

# **Communication to the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment of Punishment on behalf of Russell Maroon Shoatz**

October 16, 2013

## **Overview**

Russell Maroon Shoatz is a 70-year-old who has been locked in solitary confinement at various state prisons for the past 22 consecutive years, and 28 of the past 30 years. Shoatz is a father, grandfather, great-grandfather, human rights advocate, and published author.<sup>1</sup> For the last 23 years, Shoatz has had an impeccable disciplinary record, receiving only one misconduct for a rule violation when he covered a vent in his cell that was blowing cold air in an attempt to stay warm. Despite his positive disciplinary record, age, and health problems, Pennsylvania Department of Corrections (PA DOC) Secretary John Wetzel and other leading officials continue to hold Shoatz in solitary confinement<sup>2</sup> at the State Correctional Institution (SCI) Frackville.

In May 2013, legal counsel for Shoatz filed a federal civil rights lawsuit asserting that PA DOC officials were subjecting him to cruel and unusual punishment and violating his due process rights by continuing to subject him to solitary confinement.<sup>3</sup> This case is presently being litigated.

As acknowledged by the report issued by your office in 2011, prolonged solitary confinement of longer than 15 days should be considered a violation of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The continued solitary confinement of Shoatz represents a grave human rights violation that has generated concern across the globe, as more than 30 organizations have endorsed the call for his release to the general prison population, along with the Nobel Peace Laureates Jose Ramos-Horta, Mairead Corrigan Maguire, and Archbishop Desmond Tutu.<sup>4</sup>

The following factual summary will discuss Shoatz's history in prison, conditions in solitary confinement, basic human needs he has been deprived of as a consequence of these conditions, the rationale for his isolation, recent events and transfers to different prisons, applicable human rights standards, and a request that your office initiate a formal inquiry in this case.

## **Russell Maroon Shoatz's history in prison**

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<sup>1</sup> Shoatz's first collection of essays was published this year: *Maroon the Implacable: The Collected Writings of Russell Maroon Shoatz*, PM Press (2013).

<sup>2</sup> Solitary confinement units are known as "restricted housing units" within the PA DOC.

<sup>3</sup> Complaint of Plaintiff, *Shoatz v. Wetzel*, 2:13-cv-00657-CRE.

<sup>4</sup> See Nobel Peace Prize laureates call for immediate end to solitary confinement of Russell Maroon Shoatz, available at: <http://russellmaroonshoatz.wordpress.com/2013/09/04/nobel-peace-prize-laureates-call-for-immediate-end-to-solitary-confinement-torture-of-russell-maroon-shoatz/>.

Russell Maroon Shoatz was sentenced to life in prison without the possibility of parole in 1972 as a consequence of his participation in the Black Liberation Movement. Prior to his conviction for the homicide of a police officer, Shoatz had been a community leader, a founding member of the Black Unity Council, and a member of the Black Panther Party.

Shoatz escaped from imprisonment in 1977 and in 1980. Each time after he was recaptured Shoatz was held in solitary confinement for a limited period prior to his eventual release to the general population. Following his second escape and recapture, Shoatz was released to the general prison population at SCI Pittsburgh in 1982. Upon release to the general population, Shoatz committed himself to abiding by the rules and regulations of the prison.

Toward this end he became involved with the Pennsylvania Association of Lifers (PAL), an officially-approved prison organization dedicated to advancing the interests of life-sentenced prisoners. In late 1982, Shoatz was one of a group of prisoners serving life sentences at the SCI Pittsburgh who began discussing ways to change the PAL to better serve the needs of the membership. Shoatz wanted the PAL to work with their non-incarcerated family members and public supporters to lobby the state legislature to repeal life without parole sentences.

After Shoatz became involved with the PAL, attendance at meetings expanded dramatically, from 12 people to more than 100, and prison authorities feared that the PAL may be used “to plan an incident, i.e. a work stoppage or strike.” *Hudson v. Thornburgh*, 770 F.Supp. 1030, 1034 (W.D.Pa. 1991). The same night Shoatz was appointed interim President he was placed in solitary confinement after being issued a misconduct for holding unauthorized meetings.<sup>5</sup> *Id.* Notwithstanding his placement in solitary confinement, Shoatz nevertheless won the subsequently held election for President. When his period in the solitary confinement on disciplinary custody for the alleged misconduct of holding unauthorized meetings expired, Shoatz continued to be held in the Restricted Housing Unit (RHU) on administrative custody. He remained in the RHU until he was transferred to a federal prison in November 1989.

