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Letter in Support of Reform Legislation on Prison Conditions in Connecticut

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Honorable Committee Members:

I write to advise this Committee about relevant International Human Rights Law on prison conditions and to express my strong support for the passage of S.B. 459 (“An Act Concerning the Commission for Correctional Oversight, the Use of Isolated Confinement, Seclusion, Restraints, Strip Searches, Social Contacts For Incarcerated Persons, Transparency For Conditions Of Incarceration And Correctional Officer Training”) (hereinafter “the PROTECT Act”). Given Connecticut’s record of egregious mistreatment that have been found to possibly rise to the level of torture, I firmly back the PROTECT ACT’s creation of independent oversight along with more robust protections that are codified into law.

As the former United Nations (UN) Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (2010-2016) (hereinafter “Special Rapporteur on Torture”), I investigated and reported on issues involving torture worldwide. I examined some of the most egregious human rights violations around the globe—acts that reflect a denial of basic human rights. In 2011, in my capacity as Special Rapporteur, I conducted a comprehensive examination of solitary confinement and published my findings in a report to the UN General Assembly (A/66/28). Based on my research, I later presented another thematic report at the 68th session of the UN General Assembly in 2013, where I recommended to all nations that the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs) be amended to prohibit the use of solitary confinement for prolonged or indefinite periods, and prohibit the practice in all circumstances against certain vulnerable populations, including breast-feeding or pregnant women, children detained as juveniles and persons with mental and physical disabilities.

Since the end of my mandate as Special Rapporteur on Torture, I have continued to collaborate and work on prison condition reform projects to address torture and ill-treatment. I worked closely on the use of solitary confinement units in New York’s prisons and detention centers and participated in civil society support for the HALT Bill to improve prisons conditions in that State. I have also rendered expert testimony on the international law standards on prison conditions in U.S. domestic

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1 With the support of the Association of the Bar of the City of New York’s Cyrus Vance Center and the Weill law firm, in 2016 and 2022 we published surveys of the use of solitary confinement in more than 50 jurisdictions around the world.
litigation (e.g., Ashker v. Brown\(^2\) and Shoatz v. Wetsel\(^3\)) as well as in international proceedings (e.g., four class action lawsuits challenging the use of solitary confinement in Canada\(^4\)). Furthermore, I have presented briefs *amicus curiae* on similar matters before the Supreme Court of Brazil and the European Court of Human Rights and expert testimony before the Second Congressional Hearing on Solitary Confinement “Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences,” in Washington, D.C.

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The Nelson Mandela Rules set relevant International Human Rights Law minimum standards on practices that Connecticut currently engages in and that the PROTECT Act seeks to reform. For the purpose of ensuring the Judiciary Committee is aware of the germane Rules and corresponding International Human Rights obligations, I respectfully present background on the rules and a summary of pertinent minimum standards as well as the human rights principles from which they are derived.

In December 2015, the UN General Assembly unanimously approved the Standard Minimum Rules for the Treatment of Prisoners, now named the “Nelson Mandela Rules” in honor of President Nelson Mandela, who spent decades in prison, much of it in solitary confinement, during Apartheid-era South Africa. The Nelson Mandela Rules were negotiated for the preceding three years by States, independent experts, and civil society organizations in consultations hosted by the UN Organization on Drugs and Crime (UNODC); as Rapporteur, I participated actively in those discussions. In their new and present version, they outline minimum standards regarding fundamental issues such as accommodation, medical services, discipline and punishment, and contact with the outside world. While not formally binding, the Nelson Mandela Rules and its predecessor, the 1957 Standard Minimum Rules, are regarded by all countries as setting universal minimum standards, and are the key framework used by monitoring and inspection mechanisms. In that sense, they provide guidance on how to prevent and avoid violations of the absolute prohibition of torture and of cruel, inhuman or degrading treatment or punishment, both of which are binding norms of international law.

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\(^2\) A class action litigation in federal courts of California regarding the use of solitary confinement as a means of prison administration in that State. The lawsuit was settled and the State agreed to release 90% of the tens of thousands of prisoners that were held in prolonged or indefinite solitary confinement, and to amend prison regulations so that they drastically reduce its use in the future. In January 2019, the court found that constitutional violations were continuing to occur and ordered further monitoring.

\(^3\) A single-plaintiff lawsuit seeking damages for Mr. Shoatz’s isolation lasting thirty years. That case was also settled with the State paying compensation to Russell Maroon Shoatz.

\(^4\) British Columbia Civil Liberties Ass’n v. Canada (Attorney General), 2018 BCSC 62; Brazeau v. Attorney General (Canada), 2019 ONSC 1888; Canadian Civil Liberties Ass’n v. Canada (Attorney General), 2019 ONCA 243; Reddock v. Canada (Attorney General), 2019 ONSC 5053. (resulting in appellate-level decisions, based on international standards, requiring the government to reform existing laws to address the harms of solitary confinement in federal prisons).
The Mandela Rules significantly limit the use of solitary confinement. According to Mandela Rule 45, “solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority.” Rule 44 defines solitary confinement as confinement for 22 hours per day without “meaningful human contact.” Expert commentators have asserted, and I concur, that “in order for the rationale of the Rule to be met, the contact needs to provide the stimuli necessary for human wellbeing, which implies an empathetic exchange and sustained, social interaction.” Importantly, the Nelson Mandela Rules also incorporated my findings and recommendations from the 2011 report regarding solitary confinement, as they ban prolonged and indefinite solitary confinement and prohibit its use against certain vulnerable populations in Rules 43 through 45. The Nelson Mandela Rules define prolonged solitary confinement as any period of solitary confinement in excess of 15 days. I concluded in my 2011 report that any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment. Furthermore, due to the lack of witnesses and the solitude in which such practices are carried out, solitary confinement may give rise to other acts of torture or ill-treatment. Short-term isolation may be legitimate, but it should also be regulated and surrounded with due process and health-care safeguards.

