

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; 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 the promotion and protection of human rights and fundamental freedoms while countering terrorism

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(Please use this reference in your reply)

25 February 2022

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; Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/20, 42/22, 42/16 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government new information we have received concerning the ongoing prolonged solitary confinement, under Special Administrative Measures (SAMs), of **Mr. Nizar Abdelaziz Trabelsi** and his deteriorating physical and mental health.

Mr. Trabelsi has been the subject of a previous communication sent on 16 December 2020 (USA 29/2020) by Special Procedures mandate holders, with regards to the severe mental impact of the prolonged solitary confinement Mr. Trabelsi has been subjected to since his extradition to the United States in 2013. We regret the lack of response from your Excellency's Government and remain concerned in light of the recent developments.

According to the information received:

Nizar Ben Abdelaziz Trabelsi is a Tunisian national born in July 1970 in Sfax. He was arrested on 3 September 2001 in his flat in Uccle, Belgium, and convicted of several offences under Belgian law, including terrorism charges, notably for attempting to commit a suicide attack on the Kleine Brogel military base, a NATO facility housing US military personnel. On 3 October 2013, Mr Trabelsi was extradited to the United States where he is currently imprisoned and awaiting trial, in the Northern Neck Regional jail. Mr. Trabelsi is restricted to his cell for 23 hours per day; is prevented from communicating with other prisoners and is deprived of adequate exercise, educational and work facilities, natural daylight, and adequate medical treatment.

Concerns on physical and mental health

On 30 October 2020, to assess the impact of prolonged solitary confinement on the mental and physical well-being of Mr. Trabelsi, his neuropsychiatrist re-examined him and reported findings of alarming levels of psychological distress and signs of psychosis, such as, hearing voices; experiencing sporadic hallucinations; periodic episodes of self-harm and suicidal thoughts; paranoia and obsessional preoccupations, amongst others.

On 28 March 2021, the Federal Public Defender's Office in Washington DC ordered a re-examination of Mr. Trabelsi's mental and physical state, in order to assess the continued impact of eight years of solitary confinement under SAMs. The report confirmed that most, if not all, previously identified and more recently developed medical conditions were exacerbated by the acute stress caused by the prolonged solitary confinement. More alarming still, would be the failure to adequately treat Mr. Trabelsi, as the report finds that out of nine illnesses, eight are incorrectly treated.

Most of Mr. Trabelsi's health conditions are treatable. His reported chronic headaches could be prevented by dimming the artificial lights, on 24 hours a day in his cell and known to cause severe headaches due to sleep deprivation. His hypertension could be prevented by increasing the rate of sporting activities, also closely linked to high blood pressure. The alarming swelling in Mr. Trabelsi's legs, which considerably worsened recently, should have been diagnosed and treated more than three years ago when blood tests were ordered in 2018. The lack of adequate treatments has exacerbated the symptoms and if incorrectly treated, could lead to life threatening diseases.

These ailments are exacerbated by the reported lack of efforts made by the prison administration to find ways to adequately communicate with Mr. Trabelsi. Language barriers are known to aggravate an already acute sense of isolation. In one particular case, Mr. Trabelsi was not able to express his medical or dietary needs correctly to the prison guards. When requesting alimental adjustments for his stomach ulcer, the guards made little efforts to provide a translator and thus failed to take the appropriate measures, which has exacerbated his ulcer. The lack of response has continued to cause prolonged, unnecessary and preventable suffering to Mr. Trabelsi.

Mr. Trabelsi's mental health continues to deteriorate; he is presenting alarming signs of extreme general mistrusts and paranoia, causing him to recently reject contact with several of his attorneys. Furthermore, the rare in person interactions Mr. Trabelsi had with them and thus with the outside world, were reduced considerably due to the spread of the SARS-COV-2 virus; likewise he has not been able to withstand noise due to the ongoing headaches, making phone calls difficult. Mr. Trabelsi was recently permitted to receive a monitored phone call from his family. The last time he had spoken to them was in 2018. Since the previous communication, it has been observed with concern that Mr. Trabelsi has further withdrawn into himself.

Mr. Trabelsi is being denied appropriate medical and psychosocial support, further affecting his mental health and well-being, to the extent that he has engaged in desperate and self-destructive acts. His solitary confinement, his inability to interact with other human beings, his lack of sunlight and exercise and the constant artificial light causing severe sleep deprivation combined to impact his mind and body in harmful ways.

