Monday, March 15, 2010

Honourable Vic Toews, Minister of Public Safety
House of Commons
Ottawa, Canada K1A 0A6

Dear Hon. Minister:

We write to express our concern regarding the pervasive use of solitary confinement in Canadian prisons. Over the past ten years, multiple reports from government taskforces, commissions and ombudsmen have called for significant reform. Despite this, the use of solitary confinement has continued to increase, both in number of persons confined and duration of confinement. There are particularly alarming concerns regarding the rising number of persons with mental illness in solitary confinement, and the impact this may have on their health both during and after their incarceration. We are therefore calling on you to take immediate action to ensure that Correctional Services Canada addresses these pressing issues.

In 1996, Louise Arbour conducted an extensive investigation into conditions at the Prison for Women in Kingston. She wrote that "the management of administrative segregation that I have observed is inconsistent with the *Charter* culture which permeates other branches of the administration of the criminal justice. … I see no alternative to the current overuse of prolonged segregation but to recommend that it be placed under the control and supervision of the courts."[1]

It has been almost 14 years since this recommendation was made. Numerous internal and external reports have similarly criticized the over-use of solitary confinement and called for the implementation of external independent review. Since that time, however, not only have these recommendations not been adopted, but reliance on administrative segregation has actually increased. Moreover, the introduction of and increasing resort to segregation status and units such as transitional units has removed entire segments of the prison population from any statistical measure or legal framework.

[1] Commission of Inquiry Into Certain Events at The Prison For Women in Kingston, The Honourable Louise Arbour Commissioner (1996) at 190, 191.

It is a foundational legal and democratic principle that all punishment administered by the State must be governed by, and justified under, legal grants of authority. Drastic curtailment of individuals' liberties, without sufficient due process or independent oversight, is unacceptable.

While the continued over-use of administrative segregation is alarming, solitary confinement can have a particularly devastating impact on those with mental health problems. Studies have shown that the effect of segregation on these groups can have serious consequences, consequences that courts have equated with torture or cruel and unusual punishment.[2] The United Nations Special Rapporteur on torture has also confirmed that the prolonged isolation of detainees may amount to torture, and has endorsed the recommendation that mentally ill prisoners should never be subjected to solitary confinement.[3]

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[2] See eg., *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995), p. 1265, 1267 ("the record demonstrates that the conditions of extreme social isolation and reduced environmental stimulation found in the Pelican Bay SHU will likely inflict some degree of psychological trauma upon most inmates confined there for more than brief periods. … [for] the already mentally ill, as well as persons with borderline personality disorders, brain damage or mental retardation, impulse-ridden personalities, or a history of prior psychiatric problems or chronic depression… placing them in the SHU is the mental equivalent of putting an asthmatic in a place with little air to breathe. … continued confinement in the SHU, under present conditions, constitutes cruel and unusual punishment in violation of the Eighth Amendment for two categories of inmates: those who are already mentally ill and those who, as identified above, are at an unreasonably high risk of suffering serious mental illness as a result of present conditions in the SHU."); *Jones'el v. Berge*, 164 F. Supp. 2d 1096 (W.D. WI 2001), p. 1101 ("Confinement in a supermaximum security prison such as Supermax is known to cause severe psychiatric morbidity, disability, suffering and mortality [even among those] who have no history of serious mental illness and who are not prone to psychiatric decompensation (breakdown)"); *Ruiz v. Johnson,* 37 F.Supp.2d 855 (S.D.Tex.1999), p. 915, *rev'd on other grounds,* 243 F.3d 941 (5th Cir.2001), *adhered to on remand,* 154 F.Supp.2d 975 (S.D.Tex.2001) ("It is deplorable and outrageous that this state's prisons appear to have become a repository for a great number of its mentally ill citizens. Persons who, with psychiatric care, could fit well into society, are instead locked away, to become wards of the state's penal system. Then, in a tragically ironic twist, they may be confined in conditions that nurture, rather than abate, their psychoses. The United States Constitution cannot abide such a perverse and unconscionable system of punishment. As to mentally ill inmates in TDCJ-ID, the severe and psychologically harmful deprivations of its administrative segregation units are, by our evolving and maturing society's standards of humanity and decency, found to be cruel and unusual punishment.").

[3] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report of the Special Rapporteur on torture and other cruel,*

In Canada, the most recent report from the Office of the Correctional Investigator indicates that the prevalence of offenders with significant mental health issues upon admission has doubled in the past five years, and statistics suggest that the number of reported self-injury incidents in custody has doubled over the past two years.[4] The report also confirms that, in the absence of adequate mental health treatment programs, "[s]egregation too often becomes the default option."[5] The issue of over reliance on solitary confinement and its potentially devastating consequences for prisoners with mental illness requires immediate attention. We are equally concerned that this situation may be accentuated in the context of the high percentage of Aboriginal men and women in federal penitentiaries.

The goal of the Correctional Service of Canada should be to enhance public safety through effective rehabilitation. Segregation, however, does not further inmate rehabilitation, and its over-use ultimately results in the release of more dangerous people. The evidence shows that many will have latent mental health challenges that are only fully revealed after release into the community. This is not a desirable by-product of imprisonment.

We urge you to address the issue.

Many of the past recommendations should be implemented. Among others:

1. Reinforcing the principle that segregation should be used only as a last resort, for as short a time as possible, and for no longer than 60 days in a 12 month period;
2. Implementing an independent external review process to monitor the use of segregation;
3. Ensuring that the existing laws are followed; that all segregation and segregation-like conditions of confinement are subject to and governed by the rule of law; and
4. Ensuring that all prisoners have access to appropriate community-based mental health services and resources, sufficient to address their respective needs.

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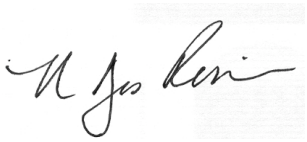
inhuman or degrading treatment or punishment, UN GAOR, 63d Sess., UN Doc. A/63/175 (2008) at para 77; Istanbul Statement on the Use and Effects of Solitary Confinement, UN GAOR, 63d Sess., Annex, Agenda Item 67(a), UN Doc. A/63/175 (2008).

[4] Correctional Investigator of Canada, Annual Report of the Office of the Correctional Investigator 2008-2009, at 12, 17.

[5] *Ibid.* at 14.

Sincerely,



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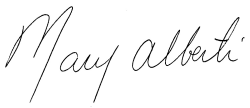

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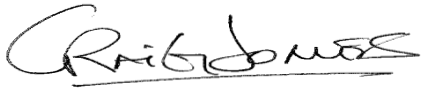

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