For a 19-month period from November 1989 to June 1991, Shoatz was housed in the general prison population at the federal penitentiary in Leavenworth, Kansas. During his time in general population, Shoatz was an exemplary prisoner and did not commit any prison rule infractions. Despite this fact, following his transfer back to the state system, Shoatz was immediately placed back in solitary confinement where he remains to this day.

### **Conditions of solitary confinement in the Pennsylvania Department of Corrections**

Prisoners in the RHU are held in cells that are approximately sixty-four to eighty square feet for twenty-three hours per day five days a week, and twenty-four hours per day on the weekends.<sup>6</sup> Cells contain a steel slab with a thin mattress; a steel sink and toilet installation; a steel desk and

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<sup>5</sup> The PAL was officially disbanded by prison authorities in June of 1983. *Hudson*, 770 F.Supp. at 1035.

<sup>6</sup> All information pertaining to cell conditions, Shoatz’s history in solitary confinement, and its impact on his physical and mental health were obtained during legal interviews, and by review of internal PA DOC policies and records regarding Shoatz.

stool. Each cell has a steel door with two thin windows in the center. There are also two thin windows on either side of the wall in the back of the cell.

There is a light on inside the cell twenty-four hours a day. For the vast majority of nights during the past 22 years, Shoatz has only slept three-to-four hours per night, keeping a hat pulled over his eyes to attempt to shield them from the twenty-four hour light.

While at SCI Greene for 18 years between 1995 and 2013, Shoatz was exposed to extremely cold air temperature in his cell every day, no matter what time of year it was. The only rule violation he committed during the past 23 years was for covering a vent in his cell that was blowing cold air on him in April 1999.

Prisoners in the RHU are deprived all meaningful social interaction, deprived of environmental stimulation, and severely restricted in the forms of intellectual activity that they can engage in. Shoatz has been regularly moved to a different cell at least every 90 days during the past 22 years, sometimes more frequently. Prison staff regularly separates prisoners in the RHU who develop a friendly rapport.

Prisoners in the RHU are able to communicate with one another through the ventilation system. Each cell is connected to three other cells. Shoatz no longer utilizes this as a means of communication, however, as it requires him to stand on his sink in order to shout through the vent. He refuses to risk falling off of the sink given his age and health concerns.

There is no educational, vocational, therapeutic or other programming in the unit. Reading material is often censored in order to control the ideas a prisoner has access to. Mail is closely monitored, and it is widely understood by prisoners and those they correspond with that incoming and outgoing mail is likely to be read by prison guards.

Prisoners in solitary confinement have substantial limits on the amount of property they are allowed to possess. Only one box measuring approximately 2.5 cubic feet is permitted in Shoatz's cell. Over the years, legal and personal property of his has been confiscated and at times destroyed by prison staff.

All visitations are non-contact, conducted through a thick pane of glass, during which the prisoner is handcuffed. Shoatz has not had a contact visit since he was held in the federal penitentiary, which ended in June 1991. He has not embraced some of his children for more than 30 years, and has grandchildren he has never been able to touch.

Only one personal visit is allowed per week, for one hour, although in practice personal visits are far less frequent, as PA DOC prisoners are typically held hundreds of miles from their families and communities.

Prisoners are served meals three times a day in their cell by guards who deliver the food through a tray slot that is present in the middle of the solid steel door of the cell. The food is smaller in portion than that served to general population prisoners, lacking in nutritional value, and at times inedible.

Exercise is permitted for one hour five days per week in a caged area not much larger than the solitary confinement cell itself. There is no exercise equipment or recreational items available to RHU prisoners.

Showers occur three times per week. During escort to showers and yard, a prisoner may be subject to a visual strip search, and will be handcuffed prior to leaving the cell. Often, prisoners are placed in leg shackles as well.

Solitary confinement units throughout the PA DOC, including those Shoatz has been confined in, are often populated with mentally disturbed and sometimes psychotic individuals whose incessant screaming, talking, ranting, crying, banging on walls and furniture, and so on make it difficult to concentrate, sleep, and hold onto one's own sanity.

In addition to these general conditions of confinement, the solitary units in the PA DOC are rife with human rights violations, including physical and psychological abuse, racial discrimination, deprivation of food, yard, showers, routine retaliation, sexual harassment on the part of staff, refusal to provide competent and prompt—or even any—physical and mental health care, and more. During his nearly 30 years in solitary confinement, Shoatz has experienced or witnessed others suffer these human rights violations.

