

# Human Rights and Security Coalition Submission to the UN Human Rights Committee Review of the United States of America

139th Session

September 2023

## Introduction

The undersigned members of the Human Rights and Security Coalition write in advance of the 139th session of the UN Human Rights Committee (the “Committee”) and its review of the United States of America (US). This submission addresses the US government’s compliance with obligations under the International Covenant on Civil and Political Rights (ICCPR) with regard to the use of lethal force outside of armed conflict and the detention facility at US Naval Station Guantánamo Bay, Cuba (“Guantánamo”).

The Human Rights and Security Coalition seeks to ensure that the United States’ national security policies abide by its human rights obligations. It does so by promoting transparency, accountability, and oversight in furtherance of our collective human security. Currently, our coalition is working to dismantle the war-based policy and legal architecture that has led to endless war, unlawful killing, unlawful detention, torture, conflict, mass displacement, and other abuses particularly against Muslim, Brown and Black communities abroad. We recognize these policies also harmfully impact communities in the United States, and seek to highlight those connections.

This statement is submitted jointly by the following organizations<sup>1</sup>: Amnesty International USA, Center for Civilians in Conflict (CIVIC), Center for Constitutional Rights, Center for Victims of Torture, Columbia Law School Human Rights Institute, Demand Progress Education Fund, Friends Committee on National Legislation, Government Information Watch, Human Rights First, Human Rights Watch, MPower Change, National Religious Campaign Against Torture, Reprieve, and September 11th Families for Peaceful Tomorrows.

The ICCPR rights at stake in this submission have been previously raised by the Committee in concluding observations and lists of issues (LOI), and they persist to this day. Our organizations share the concerns expressed by the Committee regarding the US practice of using lethal force outside the context of recognized armed conflict, as well as indefinite arbitrary detention and unfair trials at Guantánamo.

With regard to the use of force outside of recognized armed conflict, the United States continues to claim that its military operations adhere to international humanitarian law (IHL), which is the *lex specialis* with respect to armed conflict and the protection of war victims. In doing so, like the three previous administrations, the Biden administration claims the unilateral authority to carry out the secretive extrajudicial killing of individuals suspected of engaging in terrorism outside any recognized battlefield, often via armed drones—and ignores its international human rights obligations under the ICCPR. As a result, past and current US policies on the use of lethal force outside recognized armed conflict, the strikes it has carried out under these policies, and its

---

<sup>1</sup> Note that some organizations listed do not take a position on every issue described in this submission.

continued lack of transparency around state policy and practice in this area, fail to abide by its ICCPR obligations, in particular its obligations to respect the right to life (Article 6), due process (Article 14), and effective remedy (Article 2).

Although the US government's new Civilian Harm Mitigation and Response Action Plan (CHMR-AP) is a welcome step in US efforts to prevent and respond to civilian harm, its impact remains to be seen as implementation is still under way, and three key issues raise concerns. First, the CHMR-AP does not apply to lethal strikes carried out by agencies other than the Department of Defense, such as the Central Intelligence Agency (CIA), which has been responsible for numerous civilian casualties. Additionally, the policy only applies to allegations of harm against civilians and does not address the rights to life and due process all persons have under international human rights law in situations outside of armed conflict, regardless of their status or the accusations against them. Third, the plan does not currently provide accountability mechanisms that could address human rights violations.

Guantánamo remains open after 21 years despite myriad documented human rights abuses, including the US government's use of arbitrary detention, torture and other ill-treatment, and unfair trials violating Articles 7, 9, and 14 of the ICCPR; and numerous calls for closure. Even though the Biden administration itself committed to closing Guantánamo in recognition of these abuses, 30 men remain detained today, the majority of whom are cleared for release, and the fundamentally broken military commissions continue to drag on. Recently, in a response to the 2023 report by the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (SRCT),<sup>2</sup> the US government asserted its commitment to providing safe and humane treatment to detainees in accordance with international and US domestic law.<sup>3</sup> However, there continue to be issues of immediate concern, including that the US has failed to adequately address urgent and serious medical complications due to an aging population and the torture they endured at the hands of US personnel.

---

<sup>2</sup> U.N. Human Rights Special Procedures, 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), <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/2023-06-26-SR-terrorism-technical-visit-US-guantanamo-detention-facility.pdf> [hereinafter "Technical Visit"].

<sup>3</sup> United States Response to the UN Special Rapporteur on Countering Terrorism Regarding the Final Report on the Technical Visit to the United States, June, 26, 2023 [Hereinafter "US Response to Technical Visit"] <https://geneva.usmission.gov/2023/06/26/u-s-response-to-the-un-special-rapporteur-on-countering-terrorism/#:~:text=The%20United%20States%20disagrees%20in,international%20and%20U.S.%20domestic%20law.>

## **The United States' Use of Lethal Force Outside Armed Conflict Violates the ICCPR's Protection of the Right to Life and Fair Trial**

### **I. The Scale of the US Use of Lethal Force Taken Outside Armed Conflict**

Despite repeated concerns raised by the Committee and civil society, US authorities continue to claim the unilateral authority to conduct secretive, extrajudicial lethal strikes outside of recognized armed conflict.<sup>4</sup> According to independent monitoring groups, the US has carried out hundreds of lethal strikes since 2002 outside of armed conflict,<sup>5</sup> including in Libya, Pakistan, Somalia, and Yemen.<sup>6</sup> Independent reporting shows that such strikes have killed thousands of people.<sup>7</sup>

This remains an urgent issue as the Biden administration continues the program of lethal strikes outside of armed conflict. In June 2023, President Biden's administration released its policy on the use of lethal force outside of armed conflict, known as the Presidential Policy Memorandum Governing Direct Action Counterterrorism Operations Outside Areas of Active Hostilities (PPM).

These lethal strikes continue under the new policy. In Somalia, the Biden administration has conducted at least 56 known strikes since January 2021, killing at least 1505 people.<sup>8</sup> According to investigations by Airwars and Reprieve, there have been at least 12 strikes in Yemen believed to have been carried out by the US under the Biden administration.<sup>9</sup> A drone strike conducted by the CIA in July 2022 targeting Al Qaeda leader Ayman al-Zawahiri in Afghanistan shows a willingness by the US to continue to use lethal force in Afghanistan,<sup>10</sup> even though the US is no longer engaged in armed conflict there.

