



Seeing into Solitary:

A Review of the Laws and Policies of Certain Nations
Regarding Solitary Confinement of Detainees

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punishment

A SPECIAL REPORT IN COLLABORATION WITH



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The unrestricted use of solitary confinement affects hundreds of thousands of prisoners around the world today, often leading to violations of other fundamental human rights. When prolonged or indefinite, solitary confinement per se violates the right to personal (physical and mental) integrity, which is at the very heart of my mandate as United Nations Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment.

The global overuse and misuse of solitary confinement has been a topic of foremost concern for my Rapporteurship, and continues to be the focus of activists and lawyers dedicated to the international protection of human rights around the world. This is

because solitary confinement—whatever the name: segregation, isolation, separation, cellular, lockdown, Supermax, or Secure Housing Unit—remains a global practice that is used for different, and often illegitimate, purposes, for prolonged periods of time, and in a

variety of contexts, including prisons, administration detention, juvenile detention, immigration detention, and even mental health institutions. Indeed, it appears that the use solitary confinement for a variety of purposes is on the rise in many countries, often unbeknownst to the general public despite the inhumane effects on the personality of inmates.

In October 2011, I presented my thematic report on solitary confinement to the United Nations General Assembly. The report examines the practice of solitary confinement from the perspective of the absolute prohibition of torture and other ill-treatment in international law, and provided a series of recommendations to States. In that report, I defined solitary confinement—in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement—as the physical and social isolation of persons who remain confined to their cells between 22 and 24 hours a day. Isolation entails the lack of meaningful social contact for the detainee, whether by means of interaction with other inmates or penitentiary staff, visits, or participation in work, educational, and leisure activities, or sports. Aside from damaging the psychological health of its victims, the practice of solitary confinement is contrary to the principles of rehabilitation, which can be found in key international human rights instruments—like the International Covenant on Civil and Political Rights. The international law of human rights mandates significant human contact both within and outside of prison, including with fellow prisoners and with prison staff not strictly dedicated to security functions. In addition, due to the prisoner’s lack of communication, as well as the lack of witnesses inside the prison, solitary confinement can also give rise to other acts of torture or ill-treatment.

The findings in my 2011 report were premised on irrefutable medical and psychiatric literature demonstrating that solitary confinement can produce adverse health effects in individuals within days,

resulting for instance in certain psychotic disorders, including a syndrome known as “prison psychosis,” whose symptoms include anxiety, depression, irritability, cognitive disorders, hallucinations, paranoia, and self-inflicted injuries. In the report I concluded that the application of solitary confinement for more than 15 days in and of itself constitutes cruel, inhuman, or degrading treatment, or even torture, in violation of Article 7 of the International Covenant on Civil and Political Rights, and Articles 1 and 6 of the Convention Against Torture, and should therefore be prohibited in all circumstances. Being one of my principal areas of concern, this definition was based on the vast majority of scientific studies indicating that after 15 days of isolation harmful psychological effects often manifest and may even become irreversible. Prolonged and indefinite solitary confinement should be prohibited under all circumstances. Indeed, while the use of short-term solitary confinement can be justified in some circumstances, provided that adequate safeguards are in place, its prolonged or indefinite use can never constitute a legitimate tool for State use, regardless of circumstances.

At the same time, solitary confinement for fewer than 15 days may also amount to ill-treatment or even torture in certain circumstances. The assessment of whether solitary confinement amounts to torture and other cruel, inhuman or degrading treatment or punishment should take into consideration all relevant conditions on a case-by-case basis. These circumstances include the purpose of the application of solitary confinement, the conditions, length, and effects of the treatment and, of course, the subjective conditions of each victim that make him or her more or less vulnerable to those effects. Any case where the victims’ suffering reaches the required degree of severity will amount to ill-treatment and even to torture. In this context, in my report I highlighted that solitary confinement can never lawfully be imposed on certain

categories of prisoners, including juveniles, pregnant or breastfeeding women, or persons with mental disabilities.

Solitary confinement may only be used under exceptional circumstances, as a measure of last resort, and for as short a time as possible. Where admissible, the reasons for its application must be communicated to the individual, and minimum due process guarantees, including access to counsel and the right to challenge the decision, must be afforded. Persons being held in solitary confinement must further be provided effective resources for challenging the reasons and the duration of their confinement, and granted access to legal advice and medical care. Solitary confinement can never be justifiably used as a modality of execution for a prison sentence or a reclusion order, as it constitutes an unreasonable punishment and does not promote rehabilitation. Furthermore, when it is used as a “prison administration” measure, for instance to separate individuals who are believed to form part of the same organized crime structure, without regard to any specific conduct on their part, it violates the right to due process (since the detained person is deprived of the opportunity to challenge the decision made). The use of solitary confinement as an administrative or protective measure, so as to segregate certain vulnerable prisoners, such as new inmates, juveniles, or LGBT prisoners from the rest of the prison population, is also unjustified unless they actually request protection. Similarly, the use of indefinite solitary confinement during pretrial detention and during criminal investigations violates the due process rights of the detainee, and at the minimum may constitute cruel, inhuman or degrading treatment.

In recent years, important strides have been made in terms of recognizing the need to prohibit some forms of solitary confinement and to regulate its use, at both international and domestic levels. Notably, the

January 2016 United States Department of Justice Report and Recommendations concerning the use of restrictive housing, and the accompanying Guiding Principles for correctional facilities, constitute an important step forward as it acknowledges the overuse of solitary confinement in the United States, and the urgent need for reform. It must be said that the public’s awareness of the need to reform the use and abuse of solitary confinement was given a formidable boost by President Barack Obama’s call for a review of the practice and his unprecedented visit to a prison facility in the United States. Similarly, statements inserted in *dicta* in their votes by two justices of the United States Supreme Court have also had the effect of highlighting the need for a closer look at the practice. Class action litigation in California and New York, and an individual lawsuit in Pennsylvania have resulted in promising settlements. In jurisdictions other than the United States, litigation efforts are challenging the constitutionality of the practice in countries like Canada and Brazil; and legislative reform is under way in Scandinavian countries following a plea to that effect by the Committee to Prevent Torture of the Council of Europe.

The landmark adoption of the Nelson Mandela Rules (the revised former United Nations Standard Minimum Rules for the Treatment of Prisoners) by the General Assembly in December 2015 constituted the first time that limitations on the use of solitary confinement were explicitly included in an international legal standard. Significantly, the Rules prohibit the use of prolonged or indefinite solitary confinement (Rule 43). Solitary confinement is defined as the confinement of prisoners for 22 hours or more a day without meaningful human contact; prolonged solitary confinement is defined as being in excess of 15 consecutive days (Rule 44). Furthermore, the Rules state that 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 authorization

by a competent authority. It shall not be imposed by virtue of a prisoner's sentence." The Rules prohibit the use of solitary confinement for juveniles and pregnant or breastfeeding women, and for prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures—which, in my opinion, is always the case (Rule 45). Lastly, the Rules mandate a special role for prison health-care personnel in reviewing and recommending changes to prisoners' involuntary separation regimes (Rule 46).

Throughout my mandate, I observed the use of solitary confinement in contravention of international human rights law first hand, particularly during country visits. At the same time, I became keenly aware of a lack of data and significant gaps in knowledge concerning the practice of solitary confinement in different jurisdictions around the world—whether in terms of policies, laws, regulations, and practices. Accordingly, together with the Cyrus R. Vance Center for International Justice and *pro bono* assistance from the law firm of Weil Gotshal & Manges, and with the assistance of the Anti-Torture Initiative, the present project was developed, with the aim of undertaking a comparative analysis of the use of solitary confinement in 26 countries and 35 jurisdictions around the world, covering a representative survey of States in Africa, Asia, Europe, North America, and South and Central America.

The study published herein—“*Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees*”—constitutes a key resource for policy-makers and practitioners confronted with the use, and seeking to reform the practice of, solitary confinement in their jurisdictions. The study addresses and analyzes specific aspects of the practice in the surveyed jurisdictions. It explores, in broad categories, the purposes behind its imposition; procedures for its authorization; the scope for challenges and appeals against and limitations on its use; the nature of physical

accommodation; provisions of access to the outside world; the use of physical restraints during solitary confinement regimes; and ongoing efforts to revise laws and regulations on solitary confinement. The result is a most valuable and much-needed comparative analysis of specific regulations and practices, shedding light on both good practices and aspects of solitary confinement regimes in dire need of reform.

This project would not have been possible without the assistance of partners at the Cyrus R. Vance Center for International Justice, the law firm Weil Gotshal & Manges, and the Anti-Torture Initiative, and particularly Alex Papachristou, Eric Ordway, Glenda Bleiberg, and Andra Nicolescu, or without the assistance of many lawyers working—oftentimes in difficult conditions—on the ground in the countries and jurisdictions surveyed, who conducted excellent research for the study. I would like to take this opportunity to express my deep gratitude for their support for this project, and to reiterate my strong conviction that it is through such indispensable partnerships that we can better address today's pressing human rights needs, like the one under discussion in this compilation.

It is my hope that the growing global momentum to reduce and reform the use of solitary confinement throughout the world will continue unabated, and indeed accelerate, with resources such as the present study serving as useful tools to policy-makers, practitioners, and advocates. Together with partners such as those that made this study possible, I look forward to continuing to expand our collective knowledge of policies, laws, regulations, and practices in the use of solitary confinement, and to pursuing much-needed reforms that will ensure respect for the human dignity and physical and mental integrity of all persons, and particularly of prisoners, and their fundamental right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment under international law.



CYRUS R. VANCE CENTER
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The Vance Center is honored to have participated in the preparation of the report “Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees” on behalf of Professor Juan E. Méndez, United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

We wish to salute Professor Méndez’s leadership in confronting the global human rights abuse that is solitary confinement.

The Vance Center has had the opportunity to support the work of Professor Méndez throughout much of his tenure as Special Rapporteur, as we have done with other mandate holders at the United Nations Human Rights Council and with other agencies of

the United Nations. We more often provide pro bono legal representation and assistance to civil society organizations—international, national, and local—throughout the world.

The Vance Center relies significantly on the participation of lawyers working in private law firms to provide this representation and assistance. Over the past 18 months, 527 lawyers in 281 law firms from

66 countries collaborated with us. They did this work with us entirely on a pro bono basis; they contributed thousands of hours of their time to the clients we serve.

The preparation of this report is a signal example of the commitment of private lawyers to support the public interest through pro bono work. Law firms from 26 nations researched and analyzed their countries' laws and regulations governing solitary confinement,

covering 35 jurisdictions. For some, the research was not straightforward: the laws and regulations were not published, and the lawyers in some instances had to interview prison officials to determine them. For some law firms, contributing the time of their lawyers also was not easy.

The Vance Center wishes to acknowledge and thank all of the lawyers and their law firms for the significant contributions that they made to this report. They are listed below, with permission. Weil Gotshal & Manges deserves particular appreciation for coordinating the project and providing attorneys from many of its offices around the world to participate in it.

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Working on this project was a genuine privilege for all of us at Weil who participated in it. It enabled us to contribute to the prodigious efforts of the United Nations and its Special Rapporteur on Torture, Professor Juan Méndez, for whom we all have enormous respect, and to draw attention to a critical—yet startlingly neglected—human rights issue that truly demands more global attention.

The solitary confinement project was particularly important to us because it promotes the value of seeking global solutions to human rights problems, requiring us to distill into meaningful form information about a particular legal issue that was gleaned from multiple legal systems all over the world. Indeed, it provided the Firm with a rare opportunity to learn about and compare a multiplicity of other national legal systems and approaches, as well as to apply skills honed with other international matters, both fee-generating and pro bono. Associates from 10 offices in 5 countries dedicated thousands of hours to this research and report, and while that is impressive, it is not unusual for Weil, where our commitment to pro bono practice has fostered extraordinary work on human rights and criminal justice, especially solitary confinement. Indeed, the Firm only last year achieved a landmark settlement, as co-counsel with the Center for

Constitutional Rights, in the federal class action *Ashker v. Governor of California*, which effectively ended indeterminate long-term solitary confinement in all California state prisons. The Firm regularly participates in similar projects with the Cyrus R. Vance Center for International Justice, which introduced us to Professor Méndez and this project. We are proud to support the Vance Center and to have a representative on the Vance Center Committee of the New York City Bar Association.

We applaud the efforts of the United Nations and Professor Méndez in seeking to end the practice of solitary confinement, and we thank them and the Vance Center for having given us this special opportunity to participate in the project. We hope that the publication of the report will benefit persons throughout the world who are adversely affected by this unfortunate practice.

Amy Fettig

Deputy Director, ACLU National Prison Project;
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“Loneliness is a destroyer of humanity.”

Jesse Wilson, held in solitary confinement at United States Penitentiary, Administrative Maximum Facility (ADX) in Florence, Colorado

On any given day in the United States, the best research suggests there are approximately 80,000–100,000 people held in solitary confinement conditions in prisons across the country. And that figure does not even include the thousands of men, women and children subject to solitary in local jails and juvenile detention centers. Over the course of a year approximately 20% of all prisoners and 18% of jail detainees spend time in solitary confinement. By any measure the use of solitary confinement in American correctional institutions is a global outlier and human rights crisis.

Not only are the numbers of people subject to solitary staggering, the duration they spend in such extreme social and environmental isolation in America is

unconscionable. While some prisoners are subject to days or weeks in isolation, too frequently American prisoners are isolated in solitary for months, years, and even decades. In the federal prison system and at least 19 states, corrections official may hold people in isolation housing indefinitely. A recent study in Texas, for example, demonstrated that the average stay in solitary for prisoners in the state is almost four years; and over one hundred people had spent more than twenty years in solitary confinement.

Despite its seemingly endemic use in the United States, solitary confinement is widely recognized as painful and difficult to endure. Research demonstrates that solitary confinement is psychologically difficult for even relatively healthy individuals, but it can be

devastating for those with mental illness. When people with severe mental illness are subjected to solitary confinement, they deteriorate dramatically. In addition to increased psychiatric symptoms generally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement.

A February 2014 study in the *American Journal of Public Health* found that detainees in solitary confinement in New York City jails were nearly seven times more likely to harm themselves than those in general population, and that the effect was particularly pronounced for youth and people with severe mental illness. In California prisons in 2004, 73% of all suicides occurred in isolation units—though these units accounted for less than 10% of the state’s total prison population. In the Indiana Department of Corrections, the rate of suicides in segregation/solitary was almost three times that of other housing units.

Beyond this devastating loss of human life, we are now beginning to understand that the extreme social isolation and environmental deprivation inflicted on individuals in American prisons and jails may fundamentally alter the human brain. Neurologists and members of the medical community are increasingly raising alarms over the long term impacts of the practice for human health and functioning.

The human costs of solitary confinement are inestimable. And yet, up until very recently, few Americans were aware of the practice of solitary confinement taking place in their own communities and government institutions.

Over the past five years, momentum for reform of the practice of solitary confinement and creation of alternatives in our prisons, jails and juvenile detention centers grew at an enormous rate. In many ways, the reform movement’s success at capturing the attention of the media, the public, and state and national leaders is unprecedented for any campaign seeking to end

inhumane prison conditions in the U.S. In the last year alone, both the President and Justices of the Supreme Court have publicly condemned the practice—and in the case of President Obama, taken affirmative steps to push reform.

In an historic op-ed in the *Washington Post*, President Barack Obama denounced the practice of solitary confinement in the United States. A national review of solitary confinement practices and alternatives conducted by the Attorney General was released simultaneously with the President’s opinion piece. That report and its recommendations—adopted by the President—set forth over 50 guiding principles for solitary reform writ large and a host of specific policy changes for the federal Bureau of Prisons (BOP) and other detention agencies, including a ban on youth solitary, diversion of those with serious mental illness, reform to protective custody, prohibitions on the use of solitary confinement for low-level disciplinary infractions, and shortened mandatory lengths of stay in solitary confinement units.

A significant driver of this movement for change is access to more information about the practice of solitary confinement at both the national and international level. At the forefront of this global expose of solitary confinement is the United Nations Special Rapporteur on Torture. His groundbreaking and historic report in 2011 on the global use of solitary confinement set the stage for much of the advocacy, public education, and human rights standard setting that followed in the United States and other countries. In that report, the Special Rapporteur called for a global ban on solitary confinement in excess of 15 days as well as bans on the segregation of juveniles and of those with mental disabilities.

As a U.S.-based advocate working in the campaign to *Stop Solitary* in prisons, jails, and youth detention centers around the country, I am especially grateful for the Special Rapporteur’s subsequent engagement

with the U.S. human rights and civil rights community and the U.S. government around the issue of solitary confinement. There is no question that the impact of his work raised the profile of the issue nationally, allowing for greater advocacy success at both the federal and state levels. Indeed, advocates in several states, such as New York and New Jersey, have sought to incorporate the 15 day limit on solitary confinement into state law. This is all the more striking when you realize that these states routinely place people in solitary for months and years at a time.

There is no question that the exposure of solitary confinement as a dire human rights issue in the U.S. and other countries supported the efforts of both nation states and non-governmental organizations in their effort to include the strong protections against the use of solitary confinement articulated by the Special Rapporteur on Torture into the revised *United Nations Standard Minimum Rules for the Treatment of Prisoners*—now known as the “*Mandela Rules*.” As a result, corrections officials in the United States and human rights advocates have begun using the *Mandela Rules* as a benchmark for humane practices in our prisons and jails.

Before the finalization of the *Mandela Rules* and the Special Rapporteur’s articulation of standards, there were few benchmarks for Americans to reference regarding the practice of solitary confinement. The resulting practices had virtually no standards—and existed outside the framework of human rights protections.

This absence of human rights standards, culture and dialogue allowed solitary confinement to proliferate and fester in this country unseen and unacknowledged.

For this reason, the publication of *Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees* is another important step in the effort to end solitary confinement as it is currently practiced around the world. For the first time, we have a critical comparative view of this frequently hidden and obscured practice.

Now we are able to interrogate our own practices of solitary against the practices of other nations. Shining a light on the justifications for solitary, the procedural protections provided for its use, the limits to that use, the nature of conditions in solitary confinement units, and the growing trend towards reform, provides a much needed tool for the public to question the actions of our own government. Importantly, it also provides a point of departure and dialogue to look for better practices and stronger human rights protections for one of the most vulnerable groups of people in any nation.

In the long road towards realizing human rights for all in our complex modern societies, one of our first steps is to question the status quo.

This *Review* is a first step.
It helps us build to the next one.

Dr. Sharon Shalev

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SEPTEMBER 2016 » LONDON

I welcome this review as an important contribution to better understanding the use of solitary confinement across the world. Comparative studies, particularly with this geographical spread, are few and far between. Yet, by enabling differences to be highlighted, they provide a vital starting point for asking why better practice in one jurisdiction cannot be applied in another.

As this review recognises, what the law and regulations say in any one jurisdiction can only offer limited insight. What actually happens in prisons, and especially in solitary confinement cells, which are at the deep and far end of the prison system, may in practice be very different. Nor indeed do laws and regulations, even if properly observed, wholly define the experience of solitary confinement. It is, for example, the quality of

prison staff-prisoner relationships that most clearly sets apart a segregation unit in England from a US supermax, and this is something which neither laws and regulations, nor their appropriate or inappropriate implementation, can tell us. Rather, it requires close observation and attention to the accounts of those who inhabit those units.

Knowledge, both of what should happen and what actually happens, is though the essential foundation for successful advocacy for change.

Juan Méndez, as Special Rapporteur on Torture, has exemplified that role in relation to solitary confinement—pushing forward efforts to better regulate and limit its use and, importantly, to raise awareness and hold governments and decision makers to account. There is much to look back on with satisfaction over the course of his mandate as Special Rapporteur. It is a cause, particularly in the US, that has finally been taken up by the media and found its way into the popular consciousness. Barack Obama’s Washington Post editorial of January 2016 ‘Why we must rethink solitary confinement’ and similar statements from other leading politicians and the courts; the ban on the use of solitary for juveniles in the Federal prison system; and other important reforms to solitary confinement policy and practices in several US states, reflect a profound change in mood and a greater willingness to critically examine the practice.

The adoption by the UN General Assembly of the revised UN Minimum Standards for the Treatment of Prisoners in December 2015— now the ‘Nelson Mandela rules’- and their ban of prolonged solitary confinement, defined as one lasting longer than 15 days, will help to ensure that reforms such as those we are seeing in the US have a wider impact worldwide. They are an important international statement of intent.

But we must not be complacent. In some other jurisdictions there seems to be a move towards replicating the US supermax model with suspected and convicted terrorists. And whilst the absolute prohibition on the use of torture provides an important backstop against the worst uses of solitary confinement, wider societal fears about terrorism and radicalisation in prisons present a risk to its extended use. We should resist that pressure.

This report marks an important contribution to the evidence base on solitary confinement. We must continue to build on it to facilitate further effective advocacy for positive change in the future.

Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees

ON BEHALF OF PROFESSOR JUAN E. MÉNDEZ,
UNITED NATIONS SPECIAL RAPPOORTEUR ON TORTURE
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT

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Glossary of Common Terms

ACLU	American Civil Liberties Union
California Settlement	A settlement agreement dated September 1, 2015 between California inmates and the Governor of California in <i>Ashker et al. v. Brown et al.</i>
CAR	The Correctional Alternative Rehabilitation program conditioned in the New York Settlement which provides an alternative to SHUs.
CDCR	California Department of Corrections and Rehabilitation
CSA	South Africa’s Correctional Services Act
DOCCS	The New York State Department of Corrections and Community Supervision
ECHR	European Convention on Human Rights
HALT Act	Humane Alternatives to Long-Term Solitary Confinement Act
ICC	Institution Classification Committee (California)
ICE	United States Immigration and Customs Enforcement Agency
JFBA	Japan Federation of Bar Association
LEP	Criminal Enforcement Law, or, the “ <i>Lei de Execução Penal</i> ,” in Brazil

LGBTQ	Lesbian, Gay, Bi-sexual, Transgender, or Queer
New York Settlement	A settlement agreement dated December 16, 2015, and subsequently approved on December 23, 2015, between several New York-based inmates and DOCCS in <i>Peoples v. Fischer</i>
RDD	Differentiated Disciplinary Regime, or, the “ <i>Regime Disciplinar Diferenciado</i> ,” part of the LEP
RRU	Residential Rehabilitation Unit
SHU	Secured Housing Unit (Illinois), Security Housing Unit (California), or Special Housing Unit (New York)
Special Rapporteur	United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mr. Juan Méndez
Survey on Solitary Confinement or the Survey	A survey conducted in numerous several countries regarding various aspects of legislation regulating the solitary confinement of detainees
UN	United Nations
Vance Center	Cyrus R. Vance Center for International Justice
Weil	Weil, Gotshal & Manges LLP

I. INTRODUCTION

A. Purpose and Methodology

This document analyzes the solitary confinement regimes in various jurisdictions around the world in the context of efforts made by the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mr. Juan Méndez, (the “Special Rapporteur”) and the Anti-Torture Initiative to fulfill his mission.¹ Specifically, we were asked to describe, and analyze laws and regulations from jurisdictions around the world that allow and/or proscribe solitary confinement and its conditions and limitations.² This document summarizes the results of a survey conducted in numerous countries (the “States”) regarding various aspects of legislation regulating the solitary confinement of detainees (the “Survey on Solitary Confinement” or the “Survey”).³ To this end, the Office of the Special Rapporteur, the Vance Center and Weil attorneys prepared a questionnaire comprising various aspects of solitary confinement. Subsequently, the Vance Center and Weil provided the questionnaire to lawyers from individual jurisdictions and asked them to complete it.⁴ Questions about legislation on solitary confinement were grouped under six main categories: (1) the existence and purpose of

solitary confinement; (2) the authorization of solitary confinement; (3) challenges and appeals concerning the use of solitary confinement; (4) limits of solitary confinement; (5) accommodation, access and physical restraints; and (6) efforts to revise laws or regulations on solitary confinement. The Survey also requested each of the Reporters to attach a copy of the relevant legislation, as well as information about relevant case law and statistics in their jurisdictions. The information contained in the completed questionnaires (the “Questionnaires”) and the attachments⁵ then became the basis for our analysis, which uses these same six categories as the structure for this document. We received Questionnaires from twenty six countries, and ten Questionnaires from one of those countries, the United States of America (the “United States”).⁶ In total, we received Questionnaires from thirty-five jurisdictions.

As to the Questionnaires themselves, a few comments should be made. First, although in some cases, responses in the Questionnaires contained whole sections of the national or regional statutes pertinent to the subjects under inquiry, the vast majority of the responses consisted only of descriptions of those laws.

1 Weil, Gotshal & Manges LLP, (“Weil”) has prepared this report at the request of the Cyrus R. Vance Center for International Justice (the “Vance Center”) in conjunction with the Special Rapporteur.

2 For this purpose, solitary confinement was defined as the physical and social isolation of individuals who are confined in their cells for 22-24 hours a day.

3 The Survey did not make a distinction between individuals held in custody after an arrest and individuals convicted of a crime. The responses to the Survey also are not uniform in their treatment of these two types of detainees. Thus, unless otherwise specified, we have used the term detainee, inmate or prisoner interchangeably as referring to individuals held in custody either with or without a conviction.

4 In most cases, the responding lawyers came from prominent law firms in the States surveyed. All responding lawyers performed their tasks on a pro bono basis. We will refer to the attorneys answering the questionnaires as the “Reporters.”

5 Weil has created a database containing the Questionnaires and attachments. Credentials and instructions to access the database will be sent individually to persons designated by the Office of the Special Rapporteur and the Vance Center. The database is available at: <https://extranet.weil.com/cm/99995/4981>

6 The States with respect to which we received Questionnaires were as follows: Argentina, Austria, Brazil, China, the Czech Republic, England and Wales (“England”), Ethiopia, Finland, France, Germany, Guatemala, Hungary, Japan, Kenya, Kyrgyzstan, Mexico, New Zealand, Norway, Poland, Russia, South Africa, Turkey, Uganda, the United States of America (the “U.S.” or the “United States”), Uruguay, and Venezuela. With respect to the United States, we received two Questionnaires pertaining to the federal level of regulation, one regarding federal prisons and another regarding the federal immigration system, plus Questionnaires from the following eight states: California, Colorado, Florida, Illinois, Maine, New York, Pennsylvania, and Texas.

Accordingly, the analysis below does not purport to be based on a study of the actual laws of jurisdictions reviewed concerning solitary confinement regimes but rather on descriptions of those laws as reported in the Questionnaires.⁷

Second, not all the Questionnaires were completed in a uniform manner. Thus, some Questionnaires contained extensive information about laws pertinent to the rights at issue, including quotations from, and citations to, such laws. Others, however, contained more summary information. In many cases, the absence of detailed information about the laws in question arose from the apparent absence of specific laws on the subject. In other cases, however, the lack of detail in the responses was attributable to the style of the responding attorney or firm. In any event, because of the lack of uniformity and harmonization among the Questionnaires, the analysis provided cannot and does not purport to have statistical value.

B. Conclusions

Although its implementation may vary from country to country and there do appear to be some efforts to reform it, the practice of solitary confinement appears to be an established fixture of the prison systems in all the countries examined, with few signs that it will disappear from those systems any time soon. Moreover, although, as described below, solitary confinement may have multiple purposes in certain jurisdictions, some of them ostensibly beneficial to the prison population, the instances of, and potential for, abuse of the practice, regardless of purpose, appear to be significant.

It should also be noted that although our primary goal was to report on the status of the laws regulating solitary confinement on the targeted jurisdictions, some of the Reporters noted that there is often a significant gap between the law and the practice of solitary confinement in their jurisdictions. This is the case, for example, in Argentina, Poland, Uruguay and Turkey. In all of these cases, solitary confinement is imposed in practice beyond what is authorized by law.

Almost all the jurisdictions reviewed use solitary confinement as a disciplinary measure. Nonetheless, the conduct that comprises such a sanction differs widely from country to country, with the range spanning from minor offenses, such as gambling, the use of abusive language, or the failure to clean an inmate's cell, to serious offenses such as murder or other serious acts of violence. In addition, although there are many non-disciplinary reasons justifying the imposition of solitary confinement (e.g., security, protection, prison administration, etc.), in many cases solitary confinement imposed because of these reasons tends to be equivalent in effect to the solitary confinement imposed as a punishment. Moreover, safeguards, challenges, access to legal counsel and mandatory medical examinations, which are frequently available in cases of disciplinary solitary confinement, are lacking, in most cases, in situations of non-disciplinary solitary confinement.

It should also be noted that approaches to solitary confinement across the jurisdictions studied differ widely not only between countries within the same region, such as Europe, but also within a single country. In this regard, for example, the laws of a certain jurisdiction regulating solitary confinement may appear to be quite humane at one level, providing services such as assistance to an inmate to defend himself or herself during an investigation to decide whether or not solitary must be imposed, and yet quite inhumane at another level by not limiting solitary

⁷ The local attorneys completing the questionnaires for this report have based their answers solely on the applicable law and publicly available data. The answers to the questionnaires are not based, for example, on interviews of detainees or prison officials. The attorneys participating in this project are also not specialized in criminal law or human rights.

confinement for special categories of inmates (e.g., juveniles, pregnant women, or the mentally ill) or not limiting the period of solitary confinement for inmates sentenced to death.⁸ Similarly, but perhaps not surprisingly, some countries which have made the most consequential improvements on solitary confinement regimes, such as England and the United States, also tend to authorize some of the longest periods of solitary confinement for inmates.

While, as mentioned above, some form of solitary confinement is authorized across all jurisdictions reviewed, the efforts of certain countries to address possible abuses in the practice are worth mentioning. In this regard, some jurisdictions, such as England and Germany, have focused their efforts on improving the conditions in which individuals are held in solitary confinement to make it more humane. Also, some jurisdictions have created independent and comprehensive administrative bodies to deal with complaints and appeals concerning the decision to impose solitary confinement.⁹ These bodies are independent of the judiciary, or any other parties involved in making the decision, and are subject to the scrutiny of a higher organization.

Many jurisdictions prohibit or limit (or have proposals to prohibit or limit) the use of solitary confinement for certain categories of inmates, such as juveniles, women (mostly pregnant women), and the mentally ill or disabled. Per our review of the Questionnaires, however, the most common limitation on solitary confinement is a limitation on the length of the confinement. For solitary confinement as a disciplinary sanction, many jurisdictions have a time limit of approximately 30 days or less. However, these limits are often subject to extensions and/or renewals so that the ultimate periods of confinement are allowed to be much more prolonged, or else are flatly ignored

⁸ This is the case in Japan.

⁹ E.g., England and some U.S. states.

in practice by the prison systems. Indeed, one of the most striking aspects of the study is the extent to which some countries, including highly developed nations with what may be viewed as enlightened approaches to certain aspects of solitary confinement, allow such confinement, whether for disciplinary or non-disciplinary purposes, and in theory or practice, to be extended either for extremely long periods, including years in some cases, or indefinitely.

II. THE PURPOSES OF SOLITARY CONFINEMENT

The imposition of solitary confinement on prison inmates is common across the world, as, in general, are the aims it seeks to achieve, with the predominant purpose being the discipline and punishment of prison inmates following their participation in one of various forms of unauthorized or unlawful behavior. There are, however, a number of other purposes for which solitary confinement is used in various jurisdictions. The three most common are: protection, security and administration. All four purposes of solitary confinement in the countries examined are addressed below.

A. Discipline

1. Prisoners

Across almost all the jurisdictions that were reviewed, discipline was either one of or (in the case of Argentina,¹⁰ Brazil, the Czech Republic, Kenya, Mexico, the U.S. State of Colorado, and Venezuela) the only purpose of placing prison inmates into solitary confinement.¹¹ When having this purpose, solitary

¹⁰ Notably, however, although Argentinian legislation allows solitary confinement only as a punitive sanction, as noted in several instances in this report, in practice, prisoners in Argentina may be held in solitary confinement for other reasons.

¹¹ Based on our review of the Questionnaires, all jurisdictions, with the exception of Guatemala and the state of Texas in the United States, employ solitary confinement for disciplinary purposes.

confinement is used either to punish inmates for their behavior while they are in prison, or as a judicially imposed sanction on a convict being sent to prison.

In many jurisdictions, solitary confinement is used as a punishment when inmates violate prison regulations. It is also used, though less frequently, as part of the sentencing of a criminal by a judge. Examples of regulations and acts which, when broken or committed, could result in placement into solitary confinement in various jurisdictions are set both below. These examples demonstrate the vast disparity in what is classified as a justifiable cause for placing detainees into solitary confinement around the world.

Brazil—solitary confinement in this country is used as a punishment for prisoner involvement in prison rebellions, some of which often result in the deaths of other inmates. Solitary confinement in Brazil may also be linked to protection in the form of preventing the loss of life of others as well as punishing those who carry out, or threaten to carry out, such acts. Solitary confinement can also be imposed in this jurisdiction for less serious offences, such as disobeying an official.

China—prisoners in Chinese prisons can be placed into solitary confinement as punishment for gambling (as is also the case in Kyrgyzstan and Mexico) or being slack at work and refusing to improve after receiving a warning from a prison officer.

England and Germany—solitary confinement can be used as a punishment in these countries only for serious acts of violence or significantly dangerous behavior, and in each case only where other management methods have been tried and have failed.

Kenya—the imposition of solitary confinement can be used in Kenya to punish prisoners found guilty (after appropriate inquiry) of minor offences, in

which case confinement in a separate cell is coupled with a prescribed punishment diet. If the prisoner is found to have committed an aggravated offence, this punishment is further coupled with corporal punishment with a cane.

United States (state of Illinois)—in relation to solitary confinement as a punishment for minor offences, the Vera Institute reported in May 2015 that 85% of Illinois inmates who had been sent to solitary confinement within a 12-month period were sent there as punishment for minor infractions, such as abusive language.

Mexico—isolation can be enforced for between 31 and 75 days where inmates do not clean their cells, where they exchange food with other inmates, or where they are late for programmed activities.

Poland—solitary confinement can be judicially imposed for offences committed outside of the prison environment. Such offences include, among others, any threat or act aimed at impairing the integrity of the Republic of Poland or its constitutional system, an attempt on the life of the President of the Republic of Poland or a member of its armed forces, and hijacking an aircraft or vessel.

In certain jurisdictions, such as England and Ethiopia, solitary confinement is used not only as a punishment but also as a method of reform, to encourage prisoners to correct their behavior. By contrast, it appears that in Guatemala, solitary confinement is not permitted as a method of discipline or punishment. Similarly, in Norway, segregation from the company of other prisoners cannot, in principle, be used as a disciplinary sanction or punishment, though short term segregation (for up to a maximum of 24 hours) is permitted for violations of the rules and order of the prison.¹²

12 Section 39 of the Act Regarding Execution of Penalties.

2. *Non-prisoners*

In China, placement into solitary confinement as a form of punishment is not limited to prisoners and can also be imposed on police officers who violate law enforcement procedures, and on traffic police, in order to prevent the abuse of discretionary authority. The acts, which, if committed, can result in a police officer being placed into solitary confinement, include spreading statements that damage the reputation of the People's Republic of China and taking part in demonstrations or strikes against the interest of the People's Republic of China. For traffic police, the punishment can be imposed for, among other acts, issuing registration certificates, approving the installation of alarm sirens and issuing driver's licenses, each in violation of statutory requirements.

B. Protection

Solitary confinement is used in many jurisdictions as a form of protection for vulnerable people, allowing the prison authorities to move inmates into isolation to protect them, either from threatened or anticipated harm from other inmates or from themselves.

Solitary confinement, sometimes in a special purpose prison cell, is also used in multiple jurisdictions as a special security measure to protect detainees who are potentially suicidal or otherwise at risk of hurting themselves. In Austria, there is a special security measure set out in a statute ensuring that such prisoners are accommodated in specially secured cells free of any items that could be used to inflict self-injury.¹³ In this jurisdiction, however, such a measure may be imposed only on prisoners whose mental condition does not allow them to be kept in a less restrictive cell due to the risk of self-inflicted harm. In Germany, detainees may only be kept isolated in such specially secured cells for a few days.

¹³ Strafgesetzbuch [StGB][Penal Code] § 103.2.4 (Austria).

In England, inmates can be placed into protective solitary confinement in order to identify risks and develop risk management strategies and to diagnose and provide support for prisoners with mental health needs and to arrange for the delivery of suitable treatments. Moving prisoners into solitary cells allows prison staff to deliver individually tailored regimes to such detainees. In the state of Colorado in the United States, persons with serious mental illnesses may not be placed into long-term solitary confinement except when exigent circumstances are present. The state of New York in the United States, however, has residential mental health units that include separate housing locations within a correctional facility which are designed for inmates diagnosed with a serious mental illness who, due to their behavior, would otherwise be serving a sanction period in solitary confinement.

In certain jurisdictions,¹⁴ inmates can request to be moved into solitary confinement for personal or compassionate reasons or because of difficulties with other prisoners. In the state of California in the United States, inmates may be moved into segregated housing if they are a relative or associate of a prison staff member. In the state of Pennsylvania in the United States, inmates who are identified as being at high risk for sexual victimization may be placed involuntarily into solitary confinement as a means of protection if there is no alternative means of separation from the likely abuser(s). Such segregation, however, may only continue until an alternative solution has been arranged and ordinarily should not exceed 30 days.

In Austria, inmates may also be placed into solitary confinement in order to control the spread of disease and infection, with the law expressly stating that prisoners must be kept in solitary confinement if

¹⁴ E.g., England, France (Article R. 57-7-70 and D238-1 of the French Penal Procedure Code), South Africa, and the United States (with regard to inmates subject to Federal Immigration laws).

there are medical reasons justifying it.¹⁵ Similarly, in Japan, the use of solitary confinement is authorized for the prevention of epidemics in order to inhibit the rampant spread of an infectious disease inside the penal institution by isolating those infected until the risk of infection has ceased to exist. It must be noted, however, that those infected need only be isolated from those who are not infected so that some of the infected persons may be treated together, which means that in such cases they would not fall into the category of solitary confinement. The use of solitary confinement in this situation is authorized until the risk of infection has ceased to exist, which also means, of course, that it can be prolonged.

Under United States federal law, inmates can be placed into solitary confinement if (i) they test positive for HIV; and (ii) there is reliable evidence indicating that they may engage in conduct posing a health risk to others. They may only be kept in such a secure room, however, for a maximum of 20 working days pending their appearance before a Hearing Administrator in order to prevent isolation in this circumstance from being protracted.

In certain jurisdictions, such as China and Japan, prisoners can be placed into solitary confinement when they have been sentenced to the death penalty. In Japan, prisoners who are sentenced to death are placed into single cells to maintain their peace of mind. Although many of these prisoners are permitted to contact people outside of their cell, this practice has the potential to fall under the scope of solitary confinement and has led to the UN Human Rights Committee recommending that Japan relax this rule and ensure that solitary confinement remain an exceptional measure of limited duration. Solitary confinement is also the default incarceration regime for persons awaiting the death penalty in Russia. However, although this rule is still technically in force,

it has no practical effect in the country since capital punishment has not been used there since 1999. In the state of Pennsylvania in the United States, where capital punishment has also not been used since 1999, inmates for whom the prosecution is seeking the death penalty may be placed into solitary confinement.

It should be noted that solitary confinement for protective purposes may also have unintended consequences. For example, despite the fact that where solitary confinement is used as a form of protection it is not intended as a punishment and that persons being isolated for their protection should not forfeit their exercise and social rights or their dignity, in Argentinian prisons there is no special place for such prisoners to exercise and spend time away from the other prisoners except in their cell. Consequently, such inmates are often secluded and find themselves living under a strict isolation regime similar to that for prisoners placed in solitary confinement for disciplinary purposes. Similarly, the laws in Kyrgyzstan allowing for the use of solitary confinement as a protective mechanism do not require certain procedural steps to be followed, in the interest of acting to ensure the safety, life and health of prisoners. And while this suspension of procedure allows prison officers to act quickly, it also has the potential for abuses in the use of this practice.

C. Security

In Germany, a detainee can be placed into solitary confinement if there is a risk of the prisoner in question being freed from the institution. Such measures should only be taken in the short term (for a maximum period of 24 hours) and only if it is believed that it cannot be avoided or remedied in any other way. Similarly, in South Africa, inmates can be confined where they have been recaptured after escape and there is reasonable suspicion that the inmate will escape, or attempt to escape, again.

¹⁵ Strafgesetzbuch [StGB][Penal Code] § 103.2.4 (Austria).

In Guatemala, solitary confinement may only be imposed in order to re-establish order and security and only in the case of emergencies for the purpose of avoiding damage to people or property, preventing violence and overcoming active resistance by inmates. Since the measure is to be used in emergencies only, it may only be used as a short term means of oppression, and prolonged solitary confinement is not expressly authorized. Similarly, in Hungary solitary confinement of detainees is permitted to terminate or prevent any activity that may violate or endanger the order and security of the detention facility.

D. Prison Administration

In several countries, solitary confinement is used as a method of prison administration and managing cell space. In Argentina, this is a regular practice because of a lack of space, despite the practice not being permitted by law. It was noted by the Reporter in this jurisdiction that new inmates may be held in solitary confinement cells for weeks or even months until space becomes available in a regular cell. Similarly, in Uruguay, prisoners are often isolated for a short period when they first arrive at the prison in order to diagnose their status and determine the most suitable section of the prison for them to be housed. This practice, however, is not permitted for longer than 24 hours. Solitary confinement for administrative purposes is also often used when inmates arrive at a new institution in the state of Florida in the United States or while an investigation or administrative process is pending. In addition, it is sometimes used in the state of Pennsylvania in the United States if there is no other appropriate bed space for an inmate.

Solitary confinement is authorized in Norway where it is necessary due to structural or manpower situations but only for a maximum period of six days. In Japan, inmates can be placed into solitary confinement for

the maintenance of order, which includes where an inmate generates a loud voice or noise against a prison officer's order to cease doing so.

It should be noted that it can be hard to draw a line between administrative segregation and protective segregation as many jurisdictions describe the practice of "administrative" solitary confinement as one with a protective component aimed at reducing incidents of violence across the prison system by isolating prisoners who are identified as being potentially dangerous, disruptive or otherwise presenting a management problem. Thus, in many cases, these two supposedly separate purposes actually have similar aims.

Solitary confinement is sometimes imposed on detainees during pre-trial detention. This is permitted in Finland¹⁶ and also in Japan and Norway in order to preserve evidence by avoiding contact between inmates which could result either in the hindrance or prevention of the collection of evidence or in the destruction of evidence. In Mexico, accused persons over 70 may be ordered to spend the pre-trial investigation period in solitary confinement. In Poland, detainees suspected of committing extremely serious offences can be kept in solitary confinement prior to their trial taking place. The same is also true in Russia for certain crimes, including crimes against humanity and those against the state. Also, in Russia, lawyers or members of law enforcement who are in pre-trial detention are generally kept in solitary confinement.

