



General Assembly

Distr.: General
26 February 2021

English only

Human Rights Council

Forty-sixth session

22 February–19 March 2021

Agenda item 6

Universal periodic review

Written statement* submitted by Program in International Human Rights Law, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2021]

* Issued as received, in the language(s) of submission only.



Deprivation of Guantanamo Bay Prisoner Rights During COVID-19: An Interim Submission to the United Nations Human Rights Council on the Occasion of the Universal Periodic Review (UPR) Outcome of the United States of America (U.S.) for the UPR Third Cycle (February – March 2021)

Background

1. In 2020, a Joint Report was disseminated to the Human Rights Council by the Program in International Human Rights Law (PIHRL) (pronounced “Pearl”) of Indiana University McKinney School of Law (Indiana, U.S.), with representatives of the Chulalongkorn University Faculty of Law (Bangkok, Thailand), and the Auckland University of Technology School of Law (Auckland, New Zealand). That Joint Report, which was submitted as part of the Universal Periodic Review of the United States of America in the 3rd Cycle, and which can be found on the PIHRL website,¹ focused on 6 specific human rights violations the U.S. has perpetrated and continues to perpetrate against all the prisoners the U.S. holds at Guantanamo Bay, Cuba:

- (a) Arbitrary, prolonged detention;
- (b) Torture;
- (c) Denial of health rights;
- (d) Interference with privacy and family life;
- (e) Denial of a fair trial; and
- (f) Denial of remedies for human rights violations.

2. The Joint Report also explained how COVID-19 exacerbated these rights violations at Guantanamo.

3. The Joint Report alleged that the U.S. has violated the rights of all forty (40) Guantanamo prisoners, whose rights arise under the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT” or “Torture Convention”), Common Article 3 of the Geneva Conventions, customary international law, and U.S. domestic law.

4. The Joint Report described how the U.S. was continuing to violate Guantanamo prisoners’ rights and discussed each violation’s impact on one or more Guantanamo prisoners, including Mohammad Rahim, from Afghanistan, who was captured in June 2007, and in 2008, after 9 months in Central Intelligence Agency (CIA) custody, was transferred to Guantanamo where he remains. Mr. Rahim was told by Guantanamo’s prosecution that it was unlikely charges would be sworn against him. But, he will also not be released, making him a Guantanamo “forever prisoner”.

5. The Joint Report also made reference to other prisoners and how they were victims of human rights violations, and these included (though not mentioned by name) the Indonesian Guantanamo prisoner Mr. Riduan Isamuddin (Hambali), and two Malaysian Guantanamo prisoners Mr. Mohd Farik Bin Amin (Zubair) and Mr. Mohammed Nazir Bin Lep (Lillie), who, as mentioned below, after being in U.S. custody for almost 20 years, were issued “referred charges” on 21 January 2021, the day after President Biden’s Inauguration.

¹ Copies of submissions to the United Nations by Indiana University McKinney School of Law’s Program in International Human Rights Law and partners can be found posted via the PIHRL’s main web page at: <https://mckinneylaw.iu.edu/human-rights/index.html> or at the following web page <https://mckinneylaw.iu.edu/human-rights/submitted-reports.html>.

6. At the UPR hearing on 9 November 2020, the U.S. delegation did not address the allegations in our Joint Report that the U.S. was violating human rights of Guantanamo prisoners, in the context of COVID-19.

7. The Report of the Working Group on the Universal Periodic Review: United States of America (A/HRC/46/15), dated 15 December 2020, also did not specifically address any of the substantive human rights violations facing Guantanamo prisoners, nor did it address COVID-19 in the Guantanamo context.

New developments regarding the U.S., COVID-19, and Guantanamo since the 9 November 2020 hearings

8. Since November 2020, there have been significant developments in the U.S. generally, but specifically as relates to human rights violations in the COVID-19 and Guantanamo context. This Interim Report mentions some of these developments, but will mention more developments and will expound upon those new developments in our “Final UPR Report” that we will disseminate before the scheduled 15 March 2021 Human Rights Council hearing at which the U.S. UPR Outcome document will be considered.

9. The new developments include:

(a) On 3 November 2020, the U.S. elected Joe Biden as President. He assumed office on 20 January 2021. At the 9 November 2020 UPR hearings, the U.S. delegation appeared under the authority of the then U.S. Administration of D.J. Trump. The Report of the Working Group issued on 15 December 2020 (A/HRC/46/15) addressed documents submitted by, and the appearances of, the then current U.S. Administration, not the now current U.S. Administration;

(b) On 21 January 2021, the day following President Biden’s taking of office, a Pentagon official who had been appointed in the Trump Administration issued “referred charges”, similar in substance to an indictment, against three men (one Indonesian and two Malaysians mentioned above) who had been in U.S. detention without referred charges for almost 20 years. The arraignment in this recently referred case is scheduled to take place live at Guantanamo on 22 February 2021, amidst COVID- 19 fears;

(c) One prisoner has been “cleared” for release by a Pentagon “Periodic Review Board”, but he remains incarcerated at Guantanamo, along with 5 prisoners who were “cleared” for release in the Obama Administration but were not released in the Trump Administration;

(d) This past week a Pentagon official authorized Guantanamo prisoners to receive COVID-19 vaccines, but days later, the Pentagon reversed course and stopped the plan to vaccinate the men.

10. These new developments make it clear that the human rights violations we alleged in our initial Joint Report have not been addressed, specifically as related to COVID-19 and the 40 men who remain imprisoned at Guantanamo, most of whom have been in U.S. detention, without trial, for almost 2 decades.

11. Our Interim Report of today serves as a placeholder for our Final Report to be disseminated before the 15 March 2021 Human Rights Council hearing on the U.S. Outcome document.