



## **SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW OF THE UNITED STATES 3 OCTOBER 2019**

### **1. Introduction**

The submitting organisations welcome the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of the United States. This submission focuses on the longstanding failure to (1) provide effective remedy and redress, including medical care, and to (2) provide fair trials to the "High Value Detainees" who are still held in Guantánamo, including Mr. Mustafa al Hawsawi. Through a system of classifications, isolation, detention and counter-terrorism related policies the United States' government is preventing a category of victims of torture and other ill-treatment from obtaining redress, fair trials and is securing impunity for perpetrators, contrary to recommendations in the previous UPR cycles. For 18 years, the United States government has been violating numerous international human rights treaties it has ratified, first and foremost the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights. Such violations deserve serious attention in the upcoming UPR review.

### **2. Organisations Submitting this Report**

#### **The World Organisation against Torture (OMCT)**

Created in 1985, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With over 200 affiliated organisations in its SOS-Torture Network and many tens of thousands of correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT's International Secretariat provides personalised medical, legal and/or social assistance to hundreds of torture victims and ensures the daily dissemination of urgent interventions across the world, in order to protect individuals and to fight against impunity. Specific programmes allow it to provide support to specific categories of vulnerable people, such as women, children and human rights defenders. In the framework of its activities, OMCT also submits individual communications and alternative reports to the special mechanisms of the United Nations, and actively collaborates in the respect, development and strengthening of international norms for the protection of human rights.

#### **REDRESS**

REDRESS is an international human rights non-governmental organisation based in the United Kingdom with a mandate to assist torture survivors to seek justice and other forms of reparation.

REDRESS has taken part as an intervener in litigation in the United States, Canada and Europe concerning violations committed in the CIA's RDI Program. In addition, REDRESS has been working on a case illustrative of the concerns set out in this submission and highlighted in this report – that of Mustafa al-Hawsawi – since 2012, and has filed criminal complaints in Lithuania and Poland seeking investigations into allegations that he may have been detained and tortured in those countries in the course of the US RDI Program. REDRESS continues to represent Mr Al-Hawsawi in his litigation before the European Court of Human Rights (ECtHR) against Lithuania. As described further in this report, REDRESS has been severely hampered in its representation of Mr al-Hawsawi by the rules in place in the United States concerning access to detainees and classification of information.

### **The International Commission of Jurists**

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council in 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

### **3. Background:**

#### **a. The Rendition, Detention and Interrogation Program and its Application to “High Value Detainees”**

Immediately following the 11 September 2001 attacks in New York City, Washington DC, and Pennsylvania, senior United States officials are known to have authorised a covert CIA Program of secret detention and interrogation of individuals suspected of involvement in terrorism.<sup>1</sup> The UN Special Rapporteur on the protection and promotion of human rights in the context of counterterrorism has characterised this program as “a systematic campaign of internationally wrongful acts involving the secret detention, rendition and torture of terrorist suspects”.<sup>2</sup>

Under the program, the CIA was authorised to detain terrorist suspects and set up detention facilities known as “black sites” outside the United States.<sup>3</sup> This program was used to detain, isolate and interrogate individuals who were considered to have a high intelligence value, known as High Value Detainees.<sup>4</sup> At the beginning of August 2002, the United States Justice Department's Office of Legal Counsel authorised the CIA to use a range of “physical and mental abuse”<sup>5</sup> of terrorist suspects in its custody under the secret detention program, known as “enhanced interrogation techniques”.<sup>6</sup>

Following the public release of United States government documents in 2009, it is now known that around one hundred individuals were held under this program between September 2001 and May 2005, although by May 2005 there were less than twenty remaining in the CIA's custody.<sup>7</sup> On 6 September 2006 the then United States President George W. Bush confirmed that a number of so-called High Value Detainees had been moved to Guantánamo Bay, Cuba, having spent years being held in sites outside the United States, and subject to “an alternative set of procedures”.<sup>8</sup>