The public version of the PPM does not reference the United States' international human rights obligations and further entrenches the US approach of using lethal force against terrorism suspects outside of armed conflict in a violation of the right to life and fair trial rights. The policy also permits US agencies to propose variations to the policy through classified country-specific plans, raising both legal and transparency concerns.<sup>11</sup> Finally, the policy contains exceptions to certain

---

<sup>4</sup> UN DOC. CCPR/C/USA/5, Paras. 8, 16 and ANNEX B paras. 1 & 2.

<sup>5</sup> Jillian Schwedler, *Is the U.S. drone program in Yemen working?*, Brookings Institution (Sep. 28, 2015), <https://www.brookings.edu/articles/is-the-u-s-drone-program-in-yemen-working/> ("The United States began to use drones in Yemen in 2002 to kill individuals affiliated with al-Qaida in the Arabian Peninsula (AQAP) and its predecessor organizations and disrupt its operations there and abroad.").

<sup>6</sup> See, e.g., *US Strikes and Civilian Casualties*, Airwars (accessed Sep. 8, 2023), <https://airwars.org/civilian-casualties/?belligerent=us-forces>; *Drone Warfare*, Bureau of Investigative Journalism (accessed Sep. 8, 2023), <https://www.thebureauinvestigates.com/projects/drone-war>

<sup>7</sup> See *id.* Ascertaining the full scale of operations is difficult as the US did not declare many of its lethal operations and because the data itself is not comprehensive.

<sup>8</sup> See *US Forces in Somalia*, Airwars (accessed Sep. 8, 2023), <https://airwars.org/conflict/us-forces-in-somalia/>.

<sup>9</sup> Airwars, *US Forces in Yemen*, <https://airwars.org/conflict/us-forces-in-yemen/>; Ahmed Al-Haj & Jon Gambrell, *Mystery Yemen drone strike renews questions over US campaign*, Assoc. Press (Feb. 10, 2023), <https://apnews.com/article/al-qaeda-ayman-zawahiri-united-states-government-military-technology-yemen-860d86430603dc36ea786e72e09438c1>.

<sup>10</sup> Robert Plummer & Matt Murphy, *Ayman al-Zawahiri: Al-Qaeda leader killed in US drone strike*, BBC (Aug. 2, 2022), <https://www.bbc.com/news/world-asia-62387167>

<sup>11</sup> Joseph Biden, *Presidential Policy Memorandum Governing Direct Action Counterterrorism Operations Outside Areas of Active Hostilities* (2023).

safeguards in cases of self defense and “collective self defense,” which includes many of the strikes taken under the Biden administration in Somalia.<sup>12</sup> Under the UN Charter’s provisions and customary international law, nations may not use defensive force without UN Security Council authorization, unless in response to an armed attack or an imminent armed attack.<sup>13</sup> Yet successive US administrations have adopted expansive interpretations of these limited exceptions, using force that violated or undermined the Charter.<sup>14</sup>

Legal experts, legislators, and former US government officials have also asserted that the US abuses or exceeds domestic law when it conducts strikes and raids outside of Afghanistan and Iraq, the two countries in which the US Congress has clearly authorized the use of lethal force.<sup>15</sup> To the extent that such strikes and raids are internationally or domestically unlawful, they are a per se violation of Article 6.<sup>16</sup> (Note that some of the undersigned groups do not, as an institutional matter, take a position on decisions to engage in armed conflict or US domestic law.)

The US program of lethal strikes outside armed conflict has led to devastating and long-lasting impacts for individuals and their families. This includes civilian deaths and injuries; the destruction of homes, businesses, and critical infrastructure; long-lasting psychological trauma;<sup>17</sup> displacement; and the loss of means of survival. For example, investigations by groups including Reprieve, Human Rights Watch, Mwatana for Human Rights, Columbia Law School’s Human Rights Clinic, and the BBC documented how the Al Ameri and Al Taisy family in Yemen lost 34 civilian family members, including nine children, due to US drone strikes over a five-year period. The families reported living in fear of the next strike and suffering life-altering psychological and physical injuries, as well as destruction of their property and loss of their livelihoods.<sup>18</sup>

## II. Applicability of International Human Rights Law including the ICCPR

---

<sup>12</sup> See *Somalia*, US Africa Command (accessed Sep. 6, 2023), <https://www.africom.mil/topic/somalia>.

<sup>13</sup> For the purposes of self defense in response to an imminent armed attack, the *Caroline* principle states that the anticipated attack must be “instant, overwhelming, and leaving no choice of means, and no moment for deliberation.”

<sup>14</sup> Rita Siemion, Hina Shamsi, Daniel Mahanty, Heather Brandon-Smith, Priyanka Motaparthi, & Matt Hawthorne, *Toward a New Approach to National and Human Security: End Unlawful, Secret, and Unaccountable Uses of Lethal Force*, Just Security (Sep. 11, 2020), <https://www.justsecurity.org/72375/toward-a-new-approach-to-national-and-human-security-end-unlawful-secret-and-unaccountable-use-of-lethal-force/>.

<sup>15</sup> *Targeted Killing and the Rule of Law: The Legal and Human Costs of 20 Years of U.S. Drone Strikes: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Feb. 9, 2022) (testimony of Stephen Pomper), <https://www.judiciary.senate.gov/imo/media/doc/Pomper%20Testimony.pdf>; Rebecca Ingber, *Legally Sliding into War*, Just Security (Mar. 15, 2021), <https://www.justsecurity.org/75306/legally-sliding-into-war/>.

<sup>16</sup> See Gen. comment no. 36 on Art. 6 of the ICCPR, Human Rights Committee para. 12 (Oct. 30, 2018), [https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/CCPR\\_C\\_GC\\_36.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/CCPR_C_GC_36.pdf)

<sup>17</sup> See ‘Drones Causing Mass Trauma Among Civilians,’ *Major Study Finds*, Bureau of Investigative Journalism (Sep. 25, 2012), <https://www.thebureauinvestigates.com/stories/2012-09-25/drones-causing-mass-trauma-among-civilians-major-study-finds>; Conor Friedersdorf, ‘Every Person Is Afraid of the Drones’: *The Strikes’ Effect on Life in Pakistan*, *Atlantic Monthly* (Sep. 25, 2012), <https://www.theatlantic.com/international/archive/2012/09/every-person-is-afraid-of-the-drones-the-strikes-effect-on-life-in-pakistan/262814/>; *Survivors of US Drone Strike Sue the German Government*, European Center for Constitutional and Human Rights (Oct. 2020), [https://www.ecchr.eu/fileadmin/Fallbeschreibungen/Case\\_Report\\_Drones\\_Yemen\\_October2020.pdf](https://www.ecchr.eu/fileadmin/Fallbeschreibungen/Case_Report_Drones_Yemen_October2020.pdf).

