

May 13, 2013

The Honorable Chuck Hagel
Secretary
United States Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary,

We write to request that you intervene to end the force-feeding of competent hunger-striking prisoners in Guantánamo Bay, which constitutes cruel, inhuman, and degrading treatment. We also urge you to investigate and address recent allegations of the use of excessive force, isolation, temperature manipulation, and forced sleeplessness in Guantánamo, which could also constitute cruel, inhuman, and degrading treatment, and which raise even greater concerns if applied in combination with force-feeding.

At least 100 of the 166 men currently held at Guantánamo are on hunger strike, including many who have long been approved for release from the prison. By all accounts, the root cause of the hunger strike is the prisoners' belief that they will be indefinitely imprisoned and likely die in Guantánamo. At the most recent count, 29 of the men are being force-fed.

The force-feeding process is inherently cruel, inhuman, and degrading. The prisoner is strapped into a chair with restraints on his legs, arms, body, and sometimes head, immobilizing him. A tube is inserted up his nostril, and snaked down his throat into his stomach. A liquid nutritional supplement is then forced down the tube. The prisoner is restrained in the chair for upwards of two hours to prevent him from vomiting. As Guantánamo hunger-striker Samir Naji al Hasan Moqbel explained recently: "I can't describe how painful it is to be force-fed this way. As it was thrust in, it made me feel like throwing up. I wanted to vomit, but I couldn't. There was agony in my chest, throat and stomach. I had never experienced such pain before."¹ Debilitating risks of force-feeding include major infections, pneumonia, collapsed lungs, heart failure, post-traumatic stress disorder and other psychological trauma.

Because of force-feeding's invasive nature, the World Medical Association (WMA), the preeminent international organization in the field of medical ethics and practice, has repeatedly condemned force-feeding of competent prisoners. The WMA's Tokyo Declaration, adopted in 1975, states that doctors shall respect a competent prisoner's right to refuse artificial feeding.² And, in its Declaration of Malta on Hunger Strikers, adopted in 1991 and revised in 2006 in large part due to developments in Guantánamo, the WMA states that "[f]orcible feeding is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force

¹ Samir Naji al Hasan Moqbel, *Gitmo Is Killing Me*, NEW YORK TIMES (April 14, 2013), available at <http://www.nytimes.com/2013/04/15/opinion/hunger-striking-at-guantanamo-bay.html>.

² World Medical Association, *Declaration of Tokyo - Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment*, 1975, as revised, 2006, available at <http://www.wma.net/en/30publications/10policies/c18/index.html> ("Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially.").

or use of physical restraints is a form of inhuman and degrading treatment.”³ The American Medical Association, a member of the WMA, has endorsed these unequivocal principles, as evidenced by its April 25, 2013 letter to you. The International Committee of the Red Cross has similarly stated: “The ICRC is opposed to forced feeding or forced treatment; it is essential that the detainees’ choices be respected and their human dignity preserved.”⁴

Force-feeding as used in Guantánamo violates Common Article 3 of the four Geneva Conventions of 1949, which bar cruel, humiliating and degrading treatment. It also could violate the Detainee Treatment Act of 2005, which prohibits the “cruel, inhuman, or degrading treatment” of prisoners “regardless of nationality or physical location.” Indeed, a 2006 joint report submitted by five independent human rights experts of the United Nations Human Rights Council (formerly the U.N. Commission on Human Rights) found that the method of force-feeding then used in Guantánamo, and which appears to remain in effect today, amounted to torture as defined in Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the United States ratified in 1994.⁵ The report also asserted that doctors and other health professionals authorizing and participating in force-feeding prisoners were violating the right to health and other human rights, including those guaranteed by the International Covenant on Civil and Political Rights, which the United States ratified in 1992. Those concerns were reiterated this month by the Office of the UN High Commissioner for Human Rights, the Inter-American Commission on Human Rights, the United Nations Working Group on Arbitrary Detention, and three UN Special Rapporteurs.⁶

In light of the above, we urgently request that you order the immediate and permanent cessation of all force-feeding of Guantánamo prisoners who are competent and capable of forming a rational judgment as to the consequences of refusing food. We request that you allow independent medical professionals to review and monitor the status of hunger-striking prisoners in a manner consistent with international ethical standards. We also request that you investigate and rectify any abusive conditions and treatment in addition to force-feeding.

Sincerely,

American Civil Liberties Union
Appeal for Justice

³ World Medical Association, *Declaration of Malta on Hunger Strikers*, 1991, as revised 2006, available at <http://www.wma.net/en/30publications/10policies/h31/index.html>.

⁴ *Hunger strikes in prisons: the ICRC’s position* (January 31, 2013), available at <http://www.icrc.org/eng/resources/documents/faq/hunger-strike-icrc-position.htm>.

⁵ *Situation of detainees at Guantánamo Bay*, Report of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Asma Jahangir; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt. Commission on Human Rights, Sixty-second session, E/CN.4/2006/120 (February 27, 2006).

⁶ Press Release, *IACHR, UN Working Group on Arbitrary Detention, UN Rapporteur on Torture, UN Rapporteur on Human Rights and Counter-Terrorism, and UN Rapporteur on Health Reiterate Need to End the Indefinite Detention of Individuals at Guantánamo Naval Base in Light of Current Human Rights Crisis*, Organization of American States (May 1, 2013).

Asylum and Human Rights Program, Boston University School of Law
Bill of Rights Defense Committee
Center for Constitutional Rights
Center on National Security at Fordham Law
Coalition for an Ethical Psychology
Council on American-Islamic Relations
Defending Dissent Foundation
Global Justice Clinic, NYU School of Law⁷
Human Rights Watch
Human Rights First
International Justice Network
Ludwig Boltzmann Institute of Human Rights⁸
Physicians for Human Rights
Psychologists for Social Responsibility
Reprieve
The Center for Victims of Torture
Washington State Religious Campaign Against Torture
Witness Against Torture

⁷ This letter does not reflect the views of NYU School of Law.

⁸ Directed by Manfred Nowak, former U.N. Special Rapporteur on torture and other forms of cruel, inhuman, degrading treatment or punishment.