Mustafa al Hawsawi is one of the 14 so-called “High Value Detainees” who was taken at that time to Guantánamo Bay.<sup>9</sup> Mr. al Hawsawi is a Saudi national who was captured by the United States authorities in March 2003 and was held in secret detention before he was brought to Guantánamo in September 2006. The report of the Committee Study of the Central Intelligence Agency's Detention and Interrogation Program (also called the Feinstein report) revealed that Mr. al Hawsawi was sodomized,<sup>10</sup> “walled”, a term used to describe being horse-collared and slung repeatedly into a wall, and forced into positions constituting torture.<sup>11</sup> As a result, he was later diagnosed with chronic

hemorrhoids, an anal fissure, symptomatic rectal prolapse, migraines, severe neck pain, and persistent ringing in his ears. Moreover, he has consistent pain when defecating, suffers from high blood pressure and has serious difficulties sleeping.<sup>12</sup> The daily pain Mr. al Hawsawi experiences due to medical conditions caused or exacerbated by his torture is akin to a continuation of torture, due to the State's refusal to rehabilitate him, his current conditions of detention, and lack of fair trial. He currently faces capital charges in a trial before a Military Commission in Guantánamo Bay, relating to his alleged involvement as media organiser and financier in the September 11, 2001 attacks in the United States.<sup>13</sup>

#### **b. Detention at Guantánamo Bay**

Although the United States government has accepted 4 recommendations on the closure of Guantánamo in the previous UPR cycle<sup>14</sup>, President Donald Trump signed an executive order in 2018 to keep the detention camp open indefinitely.<sup>15</sup>

The “High Value Detainees” remaining at Guantánamo Bay, including Mustafa al Hawsawi, are held in a separate, purpose-built section of the prison: Camp 7.<sup>16</sup> The location, as well as much of the operation and conditions of confinement of Camp 7, remain classified, and only a strictly limited number of government agents are allowed access. Even the lawyers of the detainees who all have received security clearances from the government, have been barred from entering, except for a one-time 12 hour daytime visit granted to three members of each defense team by order of the Military Commission Judge in 2013.<sup>17</sup>

The High Value Detainees held in Camp 7 remain largely isolated from the outside world, with the exception of ICRC officials, security-cleared defense lawyers, and very restricted security-cleared correspondence. The detainees have no right to independent medical exams and the Special Rapporteurs have “consistently been refused access to Guantánamo and other high security facilities in accordance with the standard terms of reference of [their] UN mandate.”<sup>18</sup>

Phone calls are not allowed between High Value Detainees and their defense counsel, so any contact must be in person at Guantánamo Bay, or through mail. In relation to mail, attorney-client communications are controlled by a communications order, which in theory limits the review of documents by a ‘privilege review team’ to contraband and proper markings. However, these privilege team reviews require continual vigilance by the lawyers in the 9/11 trial as, in the past, these lawyers have alleged that the inspections went beyond inspecting for contraband, and instead involved impermissible content review of attorney-client communications.<sup>19</sup>

Contact with family members is severely limited and controlled. “High Value Detainee” are permitted occasional video-telephone conferences with certain family members, where those family members have been vetted and approved for such contact by the U.S. Government. These telephone calls consist of pre-recorded messages, sent back and forth on a time-delay, so that U.S. Government intelligence and security personnel can review the messages and edit where they deem needed. In addition, since October 2006, detainees have been permitted to send two ICRC messages and four postcards during each quarterly ICRC visit. These are similarly subject to review, and are generally delivered with a six to twelve month delay, with many having been heavily redacted by US authorities.<sup>20</sup>

Numerous international human rights bodies have found the conditions in Guantánamo detention camp amount to serious human rights violations, including ill-treatment.<sup>21</sup> Most notably, the Committee against Torture has expressed its concerns regarding the reports of deaths in Guantánamo as well as regarding the hunger strikes of some detainees allegedly administered in an unnecessarily brutal and painful manner.<sup>22</sup>

#### **4. Failure to Provide Fair Trials to the “High Value Detainees”**

Six of the High Value Detainees at Guantánamo Bay, including Mr. al Hawsawi, have been on trial before Military Commissions in effect since 2008. Each case is still at pre-trial stage, and each of the accused faces charges that could lead to the imposition of the death penalty.