<sup>18</sup> Leah Feiger & Nick Turse, *A Yemeni Family Was Repeatedly Attacked by U.S. Drones. Now, They’re Seeking Justice*, *Vice News* (Jan. 26, 2021), <https://www.vice.com/en/article/3anj33/a-yemeni-family-was-repeatedly-attacked-by-us-drones-now-theyre-seeking-justice>

The US program of extrajudicial killings outside of armed conflict continues to raise significant concerns about the US' compliance with the ICCPR, specifically Article 6, the right to life—a peremptory or *jus cogens* norm—Article 14, the right to a fair trial, and Article 2, the right to a remedy. In its concluding observations in 2014, the Committee specifically noted concerns about the US's very broad approach to the definition and geographical scope of armed conflict and the expansive interpretation of what constitutes an imminent threat for the purpose of anticipatory self defense, among other issues.

General comment no. 36 on Article 6 of the ICCPR emphasizes that “the right to life is the supreme right from which no derogation is permitted.” The right to life applies to anyone “without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.”<sup>19</sup> The US is prohibited from targeting and killing individuals in areas outside of armed conflict, even if they are suspected of carrying out attacks or another crime. Indeed, then-UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, reported to the Human Rights Council that “outside the context of armed conflict, the use of drones for targeted killing is almost never likely to be legal,” violating the right to life.<sup>20</sup> Further, in a 2020 report to the Human Rights Council concerning the US killing of General Qasem Soleimani and the use of armed drones, Alston's successor Agnes Callamard noted that countries have an obligation to “respect and ensure the right to life” of those affected and targeted by drone strikes.<sup>21</sup>

Outside of armed conflict, suspected criminal activity, including acts of terrorism, ought to be dealt with through law enforcement measures provided for under domestic criminal law and in compliance with international human rights law.<sup>22</sup> As such, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials detail the narrow exception to the prohibition on the use of lethal force: “only in self-defence or defence of others against the imminent threat of death or serious injury... when strictly unavoidable in order to protect life”, “only when less extreme means are insufficient to achieve [the] objectives”, and only “in proportion to the seriousness of the offence and the legitimate objective to be achieved.”<sup>23</sup>

This method of dealing with suspected criminal activity also raises serious due process concerns, implicating the ICCPR's right to a fair trial for those accused of a crime (Article 14). The process

---

<sup>19</sup> See Gen. comment no. 36 on Art. 6 of the ICCPR, Human Rights Committee para. 3 (Oct. 30, 2018), [https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/CCPR\\_C\\_GC\\_36.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/CCPR_C_GC_36.pdf)

<sup>20</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Study on Targeted Killings, para. 85 (28 May 2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/137/53/PDF/G1013753.pdf?OpenElement>

<sup>21</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, ¶ 26, (15 August 2020), <https://www.ohchr.org/en/documents/thematic-reports/ahrc4438-use-armed-drones-targeted-killings-report-special-rapporteur>.

<sup>22</sup> See Alston, *supra* note 16, at 18-19; Callamard, *supra* note 17, at 12-13; Carla Crandall, *Ready . . . Fire . . . Aim!: A Case for Applying American Due Process Principles Before Engaging in Drone Strikes*, 24 FL. J. Int. L. 55, 66 (April 2012).

<sup>23</sup> UNOHCHR, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>.

of target selection occurs mostly in secret<sup>24</sup> and typically results in death, with no opportunity for the individual to be informed of charges against them, prepare a defense, and be tried in a competent, independent and impartial court.

### III. International Humanitarian Law is Not Applicable

Under the past three US administrations, the government has adopted policies on the use of lethal force “outside areas of active hostilities,” signifying tacit acknowledgment that strikes are being conducted outside of an armed conflict to which the US is a party.<sup>25</sup> Nevertheless, US policy indicates that the US considers IHL to apply. This aligns with US claims that it is engaged in a global, geographically and temporally limitless non-international armed conflict (NIAC) with Al Qaeda and associated groups.<sup>26</sup> This framing has no legal basis. UN Special Rapporteur Philip Alston reported that the nature of the US conflict with Al Qaeda does not meet the definition of a NIAC. In particular, Alston highlights that Al Qaeda and associated groups are too “loosely linked” to constitute a distinct and identifiable “party.” Often, the link between Al Qaeda and its “associated” groups is tenuous, if not non-existent, and many attacks are conducted by individuals merely inspired by Al Qaeda. Further, the sporadic nature of violence by these groups does not meet IHL’s intensity and duration requirements to establish an armed conflict.<sup>27</sup> According to the International Committee of the Red Cross (ICRC), the concept of a ‘global war on terror’ does not exist in international law. Rather, each individual instance of armed force would need to be legally defined based on the particular facts of that action. Al Qaeda and its “associated” forces do not constitute a “unitary” party. As such, international law cannot conceive of a singular conflict against the separate forces of Al Qaeda, Al Shabaab, AQAP, and the Islamic State in different conflicts in different countries.<sup>28</sup>

### IV. Avenues for Redress

The ICCPR requires the US to provide redress for violations of the rights protected by the ICCPR. Article 2 states that any person whose rights are violated “shall have an effective remedy” provided

---

<sup>24</sup> You Never Die Twice, Reprieve 4 (Dec. 31, 2014), [https://reprieve.org/wp-content/uploads/sites/2/2020/07/Report\\_YouNeverDieTwice\\_2014.pdf](https://reprieve.org/wp-content/uploads/sites/2/2020/07/Report_YouNeverDieTwice_2014.pdf).

<sup>25</sup> See Barack Obama, *Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities* (May 22, 2013); Donald Trump, *Principles, Standards, and Procedures, for US Direct Action Against Terrorist Targets*; Joe Biden, *Presidential Policy Memorandum Governing Direct Action Counterterrorism Operations Outside Areas of Active Hostilities* (June 30, 2023).

<sup>26</sup> Department of Justice White Paper, *Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who is a Senior Operational Leader of Al-Qa’ida or An Associated Force*, (Nov. 8, 2011), <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/dept-white-paper.pdf>; President Joe Biden, Remarks by President Biden on the End of the War in Afghanistan, The White House (Aug. 31 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/31/remarks-by-president-biden-on-the-end-of-the-war-in-afghanistan>.

