

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL
USA 1/2015:

15 January 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/6 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the role of health professionals in the Central Intelligence Agency (CIA) interrogation program, between 2001 and 2009, and the subsequent lack of investigation into these allegations.**

On 9 December 2014, the US Senate Select Committee on Intelligence (SSCI) released the summary, conclusions and executive summary of its report on the CIA interrogation practices. This report concluded that, between 2001 and 2009, US high ranking public officials promoted, encouraged and allowed the practice of torture.

On 9 and 11 December 2014, the UN independent experts on counter terrorism and torture, respectively, publically welcomed the release of these findings and called for immediate action to avoid impunity and ensure accountability for a crime of universal jurisdiction.

We are now writing to your Excellency's Government to raise the specific issue of the role of health professionals from the CIA Office of Medical Services (OMS) in the interrogation program of the Agency.

According to the information contained in the summary of the SSCI report:

CIA health professionals played a central role in the CIA interrogation programme to an extent not understood or seen before. These health professionals designed, directed and profited from the CIA interrogation program; intentionally inflicted harm on detainees; enabled the U.S. Department of Justice (DoJ) lawyers to treat the interrogation practices as safe, legal and effective; engaged in potential human

subjects research to provide legal cover for torture; monitored detainee torture and calibrated levels of pain; evaluated and treated detainees for purposes of torture; conditioned medical care on cooperation with interrogators; and failed to document physical and/or psychological evidence of torture.

The role and conduct of these health professionals, which included psychologists, psychiatrists, and physicians assistants, would not only imply a gross violation of medical and professional ethics but also violations of domestic and international law given the seriousness of the crime of torture, which is subject to universal jurisdiction.

1. *Designing, directing and profiting from CIA torture program*

Two CIA contract psychologists designed the so-called ‘enhanced interrogations techniques’ in 2002, a program that proposed techniques which included waterboarding, stress-positions, slapping, isolation, sleep deprivation, dietary manipulation, sensory deprivation and overload, and sexual humiliation. In addition, the contractors personally applied the “enhanced interrogation techniques” to detainees, conducted psychological evaluations of detainees whom they would torture, trained other interrogators in the use of torture, and recommended what techniques should be employed on which detainees.

According to the SSCI summary report, in January 2003, a CIA contract psychologist travelled to a CIA black site in Poland, where he evaluated a detainee and recommended the use of waterboarding to be administered by himself and his colleague. In June 2003, the two contract psychologists returned to Poland and administered waterboarding and other techniques to another detainee.

The two CIA contract psychologists did not report to the OMS. Nonetheless, in a 2003 memorandum for the CIA Inspector General, one OMS staff member expressed concern about the conflict of interest where the same individuals, the contract psychologists acting as interrogators, approved and applied the enhanced interrogation technique, judged both its effectiveness and detainee resilience, and implicitly proposed continued use of the technique.

These contract psychologists were the only officers authorised to use the technique at the time, and reportedly worked at a compensation of 1,800 USD/day, or four times that of interrogators who could not use the technique.

2. *Intentionally inflicting harm on detainees*

It transpires from the US Senate report that CIA health professionals intentionally inflicted harm on detainees. This included making adjustments to the physical state of detainees in order to permit continued or increased harm, and carrying out clinical procedures for non-medical reasons. During the program, it is documented that five detainees were subject to rectal rehydration or rectal feeding, and three others were threatened with the procedure.

In March 2003, a detainee at the Salt Pit in Afghanistan was subjected to rectal rehydration at least twice, without a determination of medical need. The chief of interrogations later characterised the procedure as illustrative of the interrogator's "total control over the detainee". A medical officer declared the procedure helped "clear a person's head" and as "effective in getting [the detainee] to talk".

Medical officers also engaged in the rectal force-feeding of three detainees partaking in a hunger-strike. It is reported that one detainee who engaged in hunger strikes between March 2004 and September 2006 accepted nasogastric and IV feeding and was initially allowed to infuse fluids and nutrients himself. Nevertheless, after three weeks, the CIA opted to rectally force-feed him with an oral nutrition product and his own pureed lunch to eliminate "unnecessary conversation". The SSCI summary states that the detainee's lunch tray of hummus, pasta with sauce, nuts and raisins was 'pureed' and rectally infused. According to CIA records, the detainee was "very hostile" to rectal feeding.