Shoatz has had a series of health issues during the past decade, including prostatitis; chronic pelvic pain; cataracts in both eyes, only one of which has been surgically removed; peripheral artery disease that causes varicose veins in his legs; a heel spur that requires occasionally wearing inserts in one of his shoes for up to two months at a time.

The continuous exposure to the conditions of solitary confinement for 22 consecutive years has exposed Shoatz to an unduly high risk of psychological harm and has caused him actual mental anguish and suffering, including increased stress, heightened anxiety, severe difficulty concentrating, short-term memory problems, agoraphobia, and unfathomable emotional pain and suffering. He experienced chronic depression for several years at SCI Greene, as his health concerns have increased and the possibility of dying in solitary confinement looms larger. During that time he also experienced suicidal ideation.

### **Deprivation of basic human needs – violations of the United States Constitution**

Russell Maroon Shoatz's prolonged solitary confinement is in violation of the U.S. Constitution's prohibition on cruel and unusual punishment. Application of clearly-established jurisprudential norms to the facts of Shoatz's situation demonstrate that he has been deprived of several basic human needs as a consequence of his decades in isolation, and that he faces a substantial risk of even more serious harm.

While “the Constitution does not mandate comfortable prisons,”<sup>7</sup> and conditions may be “restrictive and even harsh,”<sup>8</sup> conditions that are inhumane are impermissible under the Eighth Amendment’s prohibition against cruel and unusual punishments.<sup>9</sup> When the government deprives an individual of their liberty via incarceration it possesses a corresponding duty to provide for that person’s basic human needs.<sup>10</sup> In cases challenging conditions of confinement, prison officials violate the Eighth Amendment’s prohibition on cruel and unusual punishment only when both an objective and subjective requirement are met.<sup>11</sup> The objective prong requires that an injury be “sufficiently serious,”<sup>12</sup> resulting in the deprivation of a single, identifiable human need.<sup>13</sup> A condition that does not meet the objective requirement by itself may be considered in combination with other conditions if these produce a “mutually reinforcing effect” that causes deprivation of a single, identifiable human need.<sup>14</sup>

The subjective prong requires that a plaintiff demonstrate that a defendant possessed a “sufficiently culpable state of mind.”<sup>15</sup> In cases involving prison conditions the culpable state of mind is one of deliberate indifference to prisoner health or safety.<sup>16</sup> Deliberate indifference is found when a prison official has knowledge that prisoners face “a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”<sup>17</sup> Being exposed to a risk of harm may state a claim under the Constitution as well, as a prisoner does not “need to await a tragic event” in order to be granted relief from a court, as “the Eighth Amendment protects against future harm” as well.<sup>18</sup>

As a consequence of Secretary Wetzel and other PA DOC officials’ deliberate indifference to the well-documented and patently obvious risks of prolonged solitary confinement, Shoatz has been deprived of numerous basic human needs, including environmental stimulation, social interaction, psychological health, emotional wellbeing, physical health, sleep, exercise, nutrition, and fundamental human dignity.

These arguments were made in the complaint filed in federal court in the Western District of Pennsylvania on Shoatz’s behalf on May 8, 2013.<sup>19</sup> His is one of four cases that have clearly challenged the constitutionality of prolonged solitary confinement lasting 10 years or longer in U.S. courts.<sup>20</sup>

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<sup>7</sup> *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981).

<sup>8</sup> *Id.* at 347.

<sup>9</sup> *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

<sup>10</sup> *Helling v. McKinney*, 509 U.S. 25, 31-32 (1993).

<sup>11</sup> *Farmer*, 511 U.S. at 834.

<sup>12</sup> *Wilson v. Seiter*, 501 U.S. 294, 298 (1991).

<sup>13</sup> *Id.* at 304.

<sup>14</sup> *Id.*

<sup>15</sup> *Wilson*, 501 U.S. at 297.

<sup>16</sup> *Farmer* 511 U.S. at 834.

<sup>17</sup> *Id.* at 847.

<sup>18</sup> *Helling*, 509 U.S. at 33.

<sup>19</sup> Complaint of Plaintiff at 75, *Shoatz v. Wetzel*, 2:13-cv-00657-CRE.

<sup>20</sup> See Plaintiff’s Brief in Opposition to Defendants’ Motion to Dismiss at 9-10, *Shoatz v. Wetzel*, attached to this submission for further explication of the jurisprudence.