<sup>27</sup> Special Rapporteur on extrajudicial, summary or arbitrary executions, *Study on Targeted Killings*, Human Rights Council, U.N. Doc A/HRC/14/24/Add.6 (28 May 2010) (by Philip Alston), at 17-18 (citing Geneva Conventions, Additional Protocol II, art. 1(2); Prosecutor v. Tadic, [Appeal on Jurisdiction] Case No. IT-94-I-AR72 (2 Oct. 1995), 35 I.L.M. 32, 54, para. 70 (1996); IACHR, *Juan Carlos Abella v. Argentina*, Report No. 55/97, OEA/Ser.L./V./II.95, doc. 7 rev. 271 para. 151 (1997))

<sup>28</sup> See International Committee of the Red Cross, *The applicability of IHL to terrorism and counterterrorism* (Oct. 1, 2015).

by the violating state.<sup>29</sup> The International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts require “full reparation” for moral and physical injury caused by a rights violation.<sup>30</sup> The UN Basic Principles on the Right to a Remedy state that full and effective reparation includes: “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”<sup>31</sup>

However, there is no avenue in US courts to remedy injury caused by US strikes outside of armed conflict that violate international human rights law. For example, in 2017, the DC Circuit Court of Appeal dismissed Faisal bin Ali Jaber’s suit, which requested a declaration that the US drone strike in Yemen that killed his brother and nephew violated US and international law. The Court ruled that the case raised a “political question” and could not be considered by the judiciary.<sup>32</sup> The US Supreme Court refused to hear the case, leaving virtually no avenue in the US court system to challenge US drone strikes outside of armed conflict.

The US has also largely failed to offer compensation and redress proactively, including through the use of payments on an *ex gratia* basis. While the US does not acknowledge *ex gratia* as a form of compensation or redress, instead describing it as amends, it does provide a route for victims to receive payments—but one the US has almost never used in recent years. For example, the US Congress has authorized \$3 million annually for *ex gratia* payments for civilian victims and survivors of US and partnered operations. Despite the high number of eligible victims and proactive requests from civilian victims and their representatives, the US government made zero payments in 2020 and one payment in 2021, the most recent year for which this information is available. In 2022, US Defense Secretary Lloyd Austin announced the CHMR-AP, which aims to improve how the US prevents and addresses civilian harm.<sup>33</sup> However, despite recognizing systemic flaws in past US investigations, the CHMR-AP does not require new investigations into reports of civilian casualties that occurred in the past, including reports of harm caused by US strikes outside recognized armed conflict. Even where the US military confirms civilian casualties, there is no requirement for commanders to provide any acknowledgment of harm, apology, compensation, or other form of redress.<sup>34</sup> As a result, potentially thousands of civilians and their families may be left without the recognition and amends they are owed.

## V. Suggested Recommendations for the US Government

1. End the program of lethal strikes outside of recognized war zones.

---

<sup>29</sup> International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI) (1966), [Hereinafter, ICCPR], at art. 2(3)(a).

<sup>30</sup> *Responsibility of States for Internationally Wrongful Acts*, Yearbook of the International Law Commission, 2001, vol. II, art. 31 (2001).

<sup>31</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, U.N. G.A. Res.60/147 art. 9 (Dec. 15, 2005).

<sup>32</sup> *Jaber v. Obama*, Case No. 16-5093, US Court of Appeals for the District of Columbia Circuit, 30 June 2017, [https://www.cadc.uscourts.gov/internet/opinions.nsf/55ACB57812F8FC918525814F00517DA6/\\$file/16-5093-1682112.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/55ACB57812F8FC918525814F00517DA6/$file/16-5093-1682112.pdf).

<sup>33</sup> Department of Defense, Civilian Harm Mitigation and Response Action Plan, (Aug. 25, 2022) [Hereinafter, CHMR-AP].

<sup>34</sup> Lara Seligman, *Pentagon’s new civilian casualty plan won’t include reopening past cases*, Politico (Oct. 20, 2022), <https://www.politico.com/news/2022/10/20/pentagon-wont-reopen-past-cases-of-civilian-deaths-00062737>

2. Develop and publish a targeting policy that complies with international law, including specific reference to US commitments under Article 6, Article 14, and Article 2 of the ICCPR and details of how the policy complies with the ICCPR.
3. Promptly strengthen and improve the CHMR-AP's accountability and transparency procedures when US airstrikes result in civilian harm, including:
  - a. Provide clear guidance for Department of Defense personnel on how to conduct thorough investigations that go beyond reviews of internal records, with reference to ICRC Guidance on the matter.<sup>35</sup>
  - b. Provide appropriate amends in all cases where there is a finding of civilian harm, including in cases that have previously been closed with no further action, when a complaint is submitted under the CHMR-AP.
  - c. Ensure that redress including compensation levels appropriately reflect the level of harm caused to families, including death and injury of civilians, psychological harm, physical injury, loss of livelihood or the ability to work, and damage to property, as noted above.
  - d. Commit to providing reasons in writing to the complainant and their representatives where there is a finding of no civilian harm caused by US action and establish an appeals process by which complainants can submit an appeal to a more senior body, which is independent from the command responsible for the military action and has the authority to review the decision.
4. Accede to the First Optional Protocol to the ICCPR, allowing individual complaints.

## **VI. Recommended Questions**

1. Describe with specificity the legal and policy standards to which the Biden administration adheres in its extraterritorial use of lethal force outside recognized armed conflict, including application of international human rights law standards.
2. Provide the identities and numbers of individuals killed or injured by the US government's use of lethal force outside recognized armed conflict, including the number of civilians.
3. Describe the steps the US government has taken to ensure accountability and redress for individuals harmed in US operations outside the context of recognized armed conflict. Where steps towards accountability and redress have been taken, list the number of incidents, a description of what occurred, and the accountability and/or redress measures taken in each case. Where steps towards accountability and redress have not been taken, describe how the US will ensure accountability and redress retrospectively, including but not limited to the application of new policy tools described in Civilian Harm Mitigation and Response Action Plan (CHMR-AP).
4. Describe what steps, if any, the US is taking to ensure that lethal strikes conducted by the Central Intelligence Agency (CIA) meet international standards for transparency, accountability, and redress where appropriate. Describe what steps the CIA has taken, if any, to investigate reports of unlawful attacks, or reports of civilian harm.

---

<sup>35</sup> Noam Lubell, et al., *Guidelines on Investigating Violations of International Humanitarian Law*, International Committee of the Red Cross (Sep. 2019).