Conversely, under US Immigration law, detainees can be placed into solitary confinement if they are scheduled for release, removal or transfer within 24 hours. This is also permitted under general United States federal law, where inmates are in holdover status during transfer to another destination.

¹⁶ By chapter 10 of the Detention Act (768/2005).

It should be noted that in Russia, inmates sentenced to life imprisonment are held in cells accommodating no more than two inmates, meaning that prisoners in this category sometimes may find themselves alone during their incarceration. This does not mean, however, that they fall within the category of prisoners in solitary confinement. Similarly in Turkey, a prisoner convicted of certain crimes such as first degree murder, manufacturing and trafficking drugs, and crimes against constitutional order must be imprisoned in a certain type of cell in which one or three prisoners may be held, therefore resulting in prisoners sometimes being held alone depending on which cell they are allocated. In Turkey, however, prisoners sentenced to aggravated life imprisonment for crimes such as genocide, aggravated murder or aggravated rape must be held in individual cells.

Also noteworthy is that in certain jurisdictions, such as France, solitary confinement is expressly not permitted to be used as a prison management tool.

E. Other Purposes

Despite there being no legal basis for it, it is common practice in Turkish prisons for prisoners to be placed in individual cells because of their sexual orientation, even where they are being incarcerated for crimes for which the punishment is not solitary confinement. Although this practice is said by the Turkish authorities to be used to “protect vulnerable individuals,” the European Court of Human Rights ruled against Turkey on this issue in 2012¹⁷ when it determined that segregating prisoners on the basis of their sexual orientation violates Article 3 (on torture) and Article 14 (on discrimination) of the European Convention on Human Rights.

¹⁷ Application Number: 24626/09.

F. Practices Similar to Solitary Confinement

A few comments should be made concerning practices that while technically not considered solitary confinement, practically speaking, approximate it. For example, in China, persons who are suspected of endangering national security are regularly placed under residential surveillance for up to six months, during which time they are prohibited from leaving a defined location and from communicating with any person without permission. This practice can be viewed as solitary confinement, and there have even been reports that this practice falls into the category of prolonged solitary confinement that amounts to torture under international law.

G. Conclusions

It is clear that around the world inmates are placed into solitary confinement for a variety of reasons. Once prisoners are placed into solitary confinement, however, it appears that prison officers do not always differentiate between those who are in this situation in order to be punished and those who are there for protection or simply because there are no other cells available. Consequently, they are all living under the same strict regime, are isolated for 22 or 23 hours each day, and are not permitted or able to carry on the usual prison activities.

Under a 2015 settlement in the State of New York, in the United States,¹⁸ it was agreed that the use of solitary confinement for protective and administrative

¹⁸ See Joint Motion to Certify Class and Joint Motion for Settlement Agreement, *Peoples v. Fischer*, No. 11-02694 (S.D.N.Y. Dec. 16, 2015), ECF No. 137 (the “New York Settlement”). The Settlement Agreement was approved by the United States District Court for the Southern District of New York on December 23, 2015. The settlement is the result of a class action brought by New York’s Civil Liberties Union in representation of two inmates in the custody of the New York State Department of Corrections and Community Supervision (“DOCCS”). The New York Settlement Agreement is available at: <https://www.documentcloud.org/documents/2647683-New-York-Solitary-Confinement-Lawsuit.html>

reasons would be used less frequently and more selectively. Additionally, in New York, the previous list of 87 rule violations that led to a solitary confinement sanction has been reduced, with 42 offences (including drug use) no longer resulting in solitary confinement sentences for one-time violations and with 23 offences no longer eligible for solitary sanctions at all, thereby removing 1,100 people from solitary conditions in that one state alone. This progress is a positive move away from the sometimes arbitrary and over-zealous use of solitary confinement for administrative purposes in prisons around the world.

III. AUTHORIZATION OF SOLITARY CONFINEMENT

A. Common Procedure

The procedures used to authorize the use of solitary confinement in the countries examined may be divided into two: (i) the procedure used to authorize solitary confinement for disciplinary purposes, and (ii) the procedure used to authorize solitary confinement for non-disciplinary purposes. With regard to the first procedure, the common practice is for a prison officer to authorize the solitary confinement of an inmate following the result of a hearing conducted by either the same officer or another authorized official, with a record kept reflecting the imposition of the measure. The inmate is then informed about the decision to place him or her in solitary confinement and is generally entitled to representation by counsel. Additionally, where this procedure is followed, a medical examination is usually performed either before or during the isolation period.

Similarly, when solitary confinement is imposed for non-disciplinary purposes such as protective, security or administrative purposes, the measure is also authorized by a prison authority, who keeps a record of the measure and gives notice to the affected inmate of its imposition. In these non-disciplinary solitary confinement situations, however, a hearing is rarely held. During this type of solitary confinement,

medical examinations are also not mandatory, and representation by legal counsel is unavailable. More specific issues relating to the authorization of solitary confinement are described below.

1. *The Investigation Concerning the Imposition of Solitary Confinement*

Although there are a few jurisdictions (such as England, Mexico, Colorado, and Pennsylvania) in which a relatively impartial individual or group is in charge of the investigation leading to the imposition of solitary confinement, in the majority of jurisdictions reviewed the inquiry regarding whether or not to impose this measure is conducted by one or more officers of the prison or the detention facility. This is the case regardless of the purpose of solitary confinement, be it disciplinary or non-disciplinary.

2. *Advance Notice Before the Hearing*¹⁹

While several jurisdictions require advance notice regarding the possibility of the imposition of solitary confinement before a hearing can take place (to the extent that the jurisdiction provides for a hearing), others have no such requirement.²⁰ Notably, such advance notice appears to be required more often in disciplinary solitary confinement situations than in non-disciplinary solitary confinement situations.²¹

19 Notably, information regarding advance notice was provided voluntarily in the Questionnaires and not in response to a specific question. Accordingly, it is possible that the study may underestimate the prevalence of this practice for both disciplinary and non-disciplinary solitary confinement.

20 England, Japan, Mexico, South Africa, Turkey, Uganda, and Venezuela require advance notice before a hearing to consider the possibility of imposing solitary confinement.

21 For example, advance notice appears to be required before imposing solitary confinement for non-disciplinary purposes only in England and France.

3. Possibility to Submit Documents and/or Evidence for Defense

Nearly half of the jurisdictions participating in the survey allow inmates or detainees to submit documents and/or other evidence for their defense in the context of an investigation regarding disciplinary solitary confinement.²² Perhaps not surprisingly, the submission of such documents or other evidence is more often allowed in an investigation for disciplinary solitary confinement than in an investigation for non-disciplinary solitary confinement.²³

4. Hearing

The majority of jurisdictions reviewed require a hearing in the context of an investigation for disciplinary solitary confinement.²⁴ As noted above, however, hearings in an investigation regarding non-disciplinary solitary confinement appear to be rare.²⁵

22 Jurisdictions allowing the filing of such evidence are: the Czech Republic, England, Finland, France, Japan, Kenya, Mexico, Russia, Turkey, Uganda, Uruguay, and Venezuela. South Africa allows for the submission of defensive evidence only when the investigation to decide whether or not to place an individual in solitary confinement is conducted by a disciplinary official and not when the investigation is conducted by the head of the correctional center or other authorized officials.

23 Only England and France seem to allow the submission of defensive evidence in the cases of non-disciplinary solitary confinement. Within the United States, this is also the case in the states of Florida and Pennsylvania.

24 A hearing is required in these circumstances in the following jurisdictions: Austria, England, Finland, Japan, Kenya, Mexico, New Zealand, South Africa, Turkey, Uganda, Uruguay, Venezuela, and the United States. Note that the United States is listed here as a state requiring a hearing in these circumstances because both the federal system and half of the eight states surveyed in the country require it.

25 As with the information concerning advance notice, however, information concerning the hearing generally was volunteered and not provided in response to a specific question. Accordingly, the study could be underestimating the prevalence of a hearing for non-disciplinary solitary confinement. Jurisdictions requiring a hearing before solitary confinement as a non-disciplinary measure can be imposed include England and the United States, in which more than half of the states studied require a hearing.

5. Authorizers of the Imposition of Solitary Confinement

As for disciplinary solitary confinement, in most of the countries studied, prison authorities authorized the measure, except in several countries (i.e., Austria, Brazil, England, Mexico, New Zealand, Norway, and Turkey) where judges or seemingly relatively impartial committees are involved in the process in part or in whole. With respect to non-disciplinary confinement, officials within the prison or detention facility authorize it, except for several countries (i.e., Austria, Brazil, England, and Norway) where judges, or what appears to be a relatively impartial committee, are involved in either the whole process or part of it.

6. Representation by Legal Counsel

In the majority of the jurisdictions reviewed, representation by legal counsel is available for inmates during an investigation to determine whether or not solitary confinement should be imposed. The survey showed, however, that legal representation is less frequently available in investigations related to non-disciplinary solitary confinement.²⁶

In several jurisdictions, including England, Finland, Austria and Norway, legal aid is also available for inmates or detainees who are unable to afford legal representation during a solitary confinement investigation. Notably, in some of the U.S states reviewed in the report, including Colorado, Florida, and New York, representation by legal counsel is specifically excluded during the proceedings to determine whether a prisoner is put in solitary confinement. Also, at the federal level, although under the United States federal rules applicable to prison systems, an inmate is entitled to have a staff representative present during the hearing process

26 Among the countries studied, representation by legal counsel in the context of non-disciplinary solitary confinement appears to be available only in Brazil, England, France, Guatemala, Kyrgyzstan, Norway, and Poland.

before a disciplinary hearing officer, he/she is not entitled to representation by legal counsel during this process.

7. Other Assistance

Only a few of the countries surveyed, such as Austria, England, and France, provide inmates with an interpreter to assist them in the preparation of their defense in the context of an investigation for disciplinary or non-disciplinary solitary confinement. Interesting to note is the case of Japan, where the warden of the penal institution will designate a member of his or her staff to assist an inmate subject to a solitary confinement investigation. The assistant discusses with the inmate the appropriateness of solitary confinement as a disciplinary punishment and then submits a written report describing his or her opinions and those of the affected inmate. The person providing this assistance will also attend the hearing in order to express the inmate's point of view on the appropriateness of the sanction.

A similar practice can be found in some U.S. states. For example, Pennsylvania and California make the assistance of a non-attorney available to inmates subject to a solitary confinement investigation. In Pennsylvania, a certified peer specialist is available to assist inmates that do not understand enough English to read and understand the meaning of the charges against them. The peer specialist helps the inmate prepare for the hearing to determine whether or not solitary confinement for disciplinary purposes should be imposed. In California the issue of an inmate's placement in a Secured Housing Unit ("SHU") goes to a hearing before an "Institution Classification Committee" ("ICC") for final authorization. If the inmate is incapable of attending the ICC hearing, or elects not to attend, a qualified staff member will be appointed to appear before the ICC. A trained staff member may also be assigned if the inmate needs assistance

communicating or if the issues are sufficiently complex to make it unlikely that the inmate can understand the issues or the ICC hearing process.

8. Medical Examination

In general, in most countries, access to a health professional appears to be provided for the entire inmate population in a detention facility. Based on the results of the Survey, medical examinations in the context of solitary confinement are performed at two different points in time: a) at the initiation of the solitary confinement, and b) during solitary confinement.

a. At the initiation of solitary confinement

Less than half of the jurisdictions studied provide for a specific regime regarding mandatory medical examinations at the initiation of solitary confinement either for disciplinary purposes or for non-disciplinary purpose.²⁷ As examples, England, Hungary, Japan, Russia, Turkey, the Czech Republic and Uruguay provide mandatory medical examinations at the initiation of disciplinary solitary confinement. As to non-disciplinary solitary confinement, only England and Japan appear to provide mandatory medical examinations at the initiation of such confinement.²⁸

b. During solitary confinement

Similarly, less than half of the jurisdictions reviewed include a specific regime for medical examinations during solitary confinement either for disciplinary

27 Examples of jurisdictions that include a medical examination as part of the process for the imposition of solitary confinement as a disciplinary measure are: Hungary, Japan, Russia, Turkey, the Czech Republic, and Uruguay. As for Brazil, though medical examinations appear to be required, it is unclear whether or not they are performed at the initiation of solitary confinement or during solitary confinement of an inmate or detainee.

28 Japan has several types of solitary confinement. Mandatory medical examinations are performed at the initiation of solitary confinement in cases of disciplinary punishment and confinement in protection rooms (which include situations where the inmate is likely to commit self-injurious acts), and during solitary confinement in cases of isolation, and confinement in protection rooms.

or non-disciplinary purposes. This does not mean, however, that all jurisdictions that provide for a medical examination regime during solitary confinement always do so for both categories of solitary confinement. Jurisdictions that include medical examinations as part of the solitary confinement regime for both purposes, disciplinary and non-disciplinary, include Austria, England, France, Germany, South Africa, and the United States.²⁹

9. General Notification of the Imposition of Solitary Confinement

a. The inmate

A vast majority of the jurisdictions reviewed inform an inmate ahead of the imposition of disciplinary solitary confinement.³⁰ Similarly, more than half of the jurisdictions do so before the imposition of non-disciplinary solitary confinement.

b. The family

None of the jurisdictions reviewed includes an obligation to inform the family of an inmate or detainee of the imposition of solitary confinement. In South Africa, if the family inquires about the whereabouts of a particular inmate and the inmate has given his/her consent, the Department of Correctional Services must inform the family about the fact that the inmate has been placed in segregation.

29 More than half of the U.S. states studied require a medical examination during solitary confinement. It is worth noting that in the U.S. state of Illinois, medical personnel must perform daily visits to individuals in solitary confinement, and a physician must conduct weekly visits to those inmates. Finland and New Zealand provide a mechanism according to which medical staff is informed of the imposition of solitary confinement for disciplinary purposes. Therefore, although there seems to be medical care tailored to solitary confinement, it is unclear whether medical examinations are mandatory.

30 Exceptions include Argentina, China, and Kenya. With respect to New Zealand, Uganda, and Kyrgyzstan, the responses to the survey were not specific enough to be able to determine one way or the other whether an inmate is or is not informed of the imposition of solitary confinement in advance of the event.

c. Counsel

In either type of solitary confinement, only a small number of jurisdictions such as South Africa, Brazil, and Norway inform the detainee's legal counsel of the imposition of solitary confinement for disciplinary purposes to his/her client. Only Brazil does so in case of the imposition of non-disciplinary solitary confinement.

10. Record of the imposition of solitary confinement

In either type of solitary confinement, more than half of the jurisdictions reviewed keep a record of the imposition of solitary confinement on an inmate. In the following jurisdictions there is either no record kept of it or the responses to the questionnaire are insufficiently clear to make such a determination, at least for the imposition of solitary confinement for disciplinary purposes: Austria, Ethiopia, Germany, Kyrgyzstan, New Zealand, Poland, Uruguay, and Argentina.

B. Conclusions

From the perspective of due process, jurisdictions such as England, Mexico, and Venezuela seem to be notable in so far as they all allow inmates to have advance notice of the imposition of solitary confinement and submission of documentary and other evidence in their defense. It should be noted, however, that Venezuela has very recently enacted new rules regarding the imposition of solitary confinement which, we are advised, do not correspond to actual practice, at least not yet. This gap between theory and practice also appears to prevail in Argentina, which has a procedure quite favorable to the detainee, though the procedure appears not to be followed in practice. In addition, some countries, such as England and Japan, provide additional assistance to inmates, such as, in England's case, interpreters, and, in the case of Japan, a member of the warden's staff to assist an inmate in the defense of his/her position with regard to solitary confinement. It should also be noted that, according to the Survey, several jurisdictions, such as China,

Ethiopia, Guatemala, Kyrgyzstan, and Poland, appear not to have in place a specific mechanism or procedure for the authorization of solitary confinement.

IV. CHALLENGES AND APPEALS CONCERNING THE USE OF SOLITARY CONFINEMENT

There are numerous means of challenging or appealing a decision to place an inmate in solitary confinement. These can be broadly divided into the following categories: (i) grievance and complaint procedures; (ii) internal administrative appeals; (iii) legal appeals; and (iv) judicial review. Each of these areas is discussed in more detail below.

A. Grievances and Complaints Procedures

1. General

Most jurisdictions generally do not provide a specific complaints procedure for decisions to place inmates in solitary confinement. However, general internal complaints procedures are usually available to all inmates, and can be used to challenge solitary confinement decisions. Some jurisdictions also allow complaints to be made by the inmate or concerned party³¹ to an independent or external body.

Complaints made through an internal complaint or grievance procedure do not have a suspensory effect on an inmate's placement in solitary confinement. We have not seen any examples of complaints systems being used successfully to challenge a decision to place an inmate in solitary confinement.

2. Procedure for Making Complaints

In most jurisdictions surveyed, complaints are dealt with internally and are directed either to a prison official or the head of a facility. In some jurisdictions, where the decision to place the inmate in solitary confinement

is made by the director of a facility, a complaint can be escalated to a governing body or a responsible minister.³²

In some jurisdictions,³³ an ombudsman also provides a complaints procedure, either in place of, or as an alternative to, that provided by the prison. In most cases, where the option is available, an inmate will choose to bring a complaint through the ombudsman.³⁴ However, there are examples where the independence of the ombudsman from the prison administration is cast into doubt.³⁵

A small number of jurisdictions allow for complaints to be taken to court, either independently of the internal complaints procedure,³⁶ or as an extension of an internal complaint that a prison official violated an inmate's rights.³⁷

B. Internal Administrative Appeals

1. General

Prisons in most jurisdictions have an internal administrative hierarchy whereby disciplinary decisions regarding inmates will generally lie with prison wardens or directors who have the authority to make decisions regarding solitary confinement.

Decisions on solitary confinement are usually either appealed directly to a higher authority within the prison system, or reviewed by designated committees specifically created to review solitary confinement

31 For example, in the state of Pennsylvania in the United States, civil action groups often take complaints against the Department of Corrections to court on the inmate's behalf.

32 For example, in Hungary, a complaint made against the decision of a prison superintendent is referred to the minister for law enforcement.

33 E.g., Brazil, England, and Finland.

34 Brazil allows any "citizen", including an inmate, to bring a complaint.

35 In England, the prison administration has the discretion to intervene where there is an abuse of the complaints procedure.

36 E.g., in the U.S. states of Pennsylvania and Maine (in *Gildoy v. Boone*, 657 F.2d 1 (1st Cir. 1981)).

37 Austria.

within the penitentiary system.³⁸ In some jurisdictions, committees have sole discretion to make a decision with respect to solitary confinement of particular inmates,³⁹ while in others there are no further administrative appeals of the warden's decision.⁴⁰ Generally, most jurisdictions provide for an independent official or independent administrative body to review the decision. In jurisdictions such as Poland, however, the decision-maker is the person responsible for reviewing the decision.⁴¹

In some instances, the decision does not lie solely with a prison official. An official must inform the judge who was responsible for hearing the inmate's case or sentencing the inmate, or defer to that person to make the decision. Once a referral is made to a judge, an administrative appeal becomes a legal appeal, under the remit of the judiciary.⁴² In Uruguay, inmates can appeal directly to the judiciary for injunctive relief against administrative decisions and apply for compensation against administrative decisions if the administrative appeals system fails them.

Certain jurisdictions, such as a few states in the United States and England, have created specially designated committees who are responsible for overseeing administrative appeals within their jurisdiction.

2. Procedure for Appeals

To launch an administrative appeal an inmate must inform a prison official. As mentioned above, under the law of most jurisdictions, decisions regarding inmates

will normally lie with prison wardens or directors who have the authority to make decisions regarding solitary confinement. In practice, however, it is the prison guards and more junior prison staff, who are often not able to receive complaints or act on requests for administrative appeals, who interact daily with inmates.

The junior staff is, however, responsible for reporting infractions or behavior that they believe warrants a referral to solitary confinement, which, in turn, could lead ultimately to a prison official's decision to place an inmate in solitary confinement.

Some jurisdictions explicitly give inmates the right to written explanations of the decision, the right to be heard by the warden who makes the decision, and to present evidence to support their position.⁴³ There are usually strict deadlines in place for making such appeals (ranging from within 3 to 15 days of the decision), but generally the procedure is understood to be more informal and less institutionalized than appeals to the judiciary.

Often jurisdictions also impose deadlines, which are usually shorter, by which a final decision on the appeal must be reached on the person or authority responsible for reviewing the decision. These deadlines range from 3 to 10 days from the appeal (except for France, where the regional director of prisons has up to a month to review the decision).

As referred to previously, in most jurisdictions, after the inmate has exhausted appeals in the internal administrative system, he/she can appeal further to the judiciary for a legal review of the administration's decisions.

38 In the U.S. states of California, Maine, Pennsylvania and in Finland there are three levels of administrative review of a decision, including (in Finland) to specific administrative courts, before an inmate can appeal to the judiciary.

39 E.g., England and several states in the United States.

40 E.g., Argentina, Norway.

41 In addition, in Russia, administrative appeals can be brought before the authorities in charge of the facility, though the independence of these persons is not guaranteed.

42 E.g., Argentina, Brazil, Guatemala, Hungary, Turkey.

43 E.g., Argentina, Finland, Germany, Kenya and Austria (among others).

In several jurisdictions, there are no formal procedures or appointed persons for deciding whether an inmate should be subject to solitary confinement and presumably, therefore, no notion of internal administrative appeals.⁴⁴

3. Grounds

There are no prescriptive grounds upon which an inmate can raise an appeal within the prison administration; instead the inmate can invoke a violation of his/her human rights (for example, denial of the right to basic health care or breach of the right not to be subject to torture) for internal appeals against the decision to be placed in solitary confinement.⁴⁵

Some jurisdictions allow appeals where due process was not followed in making the decision or where an improper or unjust decision was made on the basis of the evidence presented.⁴⁶ However, the legal rules of evidence do not apply in these circumstances. It is for inmates to put forward their own evidence (and in some jurisdictions, call their own witnesses) to support their position.

