
Advance Edited Version

Distr.: General
2 June 2023

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023

Opinion No. 18/2023 concerning Mr. Mustafa Faraj Muhammad Masud al-Jadid al-Uzaybi (United States of America, Pakistan and Romania)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,¹ on 13 December 2022 the Working Group transmitted to the Governments of the Pakistan, Romania and the United States of America a communication concerning Mr. Mustafa Faraj Muhammad Masud al-Jadid al-Uzaybi. The Governments of the United States and Pakistan did not provide timely responses. On 10 February 2023, the Government of Romania requested a one-month extension to respond, which was granted. Romania submitted its response on 13 March 2023. All States are parties to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language,

¹ [A/HRC/36/38](#).

religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Mustafa Faraj Muhammad Masud al-Jadid al-Uzaybi is a Libyan national, born in Tarhuna, Libya, on 1 November 1970.

5. According to the information received, Mr. al-Uzaybi was apprehended on 2 May 2005, in north Peshawar, Pakistan, by Pakistani Special Forces, without any arrest mandate. Initially held in Pakistani detention, he was reportedly rendered by the Pakistani authorities, outside any lawful process of extradition or expulsion, to the Central Intelligence Agency between 6 and 7 May 2005.

6. Mr. al-Uzaybi was taken to Central Intelligence Agency detention site orange, in Afghanistan, between 24 and 25 May 2005, and then almost immediately rendered onwards to another site in Bucharest.

7. In Romania, he was subjected to all of the Central Intelligence Agency enhanced interrogation techniques. He was subjected to additional questioning at least until September 2005. Authorities of the United States reportedly subjected him to: (a) dietary manipulation; (b) nudity; (c) attention grasp; (d) walling; (e) facial hold; (f) facial slap or insult slap; (g) abdominal slap; (h) cramped confinement; (i) wall standing; (j) stress positions; (k) water dousing; and (l) sleep deprivation (more than 48 hours). In total, Mr. al-Uzaybi was detained and tortured by agents of the Central Intelligence Agency for over 460 days before being transported to Guantanamo Bay, Cuba, where he has been detained for over 17 years.

8. According to the source, the use of the combination of all enhanced interrogation techniques used on Mr. al-Uzaybi was approved by the Director of the Central Intelligence Agency upon his arrival in Romania. The torture did not stop when he started complaining of a loss of hearing, continuing until his interrogators were convinced that he was not withholding information.

9. Mr. al-Uzaybi was forced to make self-incriminating statements. He was considered a “high-value detainee”, as he was seen as likely to pose a threat to the United States or its allies. As a high-value detainee, he was systematically subjected to enhanced interrogation techniques at black sites, as well as to stricter security measures than the rest of detainees in Guantanamo Bay. Meetings with detainees at Guantanamo Bay are regulated by strict security procedures.

10. Mr. al-Uzaybi was most probably held at the black site in Romania until November 2005. He was subsequently transferred to another black site, before being taken to Afghanistan. He was held at one of the black sites in Afghanistan between March and September 2006, before being handed over to the United States Department of Defense and transferred to Guantanamo Bay.

11. Mr. al-Uzaybi was held in detention at black sites for at least one year and a half, from his capture in May 2005 to September 2006, during which time he was reportedly subjected to enforced disappearance and torture. On 18 November 2005 and 18 April 2006, the International Committee of the Red Cross (ICRC) reportedly requested the United States authorities for information on Mr. al-Uzaybi’s fate and whereabouts. Those questions went unanswered.

12. Reportedly, Mr. al-Uzaybi’s whereabouts remained unknown at least until 2007, when he was able to send a letter to his family. After that one letter, he was allowed a monitored call with relatives in 2015, although this was an exchange of recorded and monitored time-delayed messages.

13. Although Mr. al-Uzaybi is currently held under the jurisdiction of the United States, it is argued that Pakistan and Romania are jointly responsible for his arbitrary arrest, enforced disappearance and torture. Allegedly, the Governments of these countries knowingly

cooperated with the authorities of the United States in arresting and maintaining him outside the protection of the law, subjecting him to enforced disappearance and torture.

14. According to medical reports, Mr. al-Uzaybi has developed several health problems as a result of the torture, including severe hearing loss in both ears, traumatic brain damage, memory loss, word-finding problems, spinal injuries, sleep disruption, complex post-traumatic stress disorder and other chronic medical problems. His condition has worsened as no adequate medical treatment or rehabilitation has ever been provided to mitigate the consequences of his torture.

Case review by the Combatant Status Review Tribunal

15. Reportedly, on 8 February 2007, Mr. al-Uzaybi was presented for the first time to the United States Combatant Status Review Tribunal. The Review Tribunal is integrated by military officers; it is not a judicial body and does not comply with due process requirements. In the case of Mr. al-Uzaybi, it was exclusively composed of military personnel.

16. Mr. al-Uzaybi was assigned a “personal representative”, a military official without legal qualifications who did not hold the status or privileges of an attorney. Furthermore, the only basis for the decision of the Combatant Status Review Tribunal, as provided to the personal representative Mr. al-Uzaybi, consisted of a list of allegations that he was not able to disprove, based on statements made by unknown sources.

17. Mr. al-Uzaybi was reportedly classified as an “enemy combatant” by the Combatant Status Review Tribunal following a non-adversarial process. It was not possible to call witnesses, nor has he been able to meaningfully challenge the final decision of the Review Tribunal before an independent and impartial judicial authority.

Case review by the Guantanamo Review Task Force

18. The source reports that, pursuant to an Executive Order of 22 January 2009, signed by the President of the United States, an inter-agency “review task force” was set up to review the status of all detainees held at Guantanamo Bay. It was composed exclusively of members of executive security agencies. Decisions were reached by the unanimous agreement of the agencies.

19. The review of the task force cannot be considered fair or transparent, since most of the information was classified and statements were obtained by the Central Intelligence Agency using “enhanced interrogation techniques”, including in the present case. In addition, the process, which had to be completed within 30 days, reportedly did not provide any opportunity for detainees to be heard or to meaningfully challenge the decisions, which were not subjected to any form of appeal or judicial review.

20. The source states that, on 10 September 2008, the task force recommended that Mr. al-Uzaybi be prosecuted. However, he has never been charged nor prosecuted.

Denial of Mr. al-Uzaybi’s right to challenge the legality of his detention.

21. Two years after he was brought to Guantanamo Bay, a habeas corpus counsel was assigned to represent Mr. al-Uzaybi. On 11 May 2009, a habeas corpus petition was filed on his behalf, to challenge the legality of his detention before the federal district court for the District of Columbia. This petition is still pending, however, more than 13 years after the initial submission, which exceeds any definition of a reasonable length of time.

