

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

TODD ASHKER, et al.,

Plaintiffs,

v.

GOVERNOR OF THE STATE OF  
CALIFORNIA, et. al.,

Defendants.

Case No.: 4:09-cv-05796-CW

CLASS ACTION

Judge: Honorable Claudia Wilken

**EXPERT REPORT OF JUAN E. MÉNDEZ**

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## **I. INTRODUCTION**

1. I respectfully submit this expert report in order to assist the Court's deliberations. This report explains how international law analyzes the prolonged solitary confinement experienced by the Plaintiffs and members of the certified class in this matter.

## **II. CREDENTIALS**

2. I am currently the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a position that I have held as an independent expert since November 1, 2010, after being appointed to it by the Human Rights Council of the United Nations. My mandate was renewed in October 2013. First created in 1985, the Special Rapporteurship is one of more than fifty "Special Procedures" of the United Nations, and one of its longest-standing. Mandate-holders are appointed to serve for up to two consecutive three-year terms, on the basis of their expertise in the respective subject matter covered by the mandate.

3. I do not submit this report in my capacity as Special Rapporteur but instead as an expert witness. My involvement in this case should not be interpreted in any way as waiving, limiting or having any other effect on the immunities enjoyed by the United Nations before United States courts.

4. In my capacity as Special Rapporteur on Torture, I visit countries that invite me in order to advise them on how to meet their obligation to observe the absolute prohibition in international law of both torture and cruel, inhuman or degrading treatment or punishment (CIDT). On such missions, I always include visits to prisons, detention centers and other places where persons are deprived of freedom and I eventually make recommendations on how to bring them up to international standards. I also write thematic reports on various aspects of the international law regarding torture with recommendations to the international community and to

all member States of the UN on how to fulfill the various obligations that are derived from the absolute prohibition on torture and CIDT. In October 2011 I submitted a report to the UN General Assembly on the use of solitary confinement and the ways in which, depending on circumstances, it may constitute either torture or CIDT. That report is attached hereto as Exhibit A.

5. My appointment as Special Rapporteur is the result of a long career dedicated to the promotion and protection of human rights, particularly in regards to torture. I have been a Special Advisor to the Prosecutor of the International Criminal Court on prevention of the crimes under that tribunal's jurisdiction, and co-chair of the Human Rights Institute of the International Bar Association. Between 2004 and 2007, I was Special Advisor to the UN Secretary General on the Prevention of Genocide. As a member of the Inter-American Commission on Human Rights of the Organization of American States between 2000 and 2003 and as its President in 2002, I also visited prisons in the western hemisphere and authored reports on visits and case complaints about them. Earlier, as a researcher and manager for Human Rights Watch between 1982 and 1994, and later as HRW General Counsel between 1994 and 1996, I had occasion to visit detention centers in many countries as well, and to write reports on their compliance or non-compliance with international standards.

6. I teach in the area of International Law at U.S. and foreign law schools. Since the Fall of 2009, I have been Professor of Human Rights Law in Residence at the Washington College of Law, American University in Washington, DC., where I teach courses on International Law and on International Human Rights Law. I have previously taught at Notre Dame Law School (1999-2004), Georgetown University (1990-93) and the Johns Hopkins' School of Advanced International Studies (1994). Since 1997, I have taught regularly at summer

sessions of the Oxford University's Masters Program on International Human Rights Law in the United Kingdom, and I occasionally lecture or teach short courses at other universities around the world.

7. My *curriculum vitae* is attached to this report as Exhibit B.

### **III. METHODOLOGY**

8. For the purpose of rendering this expert testimony, I have received and read the Plaintiff's Second Amended Complaint in this class action, the Summary of Step-Down Regulations; Order (by this court) Granting in Part Motion for Class Certification dated 06-02-2013; a DRB Case-by-Case Review of Ruben Williams dated 12-11-2013; Inmate/Parolee Appeal by Mark Quiroz dated 06-10-2013, Potty Watch and Contraband Surveillance Procedures (redacted in parts) dated 03-28-2012; Final Text of Adopted Regulations by California Department of Corrections and Rehabilitation, dated 10-17-2014; Serious Rule Violation Report on Luis Esquivel dated 08-11-1999; Declaration of Luis Esquivel in Support of Motion for Class Certification, dated 05-02-2013; Declaration of Todd Ashker in Support of Motion for Class Certification, dated 05-02-2013; Deposition of Warden Clark Ducart, 11-24-2014; Ashker Abridged Responses to Interrogatories (undated); and Agreement to End Hostilities, dated 08-12-2012. I also visited eleven members of the Eighth Amendment class in this case (including three named Plaintiffs) on December 8 and 9, 2014 at their current place of detention in Pelican Bay prison in Crescent City, California. I also visited the premises of the Special Housing Unit (SHU) and the wing for Administrative Segregation ("AdSeg"). The persons I interviewed gave me detailed explanations of the conditions of their detention and prolonged solitary confinement in Pelican Bay and also in other California correctional institutions.

9. I wish to inform the Court that, since September 16, 2011, I have been in contact with the US Government about the use of solitary confinement in several prisons in this country.

My communication of that date was answered by the Permanent Mission of the US in Geneva, Switzerland on November 30, 2011. I attach copies of both those documents as Exhibit C.

10. I state for the record that I have served as an expert witness in only one other lawsuit in the last four years. That case is *Russell Shoatz v. Wetzel*, US District Court for the Western District of Pennsylvania. My report was filed with that Court on February 13, 2015. That case is also about prolonged solitary confinement in State prisons.

11. I also state that I am receiving no compensation for my testimony in this case. Counsel for plaintiffs have paid for my transportation and lodging when I visited the Pelican Bay facility in Northern California.

#### **IV. SOLITARY CONFINEMENT IN INTERNATIONAL LAW**

12. The treatment of prisoners and detained persons is comprehensively addressed by international law.<sup>1</sup> As described more fully below, there is an emerging consensus that, under certain circumstances, solitary confinement violates international obligations with respect to treatment of offenders. Such violations arise when the use of solitary confinement crosses a threshold into becoming cruel, inhuman or degrading treatment or punishment or even torture. The limited use of solitary confinement under proper circumstances does not violate international standards. Circumstances in which solitary confinement may be legitimately imposed require: a) a reasonable motive or purpose in isolating the inmate; b) due process in the determination of its imposition, including a meaningful opportunity to challenge it; c) adequate medical examination to prevent isolation from affecting the inmate's health; d) an absolute prohibition of its use, for any length of time, against children, persons with mental disabilities, and pregnant women; and

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<sup>1</sup> See generally, Sir Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law*, Oxford: OUP, 3d. edition, 2009. Sources include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Convention Against Torture (CAT), the Standard Minimum Rules for the Treatment of Prisoners, and the UN Basic Rules for the Treatment of Prisoners (see below for complete references).

e) limited duration of an inmate's term in isolation and limited time spent in isolation per day so that it does not inflict severe pain or suffering on the inmate. An important consideration is the length of the period that an inmate spends in isolation. Under international law obligations, there is an absolute ban on "indefinite" or "indeterminate" periods of isolation.<sup>2</sup>

13. International law establishes an absolute prohibition on torture as well as on cruel, inhuman or degrading treatment or punishment (CIDT) that cannot be derogated. This prohibition is *jus cogens*, meaning that it is an imperative norm of international law that binds all States and that admits no repeal or exception by another treaty or custom emerging later. The prohibition likewise does not recognize any emergency or other circumstance that could warrant a suspension. The United States is bound in all its governmental functions to abide by this prohibition, as a matter of *jus cogens* obligation, of customary international law and of treaty law, since the United States is a party to the UN Convention Against Torture (CAT), an instrument that codifies this and several other customary international law norms. The US has been a party to this multilateral treaty since 1994, after signature by the Executive Branch and ratification by the US Senate on April 18, 1988, and October 21, 1994, respectively.<sup>3</sup> The US did include several declarations, reservations and understandings (DRUs) but none of them relevant to the absolute nature of the prohibition on either torture or CIDT.

14. One of the DRUs inserted in the ratification by the US of the CAT is relevant to this Court's deliberation: The US declared that, for purposes of its obligations acquired in signing the treaty, it understood the notion of "cruel, inhuman or degrading treatment or punishment" to be equivalent to the constitutional prohibition of "cruel and unusual

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<sup>2</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of Juan E. Méndez, U.N. Doc. A/66/268 (Aug. 5, 2011).

<sup>3</sup> United Nations Human Rights, Treaty Body Reporting Status for the United States of America, available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=USA&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=USA&Lang=EN)

punishment.” Note that this is not a reservation excluding US obligations with respect to “inhuman or degrading treatment” but a clarification that the words “cruel and unusual punishment” are meant to convey the same meaning as CIDT. Therefore, any finding of fact that a policy or practice constitutes CIDT as applied to the plaintiffs would *ipso jure* breach the constitutional prohibition, and vice-versa. Under international law, torture is defined 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>4</sup>

15. CIDT are “other acts . . . which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>5</sup> Both definitions require the action of a State agent, a requirement that is amply satisfied in the facts in this case. In both torture and CIDT, the pain and suffering involved can be either physical or mental; in other words, a person can be the victim of torture or CIDT even if no physical assault takes place. “Mental” pain and suffering is what more appropriately should be called “psychological” or “emotional” adverse effects on a person’s mind.

16. For purposes of a more clear understanding of when a certain behavior constitutes torture and when it is CIDT, the Office of the UN High Commissioner for Human Rights has stated that:

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<sup>4</sup> Art. 1, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “CAT”), Dec. 10, 1984, 1465 U.N.T.S. 85. The “lawfulness” of the sanction is determined by reference to international, not domestic law. See Fn 22 below.

<sup>5</sup> *Ibid*, Art. 16



Torture and cruel, inhuman and degrading treatment are concepts that might be difficult to distinguish . . . Torture is a [more] severe form of inhuman treatment, but there is no objective element of distinction between the two categories. Acts at stake are usually identical and only the level of intensity/severity of the ill-treatment, taking into account the vulnerability of the victim, may vary.<sup>6</sup>

17. The International Committee of the Red Cross (ICRC), considered an authoritative interpreter of the Geneva Conventions and uses and customs of war as well as on prison conditions for all categories of persons deprived of freedom, adds that:

The element that distinguishes inhuman treatment from torture is the absence of the requirement that the treatment be inflicted for a specific purpose . . . In their case-law [on inhuman treatment] human rights bodies stress[] the severity of the physical or mental pain or suffering. They have found violations of the prohibition of inhuman treatment in cases of active maltreatment but also in cases of very poor conditions of detention, as well as in cases of solitary confinement. Lack of adequate food, water or medical treatment for detained persons has also been found to amount to inhuman treatment.<sup>7</sup>

18. There are two important differences between torture and CIDT. One is that torture requires specific intent to cause pain and suffering, while CIDT can be inflicted intentionally or by deliberate indifference. The other difference is one of degree of the pain and suffering; torture is a more severe form of CIDT that is inflicted with specific intent. CIDT certainly requires a certain intensity of pain and suffering, but of a lesser severity than torture. The threshold of severity that transforms CIDT into torture is not well defined because it depends on both objective and subjective circumstances; the same treatment can be CIDT when inflicted on a sane and healthy adult, and torture when the victim is infirm, under age or for other reasons more vulnerable to pain and suffering.

19. In relation to the specific intent required for torture, it must be noted that it should

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<sup>6</sup>OHCHR, UNVFVT, *Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies*, available at:

[http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation\\_torture\\_2011\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf)

<sup>7</sup> ICRC, *Customary IHL Rules*, available at [https://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter32\\_rule90#Fn\\_95\\_26](https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule90#Fn_95_26)

not be confused with the purpose for which the treatment is applied. It is the deliberate and knowing intention to inflict pain and suffering that characterizes torture, regardless of whether the purpose is to coerce a confession or statement against interest, to punish the victim, to terrorize friends, relatives or acquaintances, or for any other purpose, including lofty ones such as preventing other harms.

20. There is no requirement in international law that either CIDT or torture must have lasting, diagnosable effects in order to be so classified, just like there is no need for permanent scars to decide that deliberate electrocution constitutes physical torture. Subjective considerations may be important to determine whether a certain episode constitutes CIDT or torture; but the objective test of both is the infliction of pain and suffering regardless of the ultimate way in which the victim experiences it.

21. It is very well established that CIDT and torture can result from subjecting persons to certain conditions of detention. In addition to the severity requirement, CIDT can originate in policy decisions that, for example, result in overcrowding, unsanitary conditions, insufficiency of food or medical care, etc. Certain conditions of detention can be categorized as torture if they are intentionally imposed and reach a higher degree of severity; examples are sleep deprivation, denial of medical services, and excessive use of force as a disciplinary measure to keep order in the facility. Even if standards in treaties are general, they are not necessarily vague in a manner that would preclude a court from determining that pain and suffering (depending on its intensity and on its intentional character) constitutes: a) treatment incidental to a regularly imposed penalty, in which case it is neither CIDT nor torture; b) CIDT; or c) torture.

22. In addition to the clear language of CAT, international standards of a non-binding

nature come to the aid of the decision-maker, in particular the UN Standard Minimum Rules for the Treatment of Prisoners (SMR).<sup>8</sup> The SMR is a document drafted in the 1950s by the then Crime Prevention Branch of the United Nations, today called UN Organization on Drugs and Crime (UNODC), an independent organization of the UN “family” based in Vienna, Austria, in which all member States of the UN are represented. The SMR has long been considered an authoritative guide to the interpretation of customary and treaty standards that prohibit mistreatment of persons deprived of freedom, either as a result of a criminal investigation, or imposition of a sentence, or for any other reason.