## Arbitrary Detention and Torture at Guantánamo

### I. Overview and Current Population

On January 11, 2023, Guantánamo entered its 22nd year. Over the last two decades, Guantánamo has detained a total of 779 men and boys – all Muslim – the overwhelming majority without any criminal charges, violating Articles 9 and 26 of the ICCPR.<sup>36</sup> Nine men have died at Guantánamo, and 30 remain captive today.<sup>37</sup> Many were tortured by the CIA or US military before being brought to Guantánamo, as well as tortured at Guantánamo, in violation of the Article 7 prohibition on torture.<sup>38</sup>

Various administrations have worked to reduce the population at Guantánamo. President George W. Bush transferred 532 detainees out of Guantánamo. President Barack Obama transferred 198 detainees, and President Donald Trump one.<sup>39</sup> As of September 2023, President Biden has transferred ten men during his term.<sup>40</sup>

Of the 30 detainees who remain detained at the time of this submission, sixteen have been cleared for transfer, under this or previous administrations, by a process called the Periodic Review Board (PRB). They include: eleven Yemenis; one stateless ethnic Rohingya; and one each from Tunisia, Libya, Somalia, and Kenya. Three detainees have not yet been cleared by the PRB, though that does not in any way make their continued detention justifiable; each continues to be held without charge or trial. Eleven are involved in the military commissions in some respect; nine men are actively being prosecuted in three cases, which violate Article 14, the right to a fair trial, including because the government has not sufficiently prohibited – or otherwise declined to use in any fashion – evidence tainted by torture.<sup>41</sup> One detainee pled guilty in the commissions in 2022 and is awaiting sentencing, and one other was convicted in 2008 and is serving a life sentence that he is now challenging, in part because the factual record on which his sentence was determined included information tainted by torture. Notably, all of these men have been detained for more than fifteen years and some for more than twenty.

In 2014, the Committee last reviewed the US and raised the continued detentions at Guantánamo as an issue of concern.<sup>42</sup> Many of the same concerns persist: conditions of confinement, torture

---

<sup>36</sup> Hina Shamsi, *20 Years Later, Guantánamo Remains a Disgraceful Stain on Our Nation. It Needs to End*, ACLU, Jan. 11, 2022 <https://www.aclu.org/news/human-rights/20-years-later-guantanamo-remains-a-disgraceful-stain-on-our-nation-it-needs-to-end>

<sup>37</sup> *The Guantanamo Docket*, N.Y. Times (Aug. 11, 2023), <https://www.nytimes.com/interactive/2021/us/guantanamo-bay-detainees.html>.

<sup>38</sup> Shamsi, *supra* note 38.

<sup>39</sup> *Supra* note 39.

<sup>40</sup> Carol E. Lee & Courtney Kube, *Newest transfer brings Guantanamo detainee population down to 30; Biden administration wants to cut it still more*, NBC News (Apr. 20, 2023), <https://www.nbcnews.com/politics/national-security/transfer-drops-guantanamo-population-30-biden-wants-to-close-rcna80478>.

<sup>41</sup> *Some Key Facts On Military Commissions v. Federal Courts*, Human Rights First (Nov. 22, 2016), <https://humanrightsfirst.org/library/some-key-facts-on-military-commissions-v-federal-courts/>.

<sup>42</sup> List of issues in relation to the fourth periodic report of the United States of America (CCPR/C/USA/4 and Corr. 1), adopted by the Committee at its 107th session (11–28 March 2013), ¶ 17

and its impact across the detention regime, lack of access to justice and remedy, and experiences of men post-transfer.

## II. Current Conditions that Constitute Torture and Other Ill-treatment

In her June 2023 report, the SRCT found that current conditions at Guantánamo Bay amount to “ongoing cruel, inhuman, and degrading treatment...and may also meet the legal threshold for torture,” a violation of Article 7 of the ICCPR.<sup>43</sup> The SRCT’s assessment encompasses several factors that affect the detainee population and compound the effects of torture and other ill-treatment to which they have been subjected. These include surveillance, the unlawful use of force and restraints, and standard operating procedures that are inconsistent in both substance and implementation, the latter due in part to inadequate training of guards. Structural deficiencies include both inadequate physical and mental healthcare, insufficient access to family, including meaningful calls and visits, and arbitrary detention featuring violations of fair trial and due process rights.

Prior to being transferred to Guantánamo, some detainees were subjected to torture and/or enforced disappearance. All have been subjected to cruel, inhuman, or degrading treatment or punishment at the detention center. Additionally, some men have been on hunger strike to protest their conditions and subjected to force feeding.<sup>44</sup> In 2011, Juan Mendez, the then UN Special Rapporteur on Torture, wrote that he “considers the practice of indefinite detention, other conditions applied to them 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>45</sup> None of these men have been provided effective remedy or rehabilitation, a violation of Article 2 of the ICCPR.

Detainees suffer from lasting effects of physical and psychological torture including traumatic brain injury, scars, headaches, musculoskeletal pains, hearing loss, visual problems, neurological damage, nightmares, insomnia, memory loss, fatigue, anxiety, depression, and post-traumatic stress disorder (PTSD).<sup>46</sup> At Guantánamo, the aging and ailing detainee population’s health is

---

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2FPPrICAqhKb7yhsijKy20sgGcLSyqccX0g1nk3FW%2By259hAHCqEMzpDNIQ9sSE6eSLqy1itbTJ2ydz%2BMwU%2BXhqgK4Tthl2nKE6Y0td0CEi9EXxRAXwu8%2B4HML7>

<sup>43</sup> Technical Visit, *supra* note 2, ¶ 49

<sup>44</sup> Carol Rosenberg, *Defense Lawyers Move to Block Force-Feeding of Guantánamo Prisoner*, N.Y. Times (Jul. 12, 2021), <https://www.nytimes.com/2021/07/12/us/politics/guantanamo-prisoner-force-feeding.html>; *Guantánamo Prisoners on Hunger Strike Say Guards Threatened to Kill Them by Stopping Force-Feeding*, Democracy Now! (Oct. 19, 2017), [https://www.democracynow.org/2017/10/19/guantanamo\\_detainees\\_on\\_hunger\\_strike\\_say](https://www.democracynow.org/2017/10/19/guantanamo_detainees_on_hunger_strike_say); Jane Sutton, *U.S. sending more medics to Guantánamo as hunger strike grows*, Reuters (Apr. 22, 2013), <https://www.reuters.com/article/us-usa-guantanamo/u-s-sending-more-medics-to-guantanamo-as-hunger-strike-grows-idUSBRE93L0XT20130422>.

<sup>45</sup> Juan E. Méndez, 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 (Oct. 3, 2013) (available at: <https://www.ohchr.org/en/statements/2013/10/statement-united-nations-special-rapporteur-torture-expert-meeting-situation>).