The extraordinary duration of Shoatz's solitary confinement places the deprivations he faces in a qualitatively distinct category from the vast majority of cases challenging isolation in U.S. courts. Those cases typically challenge solitary confinement as a short-term disciplinary measure, not as a life-long strategy of political repression. The severe restrictions on social interaction Shoatz has endured, along with the dearth of space and time for exercise, the small portions and poor quality of food, lack of sunlight, restrictions on personal property, complete denial of human touch, denial of treatment for a cataract in one eye, and deprivation of sleep have endured far beyond any humane threshold.

### **Rationale for placement in solitary confinement**

There are two classifications for prisoners placed in the RHU in the PA DOC, disciplinary or administrative custody. Disciplinary custody is for those found guilty of violating prison rules. Administrative custody is a catch-all that has broad criteria capable of justifying virtually any decision to hold a person in solitary confinement.

The PA DOC has placed Shoatz on something it refers to as the Restricted Release List (RRL), which is a list of approximately 85 prisoners<sup>21</sup> who may not be placed into general population at any prison without the express authorization of PA DOC Secretary John Wetzel. In order to be removed from solitary confinement, Shoatz must first be granted authorization by the prison at which he is held, currently SCI Frackville, then by the Regional Deputy Secretary, and then the by Secretary.

His classification status is nominally reviewed every 90 days by the Program Review Committee (PRC). The review by the PRC is a perfunctory proceeding, and the extension of his solitary confinement is automatic. Shoatz has typically been given the same rationale for his solitary confinement at each PRC hearing: that he is an escape risk in a less secure status. Other times he is given no rationale for his isolation at all, or told that he has a history of violence.

For instance, on May 22, 2012, Shoatz attended a PRC review and requested a full and detailed accounting of the evidence relied upon in continuing his solitary confinement. The PRC refused to provide that information, stating that he had already been given the reasoning on previous occasions.<sup>22</sup> On May 23, 2012, Shoatz appealed the PRC review to Defendant Folino, and again requested a detailed and complete explanation of the basis for his continuing solitary confinement. On June 29, 2012, Superintendent Folino denied Shoatz's appeal and dismissed his request for a detailed and complete explanation of the basis for his continuing solitary confinement, stating "No one is more aware of the details of your extensive assaultive and violent history than you, Mr. Shoat[z]."<sup>23</sup> Superintendent Folino made this decision despite never having once interacted with Shoatz the entire time that Shoatz was at SCI Greene.

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<sup>21</sup> Testimony of Deputy Secretary Michael D. Klopotoski in front of the Pennsylvania House Judiciary Committee, August 2, 2010.

<sup>22</sup> PRC Report 115, May 22, 2012 ("IM wanted detailed account of why he is on RRL – in writing – told him I know he has written [...] numerous officials concerning this [and] he has received responses.").

<sup>23</sup> Louis S. Folino, First-Level Appeal of Review Decision, June 29, 2012.

In addition to the PRC review, separate security and psychological reviews are required before Shoatz can be released from solitary confinement. Shoatz's most recent security review occurred on November 10, 2010. Prior to that, the last time Shoatz had a security review was on June 4, 1998. Shoatz's most recent psychological review occurred on November 4, 2010. This review stated that "mental health concerns are irrelevant in considering release of [Shoatz] from [solitary confinement]."

Shoatz has never been told what he can or must do in order to be released from solitary confinement.

In Shoatz's case, he has been kept in administrative custody status for more than twenty years under the pretext that he poses an escape risk if removed from the RHU. This rationale is undermined, however, by the reality that Pennsylvania prisons are far more fortified than when Shoatz last escaped more than thirty years ago. According to official PA DOC data, there has been only one escape in the last ten years, although hundreds of thousands of prisoners have cycled in and out of the general prison population during that time.<sup>24</sup>

Even more relevant to the claim that Shoatz is an escape risk is the fact that he is 70-years-old, and suffers from a number of physical ailments that diminish his ability to pose an escape risk.

Still, the most relevant factor in determining whether Shoatz poses an escape risk is his conduct during the past three decades. Over three decades ago, Shoatz made a decision that he would only pursue lawful means of advocacy to obtain his release from prison. On two occasions since his second escape he has been released into the general population without incident.<sup>25</sup> He has now gone more than 23 years without a single serious rule violation. While he has made it clear to prison authorities through words and acts that he has no intention of posing a security risk, this does not change the fact that there are those in the PA DOC who think people like Shoatz should be kept in isolation forever.

Although never formally acknowledged by prison officials, various prison officials and staff have at times expressly stated or implied to Shoatz, his family, or supporters that Shoatz is in solitary confinement due to his leadership qualities and organizing abilities. These statements in combination with the differential and more lenient treatment afforded other prisoners with histories of escape attempts or violence provide strong evidence that the PA DOC has placed a target on Shoatz due to his being an advocate and defender of human rights for oppressed peoples for more than 40 years.

