



## Input for the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

### Contribution to the Thematic report on “Psychological Torture and Ill-Treatment”

29 November 2019

#### Introduction

Penal Reform International (PRI) and Dr. Sharon Shalev, Research Associate at the University of Oxford and Independent Consultant at [SolitaryConfinement.org](http://SolitaryConfinement.org) welcome the Special Rapporteur's call for input for the forthcoming thematic report on "psychological torture and ill-treatment". This submission highlights **the relationship between psychological torture and ill-treatment to solitary confinement**. We chose to prioritise solitary confinement because it is commonly used in prison systems internationally, and because its harmful impact on the health of those subjected to it mean that when used in a manner not commensurate with the UN Nelson Mandela Rules, it can constitute a form of psychological torture and ill-treatment.

This submission responds mainly to Question 2 on the Questionnaire provided, primarily addressing the prevalence and State practice section, drawing on PRI's and Dr. Shalev's research and observations from a number of countries.<sup>1</sup> The submission also draws on material published in the [Guidance Document On The Nelson Mandela Rules: Implementing The United Nations Revised Standard Minimum Rules For The Treatment of Prisoners](#) which was co-published by PRI and the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

#### Key recommendation

**The accumulated body of evidence generated by the developments detailed in this submission means that there is a momentum around efforts to reduce the use of solitary confinement. We invite the Special Rapporteur to prioritise efforts in this area and contribute to better documenting, reporting and advocating for the use of this damaging prison practice to be dramatically reduced and abolished altogether for vulnerable groups. We look forward to working with the Special Rapporteur's office on this important issue.**

<sup>1</sup> Including in-depth studies of the use of solitary confinement in New Zealand (Shalev, S. (2017) [Thinking outside the box? A review of seclusion and restraint practices in New Zealand](#), New Zealand Human Rights Commission, Auckland), and in England and Wales (Shalev, S. and Edgar, K. (2015) [Deep Custody: Segregation Units and Close Supervision Centres in England and Wales](#), Prison Reform Trust: London).

# Psychological torture and ill-treatment in the use of solitary confinement

## The health impact of solitary confinement

Solitary confinement can constitute a form of psychological torture and ill-treatment due to the harmful impact it has on the health of those subjected to it. A range of reasons are used to justify locking people in prison in solitary confinement, including, but not limited to punitive, administrative, protective and medical reasons. Yet, regardless of the reasoning behind denying people in prison “meaningful human interaction” for extended periods of time, the damage solitary confinement inflicts on the person subjected to it can be substantial.

The *Essex paper*<sup>2</sup> sought to clarify what Rule 44 of the Nelson Mandela refers to as “meaningful human interaction” and defined it as:

“the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and wellbeing. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.”

The negative, and potentially long-lasting, impact of solitary confinement on the physical and mental health and wellbeing of prisoners is well-documented. Medical research confirms that the physical and social isolation entailed by solitary confinement, and the denial of meaningful human contact, can lead to what has been described as the “isolation syndrome”, the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide, and which can destroy a person’s personality.<sup>3</sup>

As the World Health Organization has pointed out, “[s]ocial and physical isolation and lack of accessible supportive resources intensify the risk of suicide. Therefore, an important element in suicide prevention in correctional settings is meaningful social interaction.”<sup>4</sup> The potential long-term effects of isolation, including the risk of suicide and self-harm, mean that there is risk not only during the period of isolation itself, but potentially long-lasting psychological effects that may persist long after the initial punishment and even after release from prison.

## Prolonged periods in solitary confinement

The harmful impact of solitary confinement is further compounded when it is used for prolonged periods of time, and this prolonged use can constitute psychological ill-treatment, and in some cases, torture.

The Istanbul Statement on the use and effects of solitary confinement (the Istanbul Statement) has also captured this, stating that:

“[s]olitary confinement may cause serious psychological and sometimes physiological ill effects (...) Negative health effects can occur after only a few days in solitary confinement,

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<sup>2</sup> Essex paper 3: Initial guidance on the interpretation and implementation of the Nelson Mandela Rules, Penal Reform International and the Essex Human Rights Centre at the University of Essex, 2017, at [www пеналреформ.орг/resource/guidance-on-implementation-thenelson-mandela-rules](http://www пеналреформ.орг/resource/guidance-on-implementation-thenelson-mandela-rules)

<sup>3</sup> Shalev, S. (2008) The Health Effects of Solitary Confinement. pp9-24, in: a *Sourcebook on Solitary Confinement*. London: Mannheim Centre for Criminology, London School of Economics.

