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Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

February 24, 2014

Senator Dick Durbin
Chairman
Subcommittee on the Constitution,
Civil Rights, and Human Rights
Senate Committee on the Judiciary
United States Congress

Dear Senator Durbin,

I am pleased to submit this statement, in my capacity as United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, for the purpose of the Second Congressional Hearing on Solitary Confinement; “Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences” to take place on February 25, 2014. I would like to congratulate the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights and its Chairman, Senator Durbin, for once again, taking the initiative to address this very important issue through a public hearing and to create the opportunity to evaluate and raise awareness on the harmful consequences of solitary confinement. While significant and meaningful strides have been made since the first Congressional Hearing in 2012 regarding the limitation of the use of solitary confinement in the United States, there is certainly still work to be done. I hope this hearing can contribute to further discussion and reform efforts on this pressing issue.

Solitary confinement remains a pervasive practice throughout much of the world, and is, in many cases, subject to widespread abuse in violation of internationally recognized human rights standards, including the absolute prohibition of torture and ill-treatment, the central focus of my mandate. Short-term uses of solitary confinement for specific purposes and closely monitored may be legitimate. However, solitary confinement is often imposed for prolonged periods, with diverse motives and in distinct contexts, including in prisons, administrative detention facilities, juvenile detention centers, mental health institutions and immigration detention facilities. Unfortunately, the United States is one of the countries where solitary confinement is widely used for prolonged periods of time raising significant concerns regarding the compliance of this practice with the United States’ obligations under the International Covenant for Civil and Political Rights (ICCPR), and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your Government ratified on 8 June 1992 and 21 October 1994 respectively.

In my capacity as Special Rapporteur I have worked closely on the issue. In October 2011, I presented a thematic report to the United Nations General Assembly examining the global practice of solitary confinement under the framework of the international prohibition of torture and ill-treatment, and provided recommendations to

all States regarding the use of solitary confinement.¹ In March 2013, I participated in a thematic hearing before the Inter-American Commission on Human Rights (IACHR) on the issue of solitary confinement in the Americas. The IACHR endorsed my recommendations and issued a public statement urging the Member States of the Organization of American States (OAS) to adopt concrete measures, in accordance with my recommendations, to ban prolonged solitary confinement.² Additionally, in my most recent thematic report, presented at the 68th session of the UN General Assembly in October 2013, I recommended that the reviewed UN Standard Minimum Rules for the Treatment of Prisoners (SMRs) should explicitly prohibit the use of solitary confinement as a disciplinary regime or judicial sentence, prohibit the use of solitary confinement for prolonged or indefinite periods, and prohibit the practice in all circumstances against juveniles, persons with mental disabilities, pregnant women, persons serving life sentences and persons awaiting execution on “death row.”³ This recommendation to include a prohibition of solitary confinement in these terms in the revised SMRs has also been recently supported by the Committee against Torture in their submission for the SMR review process.

In my 2011 thematic report I defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. While the official title or name of this practice may vary, the general characteristics remain the same, namely the absence of significant contact with the outside world and with other prisoners. Access to significant human contact for instance, through contact with other prisoners, visits by friends and family members, recreational activities and educational opportunities, are essential not only for the rehabilitation of the prisoners and their reintegration into society, but also to care for the prisoners’ mental and physical integrity.

Depending on the specific reasons for its application, as well as on the conditions, length, severity of the effects and other circumstances, solitary confinement can amount to cruel, inhuman and degrading treatment or punishment, and even torture.⁴ This is the case where the physical conditions and the prison regime of solitary confinement fail to respect the inherent dignity of the human person and cause severe mental and physical pain or suffering.⁵ Evidence suggests that serious health effects may begin to appear after only several days of isolation and the risks grow with every day that passes in those conditions. Research on the effects of isolation indicate the existence of certain psychotic disorders, including a syndrome known as “prison psychosis” whose symptoms include anxiety, depression, anger, cognitive disorders, distortions of perception, paranoia, and psychosis and self-inflicted injuries. Furthermore, due to the lack of witnesses and the solitude in which such practices are carried out, solitary confinement may give rise to other acts of torture or ill treatment.

