

June 19, 2013

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Via email sears@state.gov

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Dear Acting Assistant Secretary Zeya, Acting Assistant Secretary Pittman, and Deputy Legal Adviser Biniiaz:

We write to urge you to extend an invitation to Professor Juan Méndez, United Nations Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, to conduct a fact-finding mission to examine the use of solitary confinement in detention facilities in the United States.

As you may be aware, the Special Rapporteur on Torture requested an invitation to visit the United States to examine, among other things, the use of solitary confinement. He recently reiterated this request.¹ To date, the Special Rapporteur's request has not been granted. The failure to grant this request is inconsistent with the U.S. government's commitment to cooperate with and support the work of U.N. independent human rights experts.

Indeed, last year, and before its re-election to the Human Rights Council, the United States pledged to "continue to strongly support the work of the Special Rapporteurs and independent experts and the dialogue that their reports engender," and specifically to "support[] the work of the U.N. Special Rapporteur on Torture."²

Moreover, in 2009, as part of the “U.S. Human Rights Commitments and Pledges” made to the U.N. General Assembly prior to its first election to the Human Rights Council, this administration stated that “(t)he United States is committed to cooperating with the UN’s human rights mechanisms ... by responding to inquiries, engaging in dialogues, and hosting visits.”³

Following its participation in the Universal Periodic Review (UPR) process at the Human Rights Council in 2011, the United States also gave an explicit commitment to “ensure the full enjoyment of human rights by persons deprived of their liberty, including by way of ensuring treatment in maximum security prisons in conformity with international law.”⁴

The Special Rapporteur on Torture, whose mandate is to prevent the occurrence of torture and inhumane treatment in U.N. member states, relies in significant part on the ability to carry out country visits in order to “study, in a comprehensive manner, trends, developments and challenges in relation to combating and preventing torture and other cruel, inhuman or degrading treatment or punishment.”⁵

In 2011, in his interim report to the U.N. General Assembly, the Special Rapporteur issued a detailed analysis of global trends in the use of solitary confinement.⁶ In that report, the Special Rapporteur concluded that solitary confinement causes severe physical and psychological harm and that under both the International Covenant on Civil and Political Rights and the Convention Against Torture, the solitary confinement of children (anyone below the age of 18 years) and persons with mental disabilities, as well as prolonged solitary confinement (over 15 days), are presumptively forms of cruel, inhuman, or degrading treatment that in certain circumstances can amount to torture.⁷

On any given day over 80,000 people are held in solitary confinement in U.S. prisons and jails, over 25,000 of whom are held in so-called “supermax” prisons specifically designed for long-term solitary confinement. Particularly vulnerable groups are routinely subjected to solitary confinement: persons with mental disabilities are dramatically overrepresented in solitary confinement; children are subjected to solitary confinement in juvenile facilities, as well as in jails and prisons that otherwise house adults; and other vulnerable groups, including LGBTI prisoners and immigration detainees, are also commonly placed in solitary confinement.⁸

That solitary confinement is an urgent and pervasive problem in this country has been noted by the Special Rapporteur in his report to the United Nations and in testimony by the Special Rapporteur before the Inter-American Commission on Human Rights.⁹ The human rights violations associated with solitary confinement have also been highlighted by members of Congress. Announcing that the Bureau of Prisons had agreed to a comprehensive and independent assessment of its use of solitary confinement in federal prisons – a few months after chairing a hearing on the consequences of solitary confinement – Senator Dick Durbin stated, “The United States holds more prisoners in solitary confinement than any other democratic nation in the world and the dramatic expansion of solitary confinement is a human rights issue we can’t ignore.”¹⁰

The U.S. Government Accountability Office recently released a report showing that, between 2008 and 2013, the number of prisoners in segregated housing units (many of whom are in solitary confinement) in Federal Bureau of Prisons facilities increased by 17%. The report also concludes that the Bureau has never evaluated the impact of solitary confinement on prisoners' well-being or institutional safety.¹¹

As a crucial step toward addressing the overuse and abuse of solitary confinement in this country, to fulfill commitments made by the U.S. government to support the work of the U.N. Special Rapporteur on Torture, and to promote greater transparency and accountability regarding the human rights record of the United States, we urge you to extend an invitation to the Special Rapporteur on Torture, Professor Juan Méndez, to undertake fact-finding in the United States, in accordance with the Terms of Reference for Fact-Finding Missions by U.N. Special Rapporteurs, on this most pressing human rights issue.

Should you have any questions or concerns, please do not hesitate to contact Mr. Jamil Dakwar, Director of the Human Rights Program at the American Civil Liberties Union either at jdakwar@aclu.org or at 212-519-7850.

We thank you in advance for your attention to this letter.

