



CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

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August 23, 2013

Dr. Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human rights
Washington, D.C. 20006

Re: Request for thematic hearing during the 149th period of sessions on grave human rights violations affecting people deprived of liberty in the United States, with a focus on people incarcerated in California prisons.

Dear Dr. Álvarez Icaza,

In accordance with Inter-American Commission on Human Rights' Rules of Procedure Articles 61-66, we respectfully submit this request for a thematic hearing on grave violations of human rights in United States ("US") custodial facilities, particularly in California. We submit this request on behalf of the following organizations working to secure human rights for people deprived of liberty in California and in the United States: National Religious Campaign Against Torture, California Families to Abolish Solitary Confinement, California Prison Focus, Legal Services for Prisoners with Children, California Coalition for Women Prisoners, The Center for Prisoner Health and Human Rights, Disability Rights Legal Center, Stanford International Human Rights and Conflict Resolution Clinic, American Friends Service Committee (Western Region), ACLU National Prison Project, Families to Amend California's Three Strikes, Fair Chance Project, Center for Constitutional Rights, Justice Now, National Lawyers Guild, San Diego Committee for Prisoners Rights, The Real Cost of Prisons Project, and the Center for Human Rights and Constitutional Law. Together these groups represent and work with thousands of people confined in prisons in the US.

Public policy debate in the U.S. has recently focused on the urgent need to reduce extended sentences for non-violent offenders, particularly those involving controlled substances. In August, the U.S. Attorney General publicly acknowledged the misguided nature of mandatory minimum sentences and stated the Administration's intention to reform these policies. While debate on this issue is salutary and continues in the spirit of the Declaration of Antigua Guatemala "For a Comprehensive Policy Against the World Drug Problem in the Americas" adopted at the 43rd General Assembly of the Organization of American States this past June, sentencing reform alone will not redress the grave and institutionalized violations of rights in California and US prisons.

The undersigned would like to address before the Commission the widespread abuses that affect people deprived of liberty in the US with a focus on California, the state with the largest prison population in which we have documented grave violations characteristic of national trends. We

seek to present to the Commission updated information on **racially-disproportionate prison overcrowding, widespread and unjustified extended use of solitary confinement, punitive responses to hunger strikers, mistreatment of juvenile detainees, and abuses faced by people in women's prisons, including coerced sterilization.** We propose to provide first-hand information on these issues as summarized below.

Overcrowding and Racial Disparities in California Prisons

With 4.5 percent of the world's population, the United States has 25 percent of the planet's prisoners; California's prison population consistently ranks among the largest in the country.

In recent decades, numerous domestic lawsuits challenged California's prison overcrowding. In 2011, the United States Supreme Court found that overcrowding -- then at nearly twice the prisons' design capacity -- unconstitutionally harmed prisoners' health and safety and amounted to cruel and unusual punishment. The state has yet to comply with that decision which required a reduction of the population to 137 percent of capacity by the end of 2013.

California's prison population reflects broader U.S. trends of racially disparate incarceration practices. African Americans, while only 12.5 percent of the US. population, comprise nearly 50 percent of its 2.3 million prisoners. Latinos, only 12 percent of the population, constitute more than 25 percent of the prisoners.

Widespread and Inadequately Regulated Use of Solitary Confinement

California's policies and practices promote widespread use of determinate and indeterminate solitary confinement. Despite court prohibitions, authorities regularly segregate prisoners based on race. California authorities place prisoners identified as associated with gangs in isolated segregated units without any determination that these detainees have engaged in or threatened to engage in misconduct or illegal activity. As a result of this gang "validation" policy, California places thousands of prisoners in near-total isolation for 24 hours a day for periods of many years, causing them extreme mental and physical harm, including extreme depression, suicidal ideation and breaks with reality.¹