The duration of time spent in solitary confinement varies considerably, with periods ranging from several days to several months, and in some cases, to terms covering multiple years. I am particularly concerned about the practice of prolonged and

¹ A/66/268 (5 August 2011)

² http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp

³ A/68/295 (9 August 2013)

⁴ A/66/268 (5 August 2011), para. 20

⁵ *Ibid.* para 81

indefinite solitary confinement, given the serious mental and physical health risks that may arise after only a few days in isolation. As a result, in my 2011 thematic report I defined prolonged solitary confinement as any period of isolation which exceeds 15 days. This should serve as a clear point of departure from which solitary confinement no longer constitutes a legitimate tool for State use. I chose this standard based on research that identifies 15 days as the point at which many of the harmful physical and psychological effects of isolation can become irreversible.⁶ Based on these effects, I argue that prolonged solitary confinement should be prohibited under all circumstances since it amounts to cruel, inhuman or degrading treatment or even torture, in violation of Article 7 of the ICCPR, Articles 1 and 16 of the CAT. This conclusion was also supported by the UN Human Rights Committee, the Subcommittee on Prevention of Torture,⁷ as well as the Inter-American Court of Human Rights, which has held that “prolonged isolation and lack of communication to which the victim is subjected, represent, in and of themselves, cruel and inhuman treatment, which are harmful to the psychological and moral integrity of the person and the right of all detainees to enjoy respect for their human dignity.”⁸

Nevertheless, prolonged and indefinite solitary confinement remain a pervasive problem in many countries, and particularly in the United States where there are more than 80,000 persons held in solitary confinement, the majority held in prolonged or indefinite isolation.⁹ In the state of California alone, there are roughly 10,000 persons in solitary confinement.¹⁰ In the summer of 2013, inmates in California declared a hunger strike for 60 days to protest the extensive use of solitary confinement against presumed gang members and other categories of prisoners. I have asked the United States’ government to invite me to visit the United States in my capacity as the Special Rapporteur and to grant me permission to visit California’s and other states’ prisons where solitary confinement is used, in order to investigate these reports of isolation and to be able to recommend possible actions. Although conversations with the United States government are ongoing, I have still not received a positive response to my request.

I want to reiterate that prolonged and indefinite solitary confinement should be prohibited in all circumstances. The longer the duration of isolation or the greater the uncertainty of the duration, the greater the risk that such isolation will cause grave or irreparable harm to the detainee, which may constitute cruel, inhuman or degrading treatment or punishment, or even torture. While the use of short-term solitary confinement can be justified in some circumstances, provided that adequate safeguards are in place, prolonged use of solitary confinement can never constitute a legitimate tool for State use regardless of circumstances. That is not to say, however, that isolation lasting for 15 days or less can never constitute torture or ill-treatment. All instances of solitary confinement should be assessed on a case by case basis, taking into

⁶ Ibid., para 26

⁷ Ibid., paras 30-32

⁸ Velázquez-Rodríguez c. Honduras, Corte Interamericana de Derechos Humanos, serie C, núm. 4, párr. 156 (1988).

⁹ <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac> and <http://solitarywatch.com/wp-content/uploads/2011/06/fact-sheet-the-high-cost-of-solitary-confinement.pdf>

¹⁰ http://www.nytimes.com/2013/07/11/us/hunger-strike-by-california-inmates-already-large-is-expected-to-be-a-long-one.html?_r=0 and <http://www.examiner.com/article/prisoners-health-a-un-investigation-on-solitary-confinement-the-u-s>

consideration all relevant circumstances, including the purpose of its application, the conditions, length and effects of the treatment, and the subjective conditions of each individual that make him or her less vulnerable to those effects. I therefore reiterate that even if solitary confinement is applied for short periods of time, it often causes mental and physical suffering or humiliation, amounting to cruel, inhuman or degrading treatment or punishment, and if the resulting pain or sufferings are severe, it can also amount to torture.

With regard to the justification or purpose of solitary confinement, it is common for isolation to be imposed as a judicial sentence, disciplinary regime or as a regime to protect or segregate certain groups from the rest of the prison population, including vulnerable groups. Particularly when used as a form of judicially imposed sentence or disciplinary regime, applied solely on the basis of the gravity of the offense for which the inmate has been convicted, prolonged or indefinite isolation is never justified. Such practices go beyond what is reasonable and proportional as a form of punishment, and preclude the possibility of rehabilitation and reform, which should be the primary objective of incarceration. Additionally, when applied as a "prison management" measure, such as in cases of separation of inmates suspected of gang associations, it deprives the inmates of their due process rights to challenge the decision. In this context, solitary confinement may become a punitive measure which can easily be abused by guards and authorities against certain inmates.

The same conclusion may be extended to the use of solitary confinement in pretrial or preventive detention, where such practices create a de facto situation of psychological pressure, which can influence detainees to make confessions or statements against themselves or others. In my 2011 thematic report, I argued that when solitary confinement is used intentionally during pretrial detention as a technique for the purpose of obtaining information or a confession or a guilty plea, it amounts to cruel, inhuman or degrading treatment or punishment or even torture and violates the obligations contained in Article 7 ICCPR and Articles 1 and 16 CAT. Furthermore, when applied in pre-trial detention because of the seriousness of the offense, it also becomes a violation of the presumption of innocence, and impedes the ability of the detainee to challenge his or her detention. In practice, the use of solitary confinement during investigations or in pre-trial detention also increases the risk that acts of physical or mental torture and other cruel, inhuman or degrading treatment will go undetected and unchallenged.