### **Transfers and continued isolation**

In the last six months, Russell Maroon Shoatz has been transferred to a different prison on two occasions. During these six months, Shoatz has been repeatedly given assurances that he was

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<sup>24</sup> Pennsylvania Department of Corrections Annual Statistical Report 2011 at 32. Available at [http://www.portal.state.pa.us/portal/server.pt/document/1297836/2011\\_annual\\_statistical\\_report\\_pdf](http://www.portal.state.pa.us/portal/server.pt/document/1297836/2011_annual_statistical_report_pdf).

<sup>25</sup> The first was at SCI Pittsburgh in 1982-83, prior to his being placed back in solitary confinement due to his work with the Pennsylvania Association of Lifers. The second was the 18-months he spent in the federal penitentiary in Leavenworth, Kansas.

heading for release to general population. At the same time, the PA DOC has stopped providing any justification for his continuing solitary confinement.

On March 28, 2013, Shoatz was transferred from SCI Greene, where he had been held since January 1995, to SCI Mahanoy in Frackville, Pennsylvania. Prior to his transfer, approximately 12 staff members at SCI Greene shook his hand, said their farewells, with some even congratulating him on finally leaving SCI Greene, which has a notoriously severe control unit.

During Shoatz's first week at SCI Mahanoy, the Superintendent of the prison, John Kerestes, spoke to him at his cell door. Kerestes said that they were working out a program to get him off of the Restricted Release List, though they had not worked it out yet. He told Shoatz that they did not intend to keep him in the RHU for a long time.

At Shoatz's first PRC hearing at SCI Mahanoy, Deputy Superintendent Brenda Tritt told him that he was sent to SCI Mahanoy in order to be placed in general population. She further informed Shoatz that SCI Mahanoy would start the paperwork for the review process after 90 days. The report for Shoatz's first PRC hearing at Mahanoy provided no reason for his continuation in solitary confinement.

On May 2, 2013, Shoatz had his second PRC hearing at SCI Mahanoy. At this hearing, Major Vukstra reiterated that the process for his removal from the RRL would occur after Shoatz had been at the prison for 90 days. This position was identical to the one given by Deputy Superintendent Tritt on April 4. The report for the May 2 PRC hearing again provided no reason for Shoatz's continuation in solitary confinement.

During PRC's walk through the RHU on June 26, 2013, Shoatz was told that the review process to remove him off the RRL had been initiated by SCI Mahanoy, and that a "vote sheet" was circulating. A vote sheet is a form where select prison personnel register their opinion as to whether a prisoner should be removed from the RHU.

On July 3, 2013, while PRC was walking through the RHU, Deputy Superintendent Beggs told Shoatz that SCI Mahanoy had "given him the green light" for release into the general prison population.

Just five days after observing his 70th birthday, on August 28, 2013, Shoatz was transferred from SCI Mahanoy to SCI Frackville, a maximum security institution that is also located in Frackville, PA like SCI Mahanoy. He was once again immediately placed in solitary confinement. Shoatz was not given a reason for the transfer.

The transfer came one week before PA DOC officials, including Secretary John Wetzel, were required report to a federal judge on the progress of Shoatz's release into the general population. DOC defendants in the case *Shoatz v. Wetzel* have represented to the court on multiple occasions that they intend to release Shoatz into the general population, but have so far failed to do so.

On September 4, 2013, PA DOC defendants in *Shoatz v. Wetzel* filed a status report with the court. The report stated: "There are currently no plans for Plaintiff's immediate or imminent



release from the Restricted Housing Unit.”<sup>26</sup> This statement in the status report is clearly inconsistent with the other statements and actions of the PA DOC described herein.

The status report also claimed that Shoatz’s transfer to SCI Mahanoy was intended “as a prelude to a step down process that had as its goal the return of plaintiff to General Population status within the DOC.”<sup>27</sup>

The report provided two reasons for Shoatz’s transfer from SCI Mahanoy. First, it claimed he had to be separated from an anonymous prisoner who was the son of a former prisoner that Shoatz had a separation from in the past. Second, the report stated Shoatz “was having unauthorized and inappropriate communications with another inmate in the Restricted Housing Unit at SCI-Mahanoy.”<sup>28</sup>

Based on information and belief, both of these rationales are atypical, if not unheard of, justifications for a transfer. First, the report did not allege that Shoatz had an administrative separation from a prisoner at SCI Mahanoy necessitating a transfer. Furthermore, administrative separations are generally not invoked if one of the prisoners is in the RHU and the other is in the general population, as the solitary confinement units are already separated from the rest of the prison.