C. Legal Appeal

1. General

The decision to place an inmate in solitary confinement may be made by a prison, a judicial authority, or by a court. Where that decision is made by a court, most inmates have the right to a legal appeal to a higher court. Some jurisdictions also allow appeal to the court system where other procedures (such as administrative

appeals) have been exhausted. Only three of the jurisdictions considered prevent inmates from making legal appeals to alternative or higher courts.⁴⁷

2. Procedure for Appeal

In most jurisdictions there is a clear process of appeal for all decisions relating to an inmate, and this applies equally for decisions to place an inmate in solitary confinement. The appeals process is subject to the same national rules on civil procedure as any other legal proceedings.

Some jurisdictions⁴⁸ have specific statutory appeals systems or routes of appeal under national human rights legislation which can be invoked instead, or in addition to, the standard appeals process, where an inmate believes his/her human rights are being violated either as a consequence of the fact of being placed in solitary confinement, or because of the conditions he/she is subject to within solitary confinement.⁴⁹

Generally, legal appeals do not have a suspensory effect until a determination of a court is made to remove an inmate from solitary confinement. In a few jurisdictions,⁵⁰ a judge can rule that a solitary confinement order is suspended during the appeal process.

Most jurisdictions do not distinguish between the methods of appeal available to an inmate in accordance with the reasons for their placement in solitary confinement. Only one⁵¹ jurisdiction considered has different procedures and appeal processes depending on whether isolation is for preventative or punitive reasons.

44 E.g., China, Kirghizstan, Illinois, Uganda, Ethiopia.

45 This is true, for example, in the California prison system and in the Federal System in the United States.

46 E.g., the U.S. state of Colorado and Japan. Russia allows appeals of decisions where there is concern over the nature of the measure imposed, the underlying justification or the conditions of the detention.

47 E.g. China, Ethiopia, Kyrgyzstan.

48 E.g., New Zealand.

49 See *Vogel v Attorney General* [2013] NZCA 545.

50 E.g., Austria, Argentina.

51 Brazil.

3. Right to Legal Representation

In most jurisdictions, inmates have the right to legal representation throughout their time in prison, whether or not they are in solitary confinement.⁵² Some inmates also have access to a specific litigation coordinator who can assist them with bringing an appeal.⁵³

Inmates often rely on the numerous legal advocacy organizations which provide advice and support to inmates, and in special circumstances will also bring claims on their behalf. This is particularly prevalent in the United States. One highly publicized recent example of this is the case of *Ashker v Governor of California*, an action brought by the Centre for Constitutional Rights on behalf of the inmates of the Pelican Bay State Prison solitary confinement wing.⁵⁴

In two jurisdictions considered⁵⁵ it was noted that, although appeals are allowed, so far none or very few have been successful. Inmates in these jurisdictions are entitled to legal representation, though in practice this is often not provided and appeals may not be passed on to the relevant court and/or public body or may be rejected immediately.

52 As noted elsewhere in this report, however, this does not apply to the specific right of legal representation in connection with the hearing to determine whether an inmate should be placed in solitary confinement. Some jurisdictions provide for this right, while others do not.

53 E.g., California.

54 This class action challenged the widespread use of inmate segregation and prolonged solitary confinement by the California Department of Corrections and Rehabilitation (“CDCR”). *Ashker v. Governor of California* resulted in a settlement agreement (the “California Settlement”), which is the basis of key reforms in California. Joint Motion for Preliminary Approval of Settlement Agreement, *Ashker et al. v. Brown et al.*, No. 09-05796 (N.D. Cal. Sept. 1, 2015), ECF No. 424. This settlement was granted preliminary approval by the United States District Court for the Central District of California on September 16, 2015. Minute Entry, *Ashker et al. v. Brown et al.*, No. 09-05796 (N.D. Cal. Sept. 1, 2015), ECF No. 431.

55 E.g., Argentina and South Africa.

4. Grounds

In most jurisdictions appeals are allowed on the basis of an error of law, undue process, or a court exceeding its authority. It is unusual for an appeal to be granted on the basis of an error of fact or the merits of an argument.

In certain jurisdictions, such as in European countries, the court will be required to take into account the provisions of the European Convention on Human Rights (ECHR) when hearing an appeal. In particular, consideration will be given to Articles 1, 3, 5, 6, and 17, which protect the individual’s right to respect, prevention of torture, liberty and security, fair trial, and prevention of abuse of rights. Inmates in these jurisdictions can also bring a claim against their country directly to the European Court of Human Rights, for breach of any of the ECHR articles.

Some European jurisdictions⁵⁶ will also take into consideration observations and decisions of international committees tasked with observing on human rights issues, such as the European Committee for the Prevention of Torture and Inhuman Degrading Treatment⁵⁷ and the Helsinki Foundation for Human Rights.

D. Judicial Review

1. Introduction

Judicial review is a means by which a nation’s courts supervise the national bodies that exercise public functions within their jurisdiction, to ensure that they are acting lawfully and fairly.

The right to commence judicial review proceedings is usually found in national law, but the procedure and processes involved are subject to principals developed in case law in common law jurisdictions.

56 E.g., Poland and Finland.

57 See, in particular, *Horych v Poland* and *Piechowicz v Poland*.

2. Judicial Review and Solitary Confinement

Inmates can bring judicial review challenges against decisions to place them in solitary confinement in most of the jurisdictions studied. There is, however, sometimes a disparity in the treatment of judicial review cases across regions. For example, the United States has a broad statute requiring that administrative remedies be exhausted before initiating judicial review of alleged violations of federal law.⁵⁸ However, the state of Colorado, has enshrined in case law that segregation actions by departments of corrections are quasi-judicial actions.⁵⁹ As a result, inmates may seek judicial review for some segregation actions even without any allegation of protected liberty interest or violation of due process.

In most jurisdictions, although there is no general principle of national judicial review of decisions to place inmates in solitary confinement, individual inmates can bring a judicial review claim against a prison, a national body, or a court that has issued a solitary confinement order. For example, in South Africa, the decisions of prison disciplinary officials, Inspecting Judges and the National Commissioner can be subject to judicial review.

3. Grounds

In most jurisdictions, judicial review is not designed as a means of challenging a decision on the basis of a point of law, or a means of further considering the merits of a decision, but rather as a means of reviewing that due and fair process was followed in reaching that

58 42 U.S.C. § 1997e(a) (“No action shall be brought with respect to prison conditions under . . . any . . . Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”)

59 See *Baldauf v. Roberts*, 37 P.3d 48 (Colo. App. 2001) (*cert. denied*, Jan. 14, 2002).

decision. In light of this, a court will usually consider only issues of breach of law or undue process, and will not consider the legal merits of a case.

As noted above, certain jurisdictions are required to take into account the provisions of the European Convention on Human Rights (ECHR) when determining whether or not a public body has acted within its remit. In particular, consideration will be given to Article 6 ECHR, which protects the right to a fair trial.

4. Independence

In most jurisdictions, judicial review is undertaken by a national court with no connection to any decisions that are subject to the review. An inmate is free to bring judicial review proceedings against any national body or authority, or official thereof, if he/she fulfils the requirements of the legislation governing the right to bring proceedings. In one jurisdiction, judicial review is only permitted if the Director of the Prison allows it.⁶⁰

E. Conclusions

There is a broad consensus across the jurisdictions considered that inmates are entitled to file complaints, report to administrative bodies, and complete legal appeals to challenge decisions to place them in solitary confinement. There are only a few jurisdictions where this does not appear to be possible.⁶¹

Some jurisdictions have gone further, and created independent and comprehensive administrative bodies to deal with complaints and appeals. These bodies are independent of the judiciary, or any parties involved in making the decision, and are subject to the scrutiny of a higher organization.

Jurisdictions that are party to the ECHR or have national legislation in place protecting constitutional rights must also consider additional human rights

60 Argentina.

61 E.g., Uganda. Very limited rights are available in Venezuela, Argentina, Turkey and South Africa.

obligations when deciding whether or not to place an inmate in solitary confinement, and the extent to which they can be allowed to remain there. There is a clear correlation between the jurisdictions with most highly developed complaints and administrative procedures with multiple levels of oversight and those jurisdictions that have additional levels of legislative protection for human rights.

V. LIMITS OF SOLITARY CONFINEMENT

Most of the countries surveyed have some kind of limitation on solitary confinement whether it is based on a particular identifying feature of the prisoner (e.g., gender, age, disability, or sexual orientation) or the length of the confinement itself. Of the countries where limitations are based on an identifying feature of the prisoner, gender, age, and disability are the most common bases for limitations. Limits based on the length of the confinement, however, are much more prevalent.

A. Limits Based on Identifying Features of the Prisoner

1. Gender

Of the countries surveyed, more countries had limitations on solitary confinement based on gender, or an identifying feature related to gender (such as pregnancy), than on any other criteria. Specifically, fifteen nations have limitations on solitary confinement for female prisoners. Eleven such nations base their limits on whether the female prisoner is pregnant, has recently given birth, is breastfeeding, or is the mother to a young child. Guatemala prohibits solitary confinement for pregnant women, women with infants, and breastfeeding mothers. Kyrgyzstan prohibits solitary confinement for pregnant women and women with children. Russia prohibits pretrial detention for pregnant women and women detained with children under 3 years old but has no provisions for women who are already serving prison sentences. Argentina

prohibits solitary confinement for pregnant women or women with children under age 4, and also if it could affect lactation. Norway prohibits solitary confinement for pregnant women, those having given birth less than 6 weeks prior, and those nursing their own child for fewer than 9 months. Venezuela prohibits solitary confinement for women in their last 3 months of pregnancy, or 6 months after birth. Hungary and Uganda prohibit solitary confinement for pregnant and nursing women. The Czech Republic prohibits solitary confinement for pregnant women and women who gave birth within the previous 6 months. Uruguay mandates that pregnant or lactating women cannot be subject to any disciplinary measures that may affect their health or the health of the child. Germany has special considerations for pregnant and nursing women and will only impose solitary confinement on such women for disciplinary reasons if a medical officer is consulted.

Three such nations have limitations for women regardless of whether they are pregnant or mothers. England strives to avoid solitary confinement for women whenever possible, and implements such confinement for as short a time as possible. Poland incarcerates female prisoners in facilities separate from men and will not allow solitary confinement absent special circumstances. While the United States federal prison system does not appear to codify special limitations on female prisoners in solitary confinement, there is a special women's prison facility in Hazelton, West Virginia that allows solitary confinement for women. Among the individual states surveyed, most did not have limits for women: only New York prohibits solitary confinement for pregnant inmates.

2. Age

Limitations based on youth are also quite common. Fourteen nations have limitations on solitary confinement for juvenile prisoners. Uruguay, Uganda, Brazil, France, and the United States prohibit solitary confinement for juveniles under any circumstances,

with no stated age minimum. In January 2016, for example, the United States prohibited solitary confinement for juvenile prisoners in federal prison.⁶² France prohibits solitary confinement for prisoners under the age of 15. Mexico and Norway only permit solitary confinement for juveniles under extraordinary circumstances. For example, in Mexico, such confinement is prohibited for juveniles unless strictly needed to avoid serious or generalized acts of violence or insurrection in which the young prisoner may be involved. Austria prohibits it “if [it is] harmful” to the prisoner. Poland, Venezuela, and the United States (Pennsylvania, California) have facility restrictions for juveniles, where solitary confinement may only be imposed in juvenile detention facilities.

Several nations that do allow solitary confinement for juveniles have special time restrictions for juveniles in solitary confinement: Turkey (up to 5 days for disciplinary solitary confinement); United States (Maine) (up to 30 hours); Kyrgyzstan (up to 22 consecutive hours, with a right to at least 2 hours for a daily walk); and Kenya (up to 3 days, after a medical professional certifies the prisoner as medically fit).

One of the states in the United States (Illinois) has a more complicated and unique set of limitations on solitary confinement for juveniles. In Illinois, juveniles

in the 6 state-run juvenile facilities must spend at least 8 hours/day outside their cells, but those in custody of the Illinois Department of Corrections have no such limitation on solitary confinement. A juvenile prisoner awaiting a disciplinary hearing in that state, however, may not be held for more than 4 days, unless the incident is still under investigative status.

3. Disability

Limitations based on disabilities, physical or mental are also common. For example, thirteen nations have limitations on solitary confinement for physically ill inmates. These restrictions range from outright bans on solitary confinement for physically ill inmates, delay of punishment until the inmate is declared healthy, separation of the inmate into a special facility or treatment program, or the requirement of an examination as a precondition to placement into solitary confinement. Uganda prohibits solitary confinement for physically ill prisoners under any circumstances. South Africa, Turkey, Uruguay, Hungary, France, and Finland will postpone or discontinue solitary confinement if it would harm or cause danger to the prisoner, and Venezuela prohibits it for inmates with terminal diseases. Poland may allow a physically disabled prisoner to serve his sentence under a therapeutic system. Austria prohibits solitary confinement if such punishment would injure the inmate or exacerbate his condition, and the Czech Republic will impose it only subject to a physical fitness examination.

Similarly, eleven nations have limitations on solitary confinement for mentally ill or disabled prisoners. As with the restrictions listed above for physically ill or disabled inmates, these restrictions range from outright bans on solitary confinement for mentally ill inmates, delay of punishment until the inmate is declared healthy, separation of the inmate into a special facility or treatment program, or the requirement of an examination as a precondition to placement into solitary confinement. Uganda, Argentina, and states in

62 The Department of Justice’s Final Report Concerning the Use of Restrictive Housing defines juveniles as “those adjudicated as juveniles, and those under age 18 who were convicted and sentenced as adults.” **U.S. Dep’t Justice, *Final Report, Report and Recommendations Concerning the Use of Restrictive Housing***, (Jan. 2016) at 114. President Obama adopted the Final Report on March 1, 2016 through a Presidential Memorandum. Memorandum on Limiting the Use of Restrictive Housing by the Federal Government, 2016 Daily comp. Pres. Doc. 113 (Mar. 1, 2016). Prohibitions on solitary confinement at the state and or local level within the United States vary. For instance, New York City banned solitary confinement for inmates 21 and younger. Laila Kearney, *NYC to end solitary for Rikers inmates age 21 or younger*, Reuters (Jan. 13, 2015), <http://www.reuters.com/article/us-usa-new-york-rikers-idUSKBN0KM25S20150113>.

the United States (e.g., the state of New York) prohibit solitary confinement for mentally ill prisoners under any circumstances, while the United States federal immigration system prohibits it entirely absent exigent circumstances.⁶³ Austria and Guatemala prohibit solitary confinement if such a measure would injure the inmate or exacerbate his condition, while the Czech Republic will impose it only subject to a mental fitness examination. South Africa and Turkey may discontinue or postpone solitary confinement due to an inmate's mental illness. Poland, New Zealand and states in the United States (California, Colorado, Pennsylvania) will allow inmates with mental illness to serve solitary confinement in a separate facility or treatment program. Venezuela mandates penalties other than prison time for mentally ill inmates.

4. Sexual Orientation

In contrast to the above bases for limiting solitary confinement, limitations based on sexual orientation are rare. Only two nations, Turkey and the United States, have limitations on solitary confinement for LGBTQ prisoners. In 2013, the European Court of Human Rights held that a homosexual prisoner in Turkey who had been segregated from all the heterosexual prisoners for reasons of safety was wrongfully excluded and had experienced discrimination due to his sexual orientation. It should be noted, however, that in actual practice, there are a number of prisoners in Turkey who are placed in solitary confinement purportedly for "administrative reasons," due to their sexual orientation.

The United States federal prison system similarly bars wardens from referring inmates for placement in solitary confinement for protection for reasons related to sexual orientation, unless the inmate also meets

other criteria for placement. None of the individual states surveyed appeared to have explicit limits for LGBTQ prisoners.

It should be noted that four nations have no specific rule prohibiting solitary confinement for juveniles, women, LGBTQ inmates or inmates with mental or physical illnesses or disabilities (China, Ethiopia, Japan and New Zealand). The state of Florida in the United States also had no specific rule prohibiting solitary confinement for any of the above-named categories.

B. Time Limits on Solitary Confinement

When addressing time limits on solitary confinement, several issues must be considered. First, one must consider the purpose of the confinement: discipline (for actions while in prison), administration (for purported reasons of health or safety), or sentenced punishment (related to the original crime). Second, one must consider whether, and to what extent, the disciplinary sanction, administrative confinement or sentenced punishment may be reviewed or extended by a judicial or administrative body. Third, one must consider whether there is a divergence between the statutory time limits on solitary confinement and the actual reported practice.

Many nations examined report statutory time limits of approximately 30 days or less for solitary confinement as a disciplinary sanction within the prison. However, it should be noted that in reality, the actual time spent in solitary confinement for prisoners under these regimes may be extended to much longer periods, due to either lengthy or indefinite limits on subsequent extensions upon appeal or review of such sanctions, or divergence between the law and actual practice. For example, 14 nations (Poland, New Zealand, the Czech Republic,⁶⁴ France, Finland, Turkey, Japan, Argentina, South Africa, China, Venezuela, Norway, Hungary,

⁶³ In addition, in Illinois a new settlement has limited solitary confinement for the mentally ill. Settlement Agreement, *Rasho v. Baldwin*, No. 07-01298 (C.D. Ill. May 10, 2016), ECF No. 696.

⁶⁴ In the Czech Republic, these limits apply to solitary confinement for all purposes.

and Uganda) report statutory limits on initial periods of solitary confinement as a disciplinary sanction of less than 30 days, with Norway at the lower end of the spectrum, with a stated maximum of 24 hours, and Poland at the higher end with a stated maximum of 28 days. However, in reality, prisoners in at least 10 of those nations may spend a significantly longer period of time in solitary confinement than what is stated by law. For example, prisoners in the Czech Republic, Finland, Japan, China, and Venezuela may have their sentences extended indefinitely upon review, or to keep order within the prison, and therefore may spend indefinite amounts of time in solitary confinement. Further, prisoners in France may have their sanctions extended in 3 month increments for up to 24 months (if reviewed by the Minister of Justice) and in Uganda for up to 90 days per year in the aggregate. In addition, in Argentina, although the stated statutory limit for solitary confinement as a disciplinary sanction is 15 days, in practice, prisoners spend weeks or months at a time in solitary confinement. Similarly, in Uruguay, although the legal maximum time limit is 10 days (renewable in 10-day increments), in practice, prisoners in solitary confinement remain isolated for an average of 30 consecutive days. And, in Poland, a prisoner may be held in solitary confinement for several years, or until the end of his sentence.

Germany and the United States present particularly interesting cases. Although both countries are relatively politically progressive and economically developed, both nations' legal regimes governing solitary confinement as a disciplinary sanction rank as the most punitive among the countries surveyed. In Germany, disciplinary detention in solitary confinement is stated to last up to four weeks under the law. However, like some of the other countries previously mentioned, in practice, it is possible in Germany for a prisoner to be subject to long-term solitary confinement, without any

statutory time limit, and with the only overall limitation being the cessation of the reason for imposing the measure.

In the United States, although there is a diverse legal regime among the states and between the states and federal systems regarding solitary confinement as a disciplinary sanction, overall, many of these laws are written such that prisoners could be held in solitary confinement indefinitely. In Pennsylvania, for example, although the law provides a limit of 90 days per charged violation, there is no overall aggregate time limit for multiple charges. Similarly, Maine, Florida and Illinois do not state any time limits for solitary confinement for disciplinary purposes, and in Florida, there have been documented cases of prisoners relegated to solitary confinement for months or years at a time. In addition, California, Colorado, and the Federal Prison system permit indefinite renewals of such sanctions. California states its statutory upper limit as 60 months for murder, but this period may be renewed indefinitely. Colorado states its limit as being 6-12 months for inmates in solitary confinement under maximum security, with evaluations every 30 days, but the director of Prisons and deputy executive director may renew this term beyond 12 months in exigent circumstances. The Federal system states its limits as 12, 6 and 3 months, depending on the severity of the prohibited act. However, these limits may be imposed consecutively on prisoners who commit different and separate acts, thereby potentially prolonging the confinement even further. In short, various regimes in the United States could and do allow for prisoners to be held in solitary confinement for disciplinary purposes indefinitely.

For solitary confinement for administrative reasons, most nations with such restrictions have a time limit of approximately 15 days or less. Three nations measure the limit in hours (Germany: 24 hours; U.S.-Maine and Japan: 72 hours). Six nations measure the limit in days

(Norway: 6 days; Brazil, Hungary and Uruguay: 10 days; New Zealand: 14 days; U.S.-Pennsylvania: 15 days). Three nations have much longer (or no) limits, including the United States. The United States federal prison system has a limit of 90 days on administrative solitary confinement for the worst offenses,⁶⁵ while Finland and Austria allow it indefinitely. The nations not named in this section appear to report no time limits on administrative confinement, or otherwise may not sanction confinement for administrative purposes.

Notably, for some of the nations listed above, periods of administrative confinement may be renewed, and in some cases, renewed indefinitely. For example, although Japan typically limits administrative solitary confinement to 72 hours, this period may be renewed indefinitely. In Norway, if administrative solitary confinement extends beyond 14 days, the decision to extend must be made by regional prison authorities, and if it extends beyond 42 days, then the national prison authorities must be notified and updated every 14 days.

