

Mandates of the Special Rapporteur on the rights of indigenous peoples, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL
AUS 6/2016:

5 August 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of indigenous peoples, and as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/9 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 torture and other ill-treatment and prolonged solitary confinement of juvenile detainees in Northern Territory's Youth Detention Centres and in particular Don Dale detention centre.**

According to the information received:

The Northern Territory has the highest rate of youth detention in Australia. Over 95 percent of the Northern Territory's youth detention population is indigenous; and most detainees are on remand in pretrial detention.

In August 2014, 6 juvenile detainees were tear gassed in the Don Dale Youth Detention Centre, after one youth had exited his unlocked cell into the secured exercise yard. The six juveniles had been placed in solitary confinement for periods up to 17 days. The cells in which the juveniles had been placed in were allegedly unsanitary; did not have fans or air conditioners in temperatures which can exceed 35 degrees Celsius; did not have windows, natural light or ventilation; and lacked access to running water. On the day of the incident, the six juveniles were transferred to a nearby adult prison for one night with spithoods placed over their heads.

In March 2015, in the Youth Detention Centre in Alice Springs, another juvenile detainee was allegedly shackled into a mechanical restraint chair with his head hooded for almost two hours.

Further information has been obtained regarding conditions in juvenile detention centres in the Northern Territories, included the housing of juveniles in solitary confinement for prolonged periods of time and without clearly indicating to the juveniles the length and reason of their solitary confinement, beatings, threats and verbal abuses by guards, the use of dogs and chemical agents such as tear gas (including inside the cells), the excessive use of hand and foot cuffs as well as spit

hoods, as well as the lack of access to education and rehabilitation programmes for detained youths.

On 17 September 2015, the Northern Territory Children's Commissioner – an independent statutory body – publicly released a report, 'Own Initiative Investigation Report: Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre'.

Following the release of an investigative journalism report by the TV programme 4Corners on 25 July 2016, entitled "Australia's Shame", a Royal Commission looking into allegations of abuse in the Northern Territory juvenile system has been established by the Australian Prime Minister.

Grave concern is expressed about the physical and psychological integrity of juvenile detainees in several youth detention centres in the Northern Territories.

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 Australia ratified in 08 August, 1989.

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 the details, and where available the results, of any investigation carried out in relation to the above described allegations in Northern Territory's Youth Detention Centres, and in particular Don Dale detention centre. If no investigation has been carried out, please explain why.
3. Please provide details of the investigation and available results carried out by the Royal Commission established in July 2016 by the Prime Minister.
4. Please provide information on measures taken to act upon the alleged human rights violations. If no measure or no sufficient measure has been taken, please explain why.

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.

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

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

Annex
Reference to international human rights law

We would like to remind your Excellency's Government of 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 Australia ratified in 1989. In particular, we would like to draw the attention of your Excellency's Government to Article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation whenever there are reasonable grounds to believe that torture has been committed, and Article 7 of the CAT, which requires States parties to prosecute suspected perpetrators of torture.

We would further like to refer to the 37 (a) of the Convention on the Right of the Child which stipulates that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

With regard to the detention conditions in Northern Territory's Youth Detention Centres, we would like to refer your attention the United Nations Standard Minimum Rules for the Treatment of Prisoners (as amended on Nov. 5, 2015 by the General Assembly and readopted as the "Mandela Rules"), and in particular Rules 11 – 23 which provide inter alia for appropriate accommodation, minimum cubic content of air and floor space, lighting and ventilation as well as requirements to be met regarding the personal hygiene of prisoners. 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 the General Assembly on 9 December 1988. The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

Additionally, regarding the alleged prolonged solitary confinement, 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 (more than 15 days) in itself runs afoul of the absolute prohibition of torture and other ill-treatment. When used on juveniles, 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 the Special Rapporteur has recommended that solitary confinement of children of any duration and for any purpose be prohibited.

Moreover, with regard to the alleged over use of tear gas and other restraint practices by prison staff, 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.