22. Reportedly, almost 20 years after his arrest, the United States authorities have yet to produce a witness or incriminating material evidence to support Mr. al-Uzaybi’s continued detention.

Case review by the Periodic Review Board

23. In 2011, the Periodic Review Board, an administrative inter-agency board composed exclusively of members of executive security agencies, was established to review whether the continued detention of particular individuals at Guantanamo Bay remains necessary for

the security of the United States.² The process was not meant to provide such individuals the possibility of challenging the legality of their continued detention.

Periodic Review Board: initial review (2016)

24. The initial review of the Periodic Review Board on the case of Mr. al-Uzaybi reportedly took place on 16 August 2016, without his presence. Instead, an opening statement read by his personal representatives indicated that he wanted to return to his family. No mention was made of the conditions under which Mr. al-Uzaybi was captured, secretly detained and tortured to force him to self-incriminate.

25. On 16 September 2016, the Periodic Review Board determined that the continued detention of Mr. al-Uzaybi remained necessary to protect the United States from a continuing significant threat, while adding that it was unable to assess his credibility owing to his decision not to participate in the hearing.

Periodic Review Board: second review (2017)

26. A second review by the Periodic Review Board was scheduled in February 2017, based on vaguely described allegations and without providing any meaningful opportunity for Mr. al-Uzaybi to challenge them.

Periodic Review Board: third and last review (2022)

27. In June 2022, the Periodic Review Board reportedly started a third review of Mr. al-Uzaybi's case, based on a brief summary of the allegations.

28. A letter from his private counsel submitted to the Periodic Review Board exposed the suffering he was subjected to. Furthermore, it highlighted that over the 17 years of his detention in Guantanamo, allegations against Mr. al-Uzaybi had become fewer and that there was no stated intention to prosecute him. Sections of the letter related to torture and other mistreatment, as well as their adverse consequences, were allegedly redacted.

29. During the hearing, Mr. al-Uzaybi denied having been a continuing threat to the United States. He pleaded for his release so that he could obtain proper health care and vowed to respect all conditions imposed if released.

30. On 23 August 2022, the Periodic Review Board approved his continued detention. It did not recommend his release even though the allegations against him had become weaker and fewer over the years. Mr. al-Uzaybi's detention was allegedly approved by the Board on the grounds of a 17-year-old uncorroborated allegation that he may have been associated with Al-Qaida. Furthermore, the Periodic Review Board was reportedly motivated in making its decision by Mr. al-Uzaybi's exercise of his right to remain silent and the allegation that he had no plans for reintegration.

Conditions of detention

31. The source claims that the current situation of Mr. al-Uzaybi shows that he has no reasonable hope of being released, putting him in a situation of indefinite detention, in inhumane conditions, which is alleged to amount to torture.

32. The source also claims that Mr. al-Uzaybi's hearing loss was caused by trauma inflicted under torture at the Central Intelligence Agency black site in Romania. Moreover, access to medical files is denied to external medical staff and information on the treatment of detainees is considered classified.

33. Whereas other detainees are allowed to receive real-time Skype calls with their families, Mr. al-Uzaybi does not because he is considered to be a high-value detainee and is thus subjected to stricter measures. Members of his family who can travel to the ICRC call site can see him on monitors during such exchanges. Each side records a message that is transmitted to the other side to respond to in another recorded message.

² Pursuant to Executive Order 13567 of 7 March 2011.

34. Mr. al-Uzaybi's hearing disability prevents him from understanding most of his family's messages.

35. Reportedly, Mr. al-Uzaybi does not have access to the outside world except for his lawyers and ICRC. In addition, his hearing disability also causes miscommunications with guards in the prison who, in turn, punish him for what they perceive as a lack of cooperation. He suffers from insecurity and isolates himself. This, in combination with chronic pain, has led to severe depression. His hearing disability, including the pain and depression he suffers, from have affected his ability to effectively fight for his release.

Analysis of violations

36. The source states that international human rights law is applicable in times of conflict, regardless of its classification.

37. According to the source, the treatment of Mr. al-Uzaybi by the United States violates articles in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Inter-American Convention on Human Rights.

Category I

Arbitrary arrest and extrajudicial rendition by Pakistan

38. The source recalls that Mr. al-Uzaybi was arrested by Pakistani military forces on 2 May 2005 without any warrant or judicial process. There was no indication that he might have been caught in a situation of flagrante delicto.

39. Pakistani authorities reportedly must have known that, if rendered to the Central Intelligence Agency, Mr. al-Uzaybi would be subjected to torture.

Extrajudicial rendition and enforced disappearance

40. Between 24 and 28 May 2005, Mr. al-Uzaybi was transported by the Central Intelligence Agency in private planes operated by several companies from detention site orange in Afghanistan to the other black site in Bucharest.

41. From the onset of his arrest, to 2007, when he was allowed to contact his family for the first time, Mr. al-Uzaybi was allegedly subjected to enforced disappearance.

42. The responsibility for his enforced disappearance and torture rests with the forces of the United States, as well as with the Government of Romania for the time he spent in the black site in Romania where he was subjected to all forms of enhanced interrogation techniques.

43. The United States Senate Select Committee on Intelligence Committee Study confirms that "political leaders of host countries were generally informed of [the sites'] existence".³ The Council of Europe's investigation into secret detention and rendition concluded that key arrangements for the clandestine operations of the Central Intelligence Agency were secured on a bilateral level with the United States by a number of countries, including Romania. Such agreements provided that host Governments "agreed to provide the premises in which these facilities were established, the highest degrees of physical security and secrecy, and steadfast guarantees of non-interference".⁴

Transfer to Guantanamo Bay and the right to challenge the legality of the detention

44. Mr. al-Uzaybi's detention allegedly continued to lack a legal basis after his transfer to Guantanamo Bay from the Central Intelligence Agency to military custody, and he has never

³ United States, Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, 9 December 2014 (redacted), findings and conclusions, pp. 7 and 16–17.

⁴ Council of Europe, "Secret detentions and illegal transfers of detainees involving Council of Europe member States: second report, 11 June 2007", paras. 112–119.

been provided with any meaningful opportunity to challenge the legality of his detention and his qualification as an “enemy combatant”.

45. At the hearing on his case before the Combatant Status Review Tribunal, Mr. al-Uzaybi was not assisted by a lawyer but by a personal representative provided by the United States Government who did not fulfil the role of an attorney and did not have the same privileges.