It should also be noted that, as with solitary confinement for disciplinary reasons, the practice of setting time limits on confinement for administrative purposes also diverges from what is legally sanctioned. For example, as noted above, in Turkey, although the European Court of Human Rights has technically held that administrative solitary confinement for protection due to sexual orientation is not permissible, in practice, many prisoners are segregated for reasons related to their sexual orientation.

⁶⁵ The United States federal penal system has a range of infraction levels. A 100-level infraction is considered the most serious, and a 400-level infraction is considered to be minor. Final Report, *supra* note 62 at 109-110. Since the Obama Administration adopted the Department of Justice's Final Report, solitary confinement is prohibited for minor, 400-level infractions. *Id.*; Presidential Memorandum, *supra* note 62.

Generally speaking, periodic administrative review of an inmate's solitary confinement, if any, takes any of five different forms: notice to a supervisory body, administrative inspections, medical visits to inmates, authorization of punishment beyond a certain length of time by a supervisory body, and periodic status review by a supervisory body. It should be noted, however, that the majority of nations in this survey (sixteen) either have no form of periodic administrative review, or otherwise do not report any such review (Venezuela, Brazil, South America, United States-Illinois, Kenya, Kyrgyzstan, Japan, Mexico, Argentina, Uganda, Uruguay, Russia, China, Ethiopia, Guatemala, and Hungary). As to the nations that do provide for administrative review, the five methods of review listed above appear to be fairly evenly spread among these nations.

One of these nations, Germany, requires mandatory notice to a supervisory body of an inmate's status after a particular amount of time. In Germany, after a couple of days or weeks, depending on the Federal State in which the inmate is imprisoned, the prison facility must inform its supervisory authority of the inmate's status.

Three other nations (Austria, Finland, and Turkey) have neutral bodies that make unannounced visits to prison facilities for the purpose of administrative inspection, and to monitor enforcement and general conditions.

In three other nations (Norway, United States-Maine, and the Czech Republic) medical staff is required periodically to examine inmates to confirm that they are physically and mentally healthy enough to continue solitary confinement. As discussed earlier in this report, twelve nations have limitations on solitary confinement for physically ill inmates, ten nations have limitations on solitary confinement for mentally ill inmates, and eleven nations have limitations on solitary confinement for women who may be pregnant or were recently pregnant, or were otherwise somehow physically affected by the birth of a child.

Three nations (England, United States-Maine, and France) require a supervisory body to authorize solitary confinement beyond a certain period of time and the threshold amount of time in these countries ranges from 72 hours (England) to six months (United States-Maine, France).

Four nations require periodic status review by a supervisory body (England, Poland, New Zealand, and the United States- federal immigration system, federal prison system, New York, California, Maine, Florida, and Colorado).

VI. ACCOMMODATION, ACCESS, AND PHYSICAL RESTRAINTS

A. Accommodation

While the majority of the countries surveyed do not expressly provide general accommodation conditions for solitary confinement, most countries provide some specificity with regard to one or more aspects of the accommodations for prisoners in such confinement, whether it is with regard to the location of the accommodations, cell size, sanitary fixtures, windows or light.

Thus, the laws of seventeen nations provide that solitary confinement must be executed in a cell established within the penitentiary institution specifically for this purpose (Austria, China, Czech Republic, Ethiopia, France, Germany, Hungary, Kyrgyzstan, New Zealand, Norway, Poland, Russia, Turkey, England, Uruguay, U.S., and Venezuela).⁶⁶ Moreover, solitary confinement cells in most of these countries are equipped with a bed, a sink, a toilet and furniture and include special security measures. In England, for example, solitary confinement cells are equipped with a bed and mattresses, a sink, a toilet, and furniture, such

⁶⁶ By contrast, the laws of seven nations do not provide that a specific cell should be established for the purpose of solitary confinement (Argentina, Brazil, Finland, Germany, Mexico, South Africa, and Uganda).

as a table and chair. Austria, in its so called “one-man-detention-room,” goes a step further, providing usually for a bed, a closet, sanitary fixtures, and even a TV. In addition, inmates in Austria are allowed to arrange their cells “according to their own ideas” (i.e., by placing flowers, pictures and other decorations on walls in line with the safety and order regulations of the penitentiary institution). In Norway, the so-called security cell which is used for inmates under custody for 48 hours must include a bunk, a plastic mattress, a blanket, a light, a toilet and a drinking fountain, as well as an interphone or intercom with music function, a window and a clock. If the inmate is kept in custody based on the decision of the court, he or she is moved into an ordinary cell, which is equipped with more comfortable furniture. Other countries, such as Germany and the U.S., in addition to providing specificity regarding one or more aspects of accommodations, also provide broad descriptions of accommodation requirements. The German regulation provides that the cells have to be equipped in such a way that the “human dignity of the inmates is not injured.” The regulation in the United States provides that the conditions for inmates in solitary confinement must “meet or exceed the standards for healthy and humane treatment.” In still other countries, considerable specificity is provided regarding security features. In Poland, for example, solitary confinement cells are furnished with specific equipment providing a higher level of security, such as an internal security bar behind the doors and in front of the windows, external iron wire mesh and outside window blinds, and tamperproof furniture fixed to the walls and the floor.

Four nations have no specific regulation at all regarding general conditions of accommodation in case of solitary confinement (Argentina, Guatemala, Kenya, and Uruguay). The regulations in Mexico are limited, the only general condition of solitary confinement being that it can be executed either in the inmate’s own cell, or in another cell for a period no longer than 30 days.

In Ethiopia, solitary confinement includes complete isolation from inmates and is generally executed in a small cell.

1. *Minimum cell size*

In six countries, the minimum cell size is at least 6 square meters. We summarize the cell size requirements in each of these countries here:

Country	Minimum cell size
Austria	Single cell: 8,5 m ²
Brazil	6 m ²
Czech Republic	6 m ²
Hungary	6 m ²
Uganda	7-11 m ²
United States	87 square feet (approx.. 8 m ²)

In three countries, the minimum cell size required by the laws in case of solitary confinement is 3 square meters (Poland, Kyrgyzstan, China). In Russia, the minimum space per inmate is 4 square meters in pre-trial detention facilities, and 2 to 3 square meters in other correctional institutions, depending on the type of institution.

Fourteen nations have no special requirements as to the minimum size of a solitary confinement cell (New Zealand, Turkey, France, Finland, Argentina, Venezuela, Norway, Germany, England, Ethiopia, Mexico, Uruguay, Kenya, and Guatemala).

2. *The Presence of Windows and Light in Cells*

Eighteen nations have specific regulations regarding windows and light in solitary confinement cells. In Austria, Brazil, China, Czech Republic, Finland, and the United States, inmates must be held in solitary confinement cells that are ventilated and heated, and provide sufficient natural light.⁶⁷ The cells in these countries must also be adequately lighted. In France,

⁶⁷ We note that in the state of California in the United States, single solitary confinement cells do not have a window and are painted entirely in white.

Germany, Kyrgyzstan, Mexico, New Zealand, Norway, Poland, Russia, South Africa, Turkey, England, and Venezuela, the laws specify only that cells where inmates in solitary confinement are held must have access to both natural and artificial light. Five nations have no specific regulations as to windows and light in solitary confinement cells (Argentina, Guatemala, Kenya, Uruguay, and Hungary). In two countries, Uganda and Ethiopia, cells do not have a window. In Uganda, however, although cells are not equipped with a window, they are ventilated. In Ethiopia, most of the time cells have no access to natural light at all.

3. *Sanitary Fixtures for Personal Hygiene*

Nineteen nations have specific regulations assuring various levels of personal hygiene for inmates, while six nations have no such regulations (Argentina, Ethiopia, Guatemala, Kenya, Kyrgyzstan, and Uruguay). In eleven of the countries that have such regulations, the solitary confinement cells are mostly equipped with sanitary fixtures. In Germany, access to sanitary fixtures has to be guaranteed, though whether the restroom is inside the cell or not depends on the particular penitentiary institution. In New Zealand, the majority of segregated inmates have access to toilets and potable water, except for those suspected of concealing unauthorized items. In Norway, in a normal cell there is a sink, while toilets and showers are in the common areas. Security cells, however, are equipped with a sink and a toilet, but no shower. In Poland, solitary confinement cells are equipped with toilets and sinks, and inmates are allowed to take a shower with warm water once a week. In Russia, solitary confinement cells must include sanitary fixtures, while in Turkey such cells must also be equipped with a shower. In the United States, inmates have access to a wash basin and toilet and receive personal items in order to maintain an acceptable level of hygiene, including toilet tissue, soap, toothbrush and cleanser, shaving utensils, etc. Inmates also have an opportunity

to shower and shave at least three times a week and have access to a hair dresser, if necessary. In the Czech Republic, toilets must be separated from the rest of the cell by an opaque partition. Notably, such separation is expressly not required in other nations, such as Germany. In Brazil, solitary confinement cells include sanitary and washroom units. In Austria, sanitary fixtures must be well equipped, clean and well-kept, and toilet facilities must be separated from cells. In Hungary, all cells must contain a sink with running water and a toilet, except for cells established for the segregation of inmates who are a threat to themselves or others. In addition, inmates in solitary confinement may keep with them in the cell a towel, toothbrush, toothpaste and a cup, soap, comb, shaving kit, toilet paper, and sanitary pads and tampons for women.

In the remaining eight countries that provide sanitary fixtures, various levels of access to such fixtures are provided by the regulations. In France, the laws provide that hygiene and cleanliness must be ensured in solitary confinement cells. In Uganda, the level of access to sanitary fixtures varies from prison to prison, though, in general, access to sanitary facilities is granted upon request in accordance with the administrative regulations of the particular penitentiary institution. Laws in Venezuela provide that inmates must have access to sanitary installations and be able to maintain their personal hygiene both within their cells and in the penitentiary institution. In England, access to sanitary fixtures may be removed when an inmate is placed into a special accommodation. However, the statistics for this jurisdiction show that the vast majority of inmates have enough clean and suitable clothes for the week, are able to shower every day, receive clean sheets and cleaning materials every week. In Mexico, the appropriate level of hygiene is controlled by periodic visits of representatives of public health services. In South Africa, sufficient washing facilities must be provided to all inmates at all times, which includes access to hot and cold water for washing

purposes. In addition, a segregated inmate may not be denied access to sanitary fixtures during his or her period of segregation. In China, all penitentiary institutions must have a medical institution and hygiene facilities, and the institution must set up its own hygiene rules for its inmates. In Finland, showering and going to the sauna may take place simultaneously with other inmates held in solitary confinement, and inmates are entitled to sufficient toiletries for personal hygiene.

B. Access

Provisions for “access” in the countries examined can be divided into the following two categories: (1) communications rights, and (2) rights to physical exercise.

1. Communications

a. Access to In-prison Human Contact

In twenty-six of the jurisdictions surveyed, no access to in-prison human contact is allowed for detainees held in solitary confinement, except for contact with prison guards, medical personnel, religious personnel under certain circumstances or other prison personnel (e.g., librarians, etc.). Some jurisdictions (e.g., South-Africa, New Zealand, Colorado) set forth a minimum frequency within which the inmate must be visited by prison personnel (e.g., once every four hours, or daily).

In England, prison personnel play a vital role in engaging inmates held in solitary confinement. Such personnel are even required to engage with inmates, specifically by being encouraged to talk and participate in activities with them where appropriate.

Notably, and contrary to much of the above, in France, the warden is actually required to encourage, if the personality of the inmate allows it, the occasional grouping of inmates in solitary confinement, such as on occasions of national or religious holidays.

In a small number of jurisdictions (e.g., Mexico), there are no specific rules with respect to access to in-prison human contact.

b. Contact with the Outside World (Visitation, Correspondence, Telephone Calls)

In approximately half of the jurisdictions surveyed, visitation from the outside world is allowed, though subject to various limitations. The frequency and length of visitations vary from country to country. In Russia, for example, personal visitation is allowed only once for every six months spent in solitary confinement. In other jurisdictions, visitation may last from 30 minutes to an hour, and from once a week to once a month in frequency.

Where legal representation is allowed, there are few restrictions on the frequency and length of legal visits.

Correspondence is regulated in a way similar to personal visits. In most instances where regulations are listed, correspondence is limited in frequency. Where legal representation is allowed, however, no limitation is applicable to legal correspondence.

Telephone calls are more severely regulated and limited. For example, in the state of Maine in the United States, a telephone call is allowed only after the inmate has spent 60 days in solitary confinement. In the state of New York, a 15-minute phone call is allowed once for every 30 days spent in solitary confinement.

c. Reading Materials

In more than ten jurisdictions, access to library facilities and reading materials is allowed. Most jurisdictions where such access is regulated have specific rules with respect to inmates in solitary confinement, and their rights to use library facilities are often more limited than those held in general prison circumstances.

In about six jurisdictions, reading materials are not allowed at all for inmates placed in solitary confinement. In France, however, inmates in solitary confinement are entitled to rent, or even buy, TVs and radios.

2. Right to Physical Exercise

More than 15 jurisdictions surveyed provide for the right to have at least one hour of physical exercise while the inmate is held in solitary confinement. In most instances, physical exercise is administered outside, in fresh air, provided weather conditions allow. In most instances, the one-hour physical exercise time is allowed a maximum of five times a week, while in some other jurisdictions, seven days a week is allowed. In five jurisdictions, including, for example, Ethiopia, physical exercise is not allowed for detainees in solitary confinement at all. In Japan, the minimum physical exercise time allowed is 30 minutes.

C. Physical Restraint

Physical restraints may be applied on inmates in twelve nations (Argentina, Austria, China, England, Germany, Hungary, Finland, Japan, Norway, Poland, South Africa, and the United States) and are generally subject to prior approval from the supervising person or authority. In these countries, physical restraints may be used for safety purposes in the case of dangerous inmates (i.e., suicidal, self-injurious, damaging property, creating disturbances, or at risk of flight),⁶⁸ or during the transportation of inmates out of their unit (e.g., Argentina, Poland).⁶⁹ The most common means of physical restraint are handcuffs, leg irons, and waist chains, though, in some jurisdictions, other special means are also available.⁷⁰ In Austria and Japan, the

68 In China, physical restraint is possible for prisoners on death row.

69 This is the case in certain states in the United States as well, namely, Colorado, Maine, and New York.

70 In the state of Maine in the United States, stationary restraint is also possible.

use of straitjackets is possible, while in Norway safety beds may also be used. In some jurisdictions, the duration of the use of physical restraints is limited. Pursuant to the laws of England, for example, the maximum duration of physical restraint may be twenty-four hours. In Hungary, it is only twelve consecutive hours. By contrast, in South Africa, physical restraints may be applied for as long as seven days, which period may be extended for the maximum of thirty days in duly justified cases.

In six jurisdictions (the Czech Republic, Ethiopia, Guatemala, Kyrgyzstan, Turkey, and Uruguay) physical restraints are not allowed on inmates in solitary confinement.⁷¹ Four nations have no specific regulations regarding the use of physical restraints on persons in solitary confinement (Brazil, Kenya, Mexico, and the Russian Federation). The states of California and Pennsylvania in the United States also have no special rules regarding physical restraints in solitary confinement, though according to a complaint filed in Pennsylvania, the prisoners in this state are handcuffed before they are allowed out of their cells for any activity.

As to four nations (France, New Zealand, Uganda, and Venezuela), it was not clear whether their jurisdiction makes use of any physical restraints on persons in solitary confinement.

VII. EFFORTS TO REVISE LAWS OR REGULATIONS REGARDING SOLITARY CONFINEMENT

Perhaps because solitary confinement has received some recent attention in the press,⁷² some countries have attempted to reform the laws or regulations regarding this practice so as to improve conditions

71 In the state of Illinois in the United States, physical restraints are “generally prohibited” for inmates in solitary confinement.

72 See, e.g., *Obama administration urges states to curb use of solitary confinement*, THE GUARDIAN, (Apr. 28, 2016, 7:00 AM), <http://www.theguardian.com/world/2016/apr/28/obama-administration-urges-states-to-curb-use-of-solitary-confinement>

for affected prisoners. This trend, however, is by no means universal. In fact, as noted below, in at least one country, the trend appears to be moving in the opposite direction.

A. Positive Trend

In at least half of the jurisdictions reviewed, the regulation of solitary confinement either has been improved in recent years or shows signs of likely or possible future improvement. Set forth below are several examples:

1. *The Scope of Solitary Confinement*

In Norway, the Ministry of Justice is leading an initiative to amend the Act Regarding the Execution of Penalty to exclude children under 18 years old from the imposition of solitary confinement in certain cases. In 2008, South Africa repealed the section of the Correctional Services Act that provided solitary confinement as a punishment for prisoners. However, “segregation”⁷³ of prisoners is still authorized under six particular instances. In Japan, there are two sources for the imposition of solitary confinement: a law and an ordinance.⁷⁴ There is a current proposal to eliminate solitary confinement based on the ordinance.⁷⁵

The United States has several examples of recent efforts to reduce the practice of solitary confinement. At the beginning of this year, solitary confinement

73 “Segregation” is not defined in the CSA but is described as detention in a single cell for part or the whole day.

74 The law is the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (the “Japanese Act”). The ordinance is the Ordinance for Penal Institutions and Treatment of Inmates.

75 The proposal was made by the Japan Federation of Bar Association (“JFBA”).

was banned for juveniles at the U.S. federal level.⁷⁶ Colorado has narrowed the use of solitary confinement to cases involving thirteen of the most violent and dangerous offense types, and efforts have focused on identifying offenders with symptoms of mental illness in need of mental health treatment in order to remove them from long-term segregation. New York City banned solitary confinement for inmates who are twenty-one years old or younger, as well as inmates who are seriously mentally ill and physically disabled.⁷⁷ At the state level, New York's proposed *Humane Alternatives to Long-Term Solitary Confinement Act*, A. 4401 / S. 2659, (the "HALT Act") introduced in the New York State Legislature in January 2014 and in the New York State Senate in January 2015,⁷⁸ would create alternatives to isolated confinement, including Residential Rehabilitation Units ("RRUs"). It would also restrict the criteria for placement in isolated confinement or RRUs, and ban special populations, such as juveniles, pregnant women, and people with mental disabilities from isolated confinement. Similarly, the state of Pennsylvania in the United States will stop placing inmates with serious mental illnesses in solitary confinement and will place them instead in special treatment units allowing them to be outside their cells for longer periods of time. Most recently, in the U.S. state of Illinois, an amendment was filed to House Bill 5417 on April 2016 ("HB5417," also referred to as the "Isolated Confinement Restriction Act") which

76 The United States executive branch, while unable to pass binding legislature to prohibit solitary confinement in all states and in every prison, has undertaken several administrative steps to curb solitary confinement in federal prisons and to establish proper procedures and limits on its use. As discussed earlier, the United States Department of Justice issued a final report and recommendations on the use of solitary confinement in federal prisons. President Obama adopted these recommendations in March 2016 and subsequently banned juvenile confinement. *Supra* note 62 and accompanying text.

77 Kearney, *supra* note 62.

78 This bill was referred to the Senate Crime Victims, Crime and Corrections Committee on January 6, 2016.

would revamp Illinois' existing solitary confinement procedures to drastically reduce the practice in many instances. Under this proposal, individuals younger than twenty-one or older than fifty-five, or who suffer from mental disabilities, serious physical conditions, or who are pregnant, would not be subject to solitary confinement.

2. *The Length of Solitary Confinement*

In Austria, there is an ongoing process to amend the Juvenile Court Act to reduce the strictest form of solitary confinement for juveniles from two weeks to one week. In 2015, Finland changed the maximum duration of solitary confinement for disciplinary purposes from fourteen to ten days. In the United States, particularly in the state of California, the California Settlement effectively ends (or is intended to end) the practices of indeterminate, long-term or indefinite solitary confinement in California. However, sentence terms may still be for up to two years initially, and extend for a maximum of ten years if an inmate commits another offense or otherwise proves to be unfit for return to the general population after the initial term. Colorado has recently revised its rules regulating "administrative segregation" in an attempt to reduce the use of long-term solitary confinement. In New York, the HALT Act would restrict solitary confinement to no more than fifteen consecutive days or twenty days total in any sixty-day period. In the state of Illinois, the proposed "Isolated Confinement Restriction Act" would prohibit the use of solitary confinement for more than five days in a 150-day period. Additionally, those who are put into solitary confinement would need to be released from their cells for four hours each day. Other jurisdictions which have proposals to reduce or limit the length of solitary confinement are Japan and Kenya.

3. *The Safeguarding and/or Conditions of Solitary Confinement*

In Uruguay, the Parliamentary Commissioner for Prisons has requested the issuance of regulations regarding solitary confinement conditions and facilities such as requirements relating to bathrooms, water, food, daylight, room light, and air ventilation systems. In Japan, the JFBA is proposing to amend the Japanese Act so that a medical opinion should be obtained from a doctor at the start of isolation for the maintenance of discipline, and thereafter periodically every month. In the United States, at the federal level, the United States Immigration and Customs Enforcement (“ICE”) has issued the Performance-Based National Detention Standards 2011 (“PBNB Standards”), which improves medical service, access to legal services and religious opportunities, and opportunities for recreation and visitation. ICE also issued a Segregation Directive in 2013 (the “2013 Directive”) which requires that administrative segregation “should be for the briefest term and under the least restrictive conditions practicable.”⁷⁹ Under the New York Settlement, inmates in a special housing unit (“SHU”), a type of room for solitary confinement, will be provided with shower curtains, have greater access to reading materials and library services, be able to spend recreation time with others for two hours, three times a week, and be allowed to make a call for at least fifteen minutes.