23. The SMR in its present language contains only passing references to solitary confinement, mandating that persons to be put in solitary confinement must be first subjected to medical examination (understood to include a psychiatric/psychological determination of good mental health).<sup>9</sup> SMR also states that “[t]he medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.”<sup>10</sup>

24. It must be noted that the international community, under the auspices of UNODC, is in the process of a substantial review of the SMRs with the assistance of criminological and correctional experts from around the world and participation of many States and civil society organizations. This expert expects the revised SMRs to include more explicit rules dealing with solitary confinement, specifically regulating its duration and including a ban on its use for certain categories of prisoners.

25. A separate instrument of international law, elaborated by well-known experts in

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<sup>8</sup> United Nations Standard Minimum Rules for Treatment of Prisoners, E.S.C. Res. 663 C (XXIV), P 19, U.N. Doc. E/3048 (Jul. 31, 1957) (amended May 13, 1977). (Hereinafter “SMR”)

<sup>9</sup> SMR, Article 32(1) “Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.”

<sup>10</sup> *Ibid.*, Article 32(3)

the early years of the millennium, does refer explicitly to solitary confinement: the Istanbul Statement on the Use and Effects of Solitary Confinement.<sup>11</sup> Like the SMRs, the Istanbul Statement has, in only a few years, attained the status of authoritative guidance to policy-makers, prison authorities and adjudicators. In particular, it constitutes the generally recognized normative instrument to establish what are legitimate and illegitimate uses of isolation and segregation of persons under any form of detention, and on the procedures and limits that are required to keep solitary confinement within legality and legitimacy. The Istanbul Statement ends with these words: “As 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.” Istanbul Statement at 7. In addition, Principle 7 of the UN Basic Principles for the Treatment of Prisoners states that “[e]fforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.”<sup>12</sup>

26. International adjudicatory bodies have ruled on solitary confinement in specific cases as well as in thematic and country-specific reports, and their judgments help determine the limits of legitimate uses of isolation.<sup>13</sup> In my capacity as UN Special Rapporteur on Torture, I issued an October 2011 thematic report to the General Assembly, attached hereto as Exhibit A.

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<sup>11</sup> Istanbul Statement on the Use and Effects of Solitary Confinement, Adopted on 9 December 2009 at the International Psychological Trauma Symposium, Istanbul (hereinafter “Istanbul Statement”) available at: [http://solitaryconfinement.org/uploads/Istanbul\\_expert\\_statement\\_on\\_sc.pdf](http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf).

<sup>12</sup> UN Basic Principles for the Treatment of Prisoners, para 7, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx>

<sup>13</sup> See, e.g. IACHR, Rapporteurship on the Rights of Persons Deprived of Liberty, *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II (Dec. 30, 2013); *Velázquez-Rodríguez v. Honduras*, Inter-American Court of Human Rights, Series C, No. 4, para. 156 (1988) (finding that “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.”); *Gómez de Voituret v. Uruguay* and *Espinoza de Polay v. Peru*, Human Rights Committee (HRC); European Committee for the Prevention of Torture, Second General Report (*ibid.*, § 1346); Inter-American Court of Human Rights, *Castillo Petruzzi and Others case*.

Almost simultaneously, the Committee for the Prevention of Torture of the Council of Europe (CPT) also called to the attention of that body its concerns as to the expanded use of solitary confinement in many of its 48 member States.<sup>14</sup> Like the Special Rapporteur, the CPT also called for specific regulation of solitary confinement to avoid its use in manners that breach the prohibition on torture or CIDT.

27. The Inter-American Commission on Human Rights of the Organization of American States (IACHR) is a treaty body of the American Convention of Human Rights and a “principal organ” established by the Charter of the OAS (a regional organization of which the US is a member). It is considered a highly authoritative organ of interpretation of both treaty and customary norms in our hemisphere and it has had occasion to deal with prison conditions often since its creation in 1959. In a document called “Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas,” approved by the Commission during its 131<sup>st</sup> regular period of sessions, the IACHR states:

Solitary confinement shall only be permitted as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution’s internal security, and to protect fundamental rights, such as the right to life and integrity of persons deprived of liberty or the personnel.

In all cases, the disposition of solitary confinement shall be authorized by the competent authority and shall be subject to judicial control, since its prolonged, inappropriate or unnecessary use would amount to acts of torture, or cruel, inhuman, or degrading treatment or punishment.<sup>15</sup>

28. As is well known, solitary confinement in the United States has also been the

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<sup>14</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *21<sup>st</sup> General Report of the CPT* (Nov. 10, 2011), CPT/Inf (2011) 28, available at: <http://www.cpt.coe.int/en/annual/rep-21.pdf>.

<sup>15</sup> OEA/Ser.L/V/II.121, Doc. 38, Mar. 13 2008. I cited this report also in my brief *amicus curiae* (“*parecer*”) to the Supreme Court of Brazil in a constitutional challenge to prison regulations that allow for solitary confinement, see [http://antitorture.org/wp-content/uploads/2013/07/Parecer-J-Mendez\\_ENG-1.pdf](http://antitorture.org/wp-content/uploads/2013/07/Parecer-J-Mendez_ENG-1.pdf). That decision is pending.

subject of concern for legislators, prison administrators, courts and civil society, a concern that is clearly on the increase. Some States have closed down facilities designed to isolate inmates, while other States have prohibited solitary confinement of persons with mental disabilities, of children and of young inmates under 21 and replaced it with a more moderate form of segregation. In many States there are ongoing judicial challenges to the indefinite or prolonged imposition of solitary confinement.

29. State practice signals the emergence of a customary international law norm if it gathers momentum in the direction of reform and if such reform is instituted because of a sense of legal obligation (*opinio juris*). It is difficult to say whether such a process is under way with respect to solitary confinement in general, mostly because there is a dire lack of information or statistics on the use of solitary confinement around the world. However, there is at the present time clear and ample state practice to restrict its use, on the one hand by prohibiting it for some categories of inmates, and on the other hand to limit its duration even for those inmates for whom some isolation is legitimate and warranted.

30. In that sense, it is safe to say that *indefinite* solitary confinement and *prolonged* solitary confinement are prohibited by customary international law standards binding on all States.<sup>16</sup> Authoritative pronouncements by international and regional bodies also consistently indicate that prolonged or indefinite isolation are strictly prohibited because they breach the international legal prohibition against torture and/or CIDT.<sup>17</sup> Even regimes of “relative isolation”

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<sup>16</sup> Solitary confinement is *indefinite* when no fixed term is imposed on its use or when it can be extended for many consecutive periods; it is *prolonged* when it exceeds a number of days. In my Report to the UN General Assembly I mentioned 15 days as the maximum term for which unmitigated, absolute isolation can be imposed, based on medical and psychiatric literature. For regimes of solitary confinement with some mitigation, the maximum term could be longer, but certainly counted in days, not weeks, months or years.

<sup>17</sup> See, e.g. *Maritza Urrutia v. Guatemala*, Judgment of November 27, 2003, Inter-Am. Ct. H.R., (Ser. C) No. 103 (2003) (restating the finding of the Inter-American Court of Human Rights that “prolonged

(i.e. with the use of mitigating factors), have been unambiguously declared to be improper when imposed indefinitely.<sup>18</sup>

31. Also prohibited is the application of solitary confinement without due process of law guarantees, or on the basis of “status” or other considerations not related to specific behavior by the inmate. The non-binding instruments, the judicial decisions and the pronouncements of authoritative treaty bodies that I have cited above, represent a clear trend towards the need to regulate solitary confinement, to restrict its uses, to surround it by due process guarantees and, principally, to prohibit its use for indefinite or prolonged durations.

32. The precedents referred to above point to a consensus that solitary confinement must never cross the threshold of the prohibition of CIDT or of torture, and that -- for that purpose -- it must be subject to the following conditions:

- For definitional purposes, solitary confinement is any condition of detention in which an inmate is deprived of any meaningful social contact for 22 to 24 hours each day;<sup>19</sup> regardless of other conditions such as availability of radio, television, reading or writing material;
- It should never be imposed, for any duration, on children, pregnant women, or persons with a psycho-social disability;
- It should not be imposed as a means or modality of execution of a sentence, as in that case it would constitute cruel, inhuman or degrading (or unusual) punishment;
- It may legitimately be used as a disciplinary sanction for the more serious

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isolation and deprivation of communication are in themselves cruel and inhuman treatment”); *Bamaca Velazquez v. Guatemala* (November 25, 2000), IAmCtHR, (finding that “the prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being”); Human Rights Committee, *General Comment 20* (noting that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by Article 7 of the ICCPR)

<sup>18</sup> See *Babar Ahmad and others v. UK* (April 10, 2012), European Court of Human Rights (stating that while the Court has never specified a period of time beyond which solitary confinement will attain the minimum level of severity required by Article 3 (prohibition against torture and ill-treatment), “solitary confinement, even in cases entailing relative isolation, cannot be imposed indefinitely on a prisoner”).

<sup>19</sup> Istanbul Statement, p. 1.

breaches of prison discipline, and then for a definite term and after a hearing with meaningful opportunity to challenge the decision;

- It may not be imposed on the basis of an administrative determination of status of the inmate as dangerous in the absence of specific behavior by the inmate that breaches prison regulations;

- It must be subject to controls, especially of a medical nature, that are frequent, impartial, independent and professional enough to prevent serious mental or physical pain and suffering;

- It must never be imposed for an indefinite or indeterminate period;

- It must never be imposed for prolonged periods.

- Whether applied lawfully or in violation of the above rules, it should be subject to meaningful and effective judicial review.

33. Although the determination of a period beyond which solitary confinement becomes prolonged is subject to debate, it is clear that it should be counted in days or weeks, not in months or years. This expert has proposed a maximum of 15 days, not immediately renewed, at least for those regimes of solitary confinement that consist of complete 24-hour isolation without access to any amenities such as radio, television or reading or writing materials. The medical literature suggests that maximum term because the human mind starts working differently after 15 days of total isolation, and in many cases the damage can be irreversible.<sup>20</sup> It follows that for a regimen of isolation surrounded by some mitigation -- as applied to members of the plaintiff class in the Security Housing Unit of the Pelican Bay prison, i.e., 90 minutes of exercise outside the cell, access to radio, television and reading and writing materials -- the maximum term could be 30 days or a slightly longer period that must not exceed an established number of days and should not be renewed without a break in between terms. Mitigating factors

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<sup>20</sup> I refer the Court to the medical literature cited in my 2011 thematic report to the UN General Assembly, attached to this testimony and to the similar literature cited in the Istanbul Statement. *See also Ilascu and others v. Moldova and Russia*, Application No. 48787/99, European Court of Human Rights (2004), para. 432 (stating that “complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reasons.”).



may temporarily limit or delay the damage to brain function involved in complete isolation, but they do not eliminate the pain and suffering that isolation causes on the inmate.

34. As stated earlier, solitary confinement can legitimately be used to prevent harm to the security of the institution, to its staff or to other inmates. It may also be used to protect inmates who would be at risk of predators if left in the general population. It is also a legitimate sanction for a well-established and proven breach of prison discipline. In all of these cases, it should be for a previously established short term and applied with due process of law requirements.<sup>21</sup>

35. Under international law it is impermissible to impose it as a prolonged measure or indefinitely, or on the basis of a “status” assigned to an inmate that does not depend on an objectively determined illegal behavior on his part.

36. The UN Human Rights Committee (HRC) has moreover made it clear that the constitutionality of a sentence or measure in a domestic jurisdiction is not sufficient to secure its compliance with the international law. Accordingly, in cases where CIDT contrary to article 7 of the ICCPR has been committed, the “permissibility of a sentence under domestic law cannot be invoked” to justify the prohibited treatment, and the State in question is obliged to abide by the relevant international legal standards.<sup>22</sup>

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<sup>21</sup> In the *Case of Montero-Aranguren et al (Detention Center of Catia) v. Venezuela* Judgment of July 5, 2006 (Preliminary Objection, Merits, Reparations and Costs), the Court deemed that “solitary confinement cells must be used as disciplinary measures or for the protection of persons only during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality. Such places must fulfill the minimum standards for proper accommodation, sufficient space and adequate ventilation, and they can only be used if a physician certifies that that the prisoner is fit to sustain it.” Paras 93, 94.

<sup>22</sup> See *George Osbourne v. Jamaica*, Communication No. 759/1997, U.N. Doc. CCPR/C/68/D/759/1997 (2000) (finding the imposition of corporal punishment, which was constitutional under domestic law, contrary to ICCPR article 7).

## V. CONDITIONS IN THE PELICAN BAY SHU

### A. Solitary Confinement:

37. For purposes of this report, I use the term “solitary confinement” to describe certain conditions of incarceration of members of the plaintiff class, regardless of whether the State of California officially uses that terminology. As stated above, solitary confinement is the detention regimen by which an inmate spends from 22 to 24 hours each day alone in a cell, with the effect of depriving him or her of meaningful social contact. For these purposes, the term applies regardless of whether the regimen is imposed as a disciplinary sanction, as a manner of execution of a penalty of imprisonment, as a specific restriction in the course of investigation of crime or during preventive detention, or as a matter of administrative discretion in management of a prison facility.

38. In the case of Pelican Bay, solitary confinement in the SHU is a discretionary measure based on the status administratively assigned to an inmate who is serving a prison term. When I visited I was told that almost 1,200 inmates were living in the SHU.