46. The source recalls that, according to the Geneva Convention relative to the Treatment of Prisoners of War, the competent authority to determine prisoner-of-war status is not the executive power but the judicial power.

47. In 2014, the Periodic Review Board, led by military officers, administratively reviewed Mr. al-Uzaybi’s detention for the first time. He did not, however, participate in the first two reviews since he was not assisted by legal counsel. Only after he was allowed access to a lawyer, in June 2022, did he attend the third review. Nevertheless, he was still not informed of the charges against him.

48. The processes before the Combatant Status Review Tribunal and the Periodic Review Board were administrative rather than judicial. Detainees were not provided with a lawyer during hearings and the decisions were subject to limited judicial review only, as the most that a reviewing court may do is to order reconsideration of a decision, not release.⁵

Indefinite detention without charges

49. At present, almost 20 years after his arrest, Mr. al-Uzaybi still has not been charged, nor has he been able to meaningfully challenge his detention. Furthermore, he was deprived of his liberty without an effective opportunity to be promptly heard by a judicial authority.

50. The habeas corpus writ submitted by his counsel on 11 May 2009 before the federal district court for the District of Columbia remains pending.

51. According to the source, the domestic legal basis used by the United States to detain Mr. al-Uzaybi, namely the law on Authorization for Use of Military Force, does not conform to human rights law and international humanitarian law.

52. The source claims that the indefinite detention of Mr. al-Uzaybi goes beyond a minimally reasonable period, which constitutes a violation of international human rights law and constitutes a form of cruel, inhuman and degrading treatment. The motivation for Mr. al-Uzaybi’s detention was reportedly to obtain information by exposing him to torture.

Absence of legal justification for the continued detention

53. The source highlights that even the contended argument that Mr. al-Uzaybi’s continuous detention without trial is justified under the law on Authorization for Use of Military Force as an “enemy combatant” no longer applies.

54. The Government of the United States has been justifying his continuous and indefinite detention on the sole rationale that “enemy combatants” could be detained without charges on the basis of the law of war in order to prevent their return to the battlefield, until the end of hostilities.

55. However, the source recalls that the United States decided to withdraw its troops from Afghanistan and signed an agreement putting an end to hostilities. Therefore, even under the United States doctrine of continued law-of-war detention, the indefinite detention of Mr. al-Uzaybi is void of legal basis.

56. After its last review, the Periodic Review Board decided that continued law-of-war detention of the detainee remains necessary to protect against a continuing significant threat to the security of the United States and recalled Mr. al-Uzaybi’s alleged extensive and lengthy history with Al-Qaida, including leadership roles, without being able to prove such claims and to charge him accordingly, after nearly 20 years of detention.

⁵ A/HRC/6/17/Add.3, para. 13.

57. The Periodic Review Board also justified its decision based on the fact that Mr. al-Uzaybi refused to answer questions regarding his past activities, in what appeared to be a form of reprisal for his use of his right to remain silent.

58. In order to reach its decision, the Periodic Review Board also considered Mr. al-Uzaybi's lack of a predetermined plan for employment and support, post-release. The source asserts that even had the Review Board found that the continued detention of Mr. al-Uzaybi's was no longer justified on the basis of national security concerns, it would still have continued his detention. Nevertheless, Mr. al-Uzaybi's limited prospects for employment are largely due to the consequences of the torture he suffered while in the custody of the Central Intelligence Agency and the denial of medical care for two decades.

Category III

59. The source submits that, in this case, the disregard for international fair trial standards is of such gravity as to render Mr. al-Uzaybi's deprivation of liberty arbitrary under category III.

The right to defence

60. Reportedly, as Mr. al-Uzaybi did not have a lawyer, he could not have participated in the reviews of his detention in a meaningful way. Furthermore, he was not brought before a competent and independent judicial authority and his detention was only subjected to administrative review processes, namely those conducted by the Combatant Status Review Tribunal and the Periodic Review Board. He never had access to his files.

61. The first time Mr. al-Uzaybi met with a lawyer was in 2008, when he was appointed a habeas corpus counsel who was granted limited access to his files. He has not been able to access his medical records, since they contain mentions of the torture he was subjected to. Moreover, meetings between detainees and their counsel are monitored by video, which cannot guarantee their confidential character.

62. Furthermore, the only documents ever provided to Mr. al-Uzaybi were mere summaries of vaguely described allegations. Additionally, no material evidence has been provided nor mentioned in the summaries to support the allegations against him.

63. Consequently, it is alleged that Mr. al-Uzaybi never had the opportunity to effectively dispute arguments or to discuss evidence adduced by the accusation, in violation of his right to equal access and equality of arms.

Use of ex parte evidence

64. The source claims that, in the case of Mr. al-Uzaybi, there was a systematic use of ex parte evidence, in violation of fair trial rules and equality of arms.

65. The source claims that these allegations are, in fact, confessions extracted under torture, which must be excluded from the debate since they cannot be considered as evidence under articles 14 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. All of the allegations made against Mr. al-Uzaybi appear to solely rest on statements of other high-value detainees who were subjected to torture. Apart from the above, there is no material evidence that establishes an association of Mr. al-Uzaybi with Al-Qaida.

Violations of pretrial guarantees

66. Mr. al-Uzaybi's detention was reviewed by two non-judicial bodies that fail to satisfy the requirements and guarantees set out in article 14 of the Covenant. The source claims that none of these reviews met minimal requirements of due process and procedural standards, such as the exclusion of coerced statements and hearsay evidence, nor do they allow detainees to cross-examine witnesses or to bring forward exculpatory statements.

67. Detainees eligible for a review before the Periodic Review Board are not allowed to access exculpatory documents because they are classified. Only summaries and substitutes of portions of the dossier considered by the Review Board are available. Detainees can

present written or oral statements, introduce relevant information, answer questions posed by the Review Board and call “reasonably available” witnesses.

68. Furthermore, detainees may be assisted by legal counsel but they cannot meet in private nor communicate in conditions that fully respect confidentiality.

69. The decisions of the Periodic Review Board are not subject to judicial review and the Review Board refuses to exclude evidence produced by torture unless all participating agencies concur that interrogators engaged in torture.

70. The source claims that Mr. al-Uzaybi is not able to provide any evidence from witnesses, including from members of his family, owing to the lack of protection for witnesses against arrest or prosecution by the United States.

