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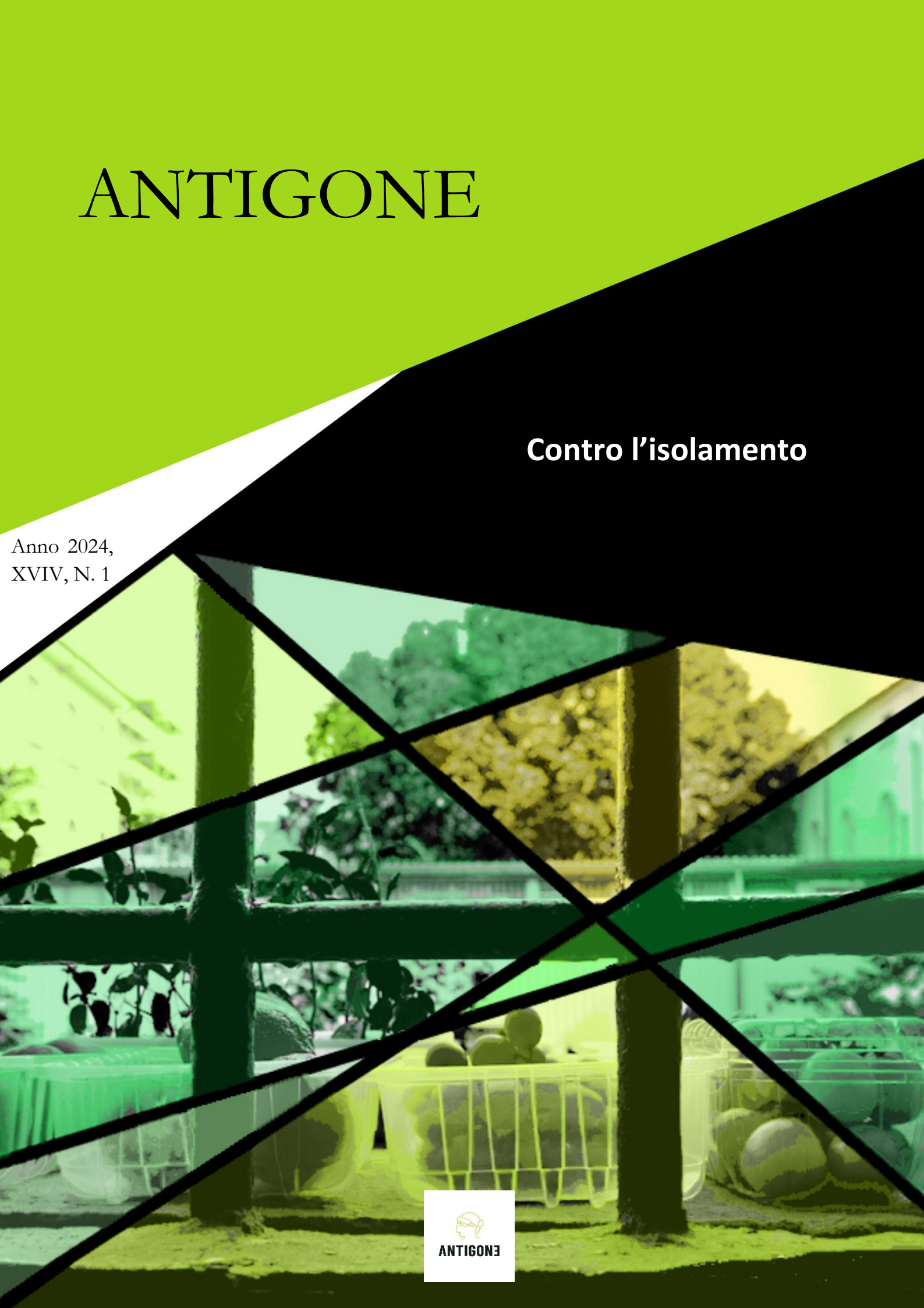

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a cura di Rachele Stroppa

INDICE

SOLITARY CONFINEMENT AND THE INTERNATIONAL GUIDING STATEMENT ON ALTERNATIVES

Juan E. Méndez[*]