Sincerely,

American Civil Liberties Union
AdvoCare, Inc.
The Advocates for Human Rights
Allard K. Lowenstein International Human Rights Clinic, Yale Law School
American Civil Liberties Union of Florida
American Civil Liberties Union of Maine
American Friends Service Committee
Amnesty International
Amnesty International USA
Association of Legal Aid Attorneys
Center for Constitutional Rights
Center for Children's Law and Policy
Children's Law Center
Civil Rights Clinic, University of Denver College of Law
Correctional Association of New York
Disability Rights International
Ella Baker Center for Human Rights
Four Freedoms Forum
Florida Institutional Legal Services Project, Florida Legal Services, Inc.
Just Detention International
Herman's House
The Human Rights Center of Chapel Hill & Carrboro
Human Rights Defense Center
Human Rights Institute, Columbia Law School

Human Rights Watch
International Association Against Torture
International Center for Advocates Against Discrimination
The Legal Aid Society
Legal Services for Prisoners with Children
Lutheran Immigration and Refugee Service
Maine Prisoner Advocacy Coalition, Mainers Against Solitary Confinement
National Alliance on Mental Illness
National Immigrant Justice Center
National Lawyers Guild Mass Incarceration Committee
National Religious Campaign against Torture
New York Campaign for Alternatives to Isolated Confinement
New York City Jails Action Coalition
New York Civil Liberties Union
North Carolina Stop Torture Now
Orange County Bill of Rights Defense Committee (NC)
Peace and Justice Task Force of All Souls Unitarian Church/NYC
Physicians for Human Rights
Reformed Church of Highland Park, NJ
Robert F. Kennedy Center for Justice & Human Rights
Santa Clara University School of Law - International Human Rights Clinic
Social Justice Committee, UU Congregation at Shelter Rock
Solitary Watch
T'ruah: The Rabbinic Call for Human Rights
Unitarian Universalist Service Committee
Uptown People's Law Center
University of California-Davis Immigration Law Clinic
Urban Justice Center

CC:

Eric Holder, U.S. Attorney General

Juan Mendez, U.N. Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment

¹ Juan Mendez, UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Statement at the 19th session of the Human Rights Council (Mar. 5, 2012), *available at* <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/19thSession/OralStatements/Mr.%20Juan%20E.%20M%20C3%A9ndez,%20Special%20Rapporteur%20on%20Torture%20and%20Other%20Cruel,%20Inhuman%20or%20Degrading%20Treatment%20of%20Punishment.pdf>; Robert Evans, *U.N. torture sleuth says no U.S. change on Guantanamo detainee access*, REUTERS, Mar. 5, 2013, <http://www.reuters.com/article/2013/03/05/us-rights-torture-idUSBRE92411820130305>.

² U.S. Dep't of State, U.S. Human Rights Commitments and Pledges (Oct. 26, 2012), *available at* <http://www.state.gov/p/io/rls/othr/199807.htm>.

³ U.S. Dep't of State, U.S. Human Rights Commitments and Pledges (Apr. 16, 2009), *available at* <http://www.state.gov/j/drl/rls/fs/2009/121764.htm>.

⁴ Accepted UPR Recommendations, Humanrights.gov (Mar. 2012), ¶ 77, *available at* <http://www.humanrights.gov/wp-content/uploads/2012/03/USAcceptedRecommendations-2010UPR.pdf>.

⁵ Human Rights Council Res. 8/8, ¶ 3(b)-(c) (June 2008), *available at* http://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_8_8.pdf.

⁶ Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, *Interim Rep. of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement>.

⁷ *Id.*, ¶¶ 76-77.

⁸ See *Hearing on Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences Before the Subcomm. on the Constitution, Civil Rights, & Human Rights of the S. Comm. on the Judiciary* (2012) (statement of the American Civil Liberties Union), *available at* http://www.aclu.org/files/assets/aclu_testimony_for_solitary_confinement_hearing_final.pdf; Written Statement of the American Civil Liberties Union for the Inter-American Commission on Human Rights hearing on Solitary Confinement in the Americas (Mar. 12, 2013), *available at* <http://www.aclu.org/prisoners-rights/written-statement-aclu-iachr-hearing-solitary-confinement-americas>. There are also serious questions about how solitary confinement disproportionately impacts minorities. See NEW YORK CIVIL LIBERTIES UNION, *BOXED IN: THE TRUE COST OF EXTREME ISOLATION IN NEW YORK'S PRISONS* (Oct. 2012), *available at* <http://www.nyclu.org/publications/report-boxed-true-cost-of-extreme-isolation-new-yorks-prisons-2012>. This practice may also have a profound impact on women and girls, particularly those who are victims of abuse.

⁹ Interim Rep. of the Special Rapporteur on Torture, ¶ 24; Press Release, Inter-American Commission on Human Rights, IACHR Wraps Up its 147th Session (Apr. 5, 2013), *available at* http://www.oas.org/en/iachr/media_center/PReleases/2013/023.asp (The IACHR has endorsed and adopted the legal conclusions of the Special Rapporteur regarding solitary confinement).

¹⁰ Press Release, Durbin Statement on Federal Bureau of Prisons Assessment of its Solitary Confinement Practices (Feb. 4, 2013), *available at* <http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac>.

¹¹ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, *BUREAU OF PRISONS: IMPROVEMENTS NEEDED IN BUREAU OF PRISONS' MONITORING AND EVALUATION OF IMPACT OF SEGREGATED HOUSING* (May 2013), *available at* <http://www.gao.gov/assets/660/654349.pdf>.