The Military Commissions before which individuals at Guantánamo Bay are being tried are designed specifically to ensure that information about the CIA’s Rendition, Detention and Interrogation program and the torture carried out through it is not made public.

The legislation in place excludes the jurisdiction of United States courts over any claims raised by the accused, aside from limited habeas corpus review (required after a successful constitutional challenge), which has been interpreted to include some oversight of current detention conditions, and final appeals on any criminal conviction.<sup>23</sup> In sum, the way that the Military proceedings are designed ensure that no allegations of torture and ill-treatment committed during the detainees’ enforced disappearance can be publicly disclosed by counsel, in any forum, nor made public during the trial.

With regards to the proceedings against Mr. al Hawsawi, the United States is actively seeking to use information obtained as the result of torture in his death penalty Military Commissions prosecution.<sup>24</sup> By so doing, the United States is circumventing international law obligations (exclusionary rule), as well as its own domestic constitutional and statutory provisions.<sup>25</sup> Moreover, the United States’ government “investigation restrictions, discovery limitations, and witness access preclusions” prohibit Mr. al Hawsawi from defending himself.<sup>26</sup>

Under the Military Commission’s communications order, so-called

“...third parties, those not directly involved in representing detainees before a military commission, are prohibited from meeting with detainees, and may only send letters that are vetted by the detention authorities. The communications order does not afford attorneys outside the military commission system any communication privilege. Thus, detainees seeking to be represented before international bodies cannot meet with or communicate with attorneys/NGOs who engage in such representation.”

These restrictions have made it very difficult for defendants to provide even general powers of attorney to lawyers or third party organisations who wish to pursue proceedings in third countries based on information in the public domain. This is the situation facing REDRESS, which has been representing Mr. al Hawsawi in his claim brought in the European Court of Human Rights (ECtHR) in relation to his torture and rendition as part of the Rendition, Detention and Interrogation Program, despite the fact that the restrictions in place prevent them from having any direct contact with their client. This creates significant difficulties in filing complaints and appeals, and may block or impede access to remedies and review mechanisms, including before treaty bodies and regional courts.

Moreover, the effect of classification, the restrictions of disclosure of information and the use of coerced evidence are compounded when they are implemented in the context of Military Commission proceedings in which the prosecution is seeking the death penalty. When a person has been forcibly disappeared and tortured by the State now trying them, the mere prospect of being sentenced to death by a Military Commission that is authorised to rely on coerced evidence can reasonably be seen to lead to psychological distress and suffering.<sup>27</sup>

#### **5. Failure to Provide Redress and Rehabilitation**

The failure to provide effective redress is of particular concern in relation to the lack of access to rehabilitation at Guantánamo Bay, including access to medical care. Under international law, in particular Article 14 of the Convention against torture, the United States has an obligation to address the therapeutic and other rehabilitative needs of those victims who remain in custody and who, due to their continued incarceration at Guantánamo Bay, are unable to proactively attend to their own

physical and psychological rehabilitation.<sup>28</sup> In order for rehabilitation to commence (and be more than illusory), the ongoing violations must be halted.

#### **a. Lack of Adequate and Independent Medical Care**

Since its last UPR review, the United States has failed to rehabilitate Mr. al Hawsawi. In March 2015, when attorneys sought “immediate and appropriate medical testing” and “immediate medical procedures [...] necessary under established standards of care in order to remedy Mr. al Hawsawi’s severe and chronic [...] medical conditions”, a Military Commission judge ruled that he did not have authority over Mr. al Hawsawi’s medical treatment.<sup>29</sup> Mr. al Hawsawi subsequently petitioned domestic courts for an independent medical evaluation, but his case was dismissed for lack of jurisdiction.<sup>30</sup> All health personnel who examine Mr. al Hawsawi are from the United States military, rotate rapidly and only address his medical symptoms. The fact that his serious health issues are a direct result of the torture to which he has been subjected is not taken into account.