Solitary confinement is the policy of isolating inmates in closed cells for 22-24 hours a day, virtually free of human contact, for periods of time ranging from many months to decades. This policy results in severe psychological and physical harm including a persistent and heightened state of anxiety, paranoia, and persecutory fears, a mindset that commonly persists long after release. Prisoners in solitary confinement also suffer from severe headaches, ruminations and irrational anger, oversensitivity to stimuli, extreme lethargy or insomnia, impaired concentration

¹ See "Urgent Petition to United Nations Working Group on Arbitrary Detention in the Matter of California Prisoners," attached to this request.

and extreme confusion. These symptoms are almost identical to the effects of severe trauma and torture.²

California authorities confine approximately 4,000 prisoners in Security Housing Units (SHUs) thus depriving them of work, meaningful rehabilitation programs, and group activities of any kind. These prisoners have virtually no interaction with others. A small minority of the prison population in SHUs is serving fixed terms of solitary confinement—ranging from days to a year— after being found guilty of specific misconduct through the prison disciplinary system. **However, authorities place the vast majority of prisoners in solitary confinement in California for indeterminate periods of time usually lasting many years not because of specific acts of wrong-doing, but merely based upon prisoners’ alleged membership in or association with a gang.** This so-called “validation” of gang membership or association occurs through an internal procedure that requires no accusation of or conviction for actual misconduct. Prisoners have also been placed in solitary confinement for possession of materials critical of California’s prison practices. In an egregious but typical case, authorities assigned Dietrich Pennington to the SHU based on his possession of an article complaining of guard abuses published in a prison-authorized newspaper, raising issues not only of the arbitrariness of the process but of freedom of expression.³ Given the minimal process required for gang “validation,” there is a high risk of erroneous deprivation. After recent public pressure, the California Department of Corrections and Rehabilitation (CDCR) announced on August 16, 2013, that it is conducting case-by-case reviews of validated prison gang members and associates only in institutions that have no inmates participating in the hunger strike, that 425 reviews have been completed and 268 validated prisoners have been transferred or are approved for transfer to a general population facility and 125 placed in various phases of a Step-Down Program that provides increased privileges for some validated prisoners.⁴

Thousands of other prisoners are held in solitary confinement not for punishment but because they are lesbian, gay, bisexual, transgender, mentally ill, or under the guise of protecting them because they are allegedly vulnerable to victimization.

Punitive response to hunger strikers

Solitary confinement policies recently led thousands of California prisoners to join a hunger strike. California prison officials have responded to the hunger strike with harsh punitive measures, including disciplinary action that has extended the time striking prisoners are in

² See Amnesty International, *USA: The Edge of Endurance: Prison Conditions in California’s Security Housing Units*, 2012.

³ See Shane Bauer, “Solitary in Iran nearly broke me. Then I went inside America’s prisons.” *Mother Jones*. November/December 2012. Available at: <http://www.motherjones.com/politics/2012/10/solitary-confinement-shane-bauer> (“California officials frequently cite possession of black literature, left-wing materials, and writing about prisoner rights as evidence of gang affiliation.”).

⁴ See http://cdcrtoday.blogspot.com/2013/08/hunger-strike-update_16.html

solitary and jeopardized their release from prison. Authorities have subjected hunger strikers to increased isolation, increased restrictions on communication with their lawyers, and restrictions in family visits. Days prior to the filing of this request, a judge authorized officials to begin forced feeding some hunger strikers

In July 2013, over 30,000 California prisoners initiated the third statewide hunger strike since June 2011 to protest conditions, including prolonged solitary confinement in small windowless concrete boxes with little to no human interaction and other severe physical deprivations. Days after prisoners began refusing food, the CDCR pledged to take disciplinary action against all those perceived as participating in the strike, with the possibility of extending strikers' time in SHU. Authorities increased the isolation of prisoners believed to be hunger strike leaders and imposed on them harsher conditions and greater restrictions on receipt of mail and communication with their lawyers and family members. Prison staff also retaliated against hunger strikers by "blasting the cells with cold air."⁵ Prisoners on strike also report being denied medical care when requested. As many as five prisoner deaths since 2011 may be associated with the denial of medical care to hunger strikers.

