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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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Madam President, Distinguished Representatives, Ladies and Gentlemen,

It is with great honor that I address this Council, for the second time, in my capacity as United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. In so doing, I wish to thank distinguished Representatives and observers of this noble body for the confidence you have bestowed in me.

Madam President,

Country visits are an important component of the mandate’s work and since taking up my appointment I have conducted two visits, one to Tunisia in May 2011 and one to Kyrgyzstan in December 2011. I would like to thank the respective Governments for extending me an invitation and for their full cooperation during my visits. The reports on the country visits to Tunisia and Kyrgyzstan are contained in documents A/HRC/19/61/Add.1 and Add.2 respectively.

At the invitation of the Government I plan to undertake a visit to Tajikistan in May 2012 and to Morocco in September 2012. I also thank the Government of Uruguay for extending me an invitation to conduct a follow-up country visit.

I would like to welcome the willingness of the Government of Kyrgyzstan to support the initiative of the Regional Office of the United Nations High Commissioner for Human Rights (OHCHR) for Central Asia to organise a Roundtable on Torture Prevention in the Kyrgyz Republic as one of the steps taken on the implementation of my recommendations. Follow-up is crucial for assessing the progress made in the implementation of recommendations and constitutes a good practice that should be replicated.

Madam President,

I had planned to visit Iraq from 6 to 15 October 2011, as these dates had been provisionally agreed upon, but days before the mission my proposed agenda had not been confirmed, compromising security preparations, so the visit could not proceed. In late January 2012, the Government of Iraq informed me that 23 April 2012 has been
scheduled as the starting day of my visit. I will meet with the Permanent Mission of Iraq this week with the hope of finding alternative dates, as I unfortunately have previously scheduled academic commitments which cannot be changed.

I was scheduled to visit Bahrain from 8 to 14 March 2012. It is with great regret that this mission was postponed by the Government just days before it was scheduled to begin. The Government advised it is still undergoing major reforms and would like some important measures to be implemented before, which the Government considers critical to my mandate, so I am able to assess its work. It further advised that a number of key authorities, with whom I wished to meet, would be limited in their ability to engage due to anticipated changes within the Government. The Government has proposed dates in July and I will discuss new dates as I am committed to undertaking this visit.

Postponements, at such a late state, are problematic when a significant amount of resources have been invested by all concerned actors, most significantly local NGOs, activists, lawyers, victims and their families who are left feeling deeply discouraged.

It has been just over one year since I made my request on 1 February 2011 to conduct a visit and to follow up on my predecessor’s request to visit the detention facilities at Guantanamo Bay and to conduct unsupervised interviews with detainees. On 22 February 2012, I received an invitation by the United States of America to visit the detention facilities at Guantanamo Bay and to receive high level briefings but was informed that the visit cannot include private interviews with detainees. Unfortunately, I am not able to comply with these conditions in light of the Terms of Reference for Fact Finding missions by Special Rapporteurs. These principles, contained in the Terms of Reference, are integral not only to my mandate but to the system of Special Procedures as a whole. I appreciate the Government’s engagement on this issue and look forward to further substantive discussions to see if acceptable conditions for a visit can be agreed upon. I have also requested an invitation to conduct a fact-finding mission to the United States of America, including access to maximum security prisons on the mainland. That request is pending.

Madam President,
My objective in selecting commissions of inquiry as my main thematic report is to generate further discussion of the standards that apply to the establishment and conduct of commissions of inquiry, and the relationship between such commissions and the fulfillment by States of their international legal obligations with regard to torture and other forms of ill-treatment. Forward looking, I hope it will deepen the international community’s understanding on when such commissions should be created by States in response to patterns or practices of torture and other forms of ill-treatment.

When used properly, a commission of inquiry may be a powerful tool in uncovering and bringing an end to patterns of violations of torture and ill-treatment; taking first steps in addressing the victims’ right to know the truth and identifying reparation measures in consultation with victims; and ensuring accountability of State institutions and compliance with international human rights law. Commissions of inquiry play a complementary role vis-à-vis other investigative mechanisms by providing unique opportunities for a deeper understanding of the underlying context in which violations were committed, a review of governmental policies, practices and institutional shortcomings, and truth-telling. They also provide an opportunity for contributing to the healing of victim communities and for rendering independent expert recommendations on reparation and guarantees of non-repetition. In addition, commissions of inquiry can play an integral role in providing impetus and eventually facilitating the formal investigation of legacies of torture and other forms of ill-treatment, and pave the way to effective and fair prosecutions.

