



January 9, 2009

Dr. Robert M. Gates
Secretary
United States Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Gates,

I am writing to bring your attention to the cruel, inhuman, degrading and unlawful treatment of the thirty hunger striking detainees currently held at the Guantánamo Bay detention facility.

This recent wave of hunger strikes at Guantánamo coincides with the eve of the seventh anniversary of the opening of the controversial detention facility that President-elect Obama has committed to closing. According to press reports, thirty of the 250 men currently detained at Guantánamo are on hunger strike¹, the highest number in months.² These detainees, none of whom have been charged with a crime, appear to be taking this extreme measure in order to protest their indefinite and arbitrary detention, conditions of confinement and lack of meaningful access to courts. By refusing food, these detainees hope to bring public attention to these matters of international concern.

Detainees at Guantánamo who refuse nine consecutive meals are classified as being hunger strikers. Twenty-five of the thirty men classified as such are now being force-fed through tubes inserted in their noses. These twenty-five detainees have refused food for twenty-one consecutive days and/or weigh less than eighty-five percent of their weight on arrival at the detention facility, according to Pauline Storum, Deputy Commander for Public Affairs for Joint Task Force Guantánamo.

Approval for the force-feeding procedure is acquired through sign-off from both a doctor and the prison camp's commander. The unlawful force-feeding procedure requires that guards and medical professionals strap the detainee "into a chair, Velcro his head to a metal restraint, then tether a tube into the man's stomach through his nose to pump in liquid nourishment twice a day."³ Two of the striking detainees have been force-fed through tubes in their noses since August 2005. One of these detainees, Imad Hassan, a thirty-year old Yemeni, has been fed through a tube periodically for the last three years and suffers from digestive and pancreatic problems, among other severe health issues.

Debilitating risks of force-feeding include major infections, pneumonia and collapsed lungs. Five detainees held at Guantánamo have died in custody since the facility opened in January 2002. Four of these detainees allegedly committed suicide as an apparent consequence of the cruel, inhuman and degrading treatment they suffered from and the despair they experienced while being indefinitely detained without meaningful access to courts and fair trials. A 2006 joint report submitted by five independent human rights experts of the United Nations Human Rights Council

¹ Carol Rosenberg, *Hunger Strikers Surge to 10 Percent at Guantánamo*, Miami Herald, January 8, 2009.

² Associated Press, *Gitmo Hunger Strike Grows to 30, Highest in Months*, January 9, 2009.

³ Rosenberg, *supra* note 1.

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(formerly the Commission on Human Rights)⁴ found that the mistreatment of detainees at Guantánamo has had profound and long-term mental effects on many of them and that conditions of confinement have led to individual and mass suicide attempts, widespread and prolonged hunger strikes and over 350 acts of self-harm in 2003 alone.

Force-feeding is universally considered to be a form of cruel, inhuman and degrading treatment. The aforementioned 2006 United Nations report authoritatively declares that the manner in which detainees are force-fed and the ethics and legality of the practice of force-feeding, regardless of the manner in which it is undertaken, are matters of grave and distinct human rights concerns. The report additionally stated that the confirmed force-feeding of detainees on hunger strike 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.

The report also asserts that doctors and other health professionals authorizing and participating in force-feeding procedures on detainees are in violation of the rights to health and other human rights, including those outlined in the International Covenant on Civil and Political Rights which the United States ratified in 1992. The U.N. Special Rapporteur on the Right to Health shared in the same communication that he had “received reports, many confirmed by investigations of the United States military, that health professionals in Guantánamo Bay have systematically violated widely accepted ethical standards set out in the United Nations Principles of Medical Ethics and the Declaration of Tokyo [of the World Medical Association (WMA)]. . . . Alleged violations include . . . being present during or engaging in non-consensual treatment, including drugging and force-feeding”.

In its 1975 Declaration of Tokyo, the WMA prohibited force-feeding and advised “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.” The WMA’s subsequent 1991 Declaration of Malta reinforces that “forced feeding contrary to an informed and voluntary refusal is unjustifiable” and recognizes the hunger strike as a “form of protest by people who lack other ways of making their demands known.” Finally, the WMA’s Declaration on Hunger Strikers states, “*Forcible feeding is never ethically 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.*”⁵ The American Medical Association is a member of the WMA.

The Department of Defense policy allows health professionals to force-feed a detainee when his hunger strike threatens his life or health. The aforementioned 2006 United Nations report renders this United States policy to be “inconsistent with the principle of individual autonomy, the policy of the World Medical Association and

⁴ 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).

⁵ <http://www.wma.net/e/policy/h31.htm>

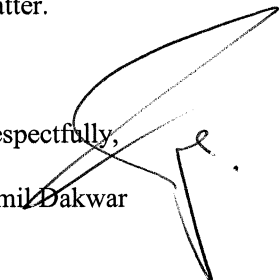


the American Medical Association, as well as the position of [International Committee of the Red Cross] doctors”.

Finally, the practice of forced feeding constitutes a violation of the Detainee Treatment Act of 2005 which prohibits the “cruel, inhuman, or degrading treatment or punishment” of detainees “regardless of nationality or physical location”, treatment which includes force-feeding. Force-feeding may also be in violation of U.S. Supreme Court holdings in *Cruzan v. Director, Missouri Department of Health*⁶ and *Washington v. Glucksberg*⁷ that individuals necessarily possess a fundamental right to refuse lifesaving medical treatment.

We respectfully and urgently request that you immediately order the prison camps commander to cease all force-feeding of detainees who are capable of forming a rational judgment and are aware of the consequences of refusing food. We also urge you to allow independent medical professionals to review and monitor the status of hunger-striking detainees in a manner consistent with international ethical standards. We also request that you order authorities at the detention facility to revise any procedure that allows force-feeding of detainees.

In light of the dire and devastating consequences of force-feeding on hunger-striking detainees at Guantánamo, we respectfully request your immediate attention to this matter.

Respectfully,

Jamil Dakwar

Director, Human Rights Program
American Civil Liberties Union

Cc:
Attorney General, Michael Mukasey, Department of Justice
Acting Inspector General, Gordon Heddell, Department of Defense
Chairman of the Armed Services Committee, Carl Levin, U.S. Senate
President of the American Medical Association, Dr. Nancy Neilsen

⁶ 497 U.S. 261, 278 (1990).
⁷ 521 U.S. 702, 725 (1997).