<sup>46</sup> *Effects of Torture*, Center for Victims of Torture, <https://www.cvt.org/resources/effects-of-torture/>.

compounded by severe, prolonged, and harmful health and mental health problems from indefinite detention and lack of adequate care.<sup>47</sup>

In response to the SRCT's report, the US government stated that "[Detainees] receive specialized medical and psychiatric care...."<sup>48</sup> However, deficiencies in Guantánamo's medical care system have been extensively documented by independent medical experts,<sup>49</sup> former military personnel,<sup>50</sup> and human rights organizations.<sup>51</sup> Detainees' medical histories often lack information about trauma and torture, and medical services are hampered by insufficient staffing and inadequate equipment, including malfunctioning imaging machines. US law prohibits the transfer of Guantánamo detainees to the US for any reason, including medical emergencies.<sup>52</sup>

In June 2022, Guantánamo's Chief Medical Officer testified that primary healthcare was easily accessible to detainees, but specialized procedures or treatments were not.<sup>53</sup> In February 2023, the current Senior Medical Officer at Guantánamo testified he was treating detainees for "active issues," was never informed of the exact torture techniques to which his patients were subjected, that patient records exclude information from their time in CIA black sites, and that he was not trained in treating survivors of torture nor "on how to treat Muslim men."<sup>54</sup> Lack of trauma-informed, culturally competent care is particularly concerning as for many detainees, cultural norms were weaponized as a form of torture.

Recent statements from UN experts and the UN Working Group on Arbitrary Detention note "denial of medical attention,"<sup>55</sup> as well as "systematic shortcomings in medical expertise,

---

<sup>47</sup> *The Men Who Remain in Guantánamo*, Center for Victims of Torture, <https://www.cvt.org/what-we-do/advocating-for-change/legacy-of-us-torture/the-men-who-remain-in-guantanamo/>.

<sup>48</sup> US Response to Technical Visit, *supra* note 3.

<sup>49</sup> *Closing Guantanamo: Ending 20 Years of Injustice*, Hearing Before the S. Comm. on the Judiciary, 117th Cong. (Dec. 7, 2021) (statement for the record of independent medical experts), [https://www.cvt.org/wp-content/uploads/Medical-Experts-Statement\\_12-7-SJC-GTMO-Hearing\\_FINAL.pdf](https://www.cvt.org/wp-content/uploads/Medical-Experts-Statement_12-7-SJC-GTMO-Hearing_FINAL.pdf)

<sup>50</sup> *Closing Guantánamo: The National Security, Fiscal, and Human Rights Implications: Hearing Before the S. Comm. on the Judiciary*, 113th Cong. (Jul. 24, 2013) (testimony of Brigadier General (Retired) Stephen Xenakis), <https://www.judiciary.senate.gov/imo/media/doc/7-24-13XenakisTestimony.pdf>; Carol Rosenberg, *Guantánamo Bay as Nursing Home: Military Envisions Hospice Care as Terrorism Suspects Age*, N.Y. Times (Apr. 27, 2019), <https://www.nytimes.com/2019/04/27/us/politics/guantanamo-bay-aging-terrorism-suspects-medical-care.html>.

<sup>51</sup> *DEPRIVATION AND DESPAIR: The Crisis of Medical Care at Guantánamo*, Center for Victims of Torture and Physicians for Human Rights, June 26, 2019, [https://www.cvt.org/wp-content/uploads/2023/06/2019\\_phr-medical-report\\_v5\\_0.pdf](https://www.cvt.org/wp-content/uploads/2023/06/2019_phr-medical-report_v5_0.pdf)

<sup>52</sup> National Defense Authorization Act for Fiscal Year 2023, H.R. 7776, 117th Cong. § 1031 (2022) <https://www.congress.gov/bill/117th-congress/house-bill/7776/text>

<sup>53</sup> Umar A Farooq, *Guantanamo detainee used as 'prop' for torture training losing battle for medical care*, Middle East Eye (Oct. 7, 2022), <https://www.middleeasteye.net/news/ailing-guantanamo-detainees-legal-battle-medical-care>.

<sup>54</sup> Carol Rosenberg (@carolrosenberg), X (Feb. 28, 2023, 9:01 AM), <https://twitter.com/carolrosenberg/status/1630592596710916097>.

<sup>55</sup> Opinion No. 66/2022 of the U.N Working Group on Arbitrary Detention concerning Zayn al-Abidin Muhammad Husayn (Abu Zubaydah) (United States of America, Pakistan, Thailand, Poland, Morocco, Lithuania, Afghanistan and the United Kingdom of Great Britain and Northern Ireland), <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session95/A-HRC-WGAD-2022-66-Advance-Edited-Version.pdf>.

equipment, treatment and accommodations,”<sup>56</sup> which violate detainees' right to health. In April 2023, the International Committee of the Red Cross' head of delegation for the United States and Canada visited Guantánamo. He subsequently issued a public statement, in which he explained that he was “particularly struck by how those who are still detained today are experiencing the symptoms of accelerated ageing, worsened by the cumulative effects of their experiences and years spent in detention. More than 20 years later, their situation remains unresolved.”<sup>57</sup>

### III. Access to Justice

#### *Habeas corpus litigation*

The US Supreme Court ruled in 2008 that Guantánamo detainees have a right to habeas corpus—to challenge their detention in US federal court—but in practice petitioners often wait many years to even reach a hearing. The “global war on terror” paradigm that the US government has used to justify endless detention and global use of lethal force has also imposed substantial obstacles to courts declaring the indefinite detentions unlawful.<sup>58</sup> Notably, the US government continues to contest habeas petitions, including in cases of individuals that the government itself has cleared for release.<sup>59</sup> Even favorable rulings in federal courts have not resulted in the immediate release of detainees.

#### *Unfair Trials*

President Bush established the Guantánamo military commissions through a Military Order on November 13, 2001, to prosecute specific non-citizen terrorism suspects outside of the US federal legal system, violating Articles 14 and 26 of the ICCPR.<sup>60</sup> Out of the 779 individuals detained at Guantánamo, only 32 have faced charges in the commissions. Among these cases, charges were dropped in 12 instances and remained in others. None of these individuals have been given a trial by an independent tribunal that meets international fair trial standards. The military commission system does not meet the due process standards set forth in the ICCPR and, decades later, have failed at providing justice.

In 2014, the Human Rights Committee recommended that the US government “should...ensure that any criminal cases against detainees held in Guantánamo...are dealt with through the criminal justice system rather than military commissions, and that those detainees are afforded the fair trial

---

<sup>56</sup> Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, et al, Remarks of Seven Special Procedures Regarding the Continuing Deterioration in the Physical and Mental Health of Detainee Mr. Nashwan al-Tamir at Guantanamo (Jan. 11, 2023) (available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27797>).