<sup>4</sup> Preventing Suicide in Jails and Prisons, WHO/International Association for Suicide Prevention, p. 16.

and the risk rises with each additional day spent in such conditions. (...) The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and wellbeing.”

This is in line with former mandate holders of the SR-T, as outlined in the report to the General Assembly of 5 August 2011 (A/66/268) concerning solitary confinement, specifically in regard to “*the use of prolonged (in excess of 15 days under conditions of total isolation) or indefinite solitary confinement... may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68.*” (A/HRC/31/57/Add.1)

### Vulnerable populations at risk

Increasingly, the international community recognises the lasting, damaging effects solitary confinement can have on people in prison, especially vulnerable populations with complex needs. People in prison are more likely to have histories of trauma and abuse, and pre-existing mental health needs that make solitary confinement particularly damaging to a prisoner’s well-being. Recent reports have indicated solitary confinement is used at an alarming rate on populations such as pregnant women, individuals with mental illness, LGBTQ people, children and young people.

### Women

Solitary confinement is especially damaging for those with preexisting mental illness. One study found that the rate of mental illness for women in prison stood at 70 percent, and was significantly higher than the rate for men.<sup>5</sup> In a 2018 report, the Vera Institute of Justice found that women in solitary confinement had a much higher degree of mental health problems than women in general population, than men in solitary confinement.<sup>6</sup> The skills required to identify mental illness in prisoners are not taught to prison staff, and accordingly, many women with mental illnesses are perceived to be willfully uncompliant and effectively punished and put in solitary confinement because of their mental illness.<sup>7</sup>

### Children and young adults

The effects of solitary confinement on children and young adults are particularly damaging as they are still developing mentally, physically, neurologically, and socially.<sup>8</sup> Experts argue that solitary confinement is particularly harmful due to young persons’ lower resilience and heightened vulnerability.<sup>9</sup> The psychological distress that solitary confinement induces in young people is illustrated in the overwhelming correlation that solitary confinement has with self-harm and suicide statistics for youth in prison. Statistics from the US, for example, indicate that “50 percent of youth who died by suicide while detained did so while in solitary confinement and 62 percent had been in solitary confinement at some point during their incarceration”.<sup>10</sup>

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<sup>5</sup> American Civil Liberties Union, *Worse Than Second-Class: Solitary Confinement Of Women In The United States*, 2019, available at <https://www.aclu.org/report/worse-second-class-solitary-confinement-women-united-states>.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Sharon Shalev, Solitary Confinement is No Place for Children, in Pro Bono Australia, 6 February 2019, <https://probonoaustralia.com.au/news/2019/02/solitary-confinement-no-place-children/>.

<sup>9</sup> American Civil Liberties Union, *Worse Than Second-Class: Solitary Confinement Of Women In The United States*, 2019.

<sup>10</sup> Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 Wash. Univ. J. L. & Pol'y 241, 259 (2012), available at <https://openscholarship>.

Similar to their older counterparts, girls represent a steady increasing number of children entering the prison system with significant prior histories of mental health issues, and physical and sexual trauma.<sup>11</sup> Their pathways into detention are often explained by minor misdemeanors, status offense, and family discord.<sup>12</sup> The social and sensory deprivation of solitary confinement can work to retraumatize victims, inflicting serious psychological harm. In certain circumstances, the small numbers of girls being held either in detention may mean that in separating them from adults (or in the case of pre-trial detention, those that are convicted) they are effectively held in solitary confinement.

### **Lesbian, gay, bisexual, transgender and queer (LGBTQ) individuals**

The former Special rapporteur on Torture in the interim report of 2011<sup>13</sup> noted the fact that LGBTQ individuals are often subjected to solitary confinement on the grounds of ‘protective custody’. There may be segregation measures required to protect people who identify (or are perceived) as LGBTQ, this does not justify limitations on their social regime.

Prison authorities may resort to isolating LGBTI detainees in single cells for their alleged protection, sometimes for weeks, months, or even years. This can be the result of unilateral decisions by the prison management, and even without informed discussions between prison authorities and the concerned inmates. In either scenario, LGBTI detainees may end up in a de facto regime of solitary confinement.<sup>14</sup>

### **Poor conditions in solitary confinement**

Solitary confinement can, in certain circumstances, amount to physical ill-treatment, both because of poor conditions of confinement and because the inherent separation of solitary confinement units from the rest of the prison means that there is a heightened risk of other human rights violations taking place. Access to adequate healthcare can be severely limited in solitary confinement. This is illustrated for example by the solitary confinement of pregnant women, where solitary confinement greatly impedes their ability to access proper prenatal care and emergency care if need be.<sup>15</sup> People with disabilities are also disadvantaged in solitary confinement. A report from the US, for example, detailed how blind and deaf prisoners in solitary confinement experience a heightened form of sensory deprivation as a result of their disability, and prisoners with mobility disabilities are denied access to necessary physical therapy and prescription medications.<sup>16</sup>

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wustl.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1019&context=law\_journal\_law\_policy.