Throughout the more than 4,700 days the United States has kept Mr. al Hawsawi imprisoned in Guantánamo Bay (since 2006), it has failed to rehabilitate him. As a result, Mr. al Hawsawi’s health issues have become chronic and he has developed painful and dangerous complications from the physical effects torture. He has recently developed anal stenosis after ongoing colorectal problems and three surgeries since his torture by the CIA.<sup>31</sup> In addition, Mr. al Hawsawi recently developed hypertension, aggravated by his near constant pain and his health continues to deteriorate.<sup>32</sup> The lack of medical care and rehabilitation not only re-victimizes him but also constitutes in itself a continuation of torture by the State. Moreover, the ongoing violations continues to compound the plight of Mr. al Hawsawi and make any rehabilitation illusory.

#### **b. Guarantees of Non-Repetition**

It has been recognized that effective redress includes guarantees of non-repetition.<sup>33</sup> However, it appears that some of the conditions of detention at Guantánamo Bay continue to constitute ill-treatment, which in some cases may rise to the level of torture. In 2013 the Special Rapporteur on Torture noted that he considers “the practice of indefinite detention, other conditions applied to [Guantánamo detainees] such as solitary confinement, as well as the use of force feeding as forms of ill-treatment that in some cases can amount to torture.”<sup>34</sup>

Conditions in Camp 7 remain shrouded in secrecy, although reports suggest that they are far more oppressive than those in other sections of Guantánamo Bay.. The secrecy surrounding the conditions of confinement only adds to their oppressiveness. Each “High Value Detainee” is held in segregated cells. While the United States claims that solitary confinement is not allowed at Guantánamo, various sources have challenged this position. The Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe notes “[A]t a minimum, all detainees who spend 22 hours a day in segregated cells are thus undoubtedly held in solitary confinement.”<sup>35</sup> In February 2016 UN Human Rights Experts calling for the closure Guantánamo Bay detention facility stressed that “detainees must be held under the conditions that respect international standards”, emphasizing “in particular, no individual must be held incommunicado, or in prolonged or indefinite solitary confinement.”<sup>36</sup>

Another worrying development in this regard is the 2018 executive order signed by President Donald Trump to keep Guantánamo Bay open indefinitely.<sup>37</sup>

### **c. Failure to Investigate and Prosecute**

Effective redress and remedy for torture also entails complaints mechanisms for victims, effective, prompt and impartial investigations into torture allegations that are capable of leading to the apprehension of those responsible, and of holding perpetrators to account.<sup>38</sup> The United States government has repeatedly stated that its Department of Defense has conducted thousands of investigations since 2001, has prosecuted and disciplined hundreds of service members for misconduct, including mistreatment of detainees, but without providing any numbers or facts.<sup>39</sup> Publicly known are only the convictions of the eleven soldiers who were responsible for torture and ill-treatment of detainees in Abu Ghraib.<sup>40</sup>

## **6. Failure to Implement Requests from the European Court of Human Rights (ECtHR) in Other Rendition Cases**

Various decision have already been made by the ECtHR in relation to aspects of the US Government's Rendition, Detention and Interrogation Program which are alleged to have been carried out in the area of the jurisdiction of the ECtHR, and in situations where the applicants remain detained at Guantánamo Bay.<sup>41</sup> In these cases, the ECtHR has ordered diplomatic representations to be made from the relevant respondent Governments to the US Government to seek to remove or limit the effects of the European Convention on Human Rights (ECHR) violations committed by the respondent state (for example, by putting an end to the applicant's arbitrary detention, not to use the death penalty in the case against the applicant, and/or not to use evidence against him obtained under torture).<sup>42</sup> For example, in the latest such decision in 2018, in *Abu Zubaydah v Lithuania*, the ECtHR required Lithuania to "attempt to make further representations to the US authorities with a view to removing or, at the very least seeking to limit, as far as possible, the effects of the Convention violations suffered by the applicant."<sup>43</sup>

