

**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**

REFERENCE: AL USA 6/2016:

28 June 2016

Excellency,

We have the honour to address you in our capacities 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 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 discrimination, ill-treatment, excessive use of force, lack of medical attention, food, and water, death in custody, and prolonged solitary confinement of prisoners with psychosocial disabilities in prisons and jails in the United States of America.**

According to the information received:

Correctional staff in prisons and jails have routinely mistreated persons with psychosocial disabilities, including schizophrenia and bipolar disorder, by using excessive force, failing to provide adequate medical attention, food, and water, and submitting them to prolonged solitary confinement.

When the behaviour of prisoners with psychosocial disabilities, resulting from their disability, is perceived as misconduct or breaching of prison discipline, prison staff allegedly often respond with excessive or unnecessary force that is unwarranted or persists after the prisoner is under control.

Chemical agents are routinely deployed as a first response to perceived problems, often with little to no justification or necessity, and in amounts disproportionate to the need. Oleoresin capsicum (pepper spray) has been used on prisoners for failing to return a food tray, tampering with a colostomy bag, refusing to come out from under a bunk, refusing to take court ordered medication, and tearing a suicide mattress. Chemical agents are often applied repeatedly, at times without decontamination between applications, leaving

prisoners with second or third degree burns. Large quantities of chemical agents are routinely deployed, with pepper spray being deployed on one prisoner in California forty times during a cell extraction. On 31 March 2009, a prisoner with a psychosocial disability taken into custody by the Lee County Sheriff's Office in Florida died from pepper spray poisoning after he was sprayed approximately twelve times in thirty-six hours and had a spit mask placed over his nose and mouth after being sprayed; he was only decontaminated once. Chemical agents can increase prisoners' fear and anxiety, feed into delusions and hallucinations, prolong psychotic episodes, and be a precipitating factor of death when used on a prisoner taking antipsychotic medication.

Electronic stun devices, such as Tasers, are frequently used unnecessarily on prisoners who are not posing a threat or acting in an aggressive manner to get them to comply with orders. Prisoners have been stunned for such reasons as resisting to having their jumpsuits changed and resisting to being placed in handcuffs. Tasers have also been used to inflict pain, fear, corporal punishment, and humiliation in prisoners, when sufficient numbers of correctional staff have been present to control an individual, and even when prisoners have been completely immobilized in restraint chairs. In 2010, one prisoner with a psychosocial disability in Muscogee County Jail in Georgia, who had masturbated in front of officers and had been ordered to put on his shirt and exit his cell, was allegedly stunned with an electronic device eleven times for failing to stop walking and cooperating in being handcuffed, even though he was not acting aggressively. On 3 February 2015, a 37 years-old African American woman, diagnosed with schizophrenia, bipolar disorder and depression, was shocked four times with a teaser gun while being held in the Fairfax County Adult Detention Center. The woman was being removed from her cell by a team of six police officers that were trying to put her in a restraint chair. As she resisted, the police officers pulled her to the floor with her head down, handcuffed her hands and shackled one of her legs. As she continued to struggle, one police officer used the teaser gun four times. The woman died on 7 February 2015 after the incident.

Full body restraints, where prisoners' arms, legs, and sometimes heads are immobilized, have also been reportedly used on prisoners with psychosocial disabilities that were engaging in harmless misconduct. When restraints are used during instances of imminent threat or prisoner self-harm prisoners have been allegedly kept in the restraints even when no longer necessary. Prisoners can remain in one fixed position for several hours at a time or even days (with one prisoner immobilized in restraints for three days in Corcoran State Prison in California in 2012), which can cause swelling, pain, and numbness, and can lead to the formation of blood clots. Prisoners may not receive adequate nutrition or hydration while in restraints and are often not provided the opportunity to use the restroom, and have to urinate or defecate on themselves. Prolonged use of restraints on persons with psychosocial disabilities deteriorates mental health and increases mental anxiety. Use of restraints has reportedly led to death from aspiration, pulmonary embolisms, and positional asphyxia.

Physical force, such as punches, kicks, and strikes to the head have been allegedly used to control prisoners with psychosocial disabilities or to extract them from their cells, and has resulted in broken jaws, noses, and ribs, as well as asphyxiation and death. Prisoners have

been reportedly hit, kicked, and stomped while in handcuffs and on the ground. In January 2010, a prisoner with a psychosocial disability in the Dallas County Jail in Texas was reportedly pepper sprayed, kicked, choked and stomped, even though he was cuffed and in leg irons and was not resisting. The prisoner later died from complications of physical restraint that included mechanical asphyxia due to neck restraint during struggle and the fact that an officer was kneeling the prisoners' back during restraint. Violent physical force can exacerbate prisoners' conditions and trigger psychotic episodes, increase hallucinations and delusions, and cause more depression or mania.

Furthermore, some correctional staff allegedly use force intentionally to inflict pain as punishment for misconduct, constituting *de facto* corporal punishment. One alleged incident from a publically documented case on 23 June 2012 at Dade Correctional Institution in Florida involves a prisoner with schizophrenia who had smeared faeces on himself and his cell and refused to clean it up. The prisoner was taken to a shower and locked in a stall where the scalding water could not be turned off nor could the temperature be controlled by the prisoner. The prisoner was left in the stall for approximately two hours. When officers returned they found him unresponsive. He had burns over ninety per cent of his body and his skin fell off when touched. We have some information that this incident is being investigated, yet are unaware of any details or outcome. It is reported that other prisoners also endured similar treatment.

