

the immediate return of Mr. Aamer to the country, invoking the waiver for his release under the modified National Defense Authorization Act.

United States of America

- (a) JAL 11/06/2012 Case No. USA 6/2012 State reply: 02/01/2013 **Alleged mistreatment with electric shock of children and young adults enrolled in the residential programme of the Judge Rotenberg Center in Canton, Massachusetts**

149. The Special Rapporteur thanks the Government of the United States of America for its response, dated 2 January 2013 to this communication concerning the treatment suffered by children and young adults enrolled in the residential programme of the Judge Rotenberg Center (JRC), including the use of aversive therapy by means of electric shock and physical means of restraints. In its reply, the Government reports that the JRC uses Graduated Electronic Decelerators (GED) to deliver contingent skin shocks as a form of aversive behavior control, including two versions of the GED, namely the GED3A and GED4, that are modified beyond what was approved for use by the United States Food and Drug Administration (FDA). The Government explained that the FDA has sent a warning letter to the JRC on 6 December 2012, demanding prompt corrective action as regards the use of modified GEDs and requesting a meeting to discuss discontinuing their use. The Government also reported that “the use of aversive therapy by JRC has been challenged through a variety of state and federal legislative and judicial actions,” including the Department of Justice’s (DOJ) investigation into possible violations of civil rights laws, which remains open and ongoing. In this context the Government reiterates that it would gladly provide additional information once that investigation is complete. In Massachusetts a variety of measures that would regulate or ban the use of aversive treatment have been introduced in recent years but failed to pass into law. However, the Commonwealth of Massachusetts’ Department of Developmental Services (DDS) amended its behavior modification regulations in October 2011 in order to ban all schools in Massachusetts from using certain aversive interventions unless a child had a court-approved treatment plan that allowed for their use prior to 1 September 2011. The Government additionally stated that in New York State, regulations have been enacted prohibiting all day or residential schools from using aversive interventions, which also provide for annually renewable exemptions in cases of children whose state-mandated “individualized education plans” approved the use of aversive therapy prior to 30 June 2009. Furthermore, New York authorities expect that by June of 2014, all (New York) residents at JRC, including those who remain subject to court-approved aversive interventions, will be offered placements in New York State where such interventions are not authorized. The Special Rapporteur welcomes new information received indicating that in February 2013 the State of Massachusetts announced it was seeking a reversal of the court order that had approved treatment plans using aversive therapy. Although the Special Rapporteur appreciates the Government’s response, he expresses serious concern about the physical and mental integrity of the students residing at JRC, in view of the continued use of electric shock therapy and physical means of restraint as part of the JRC educational programme. He notes that although in 2011 the Commonwealth of Massachusetts’ Department of Developmental Services (DDS) approved regulation changes that limited the use of Level III Aversive Interventions (including skin shock), this new regulation does still allow the use of electric shocks for those students who had an existing court-approved treatment plan as of September 1, 2011 (115 CMR 5.14). Under the revised regulations, only new students in Massachusetts are protected from Level III aversives, including electric shock or prolonged restraints. The Special Rapporteur notes with great concern that many students at the JRC are still eligible for the Level III Aversive Interventions, including electro-shock treatment. The Special Rapporteur is also concerned that Massachusetts regulations would not apply in other states. JRC, previously called the Behavioral Research Institute, was previously located in California and Rhode Island. There is nothing to stop

JRC from simply relocating again to another state. Protections are needed at the federal level to ensure that Level III aversives are brought to an end in the United States of America. The Special Rapporteur understands that, under individualized court orders now in place for JRC patients, the use of Level III aversives have been justified as form of treatment, rehabilitation, habilitation, or education for persons with disabilities. The Special Rapporteur would like to draw attention to mandates' recent report on the applicability of the torture and ill-treatment framework in health-care settings (A/HRC/22/53, 1 February 2103). As the report states in paragraph 18, authoritative interpretations of international human rights law by international bodies have established that a violation of the Convention against Torture may occur "where the purpose or intention of the State's action or inaction was not to degrade, humiliate or punish the victim, but where this nevertheless was the result." The report calls into question the concept that medical necessity may ever be used to justify a treatment practice that induces severe emotional or physical pain (see paras. 31-35), "This is particularly the case when intrusive and irreversible, non-consensual treatments are performed on patients from marginalized groups, such as persons with disabilities, notwithstanding claims of good intentions or medical necessity" (para. 32). The Special Rapporteur reminds the Government of paragraph 7a of Resolution 8/8 of the Human Rights Council, according to which corporal punishment, including that of children, can amount to cruel, inhuman or degrading punishment or even torture. The Special Rapporteur further reminds of his report to the 60th session of the General Assembly, in which he determined that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and 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. The Special Rapporteur also reiterates that in paragraph 5 of General Comment No. 20, 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 or as an educative or disciplinary measure. Therefore and in the absence of evidence to the contrary, the Special Rapporteur determines that the rights of the students of the JRC subjected to Level III Aversive Interventions by means of electric shock and physical means of restraints have been violated under the UN Convention against Torture and other international standards. The Special Rapporteur calls on the Government to ensure a prompt and impartial investigation into these continued practices. He calls on the Government to provide information on the Department of Justice's (DOJ) investigation into possible violations of civil rights laws and to take measures to prohibit the use of Level III Aversive Interventions for all students on a national level, including those students who had an existing court-approved treatment plan as of 1 September 2011 in Massachusetts.

(b) JUA 22/06/2012 Case No. USA 7/2012 State reply: None to date **Alleged prolonged solitary confinement and ill-treatment in solitary confinement**

150. The Special Rapporteur regrets that the Government of the United States of America has not responded to this communication, thereby failing to cooperate with the mandate established by the Human Rights Council. The communication referred to the alleged prolonged solitary confinement and ill-treatment of Mr. Robert Cuff, a member of the United States Navy, who suffers from brain damage and severe Post-Traumatic Stress Disorder (PTSD). According to the information received, Mr. Cuff is incarcerated and held in solitary confinement at the Bossier Parish Medium Correctional Facility in Shreveport, Louisiana, under unsanitary conditions and without access to adequate medical care. In this context, the Special Rapporteur recalls paragraph 6 of General Comment No. 20 of the Human Rights Committee, 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, and 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." The Special Rapporteur