<sup>11</sup> Malika Saada Saar et al., Human Rights Project for Girls et al., *The Sexual Abuse to Prison Pipeline: The Girls' Story 9* (2015), available at [http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015\\_COP\\_sexual-abuse\\_layout\\_web-1.pdf](http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf).

<sup>12</sup> Colleen Murphy, The Solitary Confinement of Girls in the United States: International Law and the Eighth Amendment, 92 Tulane L. Rev. 697, 704 (2018); For one illustration of the disastrous consequences of the placement in solitary confinement of a young woman, see: Coroner for Ontario's report: *Coroner's Inquest Touching the Death of Ashley Smith*, 19 December 2013, [www.csc-scc.gc.ca/005/007/005007-9009-eng.shtml](http://www.csc-scc.gc.ca/005/007/005007-9009-eng.shtml)

<sup>13</sup> Interim report of the Special Rapporteur on Torture to the UN General Assembly, 5 August 2011, A/66/268, p19.

<sup>14</sup> Association for the Prevention of Torture, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*, 2018, [https://apt.ch/content/files\\_res/apt\\_20181204\\_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf](https://apt.ch/content/files_res/apt_20181204_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf), p67.

<sup>15</sup> American Civil Liberties Union, *Worse Than Second-Class: Solitary Confinement Of Women In The United States*, 2019.

<sup>16</sup> American Civil Liberties Union, *Caged in: The Devastating Harms of Solitary Confinement on Prisoners with Physical Disabilities*, 2017.

**In line with the Nelson Mandela Rules, states should prohibit both indefinite and prolonged solitary confinement, as well as for certain groups, as stipulated in international standards. It should only be used as a last resort in exceptional cases, and then should only be applied for the shortest time possible and be subject to regular, independent review.**

### State examples in attempts to limit use of solitary confinement

Recent years have seen some reduction in the use of solitary confinement in a number of jurisdictions. For example, there was a substantial overall drop in the use of ‘administrative segregation’ in Canadian prisons: in August 2017 approximately 300 prisoners were segregated, a decrease from 800 in 2014.<sup>17</sup> Significantly, the British Columbia Supreme Court found that prolonged segregation – defined by the Nelson Mandela Rules as more than 15 days – was unconstitutional, noting that this was ‘a generous standard given the overwhelming evidence that even within that space of time an individual can suffer severe psychological harm’.<sup>18</sup>

A number of US states have similarly passed legislation to ensure that people who are particularly vulnerable to the ill effects of solitary confinement (including children, young people, pregnant women and people with serious mental illness) are not subjected to it.<sup>19</sup> Elsewhere, for example in England and Wales,<sup>20</sup> Australia<sup>21</sup> and Canada,<sup>22</sup> special committees of enquires have been set up to look at the use of solitary confinement and better regulate its use, especially with vulnerable groups.

### Developments in international law

#### UN Nelson Mandela Rules and UN Bangkok Rules

As stated above, the UN Nelson Mandela and UN Bangkok Rules provide recommendations to safeguard against human rights violations in the use of solitary confinement.

For example, due to the detrimental effects of isolation on human beings and the potential misuse of this practice, Rule 37(d) has been introduced to clarify that prison staff can separate a prisoner from the general prison population only if and when permissible by law, irrespective of the length of the period of such separation and irrespective of the term used for such a measure (for example solitary confinement, isolation, segregation, special care units or restricted housing). Similarly, the Mandela Rules state that all states should avoid the use of solitary confinement where possible and take steps towards its total abolition. The use of any form of involuntary separation, whether as a

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<sup>17</sup> ‘Prisons see drop in solitary confinement use as vulnerable groups granted immunity’, The Globe and Mail, 7 August 2017, [www.theglobeandmail.com/news/national/prisons-see-drop-in-solitary-confinementuse-as-vulnerable-groups-granted-immunity/article35897637/](http://www.theglobeandmail.com/news/national/prisons-see-drop-in-solitary-confinementuse-as-vulnerable-groups-granted-immunity/article35897637/).

<sup>18</sup> British Columbia Civil Liberties Association v. Canada (Attorney General), 2018 BCSC 62, para. 137.