In our expert opinion, and that of other experts, rectal hydration is almost never practiced in medicine because oral and intravenous routes of fluid administration are more effective. Moreover, there is no medical reason to use rectal hydration or nutrition since the rectum is an inefficient way to absorb nutrients.

In addition, it is documented that medical officers routinely partook in rectal exams with "excessive force". One detainee was diagnosed with "chronic haemorrhoids, an anal fissure, and symptomatic rectal prolapse" following a rectal exam. In a February 2004 email, one medical officer boasted about using the largest Ewal tube they had.

3. Engaging in potential human subjects experimentation to provide legal cover for torture

From the SSCI summary it can be inferred that the OMS officers played an active role in determining, along with the DoJ lawyers, what techniques would be considered authorised for the CIA to employ. The 2004 OMS Draft Guidelines stated "in order to best inform future medical judgments and recommendations, it is important that every application of the waterboard be thoroughly documented". The OMS personnel analysed data previously collected from the detainees during torture to make generalised conclusions about the techniques. In 2004 and 2005, this data and analysis was provided to the DoJ's Office of Legal Counsel to determine what techniques and applications would be legitimate under their interpretation of U.S. laws.

On at least two occasions, CIA personnel expressed concerns that this process would amount to human experimentation. Similarly, on 11 April 2005, OMS personnel expressed such concern when stating that the "OMS did not review or vet these techniques prior to their introduction, but rather came into this program with the understanding... that they were already determined as legal, permitted and safe. We see this current iteration as a reversal of that sequence".

However, despite these concerns, the 2005 Office of Legal Counsel memos (known as the Bradbury memos) reveal that the final determinations on the legality and safety of the techniques relied heavily on OMS data and analysis.

4. *Monitoring detainees torture and calibrating the level of pain*

It has been documented that CIA health professionals played a central role in monitoring the “enhanced interrogations techniques” and calibrating the level of pain inflicted to ensure they did not reach ‘unacceptable levels’.

It is documented that one detainee, captured in Pakistan and relocated to Thailand in March 2002, was subjected to a range of coercive techniques, despite having suffered a gunshot wound, including forced nudity, shackling, sleep deprivation, and isolation. On 4 August 2002, the detainee was waterboarded for the first time in the presence of medical officers. According to the summary, the waterboard lasted over two-and-a-half-hours, during which time the detainee coughed, suffered “involuntary spasms of the torso and extremities” and vomited, despite not having eaten for 10 hours. In an email to the OMS leadership, a medical officer described the vomiting as “surprising and disturbing” and stated a plan to only feed the detainee with an oral nutrition product for a while. In 2007, the then CIA director informed the U.S. Select Senate Committee on Intelligence that the detainee’s diet had been changed because he was recovering from surgery.

The detainee was waterboarded at least 83 times in August 2002 alone, and continued to vomit after the waterboarding had been discontinued. An OMS email dated 6 March 2003 states that the detainee “became completely unresponsive, with bubbles rising through his open, full mouth” during one waterboarding session. According to CIA records, the detainee remained unresponsive until his interrogators administered him xyphoid at which point he regained consciousness and expelled large amounts of liquid.

On 13 March 2003, a medical officer objected when interrogators planned the detainee’s fourth waterboarding session in a 24-hour period. While on-site personnel were awaiting formal authorisation, the chief base instructed the medical officer not to directly contact CIA headquarters through the CIA’s classified internal email system, to avoid establishing “grounds for further legal action”.

5. *Evaluating and treating detainees for purposes of torture*

The SSCI summary report documents that OMS medical officers provided clearance for CIA detainees to be subjected to torture. In separate cases, two detainees underwent psychological and medical assessments upon arrival at their respective detention sites, clearing them for the proposed plan of interrogations.

In April 2003, two detainees suffered a broken foot while trying to escape. In April 2003, a CIA physician assistant recommended the detainees avoid standing for a couple of weeks. On 24 April 2003, CIA headquarters reviewed x-rays of the detainees’ injuries and recommended no weight bearing and the use of crutches for three months.

Shortly after, on 12 May 2003 another CIA physician assistant, who had not been involved in previous examinations, determined they were “sufficiently healed to allow being placed in the standing sleep deprivation process”. An OMS medical officer concurred, and sleep deprivation for the two detainees commenced soon thereafter.