39. At Pelican Bay, inmates at the SHU spend 22 and a half hours of each day alone in a cell without windows.<sup>23</sup> A few inmates are sometimes allowed to live in the cell with another inmate, if, for example, necessary to assist one of them in writing or other chores because of some disability. The cells measure approximately 80 square feet, and they include a bed, a toilet and a sink. They have no windows and one side of them is open to the corridor, but there are no cells facing each other. In consequence, some conversations are possible with adjoining cells -- as long as voices are not raised too high, as shouting is not permitted -- but

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<sup>23</sup> The descriptions that follow are based on my own visual impressions, the material I have read and the interviews with inmates. See also Amnesty International report at: <http://www.amnestyusa.org/sites/default/files/edgeofendurancecaliforniareport.pdf>. Defendants have also admitted this fact in their Answer to this Complaint.

without visual contact. SHU inmates are allowed reading and writing materials, radio and TV (at their cost) which they can watch or listen to at any hour of the day or night. The 90 minutes of daily exercise take place in a space adjoining each section to which each inmate is taken by himself. The SHU exercise yard consists of four cement walls, that are 20 feet high, with half of the roof open to the sky through a wire mesh.

40. The daily isolation that results from these conditions is exacerbated by the geographic remoteness of Pelican Bay; although family visits are authorized on a weekly basis, many inmates receive only a few visits each year, if at all. Family visits (as well as visits with lawyers) are held in booths that separate the inmate from the visitor with a Plexiglas window, and conversations are held by a telephone attached to the wall. Visits and conversations with family (but not with lawyers) are openly monitored by the authorities.

41. Some cells in the SHU are equipped with a transparent Plexiglas mesh that covers the whole open side of the cell. Prison authorities report that these so-called "Lexan cells" are required by occupational safety and health regulations, to protect prison staff against attempts of some inmates to throw feces or urine at them. The inmates report that such cells are deprived of adequate air flows since there are no windows, so that cell temperature becomes too warm to bear. They also report that the authorities place inmates in them without regard to their behavior and for no explained reason. Authorities confirmed to me that they use them because they need the space. Since the condition of extreme isolation for 22.5 hours each day is already extremely harsh, those who are placed in Lexan cells for indefinite periods suffer an added cruelty to their harsh prison sentences that has no valid justification in terms of prison management and thus also breaches international obligations.

42. The transportation of the inmate to and from visits is marked by a process of strip

searches, body cavity searches, chaining, handcuffing and escort by guards that inmates find humiliating. Despite the existence and easy availability of X-rays and metal detectors, inmates are forced to strip of all their clothes and to be visually examined by guards on all parts of their bodies, including anatomical orifices; and to do so repeatedly, even if at all times they have been in the company of guards who monitor their every movement. These strip searches and body cavity searches are disproportionate and unnecessary to any reasonable security concern and they have the effect -- if not the purpose -- of humiliating the inmates. International precedents have ascertained that the very definition of “degrading” treatment or punishment in Art. 16 of the Convention Against Torture, is that action that humiliates the person subjected to it.<sup>24</sup> For that reason, strip searches, body cavity searches, shackling, chaining and handcuffing as applied in Pelican Bay to SHU inmates during transfers within the facility violate U.S. obligations under that treaty.

**B. Duration:**

43. Gang-validated prisoners are placed in the SHU for an indeterminate period. Under the old system in place at the facility, inmates were reviewed for release from the SHU every six years. Under the new system as I understand it, one must still wait for years before receiving a review that allows release from the SHU. These periods of time do not meet the requirements of adequate periodic review under international law. Moreover, the authorities do not seem to consider the possibility of limiting the repetition of terms of solitary confinement. As a result, all the inmates I interviewed appeared to be subject to both prolonged and indefinitely-imposed periods of solitary confinement:

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<sup>24</sup> *Van der Ven v. Netherlands*, European Court of Human Rights (2003) (finding that the practice of weekly invasive strip-searches for three and a half years, where the applicant was already subjected to a great number of surveillance measures and in the absence of convincing security needs, diminished the applicant’s human dignity and amounted to inhuman or degrading treatment).

- Todd Ashker has spent the last 25 years at the Pelican Bay SHU, plus an earlier time at the SHU in Folsom.
- Luis Esquivel has been at the SHU since February 2000, i.e., 15 years, plus ten months earlier in Lancaster SHU.
- George Franco has been in the Pelican Bay SHU for the last 23 years, plus an earlier period at the Corcoran SHU.
- Fernando Bermudez was sent to the SHU at Folsom in 1982 and has been in isolation ever since, i.e., 33 years.
- Ronnie Yandell has been at the Pelican Bay SHU for the last eleven years.
- Ruben Williams has spent the last 33 years in solitary confinement, first at Folsom, then at Pelican Bay.
- Apolonio Hernandez has been at the SHU for 18 years, always at Pelican Bay.
- Randall Ellis has been in isolation since 1984, at San Quintin, Folsom, Corcoran and Pelican Bay; first arrested when he was 16, he has spent all but the first eighteen months of his imprisonment in solitary confinement.
- Cornelio Montes has been isolated for 21 years at Calipatria, Corcoran and, since 1995, at Pelican Bay.
- Antonio Guillen has been at the Pelican Bay SHU for 12 years, and had previously been isolated in Tahapachi for two years.
- James Williamson was transferred to Pelican Bay in November of 1990 and has been there ever since: 24 years.

44. As set forth above, I have visited numerous prisons in many nations around the world. Many of these nations utilize some forms of solitary confinement. What I observed at Pelican Bay is exceptional in terms of the extraordinary length of time that these inmates have spent in solitary confinement.

45. Moreover, Pelican Bay is also exceptional in having substantial numbers of prisoners held in solitary confinement for over a decade because of their status as an active gang member or affiliate without having committed either a violent crime or having had a very violent history. I know of no other country that keeps substantial numbers of prisoners in decades-long

solitary confinement simply because of membership in or affiliation with groups such as gangs.

46. In addition to the extraordinary length of these SHU terms, it must be noted that, either by regulation or *de facto*, no one serving a life sentence is considered for parole while being housed in the SHU. At least some of those interviewed, and perhaps many among the plaintiff class, have been eligible for parole for many years (one since 1999) after having served the requisite portion of their sentences. For them, the arbitrariness of their placement at the SHU denies them a right to be considered for early release, even though their behavior in custody does not merit such denial.

47. As a result of litigation and of the various hunger strikes, some changes are under way. The Department of Corrections has instituted a Step Down Program that establishes rules and procedures to allow inmates to leave the SHU and be returned to the general population. Presumably, the reviews of status will now be governed by more specific, objective standards, and there may be more frequent reviews. The long chronological terms between steps, i.e., between administrative decisions to ease the conditions of isolation, seem unaffected by these changes for now. The standards and burden of evidence also do not seem to be very different. At any rate, because the Step Down Program is at very early stages of implementation, it is difficult to determine whether it will make a meaningful difference.

48. Judicial precedents by international courts establish a direct relationship between the legality of a regimen of isolation and its duration. The Human Rights Committee has found that total isolation, even for a period of several days, without the possibility of recreation, violates Article 7 (prohibition of torture and ill-treatment) of the ICCPR.<sup>25</sup> It has also found violations of Article 10 of the ICCPR (failing to respect the inherent dignity of the human person) in cases where applicants were placed in solitary confinement for periods of five to six

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<sup>25</sup> *Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994).

years.<sup>26</sup>

49. The Committee against Torture has in its concluding observations consistently expressed concern about the use of prolonged solitary confinement without a time limit,<sup>27</sup> urging States to limit its use as a “measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review.”<sup>28</sup>

50. The European Court of Human Rights has found that a stringent regime of solitary confinement of approximately three years constitutes inhumane and degrading treatment and exceeds that treatment inherently unavoidable in detention.<sup>29</sup> The Court has expressly stated that “even for difficult and dangerous prisoners, periods of solitary confinement should be as short as possible,” even when prisoners are subjected to “relative social isolation,” rather than “sensory or total social isolation,” and found a violation of Article 3 (prohibition of torture and

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<sup>26</sup> See, e.g. *Xavier Evans v. Trinidad and Tobago* (March 21, 2003); *Charles Gurmurkh Sobhrak v Nepal* (July 27, 2010); *Kennedy v. Trinidad and Tobago*, Communication No. 845, U.N. Doc. CCPR/C/67/D/845/1999 (31 December 1999); see also

*Yong Joo-Kang*, 878/1999, 78<sup>th</sup> Session, July 15, 2003 (Finding a violation of Article 10, paragraph 1 of the ICCPR protecting the inherent dignity of the prisoner, and of paragraph 3, which requires the essential aim of detention to be reformation and social rehabilitation, in a case where the applicant was held in solitary confinement for 13 years on the ground of his presumed political opinion. Detention in solitary confinement for a period of 13 years “is a measure of such gravity, and of such fundamental impact on the individual in question, that it requires the most serious and detailed justification.”).

<sup>27</sup> Japan, Concluding Observations (2013) (expressing concern about “extensively prolonged [solitary confinement] without a time limit”). See also Japan, Concluding Observations (2007) (expressing concern about the isolation of detainees for over 10 years).

<sup>28</sup> Denmark, Concluding Observations (2007).

<sup>29</sup> *Iorgov v. Bulgaria*, (Application no. 40653/98) (March 11, 2004) (involving a situation where the applicant was held in solitary confinement for approximately three years in a small cell, was allowed one hour out-of-cell time in an open yard with other inmates, spent almost 23 hours per day alone in his cell., and could receive one or two half-hour visits per month. The Court considered that “the stringent custodial regime to which the applicant was subjected and the material conditions in which he was detained must have caused him suffering exceeding the unavoidable level inherent in detention.”). See also *Polay Campos v. Peru*, 577/1994 (November 5, 1997) (finding that relative isolation for 23 hours a day in a small cell with only 10 minutes of sunlight per day constitutes treatment in violation of Article 7 of the ICCPR (prohibition of torture and ill-treatment)).

ill-treatment) in solitary confinement regimes lasting less than three years.<sup>30</sup> The European Committee for the Prevention of Torture has stated that even when prisoners are held in conditions akin to solitary confinement for “disciplinary purposes, or as a result of their “dangerousness” or their “troublesomeness,” solitary confinement should be as short as possible.<sup>31</sup>

51. Similarly, the Inter-American Court on Human Rights has held that “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.”<sup>32</sup> The Court held in one case that the petitioner was subjected to CIDT after she was held in isolation for one year,<sup>33</sup> and exceptionally called for provisional measures in a case where the victim was “subjected to isolation and deprived of sunlight, which facts in themselves constitute cruel and inhuman forms of treatment, for a period of four years.”<sup>34</sup>

52. When the International Criminal Tribunal for Rwanda was presented with the question whether the Accused could be transferred to Rwanda under Rule 11bis of its Statute, both the Trial Chamber and the Appeals Chamber denied the transfers.<sup>35</sup> These decisions were

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<sup>30</sup> See, e.g., *Mathew v. The Netherlands* (Sept. 29, 2005) (finding that the applicant was subjected to inhuman treatment by virtue of his detention “in a situation amounting to solitary confinement,” which included confinement to his cell for 23 hours a day).

<sup>31</sup> European Committee for the Prevention of Torture, Second General Report.

<sup>32</sup> *Velázquez-Rodríguez v. Honduras*, Inter-American Court of Human Rights, Judgment of 29 July 1988, Series C, No. 4, para. 156, 187 (1988). The Court found that such treatment violated Art. 5 of the American Convention on Human Rights.

<sup>33</sup> *Maria Teresa De La Cruz Flores v. Peru.*, IAmCtHR, Judgment of 18 November 2004, Series C, No. 115 (2004). Under this regime, the applicant could only exercise for half an hour a day, could receive family visits once every three months, had very limited access to reading materials and could only write to her family for thirty minutes once a month. .

<sup>34</sup> IAmCtHR, Provisional Measures, *Loayza Tamayo v. Peru*, Resolutions of July 2 and September 13, 1996. In the latter, the full Court ordered Peru immediately to modify the conditions of Ms. Loayza’s detention, in particular with regard to solitary confinement.

<sup>35</sup> ICTR, *The Prosecutor v. Ildéphonse Hategekimana*, Case No. ICTR-00-55B-R11bis; ICTR, *The*



based on the likelihood that the accused could be subjected to life imprisonment in isolation without adequate safeguards, thus violating their right not to be subjected to torture or cruel, inhuman or degrading treatment. In order to determine what are the necessary safeguards against such treatment, both chambers refer to decisions by the European Court of Human Rights;<sup>36</sup> by the Inter-American Court of Human Rights,<sup>37</sup> as well as concluding observations by the Human Rights Committee<sup>38</sup> and the UN Committee Against Torture.<sup>39</sup> In this vein, both the Trial Chamber and the Appeals Chamber considered that solitary confinement had to be understood as an exceptional measure, and, when applied, due regard had to be taken to the requisites of necessity and proportionality, and to restricting its application in time.<sup>40</sup> Moreover, in *Hategekimana* the Appeals Chamber affirmed that Rwanda's Abolition of the Death Penalty Law permitting solitary confinement in isolation for twenty years without any of the above mentioned safeguards could amount to a violation of the Accused's right not to be subjected to cruel, inhuman or degrading treatment.<sup>41</sup>

### **C. Rationale and Process for SHU Placement**

53. My conversations with the inmates I visited, and my understanding of the

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*Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis; ICTR, *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis; ICTR, *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-01-67-RI Ibis

<sup>36</sup> *Ramirez Sanchez v. France*, Judgment, European Court of Human Rights, Grand Chamber, App. No. 59450/00, 4 July 2006, paras 120-150.

<sup>37</sup> Inter-American Court of Human Rights: *Case of Castillo Petruzzi et al. v. Peru*, Judgment (Merits, Reparations and Costs), 30 May 1999, Series C, No. 52, paras. 194-199; *Case of Miguel Castro-Castro Prison v. Peru*, Judgment, 25 November 2006, Series C, No. 160, para. 315; *Case of García Asto and Ramirez Rojas*, Judgment, November 25 2005, Series C, No. 137, para. 221; *Case of Raxacó Reyes*, Judgment, 15 September 2005, Series C, No. 133, para. 95; *Case of Fermín Ramírez*, Judgment of 20 June 2005, Series C, No. 126, para. 118.

