

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Working Group on Arbitrary Detention

REFERENCE:
AL GBR 4/2021

10 March 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 43/20 and 42/22.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Kevan Thakrar** who has been held in Close Supervision Centres for ten years under conditions of indefinite and prolonged solitary confinement.

According to the information received:

Mr. Thakrar (numberA4907AE) was arrested on 2 September 2007, accused of three counts of murder, two of attempted murder and one firearms offence with two other people. In June 2008, nine months after their arrest, the accused were tried at St Albans Crown Court reportedly before the defence had time to prepare due to alleged witness tampering and intimidation and failure by the CPS to meet disclosure deadlines. After three trial sessions, in August 2008, Mr. Thakrar and his –co-defendants were convicted of joint enterprise by a jury and sentenced to life with a 35 year tariff.

In March 2010, Mr. Thakrar was accused of attacking a prison guard at HMP Farkland. Following a trial in 2011, he was unanimously exonerated by the jury.

Mr. Thakrar is serving his sentence and has been held in various Close Supervision Centres (CSC) at HMP Farkland, HMP Woodhill and HMP Whitemoor, for the past 10 years continuously. Mr. Thakrar was informed that he is a "high risk" prisoner without any concrete written evidence and without being told what he needs to do to be released from the CSC beyond the subjective stipulation that he must engage with the authorities. It is alleged that he is the subject of an act of retribution by the prison authorities.

During his imprisonment, he has been restricted to his cell for 23 or more hours per day. While in the CSCs, he is prevented from communicating with other prisoners and is deprived of adequate exercise, educational and work facilities, natural daylight and long-distance vision and adequate medical treatment.

Condition of detention in Close Supervision Centres (CSCs)

CSCs were introduced in 1998 as a type of control unit based in five prisons, to remove the most seriously disruptive prisoners from main locations within prisons. CSCs are holding units where prisoners are held in conditions described

as “most restrictive...with limited stimuli and human contact”. The level of confinement and deprivation of contact with other human beings in CSCs is comparable to “solitary confinement” due to its sensory deprivation, social isolation and confinement aspect.

Prior to being transferred to a CSC, an individual risk assessment is conducted to determine a referral to CSC. However, prior to the assessment, prisoners are allegedly kept in segregation for lengthy periods. The assessment takes place while the prisoners are in a vulnerable state.

The Royal College of Psychiatrists (RCP) accredits CSCs as “Enabling Environments”, i.e. a place where there is a focus on creating a positive and effective social environment and where healthy relationships are seen as the key to success, despite growing accounts of human rights violations from prisoners held in these units including death in custody, mental illness, prisoners being confined to their cells for 24 hours a day, being fed through a hatch, guards being allowed to attack prisoners with impunity, food deprivation used as punishment, and deliberate attempts to isolate prisoners from family and outside support. CSCs have been referred to by inmates and other prisoners as “psychologically calculated, tactical targeting and abuse” and a process of assessing risk that lacks any legitimacy where prisoners feel “there is no way out”.

In addition, prisons receive annually “£100,000 per prison per CSC bed based on full occupancy”, considerably more than the cost per prisoner held in general population. There is thus an alleged financial incentive for sending prisoners to CSCs and keeping them there, and it casts doubt on the claim that these decisions are based on an assessment of the risk that prisoners pose.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern at the indefinite and prolonged detention of Mr. Thakrar in what appears to be conditions of solitary confinement. Both in this individual case and in terms of general policy, we are particularly concerned at the reported use of prolonged or indefinite solitary confinement in Close Supervision Centers, thus predictably inflicting severe pain or suffering amounting to cruel, inhuman and degrading treatment or punishment, or even torture.

Should the facts alleged above be confirmed, they would amount to a violation of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in Articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by the United Kingdom on 8 December 1988. These acts would also constitute a violation of Articles 7, 9, and 10 of the International Covenant on Civil and Political Rights (ICCPR) to which the United Kingdom became a state party on 20 July 1976.

In this regard, we would like to recall the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) which lay out generally accepted principles and practice in the treatment of prisoners and prison management. In particular, we would like to refer to Rules 43.1(b), 43.3, 44, 45 and 46

which refer to the use of disciplinary sanctions or restrictive measures, including solitary confinement, and the role of health-care personnel regarding any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of prisoners subjected to such sanctions or measures. We 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 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.

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(s) you may have on the above-mentioned allegations.
2. Please explain the factual and legal grounds that justify the alleged prolonged or indefinite and prolonged detention of Mr. Thakrar in conditions amounting to solitary confinement, and how these measures are consistent with the international human rights obligations of the United Kingdom, most notably under ICCPR and CAT.
3. Please clarify the factual and legal basis for the alleged categorization of Mr. Thakrar as a high risk prisoner, and for continuing such categorization for a period of ten years after his arrest and imprisonment.
4. Please clarify whether Mr. Thakrar was informed of the factual and legal grounds for his continued detention in such conditions of isolation, and about the precise modalities that would allow a return to normal detention conditions.
5. Please describe in detail the full range of different detention regimes that can be applied in Close Supervision Centres, the purpose of each of these regimes, and how they are consistent with the United Kingdom’s human rights obligations, most notably under ICCPR and CAT,
6. Please describe in detail the safeguards and other effective measures taken by your Excellency’s Government to ensure that prisoners in Close Supervision Centres are not subjected to prolonged or unnecessary solitary confinement or similar conditions of isolation, which may amount to cruel, inhuman or degrading treatment or punishment, or even torture.
7. Please provide detailed information on the individual risk assessments carried out before referral to Close Supervision Centres is recommended. Please also provide information on whether an assessment can be legally

challenged and/or whether any other recourse or remedy, such as an independent and external review of the assessment, is available to the prisoner.

8. Please provide detailed information on measures taken to ensure that the assignment to or continued accommodation in Close Supervision Centres is not based on or influenced by factors unrelated to the behavior of prisoners, such as most notably financial incentives.
9. Please provide detailed information on measures taken to end solitary confinement and isolation of persons with mental conditions and psychosocial disabilities experiencing a mental health crisis.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Leigh Toomey
Chair-Rapporteur of the Working Group on Arbitrary Detention

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we 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).

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.

We 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 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.

We also refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment. The Committee against Torture and the Human Rights Committee have found that conditions of detention can amount to inhuman and degrading treatment.

With regards to aforementioned allegations of prolonged solitary confinement and isolation, we would like to refer to the report by the former 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.

Furthermore, we would like to recall the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) which lay out generally accepted principles and practice in the treatment of prisoners and prison management. In particular, we would like to refer to Rules 43.1(b), 43.3, 44, 45 and 46 which refer to the use of disciplinary sanctions or restrictive measures, including solitary confinement and the role of health-care personnel regarding any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of prisoners subjected to such sanctions or measures.

Rule 43 of the Mandela Rules prohibits prolonged or indefinite solitary confinement and defines prolonged solitary confinement as solitary confinement for a time period in excess of 15 consecutive days in Rule 44. The 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. Further, Rule 45.2, explicitly prohibit the imposition of isolation for punishment and prohibit the imposition of isolation “in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.”