4. *The Review Process and/or Supervision of Solitary Confinement*

In Japan, the JFBA proposed the creation of an independent organization to review complaints (including, but not limited to placement in solitary confinement), and to allow inmates to appoint an attorney and submit evidence when filing a complaint

regarding the imposition of solitary confinement. In the United States, at the federal level, the PBNB Standards have improved the process for reporting and responding to complaints. In addition, the 2013 Directive provided for an increase in oversight and reporting mechanisms when solitary confinement is used. In California, as a result of the California Settlement, prisoners will get to play a role in monitoring segregated housing conditions. In New York, under the New York Settlement, before a SHU confinement sanction can be imposed on an inmate that is in one of the programs provided as an alternative to SHU, a superintendent must review the sanction and approve or disapprove it. Such a sanction must be reported every quarter to a central office. In addition, staff members will be hired in the DOCCS to establish an electronic record-keeping and recording system for solitary confinement. Also in New York, the HALT Act would enhance due process protections before placement in isolated confinement or RRUs, and mandate training, reporting, and outside oversight.

B. *Notable Developments*

As previously noted, the United States Department of Justice is clearly part of a trend to reduce the use of solitary confinement and/or at least improve the conditions of inmates placed in solitary confinement. As explained above, settlements in California and New York have driven these states to limit and regulate further the use of solitary confinement. This is also the case in Illinois. The terms of the California Settlement include the following key reforms, among others: (i) ending the status-based practice of solitary confinement in favor of a behavior-based system (to prevent prisoners being sent to solitary confinement solely due to an alleged gang affiliation, rather than some serious rule violation); (ii) imposing determinate sentences with a structured two-year “Step Down” program providing a defined path for reentering the general prison population; and (iii) giving prisoners

⁷⁹ U.S. Immigration and Customs Enforcement, Review of the Use of Segregation for ICE Detainees (Sept. 4, 2013), https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

themselves a role in monitoring CDCR compliance with the settlement agreement and segregated housing conditions. Under the New York Settlement, DOCCS will maintain the written policy regarding the presumption against placement of a pregnant inmate in SHUs for disciplinary purposes, except in exceptional circumstances. With respect to juveniles, New York will have separate housing for juveniles as an alternative to SHUs and even under the strictest form of disciplinary housing, juveniles will have access to out-of-cell programming and outdoor exercise, limiting time in their cells to nineteen hours a day, excluding exceptional circumstances.⁸⁰ Another lawsuit filed by the American Civil Liberties Union of Illinois against the Illinois Department of Corrections resulted in another settlement⁸¹ that requires that juveniles held in six state-run juvenile facilities run by the state of Illinois spend at least eight hours a day outside their cells. However, this rule does not apply to other young people in the custody of the Illinois Department of Corrections. Further, under another settlement, mentally ill inmates in Illinois must not be confined for longer than sixty days without having at least twenty hours out of cell each week.⁸² Moreover, at the federal level, President Obama banned the practice of holding juveniles in solitary confinement.⁸³

C. Amendments that Depart from the Common Trend

Based on our review, only Brazil appears to be changing its solitary confinement system in a way contrary to the common trend described above. The reason appears to be related to the occurrence of repeated major rebellions in prisons in the State of Sao Paulo. Solitary confinement is authorized in Brazil under various circumstances by the Criminal Enforcement Law (Lei de Execução Penal, “LEP”). The strictest modality of solitary confinement under the LEP is the Differentiated Disciplinary Regime (Regime Disciplinar Diferenciado “RDD”) which allows the placement of an inmate in solitary confinement for 360 days, a term that can be renewed for an equal period of time (although, renewal is limited to 1/6 of the duration of the sentence). There are several recent proposals in Brazil, however, to reform the RDD regime, including proposals to extend the scope of solitary confinement to leaders of rebellions, and different proposals to double the maximum term for the imposition of solitary confinement from 360 days to 720 days with and without a limitation for its renewal.

80 In addition, the New York Settlement states that the Correctional Alternative Rehabilitation (“CAR”) program at the Sullivan Correctional Facility, which provides an alternative to SHU for certain special-needs inmates, will continue.

81 See, Submission of Policies Pursuant to Remedial Plan, R.J., et al. v. Jones, No. 12-07289 (N.D. Ill. Apr. 20, 2015), ECF No. 133.

82 Settlement Agreement, *Rasho v. Baldwin*, No. 07-01298, at 20 (C.D. Ill. May 10, 2016), ECF No. 696.

83 See, Michael D. Shear, *Obama Bans Solitary Confinement of Juveniles in Federal Prisons*, NYT, (Jan. 25, 2016), http://www.nytimes.com/2016/01/26/us/politics/obama-bans-solitary-confinement-of-juveniles-in-federal-prisons.html?_r=0

Solitary Confinement Questionnaire

Solitary Confinement Questionnaire

DEFINITION OF SOLITARY CONFINEMENT

1. If we define solitary confinement as the physical and social isolation of individuals who are confined in their cells for 22–24 hours a day (in line with the Istanbul Statement), is solitary confinement authorized in your jurisdiction?
2. For what purposes/under what circumstances is solitary confinement authorized in your jurisdiction (i.e. disciplinary sanctions/punishment or as part of a judicially imposed sentence; for purposes of prison administration/to facilitate prison management; as a protective measure for vulnerable individuals, for purposes of criminal—pre-charge/pre-trial investigations)?
3. Please provide a copy (PDF source or weblink) of the relevant legislation, regulations, policies, or procedures defining and governing the use of solitary confinement as defined in question 1.
4. Is solitary confinement prohibited for any categories of persons (i.e. juveniles or pregnant and nursing women, persons with mental disabilities) in your jurisdiction?
5. Please describe what, if any, alternative disciplinary measures are available in your jurisdiction to take the place of solitary confinement.

OTHER PRACTICES CONSTITUTING ISOLATION / SEGREGATION

1. Identify practices by any other names (i.e. isolation, segregation, special care unit, restricting housing, secure housing unit, restricted housing, etc.) that involve the involuntary isolation/segregation of prisoners from the general prison population, either as a disciplinary sanction or for purposes of prison administration (i.e. the maintenance of order and security)?
2. Please provide a copy (PDF source or weblink) of the relevant legislation, regulations, and/or policies providing for such isolation/segregation regimes.

PROLONGED SOLITARY CONFINEMENT

1. Is the use of long-term/prolonged solitary confinement, when defined as anything exceeding 15 days, authorized in your jurisdiction? If so, for how many consecutive days or months? How frequently can this measure be renewed in a given time period? What are the limitations imposed on the continuation of solitary confinement regimes in your jurisdiction?
2. For what purposes/under what circumstances is the use of long-term/prolonged solitary confinement authorized in your jurisdiction?

3. Please provide a copy of the statute or regulation allowing the use of prolonged solitary confinement and its maximum duration (PDF source or weblink).

AUTHORIZATION OF SOLITARY CONFINEMENT

1. What are the procedures/mechanisms in place governing the authorization of solitary confinement in your jurisdiction?
2. Which authorities are responsible for determinations for the placement of prisoners in solitary confinement?
3. Are prisoners entitled to legal counsel or other representation during determination proceedings?

SAFEGUARDS AND REVIEW

1. Can the authorization of solitary confinement be challenged (i.e. as re: both the nature of and underlying justification for confinement)? If so, please provide details.
2. Do persons held in solitary confinement have an opportunity to appeal all final decisions by prison authorities and administrative bodies to an independent judicial body empowered to review the nature of and underlying justification for confinement? Please provide details.
3. Please describe in detail any processes available for individuals held in solitary confinement to file complaints.
4. Please describe the steps taken in your jurisdiction to ensure that persons have access to legal counsel/representation throughout the period in which they are held in solitary confinement.

5. Please describe any safeguards that accompany the authorization of solitary confinement in your jurisdiction, including:

- a. Regular monitoring and review of detainees' physical and medical conditions (including psychological examinations) by qualified medical personnel is in place, both at the initiation of solitary confinement and during their confinement. Are medical personnel independent and accountable to authorities outside of the prison administration, and do they receive any specialized training? Please provide details.
- b. Mechanisms for administrative and/or judicial review of solitary confinement regimes. Please provide details, including details about the regularity of review and about the reviewing authority (i.e. is it independent from the authorizing body?).
- c. Requirements for informing detainee and/or family members and/or counsel about the imposition of solitary confinement (and of the reasons behind the determination).
- d. Requirements and mechanisms in place for documenting the imposition of solitary confinement on individual prisoners.

CONDITIONS / SOLITARY CONFINEMENT REGIMES

1. What are the conditions of solitary confinement in your jurisdiction? [Examples: complete isolation, specific type of cells, no access to natural light, no access to media, etc.]

2. More specifically, please provide information regarding the following physical conditions of solitary confinement in your jurisdiction (please provide specific details):
 - a. Minimum cell size
 - b. The presence of windows and light in cells
 - c. Access to sanitary fixtures for personal hygiene
 - d. Availability of reading and writing materials
3. Do solitary confinement regimes in your jurisdictions provide for (if the answers are yes, please provide specific details):
 - a. Outdoor exercise and programming
 - b. Access to human contact within the prison
 - c. Contact with the outside world (i.e. visits, mail, telephone calls, access to reading materials, television, or radio).
 - d. Any other mitigating activities or factors
4. Does your jurisdiction make use of any physical restraints on persons in solitary confinement (i.e. leg irons). [If the answer is yes, please provide specific details and examples.]
5. Are there specific regulations applicable to different target groups such as men, women, juveniles, persons with mental or physical disabilities, LGBTI, the elderly, and immigrants?
6. Please describe any procedures/mechanisms in place mandating the supervision of solitary confinement regimes by a judge, independent monitoring body, or any other authorities in your jurisdiction.

STATISTICS/JURISPRUDENCE

1. Please list and summarize briefly any judicial decisions dealing with solitary confinement in your jurisdiction.
2. Are there any national or regional statistics on the number of individuals submitted to solitary confinement in a given period of time? If so, please provide the most recent statistics.
3. To the extent this information has not been previously provided, please list and summarize briefly any laws and/or regulations currently in effect dealing with solitary confinement. [Include texts in pdf format or internet links is possible].
4. Please list any recent and ongoing efforts/ proposals to revise the above laws or regulations, whether to restrict or facilitate the use of solitary confinement in your jurisdiction. Include texts in pdf format or internet links is possible.

**Interim report of the
Special Rapporteur
of the Human Rights
Council on torture and
other cruel, inhuman
or degrading treat-
ment or punishment**



General Assembly

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Item 69 (b) of the provisional agenda*

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report prepared by the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, in accordance with General Assembly resolution 65/205.

* A/66/150.

Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 65/205, the Special Rapporteur addresses issues of special concern and recent developments in the context of his mandate.

The Special Rapporteur draws the attention of the General Assembly to his assessment that solitary confinement is practised in a majority of States. He finds that where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, it can amount to cruel, inhuman or degrading treatment or punishment and even torture. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged.

The report highlights a number of general principles to help to guide States to re-evaluate and minimize its use and, in certain cases, abolish the practice of solitary confinement. The practice should be used only in very exceptional circumstances, as a last resort, for as short a time as possible. He further emphasizes the need for minimum procedural safeguards, internal and external, to ensure that all persons deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person.

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I. Introduction

1. The present report, submitted pursuant to paragraph 39 of General Assembly resolution 65/205, is the thirteenth submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It is the first report submitted by the present mandate holder.
2. The Special Rapporteur wishes to draw attention to his report to the Human Rights Council (A/HRC/16/52), in which he outlined his vision, working methods and priorities for his tenure as Special Rapporteur.

II. Activities related to the mandate

3. Below is a summary of the activities carried out by the Special Rapporteur pursuant to the mandate since the submission of his report to the Human Rights Council (A/HRC/16/52 and Add.1-6).

Communications concerning human rights violations

4. During the period from 1 December 2010 to 1 July 2011, he sent 20 letters of allegations of torture to 18 Governments, and 95 urgent appeals on behalf of persons who might be at risk of torture or other forms of ill-treatment to 48 Governments. In the same period 82 responses were received.

Country visits

5. With respect to fact-finding missions, an anticipated country visit to Kyrgyzstan for May 2011 was postponed, at the request of the Government, owing to ongoing political developments. By letter dated 28 July 2011, the Government of the Kyrgyz Republic proposed a country visit for the second half of August 2011. The Special Rapporteur welcomes this invitation; however, because of the short notice, he is discussing potential dates with the Government at the time of submitting the present report. He has accepted an invitation from the Government of Iraq to visit the country in October 2011. He has also been invited to visit Bahrain and is discussing dates with the Government. In addition to the pending country visit requests (see A/HRC/16/52, para. 6) the Special Rapporteur has requested a visit to Morocco with respect to Western Sahara.
6. The Special Rapporteur conducted a visit to Tunisia from 15 to 22 May 2011. He shared his preliminary findings with the interim Government and issued a press statement on 22 May expressing his appreciation to the Government for the full cooperation extended to him. He noted that the Government had undertaken a series of positive steps towards ensuring accountability and long-term reforms. However, he is of the view that a “wait and see attitude” in anticipation of the Constituent Assembly election may be hampering the possibility of delivering bold and aggressive steps in restoring justice for past and recent abuses. The Special Rapporteur stressed that swift, effective and independent criminal investigations against alleged perpetrators of torture and ill-treatment should be ensured and administrative programmes should be launched offering redress and reparation services to victims of past and recent violations. The report of the mission to Tunisia will be presented to the Human Rights Council at its nineteenth session in March 2012.

Key press statements

7. The Special Rapporteur issued the following press statements (many were joint statements with other mandate holders):

- On 31 December 2010 — expressing serious concern that enforced or involuntary disappearances, arbitrary detentions, extrajudicial, summary or arbitrary executions, and acts of sexual violence may have occurred or may still be occurring in Côte d'Ivoire in relation to the presidential elections.
- On 14 January 2011 — urging the Government of Tunisia to control the use of force against peaceful demonstrations, after at least 21 deaths were officially confirmed.
- On 3 February 2011 — on public unrest in Belarus, Egypt and Tunisia and the alleged infliction of torture or cruel, inhuman or degrading treatment in connection with suppression of peaceful demonstrations.
- On 17 February — urging the transitional Government in Egypt to establish an independent inquiry to investigate human rights violations during the revolution in that country, with the powers to transmit names and evidence for prosecution to the relevant authorities.
- On 18 February — urging the Governments of Bahrain and the Libyan Arab Jamahiriya to guarantee the right to peaceful protest and immediately cease the use of excessive and lethal force.
- On 22 February — on the situation of human rights defenders expressing serious concerns about gross violations of human rights that were being committed in the Libyan Arab Jamahiriya.
- On 3 March 2011 — condemning the violent crackdown on protesters in Yemen, and urging the Government to stop the excessive use of force as a means to end ongoing protests.
- On 22 March — expressing concerns about increased incidents of serious human rights violations in the capital of Bahrain.
- On 1 April 2011 — expressing concerns about serious human rights violations in Côte d'Ivoire, including enforced disappearances, extrajudicial killings, killing and maiming of children, and sexual violence which may amount to international crimes, and expressed the full support of the Special Rapporteur and other mandate holders for Security Council resolution 1975 (2011).
- On 11 April and 12 July — expressing frustration that despite his repeated requests to visit Private First Class Bradley E. Manning, the Government of the United States of America has not granted him unmonitored access to the detainee. The question of unfettered access goes beyond this case and touches on whether the Special Rapporteur would be able to conduct private and unmonitored interviews with detainees if he were to conduct a country visit to the United States.
- On 15 April — denouncing the rising death toll and brutal crackdown on peaceful protesters, journalists and human rights defenders in the Syrian Arab Republic despite the Government's promises of reforms and consultations to end the 48-year-old emergency rule.

- On 1 July 2011 — urging the Government of the United States to stop the scheduled execution of Humberto Leal García in Texas.

Highlights of key presentations/consultations/training courses

8. From 8 to 9 February 2011, the Special Rapporteur participated in a meeting sponsored by Amnesty International in London to discuss “Developing International Best Practice for Inquiries and Investigations into Torture”. He also spoke at the All Party Parliamentary Group on Extraordinary Rendition.

9. On 22 February, he delivered a statement to the American Academy of Forensic Sciences at its 63rd annual meeting on “International framework and mechanisms for documenting conditions of detention, torture and ill-treatment”.

10. On 28 February, he met with high-ranking officials from the Department of State and the Department of Defense of the United States of America in Washington, D.C., and again with the Department of Defense on 22 April to discuss issues of mutual concern.

11. From 6 to 10 March 2011, the Special Rapporteur was in Geneva for the sixteenth session of the Human Rights Council and met with the Ambassadors of Iraq, Kyrgyzstan, Mexico, Thailand and the United States. He also met with all the Human Rights Council regional groups except for the Africa Group, which unfortunately could not be scheduled.

12. On 16 and 17 March, in Washington, D.C., he participated in a meeting with the Chair of the Committee against Torture, the Vice-Chair of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights, a representative of the European Committee for the Prevention of Torture and the Special Rapporteur on Detained Persons of the African Commission on Human and Peoples’ Rights. The meeting was organized jointly by the Washington College of Law of American University and the Association for the Prevention of Torture to discuss ways to strengthen the working relations of those mechanisms.

13. From 18 to 20 March, the Special Rapporteur made two presentations to the annual General Meeting and the fiftieth anniversary commemoration of the United States Section of Amnesty International in San Francisco.

14. On 1 June 2011, he was the keynote speaker at an event in Washington, D.C., organized by several faith-based groups and entitled “Accountability Today: Preventing Torture Tomorrow”.

15. From 15 to 17 June, the Special Rapporteur chaired, with the support of the Government of the Netherlands, a regional consultation on torture for the Americas in Santiago, Chile. The regional consultation was organized in partnership with the Association for the Prevention of Torture, the Centro de Estudios Legales y Sociales, Corporación Humanas — Centro Regional de Derechos Humanos y Justicia de Género and Conectas Direitos Humanos, and was an opportunity for governments, national institutions and organizations of civil society from 12 countries to discuss follow-up to recommendations of country visits and to strengthen local and regional protection mechanisms against torture and ill-treatment.

16. On 20 June, he met with the Director General for Foreign Policy, Ministry of Foreign Affairs of Chile, in Santiago.

17. From 27 June to 1 July, the Special Rapporteur participated in the eighteenth annual meeting of Special Rapporteurs in Geneva. He also met with representatives of the Governments of Iraq, Kyrgyzstan, the Netherlands, the Russian Federation, Tunisia and the United States of America.

18. On 7 July 2011, he met in Brasilia with the Minister for Human Rights in the Government of Brazil.

III. Solitary confinement

A. Overview of work undertaken by the mandate

19. In his first report as Special Rapporteur (A/HRC/16/52, para. 70), he recognized that “the question as to whether ... prolonged solitary confinement” constituted “*per se* cruel, inhuman or degrading treatment or punishment has given rise to much debate and discussion in the Human Rights Council”, and believed that “the international community as a whole would greatly benefit from a dispassionate and rational discussion of the issues”.

20. The Special Rapporteur has received complaints that solitary confinement is used in some countries in the context of administrative detention for national security or as a method to fight organized crime, as well as in immigration detention. He undertook this study because he found the practice of solitary confinement to be global in nature and subject to widespread abuse. In particular, the social isolation and sensory deprivation that is imposed by some States does, in some circumstances, amount to cruel, inhuman and degrading treatment and even torture.

21. The Special Rapporteur’s predecessors have noted that prolonged solitary confinement may itself amount to prohibited ill-treatment or torture (E/CN.4/1999/61, para. 394, and E/CN.4/2003/68, para. 26 (m)).

22. The Istanbul Statement on the Use and Effects of Solitary Confinement was annexed to the former Special Rapporteur’s 2008 interim report to the General Assembly (A/63/175, annex). The report concluded that “prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture. ... [T]he use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort. Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner-prison staff contact, allowing access to social activities with other prisoners, allowing more visits and providing access to mental health services” (A/63/175, paras. 77 and 83).

B. History and current practice of solitary confinement

23. The history of the use of solitary confinement on detainees has been well documented. The practice can be traced to the 1820s in the United States of

America, where it was believed that isolation of prisoners would aid in their rehabilitation. Under this model prisoners spent their entire day alone, mostly within the confines of their cells, including for work, in order to reflect on their transgressions away from negative external influences. Beginning in the 1830s, European and South American countries adopted this practice (A/63/175, para. 81). It must be recognized that 200 years ago this model was a socially and morally progressive way to deal with punishment, as it emphasized rehabilitation and attempted to substitute for the death penalty, limb amputations and other penalties then prevalent.

24. States around the world continue to use solitary confinement extensively (see A/63/175, para. 78). In some countries, the use of Super Maximum Security Prisons to impose solitary confinement as a normal, rather than an “exceptional”, practice for inmates is considered problematic. In the United States, for example, it is estimated that between 20,000 and 25,000 individuals are being held in isolation.¹ Another example is the extensive use of solitary confinement in relation to pretrial detention, which for many years has been an integral part of the Scandinavian prison practice.² Some form of isolation from the general prison population is used almost everywhere as punishment for breaches of prison discipline. Many States now use solitary confinement more routinely and for longer durations. For example, in Brazil, Law 10792 of 2003, amending the existing “Law of Penal Execution”, contemplates a “differentiated” disciplinary regime in an individual cell for up to 360 days, without prejudice to extensions of similar length for new offences and up to one sixth of the prison term. In 2010, the Province of Buenos Aires in Argentina instituted a Programme of Prevention of Violent Behaviour in its prisons which consists of isolation for a minimum of nine months (the initial three months in full isolation), a term that — according to prison monitors — is frequently extended.