However, the Committee of Ministers, the body charged with monitoring the implementation of the ECtHR's decisions, has repeatedly criticized the US authorities for their failure to respond positively to similar requests which have been made in the earlier cases.<sup>44</sup> Several respondent states have set out in detail the responses from the US authorities to their requests,<sup>45</sup> which include the following arguments:

- the military commissions and federal courts comply with all applicable international and domestic law fair trial safeguards
- international law does not prohibit capital punishment when imposed and carried out in a manner that is consistent with a state's international obligations
- the US continues to have legal authority under the law of war to detain individuals who are part of or substantially supported Al-Qaeda, the Taliban, or associated forces until the end of hostilities
- detainees have the right to challenge the legality of their detention in a US court through a petition for the writ of habeas corpus.

The failure of the US authorities to engage with the representations of the respondent states further infringes the rights of the applicants in these cases.

## **7. Conclusion**

We respectfully request that the Human Rights Council takes into account these matters in its consideration of the US at the forthcoming UPR. We remain deeply concerned at the longstanding failures of the US authorities to (1) provide effective remedy and redress, including medical care, and to (2) provide fair trials to the "High Value Detainees" who are still held in Guantánamo, including Mr. al Hawsawi.

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<sup>1</sup> UN, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson: Framework Principles for securing the accountability of public officials for gross or systematic human rights violations committed in the context of State counter-terrorism initiatives’, A/HRC/22/52, 1 March 2013, para. 15.

<sup>2</sup> *Ibid.*, para. 14.

<sup>3</sup> *Ibid.*, para. 15.

<sup>4</sup> Central Intelligence Agency Office of the Inspector General, ‘Special Review’, 7 May 2004, pp.3G4, [http://www.therenditionproject.org.uk/pdf/PDF%2020%20\[CIA%20IG%20Investigation%20EITs%202004\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%2020%20[CIA%20IG%20Investigation%20EITs%202004].pdf) (“CIA OIG Review”); see also Stephen G. Bradbury, ‘Memorandum re: application of United States obligations under article 16 of the Convention against Torture to certain techniques that may be used in the interrogation of high value al-Qaida detainees’, 30 May 2005, p. 6, available at [http://hrlibrary.umn.edu/OathBetrayed/olc\\_Bradbury.pdf](http://hrlibrary.umn.edu/OathBetrayed/olc_Bradbury.pdf).

<sup>5</sup> UN, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson: Framework Principles for securing the accountability of public officials for gross or systematic human rights violations committed in the context of State counter-terrorism initiatives’, A/HRC/22/52, 1 March 2013, para. 15.

<sup>6</sup> *Ibid.*; see also Jay Bybee, Office of Legal Counsel, Department of Justice, “Memo for Alberto Gonzales, Counsel to the President Re: Standards of Conduct for Interrogation under 18 USC §§2340–2340A”, 1 August 2002, available at <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB127/02.08.01.pdf>.

<sup>7</sup> UN, “Joint Study on global practices in relation to secret detention in the context of countering terrorism Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the working group on arbitrary detention represented by its vice-chair, Shaheen Sardar Ali; and the working group on enforced or involuntary disappearances represented by its chair, Jeremy Sarkin” A/HRC/13/42, 19 February 2010, para 103, available at <https://www.refworld.org/docid/4bbef04d2.html>.

<sup>8</sup> The White House (2006), ‘President Discusses Creation of Military Commissions to Try Suspected Terrorist’, The White House Archive website, 6 September 2006, available at <https://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>.

<sup>9</sup> International Committee of the Red Cross (ICRC), ‘Report on the Treatment of Fourteen ‘High Value Detainees’ in CIA Custody’, February 2007, p. 5, available at <http://www.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>.