Violations of the Rights of Juvenile Detainees

The California prison system also fails to ensure the rights of its juvenile detainees. Over the past decade California has closed all but three of its youth detention facilities.⁶ Though this is a positive reform, it means that more youth are detained at the county level, where treatment can be highly disparate. Many counties place children in solitary confinement, including Contra Costa County. Officials there reportedly lock youths with disabilities in solitary confinement for up to 23 hours a day—in some cases for months—and deny them schooling.⁷

Over the past decade, in an effort to decrease overcrowding, California officials shuttered state juvenile penitentiaries and "re-aligned" detained young people to local facilities. While we welcome the move to close over-crowded state juvenile facilities, it has become apparent that youth detained in county jails often suffer severe harms. In Contra Costa County, for example, a

⁵ See Amnesty International, *USA: End inhumane treatment of California prison hunger strikers*, July 22, 2013, available at <http://www.amnesty.org/en/for-media/press-releases/usa-end-inhumane-treatment-california-prison-hunger-strikers-2013-07-22>; Rory Carroll.

"California prison guards retaliating against hunger-strikers, lawyers say." *The Guardian*. July 19, 2013. Available at <http://www.theguardian.com/world/2013/jul/19/california-prison-hunger-strike-retaliation>.

⁶ See Department of Juvenile Justice Facility Locations, available at http://www.cdcr.ca.gov/Juvenile_Justice/Facility_Locations/index.html

⁷ David DeBolt, Malaika Fraley, "Lawsuit Claims Contra Costa County Juvenile Hall locks youth with disabilities in solitary confinement for up to 23 hours a day," *San Jose Mercury News*, August 8, 2013, http://www.mercurynews.com/breaking-news/ci_23824484/lawsuit-contra-costa-juvenile-hall-locks-youth-disabilities.

14-year-old girl was placed in solitary in a cell for approximately 100 days over the last year, with no education services and short breaks outside only two times a day. Diagnosed with bipolar disorder and attention deficit disorder, the girl was removed from the juvenile hall county school and placed in solitary confinement, with officials failing to conduct a mandatory inquiry into whether her behavior was related to her disability.⁸ Another young person in the county, a 17-year-old boy — already found mentally incompetent by a juvenile court — was put into solitary for more than two months. He began hearing voices, talking to himself, thought he was being poisoned, and broke down in a psychotic episode and was hospitalized.⁹ Solitary confinement not only compromises a child's cognitive, emotional and psychological development, but also results in a high incidence of undiagnosed, misdiagnosed or untreated cases of mental illness.

Abuses of People in Women's Prisons Including Coerced Sterilization

Women's prisons are also dangerously overcrowded and employ solitary confinement in questionable cases. Sterilization abuse and the abysmal reproductive healthcare of people in women's prisons also raise serious human rights concerns..

As officials failed to meet court-mandated population levels in the prison system as a whole, overcrowding in women's prisons increased.¹⁰ The Central California Women's Facility (CCWF) currently operates at 175 percent capacity, the highest rate of overcrowding of any facility – male or female - in California; and California Institution for Women is suffering from a bloated population at 150% capacity. Lack of adequate ventilation, mold, mildew, rust, and animal feces are producing medical emergencies that remain unattended because of inadequate medical access and care. Additionally, the lack of basic resources, such as food, clothing, and cleaning supplies has led to heightened tension and increased violence within the prisons. Consistent with research on prison overcrowding, prisoners report increased levels of preventable illness and premature death due to systemic medical neglect. Hundreds have been confined to administrative segregation units, the majority of whom were receiving some form of mental health treatment at the time of transfer,¹¹ because there are not enough beds available to

8 Susan Ferris, Suit alleges mistreatment of California minors with mental health problems, *The Center for Public Integrity*, August 9, 2013, available at <http://www.publicintegrity.org/2013/08/09/13152/suit-alleges-mistreatment-california-minors-mental-health-problems>.