<sup>38</sup> Concluding Observations of the Human Rights Committee: Denmark, 31 October 2000, UN Doc. CCPR/CO/70/DNK

<sup>39</sup> UN Committee against Torture (CAT), Conclusions and Recommendations of the Committee against Torture: Japan, 3 August 2007, UN Doc. CAT/C/JPN/CO/1, para. 18.

<sup>40</sup> ICTR, *Kanyarukiga*, Appeals Chamber, cit. par. 15 (30 October 2008); *Hategekimana*, Trial Chamber, cit., par. 25 (4 December 2008); *Munyakazi*, Trial Chamber, cit., par 30 (28 May 2008).

<sup>41</sup> ICTR, *Hategekimana*, Appeals Chamber, cit., par. 33, 38 (4 December 2008).

documents I reviewed, suggest that the procedures that prisoners were afforded when they were placed and retained at the Pelican Bay SHU do not meet international standards. Problems with the procedures include: a) the infrequency of the reviews; b) the reliance on confidential informant evidence that renders the inmate helpless to rebut or challenge the assertions made; and c) reliance on books, artwork or other similar material to send to and retain someone in solitary.

54. In addition, it seemed clear to me from my interviews with the inmates that the harsh conditions at the Pelican Bay SHU are intentionally used as a form of coercion to elicit cooperation from the inmates. To the extent that such conditions involve mental pain and suffering of a certain gravity, it is coercion that meets the definition of purposes that are impermissible under Article 1 of the Convention Against Torture.

**D. Insufficient Mitigation of Conditions**

55. In international law, prolonged or indefinite isolation is prohibited, although what duration of a solitary confinement is prolonged may depend on various factors. For example, more than 15 days of extreme isolation (i.e., 24 hours a day without social contact, without reading or writing materials and without radio or television) constitutes prolonged solitary confinement in contravention of the prohibition of cruel, inhuman or degrading treatment. Inmates in Pelican Bay SHU do have access to reading and writing materials, to radio and television (at their expense) and to 90 minutes a day outside their cells, albeit also alone. Their cells have no windows to afford any natural light, and therefore the inmates do not have visual access to the outside world or to the sky. They have no access to calls to or from family except in emergencies, and then always on a monitored basis and for only a few minutes each time. Inmates at the SHU lack access to other forms of mitigation of the harshness of their conditions, such as programmed activities, educational opportunities, work therapy or other forms of

rehabilitation and reform. Since the purpose of incarceration, according to the Standard Minimum Rules for the Treatment of Prisoners, is to contribute to the rehabilitation and eventual social reintegration of the convicted person, the regimen that applies in Pelican Bay SHU violates principles accepted by all civilized nations in that the harshness of isolation is not sufficiently mitigated by factors that could alleviate the intense mental pain and suffering that the system inflicts on the inmates.

56. That pain and suffering is inflicted in all inmates subjected to solitary confinement is beyond dispute today.<sup>42</sup> As the experts meeting in Istanbul in 2007 stated:

It has been convincingly documented on numerous occasions that solitary confinement may cause serious psychological and sometimes physiological ill effects. Research suggests that between one third and as many as 90 per cent of prisoners experience adverse symptoms in solitary confinement. A long list of symptoms ranging from insomnia and confusion to hallucinations and psychosis has been documented. Negative health effects can occur after only a few days in solitary confinement and the health risks rise with each additional day spent in such conditions. Individuals may react to solitary confinement differently. Still, a significant number of individuals will experience serious health problems regardless of the specific conditions, regardless of time and place, and regardless of pre-existing personal factors. The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and well being.<sup>43</sup>

57. At one time or another, all the inmates that I interviewed have suffered from these symptoms and many if not all probably experience them on a chronic basis. It must be noted that, for purposes of the definitions of torture and CIDT in international law, pain and suffering does not depend on the short- or long-term effects on particular individuals. On the other hand, it stands to reason that the longer the period of isolation the higher the probability of serious effects, both short- and long-term. Those effects determine the gravity of the practice for

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<sup>42</sup> Peter Scharff Smith, *Solitary Confinement: An Introduction to the Istanbul Statement on the Use and Effect of Solitary Confinement*, *Torture*, Vol. 18, No. 1, pp. 56 et seq.; See also, Sharon Shalev, *A Sourcebook on Solitary Confinement*, London: LSE, 2008.

<sup>43</sup> Istanbul Statement, *cit.*

purposes of distinguishing between CIDT and torture, but not whether their absolute prohibition has been breached. The absence of a clinical diagnosis of mental illness does not negate the objective reality that pain and suffering actually takes place. One inmate put it to me thus: “We may have found some ways to cope, but that does not mean that we don’t suffer.”

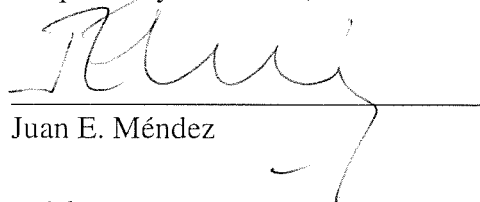
## VI. CONCLUSIONS

58. In view of the facts as I understand them, and of the international law norms explained above, it is my considered view that the conditions of confinement at the SHU of Pelican Bay prison amount to torture or cruel, inhuman or degrading treatment or punishment according to customary international law rules codified in the Convention Against Torture.

59. Because of their duration, purpose and imposition without sufficient due process or right to a remedy, and the insufficiency of mitigating amenities, these conditions of isolation are contrary to the practices of civilized nations. In particular, very few other nations use solitary confinement of this indefinite or prolonged duration, and those that do have been condemned by international organs of human rights protection. No other country uses prolonged or indefinite solitary confinement as a prison administration measure without regard to the behavior of the inmate or without a meaningful opportunity to challenge it.

60. These conditions constitute violation of solemn obligations that the United States of America has acquired in signing and ratifying the Convention Against Torture and the International Covenant on Civil and Political Rights, as well as a matter of *jus cogens* and binding international custom. These are obligations that domestic courts are responsible for upholding and enforcing.

Respectfully submitted,

  
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Juan E. Méndez

Date: March 6, 2015

# **Exhibit A**



# General Assembly

Distr.: General  
5 August 2011

Original: English

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## Sixty-sixth session

Item 69 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Torture and other cruel, inhuman or degrading treatment or punishment**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the interim report prepared by the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, in accordance with General Assembly resolution 65/205.

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\* A/66/150.

## **Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment**

### *Summary*

In the present report, submitted pursuant to General Assembly resolution 65/205, the Special Rapporteur addresses issues of special concern and recent developments in the context of his mandate.

The Special Rapporteur draws the attention of the General Assembly to his assessment that solitary confinement is practised in a majority of States. He finds that where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, it can amount to cruel, inhuman or degrading treatment or punishment and even torture. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged.

The report highlights a number of general principles to help to guide States to re-evaluate and minimize its use and, in certain cases, abolish the practice of solitary confinement. The practice should be used only in very exceptional circumstances, as a last resort, for as short a time as possible. He further emphasizes the need for minimum procedural safeguards, internal and external, to ensure that all persons deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person.

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## **I. Introduction**

1. The present report, submitted pursuant to paragraph 39 of General Assembly resolution 65/205, is the thirteenth submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It is the first report submitted by the present mandate holder.
2. The Special Rapporteur wishes to draw attention to his report to the Human Rights Council (A/HRC/16/52), in which he outlined his vision, working methods and priorities for his tenure as Special Rapporteur.

## **II. Activities related to the mandate**

3. Below is a summary of the activities carried out by the Special Rapporteur pursuant to the mandate since the submission of his report to the Human Rights Council (A/HRC/16/52 and Add.1-6).

### **Communications concerning human rights violations**

4. During the period from 1 December 2010 to 1 July 2011, he sent 20 letters of allegations of torture to 18 Governments, and 95 urgent appeals on behalf of persons who might be at risk of torture or other forms of ill-treatment to 48 Governments. In the same period 82 responses were received.

### **Country visits**

5. With respect to fact-finding missions, an anticipated country visit to Kyrgyzstan for May 2011 was postponed, at the request of the Government, owing to ongoing political developments. By letter dated 28 July 2011, the Government of the Kyrgyz Republic proposed a country visit for the second half of August 2011. The Special Rapporteur welcomes this invitation; however, because of the short notice, he is discussing potential dates with the Government at the time of submitting the present report. He has accepted an invitation from the Government of Iraq to visit the country in October 2011. He has also been invited to visit Bahrain and is discussing dates with the Government. In addition to the pending country visit requests (see A/HRC/16/52, para. 6) the Special Rapporteur has requested a visit to Morocco with respect to Western Sahara.
6. The Special Rapporteur conducted a visit to Tunisia from 15 to 22 May 2011. He shared his preliminary findings with the interim Government and issued a press statement on 22 May expressing his appreciation to the Government for the full cooperation extended to him. He noted that the Government had undertaken a series of positive steps towards ensuring accountability and long-term reforms. However, he is of the view that a “wait and see attitude” in anticipation of the Constituent Assembly election may be hampering the possibility of delivering bold and aggressive steps in restoring justice for past and recent abuses. The Special Rapporteur stressed that swift, effective and independent criminal investigations against alleged perpetrators of torture and ill-treatment should be ensured and administrative programmes should be launched offering redress and reparation services to victims of past and recent violations. The report of the mission to Tunisia will be presented to the Human Rights Council at its nineteenth session in March 2012.

### Key press statements

7. The Special Rapporteur issued the following press statements (many were joint statements with other mandate holders):

- On 31 December 2010 — expressing serious concern that enforced or involuntary disappearances, arbitrary detentions, extrajudicial, summary or arbitrary executions, and acts of sexual violence may have occurred or may still be occurring in Côte d'Ivoire in relation to the presidential elections.
- On 14 January 2011 — urging the Government of Tunisia to control the use of force against peaceful demonstrations, after at least 21 deaths were officially confirmed.
- On 3 February 2011 — on public unrest in Belarus, Egypt and Tunisia and the alleged infliction of torture or cruel, inhuman or degrading treatment in connection with suppression of peaceful demonstrations.
- On 17 February — urging the transitional Government in Egypt to establish an independent inquiry to investigate human rights violations during the revolution in that country, with the powers to transmit names and evidence for prosecution to the relevant authorities.
- On 18 February — urging the Governments of Bahrain and the Libyan Arab Jamahiriya to guarantee the right to peaceful protest and immediately cease the use of excessive and lethal force.
- On 22 February — on the situation of human rights defenders expressing serious concerns about gross violations of human rights that were being committed in the Libyan Arab Jamahiriya.
- On 3 March 2011 — condemning the violent crackdown on protesters in Yemen, and urging the Government to stop the excessive use of force as a means to end ongoing protests.
- On 22 March — expressing concerns about increased incidents of serious human rights violations in the capital of Bahrain.
- On 1 April 2011 — expressing concerns about serious human rights violations in Côte d'Ivoire, including enforced disappearances, extrajudicial killings, killing and maiming of children, and sexual violence which may amount to international crimes, and expressed the full support of the Special Rapporteur and other mandate holders for Security Council resolution 1975 (2011).
- On 11 April and 12 July — expressing frustration that despite his repeated requests to visit Private First Class Bradley E. Manning, the Government of the United States of America has not granted him unmonitored access to the detainee. The question of unfettered access goes beyond this case and touches on whether the Special Rapporteur would be able to conduct private and unmonitored interviews with detainees if he were to conduct a country visit to the United States.
- On 15 April — denouncing the rising death toll and brutal crackdown on peaceful protesters, journalists and human rights defenders in the Syrian Arab Republic despite the Government's promises of reforms and consultations to end the 48-year-old emergency rule.

- On 1 July 2011 — urging the Government of the United States to stop the scheduled execution of Humberto Leal García in Texas.

### **Highlights of key presentations/consultations/training courses**

8. From 8 to 9 February 2011, the Special Rapporteur participated in a meeting sponsored by Amnesty International in London to discuss “Developing International Best Practice for Inquiries and Investigations into Torture”. He also spoke at the All Party Parliamentary Group on Extraordinary Rendition.

9. On 22 February, he delivered a statement to the American Academy of Forensic Sciences at its 63rd annual meeting on “International framework and mechanisms for documenting conditions of detention, torture and ill-treatment”.

10. On 28 February, he met with high-ranking officials from the Department of State and the Department of Defense of the United States of America in Washington, D.C., and again with the Department of Defense on 22 April to discuss issues of mutual concern.

11. From 6 to 10 March 2011, the Special Rapporteur was in Geneva for the sixteenth session of the Human Rights Council and met with the Ambassadors of Iraq, Kyrgyzstan, Mexico, Thailand and the United States. He also met with all the Human Rights Council regional groups except for the Africa Group, which unfortunately could not be scheduled.

12. On 16 and 17 March, in Washington, D.C., he participated in a meeting with the Chair of the Committee against Torture, the Vice-Chair of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights, a representative of the European Committee for the Prevention of Torture and the Special Rapporteur on Detained Persons of the African Commission on Human and Peoples’ Rights. The meeting was organized jointly by the Washington College of Law of American University and the Association for the Prevention of Torture to discuss ways to strengthen the working relations of those mechanisms.

13. From 18 to 20 March, the Special Rapporteur made two presentations to the annual General Meeting and the fiftieth anniversary commemoration of the United States Section of Amnesty International in San Francisco.

14. On 1 June 2011, he was the keynote speaker at an event in Washington, D.C., organized by several faith-based groups and entitled “Accountability Today: Preventing Torture Tomorrow”.