<sup>10</sup> Senate Select Committee on Intelligence (SSCI), Committee Study of the CIA’s Detention and Interrogation Program, Executive Summary (released December 2014), at 100, n. 584, noting, “rectal exams were conducted with “excessive force”” after which Mr. al Hawsawi was diagnosed with, “chronic hemorrhoids, an anal fissure and symptomatic rectal prolapse”, available at [https://www.feinstein.senate.gov/public/\\_cache/files/7/c/7c85429a-ec38-4bb5-968f-289799bf6d0e/D87288C34A6D9FF736F9459ABCF83210.sscistudy1.pdf](https://www.feinstein.senate.gov/public/_cache/files/7/c/7c85429a-ec38-4bb5-968f-289799bf6d0e/D87288C34A6D9FF736F9459ABCF83210.sscistudy1.pdf).

<sup>11</sup> Declassified Central Intelligence Agency (CIA) Inspector General (IG) Disposition Memorandum, ‘Alleged Use of Unauthorized Interrogation Techniques, Case 2004-7604-IG’ December 6, 2006, Approved for Release June 10, 2016, at 10, available at <https://www.cia.gov/library/readingroom/docs/0006541723.pdf>. See also Mr. al Hawsawi’s Defense Motion to Waive Mr. al Hawsawi’s Appearance At the Military Commission Session Scheduled to begin 22 July 2019, AE640I (MAH) *United States v. Mohammad et. al.*, (15 July 2019) available at [https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE640I\(MAH\)\).pdf](https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE640I(MAH)).pdf).

<sup>12</sup> See Mr. al Hawsawi’s Defense Motion to Waive Mr. al Hawsawi’s Appearance At the Military Commission Session Scheduled to begin 22 July 2019, AE640I (MAH) *United States v. Mohammad et. al.*, (15 July 2019) available at [https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE640I\(MAH\)\).pdf](https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE640I(MAH)).pdf).

<sup>13</sup> See Department of Defense, ‘JTF-GTMO Detainee Assessment: Mustafa al-Hawsawi’, 8 December, available at <https://www.therenditionproject.org.uk/documents/RDI/061208-DoD-JTF-Detainee-Assessment-Hawsawi.pdf>

<sup>14</sup> UPR Info, Responses to Recommendations and Voluntary Pledges, available at [https://www.upr-info.org/sites/default/files/document/united\\_states/session\\_22\\_-\\_may\\_2015/recommendations\\_and\\_pledges\\_usa\\_2015.pdf](https://www.upr-info.org/sites/default/files/document/united_states/session_22_-_may_2015/recommendations_and_pledges_usa_2015.pdf).

<sup>15</sup> The Whitehouse, Presidential Executive Order on Protecting America Through Lawful Detention of Terrorists, 30 January 2018, available at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-protecting-america-lawful-detention-terrorists/>.

<sup>16</sup> See *USA v KSM et al*, AE303 (MAH), ‘Defense Motion for Appropriate Relief to Require Confinement Conditions that Comply with International Humanitarian Law standards’, 29 May 2014, p. 3.

<sup>17</sup> Dina Temple-Raston (2013), ‘Sept. 11 Trial Judge Gives Defense Attorneys Access To ‘Camp 7’’, 21 February 2013, available at <https://www.nhpr.org/post/sept-11-trial-judge-gives-defense-attorneys-access-camp-7#stream/0>.

<sup>18</sup> See OHCHR, ‘US must stop policy of impunity for the crime of torture’, press release of Mr. Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 13 December 2017, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22532&LangID=E>.

<sup>19</sup> Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

punishment, Joint Urgent Appeal: United States of America, UA G/SO 218/2 G/SO 214 (3G3G16) Terrorism (2005G4) G/SO 214 (53G24) USA 31/2012, p. 3, [https://spdb.ohchr.org/hrdb/22nd/public\\_G\\_UA\\_USA\\_30.11.12\\_\(31.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public_G_UA_USA_30.11.12_(31.2012).pdf).

<sup>20</sup> USA v KSM et al, AE303 (MAH), ‘Defense Motion for Appropriate Relief to Require Confinement Conditions that Comply with International Humanitarian Law standards’, 29 May 2014, p. 4. See further USA v KSM et al, AE 214(MAH), ‘Defense Motion to Compel Mr. al Hawsawi’s Access to the Government of Saudi Arabia in Compliance with United States Law’, pp. 4 and 12, [www.mc.mil](http://www.mc.mil).

