

**Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: AL USA 12/2016:

31 October 2016

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 25/13.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received **concerning the alleged ongoing prolonged solitary confinement, under Special Administrative Measures (SAMs), at the United States Penitentiary, Administrative Maximum Facility (ADX) in Florence, Colorado, of Mr. Ahmed Abu Ali, who is serving an aggregate term of life without parole, since the year 2005.** Mr. Ali's case was the subject of a joint communication dated 15 August 2013 (*Reference: AL G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24); USA 12/2013*)

According to the information received:

In October 2005, Mr. Ali was sentenced to an aggregate term of imprisonment of life without parole pursuant to several terrorism-related charges. His case resulted in two appeals to the United States Court of Appeals for the Fourth Circuit. On 17 April 2006, Mr. Ali was sentenced to an aggregate term of thirty years imprisonment. Both Mr. Ali and the Government filed a notice of appeal. On 6 June 2008, the Fourth Circuit remanded for a new sentencing hearing (*United States v. Abu Ali*, 528 F. 3d 210 [4<sup>th</sup> Cir. 2008]). The resentencing was held on 27 July 2009 and resulted in the trial court's imposition of an aggregate term of life without parole. On 1 February 2011, the Fourth Circuit affirmed the sentence (*United States v. Abu Ali*, 410 Fed. Appx. 673 [4<sup>th</sup> Cir. Cir. 2011]).

Mr. Ali currently continues to be detained in the United States Penitentiary, Administrative Maximum Facility ("ADX") in Florence, Colorado, under SAMs. He is allegedly being subjected to ongoing prolonged solitary confinement and concern has been expressed about his deteriorating mental health. He is reportedly under 23-hour lock down in a 7 by 12 foot cell, and denied reading materials. Letters are allegedly received months after they are sent, and he is only allowed one unscheduled telephone call to his family a month. Mr. Ali's SAMs are reportedly due for renewal, with a review slated to commence in December 2016.

Without prejudice to the veracity of the information received, I would like to express grave concern about the prolonged solitary confinement of Mr. Ali under SAMs for the past 11 years. I would like to thank Your Excellency's Government for its

response to my previous communication on Mr. Ali's case, dated August 15, 2014, in which it informed that the Government does not comment on cases currently under litigation, and was therefore unable to comment on the circumstances surrounding Mr. Ali's case while his motion to vacate his sentence was pending before the United States federal district court. I would also like to thank your Excellency's Government for its letter dated 30 November 2011, referenced in its communication of 15 August 2014, in which it described conditions of confinement at the ADX facility.

In connection with these allegations and concerns, I would like to remind your Excellency's Government of its obligations under international human rights law, in particular the absolute prohibition of torture and other forms of ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the United States of America ratified in 1994. I would like to stress that conditions of detention as described above can amount to inhuman and degrading treatment, as consistently found by, among others, the Human Rights Committee.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the legal grounds and the reasons for Mr. Ali's continued solitary confinement under at the ADX United States Penitentiary, including results of the reviews leading to the renewal of Mr. Ali's SAMs.
3. Please provide information on measures taken by your Excellency's Government to ensure that Mr. Ali is not being subjected to prolonged solitary confinement and the measures taken to assure adequate medical treatment to maintain Mr. Ali's mental health.
4. Please provide information on measures taken by your Excellency's Government to reduce the use of solitary confinement and to abolish the practice of prolonged solitary confinement and other extreme isolation practices within the penitentiary system.
5. Please provide information on steps taken by your Excellency's Government to define a maximum term beyond which solitary confinement would be considered prolonged and therefore banned.

6. Please provide information on the steps taken by your Excellency's Government to implement the recommendations and guiding principles for all correctional systems and for the Federal Bureau of Prisons specifically found in the January 2016 "U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing."

I would appreciate receiving a response within 60 days.

While awaiting a reply, I 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(s) responsible for 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 my highest consideration.

Juan Ernesto Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, I would like to draw the attention of your Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above, in particular the absolute and non-derogable prohibition of torture and other ill-treatment as codified in **articles 2 and 16 of the Convention against Torture** and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the United States ratified on October 21, 1994.

**Article 7 of the International Covenant on Civil and Political Rights**, to which the United States is a party provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” General Comment 20 of the Human Rights Committee points out that the purpose of article 7 “is to protect both the dignity and the physical and mental integrity of the individual.” The Human Rights Committee further points out the complementarity of **article 10, paragraph 1**, of the Covenant, stipulating that all persons deprived of their liberty be treated with humanity and respect.

I would also like to draw your attention to the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). **Principle 1** refers to humane treatment and respect for the inherent dignity of the person. **Principle 6** states that no person will be subjected to torture or other ill-treatment while imprisoned.

With regards to aforementioned allegations of prolonged solitary confinement, I would like to refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (**A/66/268**), in which it is stated that the use of prolonged solitary confinement (above 15 days) in itself runs afoul of the absolute prohibition of torture and ill-treatment and that for people with mental disabilities, solitary confinement amounts to cruel, inhuman or degrading treatment or punishment or even torture, even if not used indefinitely or for a prolonged period of time.

The **Nelson Mandela Rules** also prohibit prolonged or indefinite solitary confinement in **Rule 43**, and define prolonged solitary confinement as solitary confinement for a time period in excess of 15 consecutive days in **Rule 44**. The Nelson Mandela Rules further specify that solitary confinement may be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review in **Rule 45**. I would also like to recall **paragraph 6 of General Comment No. 20 of the Human Rights Committee** (adopted at the 44th session of the Human Rights Committee, 1992), which states that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by **article 7 of the International Covenant on Civil and Political Rights**, which the United States ratified in 1992.