15. From 15 to 17 June, the Special Rapporteur chaired, with the support of the Government of the Netherlands, a regional consultation on torture for the Americas in Santiago, Chile. The regional consultation was organized in partnership with the Association for the Prevention of Torture, the Centro de Estudios Legales y Sociales, Corporación Humanas — Centro Regional de Derechos Humanos y Justicia de Género and Conectas Direitos Humanos, and was an opportunity for governments, national institutions and organizations of civil society from 12 countries to discuss follow-up to recommendations of country visits and to strengthen local and regional protection mechanisms against torture and ill-treatment.

16. On 20 June, he met with the Director General for Foreign Policy, Ministry of Foreign Affairs of Chile, in Santiago.

17. From 27 June to 1 July, the Special Rapporteur participated in the eighteenth annual meeting of Special Rapporteurs in Geneva. He also met with representatives of the Governments of Iraq, Kyrgyzstan, the Netherlands, the Russian Federation, Tunisia and the United States of America.

18. On 7 July 2011, he met in Brasilia with the Minister for Human Rights in the Government of Brazil.

### **III. Solitary confinement**

#### **A. Overview of work undertaken by the mandate**

19. In his first report as Special Rapporteur (A/HRC/16/52, para. 70), he recognized that “the question as to whether ... prolonged solitary confinement” constituted “*per se* cruel, inhuman or degrading treatment or punishment has given rise to much debate and discussion in the Human Rights Council”, and believed that “the international community as a whole would greatly benefit from a dispassionate and rational discussion of the issues”.

20. The Special Rapporteur has received complaints that solitary confinement is used in some countries in the context of administrative detention for national security or as a method to fight organized crime, as well as in immigration detention. He undertook this study because he found the practice of solitary confinement to be global in nature and subject to widespread abuse. In particular, 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.

21. The Special Rapporteur’s predecessors have noted that prolonged solitary confinement may itself amount to prohibited ill-treatment or torture (E/CN.4/1999/61, para. 394, and E/CN.4/2003/68, para. 26 (m)).

22. The Istanbul Statement on the Use and Effects of Solitary Confinement was annexed to the former Special Rapporteur’s 2008 interim report to the General Assembly (A/63/175, annex). The report concluded that “prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture. ... [T]he use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort. Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner-prison staff contact, allowing access to social activities with other prisoners, allowing more visits and providing access to mental health services” (A/63/175, paras. 77 and 83).

#### **B. History and current practice of solitary confinement**

23. The history of the use of solitary confinement on detainees has been well documented. The practice can be traced to the 1820s in the United States of

America, where it was believed that isolation of prisoners would aid in their rehabilitation. Under this model prisoners spent their entire day alone, mostly within the confines of their cells, including for work, in order to reflect on their transgressions away from negative external influences. Beginning in the 1830s, European and South American countries adopted this practice (A/63/175, para. 81). It must be recognized that 200 years ago this model was a socially and morally progressive way to deal with punishment, as it emphasized rehabilitation and attempted to substitute for the death penalty, limb amputations and other penalties then prevalent.

24. States around the world continue to use solitary confinement extensively (see A/63/175, para. 78). In some countries, the use of Super Maximum Security Prisons to impose solitary confinement as a normal, rather than an “exceptional”, practice for inmates is considered problematic. In the United States, for example, it is estimated that between 20,000 and 25,000 individuals are being held in isolation.<sup>1</sup> Another example is the extensive use of solitary confinement in relation to pretrial detention, which for many years has been an integral part of the Scandinavian prison practice.<sup>2</sup> Some form of isolation from the general prison population is used almost everywhere as punishment for breaches of prison discipline. Many States now use solitary confinement more routinely and for longer durations. For example, in Brazil, Law 10792 of 2003, amending the existing “Law of Penal Execution”, contemplates a “differentiated” disciplinary regime in an individual cell for up to 360 days, without prejudice to extensions of similar length for new offences and up to one sixth of the prison term. In 2010, the Province of Buenos Aires in Argentina instituted a Programme of Prevention of Violent Behaviour in its prisons which consists of isolation for a minimum of nine months (the initial three months in full isolation), a term that — according to prison monitors — is frequently extended.

### C. Definition

25. There is no universally agreed upon definition of solitary confinement. The Istanbul Statement on the Use and Effects of Solitary Confinement defines solitary confinement as the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day. In many jurisdictions, prisoners held in solitary confinement are allowed out of their cells for one hour of solitary exercise a day. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, generally monotonous, and often not empathetic.

26. Solitary confinement is also known as “segregation”, “isolation”,<sup>3</sup> “separation”, “cellular”,<sup>4</sup> “lockdown”, “Supermax”, “the hole” or “Secure Housing

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<sup>1</sup> Alexandra Naday, Joshua D. Freilich and Jeff Mellow, “The Elusive Data on Supermax Confinement”, *The Prison Journal*, vol. 88, issue 1, p. 69 (2008).

<sup>2</sup> Peter Scharff Smith, “The effects of solitary confinement on prison inmates: a brief history and review of the literature”, *Crime and Justice*, vol. 34 (2006), p. 441.

<sup>3</sup> Jeffrey L. Metzner, M.D., and Jamie Fellner, “Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics”, *The Journal of the American Academy of Psychiatry and the Law*, vol. 38, No. 1, pp. 104-108 (2010).

<sup>4</sup> Sharon Shalev, *A Sourcebook on Solitary Confinement* (London, Mannheim Centre for Criminology, 2008), p. 1.

Unit (SHU)”,<sup>5</sup> but all these terms can involve different factors. For the purposes of this report, the Special Rapporteur defines solitary confinement as the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day. Of particular concern to the Special Rapporteur is prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days. He is aware of the arbitrary nature of the effort to establish a moment in time which an already harmful regime becomes prolonged and therefore unacceptably painful. He concludes that 15 days is the limit between “solitary confinement” and “prolonged solitary confinement” because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.<sup>6</sup>

## **D. Legal framework**

27. International and regional human rights bodies have taken different approaches to address the underlying conditions of social and physical isolation of detainees, and whether such practices constitute torture or cruel, inhuman or degrading treatment or punishment. For example, while the European Court of Human Rights has confronted solitary confinement regimes with regularity, the United Nations Human Rights Committee and the Inter-American Court of Human Rights have most extensively addressed the related phenomenon of incommunicado detention. For the purposes of this report, the Special Rapporteur will highlight the work of universal and regional human rights bodies on solitary confinement only.

### **1. International level**

#### **General Assembly**

28. In 1990, the General Assembly adopted resolution 45/111, the Basic Principles for the Treatment of Prisoners. Principle 7 states that efforts to abolish solitary confinement as a punishment, or to restrict its use, should be undertaken and encouraged.

29. In the same year, the General Assembly adopted resolution 45/113, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In paragraph 67 the Assembly asserted 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 concerned”.

#### **United Nations treaty bodies**

30. The Human Rights Committee, in paragraph 6 of its General Comment No. 20, noted that prolonged solitary confinement of the detained or imprisoned person might amount to acts prohibited by article 7 of the International Covenant on Civil

<sup>5</sup> Ken Strutin, “Solitary Confinement”, LLRX.com, published on 10 August 2010.

<sup>6</sup> Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement, Crime and Delinquency”, vol. 49, No. 1, pp. 124-156.

and Political Rights.<sup>7</sup> In its concluding observations on Rwanda, the Human Rights Committee recommended that “The State party should put an end to the sentence of solitary confinement ...” (CCPR/C/RWA/CO/3, para. 14).

31. The Committee against Torture has recognized the harmful physical and mental effects of prolonged solitary confinement and has expressed concern about its use, including as a preventive measure during pretrial detention, as well as a disciplinary measure. The Committee has recommended that the use of solitary confinement be abolished, particularly during pretrial detention, or at least that it should be strictly and specifically regulated by law (maximum duration, etc.) and exercised under judicial supervision, and used only in exceptional circumstances, such as when the safety of persons or property is involved (A/63/175, para. 80). The Committee has recommended that persons under the age of 18 should not be subjected to solitary confinement (CAT/C/MAC/CO/4, para. 8).

32. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has pointed out that prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment and recommended that solitary confinement should not be used in the case of minors or the mentally disabled (CAT/OP/PRY/1, para. 185). The Subcommittee has also recommended that a medical officer should visit prisoners held in solitary confinement every day, on the understanding that such visits should be in the interests of the prisoners’ health. Furthermore, prisoners held in solitary confinement for more than 12 hours should have access to fresh air for at least one hour each day (CAT/OP/PRY/1, para. 184). In view of the condition of solitary confinement, the Subcommittee has pointed out that beds and proper mattresses should be made available to all inmates, including prisoners held in solitary confinement (CAT/OP/HND/1, para. 227 (a), and CAT/OP/PRY/1, para. 280).

33. The Committee on the Rights of the Child, in its General Comment No. 10 (2007), emphasized that “disciplinary measures in violation of article 37 [of the Convention on the Rights of the Child] must be strictly forbidden, including ... closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned” (CRC/C/GC/10, para. 89). Moreover, the Committee has urged States parties to prohibit and abolish the use of solitary confinement against children (CRC/C/15/Add.151, para. 41; CRC/C/15/Add.220, para. 45 (d); and CRC/C/15/Add.232, para. 36 (a)).

## **2. Regional level**

### **European Court of Human Rights**

34. In its evaluation of cases of solitary confinement, the European Court of Human Rights considers the rationale given by the State for the imposition of social and physical isolation. The Court has found violations of article 3 of the European Convention on Human Rights where States do not provide a security-based

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<sup>7</sup> Human Rights Committee, International Covenant on Civil and Political Rights, General Comment No. 20 (A/47/40, annex VI.A), article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992.

justification for the use of solitary confinement.<sup>8</sup> In circumstances of prolonged solitary confinement, the Court has held that the justification for solitary confinement must be explained to the individual and the justification must be “increasingly detailed and compelling” as time goes on.<sup>9</sup>

35. Through its jurisprudence, the European Court of Human Rights emphasizes that certain procedural safeguards must be in place during the imposition of solitary confinement, for example, monitoring a prisoner’s physical well-being,<sup>9</sup> particularly where the individual is not in good health<sup>10</sup> and having access to judicial review.<sup>11</sup>

36. The level of isolation imposed on an individual is essential to the European Court of Human Rights’ assessment of whether instances of physical and mental isolation constitute torture or cruel, inhuman or degrading treatment or punishment. A prolonged absolute prohibition of visits from individuals from outside the prison causes suffering “clearly exceeding the unavoidable level inherent in detention”.<sup>12</sup> However, where the individual can receive visitors and write letters,<sup>13</sup> have access to television, books and newspapers and regular contact with prison staff<sup>14</sup> or visit with clergy or lawyers on a regular basis,<sup>15</sup> isolation is “partial”, and the minimum threshold of severity — which the European Court of Human Rights considers necessary to find a violation of article 3 of the European Convention on Human Rights — is not met. Nevertheless, the Court has emphasized that solitary confinement, even where the isolation is only partial, cannot be imposed on a prisoner indefinitely.<sup>16</sup>

### **Inter-American System on Human Rights**

37. The jurisprudence on solitary confinement within the Inter-American System on Human Rights is more conclusive than within the bodies discussed above. Since its earliest judgments, the Inter-American Court of Human Rights has found that certain elements of a prison regime and certain physical prison conditions in themselves constitute cruel and inhuman treatment, and therefore violate article 5 of the American Convention on Human Rights, which recognizes the right to the integrity of the person. For example, the Court held that “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the

<sup>8</sup> *Iorgov v. Bulgaria*, Application No. 40653/98, European Court of Human Rights, para. 84 (2004); *G.B. v. Bulgaria*, Application No. 42346/98, European Court of Human Rights, para. 85 (2004).

<sup>9</sup> *A.B. v. Russia*, Application No. 1439/06, European Court of Human Rights, para. 108 (2010).

<sup>10</sup> *Palushi v. Austria*, Application No. 27900/04, European Court of Human Rights, paras. 72 and 73 (2009).

<sup>11</sup> *A.B. v. Russia*, para. 111.

<sup>12</sup> *Onoufriou v. Cyprus*, Application No. 24407/04, European Court of Human Rights, para. 80 (2010).

<sup>13</sup> *Ocalan v. Turkey*, Application No. 46221/99, European Court of Human Rights, para. 196 (2005).

<sup>14</sup> *Rohde v. Denmark*, Application No. 69332/01, European Court of Human Rights, para. 97 (2005).

<sup>15</sup> *Ramírez Sanchez v. France*, Application No. 59450/00, European Court of Human Rights, paras. 105, 106 and 135 (2006).

<sup>16</sup> *Ibid.*, para. 145.



right of any detainee to respect for his inherent dignity as a human being”.<sup>17</sup> The Court has additionally addressed physical conditions of detention, asserting that “isolation in a small cell, without ventilation or natural light, ... [and] restriction of visiting rights ..., constitute forms of cruel, inhuman and degrading treatment”.<sup>18</sup>

38. The Court has additionally recognized that solitary confinement results in psychological and physical suffering that may contribute to treatment that constitutes torture. In at least one case, the Court has identified the physical conditions of solitary confinement, including “a small cell with no ventilation or natural light”, and a prison regime where a detained individual “is held for 23 and a half hours a day ..., [and] permitted to see his relatives only once a month, but could have no physical contact with them”, when coupled with other forms of physical and psychological aggression, in sum may constitute physical and psychological torture.<sup>19</sup>

39. In its analysis of solitary confinement, the Court has noted that even when used in exceptional circumstances, procedural safeguards must be in place. For example, “the State is obliged to ensure that the detainee enjoys the minimum and non-derogable guarantees established in the [American] Convention and, specifically, the right to question the lawfulness of the detention and the guarantee of access to effective defense during his incarceration”.<sup>20</sup> Similarly, the Inter-American Commission on Human Rights has consistently held that all forms of disciplinary action taken against detained persons must comport with the norms of due process and provide opportunity for judicial review.<sup>21</sup>

## **E. States’ rationale for the use of solitary confinement**

40. The justifications provided by States for the use of solitary confinement fall into five general categories:

- (a) To punish an individual (as part of the judicially imposed sentence or as part of a disciplinary regime);
- (b) To protect vulnerable individuals;
- (c) To facilitate prison management of certain individuals;
- (d) To protect or promote national security;
- (e) To facilitate pre-charge or pretrial investigations.