Second, Shoatz was never given a misconduct or any notice at all in regard to the alleged “unauthorized and inappropriate communications” he was having with another prisoner. This is the first time that we know of that a prisoner has engaged in conduct so serious as to necessitate a sudden transfer, but not serious enough to be issued a misconduct or other notice of investigation.

Upon his arrival at SCI Frackville, Shoatz was informed that he would soon begin a 60-day “step-down” program. During this program, Shoatz will act as a block worker, performing janitorial-type duties in the RHU. Every 20 days he will be evaluated to see if he is complying with the requirements of the program. At the end of the 60-days, if he successfully completes the program, prison officials have stated they will review his RRL status. He has not been promised release into the general population, but instead is being offered a replay of promises that were made at SCI Mahanoy, where he was also told that he was to be reviewed and released imminently.

On September 23, 2013, Shoatz began the step-down program. Shoatz is permitted out of his cell to perform janitorial duties on the tier of cells he is held in for approximately one-hour per day, Monday through Friday. As a consequence, he is held in solitary confinement for 22 hours five days a week, and still held in isolation for 24 hours on Saturday and Sunday.

Although this program represents the most out-of-cell time Shoatz has been afforded since he was in federal prison in 1991, and the most in a PA DOC prison since 1983, there is no guaranteed that he will eventually be released into the general population. The fact is that he is

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<sup>26</sup> Corrections Defendants’ Status Report at 2, *Shoatz v. Wetzel*, 2:13-cv-00657-CRE.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

still classified at the highest security level and confined in the RHU despite more than two decades of an exemplary conduct record.

These recent transfers have demonstrated a callous disregard on the part of PA DOC officials for Shoatz, as they have held out the promise of imminent release from solitary confinement only to continually postpone, delay, and equivocate. Such acts cannot help but have an adverse impact on a man who has been deprived human contact for decades.

### **International human rights standards**

*“[I]nternational law prohibits every act of torture or other cruel, inhuman or degrading treatment or punishment, no matter where, when, or against whom it is perpetrated . . .”*<sup>29</sup>

The conditions imposed on Russell Maroon Shoatz and their effects upon him fit the legal definition of torture articulated in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter CAT), which defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>30</sup>

PA DOC officials have intentionally inflicted severe pain and suffering, both physical and mental, upon Shoatz to punish him for past actions and to intimidate him and other prisoners who defend human rights. These conditions have been imposed upon him based on political discrimination, as Shoatz has been targeted for differential and more severe treatment than other prisoners due to his reputation as a human rights leader inside and outside of the prisons.

The significant number of violations of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides additional support for the conclusion that Shoatz’s nearly 30 years in solitary confinement constitutes torture.<sup>31</sup>

The extremely cold temperatures Shoatz was constantly exposed to at SCI Greene, along with the constricted space and 24-hour lighting of the PA DOC’s solitary confinement cells contravenes the requirement of Rule 10 that “all sleeping accommodation shall meet all

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<sup>29</sup> Nigel S. Rodley with Matt Pollard, *THE TREATMENT OF PRISONERS UNDER INTERNATIONAL LAW* 81 (3d Edition 2009).

<sup>30</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1(1), Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>31</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 30 August 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”<sup>32</sup>

The meager portions and poor quality of the food served in PA DOC RHU units is contrary to Rule 20, which states that food shall possess “nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”<sup>33</sup>

The lack of any exercise installations or equipment in the tiny outdoor cages that RHU prisoners are permitted to enter for five hours each week violates Rule 21, which provides that “installations and equipment” for exercise should be available.<sup>34</sup>

The extreme severity and duration of Shoatz’s solitary confinement runs afoul of the requirement of Rule 27 that “discipline and order” shall entail “no more restriction than is necessary for safe custody and well-ordered community life.”<sup>35</sup>

Punishment harmful to the physical and mental health of a prisoner is also prohibited under Rule 32.<sup>36</sup>

The PA DOC’s use of restraints every time a prisoner exits an RHU cell contravenes Rules 33 and 34, which provide that restraints “must not be applied for any longer time than is strictly necessary.”<sup>37</sup>

To the extent that Shoatz is being held in solitary confinement for his past escapes the PA DOC is acting contrary to Rule 30(1), which prohibits punishing a prisoner “twice for the same offence.”<sup>38</sup>

Subjecting Shoatz to these conditions because of his role as a human rights defender and political dissident violates the admonition of Rule 6 that there shall be no discrimination of any kind in the application of these rules, including based on political opinion.<sup>39</sup>

Conditions of confinement that contravene so many basic minimum standards of the international community, and which run afoul of strict prohibitions against torture and other cruel, inhuman, or degrading treatment or punishment subject offending governments to precise and non-derogable obligations under international human rights law.