Use of self-incriminating evidence obtained under torture

71. Mr. al-Uzaybi allegedly was subjected to enhanced interrogation techniques at black sites and was forced to make self-incriminating statements, in violation of his right to be presumed innocent under article 14 (2) of the Covenant and his right not to be compelled to confess guilt under article 14 (3) (g).

Violation of the right to be tried promptly

72. The source highlights that “the detention of persons for a period of several years without charge fundamentally undermines the right of fair trial”.⁶ Mr. al-Uzaybi has reportedly been deprived of his liberty for 17 years at Guantanamo Bay with no indication of when he will be brought to trial.

73. Mr. al-Uzaybi’s case related to a writ of habeas corpus is still pending after more than a decade.

Category V

Discrimination based on religion and national origin

74. The source highlights that all detainees brought to Guantanamo Bay since the beginning of the “war on terror” declared by the United States were foreign Muslim men, as it is the case for Mr. al-Uzaybi. The military prison is allegedly exclusively reserved for foreign Muslim men.

75. Furthermore, every prisoner brought to Guantanamo Bay was Muslim, indicating that the United States Government has discriminated on the basis of religion and national origin. Only United States citizens were granted the right to a writ of habeas corpus at the beginning of their detention.

76. The transcript of the last hearing of Mr. al-Uzaybi’s case before the reportedly shows that questions were directed at his understanding of religious notions, such as “jihad”, which he explained as referring to the personal struggles of every human being and not to the use of violence. Allegedly, he was frequently questioned on his religious and political views relating to the foreign policy of the United States. While he provided answers that confirmed his absence of violent intent or dangerousness, members of the Board insisted on certain questions that would never have been raised had he not been a practising Muslim.

77. The source submits that the refusal of the Periodic Review Board to accede to his demand for a transfer to a safe place to reunite with his family is directly caused by what would seem to be a biased assessment of Mr. al-Uzaybi’s potential animosity toward the United States resulting from his religious beliefs and origins.

78. The source claims this is a violation of articles 2, 5 (a) and (b), and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, articles 2 and 7 of Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.

⁶ A/HRC/6/17/Add.3, para. 12.

79. Mr. al-Uzaybi's deprivation of liberty allegedly constitutes a violation of international law for reasons of discrimination based on religion, thus ignoring the equality of human rights, which renders his detention arbitrary under category V.

Access to medical and rehabilitative care leading to a denial of access to justice

80. While concerns have been raised over the lack of adequate medical assistance and rehabilitation for victims of torture at Guantanamo Bay, the source claims that the level of health care and rehabilitation offered to detainees is not comparable to the care granted to soldiers onsite.

81. Owing to the restrictive conditions of his detention, coupled with his inability to communicate his needs effectively, Mr. al-Uzaybi has been denied any meaningful opportunity to defend himself. The Periodic Review Board has repeatedly questioned Mr. al-Uzaybi's request for a transfer to his family, given his perceived inability to provide financially for them owing to his poor health and his disability. The source claims that the position of the Review Board allegedly amounts to forcing Mr. al-Uzaybi to pay a high price for his 20-year incommunicado detention, torture, permanent hearing disability, denial of medical care and rehabilitation that he has been, and still is, subjected to and that it amounts to a violation of his right to equality before the law as a person with a disability, making his detention arbitrary under category V.

Response from the Governments

82. On 13 December 2022 the Working Group transmitted to the Governments of Pakistan, Romania and the United States of America a communication concerning Mr. al-Uzaybi, requesting them to provide, by 13 February 2023, detailed information about the circumstances surrounding his detention and transfer, as well as to clarify the legal provisions justifying his deprivation of liberty and their compatibility with relevant obligations under international law. The Governments of the Pakistan and the United States did not provide timely responses. On 10 February 2023, the Government of Romania requested a one-month extension to respond, which was granted. Romania submitted its response on 13 March 2023.

83. In its response, Romania argues that the Working Group is precluded from considering the complaint because it alleges arbitrary detention in the context of enforced disappearance. It argues that this precludes the communication from being applicable to Romania as it is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance, and that, in any event, the matter should fall within the remit of the Committee on Enforced Disappearances. It adds, on the merits, that Mr. al-Uzaybi was never in the custody of the Romanian penitentiary system.

Additional comments from the source

84. Regarding the response from the Government of Romania, the source indicates that enforced disappearance constitutes a particularly aggravated form of arbitrary detention and that the Committee on Enforced Disappearances does not hold any exclusive competence to hear cases of enforced disappearances, the prohibition of enforced disappearance being based on both customary law and conventional obligations. Moreover, the source stresses that the Government response does not refute that Mr. al-Uzaybi was secretly detained and subjected to torture at a black site situated in Bucharest, from May 2005 until, most probably, November 2005.

Discussion

85. The Working Group thanks the source and the Government of Romania for its submissions. In the absence of a timely replies from the Government of Pakistan and the United States, the Working Group has decided to render the present opinion in conformity with paragraph 15 of its methods of work.

86. In determining whether the deprivation of liberty of Mr. al-Uzaybi is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon

the Government if it wishes to refute the allegations. Mere assertions that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁷

87. The source has submitted that Mr. al-Uzaybi's detention is arbitrary and falls under categories I, III and V. All of three categories are relevant to his treatment by the United States. Conversely, for Pakistan and Romania only category I and category III (to the extent it concerns torture and cruel, inhuman or degrading treatment) are potentially relevant to their treatment of Mr. al-Uzaybi. Accordingly, the Working Group will address the source's allegations under category I and category III (to the extent it concerns torture and cruel, inhuman or degrading treatment) against Pakistan, Romania and the United States before turning to the additional allegations against the United States under categories III and V.

88. At the outset, the Working Group addresses the arguments of Romania, concerning the inapplicability of the matter in the light of the International Convention for the Protection of All Persons from Enforced Disappearance, to which Romania is not a party. The Working Group rejects this argument, on the basis that the matters alleged in the source's submissions fall squarely within the mandate of the Working Group.⁸ To the extent that the allegations also refer to enforced disappearance, this does not preclude the Working Group from considering the matter. In fact, the Working Group has frequently addressed cases of arbitrary detention that also involve allegations of enforced disappearances and can refer those issues to other special mandate holders for appropriate action,⁹ in line with its methods of work.¹⁰ The Working Group recalls the position of the Human Rights Committee on numerous occasions in its jurisprudence, highlighting that "enforced disappearance constitutes a particularly aggravated form of arbitrary detention",¹¹ in violation of article 6 of the Universal Declaration of Human Rights", characterizing such detention as falling under category I.¹²

89. Additionally, Romania has submitted that Mr. al-Uzaybi was never in its penitentiary system. However, the source has provided detailed submissions, supported by references to other institutions and organizations, indicating that Mr. al-Uzaybi was detained as part of the extraordinary rendition programme and that Romania was associated with the programme. Given the lack of any detailed response to the above allegations, and given that the statement of Romania is consistent with the source's allegation that Mr. al-Uzaybi was purposefully kept outside of the regular incarceration system and regular legal processes, the Working Group can only conclude that Mr. al-Uzaybi was detained in Romania as alleged.