41. The imposition of solitary confinement as a part of an individual’s judicially imposed sentence often arises in circumstances of particularly egregious crimes or

<sup>17</sup> *Velázquez-Rodríguez v. Honduras*, Inter-American Court of Human Rights, Series C, No. 4, para. 156 (1988).

<sup>18</sup> *Loayza-Tamayo v. Peru*, Inter-American Court of Human Rights, Series C, No. 33, para. 58 (1997).

<sup>19</sup> *Cantoral-Benavides v. Peru*, Inter-American Court of Human Rights, Series C, No. 69, paras. 62 and 104 (2000).

<sup>20</sup> *Suárez-Rosero v. Ecuador*, Inter-American Court of Human Rights, Series C, No. 35, paras. 51-56 (1997).

<sup>21</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Mexico* (OEA/Ser.L/V/II.100), para. 254 (2008).

crimes against the State.<sup>22</sup> For instance, in some central European States, individuals convicted and sentenced to capital punishment and to life imprisonment serve their time in solitary confinement (A/64/215, para. 53). In other States, such as in Mongolia, death sentences may be commuted to life sentences spent in solitary confinement (E/CN.4/2006/6/Add.4, para. 47). The use of solitary confinement as a disciplinary measure within prisons is also well documented and is likely the most pervasive rationale for the use of solitary confinement as a form of punishment.<sup>22</sup> Disciplinary measures usually involve the violation of a prison rule. For instance, in Nigeria detainees are punished with solitary confinement of up to three days for disciplinary offences (A/HRC/7/3/Add.4, appendix I, para. 113). Similarly, in the Abepura Prison in Indonesia, solitary confinement for up to eight days is used as a disciplinary measure for persons who violate prison rules (A/HRC/7/3/Add.7, appendix I, para. 37).

42. Solitary confinement is also used to separate vulnerable individuals, including juveniles, persons with disabilities, and lesbian, gay, bisexual and transgender persons, for their own protection. They may be placed in solitary confinement at their own request or at the discretion of prison officials.<sup>23</sup>

43. State officials also use solitary confinement as a tool to manage certain prison populations. Individuals determined to be dangerous, such as gang members, or at high risk of escape may be placed in solitary confinement.<sup>23</sup> Similarly, individuals determined to be at risk of injury, such as sex offenders, informants, and former correctional or law enforcement officers, are often allowed, or encouraged, to choose voluntary solitary confinement in order to protect themselves from fellow inmates.<sup>24</sup> Prisoners may also be placed in some form of solitary confinement in the interests of prison management before, during or after transportation to and from cells and detention facilities.<sup>25</sup> While the duration of solitary confinement when used as a management tool may vary considerably, it is notable that the motivation for its imposition is pragmatic rather than punitive.

44. Individuals determined to be terrorist suspects or national security risks are often subjected to solitary confinement as well. For instance, in Equatorial Guinea a section of the Black Beach Prison consisting of single cells is used for solitary confinement of high security prisoners (A/HRC/13/39/Add.4, appendix I). Solitary confinement can be also used as a coercive interrogation technique, and is often an integral part of enforced disappearance or incommunicado detention (A/63/175, annex). As noted within category (a) in paragraph 40 above, national security also serves as a primary reason for the imposition of solitary confinement as a result of a judicial sentence. For example, in China an individual sentenced for “unlawfully supplying State secrets or intelligence to entities outside China” was allegedly held in solitary confinement for two years of her eight-year sentence (E/CN.4/2006/6/Add.6, appendix 2, para. 26).

45. States also use solitary confinement to isolate individuals during pre-charge or pretrial detention. In some States, such as Denmark, holding individuals in solitary

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<sup>22</sup> Shalev, op. cit., p. 25.

<sup>23</sup> Shalev, op. cit., pp. 25 and 26.

<sup>24</sup> Peter Scharff Smith, “Solitary Confinement: An introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement”, *Journal on Rehabilitation of Torture Victims and Prevention of Torture*, vol. 18 (2008), p. 56.

<sup>25</sup> Shalev, op. cit., p. 26.

confinement is a regular feature of pretrial detention (A/63/175, para. 78 (i)). The purposes for the use of solitary confinement in pre-charge and pretrial detention vary widely, and include preventing the intermingling of detainees to avoid demoralization and collusion, and to apply pressure on detainees to elicit cooperation or extract a confession.<sup>26</sup>

## **F. Conditions of solitary confinement**

46. The administration of prisons and the conditions in which prisoners are held is governed by prison regulations and national laws, as well as by international human rights law. Fundamental norms that are binding by virtue of being treaty-based or part of customary international law are supplemented and interpreted through the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in 1957. Although not directly binding, the Standard Minimum Rules are widely accepted as the universal norm for the humane treatment of prisoners.

47. The particular conditions in which detainees are held in solitary confinement vary between institutions and jurisdictions. Most, however, have a number of physical and non-physical conditions (or a prison regime) in common.

### **1. Physical conditions**

48. The principal physical conditions relevant to solitary confinement are cell size, presence of windows and light, and access to sanitary fixtures for personal hygiene. In practice, solitary confinement cells typically share some common features, including: location in a separate or remote part of the prison; small, or partially covered windows; sealed air quality; stark appearance and dull colours; toughened cardboard or other tamperproof furniture bolted to the floor; and small and barren exercise cages or yards (E/CN.4/2006/6/Add.3, para. 47). In some jurisdictions, prisoners in solitary confinement are held in leg irons and subjected to other physical restraints (A/HRC/13/39/Add.4, para. 76 (f)).

49. There is no universal instrument that specifies a minimum acceptable cell size, although domestic and regional jurisdictions have sometimes ruled on the matter. According to the European Court of Human Rights in *Ramírez Sanchez v. France*, a cell measuring 6.84 square metres is “large enough” for single occupancy.<sup>27</sup> The Court did not elaborate on why such measures could be considered adequate; the Special Rapporteur respectfully begs to differ, especially if the single cell should also contain, at a minimum, toilet and washing facilities, bedding and a desk.

50. The presence of windows and light is also of critical importance to the adequate treatment of detainees in solitary confinement. Under rule 11 of the Standard Minimum Rules for the Treatment of Prisoners, there should be sufficient light to enable the detainee to work or read, and windows so constructed as to allow airflow whether or not artificial ventilation is provided. However, State practice reveals that this standard is often not met. For example, in Georgia, window-

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<sup>26</sup> Peter Scharff Smith, “Solitary Confinement: An introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement”, p. 41.

<sup>27</sup> *Ramírez Sanchez v. France*, Application No. 59450/00, European Court of Human Rights, para. 102 (2006).

openings in solitary confinement cells were found to have steel sheets welded to the outside bars, which restricted light and ventilation (E/CN.4/2006/6/Add.3, para. 47). In Israel, solitary confinement cells are often lit with fluorescent bulbs as their only source of light, and they have no source of fresh air.<sup>28</sup>

51. Rules 12 and 13 of the Standard Minimum Rules stipulate that detention facilities should provide sufficient sanitary fixtures to allow for the personal hygiene of the detainee. Therefore, cells used for solitary confinement should contain a lavatory and wash-basin within the cell.<sup>29</sup> In its 2006 report on Greece, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment observed that isolation cells in the Komotini Prison failed to meet the necessary minimum standard for sanitary fixtures because detainees were forced to use the toilet for a wash-basin as well.<sup>30</sup> Other environmental factors, such as temperature, noise level, privacy, and soft materials for cell furnishings may also be implicated in the solitary confinement setting.

## 2. Prison regime

52. The principal aspects of a prison regime relevant to an assessment of the conditions of solitary confinement include access to outdoor exercise and programming, access to meaningful human contact within the prison, and contact with the outside world. In accordance with rule 21 of the Standard Minimum Rules for the Treatment of Prisoners, every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. Similarly, the European Committee for the Prevention of Torture emphasizes that all prisoners without exception should be afforded the opportunity to have one hour of open-air exercise per day.<sup>31</sup> However, State practice indicates that these standards are not always observed. In Jordan, for example, a detainee was allowed outside of his solitary confinement cell for only one hour per week (A/HRC/4/33/Add.3, appendix, para. 21). In *Poltrotsky v. Ukraine*, the European Court of Human Rights found that a lack of opportunity for outdoor exercise, coupled with a lack of access to natural light, constitutes a violation of article 3 of the European Convention on Human Rights.<sup>32</sup>

53. Access to meaningful human contact within the prison and contact with the outside world are also essential to the psychological health of detainees held in solitary confinement, especially those held for prolonged periods of time. Within prisons this contact could be with health professionals, prison guards or other prisoners. Contact with the outside world could include visits, mail, and phone calls from legal counsel, family and friends, and access to reading material, television or radio. Article 17 of the International Covenant on Civil and Political Rights grants prisoners the right to family and correspondence. Additionally, the Standard Minimum Rules for the Treatment of Prisoners provide for various external stimuli

<sup>28</sup> Solitary Confinement of Prisoners and Detainees in Israeli Prisons, Joint Project of Adalah, Al Mezan (Gaza) and Physicians for Human Rights (Israel, June 2011).

<sup>29</sup> Shalev, *op. cit.*, p. 42.

<sup>30</sup> Council of Europe, Committee for the Prevention of Torture, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 20 December 2006 (CPT/Inf (2006)), p. 41.

<sup>31</sup> Council of Europe, "CPT Standards" (CPT/Inf/E (2002) 1 — Rev. 2010), sect. II, para. 48.

<sup>32</sup> *Poltrotsky v. Ukraine*, p. 146 (European Court of Human Rights, 2006-V).

(articles 21 on exercise and sport; 37-39 on contact with the outside world; 40 on books; 41 and 42 on religion; 71-76 on work; 77 and 78 on education and recreation; and 79-81 on social relations and after-care).

### 3. Social isolation

54. Solitary confinement reduces meaningful social contact to an absolute minimum. The level of social stimulus that results is insufficient for the individual to remain in a reasonable state of mental health.<sup>33</sup>

55. Research shows that deprived of a sufficient level of social stimulation, individuals soon become incapable of maintaining an adequate state of alertness and attention to their environment. Indeed, even a few days of solitary confinement will shift an individual's brain activity towards an abnormal pattern characteristic of stupor and delirium.<sup>34</sup> Advancements in new technologies have made it possible to achieve indirect supervision and keep individuals under close surveillance with almost no human interaction. The European Court of Human Rights has recognized that "complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason".<sup>35</sup>

56. According to the European Court of Human Rights, States should also take steps to reduce the negative impact of solitary confinement.<sup>36</sup> Where the damaging effects of solitary confinement on a particular individual are known, the regime cannot continue.<sup>37</sup> The conditions of confinement are relevant in this respect, because where conditions are beyond reproach, the Court considers it unlikely that the minimum threshold of severity to find a violation of article 3 will be reached.<sup>38</sup> Routine examination by doctors can be a factor in determining that there was no violation of article 3.<sup>39</sup>

## G. Prolonged or indefinite solitary confinement

57. The use of prolonged or indefinite solitary confinement has increased in various jurisdictions, especially in the context of the "war on terror" and "a threat to national security". Individuals subjected to either of these practices are in a sense in a prison within a prison and thus suffer an extreme form of anxiety and exclusion, which clearly supersede normal imprisonment. Owing to their isolation, prisoners held in prolonged or indefinite solitary confinement can easily slip out of sight of

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<sup>33</sup> Peter Scharff Smith, "The effects of solitary confinement on prison inmates", *Crime and Justice*, vol. 34 (2006), p. 449.

<sup>34</sup> Stuart Grassian, "Psychiatric Effects of Solitary Confinement", *Journal of Law and Policy*, vol. 22 (2006), p. 325.

<sup>35</sup> *Ilaşcu and others v. Moldova and Russia*, Application No. 48787/99, European Court of Human Rights (2004), para. 432.

<sup>36</sup> *Mathew v. Netherlands*, Application No. 24919/03, para. 202.

<sup>37</sup> *G.B. v. Bulgaria*, para. 85.

<sup>38</sup> *Valasinas v. Lithuania*, Application No. 44558/98, European Court of Human Rights, para. 112 (2001); *Ocalan v. Turkey*, para. 193.

<sup>39</sup> *Rohde v. Denmark*, para. 97.

justice, and safeguarding their rights is therefore often difficult, even in States where there is a strong adherence to rule of law.<sup>40</sup>

58. When a State fails to uphold the Standard Minimum Rules for the Treatment of Prisoners during a short period of time of solitary confinement, there may be some debate on whether the adverse effects amount to cruel, inhuman or degrading treatment or punishment or torture. However, the longer the duration of solitary confinement or the greater the uncertainty regarding the length of time, the greater the risk of serious and irreparable harm to the inmate that may constitute cruel, inhuman or degrading treatment or punishment or even torture.

59. The feeling of uncertainty when not informed of the length of solitary confinement exacerbates the pain and suffering of the individuals who are subjected to it. In some instances, individuals may be held indefinitely during pretrial detention, increasing the risk of other forms of cruel, inhuman or degrading treatment or punishment or torture (CAT/C/DNK/CO/5, para. 14).