Recognizing that the use of restraints may rise to the level of torture or ill-treatment, the Mandela Rules seek to safeguard the dignity of individuals by restricting the use of restraints. Rule 47 prohibits the use of restraints which are inherently degrading or painful. Under Rule 48, the use of other restraints is only authorized (a) “as a precaution against escape during a transfer” or (b) “by order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property.” Under the latter circumstances, the director must immediately alert qualified health-care professionals and report to the higher administrative authority. If authorized under Rule 48(b), authorities still are limited in their use of restraints: they may only use restraints if there is no lesser form of control that could address the actual risk, may only use the least intrusive method necessary to address the risk, and must remove the restraints as soon as possible “after the risks posed by unrestricted movement are no longer present.”

Finally, the Mandela Rules affirm the essential role that independent external monitoring and oversight of prisons – functioning independently but in tandem with internal monitoring systems – has as an effective means to prevent or detect torture and other ill-treatment. Rules 83-85 mandate the creation of independent external and internal inspection systems, each with authority to access information and prisons, freely conduct visits, including unannounced visits, carry out interviews with staff and incarcerated individuals of their choosing, and make public and private reports and recommendations based upon their findings. These expansive authorities and duties derive from a long-recognized appreciation of external, independent monitoring and civilian engagement’s ability

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5 Essex paper 3, Penal Reform International and the University of Essex, p. 89.
to give effect to protective measures. As the Special Rapporteurship on Torture has long asserted: “Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture.”

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My successor as UN Special Rapporteur, Prof. Nils Melzer, has drawn particular attention to the concerning conditions of confinement in Connecticut with reference to the Mandela Rules and other International Human Rights Law. As he said in a statement in 2020, the practices of the Connecticut Department of Corrections (DOC) are cause for considerable alarm:

The DOC appears to routinely resort to repressive measures, such as prolonged or indefinite isolation, excessive use of in-cell restraints and needlessly intrusive strip searches. There seems to be a State-sanctioned policy aimed at purposefully inflicting severe pain or suffering, physical or mental, which may well amount to torture.

. . . These practices trigger and exacerbate psychological suffering, in particular in inmates who may have experienced previous trauma or have mental health conditions or psychosocial disabilities.

. . . The severe and often irreparable psychological and physical consequences of solitary confinement and social exclusion are well documented and can range from progressively severe forms of anxiety, stress, and depression to cognitive impairment and suicidal tendencies.

The Special Rapporteur concluded, and I affirm, that “[t]his deliberate infliction of severe mental pain or suffering may well amount to psychological torture,” in violation of international law and the Mandela Rules. Connecticut must address these policies and practices and must work to build a more dignified and humane prison system. Connecticut’s prison system should be commended for taking a number of positive preliminary steps towards that goal in the last few years. DOC has closed Northern Correctional Institute. Governor Lamont took the positive step of recognizing the centrality of the Mandela Rules in Executive Order 21-1. Still, much progress is needed.

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9 Id.
Executive Order 21-1 does not live up to either the letter or the spirit of the Mandela Rules. In fact, policies sanctioned by the Executive Order authorize the violation of the Mandela Rules in conflict with Connecticut’s International Human Rights Law obligations. For example, the Executive Order policy violates Rule 45 by failing to forbid the use of solitary confinement against vulnerable populations, including those with mental illness or psychosocial disabilities or young people. Additionally, the Executive Order purports to follow the Mandela Rules’ 15-day limit on prolonged solitary confinement. However, the text creates an unrestricted exception for “lockdowns” and permits repeated use of 15-day periods interspersed with non-isolation. While such an approach might technically comply with the Rules, those loopholes conflict with their spirit, which sought to categorically prohibit the abhorrent, damaging practice of prolonged isolation.

Connecticut’s current policies remain inconsistent with International Human Rights Law obligations. Without concrete law to codify and advance practices, Connecticut’s prison system might easily return to its past practices of confining prisoners in isolation for months, years, and even decades at a time. Finally, without law to codify due-process safeguards, prisoners may be subjected to these practices for minor, nonviolent rule violations or even routinely for no rule violations at all. Such practices would violate the international obligations of the United States.

The PROTECT Act reflects both safe and effective prison policy and respect for human rights, and statutorily aligns Connecticut with International Law and International Human Rights Law standards. This legislation will help codify reasonable limits on solitary confinement, restraints, and strip-searches in Connecticut prisons and jails. Furthermore, the creation of an independent, civilian oversight committee will bring Connecticut into alignment on International Human Rights Law duties related to external monitoring and will provide an effective and essential mechanism to detect and prevent torture and ill-treatment of incarcerated persons. Importantly, the non-partisan, independent Commission would include formerly incarcerated people, family members of formerly or currently incarcerated individuals, and health care professionals, groups of individuals uniquely placed to give effect to the protections of the Act.

I am grateful to the Honorable Committee Members for their attention to this matter.

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