90. On the substantive matters arising from the complaint, the Working Group notes that since the 11 September 2001 attacks on the United States, it has developed a body of legal analysis and jurisprudence reaffirming that the prohibition of arbitrary detention is a peremptory norm (*jus cogens*) of international law, from which no derogation is permitted,¹³ and that the prolonged and indefinite detention of individuals at Guantanamo Bay violates that prohibition.¹⁴ The Working Group has set out key principles in this regard, including in relation to the States' obligations under human rights law,¹⁵ habeas corpus¹⁶ and fair trial rights,¹⁷ as well as in relation to the applicability of international humanitarian law.¹⁸

⁷ A/HRC/19/57, para. 68.

⁸ Human Rights Council, resolution 51/8.

⁹ Opinions No. 23/2022, No. 60/2022 and No. 78/2020.

¹⁰ A/HRC/36/38, para. 33.

¹¹ Human Rights Committee, general comment No. 35 (2014), para. 17.

¹² Opinions No. 5/2020, No. 6/2020, No. 11/2020, No. 34/2021, and No. 84/2021. See also *Case of Al Nashiri V. Romania* (Application No. 33234/12), Judgment, 31 May 2018, para. 690.

¹³ A/HRC/22/44, para. 51, and opinions No. 10/2013, para. 32; No. 50/2014, para. 66; No. 89/2017, para. 36; and No. 70/2019, para. 53.

¹⁴ Opinions No. 2/2009, No. 3/2009, No. 10/2013, 50/2014, 89/2017, and No. 70/2019.

¹⁵ E/CN.4/2006/120, paras. 10–11. Opinion No. 57/2013, para. 55, and CCPR/C/21/Rev.1/Add.13, para. 10.

¹⁶ E/CN.4/2003/8, paras. 61–64; E/CN.4/2006/7, paras. 68–75; and A/HRC/4/40, paras. 14–15; see also opinions No. 44/2005, para. 13; No. 2/2009, para. 27; No. 3/2009, para. 30; No. 53/2016, para. 42; and No. 89/2017, para. 37 (a).

¹⁷ A/HRC/36/37/Add.2, para. 78.

¹⁸ Opinions No. 43/2006, para. 31; No. 11/2007, para. 11; and No. 89/2017, para. 43.

91. On the interrelated issue of “extraordinary renditions”, the Working Group has also set out relevant principles in its jurisprudence, highlighting its incompatibility under international law.¹⁹

Category I

Arrest and extrajudicial rendition

92. The source states that Mr. al-Uzaybi was arrested without any legal basis by Pakistani military forces on 2 May 2005, without any warrant being shown to him or any judicial process being conducted. He was not arrested in a situation of flagrante delicto and his arrest was not subject to any judicial oversight. These allegations have not been refuted before the Working Group by any of the Governments involved.

93. Noting article 9 (1) and (2) of the Covenant, the Working Group has previously stated that, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.²⁰ This is typically²¹ done through an arrest warrant or arrest order (or equivalent document).²²

94. Based on the unrefuted facts set out by the source, which the Working Group considers to be established, the Pakistani military did not show Mr. Uzaybi any warrant or similar document, notwithstanding the fact that he was not arrested on the battlefield or in any situation of flagrante delicto, in which an *ex ante* warrant would not be practicable. He was then rendered, outside of any legal framework, from Pakistan into the custody of the United States and then on to Romania. There is no indication that he was notified of the reasons for his arrest in a timely manner or promptly informed of any charges against him during these processes by any of the Governments involved. On this basis, the Working Group finds that Mr. al-Uzaybi’s rights under article 9 (1) and (2) of the Covenant were violated.

95. As noted above, the source alleges that he was kept outside of any legal framework, while being rendered from Pakistan into the custody of the United States and Romania. While in custody, he was subjected to various legal procedures, but alleges that, to date, neither the administrative processes set in Guantanamo Bay nor his habeas corpus writ (still pending before the judicial authorities of the United States) have allowed him to challenge the legality of his detention.

96. Concerning the right to challenge the lawfulness of an arrest, the Working Group notes article 9 (3) and (4) of the Covenant. Moreover, any form of detention or imprisonment should be ordered by, or be subjected to, the effective control of a judicial or other authority, which is competent, impartial and independent.²³

97. In the light of the source’s unrefuted allegations, there is no indication that Mr. al-Uzaybi had the opportunity to challenge the lawfulness of his arrest before a competent, impartial and independent judicial body. Indeed, it was only on 8 February 2007, over 18 months after his arrest, that Mr. al-Uzaybi was reportedly presented to an official body, namely the Combatant Status Review Tribunal. Noting that the procedural shortcomings of the Review Tribunal are addressed under category III below, the Working Group finds that Mr. al-Uzaybi was deprived of his rights, under article 9 of the Covenant, to be brought

¹⁹ A/HRC/4/40, para. 49; A/HRC/13/42, para. 36; and A/HRC/48/55, para. 59; see also opinions No. 47/2005, paras. 19–20; No. 53/2016, paras. 59–60; No. 11/2018, para. 54; and No. 15/2021, para. 94.

²⁰ Opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018, and No. 79/2018.

²¹ Human Rights Committee, general comment No. 35 (2014), para. 21; see also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

²² Human Rights Committee, general comment No. 35 (2014), para. 27; and opinion No. 30/2017, paras. 58 and 59.

²³ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 4.

promptly before a judge and to bring proceedings before a court without delay to challenge the lawfulness of his detention and order his release if his detention is not lawful.

98. In relation to the practice of extraordinary renditions, according to the source, Mr. al-Uzaybi was allegedly rendered by Pakistan to the custody of the Central Intelligence Agency and was then transported to black sites in Afghanistan and Romania, between 24 and 28 May 2005, by the Central Intelligence Agency in private planes, and subsequently kept at black sites over a period of several months, during which time he was tortured.