Moreover, medical officers used medical treatment as a means for enabling torture to continue. One detainee was given blood thinner and spiral ace bandages after experiencing swelling in his lower legs after 54 hours of being shackled in the standing position. After the sleep deprivation was continued in the sitting position until the swelling subsided, the detainee was given more blood thinner and returned to the standing position and the sleep deprivation extended to 102 hours. After four hours sleep, the detainee was subjected to an additional 52 hours sleep deprivation, after which CIA Headquarters informed interrogators that eight hours was the minimum rest period between sleep deprivation sessions.

The same detainee had previously been subjected to nudity, dietary manipulation, insult, slaps, abdominal slaps, attention grasps, facial holds, walling, stress positions and water dousing with 44 degree Fahrenheit (6.67 degree Celsius) water for 18 minutes. He experienced an oedema on his head due to walling, abrasions on his neck, and blisters on his ankles from shackles. When asked about the possibility that detainees subjected to standing sleep deprivation could suffer from oedema, OMS doctors informed the DoJ attorneys that it was not a problem as the CIA could “adjust shackles or [the] method of applying the technique as necessary to prevent oedema, as well as any chafing or over-tightness from the shackles”.

On 12 March 2003, a medical officer monitoring the waterboarding of a detainee requested that saline be used instead of water. During the session, the detainee ingested water to the point that the “abdomen was somewhat distended and he expressed water when the abdomen was pressed”. According to the SSCI report, while the medical officer indicated that he was not concerned about the regurgitated gastric acid damaging the detainee’s oesophagus as the detainee’s gastric contents were so diluted by water. In turn, he expressed concern about water intoxication and dilution of electrolytes, which can lead to death, and requested that the interrogators use saline in future waterboarding sessions. The officer later wrote to OMS saying that “in the new techniques we are basically doing a series of near drownings”.

6. *Conditioning medical care on cooperation with interrogators*

In certain cases, from the SSCI summary report it can be concluded that medical care was conditioned on detainee cooperation with interrogators.

Before August 2002, while in the custody of the Federal Bureau of Investigation (FBI), one detainee routinely received medical care, including for the gunshot wound he sustained during capture. Once the CIA assumed control, however, medical care was withheld, despite the risk of wound infection. CIA headquarters indicated the interrogation team that the interrogation would take precedence over preventive medical

procedures. On 10 August 2002, the medical officer at the site acknowledged that the detainee's medical condition was likely to decline to an 'unacceptable level'. Five days later, an email to OMS stated that the medical officer was providing "absolute minimum wound care", and that the detainee "has had no opportunity to practice any form of hygienic self-care". The email also states that "the physical nature of this phase dictates multiple physical stresses...and nutrition is bare bones".

Subsequently, after one of the detainee's eyes began to deteriorate, CIA officers requested a test of the other eye, stating the request was "driven by our intelligence needs vice humanitarian concern for [the detainee]".

Another detainee was placed in standing and kneeling stress position despite having a sprained ankle. When he complained of discomfort, his CIA captors informed him that he could not sit unless he answered questions truthfully.

7. *Failing to document physical and/or psychological evidence of torture*

The SSCI summary report OMS also points to the fact that health professionals or CIA psychologists did not conduct any meaningful assessments of the potentially physical and/or psychological harms of the so-called "enhanced interrogation techniques". This was despite the fact that many detainees subjected to these interrogation techniques exhibited psychological and behavioural complications, including hallucinations, paranoia, insomnia, and attempts at self-harm and self-mutilation.

Furthermore, it is documented that CIA medical staff disregarded and/or failed to document detainee medical complaints. In the case of one detainee, CIA medical records consistently report he had no medical complaints. However, CIA interrogation records indicate that when he had previously complained of ailments to CIA personnel, he was subjected to the CIA's "enhanced interrogation techniques" and told by CIA interrogators that his medical condition was not of concern to the CIA.

Finally, it has come to our attention that at least in one instance a complaint has been filed, and that in this case the New York Office of Professional Discipline (OPD) has refused to investigate allegations similar to those described above.