<sup>19</sup> For some examples see: American Civil Liberties Union and Solitary Watch: Recent State Reforms to Limit the Use of Solitary Confinement (2013). Online at: <https://www.aclu.org/other/stop-solitary-recent-state-reforms-limit-use-solitary-confinement>

<sup>20</sup> United Kingdom Parliament Joint Committee on Human Rights. Youth Detention: Solitary Confinement and Restraint Inquiry, 2017 (online at: <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2017/youth-detention-solitary-confinement-17-19/>)

<sup>21</sup> Victoria Ombudsman A thematic investigation of practices related to solitary confinement of children and young people, September 2019 (online at: <https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports/OPCAT-in-Victoria-A-thematic-investigation-of-prac>).

<sup>22</sup> Independent Review of Ontario Corrections. Segregation in Ontario, 2017 (online at: [https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/IROC%20Segregation%20Report%20ENGLISH%20FINAL\\_0.pdf](https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/IROC%20Segregation%20Report%20ENGLISH%20FINAL_0.pdf).)

disciplinary sanction or for the maintenance of order and security, must be subject to authorization by law or by the regulation of the competent administrative authority, as set out in Rule 37(d).

The Mandela Rules absolutely prohibit the use of indefinite and of prolonged solitary confinement, both of which amount to torture and/or other ill-treatment.

As clarified in Rule 44, prolonged solitary confinement refers to confinement that lasts for a period in excess of 15 continuous days. The rationale of the prohibition implies that it also applies when periods of isolation are imposed in close succession. The UNCAT has recommended that there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. The UN Special Rapporteur on torture has similarly noted that the prohibition should include “frequently renewed measures that amount to prolonged solitary confinement”.

The former UN Special Rapporteur on torture has stated that “[i]f used intentionally for purposes such as punishment, intimidation, coercion or obtaining information or a confession, or for any reason based on discrimination, and if the resulting pain or suffering are severe, solitary confinement amounts to torture”.

Rule 45(2) reiterates the prohibition of the use of solitary confinement “and similar measures” in cases involving women and children as referred to in other UN standards and norms. This includes Rule 22 of the Bangkok Rules, which specifies that “[p]unishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.” This is due to the possible health complications that could arise from those who are pregnant and the fact that it penalizes children by separating them from their parents. Rule 67 of the Havana Rules prohibits placement of children in solitary confinement as a disciplinary measure. The UNCRC and the UN Special Rapporteur on torture have called on States to never use solitary confinement on children.

The use of solitary confinement is absolutely prohibited for prisoners with mental health conditions given their diminished mental capacity and because solitary confinement often results in severe exacerbation of previously existing mental health conditions.

### **World Medical Association statement on solitary confinement**

The World Medical Association recently published a [statement on the damaging medical impact on prisoners of solitary confinement](#). They cite documented cases where solitary confinement has caused “serious psychological, psychiatric, and sometimes physiological effects”. The WMA reaffirms that certain populations are particularly vulnerable to the negative health effects of solitary confinement, such as those with mental or physical disabilities, and children and young people. In the statement they call for the adoption of the SMR and other international standards and recommendations to curb the misuse of solitary confinement. Ultimately, they offer recommendations and reassert physicians’ “duty to consider the conditions in solitary confinement and to raise concerns with the authorities if they believe that they are unacceptable or might amount to inhumane or degrading treatment”.

### **The European Prison Rules update**

During its 74th Plenary in June 2018 (Session CDPC (2018)11), the European Committee on Crime Problems (CDPC) mandated the PC-CP to prepare preliminary draft texts amending the several rules of the European Prison Rules. The revision also foresees some technical changes in the Preamble in order to align its content to the jurisprudence of the European Court of Human Rights (ECtHR), the

standards of the European Committee for the Prevention of Torture (CPT), as well as the UN Standard Minimum Rules for the Treatment of Prisoners (The “Nelson Mandela Rules”). For the purposes of this submission, the pertinent Rules being revised are those on solitary confinement (Nos 3, 24, 53 and 60.5).

The European Prison Rules are a key reference for both prison administrations and staff in the region. The Rules are also used by monitoring bodies and civil society, providing guidance on how to uphold the rights of people in prison in practice. Furthermore, the ECtHR frequently uses the European Prison Rules in their jurisprudence. It is therefore of utmost importance that the Rules are revised to ensure they reflect the most recent and highest protection availed to people in prison who could be at risk for solitary confinement, as laid out in international and regional standards.

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For more information please contact:

Olivia Rope  
Director of Policy and International Advocacy  
[orope@penalreform.org](mailto:orope@penalreform.org)

Sharon Shalev  
[sharon.shalev@solitaryconfinement.org](mailto:sharon.shalev@solitaryconfinement.org)