

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

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 26/20, 24/6, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of the severe conditions of detention of Mr. ██████████ in Yatala Labour Prison, that include being held in solitary confinement for more than five years, and being provided with inadequate mental health care.

According to the information we received:

Mr. ██████, a 29 year-old African American citizen of the United States, was charged with attempted homicide following an incident that occurred on 12 November 2007. On 4 December 2008, Mr. ██████ was found not guilty by reason of mental impairment and fixed a limiting [maximum] term of 13 years from that date.

Mr. ██████ was initially housed in the James Nash House (JNH), South Australia's center for treatment of forensic patients, (i.e. those who have been found not guilty due to mental impairment at the time of the offence, like Mr. ██████). Mr. ██████ received no psychotherapy during his time at JNH, despite requests for such treatment, including family therapy.

After nine months, on 3 September 2009, officials at JNH transferred Mr. ■ to the Yatala Labour Prison, describing a lack of capacity for dealing with patients with “personality disorders” to Mr. ■’s family. The JNH claimed that it could not accommodate aggressive forensic patients suffering from “personality disorders,” due to the fact that it houses a conflicting demographic of patients with intellectual disabilities. This decision was made despite the fact that the usual course of action for a person found not guilty by reason of mental impairment, like Mr. ■, is housing in JNH (under Section 269 of the Criminal Law Consolidation Act). During the transfer, and despite the fact that Mr. ■ was not presenting a threat to anyone or damaging furniture, a SWAT team in full gear was called in, which burst into his room, handcuffed him, ripped off his clothing, and forcibly administered a sedative injection.

At the time of transfer to Yatala Labour prison, Mr. ■ was a dual-status prisoner, serving a concurrent two-month sentence for another, minor, crime. In order to effectuate the transfer, JNH officials reportedly requested a directive from the Health Minister authorizing Mr. ■’s transfer, citing a lack of beds at JNH to accommodate Mr. ■, and stating that once this two-month criminal conviction ended, Mr. ■ would revert back to forensic status and be placed on a waiting list for available beds. There was no review of this ministerial decision at the end of the two months. Mr. ■ remains accommodated at Yalata Labour Prison to date, under a Ministerial Direction from the Minister for Mental Health and Substance Abuse dated 15 April 2013, (Section 269V of the Criminal Law Consolidation Act, 1935). Responsibility for Mr. ■’s care is shared between the JNH and the Department of Corrective Services.

At Yalata Labour Prison, Mr. ■ was initially housed in a mainstream division, in the Australian prison system, where he remained in solitary confinement for five years and a half, until January 2015.

There are serious concerns that the only psychiatric treatment Mr. ■ was given during the first three years of his time in Yalata Labour Prison consisted of several minute visits by a psychiatrist approximately every three to four months. Mr. ■’s family were refused permission to employ a privately funded psychiatrist or psychologist to provide a regular course of treatment of Mr. ■. Eventually, Mr. ■ was permitted to receive regular bi-monthly visits from a psychiatrist from September 2013 – March 2014, and regular bi-weekly visits from April 2014 – present, but that there are frequent gaps in the provision of these services. According to Mr. ■’s family, prison authorities (including medical authorities) cited the fact that no treatment exists for personality disorders as a reason behind the lack of provision of medical care.

Additionally, under Mr. ■■■'s regime in G Division, he is confined to his cell for 22-23 hours a day, and only allowed one hour outside. During this hour, Mr. ■■■ is placed in a cage-like structure, rather than in the open yard with other prisoners, which makes any communication with other prisoners virtually impossible. There is no provision for recreational activities or a gym, which does not allow for a healthy outlet for his energy. Mr. ■■■ has repeatedly been subjected to additional punitive measures, including handcuffing regimes (for nearly one year), loss of TV, removal of his mattress, loud music blasting into his cell for four hours, and being obliged to wear a hospital gown in place of regular clothing.