The absolute prohibition on torture is recognized as a *jus cogens*, or peremptory norm of international law that is binding on all governments.<sup>40</sup> No treaty or domestic statute can

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<sup>32</sup> *Id.* at 10.

<sup>33</sup> *Id.* at 20.

<sup>34</sup> *Id.* at 21.

<sup>35</sup> *Id.* at 27.

<sup>36</sup> *Id.* at 32(2).

<sup>37</sup> *Id.* at 33-34.

<sup>38</sup> *Id.* at 30(1).

<sup>39</sup> *Id.* at 6.

supersede this prohibition.<sup>41</sup> The prohibition against torture is subject to universal jurisdiction and obligates governments to apprehend and bring to justice perpetrators wherever they are to be found.<sup>42</sup> Other governments are not to recognize a breach of this prohibition as lawful, and are “under an obligation to cooperate to bring the breach to an end.”<sup>43</sup> Article five of the Universal Declaration of Human Rights<sup>44</sup> and article 7 of the International Covenant on Civil and Political Rights<sup>45</sup> also recognize the prohibition against torture.

The Committee Against Torture, European Court of Human Rights, and Inter-American Court of Human Rights have all stressed that solitary confinement “should be ‘an exceptional measure of limited duration’ that is subject to strict judicial review both when it is applied and when it is prolonged.”<sup>46</sup>

This position was endorsed in the Istanbul Statement on the Use and Effects of Solitary Confinement that was adopted in December 2007 at the International Psychological Trauma Symposium, which declared that “[a]s a general principle solitary confinement should only be used in very exceptional cases, for as short a time as possible and only as a last resort.”<sup>47</sup> The statement emphasized that when solitary is imposed it should be done in a manner that “raises the level of meaningful social contacts for prisoners” via the provision of meaningful activities in and out of their cells, social interactions with other prisoners, more visits from family and community members, as well as in-depth discussions with psychologists, psychiatrists, and religious personnel.<sup>48</sup> Then United Nations Special Rapporteur on Torture, Manfred Nowak, commended the Istanbul Statement in his 2008 report to the General Assembly, reinforcing the implication that the imposition of solitary confinement that is not mandated by extraordinary security concerns, or subjects prisoners to deprivations of meaningful social interaction and environmental stimulation violates the prohibition against torture and other ill-treatment.<sup>49</sup>

This position was further reinforced in your 2011 report to the General Assembly on solitary confinement. The legal analysis of that report that resoundingly affirms the conclusion that U.S.-style solitary confinement units are prohibited under international law.<sup>50</sup> Noting “that all human

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<sup>40</sup> Rodley, *supra* note 29 at 65-66 (Also noting that in addition to the prohibition against torture, “there is evidence too that this status extends to the whole of the prohibition of torture *and* other cruel, inhuman and degrading treatment or punishment.”) (emphasis in original).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 49.

<sup>43</sup> *Id.* at 65.

<sup>44</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

<sup>45</sup> International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>46</sup> Jules Lobel, *Prolonged Solitary Confinement and the Constitution*, 11 U. Pa. J. Const. L. 115, 129-30 (2008).

<sup>47</sup> Rodley, *supra* note 29 at 407.

<sup>48</sup> *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Annex, U.N. Doc. A/63/175 (July 28, 2008).

<sup>49</sup> *Id.* at ¶ 84-85.

<sup>50</sup> *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment* U.N. Doc. A/66/268 (August 5, 2011) (Defining solitary

rights standards are subject to the norm of ‘progressive development,’ in that they evolve in accordance with emerging new features of repression,”<sup>51</sup> the report states that “the social isolation and sensory deprivation that is imposed by some States does, in some circumstances, amount to cruel, inhuman and degrading treatment and even torture.”<sup>52</sup>

Clarifying just what circumstances rise to the level of a violation of international human rights law, you found that punitive or prolonged solitary confinement constitutes torture or cruel, inhuman or degrading treatment, depending on the severity of the conditions. When imposed “for the purpose of punishment,” solitary confinement “cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behavior,” in violation of the CAT.<sup>53</sup> In addition, the report found that “any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment,” and called on the international community to adopt such a standard and impose “an absolute prohibition on solitary confinement exceeding 15 consecutive days.”<sup>54</sup>

