

1 | Introduction

1.1 What is the Sourcebook about?

Isolation, segregation, separation, cellular or solitary confinement are some of the terms used to describe a form of confinement where prisoners are held alone in their cell for up to 24 hours a day, and are only allowed to leave it, if at all, for an hour or so of outdoor exercise. Solitary confinement may be imposed on prisoners as short-term punishment for prison offences, or indefinitely for the prisoner's own protection, either at his request or at the discretion of the prison authorities. In other cases prisoners may be isolated from others for months and even years on administrative grounds: as a long-term strategy for managing challenging prisoners or where prisoners are deemed to be a threat to national security. Finally, pre-charge and pre-trial detainees may be isolated from others whilst their interrogation or the investigation into their case is ongoing.

This Sourcebook provides a single reference point for those concerned with the practice of solitary confinement, particularly when it is imposed for prolonged periods of time. Its purpose is to a) inform prison operational staff, health professionals, and policy makers of the human rights position regarding solitary confinement, of ethical and professional standards and codes of practice relating to prisoner isolation, and of research findings on the health effects of solitary confinement, and b) propose safeguards and best practice in light of the above. More broadly, it aims to raise awareness of the potential consequences of prolonged solitary confinement.

The basic premise in compiling this Sourcebook is that prolonged solitary confinement is inherently damaging and is not good practice. It should only be used as a last resort and be reserved for a handful of the most extreme cases. In the few cases where solitary confinement may be exceptionally and absolutely necessary, it should only be used for the shortest possible time, and be managed within established guidelines and strict safeguards. By extension, prison regimes which are entirely constructed around a solitary confinement model cannot but be damaging to prisoners and run contrary to principles of rehabilitation and social reintegration. While prison authorities may sometimes need to resort to short term disciplinary segregation, it must, again, only be as a last resort and managed within strict safeguards. The use of solitary confinement as a means of coercing a 'confession' or as means of 'softening up' detainees for interrogation must be prohibited under all circumstances.

1.2 How is the Sourcebook structured?

The rest of this chapter addresses issues of definition, provides the historic context for the use of solitary confinement, and sets out the legal and regulatory framework for the operation of prisons and the treatment of prisoners. Chapter Two examines the documented health effects of solitary confinement, both physical and psychological, and attempts to understand what makes solitary confinement damaging. Chapter Three examines the different roles of solitary confinement in

contemporary prison systems – as punishment, for the prisoner’s own protection, as a tool for managing difficult prisoners and as part of the investigation or interrogation process – and some of the standards, safeguards and recommendations relating to the placement of prisoners and detainees in solitary confinement. Chapter Four examines international standards, research findings and recommendations regarding the design, physical conditions and regime in isolation units. Chapter Five addresses some of the ethical issues and dilemmas facing health professionals working in solitary confinement units, and Chapter Six briefly examines international, regional and national mechanisms for inspecting and monitoring solitary confinement units. Chapter Seven recaps some of the main issues and themes discussed throughout the Sourcebook.

1.3 Definition: what constitutes solitary confinement?

For the purpose of the Sourcebook, solitary confinement is defined as a form of confinement where prisoners spend 22 to 24 hours a day alone in their cell in separation from each other¹. Notwithstanding the different meanings attached to each of these terms in different jurisdictions, the term ‘solitary confinement’ will be used interchangeably with the terms ‘isolation’ and ‘segregation’ when describing regimes where prisoners do not have contact with one another, other than, as is the case in some jurisdictions, during an outdoor exercise period².

1.4 Brief historic context

Solitary confinement is one of the oldest and most enduring prison practices. Bar the death penalty, it is also the most extreme penalty which can legally be imposed on prisoners. Solitary confinement was first widely and systematically used on both sides of the Atlantic in the ‘separate’ and ‘silent’ penitentiaries of the 19th century, with the aim of reforming convicts. It was believed that once left alone with their conscience and the Bible, prisoners would engage in inner reflection, see the error of their ways and be reformed into law abiding citizens. It soon transpired, however, that rather than being reformed, many prisoners became mentally ill, and there was little evidence that the newly built, expensive prisons were more successful than their predecessors in reducing offending. Such criticisms, combined with growing prison populations and pressures for additional prison spaces, led to the dismantling of the isolation system in most countries by the late 19th century³. By then, however, solitary confinement had become a permanent feature of prison systems world-wide, used mainly as a form of short term punishment for prison offences, for holding political prisoners, for protective custody, and as a technique for ‘softening-up’ detainees, particularly those suspected of crimes against the State, before and between interrogation sessions.

In addition to these ‘traditional’ uses, towards the end of the 20th century and at the beginning of the 21st, the use of long term, large scale solitary confinement returned in the form of ‘supermax’ (short for super-maximum security) and ‘special security’ prisons. These are large, high tech prisons, designed for long term and strict isolation of prisoners classified as high risk and/or difficult to control. This phenomenon is particularly evident in the United States, where the Federal Government and some 44 States operate at least one such prison, but similar units can now also

be found in other countries. The use of prolonged solitary confinement has also increased in recent years in the context of the ‘war on terror’, not least at Guantanamo Bay where detainees have been held in supermax-like facilities for years, for the most part without any charge and without trial, and in secret detention centres where isolation is used as an integral part of interrogation practices⁴. Another form of solitary confinement, favoured in a number of European countries, is ‘small group isolation’ wherein prisoners who are classified as dangerous or high risk are held in solitary confinement in small high security units, and allowed limited association with one to five others at designated times, typically during the one-hour long outdoor exercise period required under international law. Paradoxically, although prison overcrowding is a major issue in many jurisdictions, the use of various forms of solitary confinement has increased in the last two decades.

