



Level 1, 550 Lonsdale Street  
Melbourne VIC 3000  
AUSTRALIA  
P: + 61 3 9225 6695  
F: + 61 3 9225 6686  
hrlrc@vicbar.com.au  
www.hrlrc.org.au

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Miguel de la Lama  
Secretary  
Working Group on Arbitrary Detention  
Office of the High Commissioner for Human Rights  
Bureau P.W.3.010  
United Nations Office at Geneva  
8-14 Avenue de la Paix  
CH-1211 Geneva 10  
SWITZERLAND

By email: [mdelalama@ohchr.org](mailto:mdelalama@ohchr.org)

And by fax: + 41 22 917 90 06

Dear Mr de la Lama

### **Conditions of Detention of Unconvicted Remand Prisoners in Victoria, Australia**

Thank you for your letter of 20 December 2006 in response to our communication of 3 August 2006 on behalf of Amer Haddara, Shane Kent, Izzydeen Attik, Fadal Sayadi, Abdullah Merhi, Ahmed Raad, Ezzit Raad, Hany Taha, Aimen Joud, Shoue Hammoud, Majed Raad, Bassam Raad and Abdul Nacer Benbrika (collectively, 'the Detainees').

Thank you also for the opportunity to comment on the Australian Government's reply of 30 November 2006 to which we respond as follows.

#### **Confinement in Cells**

We are instructed that within the Acacia Unit of Barwon Prison there are four units, called Units 1, 2, 3 and 4. Units 1, 2 and 3 have single-occupancy cells and some common areas, being two yards and a

'dayroom'. Unit 4 has single-occupancy cells, each with its own enclosed yard, and no common areas. Each of the Detainees has spent extended periods (including periods in excess of 70 days) in Unit 4, during which time they have no contact with any other prisoners at all.

The maximum time that any of the Detainees is permitted out of his cell each day is six hours, although this frequently varies to as little as one hour due to the time required by prison officers to escort prisoners to and from their cells and other 'operational' requirements.

### **Personal Visits**

We are instructed that the Detainees are permitted a maximum of one non-contact visit per week with family members for up to one hour. This visit takes place in a visit box, with the Detainees separated from the visitors by thick glass.

In the case of Detainees with children under the age of 16, the Detainees are permitted one contact visit per month for a maximum of one hour. The Detainees are strip searched both before and after each of these visits. This visit occurs in a room measuring approximately 2 metres by 2.5 metres. Throughout the visit, the Detainees remain in leg irons and in manacles attached to a leather band around the waist. Spouses and partners are not permitted in the room with the children but are instead required to observe the visit from behind thick glass. Although the Australian Government asserts that these restrictions are permissible under Rule 92 of the Standard Minimum Rules on the Treatment of Prisoners, this Rule only enables such restrictions as are *necessary* in the interests of the administration of justice and the security and good order of the prison. Contrary to this, we are instructed that this regime applies to all of the Detainees, despite the fact that many of the Detainees have no previous criminal history of violence or of attempting to escape. We also are not aware of any objective assessment made by the prison authorities as to risk or any attempts to adopt less restrictive or intrusive measures. It is notable that the visitation restrictions placed on the Detainees are more onerous than those applied to many persons convicted of violent offences, including murder and manslaughter. As discussed in our letter of 3 August 2006, some of the Detainees have only been charged with membership of or supporting a terrorist organisation, and not with any offences involving planning, preparing or supporting a specific terrorist act. Moreover, none of the Detainees have been charged with engaging in a terrorist act or doing an act in preparation for a terrorist act.

As a result of the restrictions, some of the Detainees have not had any physical contact with any persons other than prison guards for at least 14 months.

### **Religious Observances and Diet**

Article 18(1) of the *ICCPR* provides that all persons have the right to freedom of religion. This freedom includes the right to worship, observe, practice and teach religion, either individually or in community with others. As discussed in our letter of 3 August 2006, the Human Rights Committee specifically considered the interpretation and application of art 18(1) and permissible restrictions under art 18(3) in the context of prisoners in General Comment 22 at paragraph 8:

Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint.

Consistent with this, the Committee's jurisprudence establishes that limitations on the capacity of an Islamic prisoner to manifest his religion in prison – including prohibitions on wearing a beard,

worshipping with other Islamic prisoners, and reading prayer books – may amount to an unlawful violation of art 18(1).<sup>1</sup>

Many of the Detainees are devout Muslims. As such, they are required to pray each Friday and, during the Eid festival following Ramadan, in congregation with at least two other Muslims. We are instructed that none of the Detainees have been permitted to comply with this religious obligation. When detained in Units 1, 2 or 3 of the Acacia Unit, the Detainees are permitted contact with only one other prisoner while. When interned in Unit 4 they have no contact whatsoever. This restriction on religious observance is despite the Detainees' indications to prison authorities that they have no objection to congregational prayer being subject to appropriate supervision by prison authorities.