Prisoners with psychosocial disabilities have also been subjected to neglect and disregard for their wellbeing, with staff allegedly failing to provide for basic needs such as food, water, or medical care. Prisoners have received meal trays that do not contain food and have had the water supply to their cells turned off. Staff have responded with violence when prisoners demanded something to eat. Many prisoners have reportedly lost considerable amounts of weight while incarcerated, with some prisoners' emaciation being a contributing factor in their deaths. It is alleged that in 2005, a prisoner with psychosocial disabilities at the Baraga Maximum Security Facility in Michigan dropped from 140 pounds to 75 pounds in the five months prior to his death. Prisoners with psychosocial disabilities have also died from easily treatable conditions because staff failed to perform basic medical assessments when confronted with an unresponsive prisoner. On 17 March 2013, a prisoner with psychosocial disabilities at the San Carlos Correctional Facility in Colorado allegedly died of severe hyponatraemia, a condition of abnormally low sodium in the blood that is easily diagnosed and treatable with prompt and adequate medical care.

Mental health and support services are also reportedly lacking in many prisons; such services are often poorly implemented or functionally non-existent. Some prisoners with psychosocial disabilities, such as schizophrenia and bipolar disorder, are confined to prisons that do not have any psychosocial support. Mental health interventions are frequently limited to medication designed to respond to immediate crises and are not personalised for individual prisoners' needs. Mental health professionals have very large caseloads, which diminishes their ability to provide appropriate response to prisoners in need of services and affects the quality of support prisoners receive. The effectiveness of

their work is also hindered by hostile interactions with corrections staff, with mental health treatment being subordinate to security concerns.

Prisoners with psychosocial disabilities are disproportionately placed in solitary confinement—in some cases at two times the rate of other prisoners—because they are less likely to conform to prison rules or are deemed to be difficult, disruptive, or dangerous. A recent report of the Department of Justice on the use of restrictive housing at the federal prison system found that 28.9 per cent of the inmates experiencing psychological distress interviewed in 2011 and 2012 acknowledged that they had been placed in solitary confinement. They can remain in solitary confinement for prolonged periods of time, even decades. One prisoner in North Carolina reportedly spent more than eight years in solitary confinement because of repeated disciplinary infractions for misbehaviour resulting from symptoms related to his psychosocial disability. Prisoners in solitary confinement can become sensitive to sights and sounds, extremely depressed, hopeless, suicidal, and violent, which perpetuates the cycle of prolongation. Use of force is also reportedly more common in solitary confinement units. The adverse psychological effects of solitary confinement are more pronounced in prisoners with psychosocial disabilities and can lead to aggravation of their symptoms or cause relapses. They may decompensate to the point where they require crisis care or additional medical health in hospitals. Mental health care in solitary confinement is commonly limited to psychotropic medication, periodic stops at a prisoners' cell door to inquire how he or she is doing, and occasional private meetings with a clinician. Individual or group therapy and educational, recreational, and life-skill enhancing activities are frequently unavailable.

Without prejudging the accuracy of these allegations, we are expressing grave concern at what appears to be the systematic use of excessive and unnecessary force, neglect, and use of solitary confinement for persons with psychosocial disabilities in the United States that may amount to torture, cruel, inhuman or degrading treatment or punishment.

In connection with these allegations and concerns, we 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. We furthermore 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 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 therefore 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 relative to the measures taken to ensure the physical and psychological integrity of persons with psychosocial disabilities in prisons and jails in the United States.
3. Please provide the details, and where available the results, of any investigation, medical and forensic examinations, and judicial or other inquiries carried out in relation to the alleged use of excessive force, lack of adequate medical care, food and, water, death in custody and solitary confinement of prisoners with psychosocial disabilities. Have penal, disciplinary or administrative sanctions been imposed on prison staff or supervisors? If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information regarding current prison conditions and procedures for ensuring access to food, water, and adequate medical care and support, including mental health care and psychosocial support, for prisoners with psychosocial disabilities.
5. Please provide information on measures taken to reduce the use of solitary confinement and to abolish the prolonged solitary confinement of prisoners with psychosocial disabilities.

We would appreciate receiving a response within 60 days.

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(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 our highest consideration.

Catalina Devandas-Aguilar  
Special Rapporteur on the rights of persons with disabilities

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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

## **Annex**

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

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With regard to alleged use of force by corrections officials, we would like to draw the attention of your Excellency's Government to Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

We would also refer your attention to the Standard Minimum Rules for the Treatment of Prisoners, now called the Mandela Rules as reviewed most recently by the UN General Assembly in November 2015. Rule 82 states that prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations.

Furthermore, regarding the allegations of corporal punishment we would refer your Excellency's Government to rule 43 of the Mandela Rules, which provides that in no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment and prohibits the use of corporal punishment. We would also like to draw your Excellency's Government's attention to report of the UN Special Rapporteur on Torture to the 60<sup>th</sup> session of the General Assembly (2005), in which he, 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.

With regard to the provision of food and water to prisoners, we would like to draw your attention to rule 22 of the Mandela Rules, which states that every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served, and that drinking water shall be available to every prisoner whenever he or she needs.

Moreover, with regards to allegations of solitary confinement of prisoners, we 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, and violates article 16 of the Convention. The Mandela Rules also prohibit prolonged or indefinite solitary confinement, as well as the imposition of solitary confinement in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. We 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.

Additionally, with regard to adequate medical treatment of prisoners, including mental health treatment and services, we would like refer your Excellency's Government to article 25 (I) of the Universal Declaration of Human Rights, which states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including medical care. We would also draw your attention to the Mandela Rules, which provide that: prisoners should enjoy the same standards of health care that are available in the community (rule 24); every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation (rule 25.1); the health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry (25.2); prisons shall ensure prompt access to medical attention in urgent cases (rule 27); a physician or other qualified health-care professionals, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary, paying particular attention to identifying any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm (rule 30c); the physician shall report to the director whenever he or she considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment (rule 33); and if, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority (rule 34).