60. Most studies fail to specify the length of time after which solitary confinement becomes prolonged. While the term may be undefined, detainees can be held in solitary confinement from a few weeks to many years. For example, in Kazakhstan, individuals can be held in solitary confinement for more than two months (A/HRC/13/39/Add.3, para. 117). Some detainees have been held in solitary confinement facilities for years, without any charge and without trial, and in secret detention centres where isolation is used as an integral part of interrogation practices.<sup>41</sup> In a joint report on the situation of detainees at Guantánamo Bay, experts found that although 30 days of isolation was the maximum period permissible, some detainees were returned to isolation after very short breaks over a period of up to 18 months (E/CN.4/2006/120, para. 53).

61. There is no international standard for the permitted maximum overall duration of solitary confinement. In *A.B. v. Russia*, the European Court of Human Rights held that detaining an individual in solitary confinement for three years constituted a violation of article 3 of the European Convention on Human Rights.<sup>42</sup> By contrast, in the United States of America, it is reported that two prisoners have been held in solitary confinement in a Louisiana prison for 40 years after failed attempts at judicial appeal of the conditions of their confinement.<sup>43</sup> As explained in paragraph 26 above, the Special Rapporteur finds that solitary confinement exceeding 15 days is prolonged.

## H. Psychological and physiological effects of solitary confinement

62. Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions. Experts who have examined the impact of solitary confinement have found three common elements that are inherently present in solitary confinement —

<sup>40</sup> Peter Scharff Smith, “Solitary Confinement: An introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement”, p. 1.

<sup>41</sup> Shalev, *op. cit.*, p. 2.

<sup>42</sup> *A.B. v. Russia*, Application No. 1439/06, European Court of Human Rights, para. 135 (2010).

<sup>43</sup> “USA: The Cruel and Inhumane Treatment of Albert Woodfox and Herman Wallace”, Amnesty International (2001).

social isolation, minimal environmental stimulation and “minimal opportunity for social interaction”.<sup>44</sup> Research further shows that solitary confinement appears to cause “psychotic disturbances,” a syndrome that has been described as “prison psychoses”.<sup>45</sup> Symptoms can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis and self-harm (see annex for a comprehensive list of symptoms).

63. Some individuals experience discrete symptoms while others experience a “severe exacerbation of a previously existing mental condition or the appearance of a mental illness where none had been observed before”.<sup>46</sup> Still, a significant number of individuals will experience serious health problems regardless of the specific conditions, regardless of time and place, and regardless of pre-existing personal factors.

## **I. Latent effects of solitary confinement**

64. There is a lack of research into the latent effects of solitary confinement. While the acute effects of solitary confinement generally recede after the period of solitary confinement ends, some of the negative health effects are long term. The minimal stimulation experienced during solitary confinement can lead to a decline in brain activity in individuals after seven days. One study found that “up to seven days, the [brain activity] decline is reversible, but if deprived over a long period this may not be the case”.<sup>47</sup>

65. Studies have found continued sleep disturbances, depression, anxiety, phobias, emotional dependence, confusion, impaired memory and concentration long after the release from isolation. Additionally, lasting personality changes often leave individuals formerly held in solitary confinement socially impoverished and withdrawn, subtly angry and fearful when forced into social interaction.<sup>48</sup> Intolerance of social interaction after a period of solitary confinement is a handicap that often prevents individuals from successfully readjusting to life within the broader prison population and severely impairs their capacity to reintegrate into society when released from imprisonment.<sup>49</sup>

## **J. Vulnerable individuals**

### **1. Juveniles**

66. United Nations treaty bodies consistently recommend that juvenile offenders, children or minors should not be subjected to solitary confinement (CAT/C/MAC/CO/4, para. 8; CAT/OP/PRY/1, para. 185; CRC/C/15/Add.151, para. 41; and CRC/C/15/Add.232, para. 36 (a)). Juveniles are often held in solitary confinement either as a disciplinary measure, or to separate them from the adult inmate population, as international human rights law prohibits the intermingling of

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<sup>44</sup> Stuart Grassian, “Psychiatric Effects of Solitary Confinement” (1993), p. 1.

<sup>45</sup> *Ibid.*, p. 8.

<sup>46</sup> *Ibid.*, p. 2.

<sup>47</sup> *Ibid.*, p. 20.

<sup>48</sup> Shalev, *op. cit.*, pp. 13 and 22.

<sup>49</sup> Stuart Grassian, “Psychiatric Effects of Solitary Confinement”, pp. 332 and 333.

juvenile and adult prison populations.<sup>50</sup> Regrettably, solitary confinement as a form of punishment of juvenile detainees has been prevalent in States such as Jamaica (A/HRC/16/52/Add.3, para. 211), Paraguay (A/HRC/7/3/Add.3, appendix I, para. 46) and Papua New Guinea (A/HRC/16/52/Add.5, appendix). In regard to disciplinary measures, a report has indicated that solitary confinement does not reduce violence among juvenile offenders detained in the youth prison.<sup>51</sup>

## 2. Persons with disabilities

67. Persons with disabilities are held in solitary confinement in some jurisdictions as a substitute for proper medical or psychiatric care or owing to the lack of other institutional housing options. These individuals may not necessarily pose danger to others or to themselves, but they are vulnerable to abuse and often regarded as a disturbance to other prisoners and prison staff.<sup>52</sup>

68. Research has shown that with respect to mental disabilities, solitary confinement often results in severe exacerbation of a previously existing mental condition.<sup>53</sup> Prisoners with mental health issues deteriorate dramatically in isolation.<sup>54</sup> The adverse effects of solitary confinement are especially significant for persons with serious mental health problems which are usually characterized by psychotic symptoms and/or significant functional impairments.<sup>55</sup> Some engage in extreme acts of self-mutilation and even suicide.<sup>54</sup>

## 3. Lesbian, gay, bisexual and transgender

69. Lesbian, gay, bisexual and transgender individuals are often subjected to solitary confinement as a form of “protective custody”.<sup>56</sup> Although segregation of such individuals may be necessary for their safety, lesbian, gay, bisexual and transgender status does not justify limitations on their social regime, e.g., access to recreation, reading materials, legal counsel or medical doctors.

## K. When solitary confinement amounts to torture and other cruel, inhuman or degrading treatment or punishment

70. Because of the absence of witnesses, solitary confinement increases the risk of acts of torture and other cruel, inhuman or degrading treatment or punishment. Given its severe adverse health effects, the use of solitary confinement itself can amount to acts prohibited by article 7 of the International Covenant on Civil and

<sup>50</sup> Article 37(c), Convention on the Rights of the Child; article 8(d), United Nations Standard Minimum Rules for the Treatment of Prisoners.

<sup>51</sup> Robert Wildeboer, “The Impact of Solitary Confinement in a Youth Prison”, *Inside and Out* (Chicago, 2010).

<sup>52</sup> Shalev, op. cit., p. 26.

<sup>53</sup> Stuart Grassian, “Psychiatric Effects of Solitary Confinement”; Shalev, op. cit., p. 10.

<sup>54</sup> American Civil Liberties Union, “Abuse of the Human Rights of Prisoners in the United States: Solitary Confinement” (2011).

<sup>55</sup> Jeffrey L. Metzner, M.D., and Jamie Fellner, “Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics”, *The Journal of the American Academy of Psychiatry and the Law*, vol. 38, No. 1, pp. 104-108 (2010).

<sup>56</sup> Heartland Alliance National Immigrant Justice Center, letter to the Special Rapporteur on torture dated 16 June 2011.



Political Rights, torture as defined in article 1 of the Convention against Torture or cruel, inhuman or degrading punishment as defined in article 16 of the Convention.

71. The assessment of whether solitary confinement amounts to torture and other cruel, inhuman or degrading treatment or punishment should take into consideration all relevant circumstances on a case-by-case basis. These circumstances include the purpose of the application of solitary confinement, the conditions, length and effects of the treatment and, of course, the subjective conditions of each victim that make him or her more or less vulnerable to those effects. In this section, the report discusses a few circumstances where the use of solitary confinement constitutes torture and other cruel, inhuman or degrading treatment or punishment.

72. Solitary confinement, when used for the purpose of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour and thus constitutes an act defined in article 1 or article 16 of the Convention against Torture, and a breach of article 7 of the International Covenant on Civil and Political Rights. This 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.

73. While physical and social segregation may be necessary in some circumstances during criminal investigations, the practice of solitary confinement during pretrial detention creates a *de facto* situation of psychological pressure which can influence detainees to make confessions or statements against others and undermines the integrity of the investigation. When solitary confinement is used intentionally during pretrial detention as a technique for the purpose of obtaining information or a confession, it amounts to torture as defined in article 1 or to cruel, inhuman or degrading treatment or punishment under article 16 of the Convention against Torture, and to a breach of article 7 of the International Covenant on Civil and Political Rights.

74. Where the physical conditions of solitary confinement are so poor and the regime so strict that they lead to severe mental and physical pain or suffering of individuals who are subjected to the confinement, the conditions of solitary confinement amount to torture or to cruel and inhuman treatment as defined in articles 1 and 16 of the Convention, and constitute a breach of article 7 of the Covenant.

75. The use of solitary confinement can be accepted only in exceptional circumstances where its duration must be as short as possible and for a definite term that is properly announced and communicated. Given the harmful effects of indefinite solitary confinement, its potential use to extract information or confession during pretrial detention, and the fact that uncertainty prevents the use of remedies to challenge it, the Special Rapporteur finds that indefinite imposition of solitary confinement violates the right to due process of the concerned individual (article 9 of the Covenant, articles 1 or 16 of the Convention, and article 7 of the Covenant).

76. The Special Rapporteur asserts that social isolation is contrary to article 10, paragraph 3, of the International Covenant on Civil and Political Rights, which states that “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation” (General Assembly resolution 2200 (XXI), annex). Long periods of isolation do not aid the

rehabilitation or re-socialization of detainees (E/CN.4/2006/6/Add.4, para. 48). The adverse acute and latent psychological and physiological effects of prolonged solitary confinement constitute severe mental pain or suffering. Thus the Special Rapporteur concurs with the position taken by the Committee against Torture in its General Comment No. 20 that prolonged solitary confinement amounts to acts prohibited by article 7 of the Covenant, and consequently to an act as defined in article 1 or article 16 of the Convention. For these reasons, the Special Rapporteur reiterates that, in his view, any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances. He calls on the international community to agree to such a standard and to impose an absolute prohibition on solitary confinement exceeding 15 consecutive days.

77. With respect to juveniles, the Declaration of the Rights of the Child and the Preamble of the Convention on the Rights of the Child state that, given their physical and mental immaturity, juveniles need special safeguards and care, including appropriate legal protection. Article 19 of the Convention on the Rights of the Child (General Assembly resolution 44/25) requires States Parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence ...” In its General Comment No. 8, the Committee on the Rights of the Child indicated that “There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children” (CRC/C/GC/8, para. 18). Paragraph 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in resolution 45/113 of 14 December 1990, states 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 concerned” (see also CRC/C/GC/10, para. 89). Thus the Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.

78. The right of persons with mental disabilities to be treated with humanity and with respect for the inherent dignity guaranteed under article 10 of the Covenant should be interpreted in light of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, adopted by the General Assembly on 17 December 1991 (resolution 46/119, annex). Given their diminished mental capacity and that solitary confinement often results in severe exacerbation of a previously existing mental condition, the Special Rapporteur believes that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment and violates article 7 of the Covenant and article 16 of the Convention.

## IV. Conclusions and recommendations

### Conclusions

**79. The Special Rapporteur stresses that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse**

effects on individuals regardless of their specific conditions. He finds solitary confinement to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society. The Special Rapporteur defines prolonged solitary confinement as any period of solitary confinement in excess of 15 days.

80. Depending on the specific reason for its application, conditions, length, effects and other circumstances, solitary confinement can amount to a breach of article 7 of the International Covenant on Civil and Political Rights, and to an act defined in article 1 or article 16 of the Convention against Torture. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged.

81. Considering the severe mental pain or suffering solitary confinement may cause when used as a punishment, during pretrial detention, indefinitely or for a prolonged period, for juveniles or persons with mental disabilities, it can amount to torture or cruel, inhuman or degrading treatment or punishment. The Special Rapporteur is of the view that 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, it amounts to cruel, inhuman or degrading treatment or punishment.

#### **Recommendations**

82. The Special Rapporteur calls upon States to respect and protect the rights of persons deprived of liberty while maintaining security and order in places of detention. He recommends that States conduct regular reviews of the system of solitary confinement. In this context, the Special Rapporteur reiterates that States should refer to the Istanbul Statement on the Use and Effects of Solitary Confinement as a useful tool in efforts to promote the respect and protection of the rights of detainees.

83. The Special Rapporteur calls upon States to ensure that all persons deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person as protected by article 10, paragraph 1, of the International Covenant on Civil and Political Rights. The Special Rapporteur refers to the Standard Minimum Rules for the Treatment of Prisoners and recommends that States increase the level of psychological, meaningful social contact for detainees while in solitary confinement.

84. The Special Rapporteur urges States to prohibit the imposition of solitary confinement as punishment — either as a part of a judicially imposed sentence or a disciplinary measure. He recommends that States develop and implement alternative disciplinary sanctions to avoid the use of solitary confinement.

85. States should take necessary steps to put an end to the practice of solitary confinement in pretrial detention. The use of solitary confinement as an extortion technique during pretrial detention should be abolished. States should adopt effective measures at the pretrial stage to improve the efficiency of investigation and introduce alternative control measures in order to segregate individuals, protect ongoing investigations, and avoid detainee collusion.

86. States should abolish the use of solitary confinement for juveniles and persons with mental disabilities. Regarding disciplinary measures for juveniles, the Special Rapporteur recommends that States should take other measures that do not involve the use of solitary confinement. In regard to the use of solitary confinement for persons with mental disabilities, the Special Rapporteur emphasizes that physical segregation of such persons may be necessary in some cases for their own safety, but solitary confinement should be strictly prohibited.