International law further provides for obligatory investigative and reparative measures in instances of torture or cruel, inhuman or degrading treatment. The CAT provides for “prompt and impartial investigation[s], wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”<sup>55</sup> Individuals who report that they have been victims of torture or other ill-treatment<sup>56</sup> and witnesses are to be protected from reprisal.<sup>57</sup> When it is found that an individual has been the victim of an act of torture he or she is entitled to redress, including “an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”<sup>58</sup>

Investigations conducted according to internationally accepted standards serve to further the principles articulated in the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Law. These guidelines specify three core components of accountability constituting the victims’ right to remedies:

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confinement in ¶ 26 as “the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day.”).

<sup>51</sup> *Id.* at ¶ 37.

<sup>52</sup> *Id.* at ¶ 20.

<sup>53</sup> *Id.* at ¶ 72 (Noting that “[t]his applies as well to situations in which solitary confinement is imposed as a result of a breach of prison discipline, as long as the pain and suffering experienced by the victim reaches the necessary severity.”).

<sup>54</sup> *Id.* at ¶ 76 (*see also* ¶ 26 for acknowledgment of “the arbitrary nature of the effort to establish a moment in time which an already harmful regime becomes prolonged and therefore unacceptably painful.” The figure was selected based on a survey of the literature on the psychological harm of isolation, which may “become irreversible” around the fifteen day limit.).

<sup>55</sup> CAT, *supra* note 127 at article 12.

<sup>56</sup> *Id.* at article 16 (stipulating that acts that are cruel, inhuman or degrading, but do not rise to the level of torture are subject to the relevant protections of the convention).

<sup>57</sup> *Id.* at article 13.

<sup>58</sup> *Id.* at article 14.

- 1) equal and effective access to justice;
- 2) adequate, effective and prompt reparation for harm suffered; and
- 3) access to relevant information concerning the violations and reparation mechanisms.<sup>59</sup>

In summary, international law mandates that local, state, and federal law enforcement have an affirmative duty to conduct independent, legitimate and transparent investigations and prosecute those involved in the perpetration or enabling of torture and other cruel, inhuman, and degrading treatment of prisoners. Survivors of torture are entitled to justice and state officials of every jurisdiction are responsible for ensuring the abolition of torture within institutions subject to their control.

### **Request for assistance**

We are respectfully requesting that the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment immediately initiate a prompt and comprehensive investigation into the facts surrounding Russell Maroon Shoatz's nearly 30 years of solitary confinement in the PA DOC. Toward this end we are asking that your office submit a formal diplomatic communication with the appropriate representative of the United States government in Geneva, Switzerland.

We are also asking that your office consider issuing a press release in this matter, acknowledging how the case of Russell Maroon Shoatz raises human rights concerns similar to those acknowledged in your press release of August 23, 2013, which addressed the hunger strike of California prisoners and "urged the United States Government to abolish the use of prolonged or indefinite solitary confinement."<sup>60</sup> These concerns were reiterated in your press release of October 7, 2013, denouncing the four decades of solitary confinement imposed on Albert Woodfox in Louisiana.<sup>61</sup>

We are also asking that you arrange a visit with Shoatz in order to discuss his conditions of confinement and their impact on him, as well as his family and loved ones. Shoatz has stated that he would welcome a visit from you.

Even if Shoatz is released from solitary confinement in the immediate future, it is still vital that an investigation into his case is pursued, and that he is visited by representatives from international human rights agencies. Shoatz is entitled to a remedy for the harm inflicted upon him.

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<sup>59</sup> *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Law*, G.A. Res 60/147, U.N. Doc. A/RES/60/147 (March 21, 2006).

<sup>60</sup> Press Release: California Jails: "Solitary confinement can amount to cruel punishment, even torture" – UN rights expert, August 23, 2013. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13655&LangID=E>.

<sup>61</sup> Press Release: US: "Four decades in solitary confinement can only be described as torture," UN rights expert, October 7, 2013. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832&LangID=E>.

It is critical that the egregious violations of Shoatz's human rights are recognized by your office and the international human rights community more broadly, both for his own sake, and for the hundreds of thousands of men, women, and children who have been subjected to these conditions of social isolation and sensory deprivation in U.S. jails and prisons over the years.

Thank you kindly for your attention in this matter.

Respectfully submitted on behalf of Russell Maroon Shoatz,

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