Furthermore, since his extradition to the United States in 2013, which according to the European Court of Human Rights was performed in violation of Article 3 of the European Convention of Human Rights (*Trabelsi v Belgium*, 2014), Mr. Trabelsi's pre-trial detention has been routinely extended

for the past eight years; with no apparent indication as to when his trial may take place, in serious violation of his right to a trial without undue delay. All stages of a criminal proceeding must take place “without undue delay”, thus, appeals must also be handled expeditiously. The delay attributable to the COVID-19 pandemic cannot justify the current significant postponements in Mr. Trabelsi’s judicial procedures.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned by Mr. Trabelsi’s prolonged pre-trial detention for over 8 years, and his uninterrupted solitary confinement under “Special Administrative Measures” (SAM) during that period, restricting all contacts with the outside world, including with family, affecting his mental and physical health to a point that it amounts to torture or other cruel, inhuman or degrading treatment or punishment.

Governments have the obligation to protect the right to physical and mental integrity of all persons deprived of their liberty in their custody. This right is set forth *inter alia* in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT). In this connection, we are drawing the attention of your Excellency’s Government to article 10, paragraph 1 of the ICCPR, which provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

As of today, Mr. Trabelsi has been subjected to 8 years of pre-trial detention in continued solitary confinement. This situation clearly can no longer be reconciled with the human right to due process and fair trial, including the right to be tried without undue delay (Article 14.1.c ICCPR), which applies to all defendants including individuals prosecuted for terrorism-related offences. Furthermore, unduly prolonged pre-trial detention may also amount to arbitrary detention, which is prohibited under international human rights law in all circumstances, including during internal disturbances and armed conflict. In addition to international human rights law, the Fifth and Fourteenth Amendments of the US Constitution also guarantee the fundamental right to due process, which cannot be restricted or deprived through procedural practices that interfere with the overall right to claim justice.¹

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.

We are issuing this letter in order to safeguard the rights of the above mentioned individual from irreparable harm, without prejudicing any eventual legal determination.

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/or comment(s) you may have on the above-mentioned allegations.

¹ Human Rights Committee, [General Comment No. 32](#), UN Doc. CCPR/C/GC/32 (2007), para. 2

2. Please provide legal and factual grounds for maintaining Mr. Trabelsi in continued solitary confinement from the date he was extradited to the USA until now, that is for an uninterrupted period of more than 8 years, in application of the Special Administrative Measures; and explain how those measures comply with international human rights law binding on the USA, and the related universally recognized standards, particularly in light of their physical and mental health effects.
3. Please provide detailed information, including legal and other documents, regulating the use of solitary confinement against persons deprived of their liberty, at any stage of the legal proceedings, and after sentencing, including any provision aimed at mitigating the adverse effects of that practice on their physical and psychological health;
4. Please explain why the prison administration does not seem to have taken any measure to modify the conditions of pre-trial detention of Mr. Trabelsi (i.e. over 8 years of solitary confinement), particularly in the light of two consecutive neuropsychiatric examinations 2020 and 2021, both of which corroborated each other, identified 9 ailments, and found that 8 of these were incorrectly treated.
5. Please explain on which grounds a prison administration can ignore the results of two judicially-requested medical examinations, and continue to detain individuals in conditions that seriously threaten their mental and physical health and integrity and, therefore, must be regarded as cruel, inhuman or degrading?
6. Please provide information on the steps taken by the Government or the judiciary to investigate the cruel, inhuman and degrading conditions under which Mr. Trabelsi has been detained for more than 8 years; to ensure personal and institutional accountability for such abuse, and to provide full redress and rehabilitation for the resulting harm.
7. Please provide information on any measure taken, or envisaged to be taken, to provide adequate dietary regime and appropriate medical care including psychosocial support, to Mr. Trabelsi, in light of his seriously deteriorating physical and mental health.
8. Please provide information on the steps taken to reform the practice of prolonged and indefinite solitary confinement in general; and when applied to persons with mental conditions and psychosocial disabilities in particular.
9. Please provide detailed information on existing mechanisms, if any, to oversee and review in a systematic manner and on a regular basis the length and conditions of detention of pre-trial detainees, especially when they risk to seriously undermine the mental and physical health and integrity of a detainee.

10. Please also describe existing avenues and mechanisms of reduction of sentences, namely with regard to life sentences, and in particular with regard to terrorism offenses, and the modalities of their implementation in practice.

While awaiting a reply, we respectfully urge that prompt measures be taken to review and alleviate the conditions of detention of Mr. Trabelsi with a view to bringing them into compliance with international human rights law and standards, most notably the absolute and non-derogable prohibition of torture and ill-treatment, including the prohibition of prolonged solitary confinement.

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 cases 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.

We may publicly express our concerns in the near future in this case as, in our view, the information at hand is sufficiently reliable, indicates a matter warranting prompt attention, and raises serious human rights concerns which we believe the wider public should be informed of. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Miriam Estrada-Castillo

Vice-Chair of the Working Group on Arbitrary Detention

Tlaleng Mofokeng

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

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, is reflected *inter alia*, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

In this connection, we would like to bring to your Excellency's Government attention the comment of the Committee Against Torture stating that "while the State party has indicated that there is no systematic use of solitary confinement in the United States", the Committee remains concerned about reports of extensive use of solitary confinement and other forms of isolation in United States prisons, jails and other detention centres, for purposes of punishment, discipline and protection, as well as for health-related reasons." The Committee also raised concern about the use of solitary confinement for indefinite periods of time and its use with respect to juveniles and individuals with mental disabilities, stating that full isolation of 22 to 23 hours a day in super-maximum security prisons is unacceptable (art. 16). CAT/C/USA/CO/3-5 (CAT 2014).