9 *Id.*

10 Matthew Fleischer, "Too Many Women? Hidden Overcrowding in CA Prisons" *The Crime Report*, July 31, 2013. Available at: <http://www.thecrimereport.org/news/inside-criminal-justice/2013-07-too-many-women-hidden-overcrowding-in-ca-prisons>

11 Sal Rodriguez, "Women in California Prison Isolation Units Face Overcrowding and Despair," *Solitary Watch*, July 1, 2013. Available at: <http://solitarywatch.com/2013/07/01/women-in-california-prison-isolation-units-face-overcrowding-and-despair/>

house them in general population.

Ongoing reports also raise concern over reproductive health care practice and policy in the prison system. Research conducted by Justice Now's participatory human rights program informed a recent Center for Investigative Reporting's exposé on illegal sterilization abuse in the prison system, documenting that between 2006 and 2010, 116 people were sterilized by tubal ligation for the purpose of birth control during caesarean section by employees or agents of CDCR. Regardless of attempt to procure consent, sterilization of people in the inherently coercive prison environment for the purpose of birth control is prohibited under federal, state and common law. People in prison report that medical staff disproportionately targeted Black and Latina women, as well as transgender and gender non-conforming people of color, those subject to life sentences, and those "deemed likely to return to prison in the future."¹²

Prison conditions during and immediately following pregnancy, including inappropriate diet and lack of basic care, result in high rates of stillbirth and miscarriage. Obvious warning signs of complications with pregnancy are often ignored.

Request for thematic hearing

Should the Commission grant this request for a hearing, we will provide the Commission with testimony from prisoners, as well as oral presentations by family members of prisoners, advocates and lawyers.

We would ask that that Commission recommend to the United States Government and the State of California that they immediately take all measures necessary to address grave violations of human rights in the prison system, including, but not limited to:

- Expediting a case-by-case review of SHU inmates for release from solitary confinement;
- Ensuring that California terminate its policy of placing prisoners in isolated segregation for periods of several years merely based upon their alleged membership in or association with a gang;
- Ensuring that California prisoners in isolated segregation are not penalized or denied release solely for protesting through hunger strikes the conditions of their confinement;

12 Cynthia Chandler, TESTIMONY ON BUDGET ISSUES RELATED TO CONDITIONS OF CONFINEMENT AND ILLEGAL STERILIZATIONS (Submitted by Justice Now to the California State Senate Budget And Fiscal Review Subcommittee No. 5 On Corrections, Public Safety, And The Judiciary on March 15, 2012); Cynthia Chandler, TESTIMONY OF JUSTICE NOW SUBMITTED TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN (February 1, 2011); Corey G. Johnson, "Female inmates sterilized in California prisons without approval," *The Center for Investigative Reporting*, July 7, 2013. Available at: <http://cironline.org/reports/female-inmates-sterilized-california-prisons-without-approval-4917>.

- Taking all necessary steps to ensure that local juvenile detention facilities cease the practice of prolonged solitary confinement for juveniles and ensuring that juveniles in detention receive adequate mental health services;
- Taking all necessary steps to address overcrowding in the system as a whole with particular concern for women's facilities;
- Ensuring that people in prison receive timely emergency and non-emergency health care, as well as timely and ready access to medical facilities;
- Investigating fully any coerced sterilization cases and ensuring that policies and protections are put in place to prevent such practices from reoccurring.

Subject to modification, the following individuals would be present at a hearing, if granted:

Dolores Canales, California Families to Abolish Solitary Confinement; Peter Schey, President, Center for Human Rights and Constitutional Law; Azadeh Zohrabi, Soros Justice Fellow, Legal Services for Prisoners With Children; Kim McGill, Organizer, Youth Justice Coalition of Los Angeles; Courtney Hooks, Justice Now.

We thank the Commission in advance for its consideration of this request.

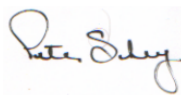
Respectfully,

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By

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