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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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.

REFERENCE: AL Health (2002-7) G/SO 214 (53-24)
USA 6/2012

11 June 2012

Excellency,

We have the honour to address you in our capacities as 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 resolution 15/22 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received **concerning the treatment suffered by children and young adults enrolled in the residential programme of the Judge Rotenberg Center (JRC)**. The JRC, located in Canton, Massachusetts, is an educational center providing treatment to those enrolled aged 3 to adulthood, all of whom are struggling with severe emotional, behavior and psychiatric problems, including autism-like disorders and other mental disabilities.

The JRC has been the subject of an urgent appeal sent on 11 May 2010, by the mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right to education (UA G/SO 214 [53-24] USA 8/2010).

A reply by your Excellency's Government was received on 28 June 2010, advising that "the United States Department of Justice has an open and ongoing investigation into possible violations of civil rights laws at the Judge Rotenberg Center. When the investigation is completed, the United States will be pleased to provide a response". To date, no further information from your Excellency's Government has been received.

According to new information received:

The JRC continues to supplement its educational programme with a type of therapy known as “aversive therapy”, which includes electric shocks, physical means of restraint and food rewards as measures to punish students and encourage change in behavior. The electric shocks are allegedly generated by a device known as Graduated Electronic Decelerator (GED) which children and young adults are made to carry 24 hours a day in backpacks or around their waist. It is reported that about half of the school’s students carry the generators that are triggered by care assistants using remote-controlled zappers, which then send an electric charge to skin pads on the student’s arms, legs, soles of their feet, finger tips and torsos.

In a statement the JRC reportedly said that it uses shock treatments only for the most difficult behaviorally involved students in the country. According to this statement shocks were only administered when other therapies were exhausted and with the approval of parents and the courts. However, it is reported that students are shocked for very minor things like standing up to give a hug. Some students, who were not able to speak out about what was happening to them, reportedly were getting 20 or 30 shocks a day.

It is reported that in May 2011, the founder and executive director of JRC, Mr. Matthew Israel, was allegedly found to have ordered the destruction of video evidence relating to a case in which a boy aged 18 was shocked 77 times over a three-hour period. Mr. Israel was sentenced to five years’ probation and was forced to resign as Executive Director of the school. However, the same treatment practices – shocks and restraints – reportedly continue.

In August 2011, the Massachusetts Governor and the Massachusetts Department of Developmental Disabilities revised state regulations to ban the use of painful treatment, such as electric shocks, in any public or private facility in the state, for any new admissions on or after 1 September 2011. A bill that would ban aversive therapy has passed the Massachusetts State Senate and is now being considered by the House. However, JRC is reportedly allowed to continue to shock students who were already receiving this treatment before 1 September 2011.

On 10 April 2012, a video of a student at JRC surfaced in a Massachusetts courtroom, in the context of a suit against the school by a former student and his mother. The JRC convinced a judge eight years ago to seal the video, which subsequently surfaced in the public domain on 10 April 2012. The video shows the then 18-year-old Andre McCollins, tied face down on a four point restraint board, being shocked 31 times over a seven hour period. In the video Andre can be heard screaming and shouting for help. His mother told the court that when she visited him soon after he was given the shocks, he could not turn his head to the right nor to the left and that he was just staring straight without blinking. As a result of this treatment, he was hospitalized for several weeks and suffered permanent psychological damage.

It is also reported that JRC plans on challenging the state of Massachusetts in court regarding the state's attempts to stop the use of shock on new admissions.

Serious concern is expressed about the physical and mental integrity of the students residing at the JRC who are children and young adults with mental disabilities. In this connection, serious concern is expressed about the use of electric shock therapy and physical means of restraint as part of the educational programme of the Center and the fact that they can sometimes be used in combination.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the Judge Rotenberg Center in Massachusetts and to appeal to your Excellency's Government to take all necessary measures to guarantee the fundamental rights of all residents of the JRC. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to draw the attention of your Excellency's Government to paragraph 7a of Resolution 8/8 of the Human Rights Council reminded Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture. In this context, we would like to draw your Excellency's Government's attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which the Special Rapporteur on torture, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. It was also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive

chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

Furthermore we would like to draw your Excellency's Government's attention to paragraphs 1 and 2 of article 15 of the Convention of the Rights of Persons with Disabilities, signed by your Excellency's Government on 30 July 2009, which respectively state that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and that "states Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment". We would also like to draw your Excellency's Government's attention to article 17 of the aforementioned Convention that states that "Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others".

In addition, we would like to draw the attention of your Excellency's Government to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

We would like to appeal to your Excellency's Government to protect the right of all residents of the JRC to enjoy the highest attainable standard of physical and mental health. The right to health is enshrined, inter alia, in article 25 of the UDHR and article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). We would also like to refer your Excellency's Government to the United Nations Principles for the Protection of Persons with Mental Illness, which holds that "Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights" as recognized in the UDHR, ICESCR, ICCPR and in other relevant instruments (Principle 1 (5)). Furthermore, the Principle 8(2) on standards of care states that "Every patient shall be protected from harm, including unjustified medication, abuse

by other patients, staff or others or other acts causing mental distress or physical discomfort”.

In view of the urgency of the matter, we would appreciate a response on the steps taken by your Excellency’s Government to safeguard the rights of the residents of the Judge Rotenberg Center in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Your Excellency’s Government’s reply of 28 June 2010, indicated that “the United States Department of Justice has an open and ongoing investigation into possible violations of civil rights laws at the Judge Rotenberg Center.” Please provide the details, and where available the results, of this investigation
3. What is the status of the bill to ban aversive therapy at the Massachusetts state level? What measures will be taken, on a Federal level, to avoid recurrence of such practices in particular the use of electric shocks on children and persons with mental disabilities, that are incompatible with international human rights standards.
4. What measures have been taken to ensure the enjoyment of the right to physical and mental health of all residents at the Judge Rotenberg Center?

We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

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

Anand Grover

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highest attainable standard of physical and mental health

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