In my view, where it is possible, national commissions of inquiry ought to be pursued before resorting to the establishment of an international commission of inquiry. Proximity to the affected population often adds to the legitimacy and potential impact of a commission of inquiry. States must be encouraged to take measures that fulfill their international obligations regarding truth, justice, reparation and guarantee of non-repetition of torture. States should, however, seek international assistance where they lack necessary resources and/or expertise. Further, the international community has a duty to establish a commission of inquiry, using the various mechanisms available, when the State fails to break the cycle of impunity or is unwilling or unable to explore the truth and
provide justice or where human rights violations threaten international peace and security. In addition, international commissions of inquiry can play a role in addressing allegations of widespread or systemic torture by calling for substantive reforms to national institutions to ensure that accountability mechanisms conform to international standards. The reports of the Independent International Commission of Inquiry on the Syrian Arab Republic (A/HRC/19/69) and the International Commission of Inquiry on Libya (A/HRC/19/68), to be considered before the Council during this session, are recent examples in this respect.

For States who wish to establish a commission of inquiry, the earlier work carried out on this subject, including the adoption of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and of the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Impunity Principles)\(^1\) provide useful guidance both to States and to the international community on national as well as international commissions of inquiry. My report demonstrates the emphasis the mandate places on strengthening the application and implementation of already existing standards for combating torture and other cruel, inhuman and degrading treatment or punishment. I encourage further progress to be made by States towards the implementation of the Protocol.

I hope that my report can complement the highly regarded documents I have just referred to. Rather than rendering recommendations, I identify effective practices and discuss standards as a way to determine when and how commissions of inquiry actually advance principles of international law and aid States and the international community in the fulfillment of their international legal obligations. By expanding on key elements such as: resources; choice between international and national commissions; composition; mandate, powers and attributions; methodology; evaluation of evidence; relationship with prosecutions; and the report as its most important outcome – I believe that fair, thorough and effective commissions of inquiry into torture and other forms of ill-treatment can be

achieved. Commissions of inquiry should be viewed as a strong yet flexible tool, to assist States in fulfilling their legal obligations to investigate and prosecute torture and other forms of ill-treatment, and to provide effective remedies to victims of past violations, including reparation for harm suffered and prevention of their reoccurrence.

Madam President,

The purpose of my report is: on the one hand, to encourage commissions of inquiry wherever patterns of torture are present; on the other, to develop standards that allow us to assess the conditions under which commissions of inquiry are truly effective and fair mechanisms to prevent, to redress and to punish torture.

In October 2011, at the 66th session, I submitted my first interim report (A/66/268) to the General Assembly, presenting my findings on the global use of solitary confinement. I thank Member States for their engagement during the interactive dialogue. In this regard, I would like to emphasize that solitary confinement is a harsh measure which can be used only in very exceptional circumstances, for as short a time as possible. When it is used in exceptional circumstances, procedural safeguards must be followed. Prolonged solitary confinement exceeding 15 days, and indefinite solitary confinement are of particular concern to me.

In fact, I have been following the issue of solitary confinement, especially the practice of prolonged solitary confinement, since I took office. Between 1 December 2010 and 30 November 2011, I transmitted to respective Governments around 20 allegation letters and urgent appeals concerning alleged abuses of solitary confinement to more than ten States. My initial research on the subject indicates that solitary confinement is being increasingly used in many States, for a wide variety of purposes, without sufficient safeguards and for lengthier periods than before.

Guided by a victim-centred approach, Addendum 4 of my present report to the Human Rights Council, provides observations on each case transmitted to Governments during the reporting period and Government responses received in relation to these communications until 31 January 2012. Among these cases, I am particularly concerned
about allegations of excessive use of force by law enforcement officials constituting torture or other cruel, inhuman or degrading treatment or punishment, which I have found to be particularly prevalent in the context of the Arab Spring and the widespread practice of solitary confinement and its prolonged use. With regard to allegations of deaths in custody and the worrying cases of mass deaths in prison riots in a number of countries, I would like to reiterate that there is a presumption of State responsibility when an individual dies in custody and that States must investigate the case thoroughly. During the reporting cycle, I also received a number of cases in relation to allegations of confessions obtained under torture and their admission as evidence against a criminal defendant. In this regard, I would like to emphasize the exclusionary rule and call on States to ensure, through proper procedural safeguards, that evidence obtained under torture is declared inadmissible.

Madam President,

From 15 to 22 May 2011, I conducted a visit to Tunisia which took place during a transition period following a decade in which the very foundation of the rule of law and the implementation of the absolute prohibition of torture were absent at the judicial and executive levels. The purpose of my visit was to help the interim Government lay the foundation of the rule of law and the implementation of the absolute prohibition of torture.

Regarding the abuses committed during the revolution and its aftermath, I recommended that the fact-finding commission established to investigate those events complete its work as soon as possible and that its findings be followed by investigations and prosecutions, when warranted, without further delay, and that victims receive adequate reparation and rehabilitation. I also urged a full and honest reckoning with the legacy of torture in the preceding 23 years of autocratic rule.

Since my country visit in May of last year, a number of developments have taken place in the country, including the elections to the Constituent Assembly and the opening of the first UN human rights office in this region, to mention but a few. Combating impunity and ensuring accountability is crucial to restoring justice. The current transition
in Tunisia represents an historic opportunity to begin to establish accountability, to ensure reparations to victims and to institutionalize safeguards.

I would like to welcome the high-level consensus across the political spectrum on the need to abolish torture and ill-treatment, and the demonstrated willingness to ensure that the roadmap to justice is laid down at the earliest possible stage. The ratification of several international human rights instruments, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Statue of Rome for an International Criminal Court and the Ministry of Justice’s initiative to develop a draft legal framework for the harmonization of national legislation with international human rights standards are a manifestation of good will and demonstrate the commitment to reform the legal system of Tunisia. While acknowledging a series of positive steps, given the legacy of the past regime, in my view, it cannot be said that a culture of impunity no longer prevails in Tunisia. Although the practice of torture and ill-treatment has decreased, incidents of torture and ill-treatment continue to occur during arrest, while in custody and during interrogations.

Two issues need the urgent attention of the Government. First, the prompt and thorough investigation into all cases of torture and ill-treatment, prosecution of the perpetrators, and the provision of effective remedies and reparations, including rehabilitation services, for all victims of torture and ill-treatment. Second, the implementation of constitutional, legislative and administrative reforms should be done on an expedited basis, to ensure the establishment of solid safeguards against torture and ill-treatment.

Madam President, distinguished delegates, ladies and gentlemen,

From 5 to 13 December 2011, I undertook a country visit to Kyrgyzstan at the invitation of the Government and would like to thank the authorities for providing clarification and detailed information on steps taken during the months following my visit. The information provided by the Government is published as Addendum 5 of my report at the request of the Government.
Kyrgyzstan has undergone significant developments since 2010. While recognizing the positive developments and progress made in securing constitutional rights and freedoms, there remain significant gaps in legislation, policies and law enforcement practices. The lack of effective legislative safeguards against torture and ill-treatment and the insignificant sanction provided for the crime of torture inevitably create an environment conducive to impunity.

I was encouraged by the open recognition by the Kyrgyz authorities of the existence of torture and ill-treatment in law-enforcement practices during the first hours of arrest and detention and the serious lack of effective safeguards. I welcome the political will and concrete steps undertaken to address significant shortfalls in legislation and law enforcement practices with a view to curb torture and ill-treatment. At this juncture it is imperative that the Government expedite legislative reforms to ensure the absolute prohibition of torture and establish effective safeguards against torture and ill-treatment in law and practice; expedite a prompt, impartial and thorough investigation into all allegations of torture and cruel, inhuman or degrading treatment or punishment; undertake public prosecutions without delay where the evidence warrants them; establish clearly set out enforcement mechanisms to provide victims with effective remedy and redress, including compensation and as full rehabilitation as possible by allocating funds in the national budget; and fulfill the right of the victim to obtain redress through civil litigation regardless of whether the guilt of a public agent has been determined by a court in a criminal case.

Regarding the many problems I observed in the penitentiary system, some important steps could be taken that are not resource-dependent, such as establishing stronger legal and procedural safeguards and a more widespread application of non-custodial measures for persons accused of petty crimes. A coordinated approach and State budgetary allocations are needed to improve the inhuman conditions I saw in most detention facilities. In this context, I have recommended that the Government appoint a high-level commission of multidisciplinary, credible specialists to conduct an urgent inspection of all detention centres. It is equally imperative to ensure a swift establishment of an effective national preventive mechanism in accordance with the Optional Protocol.
to the Convention against Torture, and to equip the mechanism with sufficient human and other resources to enable it to inspect all places of detention regularly, as well as unannounced visits, to receive complaints, initiate prosecutions and follow them through to their conclusion.

Madam President,

In the exercise of my mandate, and with reference to paragraph 5(d) of Resolution 16/23 that urges States to ensure proper follow-up to the recommendations and conclusions of the Special Rapporteur, I shared the follow-up tables with respective States visited by the mandate in the past ten years. Governments are asked to provide information and comments on measures taken with regard to implementation of the recommendations, as reflected in Addendum 3 of my report. I would like to express my gratitude to those Governments who responded to my request in a timely manner providing detailed information on steps taken during the reporting period. I regret that due to late submissions by several Governments, it has not been possible to reflect all the information in this report but the recent responses will be noted for future reference.

The follow up document contains information provided by States and other stakeholders, including United Nations mechanisms, National Human Rights Institutions and non-governmental organizations, relating to the measures adopted in connection with recommendations made after conducting country visits. My observations note various positive steps undertaken, while calling, once again for further follow-up measures.

I strongly believe that follow-up is a key element in ensuring the effectiveness of recommendations of Special Procedures mechanisms and it provides an excellent opportunity to reinforce cross-cutting recommendations emerging from other regional and UN mechanisms, including the recommendations issued by the Committee against Torture, the Subcommittee on the Prevention of Torture and the Universal Periodic Review.

Madam President and all here gathered,

I thank you for your attention and look forward to a fruitful dialogue with you.