilitation for torture, cruel, inhuman and degrading treatment.

¹⁰ Istanbul Protocol para. 267 & 294. Noting also “Clinicians who conduct evaluations of victims of alleged torture should have the cultural humility and transcultural perspective necessary to understand and effectively document the physical and psychological effects of the alleged torture or ill-treatment”. *Id.*

to leave any country. Any restrictions on freedom of movement should be strictly necessary and proportionate in pursuit of a legitimate security aim, factually motivated, and subject to stringent and ongoing review.¹¹ The Human Rights Committee has found that “liberty of movement is an indispensable condition for the free development of a person”. The Committee has confirmed that when the right to freedom of movement is restricted remedies must be meaningful.¹² When a person is lawfully in a State, any restrictions on his/her movement as well as any treatment that is different from that accorded to nationals have to be justified by the exceptions provided for in article 12(3). Any restriction on the right to free movement, including on the ground of national security or public order, must be consistent with all other rights in the Covenant. The Human Rights Committee has also signaled the human rights concerns that follow from the ‘manifold legal and bureaucratic barriers unnecessarily affecting the full enjoyment of the rights of individuals to move freely, to leave a country ... and to take up residence’.¹³ We highlight the human rights concerns that follow from the application of bureaucratic barriers to securing national identification including a driving license. The Human Rights Committee has also expressed concern about the application of restrictions in breach of the fundamental principles of equality and non-discrimination.¹⁴ In parallel, we highlight the protections due to aliens under international law, recalling General Comment No. 15,¹⁵ affirming the obligation of State Parties to ensure the rights of the Covenant to “all individuals within its state territory and subject to its jurisdiction (art 2, para 1)”.¹⁶

Under international human rights law, every person enjoys the right to private and family life without undue interference. Article 17 of the ICCPR requires that:

1. No one shall be subjected to arbitrary or unlawful interference with [their] privacy, family, home or correspondence, nor to unlawful attacks on [their] honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.¹⁷

As regards the protection of privacy, international human rights law stipulates further conditions which must be satisfied for an interference to be lawful. First, the interference may only take place in accordance with established law¹⁸ which specifies in detail the precise circumstances in which such interferences may be permitted.¹⁹ Further, any interference with the right to privacy must be ‘reasonable,’ which the Human Rights Committee has clarified means that it ‘must be proportional to the end sought and be necessary in the circumstances of any given case.’²⁰ Harassing, disproportionate or discriminatory interference with privacy including via surveillance,

¹¹ Human Rights Committee, General Comment No. 27 (Freedom of Movement) U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999).

¹² *Id.*, para. 3.

¹³ *Id.*, para. 17 (the Committee has provided a non-exhaustive list of such rules and practices).

¹⁴ *Id.*, para 18.

¹⁵ CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986.

¹⁶ *Id.* para 1 (highlighting that “there shall be no discrimination between aliens and citizens in the application of enumerated rights *id* para. 7).

¹⁷ See also UDHR, art. 12.

¹⁸ Human Rights Committee, General Comment No. 16, UN Doc. HRI/GEN/1/Rev.9 (Vol I) (8 April 1988), para.3.

¹⁹ Human Rights Committee, General Comment No. 16, para. 8.

²⁰ Human Rights Committee, *Toonan v Australia*, UN Doc. CCPR/C/50/D/488/1992 (1994), para.8.3.

stop and search or airport screening, cannot be justified under the ICCPR. The text of article 17 of the ICCPR (unlike the text of various other rights) does not expressly set out what type of end might justify an interference with the right to privacy. But the consistent approach of the Human Rights Committee²¹ and regional courts interpreting equivalent protections under regional instruments such as the European Convention²² is to require that a legitimate aim (such as the prevention of crime) is identified in furtherance of which the interference is a necessary and proportionate measure.

Legitimate aims can clearly be capable of justifying limited interference with the right to privacy. But the degree of interference must be considered in the light of the necessity of the measure to achieve the aim and the actual benefit it yields.²³ In another context (the right to freedom of movement), the HRC has clarified that such consideration requires that the infringement is the ‘least intrusive instrument amongst those which might achieve their protective functions’²⁴ and has counselled that ‘[i]n adopting laws providing for restrictions permitted [for legitimate aims], States should always be guided by the principle that the restrictions must not impair the essence of the right ... the relation between the right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.’²⁵

We highlight that article 19 of the ICCPR provides that:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [their] choice.²⁶

The right to freedom of expression is recognized in human rights law as particularly important, since it provides the mechanism by which other rights, such as political participation,²⁷ freedom of assembly²⁸ and association,²⁹ and freedom of religion,³⁰ may be exercised.

As the Human Rights Committee put it in its General Comment No. 34:

Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They

²¹ See, for instance: Human Rights Committee, *Van Hulst v Netherlands*, UN Doc. CCPR/C/82/D/903/1999 (2004), paras. 7.6-7.10.

²² See, for instance: *Weber and Saravia v Germany* (App No. 54934/00), Decision of 29 June 2006, paras. 103- 137.

²³ As noted in OHCHR, *Annual Report of the UN High Commissioner for Human Rights, ‘The Right to Privacy in the Digital Age,’* UN Doc. A/HRC/27/37 (30 June 2014), para.24.

²⁴ Human Rights Committee, General Comment No. 27, UN Doc. CCPR/C/21/Rev.1/Add/9 (1999), para. 14; and Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 34.

²⁵ Human Rights Committee, General Comment No. 27, para.13.

²⁶ UDHR, art. 19.

²⁷ See: UDHR, art. 21; HRC, *Gauthier v Canada*, UN Doc. CCPR/C/65/D/633/1995, para.13.4; and *Aduayom, Diasso and Dobou v Togo*, UN Doc. CCPR/C/57/D/422-4/1990, para.7.4.

²⁸ ICCPR, art. 21; UDHR, art. 20.

²⁹ ICCPR, art. 22; UDHR, art. 20.

³⁰ ICCPR, art. 18; UDHR, art. 18.

constitute the foundation stone for every free and democratic society ... Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.³¹

We affirm the centrality of the right to family life in all of its diverse forms under international law:³² “The family can function as an extraordinarily meaningful site for the realization of individual rights”.³³ The family, and “home life”, remains a meaningful site of respite within which to exercise the full scope of individual rights among diverse contexts and communities. We underscore that as counter-terrorism has expanded its scope, it has insidiously crept into the regulation of family life, family law and the intersection between families and the State. We are particularly concerned by the coercive and discriminatory denial of access to family life on the basis of security and counter-terrorism practices and guarantees. The effects implicate human rights beyond the usual scope of analysis regarding national security policies, requiring attention to States’ obligations, such as those not to interfere with the family life, to ensure equality of rights within the family and to protect and assist the family.³⁴

We would finally like to draw the attention of your Excellency’s Government to States’ obligations to provide victims of human rights violations with effective remedies. 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 which should be proportionate to the gravity of the violations and the 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 CAT. Paragraph 7 (b) and (e) of Human Rights Council resolution 16/23, adopted in April 2011, urges States:

To 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, including the officials in charge of the place of detention where the prohibited act is found to have been committed; 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...

³¹ Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (12 September 2011), para. 2.

³² Human Rights Council resolution 29/22.

³³ A/HRC/46/36, para. 18.

³⁴ A/HRC/46/36 para. 21.

It further urges States:

To 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.