<sup>21</sup> For example, Organisation of American States, ‘IACHR Condemns Decision of the United States to Maintain Guantánamo Prison Open’, 20 February 2018, available at [https://www.oas.org/en/iachr/media\\_center/PReleases/2018/031.asp](https://www.oas.org/en/iachr/media_center/PReleases/2018/031.asp).

<sup>22</sup> Committee against Torture, Concluding Observations on the United States, UN Doc. CAT/C/USA/CO/3-5, 19 December 2014, para. 14. See also “US must stop policy of impunity for the crime of torture” press release of Mr. Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 13 December 2017, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22532&LangID=E>.

<sup>23</sup> 10 U.S.C. §950g. See further Jennifer K Elsea (2014), ‘The Military Commissions Act of 2009 (MCA 2009): Overview and Legal Issues’, Congressional Research Service, 4 August 2014, pp. 33–35, available at <http://fas.org/sgp/crs/natsec/R41163.pdf>.

<sup>24</sup> See when available Mr. al Hawsawi’s Reply to AE 632A (GOV) Government Response to Mr. al Hawsawi’s Motion in Response to AE 524RRR, Ruling, regarding Scheduling the Filing of a Motion to Suppress FBI Statements, AE 632C (MAH) United States v. Mohammad et. al, (30 May 2019).

<sup>25</sup> The Military Commissions Act of 2009 provides the following, at 10 United States Code § 948r, available at <https://www.mc.mil/Portals/0/pdfs/MCA%202009%20Chapter%2047A.pdf>: “No statement obtained by the use of torture or by cruel, inhuman, or degrading treatment (as defined by section 1003 of the [Detainee Treatment Act of 2005 \(42 U.S.C. 2000dd\)](#)), whether or not under color of law, shall be admissible in a military commission under this chapter, except against a person accused of torture or such treatment as evidence that the statement was made.” The Detainee Treatment Act provides the following:

(a) No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

[..]

(d) “cruel, inhuman, or degrading treatment or punishment” means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

<sup>26</sup> See Defense Motion to Reconsider AE 524LLL, Ruling on Government Motion to Reconsider and Clarify AE 524LL, Ruling *United States v. Mohammad et. al*, (18 April 2019) available at [https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE524MMM\(MAH\)\).pdf](https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE524MMM(MAH)).pdf)

<sup>27</sup> As to the psychological suffering arising from apprehension of being subjected to the death penalty see (in the European context) see ECtHR, *AllySaadoon & Mufdhi v UK* (2010), App. No. 61498/08, 2 March 2010, para. 144. See further analogous circumstances apparent in the “death row phenomenon”, as discussed by the Special Rapporteur on Torture, Juan Mendez, in his interim report to the General Assembly, UN Doc. A/67/279, 9 August 2012, paras. 42-51

<sup>28</sup> UN Committee against Torture, General Comment No. 3, Implementation of article 14 by States parties, UN. Doc. CAT/C/GC/3, 13 December 2012, para. 13: specialised services for the victim of torture or ill-treatment should be “available, appropriate and promptly accessible.”

<sup>29</sup> See Order Defense Motion for Medical Intervention, AE332C, *United States v. Mohammad et. al*, (10 March 2015) available at [https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE332C\).pdf](https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE332C).pdf).

<sup>30</sup> *Hawsawi v. Obama*, Civil Action No. 15-1257, Memorandum Order (Sept. 10, 2015).

<sup>31</sup> See Mr. al Hawsawi’s Defense Motion to Waive Mr. al Hawsawi’s Appearance At the Military Commission Session Scheduled to begin 22 July 2019, AE640I (MAH) *United States v. Mohammad et. al*, (15 July, 2019), p. 2, available at [https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE640I\(MAH\)\).pdf](https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE640I(MAH)).pdf).

