



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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REFERENCE: ARDS/IIEM/AM/KK/ip

3 August 2023

Subject: Wendell Keith Clay

Excellency,

We have the honour to address you in our capacity as the United Nations International Independent Expert Mechanism mandated to advance racial justice and equality in the context of law enforcement, established pursuant to operative paragraph 10 of Human Rights Council resolution 47/21.¹

We write in the spirit of dialogue, to initiate contact with your Excellency's Government regarding the case of Mr. Wendell Keith Clay.

According to available information, on 8 November 2021 at approximately 11:00 p.m., Mr. Wendell Keith Clay, a 41-year-old man of African descent, was arrested in Lexington, Kentucky on a *fugitive charge, in violation of his probation in Maryland*. On 9 November 2021, he appeared in court and was *found guilty* of possession of controlled substance, marijuana, synthetic drugs, and drug paraphernalia.

On 16 November 2021, Mr. Clay was *found guilty* of possession of cocaine, marijuana, synthetic drugs, and drug paraphernalia.

On 6 June 2022, Mr. Clay was found guilty of rape, burglary, sexual abuse, wanton endangerment, *unlawful imprisonment*, receiving stolen property, and possession of a firearm.

We received correspondence from Mr. Clay that has raised concern. In a letter to our Office, Mr. Clay claimed that he is “being illegally detained under extreme & harsh conditions” and is “under duress & held in isolation for well over 8 month[s].” He also alleges that he has only been given 20 minutes per week for recreation outside of his cell.

¹ The international independent expert mechanism to advance racial justice and equality in the context of law enforcement was established in July 2021 by the Human Rights Council to make recommendations, inter alia, on the concrete steps needed to ensure access to justice, accountability and redress for excessive use of force and other human rights violations by law enforcement officials against Africans and people of African descent. Justice Yvonne Mokgoro (South Africa, Chairperson); Dr. Tracie Keese (United States of America) and Professor Juan Méndez (Argentina) were appointed in December 2021 by the President of the Human Rights Council to serve as independent experts on the mechanism.

In addition to the claims about the conditions under which Mr. Clay is being held, he asserts that a conflict of interest within the Fayette County Police Department and the Kentucky Justice System more broadly has led to unethical conduct surrounding his case, resulting in illegal detention based on fraudulent orders. He has also made claims that his right to due process and equal protection have been violated.

We would like to express utmost concern, and stress that in this case, according to the details provided by Mr. Clay, his conditions and length of detention, particularly during a *pre-trial period*, appear to violate international norms and standards.

The Istanbul Statement on the Use and Effects of Solitary Confinement defines solitary confinement as the physical isolation of individuals who are confined in their cells for twenty-two to twenty-four hours a day. The Statement also elaborates on the negative impact on health that worsens with each day in such isolated circumstances.² The United Nations Standard Minimum Rules for The Treatment of Prisoners, underscore the need for provision of health care services and recreational activities to promote mental and physical health while in detention and states that solitary confinement must only be used as a last resort.³ Further, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has drawn links between prolonged isolation of detainees to cruel, inhuman or degrading punishment, which may amount to torture in certain cases.⁴ The Special Rapporteur has also stated that pre-trial detainees in solitary confinement puts them in a vulnerable position, where solitary confinement is used to extract information from them or force a confession.⁵

We take this opportunity to recall that the United States is bound by several international human rights law provisions including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination and has a duty to fulfil the obligations within them. The Human Rights Committee and the Committee against Torture have issued recommendations to the USA to impose strict limits on the use of solitary confinement including during pre-trial detention.⁶

Considering these international human rights obligations, and in order to make further findings and recommendations regarding concrete steps to ensure racial justice and equality for Africans and people of African descent in the context of law enforcement and the criminal justice system, we would be grateful if the Government of the USA could provide us with further information on Mr. Clay's case including:

- Details of the case(s) concerning Mr. Clay, including whether they are ongoing or if he has received a sentence.

² The Istanbul Statement on the Use and Effects of Solitary Confinement

³ United Nations Standard Minimum Rules for The Treatment of Prisoners rule 44 and 45

⁴ A/63/175

⁵ A/63/175 para 82

⁶ CCPR/C/USA/CO/4 para 20, CAT/C/USA/CO/3-5 para 20(a)



- Information, in law, policy, and practice, concerning the management of the Fayette County Detention Center by the officers and staff at-large as it relates to treatment of detainees and inmates, as well as pre-trial detention and solitary confinement.
- Data, disaggregated by race or ethnic origin, of pre-trial detainees and prison inmates who are subject to solitary confinement in the Fayette County Detention Center, as well as the whole of the Commonwealth of Kentucky.
- Measures being taken or are planned to be taken by the Government or the legislative body to update and streamline practices such as solitary confinement, and treatment of detainees and inmates more broadly.
- Other relevant information deemed necessary for purposes of the mandate.

Given the seriousness of the matter, we would appreciate a response to these points at your earliest convenience and no later than 60 days on receipt of this letter. Please note that we may decide to make our views and concerns public in the coming days, and that such public statement will reflect that we have raised our concerns with your Excellency's Government.

Please accept, Excellency, the assurances of our highest consideration.

Sincerely,

Dr. Tracie Keese

Prof. Juan Méndez

Members of the International Independent Expert Mechanism to Advance Racial Justice and
Equality in the Context of Law Enforcement