In the Rapporteur's interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days under conditions of total isolation) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156. Prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

Furthermore, the Special Rapporteur on Torture stressed that "[E]ven if permitted by domestic law, none of the following methods of inflicting mental pain or suffering can be regarded as "lawful sanctions": prolonged or indefinite solitary confinement; placement in a dark or constantly lit cell; collective punishment; and prohibition of family contacts. (In accordance with the Nelson Mandela Rule n.43). Even more extreme than solitary confinement is "incommunicado detention", which deprives the inmate of any contact with the outside world, in particular with medical doctors, lawyers and relatives and has repeatedly been recognized as a form of torture.

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.”

We would also like to underline conclusion of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, calling on States to “[E]nsure that all detainees are held in accordance with international human rights standards, including the requirement that all detainees be held in regularized facilities, that they be registered, that they be allowed contact with the outside world (lawyers, International Committee of the Red Cross, where applicable, family), and that any form of detention is subject to accessible and effective court review, which entails the possibility of release”.

Paragraph 6 of General Comment No. 20 of the Human Rights Committee states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the ICCPR.

We also would like to draw the attention of your Excellency’s Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) which lay out generally accepted principles and practice with regard the treatment of prisoners and prison management. In particular, Rule 43. 1 (a), (b) and (c) proscribe any restriction or disciplinary sanctions amounting to torture or other cruel, inhuman or degrading treatment or punishment including, most notably, indefinite solitary confinement; prolonged solitary confinement and the placement of a prisoner in a dark or constantly lit cell. Prolonged solitary confinement is defined in Rule 43 as any confinement of prisoners for 22 hours or more a day without meaningful human contact in excess of 15 consecutive days. Moreover, even below the absolute maximum duration of 15 consecutive days, solitary confinement can only be used as a last resort, for as short a time as possible and subject to independent review (Rule 45). Rule 46 even completely prohibits the solitary confinement of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. In addition, article 7 of the Basic Principles for the Treatment of Prisoners 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”.

In his 2011 report to the UN General Assembly (A/66/268) the Special Rapporteur on torture stated that when solitary confinement inflicts severe mental and physical pain or suffering on a detainee it can amount to cruel, inhuman or degrading treatment or punishment and even torture. He specified that, beyond the limit of 15 consecutive days, some of the harmful psychological effects of isolation can become irreversible.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, must comply fully with all their obligations under international law. In this regard, we also wish to refer to the Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.

We would also like to reiterate the Ruling of the European Court of Human Rights in *Vinter and Others v UK (2013)*, which concluded that “[A] whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration. The Court elaborated on this standard in the *Trabelsi v Belgium* (September 2014) by holding that the necessary review mechanism must enable the national authorities to ascertain, on the basis of objective, pre-established criteria of which the prisoner had precise cognisance at the time of imposition of the life sentence, whether, while serving his sentence, the prisoner has changed and progressed to such an extent that continued detention can no longer be justified on legitimate penological grounds.

Finally, we would like to recall that, in line with UN Security Council resolutions, the Special Rapporteur on human rights while countering terrorism has, on numerous occasions, noted that all measures adopted in the context of countering terrorism, including those dealing with the rights of non-nationals, deportations and extradition must comply with international human rights law. Therefore, any transfer of a terrorism suspect or convict from one State to another must be based on law and follow the procedures set forth in law. Further, there is a right to an effective review mechanism for any decision to expel, deport or extradite. Article 13 of the International Covenant on Civil and Political Rights provides that “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” The Human Rights Committee has clearly stated that the right to challenge an expulsion decision and to have one's case

reviewed applies not only to expulsion and deportation decisions, but also to extradition, including when the State invokes reasons linked to national security. The review proceedings must provide a real opportunity to submit reasons against deportation or extradition (Human Rights Committee, *Pierre Giry v. Dominican Republic*, Communication No. 193/1985, U.N. Doc. CCPR/C/39/D/193/1985 (1990)). The right to be expelled, deported or extradited only on the basis of a decision adopted in accordance with the applicable law, and to submit reasons against expulsion and to have them examined, applies also in the case of terrorism suspects. Similarly, all aspect of the right to a fair trial must be respected, even when dealing with acts of terrorism. This includes the application of the rule *ne bis in idem*, guaranteed under article 14(7) of the International Covenant on Civil and Political Rights.