



DEPARTMENT OF DEFENSE
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6 January 2015

Dr. Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
Washington, D.C. 20006

Re: Request for a hybrid thematic and individual complaint hearing during the 154th Period of Sessions on the effect of the release of the redacted version of the United States Senate Select Committee on Intelligence report entitled *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* as it relates to the ongoing Military Commissions and conditions of detainee confinement at U.S. Naval Air Station Guantanamo Bay, Cuba, by utilizing the pending complaint of Mr. Mustafa al-Hawsawi before the Inter-American Commission on Human Rights (No. 1385-14) as a case study upon which to structure and focus the discussion.

Dear Dr. Álvarez Icaza,

In accordance with Articles 62 and 64 of the Rules of Procedure of the Inter-American Commission on Human Rights ("IACmHR"), Mr. Mustafa al-Hawsawi respectfully submits this proposal for a hybrid thematic and individual complaint hearing on the implications of the redacted version of the United States Senate Select Committee on Intelligence report entitled *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* ("Torture Report") as it relates to the victims of torture still in confinement at Guantanamo. In the press, as well as among scholars, the accuracy of the Torture Report has received much attention. So has the prospect of accountability of those responsible for the actions described in that report.

Yet, by contrast, much less attention has been given to the effects of the Torture Report on the conditions of confinement at Guantanamo Bay and the proceedings of the Military Commissions. Before the Guantanamo Military Commissions, the United States Government seeks the death penalty against torture victims discussed in the report, including Mr. Mustafa al-Hawsawi. No such discussion similar to the one being presently proposed to the IACmHR in this letter seems likely in a domestic political or legal forum in the near future. A hearing before the IACmHR in two months' time is highly appropriate and crucially needed.

The case of Mr. al-Hawsawi, a high-value detainee and torture victim, who currently has a pending complaint before the IACmHR (No. 1385-14), would be a useful vehicle for structuring and focusing such a public dialogue. This would be a positive step towards putting an end to



the wrongs, by ensuring that torture victims get humane treatment and rehabilitation instead of secret confinement and executions.

Conditions of Confinement and Rehabilitative Medical Care for Torture Victims Currently Held at Guantanamo Bay

The Torture Report recounts in gruesome detail the years of continuous assault on the bodies, minds, and dignity of individuals who are still being held in isolated captivity in Guantanamo Bay. It describes Mr. al-Hawsawi as one of the individuals subjected to “enhanced interrogation techniques,”¹ including grotesque methods of torture that shock the conscience. These acts included “water dousing”² (equated in the Torture Report with water-boarding), which caused Mr. al-Hawsawi such acute agony from the cold water that he “cried out for God.”³ In another instance, Mr. al-Hawsawi was involved in an unspecified “incident” that led a CIA official to recommend that periods of sleep deprivation be reduced from 72 to 48 hours; however, whether that recommendation was actually followed is not noted in the Torture Report.⁴ Most alarmingly, the Torture Report states that Mr. al-Hawsawi has suffered from “chronic hemorrhoids, an anal fissure, and symptomatic rectal prolapse.”⁵ This observation follows the notation within the Torture Report of allegations that Mr. al-Hawsawi was 1 of 2 detainees on whom “rectal exams were conducted with ‘excessive force’.”⁶ The Torture Report further cites rectal rehydration as a means of “behavior control.”⁷

Under the American Declaration of the Rights and Duties of Man, the United States has obligations to respect the life, liberty, and security of individuals (Art. 1) and not to violate the preservation of an individual’s health and well-being (Art. 10), including his right to medical care. The United States has flagrantly violated both of these obligations. If the IACmHR holds a hearing on the issue now, it can assess the medical reparations and rehabilitative care that the United States fails to provide, but must provide, to the victims still under its control.

Currently, Mr. al-Hawsawi is not receiving adequate restorative medical treatment for the injuries and conditions resulting from years of CIA torture in its black sites, as recorded in the Torture Report. Indeed, the U.S. Government is arguably providing substandard medical care due, not just to an injured prisoner generally, but, in Mr. al-Hawsawi’s case, to a full-blown physically traumatized torture victim. Disturbingly, our Government prohibits Mr. al-Hawsawi from being examined and diagnosed by an independent physician unconnected to the very Government that tortured him.

¹ Page 96 of the Torture Report.

² Page 103 of the Torture Report.

³ Pages 106 and 107 of the Torture Report.

⁴ Page 136 of the Torture Report.

⁵ Page 100 of the Torture Report.

⁶ Ibid.

⁷ Ibid.

Also, in the context of Mr. al-Hawsawi's pending complaint before the IACmHR, it is important to inform the IACmHR that not only has he clearly suffered from untreated physical injuries for more than nine years, but also the information possibly identifying the origins of these conditions was only made known to his legal counsel by the U.S. Senate within the Torture Report.⁸ And of course, much additional information remains classified and hidden from his counsel and the rest of the world. His legal team is currently prohibited from reviewing his medical records during his time in CIA custody, speaking with the military doctors who have examined him, and from arranging an independent diagnostic assessment as discussed above.

