

21 September 2015

Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10
SWITZERLAND

By email: urgent-action@ohchr.org

To: Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
Mr Juan Ernesto Méndez

Copy: The Hon John Elferink, Attorney-General and Minister for Justice, Minister for Correctional
Services, Northern Territory Government

Dear Sir

Request for urgent action on treatment of young people in Northern Territory's Don Dale Youth Detention Centre

We write in relation to the mistreatment of young people (aged 18 years and under) detained in the Northern Territory's principle youth detention centre, Don Dale.

The Northern Territory has the highest rates 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.¹

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' (**the report**).²

¹ Australian Institute of Health and Welfare, 'Northern Territory: youth justice supervisions 2013-14'. Available at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550838>.

The report details an incident (**the incident**) on 21 August 2014 where tear gas was used on six young people, one being 14 years old, in response to a disturbance involving one young person leaving his cell, after being held in conditions amounting to solitary confinement, when his cell door was left open by an officer.

The report documents concerning practices, including:

- The use of prolonged solitary confinement of young people (up to 17 days), even though the legislative maximum allowance is 72 hours;³
- The housing of young people in solitary confinement cells which are unsanitary; do not have fans or air conditioners; do not have windows, natural light or ventilation; and do not have access to running water, in temperatures which can exceed 35 degrees;⁴
- The failure to provide young detainees with access to education or rehabilitation programs;⁵
- The use of spit hoods, even in circumstances where young people have no history of spitting;⁶
- The use of hand cuffs and foot restraints;⁷
- The housing of young people in adult prisons;⁸
- The use of dogs and chemical agents, to the extent that one young person was exposed to tear gas for a period of eight minutes;⁹
- A lack of policies and procedures to govern use of force and restraints on young people;¹⁰
- The use of insufficiently trained staff to guard the youth detention centre;¹¹ and
- A lack of accountability when excessive force is used.¹²

We are concerned that the Northern Territory Government has not taken sufficient steps to implement the recommendations for change contained in the report; has not attributed responsibility for the failure in governance;¹³ and has not unequivocally stated that such punitive practices will cease. Indeed, there are current reports that similar practices continue to be used on young detainees.¹⁴

The practices documented in the report are in breach of Australia's obligations under the *Convention on the Rights of the Child (CROC)*, the *Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* and the *International Covenant on Civil and Political Rights (ICCPR)*.

² Office of the Children's Commissioner Northern Territory, 'Own Initiative Investigation Report, Services Provided by the Department of Correctional Services at the Don Dale Youth Detention Centre' (August 2015). Available at: <http://www.childrenscommissioner.nt.gov.au/publications/Childrens%20Commissioner%20DDYDC%20-%20Report%20to%20Minister%20170915.pdf>.

³ Ibid, p 9 and 43. See also, s 153(5) *Youth Justice Act* (NT).

⁴ Ibid, p 7.

⁵ Ibid.

⁶ Ibid, p 23-4.

⁷ Ibid, p 24-5.

⁸ Ibid, p 22.

⁹ Ibid, p 21.

¹⁰ Ibid, p 23-6.

¹¹ Ibid, p 25, 48-51.

¹² Ibid, p 25-7.

¹³ Ibid, p 26-27.

¹⁴ See below n 20-22.

The Northern Territory Government's actions subsequent to the incident on 21 August 2014

1. The transfer to Berrimah Prison

In response to the incident and general infrastructure concerns, on 23 December 2014 young detainees were moved out of the former Don Dale Youth Detention Centre (where the incident occurred), into the Northern Territory's old, adult, maximum security Berrimah Prison.¹⁵ The Berrimah Prison has since been renamed Don Dale Youth Detention Centre.

The Northern Territory Government spent \$800,000 on refurbishments to Berrimah Prison, suggesting that this was sufficient to transform the facility into one appropriate for youth detainees. The refurbishments largely amounted to the installation of CCTV footage, the removal of bars from some cells, and the painting of the facility.¹⁶

This author has visited both the former Berrimah Prison and the new Don Dale Youth Detention Centre, and they are virtually the same. Razor wire, concrete, high fences, adult prison guards and an overall punitive atmosphere characterize the new Don Dale facility. This observation is corroborated by non-government organizations in daily contact with detainees.

For example, young people classified as either at risk or high security are housed in the former maximum security section of Berrimah Prison. Overall it is reported that there has been little change in the overuse of punitive practices such as solitary confinement, spit hooding, and the use of restraints.

2. The Vita Report

In late 2014, the Northern Territory Government commissioned a 'Review of the Northern Territory Youth Detention System' (**the Vita Review**), largely in response to the incident.¹⁷ Mr Michael Vita, the former manager of Long Bay Jail in NSW and Villawood Immigration Detention Centre, was appointed to oversee and author the review,¹⁸ which was published in January 2015.