99. The Working Group has noted that the practice of so-called renditions is aimed at avoiding all procedural safeguards and is not compatible with international law. It has expressed concern about transfers and detention outside the confines of any legal procedure, that do not allow the individuals access to counsel or to any judicial authority to contest the transfers and has considered such transfers to be arbitrary, such as where no charges are laid against the detainees, they are not informed of any accusation against them nor brought before any judicial authority.²⁴ Individuals should not be expelled to another country when there are substantial grounds for believing that their lives would be at risk or that they would be in danger of being subjected to torture and cruel, inhuman, or degrading treatment. This is sometimes considered under the principle of non-refoulement. The risk of arbitrary detention in the receiving State must be among the elements taken into consideration.²⁵

100. The source's unrefuted allegations show that Mr. al-Uzaybi was transferred by Pakistan into the custody of the United States outside the usual legal procedures and without a hearing before a judge. By 2005, when Mr. al-Uzaybi was arrested, the existence of Guantanamo Bay and the United States programme of transporting persons detained by Pakistan to various sites, including Guantanamo Bay, was an established practice.²⁶ Similarly, the transfer of custody of Mr. al-Uzaybi between the United States and Romania was done outside of the usual legal frameworks. The Working Group notes that the Council of Europe's investigation into secret detention and rendition concluded that key arrangements for the clandestine operations of the Central Intelligence Agency were secured on a bilateral level with the United States by a number of countries, including Romania.

101. The Working Group recalls that the principle of joint responsibility that applies to States when more than one of them were involved in the perpetration of a violation. The articles on the responsibility of States for internationally wrongful acts, specify that: "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State".²⁷ In the light of its findings above, the Working Group is satisfied that the Governments of the Pakistan, Romania and the United States all played a role in the extraordinary rendition programme, whether through directly detaining persons subjected to it or through knowingly assisting the implementation of the programme through transport access and the provision of locations for unregistered detention sites. The Working Group notes, in particular, that, although the United States played the most significant role in the violations of Mr. al-Uzaybi's rights, he was arrested by Pakistani military forces and then held for several days before being rendered, without any legal proceedings, to the Central Intelligence Agency. The Working Group also notes the visit of the Director of the Central Intelligence Agency to Romania while Mr. al-Uzaybi was being detained there, and the fact he was detained in Romania on at least two occasions, pursuant to a bilateral agreement between the Romania and the United States. In the light of this information, the Working Group considers that these States are all jointly responsible for the arrest, rendition and arbitrary detention of Mr. al-Uzaybi,²⁸ which amount to violations of international human rights law, and constitutes arbitrary detention under category I.

²⁴ Opinion No. 70/2019 concerning Mohammed al-Qahtani (United States of America).

²⁵ A/HRC/4/40, para. 49; A/HRC/13/42, para. 36; and A/HRC/48/55, para. 59; see also opinions No. 47/2005, paras. 19–20; and No. 53/2016, paras. 59–60; No. 11/2018, para. 54; and No. 15/2021, para. 94.

²⁶ See opinion No. 70/2019; see also A/HRC/49/45, annex.

²⁷ See articles on the responsibility of States for internationally wrongful acts, article 16.

²⁸ Opinion No. 84/2020, para. 72.

102. Moreover, the source submits that, following his arrest in early 2005, Mr. al-Uzaybi was not allowed to contact his family until 2007, when he was able to do so by letter. Thereafter, he was allowed a first monitored call with relatives in 2015. According to the source, ICRC reportedly requested to the authorities of the United States for information on Mr. al-Uzaybi's fate and whereabouts in 2005 and 2006, but these requests were not answered. The source considers that Governments of Pakistan, Romania and the United States are jointly responsible for his arbitrary arrest, enforced disappearance and torture. The Governments have not responded to these allegations.

103. The Working Group considers that the source has laid out a credible account, which is supported by documentation, including from ICRC. The Working Group considers that Mr. al-Uzaybi was deprived of his liberty against his will by officials of the United States who refused to disclose his fate and whereabouts. Accordingly, the Working Group finds that he was subjected to enforced disappearance, in contravention of articles 9 and 14 of the Covenant, which constitutes a particularly aggravated form of arbitrary detention.²⁹ The Working Group notes that, in this way, Mr. al-Uzaybi was also placed outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.³⁰ The Working Group concludes that these amount to violations of Mr. al-Uzaybi's rights to liberty, to be informed of the basis for arrest and charges against him, and to promptly challenge that detention or be released, under category I.

104. Additionally, the source notes that currently, 17 years after his arrest, Mr. al-Uzaybi has still not been charged with a crime. He is held at Guantanamo Bay not as a prisoner of war but as an illegal enemy combatant, purportedly pursuant to the law on the Authorization for Use of Military Force, although the Working Group notes that the law does not specifically authorize arrest or detention.³¹ To the extent the Governments relied on international humanitarian law, they have not demonstrated that there are ongoing circumstances justifying his detention under the "law of war". Consequently, and on this basis, his detention is arbitrary under category I.

Category III (torture and cruel, inhuman, or degrading treatment: Pakistan, Romania and the United States)

105. Under category III, the Working Group first turns to the torture and cruel, inhuman, or degrading treatment allegations, which concern all three Governments. According to the source, Pakistani authorities must have known that, if rendered to the Central Intelligence Agency, Mr. al-Uzaybi would be subjected to torture or cruel, inhuman or degrading treatment. He was transported to black sites in Afghanistan and Romania between 24 and 28 May 2005, by the Central Intelligence Agency in private planes. The source alleges that the Governments of Pakistan, Romania and the United States collaborated in his torture and cruel, inhuman or degrading treatment and are jointly responsible for his arbitrary arrest, enforced disappearance and torture and cruel, inhuman or degrading treatment.

106. Individuals should not be expelled to another country when there are substantial grounds for believing that their lives would be at risk, or that they would be in danger of being subjected to torture and cruel, inhuman, or degrading treatment,³² which is sometimes referred to as non-refoulement. Torture itself is a peremptory norm of international law, and also prohibited by article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and by the Convention against Torture.³³

²⁹ Human Rights Committee, general comment 35 (2014), para. 17, and opinion No. 5/2020, para. 74.

³⁰ [CCPR/C/BHR/CO/1](#), paras. 35–36; see also opinions No. 59/2019, para. 50; and No. 5/2020, paras. 73–74.

³¹ Opinions No. 10/2013, para. 34; No. 50/2014, para. 69; and No. 70/2019, para. 64.

³² [A/HRC/4/40](#), para. 49; opinions No. 47/2005, paras. 19–20; No. 53/2016, paras. 59–60; No. 11/2018, para. 54; and No. 15/2021, para. 94; see also [A/HRC/13/42](#), para. 36; and [A/HRC/48/55](#), para. 59.