During Ramadan, the Detainees are required to fast each day from the time known in Islam as Emsak (which is before dawn) until sunset. We are instructed that, despite this and throughout Ramadan, the Detainees were provided with their meals in their cells at 3.00pm. During Ramadan, sunset did not occur until well after 6.00pm, meaning that the Detainees were required to sit in their cells with their meals for at least three hours. We are further instructed that, by sunset, the meals had gone cold and that the meat had congealed with fat, rendering it inedible. Throughout Ramadan, the prison authorities refused repeated requests to either reheat the meals or to serve the meals after sunset, citing operational and security constraints which require the Acacia Unit to be locked down by 3.00pm.

### **Physical and Mental Health**

We are instructed that the physical and mental health of some of the Detainees has deteriorated during the course of detention. We continue to have significant concerns in relation to the inadequacy of health care available to the Detainees in prison.

As discussed in our letter of 3 August 2006, the conditions of detention having a significant deleterious impact on the Detainees' health include:

- extended solitary confinement;
- extremely limited and restrictive visitation rights, including no right to contact visits other than with their children;
- the imposition of arbitrary limits set on the time they are allowed out of their cells;
- the very limited contact with other prisoners;
- being strip searched both before and after every contact visit and both before leaving and upon returning to prison to attend court; and
- the very limited periods for which the Detainees are allowed outside of their cells.

As further discussed in our letter of 3 August 2006, the violations of the right to health consequent to the Detainees' conditions of detention are exacerbated by the lack of access to adequate health care, particularly mental health care, in Victorian and Australian prisons. The Senate Select Committee on Mental Health has recently accepted evidence that mental health care services in prisons are

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<sup>1</sup> HRC, *Boodoo v Trinidad and Tobago*, Communication No 721/96, U.N. Doc. CCPR/C/74/D/721/1996 (2002) [6.6].

inadequate in all Australian jurisdictions<sup>2</sup> and that prison conditions themselves may worsen mental health and significantly complicate the effective treatment of mental illness.<sup>3</sup>

In our view, it is strongly arguable that the level of mental health care available to the Detainees falls short of that explicitly required by art 12 of the *ICESCR* and impliedly required by arts 7, 9 and 10 of the *ICCPR*.

### **Period of Detention**

As a final matter, we note that the Detainees have now all been committed to stand trial in the Supreme Court of Victoria at a date yet to be fixed. It is unlikely, however, that the trial will commence until late-2007 at the earliest and may continue for a period of up to 6-12 months. This means that the Detainees may be held in their current oppressive conditions as unconvicted remand prisoners for up to three years. We consider that this raises particular issues in relation to the guarantee under art 14(3)(c) of the *ICCPR* that persons charged with a criminal offence must be tried without undue delay.

### **Conclusion**

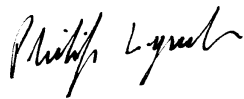
We consider that the facts outlined in this letter, in combination with the facts and submissions made in our letter of 3 August 2006, raise very serious issues as to the compatibility of the Detainees' conditions of detention with arts 7, 9, 10(1), 14(3) and 18(1) of the *ICCPR* and art 12 of the *ICESCR*. We are particularly of the view that the detention is not reasonable, necessary, just or proportionate as required by art 9(1) of the *ICCPR*.

We greatly appreciate the Working Group's consideration of this matter and the opportunity to respond to the Australian Government's letter of 30 November 2006.

We take this opportunity to commend the Working Group on its important work and look forward to being informed of the outcomes of the 48<sup>th</sup> Session.

Please contact Philip Lynch by post, by email at [hrlrc@vicbar.com.au](mailto:hrlrc@vicbar.com.au), by telephone on + 61 3 9225 6695 or by facsimile on + 61 3 9225 6686 with any questions regarding this matter.

Yours sincerely



Philip Lynch  
Director and Principal Solicitor  
Human Rights Law Resource Centre Ltd

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<sup>2</sup> Senate Select Committee on Mental Health, *A National Approach to Mental Health: From Crisis to Community* (March 2006) [13.98].

<sup>3</sup> *Ibid* [13.102]. See also Ombudsman Victoria and Office of Police Integrity, *Conditions for Persons in Custody: Report of Ombudsman Victoria and Office of Police Integrity* (July 2006); *R v Rollo* [2006] VSCA 154 (31 July 2006); *R v SH* [2006] VSCA 83; *R v Wooden* [2006] VSCA 97.