Before the release of the report, the IACmHR requested a response in November 2014 from the U.S. Government on the state of Mr. al-Hawsawi's health and medical care, so that it could decide whether to issue instructions for interim measures to preserve his life and physical well-being while in confinement. Mr. al-Hawsawi has not seen any such response; but if the IACmHR has received one, it might review the response during the hearing to determine whether the U.S. Government has been forthcoming to the IACmHR and in compliance with its legal obligations in light of the Torture Report. Consequently, Mr. al-Hawsawi requests that the IACmHR examine the conditions of confinement of torture victims at Guantanamo, and especially their medical treatment, with particular attention given to his own circumstances.

Implications of the Torture Report for the Military Commissions at Guantanamo Bay

The American Declaration of the Rights and Duties of Man requires the United States to ensure equality before the law (Art. 2); the recognition of juridical personality and civil rights (Art. 17); fair trial (Art. 18); and due process of law (Art. 26). The IACmHR is uniquely placed to review the implications of the Torture Report with regard to the ongoing death penalty criminal proceedings taking place before the Military Commissions at Guantanamo Bay. This is especially true, to no small degree, because the resulting implications are still in the process of being identified. A hearing before the IACmHR on this matter would go a long way to further uncover implications that thus far remain unrecognized or indistinct.

The facts contained in the Torture Report make clear a number of immediately evident repercussions for the Guantanamo trials of torture victims like Mr. al-Hawsawi. Litigation regarding medical needs must be expanded. Evidence and confessions derived from torture must be strictly scrutinized. The Torture Report further reinforces the probability that the entire edifice and structure of the Military Commissions were constructed and exist to avert U.S. Government accountability for the "original sin" of torturing the defendants they now seek to prosecute. The Torture Report explicitly states the U.S. Government had no intention of a torture victim ever being released, and that the acts of torture were carried out under the

⁸ Ibid.

guarantee that the victim would never walk free again to seek redress.⁹ Furthermore, the Torture Report strongly implies that the CIA itself selected the individuals to be permanently silenced through indefinite detentions, rigged prosecutions, and guaranteed convictions.¹⁰

These facts would explain why Mr. al-Hawsawi has not been afforded his full juridical personality and civil rights, and also why due process and a fair trial are markedly absent at Guantanamo Bay. To be sure, it would explain why the prosecutions are taking place in Guantanamo Bay at all: because our Government never intended to honor the rights due Mr. al-Hawsawi within the American Declaration on the Rights and Duties of Man.

The IACmHR might use the occasion of a hearing to consider the inexplicable current circumstance that Mr. al-Hawsawi is absolutely prohibited by the U.S. Government from communicating with any individual who does not have a top secret U.S. Government security clearance. The U.S. Government has gone on record asserting that Mr. al-Hawsawi's mind is, literally, classified. That is to say, the whole world can read and discuss the most sadistic personal indignities inflicted upon him in the now released Torture Report, yet Mr. al-Hawsawi himself is unable to comment on what people read about him nor complain to any human rights body besides the IACmHR that might further investigate or provide him redress.

Finally, media reports indicate that despite the recent rapprochement of relations between the United States and Cuba, the issue of the prisons at Guantanamo Bay is still unresolved and festering. A hearing on the Torture Report as it relates to the confinement and trial of high-value detainees might bring to light more information beneficial to a dialogue on the human rights obligations of both countries towards torture victims still in U.S. custody on Cuban sovereign territory. This is clearly an Inter-American transnational human rights issue of the highest importance, and coming to terms with the Torture Report as it relates to Mr. al-Hawsawi can only contribute to the furtherance of peace and human rights throughout the Americas.

Concluding Comments

Mr. al-Hawsawi is cognizant that similar proposals may have been lodged with the IACmHR for hearings on the Torture Report. Mr. al-Hawsawi respectfully suggests that his case needs a separate and dedicated hearing before the IACmHR, because he is a high-value detainee facing capital punishment who is now confirmed as a victim of torture and who already has a pending complaint before the IACmHR. The IACmHR could utilize Mr. al-Hawsawi's current hearing proposal and his pending complaint dossier to bring focus and manageability to a discussion on the many wide-ranging considerations resulting from the Torture Report.

⁹ Page 35 of the Torture Report.

¹⁰ Page 157 of the Torture Report, noting, "By May 2006, the CIA had 11 detainees whom it had identified as candidates for prosecution by a U.S. military commission."

If the IACmHR grants this request for a hearing, we propose to join with human rights organizations that represent torture victims in international forums; medical experts who can speak to the immediate needs of torture victims in isolated confinement; and scholars of international law who can enumerate the content of the legal obligations incumbent on the U.S. Government as a result of the actions revealed in the Torture Report, both with respect to the Military Commissions and the conditions of high-value detainee confinement at Guantanamo. Mr. al-Hawsawi's legal counsel is fluent in both Spanish and English and could moderate the discussion while also being present to provide context and details about Mr. al-Hawsawi's case and Guantanamo Bay issues generally.

Respectfully submitted,

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