Furthermore, solitary confinement of any duration may never be imposed on juveniles under the age of 18, or persons with mental disabilities. In this context, the UN General Assembly, the Committee against Torture, the Subcommittee for the Prevention of Torture and the Committee on the Rights of the Child have all declared that solitary confinement of minors should be strictly prohibited;¹¹ The Inter-American Commission on Human Rights has similarly declared that the imposition of solitary confinement on minors constitutes cruel, inhuman or degrading treatment.¹² Paragraph 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty establishes that "all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including [...] solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile

¹¹ A/66/268 (5 August 2011) para 29-33

¹² <http://www.cidh.org/countryrep/JusticiaJuvenileng/jjiv.eng.htm>

concerned.”¹³ Despite these standards, solitary confinement of juveniles and mentally disabled persons remains a widespread problem, including in the United States.¹⁴ However, New York and other states have made recent strides towards reducing the use of solitary confinement in juvenile cases. New York has agreed to implement a minimum of five hours of outside cell programming at least five days a week for 16 and 17 year old prisoners.¹⁵

In order to abolish the use of prolonged and indefinite solitary confinement, to guarantee the rights of detainees, and to minimize the potential adverse health effects associated with this practice, I have urged states to apply the following guiding principles and procedural safeguards:

Firstly, the physical conditions and prison regime of solitary confinement must be proportional to the severity of the charges. In particular, solitary confinement should only be applied for the shortest duration possible, and prolonged isolation should be prohibited. Secondly, solitary confinement must be imposed only as a last resort where less restrictive measures cannot achieve the intended disciplinary goals. Thirdly, solitary confinement must never be imposed or allowed to continue except where there is an affirmative determination that it will not result in severe pain or suffering, whether physical or mental. Fourthly, a documented system of regular review of the justifications for the imposition of solitary confinement should be in place. All assessments, justifications and decisions taken with respect to the imposition and duration of solitary confinement must be clearly documented and communicated to the detained persons and their legal counsel. It has been demonstrated in many cases that the feeling of uncertainty, when not informed of the length of solitary confinement, exacerbates the pain and suffering of detainees. Furthermore, persons held in solitary confinement must be provided with a genuine opportunity to challenge both the nature of their confinement and its underlying justification through a process of administrative and judicial review. Additionally, individuals held in solitary confinement must have free access to competent legal counsel, and qualified and independent medical personnel. There should be a documented system of regular monitoring and review of the physical and mental condition of the individual by qualified medical personnel on a daily basis throughout the period in which the individual is held in solitary confinement.

Solitary confinement continues to be widely used in the United States and there is still a great need for reform, both at the Federal and state level. However, encouraging changes have been taking place in recent years. I commend the changes in Maine, New York, Mississippi and other states that have taken steps to safeguard prisoners, particularly juveniles, from the detrimental impacts of solitary confinement.¹⁶ Recognition of the adverse physical, mental, and emotional impacts of solitary confinement and the development of procedures to safeguard against its application, especially for long and excessive periods of time, is the first step in reducing and ideally eliminating this practice. Other states, such as Colorado, are increasingly aware of the

¹³ A/66/268 (5 August 2011) para 29

¹⁴ <https://www.aclu.org/files/assets/us1012webwcover.pdf>

¹⁵ <http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html?hp>

¹⁶ http://www.aclumaine.org/sites/default/files/uploads/users/admin/ACLU_Solitary_Report_webversion.pdf

need for reform, but significant change is slow to take hold.¹⁷ Further, I am aware and congratulate the impressive work that this Subcommittee has done, in collaboration with the Federal Bureau of Prisons, to comprehensively evaluate and reform the use of solitary confinement and isolation in federal corrections facilities.¹⁸ Additionally, the work of civil society, grass-root organizations, and victim's families has been fundamental for the advancement of research and the raising of awareness on the pervasive use and detrimental impacts of solitary confinement.

I would again like to thank the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for inviting me to participate in this important hearing on solitary confinement and allowing me to submit this statement for the record. I am hopeful that this hearing, along with future reforms and advancements, will help bring a timely end to the pervasive use of solitary confinement in United States prisons and insure that prisoners are guaranteed the necessary protections against torture and ill-treatment.

Sincerely,



Juan E. Méndez

United Nations Special Rapporteur on the question of torture
and other cruel, inhuman or degrading treatment or punishment

¹⁷ http://mobile.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html?action=click&contentCollection=Opinion®ion=Footer&module=MoreInSection&pgtype=article&_r=0&referrer=

¹⁸ <http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac>