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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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Mister President, Distinguished Representatives, Ladies and Gentlemen,

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

Mister President,

Country visits are an important component of the mandate's work. I would like to thank the respective Governments of Tajikistan and Morocco¹ for extending me an invitation and for their full cooperation during my visits which took place in May and September of 2012. The reports on the country visits to Tajikistan and Morocco are contained in documents A/HRC/22/53/Add.1 and Add.2, respectively.

For 2013, I am pleased to announce that my visit to Bahrain, which was postponed last March, is now scheduled to take place from the 8 to 16 May 2013. I welcome that the Government of Bahrain has committed to this visit and expressed a willingness to engage on issues within my mandate. I also thank the Government of Guatemala for extending me an invitation to visit which I hope to conduct in September or October this year. I also thank the Government of Thailand for the invitation to visit in February 2014.

Mister President and distinguished delegates,

My main report focuses on certain forms of abuse in health-care settings that may cross a threshold of mistreatment that is tantamount to torture or cruel, inhuman or degrading treatment or punishment. The report sheds light on often undetected forms of abusive practices that occur under the auspices of health-care policies, and emphasizes how certain treatments run afoul of the prohibition on torture and ill-treatment. It identifies the scope of the State's obligation to regulate, control and supervise health-care

¹ The Special Rapporteur also visited Laâyoune, Western Sahara, on 17 and 18 September 2012. As an independent mandate holder, his visit should not be interpreted as expressing any political view concerning the present or future status of the Non-Self-Governing Territory of Western Sahara. The territory is subject to the right to self-determination in conformity with the principles contained in General Assembly resolutions 1514 (XV) and 1541 (XV).

practices with a view to preventing mistreatment under any pretext and the policies that promote these practices and existing protection gaps.

Mister President,

In order to demonstrate how abusive practices in health-care settings meet the definition of torture, the key elements of the definition of torture and ill-treatment and its applicability to the abuses in health-care settings are examined. Important interpretative and guiding principles such as legal capacity, informed consent, and the doctrine of “medical necessity” as well as the concept of stigmatized identities provide useful guidance in understanding the breadth of the problem and the underlying causes that are paramount to most of these abusive practices. It is important that States clarify that domestic laws on legal capacity are in compliance with the Convention on the Rights of Persons with Disabilities (CRPD) standards. Free and informed consent should be safeguarded on an equal basis for all individuals without any exception, through the legal framework and judicial and administrative mechanisms, including through policies and practices to protect against abuses. Any legal provisions to the contrary, such as provisions allowing confinement or compulsory treatment in mental health settings, including through guardianship and other substituted decision-making, must be repealed.

Numerous reports document that users of illicit drugs who are detained in compulsory detention centers undergo painful withdrawal from drug dependence without medical assistance, administration of unknown or experimental medications, State-sanctioned beatings, caning or whipping, forced labour, sexual abuse and intentional humiliation. Notwithstanding the commitment to scale-up methadone treatment and evidence-based treatment as opposed to punitive approaches, those remanded to compulsory treatment in the punitive drug-free centres continue to exceed, exponentially, the number receiving evidence-based treatment for drug dependence.

In this respect I am calling on States to close compulsory drug detention and so called rehabilitation centres without delay and implement voluntary, evidence-based and rights-based health and social services in the community. All harm-reduction measures

and drug-dependence treatment services, particularly opioid substitution therapy, should be available to people who use drugs, in particular those incarcerated.

Mister President,

My mandate has on numerous occasions responded to various initiatives in the area of gender mainstreaming and combating violence against women by examining gender-specific forms of torture with a view to ensure that the torture protection framework is applied in a gender sensitive manner. I sought to complement these efforts by identifying the reproductive rights practices in health-care settings that I believe amount to torture or ill-treatment. Examples of such practices include abusive treatment and humiliation in institutional settings; involuntary sterilization; denial of legally available health services such as abortion and post-abortion care; forced abortions and sterilizations; female genital mutilation; and violations of medical secrecy and confidentiality in health-care settings such as denunciations of women by medical personnel when evidence of illegal abortion is found. States should ensure that women have access to emergency medical care, including post-abortion care, without fear of criminal penalties or reprisals. States whose domestic law authorizes abortions under various circumstances should ensure that services are effectively available without adverse consequences to the woman or the health professional.

In 2012, WHO estimated that 5.5 billion people live in countries with low or no access to controlled medicines and have no or insufficient access to treatment for moderate to severe pain. Despite the repeated reminders made by the Commission on Narcotic Drugs to States of their obligations, 83 per cent of the world population has either no or inadequate access to treatment for moderate to severe pain. Many countries fail to make adequate arrangements for the supply of these medications. Although relatively inexpensive and highly effective medications such as morphine and other narcotic drugs have proven essential “for the relief of pain and suffering”, these types of medications are virtually unavailable in more than 150 countries. Ensuring the availability and accessibility of medications included in the WHO Model List of Essential Medicines is not just a reasonable step but a legal obligation under the 1961 Single

Convention on Narcotic Drugs. When the failure of States to take positive steps, or to refrain from interfering with health-care services, condemns patients to unnecessary suffering from pain, States not only fall foul of the right to health but may also violate an affirmative obligation under the prohibition of torture and ill-treatment.

States should adopt a human rights-based approach to drug control as a matter of priority to prevent the continuing violations of rights stemming from the current approaches to curtailing supply and demand.

Mister President,

Despite the significant strides made in the development of norms for the abolition of forced psychiatric interventions on the basis of disability alone as a form of torture and ill-treatment and the authoritative guidance provided by the CRPD, severe abuses continue to be committed in health-care settings where choices by people with disabilities are often overridden based on their supposed “best interests”, and where serious violations and discrimination against persons with disabilities may be masked as “good intentions” of health-care professionals.

The mandate has previously declared that there can be no therapeutic justification for the use of solitary confinement and prolonged restraint of persons with disabilities in psychiatric institutions; both prolonged seclusion and restraint constitute torture and ill-treatment. In my 2012 report (A/66/88) I addressed the issue of solitary confinement and stated that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment.

Mister President,

Fully respecting each person’s legal capacity is a first step in the prevention of torture and ill-treatment. As already established by the mandate, medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose or when aimed at correcting or alleviating a disability, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned.

Deprivation of liberty on grounds of mental illness is unjustified. Under the European Convention on Human Rights, mental disorder must be of a certain severity in order to justify detention. I believe that the severity of the mental illness cannot justify detention nor can it be justified by a motivation to protect the safety of the person or of others. Furthermore, deprivation of liberty that is based on the grounds of a disability and that inflicts severe pain or suffering falls under the scope of the Convention against Torture. In making such an assessment, factors such as fear and anxiety produced by indefinite detention, the infliction of forced medication or electroshock, the use of restraints and seclusion, the segregation from family and community, should be taken into account.

Mister President,

The CRPD offers the most comprehensive set of standards on the rights of persons with disabilities and it is important that States review the anti-torture framework in relation to persons with disabilities in line with the CRPD. States should impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs, for both long- and short- term application. The obligation to end forced psychiatric interventions based on grounds of disability is of immediate application and scarce financial resources cannot justify postponement of its implementation.

Forced treatment and commitment should be replaced by services in the community that meet needs expressed by persons with disabilities and respect the autonomy, choices, dignity and privacy of the person concerned. States must revise the legal provisions that allow detention on mental health grounds or in mental health facilities and any coercive interventions or treatments in the mental health setting without the free and informed consent by the person concerned.

Mister President,

Minority and marginalized groups and individuals should be afforded special protection as a critical component of the obligation to prevent torture and ill-treatment by, inter alia, investing in and offering marginalized individuals a wide range of voluntary support that enable them to exercise their legal capacity and that fully respect their individual autonomy, will and preferences. There is an abundance of testimonies and cases of ill-treatment in health-care settings such as the denial of opiate substitution treatment to persons who use drugs; documented negative and obstructive attitudes on the part of medical workers, including denial of necessary health-care services to sex workers and lesbian, gay, bisexual and transgender and intersex persons; homophobic ill-treatment including State-sponsored forcible anal examinations for the prosecution of suspected homosexual activities, hormone therapy and genital-normalizing surgeries under the guise of so called “reparative therapies”, and irreversible sex assignment; involuntary sterilization; forced medical interventions; and non-consensual medical practices in relation to persons with disabilities.

States should repeal any law allowing intrusive and irreversible treatments when enforced or administered without the free and informed consent of the person concerned.

Mister President,

The patterns illustrated in the report likely represent a small fraction of this global problem. Such interventions always amount at least to inhuman and degrading treatment, often they arguably meet the criteria for torture, and they are always prohibited by international law.

All countries should enforce the prohibition of torture in all health-care institutions, both public and private by, inter alia, declaring that abuses committed in the context of health-care can amount to torture or cruel, inhuman or degrading treatment or punishment; regulating health-care practices with a view to preventing mistreatment under any pretext; and integrating the provisions of prevention of torture and ill-treatment into health-care policies.

The significance of categorizing abuses in health-care settings as torture and ill-treatment and examining abuses in health-care settings from a torture protection framework provides the opportunity to solidify an understanding of these violations and to highlight the positive obligations that States have to prevent, prosecute and redress such violations. Furthermore, by reframing violence and abuses in health-care settings as prohibited ill-treatment, victims and advocates are afforded stronger legal protection and redress for violations of human rights.

I hope that my 2013 report will generate a discussion among law-makers and advocates and highlight the additional measures needed to regulate, control and supervise health-care practices with a view to preventing mistreatment under any pretext.

Mister President and distinguished delegates,

From 10 to 18 May 2012, I undertook a country visit to Tajikistan at the invitation of the Government and would like to thank the authorities for providing me with unimpeded access to all detention facilities. I would also like to thank the Government for the clarification and detailed information on steps taken during the months following my visit.

In the past two years, Tajikistan has undergone significant developments. It has introduced some encouraging changes in the normative framework including, in April 2012, a new criminal provision defining torture and providing penalties for it. However, despite the political will and efforts made by the Government of Tajikistan to address shortfalls in legislation, significant gaps in legislation, policies and law enforcement practices remain.

At this juncture it is imperative that the Government: ensure that no person convicted for the crime of torture may benefit from an act of amnesty; undertake public prosecutions when law enforcement officials resort to illegal methods of interrogation; expedite a prompt, impartial and thorough investigation into all allegations of torture and cruel, inhuman or degrading treatment or punishment; amend the Code of the Criminal Procedure to ensure that it takes into account the principle of non-refoulement; introduce

independent, effective and accessible complaint mechanisms in all places of detention; and take concrete measures to speed up the ratification of the Optional Protocol to the Convention against Torture and subsequently establish an effective national preventive mechanism.

I call on the Government to take decisive steps to ensure immediate and effective implementation of my recommendations and for the international community to assist Tajikistan in its fight against torture and ill-treatment by providing it with appropriate financial and technical support.

Mister President,

From 15 to 22 September 2012, I undertook a country visit to Morocco at the invitation of the Government. I found that a culture of human rights is emerging in Morocco. The establishment of the National Council of Human Rights is one example of a positive institutional aspect. I recognized that crucial to the development of an emerging culture of human rights is the effort made by the Moroccan authorities, through the Equity and Reconciliation Commission, to address the legacy of past abuses during the “years of lead” and I welcomed the acknowledgment of cases of torture during that period. However, with regard to the present situation I regretted that senior authorities generally deny that torture still occurs today.

In this context, I found that frequent exertion of undue physical and mental pressure upon detainees during interrogations is still happening; this requires the Government’s full attention. In addition I found that treatment amounting to the excessive use of force and even torture is linked to large demonstrations or assembly and spikes when there is a perceived threat to national security.

In cases involving State security, such as terrorism, membership in Islamist movements, or supporters of independence for Western Sahara, I found that there is a pattern of torture and ill-treatment by police officers during the arrest process and while individuals are in detention. In addition, I found that many individuals have been coerced

to confess and sentenced to prison on the basis of such a confession. When the police or other authorities respond to incidents that involve protests or assembly, I found that there is a corresponding increase in the use of excessive force. I reiterated that whether or not the demonstrations are permitted, authorities must comply with international standards based on necessity and proportionality in the use of force and respect for the right to life and physical integrity.

I noted with concern that complaints regarding such abuses are often dismissed by the investigative authorities and the courts, and I recommended that the gap that exists between law and practice in this respect should be closed.

While recognizing the difficulties posed by the flow of undocumented migrants in some parts of the State, I expressed concern about a rise in reported violence, including beatings, sexual violence, and other forms of ill-treatment by security forces, particularly against sub-Saharan migrants.

Regarding my visit to Laâyoune, Western Sahara, I found that torture and ill-treatment were inflicted during arrest, at police stations and at the prison in Laâyoune. I also found that excessive force was used by Moroccan law-enforcement officials during and after demonstrations in order to intimidate protestors. The testimonies received indicate that members of the Sahrawi population are specifically, but not exclusively, victims of such violations.

In this context I recommended that the Government should further strengthen the protection of human rights by inviting the United Nations special procedures mechanisms; strengthen its engagement with civil society and the national human rights institution; and that the Government should further facilitate the presence of international non-governmental organizations. I further noted that the entire region would benefit from the establishment of an inter-governmental human rights monitoring mechanism, for the entire Western Saharan region, as a confidence-building measure that would help

improve the state of human rights in the region, particularly with respect to the prohibition on torture and other cruel, inhuman and degrading treatment or punishment.

I would like to thank the Government of Morocco for its efforts in strengthening the protection of human rights in general and the prohibition of torture in particular and for its cooperation with the Special Procedures and with my mandate. I commend the Government for its continued efforts as regards the improvement of detention conditions, including the closing of old facilities and the construction of new detention facilities. I would also like to thank the Government for its comprehensive replies and comments to my report and its declared intention to implement my recommendations. The observations provided by the Government are published as Addendum 5 of my report at the request of the Government. In this context I look forward to receiving the Government's Progress Report as mentioned in its observations. Finally, I would like to thank the Government for its openness to future cooperation with the mandate and follow-up activities with regard to the implementation of my recommendations and thus, the eradication and prevention of torture and ill-treatment.

Mister President,

As I have identified follow-up as one of my priorities, I have initiated a project, supported by the Center for Human Rights and Humanitarian Law at American University, Washington College of Law called that Anti-Torture Initiative to support follow-up visits and I am engaged with Governments in relation to previous visits I have undertaken to see if an invitation for a follow-up visit later in 2013 could be considered. It is an opportunity to further the engagement established with all interlocutors and enables an on-going assessment, at the country level, on the status of implementation of recommendations.

I am interested in other ways that follow-up could be further enhanced. My mandate is part of a joint follow-up project, undertaken by the Office of the High Commissioner for Human Rights, to create a database which compiles all recommendations for Latin American States from the Inter-American Commission on

Human Rights, the Committee against Torture and the Subcommittee on Prevention of torture and the Special Rapporteur on torture. This follow-up tool is the first of a broader joint project to increase the cooperation and effectiveness of the different mechanisms.

Mister President,

I take this opportunity to thank the Government of Uruguay for inviting me to conduct a follow-up visit from 2 to 6 December in 2012, which constitutes a good practice that needs to be encouraged. I wish to recognize the positive work that the Government and the citizens of Uruguay have taken in considering the recommendations of my mandate as a guideline and for leading important reforms in the penitentiary system. The Government has closed prisons and sectors of prisons that, according to my predecessor's recommendations, were not compatible with international standards, and has built new detention facilities which in general, offer adequate conditions of detention. I would also like to congratulate the Government for implementing important institutional reforms that are in accordance with the development of a human rights based penitentiary system. In particular, I want to highlight the creation of decentralized organisms responsible for managing the detention facilities for juveniles and adults, and for the important creation of a National Human Rights Institution that will act as a National preventive Mechanism under the Optional Protocol to the Convention against Torture.

I want to call on the Government to strengthen the reform of the juvenile criminal justice system, where progress has not advanced as far. Regarding juveniles, it is important to advance the implementation of policies oriented to rehabilitation and focus on the use of deprivation of liberty as a last resort. Furthermore, I want to call on the Government to work on improving the conditions of detention of all the detention facilities, in particular with regards to overcrowding, which in many centers reaches critical levels. Lastly, I recommend that the Government implement legislative reforms with the objective of guaranteeing that pre-trial detention would only be used as an exceptional measure, and the implementation of programs to ensure that all persons

deprived of their liberty have access to working, cultural, and recreational opportunities that can help their rehabilitation.

Mister President,

Thematic follow-up is also important and I endeavor to advance issues raised in my previous reports. In my report to the General Assembly in October 2012 (A/67/279) on the death penalty I concluded that there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and cruel, inhuman or degrading treatment or punishment. I found that this evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so. I recommended a more comprehensive legal study on the emergence of a customary norm prohibiting the use of the death penalty under all circumstances.

Mister President and all those gathered,

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