<sup>57</sup> *Guantanamo: Detaining authorities must adapt to the needs of a rapidly ageing population*, ICRC (Apr. 21, 2023), <https://www.icrc.org/en/document/guant%C3%A1namo-detaining-authorities-must-adapt-needs-rapidly-ageing-population>.

<sup>58</sup> Shayana Kadidal, *Cutting Edge Issues in Year 20 of the Guantánamo Habeas Litigation*, Just Security (Jan. 11, 2022), <https://www.justsecurity.org/79803/cutting-edge-issues-in-year-20-of-the-guantanamo-habeas-litigation/>

<sup>59</sup> *Man Cleared for Release from Gitmo Presses Judge to Act on Long Stalled Case as Medical Condition Worsens*, Center for Constitutional Rights (Nov. 7, 2022), <https://ccrjustice.org/home/press-center/press-releases/man-cleared-release-gitmo-presses-judge-act-long-stalled-case>

<sup>60</sup> Press Release, White House Office of the Press Secretary, President Issues Military Order (November 13, 2001) (available at <https://www.mc.mil/Portals/0/MilitaryOrderNov2001.pdf>).

guarantees enshrined in Article 14 of the Covenant.”<sup>61</sup> That is no longer possible – because, as noted above, US law prohibits detainees from being transferred to the US – nor does it serve the interests of justice to start from scratch a new criminal trial 22 years after the September 11 attacks. And so, the fundamentally broken military commissions continue to operate.

Of the 30 detainees remaining at Guantánamo, eleven are involved in the commissions. One detainee has pled guilty and is awaiting sentencing; one has been convicted and is serving a life sentence; nine are being prosecuted in three active cases; and six of the nine have been charged with crimes that carry a maximum sentence of death. This includes defendants in *United States v. Khalid Sheikh Mohammed, et al.*, the prosecution of the detainees alleged to be most responsible for the September 11, 2001, attacks.

The failure of the commissions is attributed to several factors. First, the Bush administration established an untested system with unfamiliar rules and personnel, resulting in ongoing disputes and uncertainty over the applicability of the US Constitution, including its Due Process Clause, at Guantánamo. Second, the use of torture has profoundly impacted the proceedings, with efforts to maintain secrecy about US torture leading to delays and related issues. Moreover, evidence tainted by torture—which the government has and continues to offer, in violation of international law, including ICCPR Article 14—complicates any potential guilty verdicts.<sup>62</sup>

In a 2021 US Senate Judiciary Committee hearing, Brigadier General John Baker (Ret.), former Chief Defense Counsel for the Military Commissions Defense Organization (MCDO), stated “At the heart of the commissions’ problems is their original sin, torture. More specifically, the government’s fear that the truth will become public is what has most undermined the commission processes.” Gen. Baker added that after 20 years, none of the active cases have trial dates, and “trial is further away today than it was when I joined the MCDO in 2015.”<sup>63</sup>

The US government’s use of torture violates Article 7 and a *jus cogens* norm of international law. In doing so, it also violated the rights of victims of the September 11, 2001 attacks. The SRCT found torture to be the “most significant barrier to fulfilling victims’ rights to justice, accountability, and transparency.” She noted torture was “a betrayal of the rights of victims.”<sup>64</sup>

The failure of the commissions is increasingly evident and there have been increased calls for plea agreements as a path to judicial finality.<sup>65</sup> In March 2022, the US government entered into plea

---

<sup>61</sup> Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsijKy20sgGcLSyqccX0g1nnMFNOUOQBx7X%2BI55yhIwIkDk6CF00Adiqu2L8SNxDB4%2BVRPkf5gZFbTOO3y9dLrUeUaTbS0RrNO7VHzbyxGDJ%2F>

<sup>62</sup> *The Failed Military Commissions*, Center for Victims of Torture, <https://www.cvt.org/what-we-do/advocating-for-change/legacy-of-us-torture/the-failed-military-commissions/>.

<sup>63</sup> *Closing Guantanamo: Ending 20 Years of Injustice, Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Dec. 7, 2021) (testimony of Brigadier General (Retired) John G. Baker), <https://www.judiciary.senate.gov/imo/media/doc/Baker%20Testimony2.pdf>.

<sup>64</sup> Technical Visit, *supra* note 2, ¶10

<sup>65</sup> Theodore B. Olson, *The U.S. Must Resolve the Cases of the Guantanamo Detainees*, Wall Street Journal (Feb. 2, 2023), <https://www.wsj.com/articles/the-u-s-must-resolve-the-cases-of-the-guantanamo-detainees-terrorist-attack-court-justice-911-defendants-11675349137>; Leila Murphy, *For 9/11 Families, Plea Deals Are the Only Path Forward*, Just Security (Feb. 7, 2023), <https://www.justsecurity.org/85045/for-9-11-families-plea-deals-are-the->

negotiations with defense counsel in *United States v. Khalid Sheikh Mohammed, et al.*,<sup>66</sup> In meetings with victim family members in May 2023, the government reported that there had been no response concerning policy advice they had asked of the Biden administration regarding proposed conditions of confinement. As a result, the government would pursue a two-pronged strategy: returning to pre-trial litigation, while at the same time continuing to engage with defense attorneys concerning potential pleas. In September 2023, the Biden administration rejected the proposed conditions of confinement that defense counsel proposed 17 months earlier.<sup>67</sup> This rejection came without any attempt on the part of the administration in the intervening months to create a process that could advance plea negotiations.

#### IV. Transfers and Post-Transfer Violations

In 2014, the Human Rights Committee recommended “The State party should expedite the transfer of detainees designated for transfer.”<sup>68</sup> The US government has reduced the population significantly since the last review, however, 30 men remain detained. The majority are cleared for release, and all have been detained for more than fifteen years.

Of the detainees cleared for release, many cannot be repatriated to their home countries such as Yemen, Somalia, Libya, Syria, and Afghanistan because of a Congressional ban on transfers to those countries.<sup>69</sup> Additionally, Congress has prohibited the transfer of any Guantánamo detainees to the US. Transfers require the assistance of the international community. The Biden administration needs to work with third countries to negotiate the resettlement of these men and ensure that their human rights will be respected.

It is official US policy not to transfer a person to a country if it determines that it is more likely than not that the individual could be tortured. This policy is consistent with US obligations under the Convention Against Torture.<sup>70</sup> However, despite assurances received from destination countries, some transferred detainees have experienced further deprivation of their human rights and some have been subjected to continued arbitrary detention and torture and other ill-treatment.