Abstract

With this Statement the author addresses the pressing issue of solitary confinement, highlighting its detrimental effects on human rights and the urgent need for alternatives. Drawing on extensive experience as the UN Special Rapporteur on Torture, the author emphasizes the importance of prevention in combating the overuse of isolation within correctional systems. The paper discusses the psychological and physical harm inflicted by solitary confinement, its disproportionate impact on vulnerable populations, and its ineffectiveness as a deterrent or rehabilitative tool. Furthermore, the importance of de-escalation strategies, mental health support, and meaningful social interaction as viable alternatives to isolation are highlighted, as well as the need for improved data collection and transparency to monitor the use of solitary confinement and assess the effectiveness of alternative approaches. By promoting a more humane and effective approach to incarceration, the paper seeks to contribute to a global movement towards the abolition of solitary confinement.

Keywords: statement, solitary confinement, alternatives, abolition

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I wish to acknowledge, with gratitude, the kind invitation I received from Antigone to participate in this very timely and urgent conference. I am also grateful for the invitation (from Antigone and Physicians for Human Rights Israel) to add my name as a signatory of the important document we will discuss today, the *International Guiding Statement on Alternatives to Solitary Confinement*. It is an honour to share that distinction with several experts who have been my mentors in the struggle against torture and in understanding why solitary confinement should be treated under the aegis of the absolute prohibition in international against torture and against cruel, inhuman or degrading treatment or punishment. That some of those mentors are also sharing this panel with me today is a source of pride but also a reminder to remain humble.

My first thematic report as the UN Special Rapporteur on Torture, in 2011, was dedicated to an argument for considering isolation a form of unlawful treatment of persons deprived of liberty. My predecessors had addressed that concern in 1999, 2003, and 2008. Later, I returned to this matter in connection with the process of updating the 1957 Standard Minimum Rules on the Treatment of Prisoners, now called the Nelson Mandela Rules, that incorporated significant rules about solitary confinement in 2015. It is a sad commentary on the slow pace of reform, nationally and internationally, that we have certainly improved on the normative framework applicable to isolation, but we are very far from achieving the abolition of solitary confinement in practice.

In my experience, this is because in the anti-torture realm we have achieved some progress on the absolute prohibition of torture and ill-treatment and its implementation through accountability and criminal prosecution, but we have not spent enough time on *prevention.* The document that we are discussing today contributes to closing that gap, precisely by crafting a road map to effective abolition of isolation and offering alternatives to the problems that isolation is purported to address.

The emphasis on prevention recognizes needs and identifies misguided solutions. It is true that prison authorities have the responsibility of separating inmates who may be dangerous to self or to others, including guards and other inmates; but the automatic resort to long-term solitary confinement gives rise to other problems and may in fact exacerbate those problems. In that vein of prevention, in 2001 I had the privilege of publishing, with many other colleagues, the *Principles on Effective Interviews in Investigations and Other Information Gathering*, an instrument that affirms the absolute prohibition of torture and other forms of coercion, but also offers a more effective methodology to achieve the cooperation of suspects, witnesses and victims of crime in the process of reaching the truth.

Similarly, the recognition that solitary confinement is unlawful (because it inflicts pain and suffering of a physical or mental

nature that is properly associated with cruel, inhuman or degrading treatment or punishment and in more extreme cases with torture) is the correct point of departure, but it is not enough. Practices at ground zero will not change unless and until we offer constructive suggestions for what works better to confront legitimate objectives – and responsibilities – of correctional institutions and their personnel.

I am also impressed by the comprehensive nature of the alternatives mentioned in the Guiding Statement. In that sense, the document reflects a very good summary of the extensive scientific research that has taken place over the last few decades. That bibliography supports not only the argument that solitary confinement does indeed inflict severe pain and suffering, but also that it is hardly effective in containing the risks of violence in places of deprivation of liberty while exacting a very serious cost in respect for human dignity of all incarcerated persons. For reasons of time, I will necessarily comment only on some of its points, and that will also allow my fellow panelists to discuss matters for which they are better equipped than me.