³³ The Working Group notes the reservations to article 7 of the Covenant and to the Convention against Torture, in particular that the Government of the United States considers itself bound by the prohibition of cruel, inhuman or degrading treatment or punishment only to the extent that it means the cruel, unusual and inhuman treatment or punishment prohibited by the fifth, eighth and/or

107. The Working Group recalls that Mr. al-Uzaybi was transferred by Pakistan into the custody of the United States. Similarly, the transfer of custody of Mr. al-Uzaybi between Romania and the United States was done outside of the regular legal frameworks. The Working Group notes the source's unrefuted claim that the use of all enhanced interrogation techniques combined on Mr. al-Uzaybi was approved by the Director of the Central Intelligence Agency upon his arrival in Romania. Given that the whole enhanced detention and interrogation programme was established outside of the official legal controls, and given the information set out above regarding the roles of the two respondent States in carrying out mistreatment on behalf of the United States, or participating in the programme with knowledge of its nature, the Working Group considers that Pakistan and Romania had at a minimum substantial information to believe that Mr. al-Uzaybi would be subjected to torture at the hands of the authorities of the United States as a result of his inclusion in the enhanced detention and interrogation programme, in which they participated.

108. The source alleges that Mr. al-Uzaybi was tortured in detention by the Central Intelligence Agency for over 460 days, during which time he was subjected to a combination of enhanced interrogation techniques, as described above. The cumulative effect of these techniques was severe. Indeed, the torture resulted in him suffering severe hearing loss in both ears (100 per cent in the left ear and approximately 50 per cent in the right ear), traumatic brain damage, memory loss, word-finding problems, spinal injuries, sleep disruption, complex post-traumatic stress disorder and other chronic medical problems. Additionally, while held in black sites and during torture sessions, Mr. al-Uzaybi was forced to make self-incriminating statements.

109. The Working Group calls on the Governments of Pakistan, Romania and the United States to investigate this alleged torture, in accordance with their obligations under articles 4, 12 and 13 of the Convention against Torture, and to prosecute anyone found to have been involved. The prohibition of torture, which is non-derogable, including during the fight against terrorism because of its status as a *jus cogens* norm, encompasses the obligation to investigate alleged violations promptly and to bring perpetrators to justice, as well as the prohibition of the use of evidence obtained under torture in legal proceedings.³⁴

110. The extraction of self-incriminating statements through the use of torture raises serious concerns about due process. The Working Group has previously held that due process concerns apply to administrative detention.³⁵ In the absence of submissions on this issue from the Governments, the source has demonstrated that such materials may have been used as evidence to try to justify Mr. al-Uzaybi's ongoing detention, in violation of his human rights under article 7 and 14 of the Covenant and under article 15 of the Convention against Torture.

111. Moreover, taking into account the severity of the alleged torture and its impact upon Mr. al-Uzaybi, the Working Group considers it extremely unlikely that he would have been able to effectively participate in the legal proceedings that were conducted, reinforcing the conclusion that his due process rights were violated.³⁶ The mistreatment he was subjected to, and the resulting impairment he has suffered, will also likely compromise his ability to participate in any trial that may eventually occur. In the light of this, the Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Additional category III violations (United States of America)

112. Also under category III, the source alleges that he was not brought before a competent, independent and impartial judicial authority. Instead, his detention was only subjected to an administrative review process, specifically the proceedings of the Combatant Status Review Tribunal and the Periodic Review Board. It is alleged that Mr. al-Uzaybi never had access to

fourteenth amendments to the Constitution of the United States. However, it considers that the alleged treatment of Mr. al-Uzaybi is of such a grave nature that it would violate any internationally accepted definition of torture and cruel, inhuman or degrading treatment or punishment.

³⁴ Opinion No. 89/2017, paras. 41–45.

³⁵ Opinions No. 12/2020, and No. 49/2020.

³⁶ Opinions No. 29/2017, para. 63; No. 47/2017, para. 28; No. 52/2018, para. 79. (j); and No. 53/2018, para. 77 (c); see also [E/CN.4/2004/3/Add.3](#), para. 33.

his files, could not access a lawyer (he was assigned a personal representative, a military official without legal qualification and who did not hold the status and privileges of an attorney) and could not participate in the reviews of his detention in a meaningful way. There was a systematic use of ex parte evidence, in violation of fair trial rules and equality of arms. The allegations against Mr. al-Uzaybi were vaguely conveyed to him and contained in summaries based on uncorroborated assumptions. Moreover, the evidence against him came from another high-value detainee who had provided it while under torture in the custody of the Central Intelligence Agency. Meanwhile, Mr. al-Uzaybi was not allowed to call witnesses for evidence. As noted above, Mr. al-Uzaybi was allegedly subjected to enhanced interrogation techniques and was forced to make self-incriminating statements, in violation of his right to be presumed innocent under article 14 (2) of the Covenant and his right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant.

113. In relation to procedural safeguards relevant to category III, there is considerable overlap with the issues raised in the discussion of category I above. The source alleges that the Government of the United States failed to observe international fair trial guarantees.

114. It is clear to the Working Group that the obligations of the United States under international human rights law extend to persons detained at Guantanamo Bay, including Mr. al-Uzaybi.³⁷ With regard to access to a lawyer, the Working Group notes the unrefuted allegations that he first met with a habeas corpus counsel two years after arriving at Guantanamo, that his writ of habeas corpus is still undecided 13 years later, and that his counsel had limited access to his files. In conjunction with the use of ex parte evidence, and his subjection to enhanced interrogation techniques to force him to make self-incriminating statements, the Working Group finds that he was deprived of his due process rights, including his right to legal representation in order to defend himself.

115. Mr. al-Uzaybi's detention without a trial for over 17 years violates his rights under article 9 (3) of the Covenant to be tried within a reasonable time, and under article 14 (3) (c) of the Covenant to be tried without undue delay. Because of this delay, he will be significantly hampered in his ability to recall events and present a defence should any trial ever occur. Consequently, his detention is arbitrary under category III on this basis.