C. Definition

25. There is no universally agreed upon definition of solitary confinement. The Istanbul Statement on the Use and Effects of Solitary Confinement defines solitary confinement as the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day. In many jurisdictions, prisoners held in solitary confinement are allowed out of their cells for one hour of solitary exercise a day. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, generally monotonous, and often not empathetic.

26. Solitary confinement is also known as “segregation”, “isolation”,³ “separation”, “cellular”,⁴ “lockdown”, “Supermax”, “the hole” or “Secure Housing

¹ Alexandra Naday, Joshua D. Freilich and Jeff Mellow, “The Elusive Data on Supermax Confinement”, *The Prison Journal*, vol. 88, issue 1, p. 69 (2008).

² Peter Scharff Smith, “The effects of solitary confinement on prison inmates: a brief history and review of the literature”, *Crime and Justice*, vol. 34 (2006), p. 441.

³ Jeffrey L. Metzner, M.D., and Jamie Fellner, “Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics”, *The Journal of the American Academy of Psychiatry and the Law*, vol. 38, No. 1, pp. 104-108 (2010).

⁴ Sharon Shalev, *A Sourcebook on Solitary Confinement* (London, Mannheim Centre for Criminology, 2008), p. 1.

Unit (SHU)”,⁵ but all these terms can involve different factors. For the purposes of this report, the Special Rapporteur defines solitary confinement as the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day. Of particular concern to the Special Rapporteur is prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days. He is aware of the arbitrary nature of the effort to establish a moment in time which an already harmful regime becomes prolonged and therefore unacceptably painful. He concludes that 15 days is the limit between “solitary confinement” and “prolonged solitary confinement” because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.⁶

D. Legal framework

27. International and regional human rights bodies have taken different approaches to address the underlying conditions of social and physical isolation of detainees, and whether such practices constitute torture or cruel, inhuman or degrading treatment or punishment. For example, while the European Court of Human Rights has confronted solitary confinement regimes with regularity, the United Nations Human Rights Committee and the Inter-American Court of Human Rights have most extensively addressed the related phenomenon of incommunicado detention. For the purposes of this report, the Special Rapporteur will highlight the work of universal and regional human rights bodies on solitary confinement only.

1. International level

General Assembly

28. In 1990, the General Assembly adopted resolution 45/111, the Basic Principles for the Treatment of Prisoners. Principle 7 states that efforts to abolish solitary confinement as a punishment, or to restrict its use, should be undertaken and encouraged.

29. In the same year, the General Assembly adopted resolution 45/113, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In paragraph 67 the Assembly asserted that “All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including ... solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned”.

United Nations treaty bodies

30. The Human Rights Committee, in paragraph 6 of its General Comment No. 20, noted that prolonged solitary confinement of the detained or imprisoned person might amount to acts prohibited by article 7 of the International Covenant on Civil

⁵ Ken Strutin, “Solitary Confinement”, LLRX.com, published on 10 August 2010.

⁶ Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement, Crime and Delinquency”, vol. 49, No. 1, pp. 124-156.

and Political Rights.⁷ In its concluding observations on Rwanda, the Human Rights Committee recommended that “The State party should put an end to the sentence of solitary confinement ...” (CCPR/C/RWA/CO/3, para. 14).

31. The Committee against Torture has recognized the harmful physical and mental effects of prolonged solitary confinement and has expressed concern about its use, including as a preventive measure during pretrial detention, as well as a disciplinary measure. The Committee has recommended that the use of solitary confinement be abolished, particularly during pretrial detention, or at least that it should be strictly and specifically regulated by law (maximum duration, etc.) and exercised under judicial supervision, and used only in exceptional circumstances, such as when the safety of persons or property is involved (A/63/175, para. 80). The Committee has recommended that persons under the age of 18 should not be subjected to solitary confinement (CAT/C/MAC/CO/4, para. 8).

32. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has pointed out that prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment and recommended that solitary confinement should not be used in the case of minors or the mentally disabled (CAT/OP/PRY/1, para. 185). The Subcommittee has also recommended that a medical officer should visit prisoners held in solitary confinement every day, on the understanding that such visits should be in the interests of the prisoners’ health. Furthermore, prisoners held in solitary confinement for more than 12 hours should have access to fresh air for at least one hour each day (CAT/OP/PRY/1, para. 184). In view of the condition of solitary confinement, the Subcommittee has pointed out that beds and proper mattresses should be made available to all inmates, including prisoners held in solitary confinement (CAT/OP/HND/1, para. 227 (a), and CAT/OP/PRY/1, para. 280).

33. The Committee on the Rights of the Child, in its General Comment No. 10 (2007), emphasized that “disciplinary measures in violation of article 37 [of the Convention on the Rights of the Child] must be strictly forbidden, including ... closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned” (CRC/C/GC/10, para. 89). Moreover, the Committee has urged States parties to prohibit and abolish the use of solitary confinement against children (CRC/C/15/Add.151, para. 41; CRC/C/15/Add.220, para. 45 (d); and CRC/C/15/Add.232, para. 36 (a)).

2. Regional level

European Court of Human Rights

34. In its evaluation of cases of solitary confinement, the European Court of Human Rights considers the rationale given by the State for the imposition of social and physical isolation. The Court has found violations of article 3 of the European Convention on Human Rights where States do not provide a security-based

⁷ Human Rights Committee, International Covenant on Civil and Political Rights, General Comment No. 20 (A/47/40, annex VI.A), article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992.

justification for the use of solitary confinement.⁸ In circumstances of prolonged solitary confinement, the Court has held that the justification for solitary confinement must be explained to the individual and the justification must be “increasingly detailed and compelling” as time goes on.⁹

35. Through its jurisprudence, the European Court of Human Rights emphasizes that certain procedural safeguards must be in place during the imposition of solitary confinement, for example, monitoring a prisoner’s physical well-being,⁹ particularly where the individual is not in good health¹⁰ and having access to judicial review.¹¹

36. The level of isolation imposed on an individual is essential to the European Court of Human Rights’ assessment of whether instances of physical and mental isolation constitute torture or cruel, inhuman or degrading treatment or punishment. A prolonged absolute prohibition of visits from individuals from outside the prison causes suffering “clearly exceeding the unavoidable level inherent in detention”.¹² However, where the individual can receive visitors and write letters,¹³ have access to television, books and newspapers and regular contact with prison staff¹⁴ or visit with clergy or lawyers on a regular basis,¹⁵ isolation is “partial”, and the minimum threshold of severity — which the European Court of Human Rights considers necessary to find a violation of article 3 of the European Convention on Human Rights — is not met. Nevertheless, the Court has emphasized that solitary confinement, even where the isolation is only partial, cannot be imposed on a prisoner indefinitely.¹⁶

Inter-American System on Human Rights

37. The jurisprudence on solitary confinement within the Inter-American System on Human Rights is more conclusive than within the bodies discussed above. Since its earliest judgments, the Inter-American Court of Human Rights has found that certain elements of a prison regime and certain physical prison conditions in themselves constitute cruel and inhuman treatment, and therefore violate article 5 of the American Convention on Human Rights, which recognizes the right to the integrity of the person. For example, the Court held that “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the

⁸ *Iorgov v. Bulgaria*, Application No. 40653/98, European Court of Human Rights, para. 84 (2004); *G.B. v. Bulgaria*, Application No. 42346/98, European Court of Human Rights, para. 85 (2004).

⁹ *A.B. v. Russia*, Application No. 1439/06, European Court of Human Rights, para. 108 (2010).

¹⁰ *Palushi v. Austria*, Application No. 27900/04, European Court of Human Rights, paras. 72 and 73 (2009).

¹¹ *A.B. v. Russia*, para. 111.

¹² *Onoufriou v. Cyprus*, Application No. 24407/04, European Court of Human Rights, para. 80 (2010).

¹³ *Ocalan v. Turkey*, Application No. 46221/99, European Court of Human Rights, para. 196 (2005).

¹⁴ *Rohde v. Denmark*, Application No. 69332/01, European Court of Human Rights, para. 97 (2005).

¹⁵ *Ramírez Sanchez v. France*, Application No. 59450/00, European Court of Human Rights, paras. 105, 106 and 135 (2006).

¹⁶ *Ibid.*, para. 145.

right of any detainee to respect for his inherent dignity as a human being”.¹⁷ The Court has additionally addressed physical conditions of detention, asserting that “isolation in a small cell, without ventilation or natural light, ... [and] restriction of visiting rights ..., constitute forms of cruel, inhuman and degrading treatment”.¹⁸

38. The Court has additionally recognized that solitary confinement results in psychological and physical suffering that may contribute to treatment that constitutes torture. In at least one case, the Court has identified the physical conditions of solitary confinement, including “a small cell with no ventilation or natural light”, and a prison regime where a detained individual “is held for 23 and a half hours a day ..., [and] permitted to see his relatives only once a month, but could have no physical contact with them”, when coupled with other forms of physical and psychological aggression, in sum may constitute physical and psychological torture.¹⁹

39. In its analysis of solitary confinement, the Court has noted that even when used in exceptional circumstances, procedural safeguards must be in place. For example, “the State is obliged to ensure that the detainee enjoys the minimum and non-derogable guarantees established in the [American] Convention and, specifically, the right to question the lawfulness of the detention and the guarantee of access to effective defense during his incarceration”.²⁰ Similarly, the Inter-American Commission on Human Rights has consistently held that all forms of disciplinary action taken against detained persons must comport with the norms of due process and provide opportunity for judicial review.²¹

E. States’ rationale for the use of solitary confinement

40. The justifications provided by States for the use of solitary confinement fall into five general categories:

- (a) To punish an individual (as part of the judicially imposed sentence or as part of a disciplinary regime);
- (b) To protect vulnerable individuals;
- (c) To facilitate prison management of certain individuals;
- (d) To protect or promote national security;
- (e) To facilitate pre-charge or pretrial investigations.

41. The imposition of solitary confinement as a part of an individual’s judicially imposed sentence often arises in circumstances of particularly egregious crimes or

¹⁷ *Velázquez-Rodríguez v. Honduras*, Inter-American Court of Human Rights, Series C, No. 4, para. 156 (1988).

¹⁸ *Loayza-Tamayo v. Peru*, Inter-American Court of Human Rights, Series C, No. 33, para. 58 (1997).

¹⁹ *Cantoral-Benavides v. Peru*, Inter-American Court of Human Rights, Series C, No. 69, paras. 62 and 104 (2000).

²⁰ *Suárez-Rosero v. Ecuador*, Inter-American Court of Human Rights, Series C, No. 35, paras. 51-56 (1997).

²¹ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Mexico* (OEA/Ser.L/V/II.100), para. 254 (2008).

crimes against the State.²² For instance, in some central European States, individuals convicted and sentenced to capital punishment and to life imprisonment serve their time in solitary confinement (A/64/215, para. 53). In other States, such as in Mongolia, death sentences may be commuted to life sentences spent in solitary confinement (E/CN.4/2006/6/Add.4, para. 47). The use of solitary confinement as a disciplinary measure within prisons is also well documented and is likely the most pervasive rationale for the use of solitary confinement as a form of punishment.²² Disciplinary measures usually involve the violation of a prison rule. For instance, in Nigeria detainees are punished with solitary confinement of up to three days for disciplinary offences (A/HRC/7/3/Add.4, appendix I, para. 113). Similarly, in the Abepura Prison in Indonesia, solitary confinement for up to eight days is used as a disciplinary measure for persons who violate prison rules (A/HRC/7/3/Add.7, appendix I, para. 37).

42. Solitary confinement is also used to separate vulnerable individuals, including juveniles, persons with disabilities, and lesbian, gay, bisexual and transgender persons, for their own protection. They may be placed in solitary confinement at their own request or at the discretion of prison officials.²³

43. State officials also use solitary confinement as a tool to manage certain prison populations. Individuals determined to be dangerous, such as gang members, or at high risk of escape may be placed in solitary confinement.²³ Similarly, individuals determined to be at risk of injury, such as sex offenders, informants, and former correctional or law enforcement officers, are often allowed, or encouraged, to choose voluntary solitary confinement in order to protect themselves from fellow inmates.²⁴ Prisoners may also be placed in some form of solitary confinement in the interests of prison management before, during or after transportation to and from cells and detention facilities.²⁵ While the duration of solitary confinement when used as a management tool may vary considerably, it is notable that the motivation for its imposition is pragmatic rather than punitive.

44. Individuals determined to be terrorist suspects or national security risks are often subjected to solitary confinement as well. For instance, in Equatorial Guinea a section of the Black Beach Prison consisting of single cells is used for solitary confinement of high security prisoners (A/HRC/13/39/Add.4, appendix I). Solitary confinement can be also used as a coercive interrogation technique, and is often an integral part of enforced disappearance or incommunicado detention (A/63/175, annex). As noted within category (a) in paragraph 40 above, national security also serves as a primary reason for the imposition of solitary confinement as a result of a judicial sentence. For example, in China an individual sentenced for “unlawfully supplying State secrets or intelligence to entities outside China” was allegedly held in solitary confinement for two years of her eight-year sentence (E/CN.4/2006/6/Add.6, appendix 2, para. 26).

45. States also use solitary confinement to isolate individuals during pre-charge or pretrial detention. In some States, such as Denmark, holding individuals in solitary

²² Shalev, op. cit., p. 25.

²³ Shalev, op. cit., pp. 25 and 26.

²⁴ Peter Scharff Smith, “Solitary Confinement: An introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement”, *Journal on Rehabilitation of Torture Victims and Prevention of Torture*, vol. 18 (2008), p. 56.

²⁵ Shalev, op. cit., p. 26.

confinement is a regular feature of pretrial detention (A/63/175, para. 78 (i)). The purposes for the use of solitary confinement in pre-charge and pretrial detention vary widely, and include preventing the intermingling of detainees to avoid demoralization and collusion, and to apply pressure on detainees to elicit cooperation or extract a confession.²⁶

F. Conditions of solitary confinement

46. The administration of prisons and the conditions in which prisoners are held is governed by prison regulations and national laws, as well as by international human rights law. Fundamental norms that are binding by virtue of being treaty-based or part of customary international law are supplemented and interpreted through the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in 1957. Although not directly binding, the Standard Minimum Rules are widely accepted as the universal norm for the humane treatment of prisoners.

47. The particular conditions in which detainees are held in solitary confinement vary between institutions and jurisdictions. Most, however, have a number of physical and non-physical conditions (or a prison regime) in common.

1. Physical conditions

48. The principal physical conditions relevant to solitary confinement are cell size, presence of windows and light, and access to sanitary fixtures for personal hygiene. In practice, solitary confinement cells typically share some common features, including: location in a separate or remote part of the prison; small, or partially covered windows; sealed air quality; stark appearance and dull colours; toughened cardboard or other tamperproof furniture bolted to the floor; and small and barren exercise cages or yards (E/CN.4/2006/6/Add.3, para. 47). In some jurisdictions, prisoners in solitary confinement are held in leg irons and subjected to other physical restraints (A/HRC/13/39/Add.4, para. 76 (f)).

49. There is no universal instrument that specifies a minimum acceptable cell size, although domestic and regional jurisdictions have sometimes ruled on the matter. According to the European Court of Human Rights in *Ramírez Sanchez v. France*, a cell measuring 6.84 square metres is “large enough” for single occupancy.²⁷ The Court did not elaborate on why such measures could be considered adequate; the Special Rapporteur respectfully begs to differ, especially if the single cell should also contain, at a minimum, toilet and washing facilities, bedding and a desk.

50. The presence of windows and light is also of critical importance to the adequate treatment of detainees in solitary confinement. Under rule 11 of the Standard Minimum Rules for the Treatment of Prisoners, there should be sufficient light to enable the detainee to work or read, and windows so constructed as to allow airflow whether or not artificial ventilation is provided. However, State practice reveals that this standard is often not met. For example, in Georgia, window-

²⁶ Peter Scharff Smith, “Solitary Confinement: An introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement”, p. 41.

²⁷ *Ramírez Sanchez v. France*, Application No. 59450/00, European Court of Human Rights, para. 102 (2006).

openings in solitary confinement cells were found to have steel sheets welded to the outside bars, which restricted light and ventilation (E/CN.4/2006/6/Add.3, para. 47). In Israel, solitary confinement cells are often lit with fluorescent bulbs as their only source of light, and they have no source of fresh air.²⁸

51. Rules 12 and 13 of the Standard Minimum Rules stipulate that detention facilities should provide sufficient sanitary fixtures to allow for the personal hygiene of the detainee. Therefore, cells used for solitary confinement should contain a lavatory and wash-basin within the cell.²⁹ In its 2006 report on Greece, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment observed that isolation cells in the Komotini Prison failed to meet the necessary minimum standard for sanitary fixtures because detainees were forced to use the toilet for a wash-basin as well.³⁰ Other environmental factors, such as temperature, noise level, privacy, and soft materials for cell furnishings may also be implicated in the solitary confinement setting.

2. Prison regime

52. The principal aspects of a prison regime relevant to an assessment of the conditions of solitary confinement include access to outdoor exercise and programming, access to meaningful human contact within the prison, and contact with the outside world. In accordance with rule 21 of the Standard Minimum Rules for the Treatment of Prisoners, every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. Similarly, the European Committee for the Prevention of Torture emphasizes that all prisoners without exception should be afforded the opportunity to have one hour of open-air exercise per day.³¹ However, State practice indicates that these standards are not always observed. In Jordan, for example, a detainee was allowed outside of his solitary confinement cell for only one hour per week (A/HRC/4/33/Add.3, appendix, para. 21). In *Poltrotsky v. Ukraine*, the European Court of Human Rights found that a lack of opportunity for outdoor exercise, coupled with a lack of access to natural light, constitutes a violation of article 3 of the European Convention on Human Rights.³²

53. Access to meaningful human contact within the prison and contact with the outside world are also essential to the psychological health of detainees held in solitary confinement, especially those held for prolonged periods of time. Within prisons this contact could be with health professionals, prison guards or other prisoners. Contact with the outside world could include visits, mail, and phone calls from legal counsel, family and friends, and access to reading material, television or radio. Article 17 of the International Covenant on Civil and Political Rights grants prisoners the right to family and correspondence. Additionally, the Standard Minimum Rules for the Treatment of Prisoners provide for various external stimuli

²⁸ Solitary Confinement of Prisoners and Detainees in Israeli Prisons, Joint Project of Adalah, Al Mezan (Gaza) and Physicians for Human Rights (Israel, June 2011).

²⁹ Shalev, op. cit., p. 42.

³⁰ Council of Europe, Committee for the Prevention of Torture, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 20 December 2006 (CPT/Inf (2006)), p. 41.

³¹ Council of Europe, "CPT Standards" (CPT/Inf/E (2002) 1 — Rev. 2010), sect. II, para. 48.

³² *Poltrotsky v. Ukraine*, p. 146 (European Court of Human Rights, 2006-V).

(articles 21 on exercise and sport; 37-39 on contact with the outside world; 40 on books; 41 and 42 on religion; 71-76 on work; 77 and 78 on education and recreation; and 79-81 on social relations and after-care).

3. Social isolation

54. Solitary confinement reduces meaningful social contact to an absolute minimum. The level of social stimulus that results is insufficient for the individual to remain in a reasonable state of mental health.³³

55. Research shows that deprived of a sufficient level of social stimulation, individuals soon become incapable of maintaining an adequate state of alertness and attention to their environment. Indeed, even a few days of solitary confinement will shift an individual's brain activity towards an abnormal pattern characteristic of stupor and delirium.³⁴ Advancements in new technologies have made it possible to achieve indirect supervision and keep individuals under close surveillance with almost no human interaction. The European Court of Human Rights has recognized that "complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason".³⁵

56. According to the European Court of Human Rights, States should also take steps to reduce the negative impact of solitary confinement.³⁶ Where the damaging effects of solitary confinement on a particular individual are known, the regime cannot continue.³⁷ The conditions of confinement are relevant in this respect, because where conditions are beyond reproach, the Court considers it unlikely that the minimum threshold of severity to find a violation of article 3 will be reached.³⁸ Routine examination by doctors can be a factor in determining that there was no violation of article 3.³⁹

G. Prolonged or indefinite solitary confinement

57. The use of prolonged or indefinite solitary confinement has increased in various jurisdictions, especially in the context of the "war on terror" and "a threat to national security". Individuals subjected to either of these practices are in a sense in a prison within a prison and thus suffer an extreme form of anxiety and exclusion, which clearly supersede normal imprisonment. Owing to their isolation, prisoners held in prolonged or indefinite solitary confinement can easily slip out of sight of

³³ Peter Scharff Smith, "The effects of solitary confinement on prison inmates", *Crime and Justice*, vol. 34 (2006), p. 449.

³⁴ Stuart Grassian, "Psychiatric Effects of Solitary Confinement", *Journal of Law and Policy*, vol. 22 (2006), p. 325.

³⁵ *Ilaşcu and others v. Moldova and Russia*, Application No. 48787/99, European Court of Human Rights (2004), para. 432.

³⁶ *Mathew v. Netherlands*, Application No. 24919/03, para. 202.

³⁷ *G.B. v. Bulgaria*, para. 85.

³⁸ *Valasinas v. Lithuania*, Application No. 44558/98, European Court of Human Rights, para. 112 (2001); *Ocalan v. Turkey*, para. 193.

³⁹ *Rohde v. Denmark*, para. 97.

justice, and safeguarding their rights is therefore often difficult, even in States where there is a strong adherence to rule of law.⁴⁰

58. When a State fails to uphold the Standard Minimum Rules for the Treatment of Prisoners during a short period of time of solitary confinement, there may be some debate on whether the adverse effects amount to cruel, inhuman or degrading treatment or punishment or torture. However, the longer the duration of solitary confinement or the greater the uncertainty regarding the length of time, the greater the risk of serious and irreparable harm to the inmate that may constitute cruel, inhuman or degrading treatment or punishment or even torture.