I do wish to comment on data and record-keeping. As is true in other aspects of law enforcement, the ill-effects of solitary confinement are not adequately documented. Indeed, it is very difficult to know with certainty the number of inmates that are isolated on any given day in various countries. It follows also that it is hard to know details of great importance, like who ordered the isolation, for what reason, whether medical attention is offered and how often, and whether the isolated persons have been heard or have been notified of their rights. If some records are kept, it is frequently the case that they are not made available to independent monitoring agencies. What seems to be known is that solitary confinement is used very extensively in many jurisdictions around the world; that resort to it seems to be growing instead of diminishing; and that it is used for various purposes: disciplinary sanctions, "prison management", to protect the integrity of ongoing criminal investigations and so on. The lack of publicly available data gives rise to the suspicion that solitary confinement is the setting in which other forms of physical and mental torture also happen and they are more likely to go unpunished.

In Section B, the Guiding Statement discusses several possible alternatives to decisions to isolate prisoners. The emphasis on solitary confinement as a measure of last resort is useful because there are in fact several steps that can be taken to address situations of tension and risk to the safety of the persons affected. I wish particularly to call attention to the need to adopt measures of de-escalation of those situations, which of course require specialized training in the corrections staff. Training is addressed more completely in Section D, but I think it is relevant to ensure that every place of detention count on members of their staff who can recognize such situations, accurately assess

their possible deterioration into violence, and observe the presence of persons who may be greater risk because of special vulnerabilities beyond that inherent to their loss of liberty. Those staff members must also be able to engage with the protagonists by means that contribute to easing of tensions and reasonable discussion to resolve conflict. I very enthusiastically support the provision in the Statement (Part B, paragraph 9) that "security-related" isolation should not be the norm or the immediate explanation for measures of solitary confinement. In effect, the imposition of solitary confinement should be recorded with description of the steps taken to prevent altercations before isolating an individual by simply stating a security need.

It is quite significant that the Statement incorporates critique of solitary confinement being used for reasons of protecting ongoing criminal investigations, even when it is ordered by a prosecutor or a judge who reviews such measures periodically. In this regard, the Committee on Prevention of Torture of the Council of Europe has repeatedly commented on the inconsistency of those practices with European and International Human Rights Law. This is an instance where alternatives to seclusion that indefinite (in the sense that its endpoint is not ascertained from the start) are likely to be more conducive to ensure the integrity of investigations and eventual rights to a fair trial, without inflicting psychological harm by way of depriving the affected person of meaningful social contact.

I have followed some reform initiatives post-Nelson Mandela Rules, and it is encouraging to see that a campaign to regulate and eventually abolish solitary confinement is taking some *momentum*, even as the effort has to be piecemeal and relatively isolated when there are so many jurisdictions to include. Still, I am encouraged by the fact that Ireland reformed its corrections regulations to incorporate the language of the Nelson Mandela Rules on solitary confinement as early as 2017. Following successful class action litigation in three different Courts of Appeal, Canada has also reformed the federal regulations to comply with those court orders and with the country's international obligations regarding solitary confinement. In other cases, however, some States in the USA have incorporated some new regulations that go only half-way into such compliance. They now call *restricted housing* a regime that purports to adapt to new rules by reducing the hours spent alone in the cell to 21 hours a day instead of 22, with all other aspects of isolation remaining the same. While these *reforms* that follow the letter but not the spirit of the Nelson Mandela Rules are to be expected given the resistance of some correctional departments to meaningful change, they are almost certain to result in more litigation and hopefully more enlightened judicial decisions.

That is precisely why I started out today by praising the Guiding Statement for being

timely and urgent at the same time. Undoubtedly, the testimony of survivors of this dreadful practice, like the one we heard today from Mr. Pontes will continue to inspire us and will not allow us to feel defeated. The Guiding Statement provides us with a very significant tool to engage in democratic debate about why reform is needed, but most importantly to show that it is possible.