<sup>32</sup> *Ibid.*, p. 3.

<sup>33</sup> Committee against Torture, General Comment No. 2, UN Doc. CAT/C/GC/3, 13 December 2012, para. 18.

<sup>34</sup> Statement of the United Nations Special Rapporteur on Torture at the Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantánamo Bay, Inter-American Commission on Human Rights, 3 October 2013, available at: <https://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13859&LangID=E>.

<sup>35</sup> OSCE-ODIHR, Report: Human Rights Situation of Detainees at Guantánamo, Warsaw, 2015, para. 226, p. 97, Available at: <http://www.osce.org/odihr/198721>.

<sup>36</sup> UN OHCHR, ‘It’s not just about closing Guantánamo, but also ensuring accountability’, UN rights experts say, 26 February 2016, available at

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17097&LangID=E>. See also, United Nations

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Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Resolution adopted by the General Assembly on 17 December 2015, UN Doc. A/Res/70/175.

<sup>37</sup> The Whitehouse, Presidential Executive Order on Protecting America Through Lawful Detention of Terrorists, 30 January 2018, available at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-protecting-america-lawful-detention-terrorists/>.

<sup>38</sup> See Committee against Torture, General Comment No. 3, UN Doc. CAT/C/GC/3, 13 December 2012, paras. 22–28 that refers to the interlinkage of Article 14 with Articles 12 and 13 of the Convention against Torture.

<sup>39</sup> See e.g. Committee against Torture, information received from the United States of America on follow-up to the concluding observations”, CAT/C/USA/CO/3-5/Add.1, 14 January 2016, para 31.

<sup>40</sup> The Baltimore Sun, ‘Soldiers convicted in the Abu Ghraib scandal’, 16 October 2006, available at <https://www.baltimoresun.com/news/bal-ghraib-story.html>.

<sup>41</sup> For example, see *Al Nashiri v Poland* (Application No. 28761/11, Judgment of 24 July 2014), *Abu Zubaydah v Lithuania* (Application No. 46454/11, Judgment of 31 May 2018), *Al Nashiri v Romania* (Application No. 33234/12, Judgment of 31 May 2018).

<sup>42</sup> See *Al Nashiri v Poland*, *ibid.*, para. 586–589; *Abu Zubaydah v Lithuania*, *ibid.*, paras. 680–684; *Al Nashiri v Romania*, *ibid.*, paras. 738–743.

<sup>43</sup> *Abu Zubaydah v Lithuania*, *ibid.*, para. 681.

<sup>44</sup> See, for example: Committee of Ministers’ Decision at its 1324th meeting, 18-20 September 2018 (DH) – H46-14, *Al Nashiri group v. Poland*, in which the Committee of Ministers “reiterated their deep regret about [the US government’s] persistent refusal of the Polish requests for diplomatic assurances and legal assistance and the absence of any other equivalent action, especially as the applicants’ present situation is the result of an illegal “extraordinary rendition” operation organised by a United States body on Polish territory, and urged anew the United States’ authorities to provide the necessary assurances and assistance or to take other equivalent measures”; decision available at [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2018\)1324/H46-14E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2018)1324/H46-14E).

<sup>45</sup> See, for example: Communication from Poland concerning the *Al Nashiri* group of cases against Poland (Application No. 28761/11), pp. 5-6, distributed as part of the Committee of Ministers 1273rd meeting (6-8 December 2016) (DH), available at [http://hudoc.exec.coe.int/eng?i=DH-DD\(2016\)1164E](http://hudoc.exec.coe.int/eng?i=DH-DD(2016)1164E); Communication from Lithuania concerning the case of *Abu Zubaydah v. Lithuania* (Application No. 46454/11), pp. 2-3, distributed as part of the Committee of Ministers 1348th meeting (June 2019) (DH) - Action plan (08/04/2019), available at [https://publicsearch.coe.int/Pages/result\\_details.aspx?ObjectId=090000168093de2b](https://publicsearch.coe.int/Pages/result_details.aspx?ObjectId=090000168093de2b).