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**Statement by Mr. Juan E. Méndez
SPECIAL RAPPORTEUR ON TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT**

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Honourable Chair,

Excellencies, Distinguished Delegates, Ladies and Gentlemen,

It is my honour to be here with you today and engage in an interactive dialogue on topics related to my mandate as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

My interim report to the General Assembly reflects on the current review process of the United Nations Standard Minimum Rules for the Treatment of Prisoners (hereinafter, the Rules) and offers an updated set of procedural standards and safeguards from the perspective of the prohibition of torture or other ill-treatment that should, as a matter of law and policy, be applied, at a minimum, to all cases of deprivation of liberty.

Honourable Chair,

The international and regional systems that oversee prison conditions operate largely with a view to preventing torture and other ill-treatment. Except for those lawful limitations that are demonstrably necessitated by the fact of incarceration, persons deprived of their liberty shall retain their non-derogable human rights and all other fundamental freedoms. Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule, the application of which cannot be dependent on the material resources available to a State party.

Since their adoption more than five decades ago, the Standard Minimum Rules for the Treatment of Prisoners have retained considerable weight as an authoritative set of generally accepted principles and practices for the treatment of prisoners and the management of penitentiary institutions. Although the Rules continue to be vital and are considered to be among the most important soft-law instruments for the interpretation of various aspects of the rights of prisoners, some areas of the rules are outdated and even in contradiction with binding human rights instruments and must be reviewed to better reflect the recent advances in correctional science and best practices. The fact that the absolute prohibition of torture and other forms of ill-treatment is absent from the Rules vividly demonstrates that the Rules require considerable revision.

In 2012, an open-ended intergovernmental expert group, established by the General Assembly Resolution 65/230, first met in Vienna to exchange information on best practices and to initiate a process of revision of the Rules. The consensus reached among the Expert Group members that "any changes to the Rules should not lower any of the existing standards" was included explicitly in its recommendations to the United Nations Commission on Crime Prevention and Criminal Justice and later endorsed by both the Economic and Social Council, and the General Assembly resolutions. Nine preliminary areas have been identified for consideration. At its second meeting, held in Buenos Aires in December 2012, the Expert Group made substantive progress and identified issues for further discussion within the targeted areas. By its resolution 2013/35, the Council again took into consideration the nine areas identified for revision and decided to extend the mandate of the Expert Group. In that same resolution, the Council invited Member States to continue to be engaged in the revision process by submitting proposals and to participate actively in the next meeting of the Expert Group, scheduled to be held in Brazil in December 2013.

Honourable Chair,

Recognising the developments on the treatment of detainees in international law since the Standard Minimum Rules were first adopted, it is crucial that the inter-governmental review process, as the most important standard-setting exercise, update the Rules to reflect current standards and developments and to ensure the consistency of the rules with the existing provisions of international law on the prohibition of torture and other ill-treatment. The current review process is not only an

opportunity to enhance the understanding of the scope and nature of the prohibition against torture and other ill-treatment, the contexts and consequences in which they occur and effective measures to prevent them; it also presents an excellent opportunity to revisit States' commitment to addressing the needs of persons deprived of liberty, with full respect for their inherent dignity and fundamental rights.

Excellency,

In my report I have carefully considered the proposed targeted areas for review from the perspective of the prohibition of torture and other ill-treatment. My report demonstrates the gaps and inconsistencies where the Rules have not kept pace with the most recent developments in human rights and offers a set of procedural standards which the revised Rules should capture. I would specifically like to draw your attention to the following issues: : solitary confinement and how to regulate it in the context of detention; and the investigation of all deaths in custody, as well as any signs or allegations of torture or other ill-treatment.

My 2011 report to the 66th session of the General Assembly focused on the current practice of solitary confinement in a majority of States. The prison regimes of solitary confinement often cause mental and physical suffering or humiliation that effectively amounts to cruel, inhuman or degrading treatment or punishment. If used intentionally, for purposes such as punishment, intimidation, coercion or obtaining information, or a confession, or for any reason based on discrimination, and if the resulting pain or suffering is severe, solitary confinement even amounts to torture. Solitary confinement should be imposed, if at all, in very exceptional circumstances, as a last resort, for as short a time as possible and with established safeguards in place after obtaining the authorization of the competent authority subject to independent review.

I would like to take this opportunity to stress that the Rules should prohibit the use and imposition of indefinite solitary confinement either as part of a judicially imposed sentence or a disciplinary measure, and alternative disciplinary sanctions should be introduced to avoid the use of solitary confinement. The Rules should also prohibit prolonged solitary confinement and frequently renewed measures that amount to prolonged solitary confinement. It is also important that the Rules set the maximum term of days beyond which solitary confinement is considered prolonged. The Rules should explicitly prohibit the imposition of solitary confinement of any duration for juveniles, persons with psychosocial disabilities or other disabilities or health conditions, pregnant women, women with infants and breastfeeding mothers. No prisoner, including those serving life sentence and prisoners on death row, shall be held in solitary confinement merely because of the gravity of the crime.

Honourable Chair,

The State bears the burden of evidentiary proof to rebut the presumption that the State is responsible for violations of the right to life and for inhumane treatment committed against persons in its custody. Accordingly, the obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies. In this respect, the lack of a prompt, thorough and impartial investigation into allegations of torture and other ill-treatment or death in custody remains one of the major challenges in fighting impunity for such acts. The decision to conduct an investigation is not discretionary, but rather an obligation irrespective of whether a complaint is filed or not. All allegations of torture and other ill-treatment should be investigated by an external investigative body, independent from those implicated in the allegation and with no institutional or hierarchical connection between the investigators and the alleged perpetrators.

In this regard, the Rules should provide detailed guidance on the purpose, modalities and overall parameters of effective investigations and documentation of torture and other ill-treatment, as reflected in the Principles on Effective Investigation and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

More specifically, the Rules should, at a minimum, require the administration to ensure that, notwithstanding internal investigations, all complaints or reports of torture or other ill-treatment, including prison violence, threats and intimidation, as well as incidents of deaths in custody (irrespective of their cause) or shortly following release, are transmitted without screening to an external independent body for investigation. In the event that the investigation confirms allegations of torture or other ill-treatment, the victims should be guaranteed both rehabilitation and redress. There should be protocols and guidelines for the prison administration about cooperating with the authorities by not obstructing the investigation and by collecting and preserving evidence. Even in the absence of an express complaint an investigation shall be undertaken if there are other indications that torture or other ill-treatment might have occurred.

Furthermore, the information related to the circumstances surrounding the death of a person in custody should be made publicly accessible, considering that public scrutiny generally outweighs the right to privacy. The prison administration should systematically identify and collect the patterns of deaths for further examination by independent bodies. It is also important that the Rules explicitly state that those potentially implicated in torture or other ill-treatment should immediately and for the duration of the investigation be suspended, at a minimum, from any duty involving access to detainees or prisoners because of the risk that they might undermine or obstruct investigations.

Excellency,

Regular inspection of places of detention constitutes one of the most effective preventive measures against torture. The revision of the Rules creates an excellent opportunity to integrate the well-established, two-fold system of independent monitoring of places of detention that allows for inspections to be carried out by governmental agencies and other competent authorities distinct from those directly in charge of the administration of the place of detention or imprisonment. In this respect, the Rules should provide for an independent oversight mechanism to have unimpeded access (on a regular and an ad hoc basis), without prior notice, to all places of deprivation of liberty, including police lock-ups, vehicles, prisons, pre-trial detention facilities, security service premises, administrative detention areas, psychiatric hospitals and special detention facilities; and to include unmonitored interviews with inmates of the inspectors' own choosing.

Honourable Chair,

The implementation of the Rules is crucial. However, no implementation can take place if the Rules are incomplete, outdated or do not adequately reflect the recent developments in international law in the area of the treatment of detainees. It is rather obvious that unless the Rules are updated and adequately reflect the recent advances in standards and best practices, it is unlikely that penitentiary staff will look beyond what the Rules require. Revision of the Rules will bring us a step closer to the implementation of principles and requirements we have adhered to by signing international and regional instruments since the adoption of the Rules, thus assisting States to live up to their obligations under binding human rights instruments.

Furthermore, States should renew their commitment to humane conditions in any place of deprivation of liberty and spare no effort to ensure the full and effective implementation of the revised Rules. Adequate resources, including properly trained staff, should be allocated to ensure the full implementation of those standards. The important role of the UN, IGOs, and NGOs in the dissemination, promotion and implementation of the Rules cannot be overstated. States should make use of technical assistance offered by relevant United Nations entities and the international community to strengthen national capacities and infrastructure in the field of standard minimum rules for treatment of persons deprived of liberty.

I call on States to continue to be actively engaged with the open-ended intergovernmental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners in order to exchange information on good practices and challenges. I also call on the Expert Group to consider the suggestions made in my present report – as well as those made by the Subcommittee on Prevention of Torture, the Inter-American Commission on Human Rights, and several non-governmental organizations -- in the deliberations ahead and in proposed revisions to the Rules as the Expert Group meeting in Brazil in December 2013.

Honourable Chair,

I wish also to provide a brief update on the status of my country visits.

I would like to thank the Government of Ghana for extending an invitation to conduct a country visit which I will undertake from 7 to 14 November 2013. My country visit to Thailand, scheduled for early 2014, has at the request of the Government, been rescheduled for the second half of 2014. I would also like to thank the Governments of Georgia and Mexico for having extended invitations for country visits in 2014. I am currently engaged with both Governments regarding dates.

I regret that country visits planned to Bahrain and Guatemala for 2013 have been postponed at the request of the respective Governments. In the case of Bahrain, the visit has been postponed by the Government for a second time, again at very short notice. I consider the postponement an effective cancellation as no new dates have been proposed. I would have conducted my visit in the spirit of cooperation and expected the Government to share that approach; regrettably, this does not appear to be the case. The Government is facing many challenges in light of the on-going tensions so I remain engaged and hope to secure definitive dates for a visit in 2014.

I have reiterated my request for an invitation from the Government of the United States of America to visit detainees at the U.S. Naval Base at Guantanamo Bay, on conditions that I can accept. I do, however, welcome the Government's offer to facilitate my travel to Guantanamo Bay to observe proceedings before the Military Commission on issues that are pertinent to my mandate. I hope to be able to plan this visit for one of the hearings that is scheduled in the near future. My request to conduct a country visit to the United States mainland to visit a number of federal and state prisons is still pending.

I would also like to thank the Governments of Morocco, Tajikistan and Tunisia for their ongoing engagement after my country visit. Upon the formal invitation of the concerned Government, I plan to conduct a number of follow-up visits in 2014 and 2015. Follow-up is one of my priorities and with the support from my Anti-Torture Initiative project, I look forward to providing further assistance to the respective Governments in the implementation of my recommendations.

Honourable Chair, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

I thank you for your attention and look forward to our dialogue.