116. In relation to the proceedings of the Combatant Status Review Tribunal and the Periodic Review Board, the Working Group recalls that any form of detention or imprisonment should be ordered by, or be subjected to, the effective control of a judicial authority, as required under article 9 (4) of the Covenant. The judicial or other authority should enjoy the status and tenure affording the strongest possible guarantees of competence, impartiality and independence.³⁸

117. Mr. al-Uzaybi was brought before a Combatant Status Review Tribunal almost two years after his arrest. As noted, he had limited, if any, access to the information on which his detention was based. The Review Tribunal did not meet the standards of review by a judicial authority as, inter alia, it could not review the lawfulness of detention. In accordance with the views of the Supreme Court of the United States in the case of *Boumediene v. Bush*, hearings before the Review Tribunal do not satisfy the right to habeas corpus or to a fair and independent trial under articles 10 of the Universal Declaration of Human Rights and 14 (1) of the Covenant.³⁹ The Periodic Review Boards, which replaced the Review Tribunals were also flawed. The Review Boards are composed of members of the executive, lacking sufficient independence to ensure a proper review. The decisions of the Review Boards are not subjected to judicial review and they refuse to exclude evidence provided under torture unless all participating agencies concur that the interrogators engaged in torture. In the light of these factors, the Working Group considers that the bodies before which Mr. al-Uzaybi appeared suffer from several flaws and do not exhibit the requisite characteristics of competence, impartiality and independence. The Guantanamo Review Task Force was also not sufficiently independent, as it was composed of officers from various executive agencies. The use of these bodies in Mr. al-Uzaybi's instance did not constitute a sufficient substitute

³⁷ Opinion No. 70/2019, para. 56.

³⁸ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 4; see also [A/HRC/WGAD/2021/32](#), para. 40.

³⁹ Opinions No. 2/2009, No. 10/2013, No. 50/2014, and No. 89/2017.

for his due process rights. His detention in these conditions is sufficiently serious to amount to a violation under category III.

118. The Working Group considers that the extensive period of his detention without trial, exceeding 17 years, is excessive and contrary to due process, in violation of his rights to be tried within a reasonable time under article 9 (3) of the Covenant, and to be tried without undue delay under article 14 (3) (c) of the Covenant.

Category V

119. The source argues that Mr. al-Uzaybi is being subjected to multiple and intersecting forms of discrimination on the grounds of his religion and his impairments. He argues that his continued indefinite detention is directly linked to the fact that he is a Muslim foreign national. He points out that every prisoner brought to Guantanamo Bay was Muslim, indicating that the United States Government has discriminated on the basis of religion as well as national origin.

120. The Working Group notes that the various denials of and restrictions on rights, that are ordinarily not applicable within the United States, apply exclusively to non-national Muslim men at Guantanamo Bay.⁴⁰ The Working Group finds that Mr. al-Uzaybi has been deprived of his fair trial guarantees. On the basis of the source's unrefuted allegation, he was frequently questioned on his religious and political views relating to the United States foreign policy. By discriminating on the basis of his status as a foreign national and his religion, the United States has denied Mr. al-Uzaybi equality before the law, in violation of articles 2, 5 (a) and (b) and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.

Concluding remarks

121. The Working Group notes with concern the source's indications that Mr. al-Uzaybi is the most severely impaired and incapacitated detainee at Guantanamo Bay and that his health is declining (exhibiting a chronic deteriorating course with significant disabilities that will increasingly impair his health, mental state and general well-being). It notes the source's statements that the medical care he needs is not available and he has not received therapies and treatments that are typically provided to service members who demonstrate such conditions, illnesses and impairments.

122. The Working Group recalls that medical care at Guantanamo has been, and remains, grossly deficient and that, for years, communication between inmates was prohibited, with serious psychological effects. The Working Group feels obliged to remind the Governments, and the Government of the United States in particular, that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect to the inherent dignity of the human person and that denial of medical assistance constitutes a violation, in particular, of rules 1, 24, 25, 27, 30 and 32 the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), as well as principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted that, in contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life.⁴¹

123. While the Working Group has specifically addressed Mr. al-Uzaybi's circumstances in the present opinion, the conclusions reached here also apply to other detainees in similar situations at Guantanamo Bay. Over the past 15 years, the Working Group has addressed

⁴⁰ Opinions No. 10/2013, No. 50/2014, No. 89/2017, and No. 70/2019; see also [CERD/C/USA/CO/7-9](#), para. 22; and opinion No. 89/2017, para. 62 (the Working Group concluded that an individual in Guantanamo Bay: "has been subjected to prolonged detention on discriminatory grounds because of his status as a foreign national and his religious beliefs as a Muslim").

⁴¹ [A/HRC/38/36](#), para. 18.

several cases of detention at Guantanamo Bay. The Working Group expresses grave concern about the pattern that all these cases follow and recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute crimes against humanity.

124. The Working Group recalls the findings from its 2016 visit to the United States, including in relation to Guantanamo Bay.⁴² The closure of Guantanamo Bay was previously an important priority of the Government. The Working Group urges the Government to once again prioritize the closing of that facility. In the meantime, the Working Group urges the Government to cooperate with United Nations human rights mechanisms and allow them full access to it. It considers that an invitation to undertake a follow-up visit to the United States, with specific authorization to visit Guantanamo, would be welcome.⁴³

Disposition

125. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. al-Uzaybi, being in contravention of articles 2, 5, 7, 9 and 10 of the Universal Declaration of Human Rights and articles 2 (3), 7, 9 (1), (2), (3) and (4), 10 and 14 (3) (c) and 26 of the Covenant, is arbitrary. The Working Group considers that United States of America is responsible for his arbitrary detention under categories I, III and V, whereas Pakistan and Romania are responsible for arbitrary detention according to category I and III (in relation to torture, cruel, inhuman and degrading treatment).

126. The Working Group requests the Governments found to be responsible for the violations of Mr. al-Uzaybi's rights, as detailed herein, to take the steps necessary to remedy his situation without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

127. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. al-Uzaybi immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure his immediate release.

128. The Working Group urges the Governments found to be responsible for the violations of his rights, as detailed herein, to ensure full, complete and independent investigations of the circumstances surrounding the arbitrary deprivation of liberty of Mr. al-Uzaybi and to take appropriate measures against those responsible for the violation of his rights.

129. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

130. The Working Group requests the Governments concerned to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

131. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Governments concerned, as detailed herein, to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. al-Uzaybi has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. al-Uzaybi;

⁴² A/HRC/36/37/Add.2.

⁴³ The Working Group notes that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism undertook a technical visit to Guantanamo Bay in 2023.

(c) Whether an investigation has been conducted into the violation of Mr. al-Uzaybi's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Governments found to be responsible for the violations of his rights with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

132. The Governments found to be responsible for the violations of his rights are invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

133. The Working Group requests the source and the Governments found to be responsible for the violations of his rights to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

134. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁴⁴

[Adopted on 29 March 2023]

⁴⁴ Human Rights Council resolution 51/8, paras. 6 and 9.