59. The feeling of uncertainty when not informed of the length of solitary confinement exacerbates the pain and suffering of the individuals who are subjected to it. In some instances, individuals may be held indefinitely during pretrial detention, increasing the risk of other forms of cruel, inhuman or degrading treatment or punishment or torture (CAT/C/DNK/CO/5, para. 14).

60. Most studies fail to specify the length of time after which solitary confinement becomes prolonged. While the term may be undefined, detainees can be held in solitary confinement from a few weeks to many years. For example, in Kazakhstan, individuals can be held in solitary confinement for more than two months (A/HRC/13/39/Add.3, para. 117). Some detainees have been held in solitary confinement facilities for years, without any charge and without trial, and in secret detention centres where isolation is used as an integral part of interrogation practices.⁴¹ In a joint report on the situation of detainees at Guantánamo Bay, experts found that although 30 days of isolation was the maximum period permissible, some detainees were returned to isolation after very short breaks over a period of up to 18 months (E/CN.4/2006/120, para. 53).

61. There is no international standard for the permitted maximum overall duration of solitary confinement. In *A.B. v. Russia*, the European Court of Human Rights held that detaining an individual in solitary confinement for three years constituted a violation of article 3 of the European Convention on Human Rights.⁴² By contrast, in the United States of America, it is reported that two prisoners have been held in solitary confinement in a Louisiana prison for 40 years after failed attempts at judicial appeal of the conditions of their confinement.⁴³ As explained in paragraph 26 above, the Special Rapporteur finds that solitary confinement exceeding 15 days is prolonged.

H. Psychological and physiological effects of solitary confinement

62. Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions. Experts who have examined the impact of solitary confinement have found three common elements that are inherently present in solitary confinement —

⁴⁰ Peter Scharff Smith, “Solitary Confinement: An introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement”, p. 1.

⁴¹ Shalev, *op. cit.*, p. 2.

⁴² *A.B. v. Russia*, Application No. 1439/06, European Court of Human Rights, para. 135 (2010).

⁴³ “USA: The Cruel and Inhumane Treatment of Albert Woodfox and Herman Wallace”, Amnesty International (2001).

social isolation, minimal environmental stimulation and “minimal opportunity for social interaction”.⁴⁴ Research further shows that solitary confinement appears to cause “psychotic disturbances,” a syndrome that has been described as “prison psychoses”.⁴⁵ Symptoms can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis and self-harm (see annex for a comprehensive list of symptoms).

63. Some individuals experience discrete symptoms while others experience a “severe exacerbation of a previously existing mental condition or the appearance of a mental illness where none had been observed before”.⁴⁶ Still, a significant number of individuals will experience serious health problems regardless of the specific conditions, regardless of time and place, and regardless of pre-existing personal factors.

I. Latent effects of solitary confinement

64. There is a lack of research into the latent effects of solitary confinement. While the acute effects of solitary confinement generally recede after the period of solitary confinement ends, some of the negative health effects are long term. The minimal stimulation experienced during solitary confinement can lead to a decline in brain activity in individuals after seven days. One study found that “up to seven days, the [brain activity] decline is reversible, but if deprived over a long period this may not be the case”.⁴⁷

65. Studies have found continued sleep disturbances, depression, anxiety, phobias, emotional dependence, confusion, impaired memory and concentration long after the release from isolation. Additionally, lasting personality changes often leave individuals formerly held in solitary confinement socially impoverished and withdrawn, subtly angry and fearful when forced into social interaction.⁴⁸ Intolerance of social interaction after a period of solitary confinement is a handicap that often prevents individuals from successfully readjusting to life within the broader prison population and severely impairs their capacity to reintegrate into society when released from imprisonment.⁴⁹

J. Vulnerable individuals

1. Juveniles

66. United Nations treaty bodies consistently recommend that juvenile offenders, children or minors should not be subjected to solitary confinement (CAT/C/MAC/CO/4, para. 8; CAT/OP/PRY/1, para. 185; CRC/C/15/Add.151, para. 41; and CRC/C/15/Add.232, para. 36 (a)). Juveniles are often held in solitary confinement either as a disciplinary measure, or to separate them from the adult inmate population, as international human rights law prohibits the intermingling of

⁴⁴ Stuart Grassian, “Psychiatric Effects of Solitary Confinement” (1993), p. 1.

⁴⁵ *Ibid.*, p. 8.

⁴⁶ *Ibid.*, p. 2.

⁴⁷ *Ibid.*, p. 20.

⁴⁸ Shalev, *op. cit.*, pp. 13 and 22.

⁴⁹ Stuart Grassian, “Psychiatric Effects of Solitary Confinement”, pp. 332 and 333.

juvenile and adult prison populations.⁵⁰ Regrettably, solitary confinement as a form of punishment of juvenile detainees has been prevalent in States such as Jamaica (A/HRC/16/52/Add.3, para. 211), Paraguay (A/HRC/7/3/Add.3, appendix I, para. 46) and Papua New Guinea (A/HRC/16/52/Add.5, appendix). In regard to disciplinary measures, a report has indicated that solitary confinement does not reduce violence among juvenile offenders detained in the youth prison.⁵¹

2. Persons with disabilities

67. Persons with disabilities are held in solitary confinement in some jurisdictions as a substitute for proper medical or psychiatric care or owing to the lack of other institutional housing options. These individuals may not necessarily pose danger to others or to themselves, but they are vulnerable to abuse and often regarded as a disturbance to other prisoners and prison staff.⁵²

68. Research has shown that with respect to mental disabilities, solitary confinement often results in severe exacerbation of a previously existing mental condition.⁵³ Prisoners with mental health issues deteriorate dramatically in isolation.⁵⁴ The adverse effects of solitary confinement are especially significant for persons with serious mental health problems which are usually characterized by psychotic symptoms and/or significant functional impairments.⁵⁵ Some engage in extreme acts of self-mutilation and even suicide.⁵⁴

3. Lesbian, gay, bisexual and transgender

69. Lesbian, gay, bisexual and transgender individuals are often subjected to solitary confinement as a form of “protective custody”.⁵⁶ Although segregation of such individuals may be necessary for their safety, lesbian, gay, bisexual and transgender status does not justify limitations on their social regime, e.g., access to recreation, reading materials, legal counsel or medical doctors.

K. When solitary confinement amounts to torture and other cruel, inhuman or degrading treatment or punishment

70. Because of the absence of witnesses, solitary confinement increases the risk of acts of torture and other cruel, inhuman or degrading treatment or punishment. Given its severe adverse health effects, the use of solitary confinement itself can amount to acts prohibited by article 7 of the International Covenant on Civil and

⁵⁰ Article 37(c), Convention on the Rights of the Child; article 8(d), United Nations Standard Minimum Rules for the Treatment of Prisoners.

⁵¹ Robert Wildeboer, “The Impact of Solitary Confinement in a Youth Prison”, *Inside and Out* (Chicago, 2010).

⁵² Shalev, op. cit., p. 26.

⁵³ Stuart Grassian, “Psychiatric Effects of Solitary Confinement”; Shalev, op. cit., p. 10.

⁵⁴ American Civil Liberties Union, “Abuse of the Human Rights of Prisoners in the United States: Solitary Confinement” (2011).

⁵⁵ Jeffrey L. Metzner, M.D., and Jamie Fellner, “Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics”, *The Journal of the American Academy of Psychiatry and the Law*, vol. 38, No. 1, pp. 104-108 (2010).

⁵⁶ Heartland Alliance National Immigrant Justice Center, letter to the Special Rapporteur on torture dated 16 June 2011.

Political Rights, torture as defined in article 1 of the Convention against Torture or cruel, inhuman or degrading punishment as defined in article 16 of the Convention.

71. The assessment of whether solitary confinement amounts to torture and other cruel, inhuman or degrading treatment or punishment should take into consideration all relevant circumstances on a case-by-case basis. These circumstances include the purpose of the application of solitary confinement, the conditions, length and effects of the treatment and, of course, the subjective conditions of each victim that make him or her more or less vulnerable to those effects. In this section, the report discusses a few circumstances where the use of solitary confinement constitutes torture and other cruel, inhuman or degrading treatment or punishment.

72. Solitary confinement, when used for the purpose of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour and thus constitutes an act defined in article 1 or article 16 of the Convention against Torture, and a breach of article 7 of the International Covenant on Civil and Political Rights. This applies as well to situations in which solitary confinement is imposed as a result of a breach of prison discipline, as long as the pain and suffering experienced by the victim reaches the necessary severity.

73. While physical and social segregation may be necessary in some circumstances during criminal investigations, the practice of solitary confinement during pretrial detention creates a de facto situation of psychological pressure which can influence detainees to make confessions or statements against others and undermines the integrity of the investigation. When solitary confinement is used intentionally during pretrial detention as a technique for the purpose of obtaining information or a confession, it amounts to torture as defined in article 1 or to cruel, inhuman or degrading treatment or punishment under article 16 of the Convention against Torture, and to a breach of article 7 of the International Covenant on Civil and Political Rights.

74. Where the physical conditions of solitary confinement are so poor and the regime so strict that they lead to severe mental and physical pain or suffering of individuals who are subjected to the confinement, the conditions of solitary confinement amount to torture or to cruel and inhuman treatment as defined in articles 1 and 16 of the Convention, and constitute a breach of article 7 of the Covenant.

75. The use of solitary confinement can be accepted only in exceptional circumstances where its duration must be as short as possible and for a definite term that is properly announced and communicated. Given the harmful effects of indefinite solitary confinement, its potential use to extract information or confession during pretrial detention, and the fact that uncertainty prevents the use of remedies to challenge it, the Special Rapporteur finds that indefinite imposition of solitary confinement violates the right to due process of the concerned individual (article 9 of the Covenant, articles 1 or 16 of the Convention, and article 7 of the Covenant).

76. The Special Rapporteur asserts that social isolation is contrary to article 10, paragraph 3, of the International Covenant on Civil and Political Rights, which states that “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation” (General Assembly resolution 2200 (XXI), annex). Long periods of isolation do not aid the

rehabilitation or re-socialization of detainees (E/CN.4/2006/6/Add.4, para. 48). The adverse acute and latent psychological and physiological effects of prolonged solitary confinement constitute severe mental pain or suffering. Thus the Special Rapporteur concurs with the position taken by the Committee against Torture in its General Comment No. 20 that prolonged solitary confinement amounts to acts prohibited by article 7 of the Covenant, and consequently to an act as defined in article 1 or article 16 of the Convention. For these reasons, the Special Rapporteur reiterates that, in his view, any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances. He calls on the international community to agree to such a standard and to impose an absolute prohibition on solitary confinement exceeding 15 consecutive days.

77. With respect to juveniles, the Declaration of the Rights of the Child and the Preamble of the Convention on the Rights of the Child state that, given their physical and mental immaturity, juveniles need special safeguards and care, including appropriate legal protection. Article 19 of the Convention on the Rights of the Child (General Assembly resolution 44/25) requires States Parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence ...” In its General Comment No. 8, the Committee on the Rights of the Child indicated that “There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children” (CRC/C/GC/8, para. 18). Paragraph 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in resolution 45/113 of 14 December 1990, states that “All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including ... solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned” (see also CRC/C/GC/10, para. 89). Thus the Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.

78. The right of persons with mental disabilities to be treated with humanity and with respect for the inherent dignity guaranteed under article 10 of the Covenant should be interpreted in light of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, adopted by the General Assembly on 17 December 1991 (resolution 46/119, annex). Given their diminished mental capacity and that solitary confinement often results in severe exacerbation of a previously existing mental condition, the Special Rapporteur believes that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment and violates article 7 of the Covenant and article 16 of the Convention.

IV. Conclusions and recommendations

Conclusions

79. **The Special Rapporteur stresses that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse**

effects on individuals regardless of their specific conditions. He finds solitary confinement to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society. The Special Rapporteur defines prolonged solitary confinement as any period of solitary confinement in excess of 15 days.

80. Depending on the specific reason for its application, conditions, length, effects and other circumstances, solitary confinement can amount to a breach of article 7 of the International Covenant on Civil and Political Rights, and to an act defined in article 1 or article 16 of the Convention against Torture. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged.

81. Considering the severe mental pain or suffering solitary confinement may cause when used as a punishment, during pretrial detention, indefinitely or for a prolonged period, for juveniles or persons with mental disabilities, it can amount to torture or cruel, inhuman or degrading treatment or punishment. The Special Rapporteur is of the view that where the physical conditions and the prison regime of solitary confinement fail to respect the inherent dignity of the human person and cause severe mental and physical pain or suffering, it amounts to cruel, inhuman or degrading treatment or punishment.

Recommendations

82. The Special Rapporteur calls upon States to respect and protect the rights of persons deprived of liberty while maintaining security and order in places of detention. He recommends that States conduct regular reviews of the system of solitary confinement. In this context, the Special Rapporteur reiterates that States should refer to the Istanbul Statement on the Use and Effects of Solitary Confinement as a useful tool in efforts to promote the respect and protection of the rights of detainees.

83. The Special Rapporteur calls upon States to ensure that all persons deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person as protected by article 10, paragraph 1, of the International Covenant on Civil and Political Rights. The Special Rapporteur refers to the Standard Minimum Rules for the Treatment of Prisoners and recommends that States increase the level of psychological, meaningful social contact for detainees while in solitary confinement.

84. The Special Rapporteur urges States to prohibit the imposition of solitary confinement as punishment — either as a part of a judicially imposed sentence or a disciplinary measure. He recommends that States develop and implement alternative disciplinary sanctions to avoid the use of solitary confinement.

85. States should take necessary steps to put an end to the practice of solitary confinement in pretrial detention. The use of solitary confinement as an extortion technique during pretrial detention should be abolished. States should adopt effective measures at the pretrial stage to improve the efficiency of investigation and introduce alternative control measures in order to segregate individuals, protect ongoing investigations, and avoid detainee collusion.

86. States should abolish the use of solitary confinement for juveniles and persons with mental disabilities. Regarding disciplinary measures for juveniles, the Special Rapporteur recommends that States should take other measures that do not involve the use of solitary confinement. In regard to the use of solitary confinement for persons with mental disabilities, the Special Rapporteur emphasizes that physical segregation of such persons may be necessary in some cases for their own safety, but solitary confinement should be strictly prohibited.

87. Indefinite solitary confinement should be abolished.

88. It is clear that short-term solitary confinement can amount to torture or cruel, inhuman or degrading treatment or punishment; it can, however, be a legitimate device in other circumstances, provided that adequate safeguards are in place. In the opinion of the Special Rapporteur, prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition.

89. The Special Rapporteur reiterates that solitary confinement should be used only in very exceptional circumstances, as a last resort, for as short a time as possible. He emphasizes that when solitary confinement is used in exceptional circumstances, minimum procedural safeguards must be followed. These safeguards reduce the chances that the use of solitary confinement will be arbitrary or excessive, as in the case of prolonged or indefinite confinement. They are all the more important in circumstances of detention where due process protections are often limited, as in administrative immigration detention. Minimum procedural safeguards should be interpreted in a manner that provides the greatest possible protection of the rights of detained individuals. In this context, the Special Rapporteur urges States to apply the following guiding principles and procedural safeguards.

Guiding principles

90. Throughout the period of detention, the physical conditions and prison regime of the solitary confinement, and in particular the duration of confinement, must be proportional to the severity of the criminal or disciplinary infraction for which solitary confinement is imposed.

91. The physical conditions and prison regime of solitary confinement must be imposed only as a last resort where less restrictive measures could not achieve the intended disciplinary goals.

92. Solitary confinement must never be imposed or allowed to continue except where there is an affirmative determination that it will not result in severe pain or suffering, whether physical or mental, giving rise to acts as defined in article 1 or article 16 of the Convention against Torture.

93. All assessments and decisions taken with respect to the imposition of solitary confinement must be clearly documented and readily available to the detained persons and their legal counsel. This includes the identity and title of the authority imposing solitary confinement, the source of his or her legal attributes to impose it, a statement of underlying justification for its imposition, its duration, the reasons for which solitary confinement is determined to be appropriate in accordance with the detained person's mental and physical health, the reasons for which solitary confinement is determined to be

proportional to the infraction, reports from regular review of the justification for solitary confinement, and medical assessments of the detained person's mental and physical health.

Internal safeguards

94. From the moment that solitary confinement is imposed, through all stages of its review and decisions of extension or termination, the justification and duration of the solitary confinement should be recorded and made known to the detained person. Additionally, the detained person should be informed of what he or she must do to be removed from solitary confinement. In accordance with rule 35 of the Standard Minimum Rules for the Treatment of Prisoners, the detained person must receive this information in plain language that he or she understands. This information must additionally be provided to any legal representative of the detained person.

95. A documented system of regular review of the justification for the imposition of solitary confinement should be in place. The review should be conducted in good faith and carried out by an independent body. Any change in the factors that justified the imposition of solitary confinement should immediately trigger a review of the detained person's solitary confinement. All review processes must be documented.

96. Persons held in solitary confinement must be provided with a genuine opportunity to challenge both the nature of their confinement and its underlying justification through a process of administrative review. At the outset of the imposition of solitary confinement, detained persons must be informed of their alleged criminal or disciplinary infraction for which solitary confinement is being imposed and must immediately have an opportunity to challenge the reasons for their detention. Following the imposition of solitary confinement, detained persons must have the opportunity to file a complaint to prison management through an internal or administrative complaints system.

97. There shall be no limitations imposed on the request or complaint, such as requiring evidence of both mental or emotional suffering and physical suffering. Prison officials have an obligation to address all requests or complaints promptly, informing the detained person of the outcome. All internal administrative findings must be subject to external appeal through judicial processes.

External safeguards

98. Detained persons held in solitary confinement must be afforded genuine opportunities to challenge both the nature of their confinement and its underlying justification through the courts of law. This requires a right to appeal all final decisions by prison authorities and administrative bodies to an independent judicial body empowered to review both the legality of the nature of the confinement and its underlying justification. Thereafter, detained persons must have the opportunity to appeal these judgements to the highest authority in the State and, after exhaustion of domestic remedies, seek review by regional or universal human rights bodies.

99. **Individuals must have free access to competent legal counsel throughout the period in which they are held in solitary confinement. Where necessary to facilitate complete and open communication between a detainee and his or her legal counsel, access to an interpreter must be provided.**

100. **There should be a documented system of regular monitoring and review of the inmate's physical and mental condition by qualified medical personnel, both at the initiation of solitary confinement and on a daily basis throughout the period in which the detained person remains in solitary confinement, as required by rule 32, paragraph 3, of the Standard Minimum Rules for the Treatment of Prisoners. Medical personnel monitoring detained persons should have specialized training in psychological assessment and/or the support of specialists in psychology. Additionally, medical personnel must be independent and accountable to an authority outside of the prison administration. Preferably, they should belong to the general national health structure. Any deterioration of the inmate's mental or physical condition should trigger a presumption that the conditions of confinement are excessive and activate an immediate review.**

101. **Medical personnel should additionally inspect the physical conditions of the inmate's confinement in accordance with article 26 of the Standard Minimum Rules for the Treatment of Prisoners. Relevant considerations include the level of hygiene and cleanliness of the facility and the inmate, heating, lighting and ventilation of the cell, suitability of clothing and bedding, adequate supply of food and water and observance of the rules concerning physical exercise.**

Annex

Effects of solitary confinement

Many symptoms may present themselves in individuals held in solitary confinement, both concurrent with their solitary confinement and after the period of solitary confinement has terminated. The following list prepared by Dr. Sharon Shalev^a demonstrates a range of possible symptoms.

Anxiety, ranging from feelings of tension to full-blown panic attacks

- Persistent low level of stress
- Irritability or anxiousness
- Fear of impending death
- Panic attacks

Depression, varying from low mood to clinical depression

- Emotional flatness/blunting — loss of ability to have any “feelings”
- Mood swings
- Hopelessness
- Social withdrawal; loss of initiation of activity or ideas; apathy; lethargy
- Major depression

Anger, ranging from irritability to full-blown rage

- Irritability and hostility
- Poor impulse control
- Outbursts of physical and verbal violence against others, self and objects
- Unprovoked anger, sometimes manifested as rage

Cognitive disturbances, ranging from lack of concentration to confused state

- Short attention span
- Poor concentration
- Poor memory
- Confused thought processes; disorientation

Perceptual distortions, ranging from hypersensitivity to hallucinations

- Hypersensitivity to noises and smells
- Distortions of sensation (e.g., walls closing in)
- Disorientation in time and space

^a Sharon Shalev, *A Sourcebook on Solitary Confinement* (London, Mannheim Centre for Criminology, 2008), pp. 15-17; also Peter Scharff Smith, “The effects of solitary confinement on prison inmates: a brief history and review of the literature”, *Crime and Justice*, vol. 34 (2006), p. 441.

- Depersonalization/derealization
- Hallucinations affecting all five senses (e.g., hallucinations of objects or people appearing in the cell, or hearing voices when no one is actually speaking)

Paranoia and psychosis, ranging from obsessional thoughts to full-blown psychosis

- Recurrent and persistent thoughts (ruminations), often of a violent and vengeful character (e.g., directed against prison staff)
- Paranoid ideas — often persecutory
- Psychotic episodes or states: psychotic depression, schizophrenia

Self-harm, self-directed aggression

- Self-mutilation and cutting
 - Suicide attempts
-

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