Overall, the Vita Review found that:¹⁹

Youth detention facilities in the Northern Territory are struggling to maintain service level standards in the absence of a coherent operating philosophy, staff training, direction, appropriate infrastructure, leadership and resourcing.

While the Vita Review made a suite of operational recommendations, such as the need for a properly trained workforce, it did not fully address the practices that led to the incident on 21 August 2014, such

¹⁵ Emilia Terzon, 'Commissioner rules out new Darwin youth detention facility before 2019; legal groups concerned by 'cockroach' conditions' ABC News (12 January 2015). Available at: <http://www.abc.net.au/news/2015-01-12/new-darwin-youth-prison-not-likely-until-2019/6013178>.

¹⁶ 'Joint Statement: Berrimah Prison is not good enough for Territory's most vulnerable kids' (5 October 2014). Available at: <http://hrc.org.au/joint-statement-berrimah-prison-is-not-good-enough-for-territorys-most-vulnerable-kids/>.

¹⁷ Northern Territory Correctional Services, 'Youth Detention Reform Advisory Group' (2014). Available at: <http://www.correctionalservices.nt.gov.au/YouthJustice/ReviewOfTheNorthernTerritoryYouthJusticeSystem/Documents/YDRAG%20Terms%20of%20Reference.pdf>.

¹⁸ Sally Brooks and Katherine Gregory, 'Former Long Bay jail boss Michael Vita to run NT juvenile detention review' ABC News (6 October 2014). Available at: <http://www.abc.net.au/news/2014-10-06/long-bay-jail-michael-vita-to-head-nt-juvenile-detention-review/5791488>.

¹⁹ Michael Vita, 'Review of the Northern Territory Youth Detention System Report' (January 2015), p 11. Available at: <http://www.correctionalservices.nt.gov.au/YouthJustice/ReviewOfTheNorthernTerritoryYouthJusticeSystem/Documents/Review%20of%20the%20Northern%20Territory%20Youth%20Detention%20System%20January%202015.pdf>.

as the use of prolonged solitary confinement and the ongoing failure to provide rehabilitation and education services.

The Northern Territory Government has stated that it is working to implement all 16 recommendations of the Vita Review.²⁰ Despite this, there are credible reports that few of these recommendations have actually been implemented, and that little has changed both in terms of youth detention policy and operation in the Northern Territory – particularly in relation to the essentially untrained workforce, the lack of policies and procedures, and the over use of punitive practices.

Current practice: Imminent risk of human rights violations

Overall, the Northern Territory Government maintains a punitive rather than rehabilitative approach to youth detention. This is despite the change in youth detention facility; the Vita Review's recommendations and now the Children's Commissioner's report.

There are recent accounts by both detainees and non-government organisations that the Northern Territory Government continues to employ similarly inhuman practices that led to the incident on 21 August 2014, such as:

- solitary confinement as punishment rather than in response to risk;
- prolonged solitary confinement;
- naked isolation;²¹
- excessive use of spit hoods;²²
- excessive use of restraints including hand and foot cuffs; and
- the denial of many young detainees access to rehabilitation and education programs.²³

Request for urgent action

The Human Rights Law Centre requests that you take urgent action with a view to ensuring the Northern Territory Government comply with its obligations under the ICCPR, CROC and CAT, and in particular, to require that:

- (b) The Northern Territory Government commit to and implement policies and practices ensuring young people are detained in youth appropriate facilities, with an appropriately specialised workforce, and with all young detainees having access to rehabilitation and education programs; and
- (c) The Northern Territory Government refrain from using practices, such as prolonged solitary confinement, naked isolation, spit hoods and excessive restraints, which place young detainees' human rights at imminent risk.

²⁰ Australian Associated Press, 'Damning Report on NT juvenile detention reveals 'climate of daily crisis' The Guardian (19 February 2015). Available at: <http://www.theguardian.com/australia-news/2015/feb/19/damning-report-nt-juvenile-detention-reveals-climate-of-daily-crisis>.

²¹ Emilia Terzon, 'Use of isolation, behaviour management in Darwin's Don Dale youth prison questioned' ABC News (4 June 2015). Available at: <http://www.abc.net.au/news/2015-06-04/behaviour-management-in-darwin-don-dale-prison-questioned/6522146>.

²² Kate Wild and Katherine Gregory, 'Teenage detainees hooded, gassed in Northern Territory Adult Prison' ABC News (18 September 2015). Available at: <http://www.abc.net.au/news/2015-09-17/juveniles-hooded-in-nt-by-corrections-staff/6785344>.

²³ The author is aware of one non-government organisation who was refused entry to Don Dale after providing an education program which contained information on the CROC and other United Nations youth specific human rights instruments.

Yours sincerely

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