The harsh conditions of detention in Division G have had a further deleterious effect on Mr. ■■■'s mental health. In one instance, Mr. ■■■ experienced a psychotic episode in response to the presence of a camera inside his cell, and that he was punished by being placed in the so-called "freezer" for three weeks, which involved him being placed in a cell completely devoid of any furniture other than a mattress, and his clothes being taken away.

According to the information received, following an incident on 6 January 2015, Mr. ■■■ was placed in a new, highly restrictive regime, which reportedly further limits his activities and access to possessions. Mr. ■■■ does not receive some of the privileges specified in his regime including time outside, because he is regarded as not complying with the regime. He is currently on a handcuff regime and four officers are required at all times when unlocking his cell and for all routine movements. A determination is made on a daily basis with regards to approval for a telephone call and a shower, with consideration given to his current behaviour and willingness to wear appropriate clothing. Mr. ■■■ is served three meals a day through a trap, and is allowed no association with other prisoners. He is allowed only three calls per week and two non-contact visits per week, while Ombudsman, Prisoner Complaints, and Legal calls are limited to time and space. The management plan further states that his regime has been imposed "for the protection of staff, other prisoners, and himself" and that "[h]e should receive minimal contact and staffs are not to engage in lengthy conversation."

Grave concern is expressed that the regime under which Mr. ■■■ is being held is unable or unwilling to properly respond to his needs. It is reported that the South Australia Ombudsman has found that Mr. ■■■ has been wrongly treated by not being provided with adequate mental health care, and by being subjected a particularly harsh prison regime. Concern is also expressed in regards to Mr. ■■■ facing the prospect of an additional seven years under a highly restrictive regime until the completion of his sentence, despite having been found not guilty by reason of mental impairment.

Without in any way implying any conclusion as to the facts of the case, we would like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr [REDACTED]. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons, especially those in their custody. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of Persons with Disabilities, all of which were ratified by Australia.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to paragraph 6 of General Comment No. 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights (Adopted at the 44th session of the Human Rights Committee, 1992). In this regard, I would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged" (Adopted by the General Assembly by resolution 45/111 of 14 December 1990).

In the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the General Assembly of 5 August 2011 (A/66/268), solitary confinement was defined, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. It was observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged or indefinite solitary confinement may never constitute a legitimate instrument of the State and it runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

Prolonged solitary confinement is defined as any period of solitary confinement in excess of 15 days (A/66/268) under conditions of total isolation. This definition was based on the large majority of scientific studies which indicate that after 15 days of isolation harmful psychological effects often manifest and may even become irreversible. For solitary confinement that includes some mitigating factors, such as access to reading and writing materials, radio or television, the term of legitimate use of isolation may exceed 15 days but would still have to be counted in days, not weeks or months or years. We would like to recall that when used indefinitely or for long periods, solitary

confinement amounts to cruel, inhuman or degrading treatment or punishment or even torture, because it may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156.

Regarding access to specialized medical care by Mr. ■■■, we would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. (GC 14, Para.34) In addition, the Standard Minimum Rules for the Treatment of Prisoners establish the provision of care for the physical and mental health of the all prisoners, including sick prisoners, those who complain of illness, and any prisoner who may require it. (Rule 25(1))

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information concerning the conditions of Mr. ■■■'s detention, and how these measures are compatible with international norms and standards as stated, *inter alia*, in the UDHR, the ICCPR, the CAT and the CRPD, as ratified by Australia. In particular, please comment on the harsh conditions under which Mr. ■■■ is being held and explain the rationale behind the new highly restrictive regime and its compatibility with the norms contained in these instruments, particularly given his recognized mental impairment.
3. Please kindly provide details of Mr. ■■■'s access to professional mental health care services or support, including the number of visits and their duration
4. Please kindly indicate what measures have been taken so far to ensure that Mr. ■■■'s physical and mental health needs are properly addressed.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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

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

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