87. Indefinite solitary confinement should be abolished.

88. It is clear that short-term solitary confinement can amount to torture or cruel, inhuman or degrading treatment or punishment; it can, however, be a legitimate device in other circumstances, provided that adequate safeguards are in place. In the opinion of the Special Rapporteur, prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition.

89. The Special Rapporteur reiterates that solitary confinement should be used only in very exceptional circumstances, as a last resort, for as short a time as possible. He emphasizes that when solitary confinement is used in exceptional circumstances, minimum procedural safeguards must be followed. These safeguards reduce the chances that the use of solitary confinement will be arbitrary or excessive, as in the case of prolonged or indefinite confinement. They are all the more important in circumstances of detention where due process protections are often limited, as in administrative immigration detention. Minimum procedural safeguards should be interpreted in a manner that provides the greatest possible protection of the rights of detained individuals. In this context, the Special Rapporteur urges States to apply the following guiding principles and procedural safeguards.

#### *Guiding principles*

90. Throughout the period of detention, the physical conditions and prison regime of the solitary confinement, and in particular the duration of confinement, must be proportional to the severity of the criminal or disciplinary infraction for which solitary confinement is imposed.

91. The physical conditions and prison regime of solitary confinement must be imposed only as a last resort where less restrictive measures could not achieve the intended disciplinary goals.

92. 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, giving rise to acts as defined in article 1 or article 16 of the Convention against Torture.

93. All assessments and decisions taken with respect to the imposition of solitary confinement must be clearly documented and readily available to the detained persons and their legal counsel. This includes the identity and title of the authority imposing solitary confinement, the source of his or her legal attributes to impose it, a statement of underlying justification for its imposition, its duration, the reasons for which solitary confinement is determined to be appropriate in accordance with the detained person's mental and physical health, the reasons for which solitary confinement is determined to be

proportional to the infraction, reports from regular review of the justification for solitary confinement, and medical assessments of the detained person's mental and physical health.

*Internal safeguards*

94. From the moment that solitary confinement is imposed, through all stages of its review and decisions of extension or termination, the justification and duration of the solitary confinement should be recorded and made known to the detained person. Additionally, the detained person should be informed of what he or she must do to be removed from solitary confinement. In accordance with rule 35 of the Standard Minimum Rules for the Treatment of Prisoners, the detained person must receive this information in plain language that he or she understands. This information must additionally be provided to any legal representative of the detained person.

95. A documented system of regular review of the justification for the imposition of solitary confinement should be in place. The review should be conducted in good faith and carried out by an independent body. Any change in the factors that justified the imposition of solitary confinement should immediately trigger a review of the detained person's solitary confinement. All review processes must be documented.

96. 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 review. At the outset of the imposition of solitary confinement, detained persons must be informed of their alleged criminal or disciplinary infraction for which solitary confinement is being imposed and must immediately have an opportunity to challenge the reasons for their detention. Following the imposition of solitary confinement, detained persons must have the opportunity to file a complaint to prison management through an internal or administrative complaints system.

97. There shall be no limitations imposed on the request or complaint, such as requiring evidence of both mental or emotional suffering and physical suffering. Prison officials have an obligation to address all requests or complaints promptly, informing the detained person of the outcome. All internal administrative findings must be subject to external appeal through judicial processes.

*External safeguards*

98. Detained persons held in solitary confinement must be afforded genuine opportunities to challenge both the nature of their confinement and its underlying justification through the courts of law. This requires a right to appeal all final decisions by prison authorities and administrative bodies to an independent judicial body empowered to review both the legality of the nature of the confinement and its underlying justification. Thereafter, detained persons must have the opportunity to appeal these judgements to the highest authority in the State and, after exhaustion of domestic remedies, seek review by regional or universal human rights bodies.

99. **Individuals must have free access to competent legal counsel throughout the period in which they are held in solitary confinement. Where necessary to facilitate complete and open communication between a detainee and his or her legal counsel, access to an interpreter must be provided.**

100. **There should be a documented system of regular monitoring and review of the inmate's physical and mental condition by qualified medical personnel, both at the initiation of solitary confinement and on a daily basis throughout the period in which the detained person remains in solitary confinement, as required by rule 32, paragraph 3, of the Standard Minimum Rules for the Treatment of Prisoners. Medical personnel monitoring detained persons should have specialized training in psychological assessment and/or the support of specialists in psychology. Additionally, medical personnel must be independent and accountable to an authority outside of the prison administration. Preferably, they should belong to the general national health structure. Any deterioration of the inmate's mental or physical condition should trigger a presumption that the conditions of confinement are excessive and activate an immediate review.**

101. **Medical personnel should additionally inspect the physical conditions of the inmate's confinement in accordance with article 26 of the Standard Minimum Rules for the Treatment of Prisoners. Relevant considerations include the level of hygiene and cleanliness of the facility and the inmate, heating, lighting and ventilation of the cell, suitability of clothing and bedding, adequate supply of food and water and observance of the rules concerning physical exercise.**

## Annex

### Effects of solitary confinement

Many symptoms may present themselves in individuals held in solitary confinement, both concurrent with their solitary confinement and after the period of solitary confinement has terminated. The following list prepared by Dr. Sharon Shalev<sup>a</sup> demonstrates a range of possible symptoms.

*Anxiety*, ranging from feelings of tension to full-blown panic attacks

- Persistent low level of stress
- Irritability or anxiousness
- Fear of impending death
- Panic attacks

*Depression*, varying from low mood to clinical depression

- Emotional flatness/blunting — loss of ability to have any “feelings”
- Mood swings
- Hopelessness
- Social withdrawal; loss of initiation of activity or ideas; apathy; lethargy
- Major depression

*Anger*, ranging from irritability to full-blown rage

- Irritability and hostility
- Poor impulse control
- Outbursts of physical and verbal violence against others, self and objects
- Unprovoked anger, sometimes manifested as rage

*Cognitive disturbances*, ranging from lack of concentration to confused state

- Short attention span
- Poor concentration
- Poor memory
- Confused thought processes; disorientation

*Perceptual distortions*, ranging from hypersensitivity to hallucinations

- Hypersensitivity to noises and smells
- Distortions of sensation (e.g., walls closing in)
- Disorientation in time and space

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<sup>a</sup> Sharon Shalev, *A Sourcebook on Solitary Confinement* (London, Mannheim Centre for Criminology, 2008), pp. 15-17; also Peter Scharff Smith, “The effects of solitary confinement on prison inmates: a brief history and review of the literature”, *Crime and Justice*, vol. 34 (2006), p. 441.

- Depersonalization/derealization
- Hallucinations affecting all five senses (e.g., hallucinations of objects or people appearing in the cell, or hearing voices when no one is actually speaking)

*Paranoia and psychosis*, ranging from obsessional thoughts to full-blown psychosis

- Recurrent and persistent thoughts (ruminations), often of a violent and vengeful character (e.g., directed against prison staff)
- Paranoid ideas — often persecutory
- Psychotic episodes or states: psychotic depression, schizophrenia

*Self-harm*, self-directed aggression

- Self-mutilation and cutting
  - Suicide attempts
-



# **Exhibit C**



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**FAX**

<b>To: H.E. Mrs. Betty E. King</b> Ambassador Permanent Representative of the United States of America to the United Nations Office at Geneva Permanent Mission of the United States of America to the United Nations Office at Geneva	<b>From: Jane Connors</b> Chief Special Procedures Branch OHCHR
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<b>Date:</b> 13 September 2011	Number of pages - (this one included) : 6
<b>Subject:</b> <b>COMMUNICATION FROM SPECIAL PROCEDURES</b> <b>ALLEGATION LETTER AL G/SO 214 (53-24)</b> <b>USA 16/2011</b>	

Please find attached an allegation letter sent by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.



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

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REFERENCE: AL G/SO 214 (53-24)  
USA 16/2011

13 September 2011

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/23.

In this connection we would like to draw the attention of your Excellency's Government to information received regarding the widespread practice of **solitary confinement**, including its prolonged and indefinite use and the imposition of solitary confinement on individuals with mental disabilities in prison system in the United States.

According to the information received there are five main issues of concern regarding the use of solitary confinement in the United States:

1. systematic use of solitary confinement in prison system;
2. the strict regime and harsh physical conditions;
3. its prolonged and indefinite use as a management strategy;
4. adverse impact of advancement in new technologies on individuals held in solitary confinement; and

.../2

Her Excellency  
Mrs. Betty E. King  
Ambassador  
Permanent Representative of the United States of America  
to the United Nations Office at Geneva  
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5. the imposition of solitary confinement on individuals with mental disabilities.

According to the information received, between 20,000 and 25,000 individuals are being held in isolation (solitary confinement) in the United States. It was reported that over the last twenty years, long-term solitary confinement has become an integral part of correctional programme in the United States.

Regarding the physical conditions and regime of solitary confinement, it was reported that in the United States, solitary confinement, also called “supermax,” “administrative segregation”, “SHU (Secured Housing Unit)”, “SMU (Special Management Unit)”, or simply “the hole”, normally consists of locking an individual alone in a cell for 23 hours or more a day, under conditions of extreme social isolation, enforced idleness, and deprivation of meaningful environmental stimulation. For instance, individuals held in “general population” units at the Administrative Maximum United States Prison (ADX) in Florence, Colorado, spend at least 23 hours each day in cells that measure 5.9 square metres. When individuals are allowed to go outside for recreation, they are placed in 3× 3 metre metal cages alone. Each cell contains a bunk for sleeping, a desk, a stool, a shelf, and a single narrow window which does not open and provides no direct sunlight or fresh air. The cells are illuminated with fluorescent light. Individuals have to take a full strip search and are shackled before leaving and returning to their cells.

Another example is that individuals held in solitary confinement at the State of Wisconsin’s Supermax Correctional Institution in Boscobel, allegedly receive no outdoor exercise and spend all but four hours a week confined to their cells. Their personal possessions are severely restricted to one religious text, one box of legal materials and 25 personal letters. They are permitted no clocks, radios, watches, cassette players or televisions. It was reported that the door of the cell is solid except for a shutter and a trap door through which a guard may transfer items to the inmate without interacting with him. The cells are illuminated 24 hours a day. The temperature fluctuates wildly, reaching extremely high and low temperatures depending on the season. A video camera rather than a human eye monitors the inmate's movements. Visits other than with lawyers are conducted through video screens.

Regarding the allegation of prolonged solitary confinement as a management strategy, it was reported that it is typical that prisoners are placed in solitary confinement for indefinite periods, and may remain there for years and in some cases decades. According to the information received, an investigation of Tamms Correctional Center, a supermax prison in Illinois, revealed that 54 prisoners had been in continuous solitary confinement for more than 10 years. Reportedly, there are numerous examples of even longer periods of solitary confinement.

With regard to the allegation of adverse impact of advancement in new technologies on individuals held in solitary confinement, it was reported that new technologies, such as the development of intercoms and video surveillance cameras, have made it possible to keep individuals under close surveillance with almost no human interaction. This form of indirect supervision realizes a level of social isolation which was impossible in earlier times.

Reportedly, many mentally disabled individuals are held in solitary confinement in various prisons in the United States. It was reported that once held in solitary confinement, the situation of individuals with mental disabilities deteriorates dramatically. There have been cases that individuals with mental disabilities swallow razors or other objects, smash their heads into the wall, compulsively cut their flesh, try to hang themselves, and attempt to harm or kill themselves.

Without in any way implying any conclusion as to the allegations mentioned above, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the practice of solitary confinement in prison system. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT). In this connection, we would like to draw your Excellency's Government's attention to Article 10, paragraph 1 of the ICCPR, which provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Concerning the allegations according to which a number of individuals have been held in solitary confinement at Tamms Correctional Center for more than 10 years, we would like to emphasize that given its severe adverse health effects, the use of solitary confinement, especially when prolonged, can amount to acts prohibited by Article 7 of the ICCPR, torture as defined in Article 1 of the CAT, or cruel, inhuman or degrading punishment as defined in Article 16 of the CAT. In this context, we would like to bring to the attention of your Excellency's Government paragraph 6 of the General Comment No. 20 of the Human rights Committee, which notes that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 (of the ICCPR)", and principle 7 of the Basic Principles for the Treatment of Prisoners, which states that "Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged."

With regard to the allegations that individuals held in solitary confinement at the Supermax Correctional Institution in Wisconsin, are not allowed any outdoor exercise, we would like to refer your Excellency's Government to paragraph 21(1) of the UN Standard Minimum rules for the Treatment of Prisoners, which states that "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits".

Concerning the allegations according to which individuals with mental disabilities are being held in solitary confinement, we would like to emphasize that the right of persons with mental disabilities to be treated with humanity and with respect for the inherent dignity guaranteed under Article 10 of the ICCPR should be interpreted in light of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, which was adopted by General Assembly Resolution 46/119 of 17 December 1991.

Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Please provide information on the use of solitary confinement, including the legal grounds and related guidelines or procedures, if there are any.
3. Please indicate whether solitary confinement is used as a last resort.
4. We would appreciate information from your Excellency's Government clarifying how it tends to address the concerns raised in this communication, especially with regard to the pattern of prolonged solitary confinement used in prison systems.
5. Are individuals informed of the justification and the duration of their solitary confinement at the outset of the imposition?
6. Are individuals held in solitary confinement provided with an opportunity to challenge the nature of their confinement and its justification through either an internal complaint system or an independent external body?
7. Are individuals held in solitary confinement monitored by qualified and independent medical personnel? If so, please provide detailed information in this regard.
8. What is the justification for the imposition of solitary confinement on individuals with mental disabilities?

I would appreciate a response within sixty days. I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports I will submit to the Human Rights Council for its consideration.

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



Juan E. Méndez

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