Many transferred detainees are without legal status in third countries, affecting their ability to access healthcare, travel, employment opportunities, and other social services, which they are entitled to under international law. Even those men who are repatriated to their home countries

---

[only-path-forward/](#); Hina Shamsi, Rita Siemion, Scott Roehm, Wells Dixon, Rev. Ron Stief and Colleen Kelly, *Toward a New Approach to National and Human Security: Close Guantanamo and End Indefinite Detention*, Just Security (Sep. 11, 2020), <https://www.justsecurity.org/72367/toward-a-new-approach-to-national-and-human-security-close-guantanamo-and-end-indefinite-detention/>

<sup>66</sup> John Ryan, *U.S. Government Initiates Plea Talks With 9/11 Defendants*, Lawdragon (Mar. 15, 2022), <https://www.lawdragon.com/news-features/2022-03-15-us-government-initiates-plea-talks-with-9-11-defendants>

<sup>67</sup> Charlie Savage & Carol Rosenberg, *Biden Rejects Proposed Conditions for Plea Deals in Sept. 11 Case*, N.Y. Times (Sep. 6, 2023) <https://www.nytimes.com/2023/09/06/us/sept-11-trial-plea-biden-guantanamo.html?smid=nytcore-ios-share&referringSource=articleShare>

<sup>68</sup> *Supra* note 61.

<sup>69</sup> *Supra* note 54, at § 1033.

<sup>70</sup> *Guantánamo Detainee Transfer Policy and Recidivism: Hearing Before the House Subcommittee on Oversight and Investigations of the Committee on Armed Services*, 114th Cong. 42 (2011) (statement of Ambassador Daniel Fried, Special Envoy for the Closure of the Guantánamo Bay Detention Facility), (available at <https://www.govinfo.gov/content/pkg/CHRG-112hrg67391/html/CHRG-112hrg67391.htm>).

face major obstacles because of the stigma of having been detained at Guantánamo, and lack of proper medical care and rehabilitation services. Some former detainees have reported harassment and monitoring by local police and live in constant fear of further detention and ill-treatment. Some detainees experience further arbitrary detention or are forcibly disappeared. This includes a former detainee transferred to the United Arab Emirates in 2017 where he was held in solitary confinement, severely mistreated and currently remains in incommunicado detention.<sup>71</sup>

In September 2022, the Biden administration appointed a Senior Representative for Guantánamo Affairs in the Bureau of Counterterrorism in the State Department. Per the SRCT, the Senior Representative “is not as senior position as the prior Special Envoy for Guantánamo Detention Closure, and that the Ambassador did not visit the men at Guantánamo until seven months into her tenure, bringing into question whether her office is undertaking an appropriately detainee-centered and comprehensive approach.”<sup>72</sup> It is the mandate of this office to monitor the situation of former detainees as well as negotiate the transfers of men currently detained.

Despite the appointment of a dedicated office in the Department, these post-transfer issues are ongoing, as shown in a recent transfer to Algeria in 2023 of Saeed Bakhouch. Despite assurances, the Algerian authorities have subjected Bakhouch to conditions that constitute torture or other ill-treatment in pre-trial detention and are proceeding with charges allegedly based on information provided by the US government.<sup>73</sup> As such, both the US and Algeria are in violation of Article 7. Furthermore, the US may be in violation of *non-refoulement* by transferring a detainee to a country where his rights would likely have been violated. Despite being made aware of Bakhouch’s current medical issues, abuse, and ongoing detention by his US lawyer, the US government has shown disregard and has thus far been unable to effectively intervene on Bakhouch’s behalf.

Ensuring detainees are not further exposed to human rights violations upon transfer and providing adequate support for reintegration is the responsibility of the US government. As the SRCT noted in her recent report, there are concrete international law obligations on the US government before, during and after the transfer of detainees. She held that “the obligations of the State in transfer are of a more specific and compelling form when the individual concerned has been tortured or ill-treated in the custody of the transferring State.”<sup>74</sup>

## V. Lack of Redress and Accountability

Under Article 2 of the ICCPR, the US is obligated to provide remedy, redress, and rehabilitation to those whose rights it has violated. Presently, there is no judicial, administrative or legislative mechanism to provide remedy to those currently or formerly detained. The existing medical care at Guantánamo lacks rehabilitation services for survivors of torture. Despite admissions by the US, there has been no meaningful justice for the international law crimes and systematic human rights violations that US officials committed. The Senate Intelligence Committee’s full report on CIA

---

<sup>71</sup> Noa Yachot, *Exclusive: many resettled Guantánamo detainees in legal limbo, analysis shows*, Guardian, (Jan. 9, 2022), <https://www.theguardian.com/us-news/2022/jan/09/guantanamo-resettled-no-legal-status>.

<sup>72</sup> Technical Visit, *supra* note 2, at ¶56.

<sup>73</sup> Letter from Coalition of Non-Governmental Organizations to Ambassador Kaidanow, US Department of State Senior Representative for Guantánamo Affairs (July 26, 2023), <https://ccrjustice.org/organizational-sign-letter-state-department-re-saeed-bakhouch-former-gitmo-detainee-imprisoned>.

<sup>74</sup> Technical Visit, *supra* note 2, at ¶ 54

torture remains classified, years after the limited investigations conducted into those crimes were closed without charges being brought against anyone.

## **VI. Suggested Recommendations for the US Government**

1. Transfer without delay the 19 men who are not charged with a crime, beginning with those cleared for release.
2. Pursue plea agreements with detainees the government is prosecuting or will prosecute.
3. Quickly develop and implement a plan to provide comprehensive, trauma-informed, culturally competent medical care to detainees.
4. Conduct oversight and monitoring of diplomatic assurances and repatriation and resettlement practices to ensure compliance with international human rights law.
5. Provide effective remedies and redress, including adequate compensation and rehabilitation.
6. Adopt a formal policy not to use, or defend use of, evidence in any way tainted by torture in any proceeding for any purpose.

## **VII. Recommended Questions**

1. What efforts is the US government making to resettle or repatriate the 16 cleared detainees?
2. What steps is the US taking to end the fundamentally broken military commissions?
3. Will the US adopt a policy not to use, or defend use of, evidence in any way tainted by torture in any proceeding for any purpose?
4. What measures have been taken to comprehensively and effectively investigate and prosecute the torture and cruel, inhuman or degrading treatment of detainees in US custody since September 11, 2001?
5. What measures is the United States taking to ensure that torture victims are ensured effective remedy – including rehabilitation – and justice?