While we welcome the publication of the SSCI summary report, would like to express our dismay and grave concern about the information contained therein regarding the role of health professionals in the CIA interrogation programme between 2001 and 2009. In our opinion, the role and conduct of these health professionals would not only imply violation of medical and professional ethics but also egregious violations of domestic and international law amounting to torture, which is subject to universal jurisdiction. Moreover, we wish to express our concern at the reported lack of investigation into these allegations.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to these issues brought forth by the situation described above.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified, *inter alia*, in article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by the United States of America on 21 October 1994.

In this context, we would also like to draw the attention of your Excellency's Government to paragraph 1 of General Assembly Resolution 68/156, which "[c]ondemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

The Special Rapporteur on torture and other Cruel, inhuman or degrading treatment or punishment has dealt with medical complicity amounting to torture and has referred to the ethical obligations of medical professionals in a variety of situations. In his 2013 thematic report to the Human Rights Council he noted that besides the absolute prohibition to inflict torture or other cruel, inhuman or degrading treatment or punishment, "a State's obligation to prevent torture applies not only to public officials, such as law enforcement agents, but also to doctors, health-care professionals and social workers, including those working in private hospitals, other institutions and detention centres" (A/HRC/22/53, para. 24).

In his 2013 thematic report to the General Assembly, the Special Rapporteur on torture emphasized, based on the Principles of Medical Ethics, principles 2 and 3, and the Ethical Principles for Medical Research Involving Human Subjects, that, "health professionals must not, under any circumstance, consent or acquiesce to torture or other ill-treatment, let alone take active part in any such ill-treatment." (A/68/295, para. 56)

Moreover, in his report A/69/387 (2014) to the General Assembly, the Special Rapporteur on torture stated that according to medical ethical standards, health professionals have the obligation not to participate actively or passively in torture or other ill-treatment. No obligation to a third party can override the duty to protect the individual from torture or other ill-treatment and to report such cases. The World Medical Association has held that health professionals should be made aware of their ethical obligations, including the need to report torture and other ill-treatment, to maintain confidentiality and to seek the consent of victims prior to examination. The Association has consistently reiterated its policy on the responsibility of physicians to denounce acts of torture or cruel, inhuman or degrading treatment or punishment of which they are aware. It urges national medical associations to speak out in support of these fundamental

principles of medical ethics and to investigate any breach of these principles by their members (para. 29).

We would like to draw the attention of your Excellency's Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. Where a detainee or any other person alleges torture or other ill-treatment or where there is reason to believe that torture or other ill-treatment has happened, alleged victims should be given an immediate examination by a doctor who can make an accurate report without interference by the authorities (A/69/387,para. 39).

We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

The information contained in the SSCI summary report appears to indicate that the CIA interrogation programme between 2001 and 2009 was in contravention of the detainees' right to the enjoyment of the highest attainable standard of physical and mental health, as set for in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the was signed by the United States of America in October 1977, as well as in the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Basic Principles for the Treatment of Prisoners.

In this connection, we would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. We would also like to draw attention to The Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, which stipulates that Prisoners shall

have access to the health services available in the country without discrimination on the grounds of their legal situation (principle 9).

In connection concerning the withholding of medical treatment, we would like to draw attention to the Standard Minimum Rules for the Treatment of Prisoners, in particular rule 25 which stipulates the medical officer should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

In connection with allegations concerning the forced rectal rehydration and rectal feeding of detainees engaging in hunger strikes, we would like to refer your Excellency's government to the World Medical Assembly's Declaration of Malta on Hunger Strikes, which emphasises the duty of all physicians to, inter alia, act ethically (principle 1) and respect individuals' autonomy (principle 2). The declaration further states that: "Forcible treatment is never acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force, or use of physical restraints is a form of inhuman and degrading treatment" (guideline 13).

In view of the urgency of the matter, we would appreciate a response to the steps taken by your Excellency's Government to respect and protect the rights of detainees in compliance with the above international instruments.

As it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the allegations described above.
2. Please explain how the so-called "enhanced interrogation techniques" practiced by the CIA on detainees between 2001 and 2009 is compatible with international human rights law and standards, including those ratified by the United States of America.
3. Please explain how the role of health professionals in the CIA interrogation program is compatible with international human rights standards, including those ratified by the United States of America.
4. Please provide details, and where available the results, of any investigation, medical examination, judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide details on the measures taken to ensure the detainees' right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, and their right to health, including access to medical care while in detention.

We would appreciate receiving a response within 60 days.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Dainius Puras

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

Juan E. Méndez

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment