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Date: 25 November 2011	Number of pages including this one 4
Subject: Letter from the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment	

Please find attached a letter from the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, Mr. Juan E. Mendez in the case of **Barbar Ahmad and Others v. The United Kingdom** for the Court's consideration.

Best regards.



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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

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REFERENCE: G/SO 214 (53-21)

25 November 2011

Dear Mr. T L Early,

In my capacity as United Nations Special Rapporteur on the question of torture and other cruel, inhuman, or degrading treatment or punishment (SR on Torture) pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/23, I have drafted a submission on a voluntary basis to the European Court of Human Rights (ECHR) in the case of **Barbar Ahmad and Others v. The United Kingdom** for the Court's consideration without prejudice to the privileges and immunities of the United Nations and its experts and officials.

It has recently come to my attention that the issue of solitary confinement, a practice of central concern to the mandate of the SR on Torture, has arisen before the Court in connection to the present case. I acknowledge however, that the period for third party observations in the present case closed in December 2010, and that the case is in the final stages of consideration by the Court, and therefore will keep my submission concise.

Pursuant to UN Human Rights Council 16/23 (A/HRC/RES/16/23), I act under the aegis of the Human Rights Council without remuneration as an independent expert within the scope of my mandate which enables me to seek, receive, examine and act on information from numerous sources, including individuals, regarding issues and alleged cases concerning torture and or other cruel, inhuman or degrading treatment or punishment. Where necessary, in response to complaints and other communications received, I conduct field visits to relevant States and engage in a dialogue with States to determine if violations have occurred and propose remedies. The communications with States also seek to ensure that every effort is taken to root out the practice of torture worldwide. The working methods of the SR on Torture ensure confidentiality of the specific content of complaints and any follow-up communications until such time as they

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are reflected in official reports submitted to the UN Human Rights Council or when mandate holders determine that the specific circumstances require action to be taken before that time. This confidentiality is of central importance to my work because of the nature of the allegations and potential for reprisals.

However, as it is relevant to the present case before the Court, I write to acknowledge that I have received complaints concerning detainees held at the ADX Florence prison facility as a result of terrorism-related convictions. These complaints have referenced, *inter alia*, the restrictive nature of the detention regime at ADX Florence, including the use of special administrative measures and solitary confinement for prolonged and indefinite periods.

More broadly, I am engaged with the international community on the issue of solitary confinement as highlighted in my most recent report to the UN General Assembly (U.N. Doc. A/66/268, 5 August 2011). This report is a thematic study and does not address solitary confinement as it is practiced in any one State. I published this report in an effort to generate guidelines to govern State practice in this area, the most basic of which calls for a complete ban on solitary confinement, particularly when used for a prolonged or indefinite period, and identifies the very limited circumstances in which solitary confinement may be practiced.

My principal concern is the effect of the social isolation and sensory deprivation that is characteristic of most solitary confinement regimes. Not only is solitary confinement antithetical to the rehabilitation of offenders and facilitation of their reintegration into society, but medical studies and anecdotal evidence has additionally shown that this form of social isolation and sensory deprivation can cause serious harm to the physical and mental state of a detainee, even after a short period of time (see U.N. Doc. A/66/268, paras. 62-65). The negative impact on detainees under a solitary confinement regime is severe because solitary confinement allows individuals to be confined to their cells for 22 to 24 hours a day, without any meaningful social contact and deprived of most, if not all, physical and social stimuli (see U.N. Doc. A/66/268 para. 25). I am particularly concerned with the use of solitary confinement as a punishment, during pre-trial detention, indefinitely or for a prolonged period, for juveniles or persons with mental disabilities, in which cases it can undoubtedly amount to torture or other cruel, inhuman or degrading treatment or punishment.

For the above reasons, as also asserted by former SR's on Torture, solitary confinement should only be used in exceptional circumstances, and with appropriate procedural and judicial safeguards in place (E/CN.4/1999/61, para. 394, and E/CN.4/2003/68, para. 26 (m)). Moreover, prolonged solitary confinement may itself amount to prohibited ill-treatment or torture. This view is broadly supported by my own research and the jurisprudence of the regional human rights bodies, and universal human rights mechanisms (see U.N. Doc. A/66/268, paras. 27-39). Moreover, solitary confinement that is either indefinite or prolonged, as I have defined as exceeding 15 consecutive days in length, should be subject to an absolute prohibition because of the severe pain and suffering that it inflicts. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has called for a similar ban on solitary confinement when used for an extended period and recommends that if States employ the practice, then they do so only under exceptional circumstances, for the shortest period possible and always subject to judicial oversight (see CPT/Inf (2011) 28, paras. 56-57, 10 November 2011).

Alongside this report, I am engaged with numerous states, including the United States of America, on the issue of solitary confinement. For instance, as widely reported in the media, I

am engaged in a dialogue with the United States Government on allegations of the prolonged solitary confinement of Mr. Bradley Manning, a United States army soldier charged with the unauthorized disclosure of classified information. The United States Government granted me permission to interview Mr. Manning but did not agree to an unmonitored conversation. Under such terms, both Mr. Manning and I declined the offer. In April 2011, Mr. Manning was transferred to an army prison at Fort Leavenworth, Kansas, where he is now held under conditions that do not include solitary confinement.

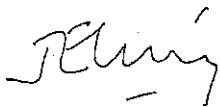
It is my understanding that prolonged and indefinite solitary confinement is applied in United States' prisons in a variety of ways and for different purposes. In particular, it is applied to inmates accused or convicted of terrorism-related offenses, both during pre-trial detention and post-conviction. For these inmates, solitary confinement is often supplemented with "special administrative measures" (SAMs) that further restrict contacts of these defendants with family and lawyers. Both solitary confinement and SAMs seem to be imposed without any relation to the behaviour of the inmate or his observance of prison discipline. Although these restrictions are imposed invoking the need to prevent acts of terrorism by others, no particular showing is made of specific reasons for such measures. Indeed, it appears that inmates have limited or no opportunity to challenge those reasons or to do anything that would allow them to "step down" from SAMs or solitary confinement.

I understand that in the present case, the Applicant asserts that his possible extradition to the United States may violate the legal principle of non-refoulement under Article 3 of the European Convention on Human Rights. Non-refoulement requires States to act affirmatively to prevent the extradition of detainees to States where torture or other cruel, inhuman, or degrading treatment or punishment are practiced. Without causing prejudice to the Court's findings, I am concerned that extradition of a detainee to a State that practices prolonged solitary confinement with limited recourse would violate Article 3.

As SR on Torture I will continue to engage with States and other bodies on the matter of solitary confinement.

Again, this letter is provided without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1964 Convention on the Privileges and Immunities of the United Nations.

Sincerely,



Juan E. Méndez
Special Rapporteur on torture and other cruel,
inhuman or degrading treatment or punishment

* * * RAPPORT DE RESULTAT DE LA COMMUNICATION (25. NOV. 2011 11:21) * * *

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UNITED NATIONS
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