1.5 Legal and regulatory framework

The operation of prisons and other places of detention, and the treatment of those held in them, are regulated by national laws, standards and directives, which vary from State to State. Such national instruments must also, however, be compatible with both international and regional human rights standards and laws⁵ as established by the United Nations and regional standard setting bodies (such as the Council of Europe, the Organisation of American States, the African Union etc.).

The Sourcebook draws on international and regional human rights instruments and their interpretation by the courts and monitoring bodies. It also draws on standards set by professional bodies to guide those working with prisoners. The Sourcebook does not, however, aim to provide a comprehensive review of human rights law and practice, but rather to address some of the most pertinent issues relating to solitary confinement⁶. Some of the key human rights instruments and bodies which are referred to throughout the Sourcebook are briefly introduced below, and Appendix 1 contains selected texts with which readers are encouraged to familiarise themselves. These resources are ‘living instruments’ which evolve over time, and the Sourcebook reflects current views and directives.

Human rights instruments and bodies

International human rights law includes both instruments designed for the universal protection of all human beings, and those designed specifically for the protection of prisoners and detainees. The basic premise of these instruments is that, other than limitations inherent in the deprivation of liberty, prisoners retain their human rights whilst incarcerated. These rights include, for example, the right to a free and fair trial; the right to freedom of thought, conscience and religion; the right to a private and family life; the right to adequate food, shelter and clothing; the right to health; and, the right to education.

The right of prisoners to be treated in a manner respectful of their human dignity and the prohibition against all forms of torture, inhuman or degrading treatment or punishment are reaffirmed in a large number of human rights instruments, including two international treaties, the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture (CAT) which are legally binding on all signatory parties to them, and parallel regional instruments. Additional instruments lay out rules of conduct for prison officers, health and other

personnel, and set acceptable minimum standards for prison design, provisions and conditions. These include the UN Standard Minimum Rules for the Treatment of Prisoners (SMR), discussed below, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁷.

A. International human rights instruments and bodies

The International Covenant on Civil and Political rights (ICCPR)

The ICCPR came into force in 1976. Its provisions are interpreted and its implementation monitored by the **UN Human Rights Committee (HRC)**. Under Article 40 of the ICCPR, all State parties to it are required to submit a report on their compliance with the ICCPR initially upon ratification, and periodically thereafter. In addition, under the Covenant's Optional Protocol, the Human Rights Committee may consider individual communications from nationals of signatory states to the Protocol.

Two articles of the ICCPR relate directly to the treatment of prisoners and prison conditions, including solitary confinement. Article 7 of the ICCPR proclaims that *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment..."*

The Human Rights Committee has interpreted Article 7 to mean⁸:

[2] The aim of the provisions of Article 7 is to protect both the dignity and the physical and mental integrity of the individual... [3] The text allows no limitation, even in time of public emergency...no justification or extenuating circumstances may be invoked to excuse a violation of Article 7 for any reason. [4] [The Committee] does not consider it necessary to draw up a list of prohibited acts, or to establish sharp distinction between the different kinds of punishment or treatment; the distinction depends on the nature, purpose and severity of the treatment applied.

The terms cruel, inhuman or degrading treatment or punishment, *"should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time"* (Note to Principle 6, Body of Principles). This interpretation would apply to some uses of solitary confinement, for example in dark, windowless or soundproofed cells. In such cases, solitary confinement may amount to inhuman or degrading treatment and sometimes even to torture⁹.

Article 7 is closely linked to Article 10 of the ICCPR, which proclaims that *"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person ... the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation"*. Solitary confinement, by definition, deprives the individual from human contact and social interaction, and therefore clearly runs contrary to this principle.

Together, articles 7 and 10 of the ICCPR set out a blanket protection of detainees from any form of ill-treatment. The Human Rights Committee stipulated that:

Article 10(1) imposes on state parties a positive obligation ... thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to Article 7...but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as that of free persons. Persons deprived of their liberty enjoy all the rights set forth, subject to the restrictions that are unavoidable in a closed environment. [4] treating all persons deprived of their liberty with humanity and respect for their dignity is a fundamental and universally applicable rule... this rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status...¹⁰.

The UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention Against Torture was adopted by the UN General Assembly in 1984 and came into force in 1987. Article 1 of the Convention stipulates that:

For the purpose of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person....

The implementation of the Convention by State parties is monitored by a body of independent experts, the **Committee Against Torture (CAT)**. All State parties to the Convention are required to submit a report within a year of ratification, and periodically thereafter. The Committee considers these reports and publishes its findings. In 2006 the **Optional Protocol to the CAT (OPCAT)** came into force with the aim of preventing torture and other ill-treatment through a system of regular inspection visits to all places of deprivation of liberty. The OPCAT establishes both an international inspection body (the Sub-Committee for the Prevention of Torture) and a permanent national inspecting body (known as the National Preventative Mechanism).

UN Standard Minimum Rules for the Treatment of Prisoners (SMR)

The SMR were adopted by the UN Economic and Social Council in 1957¹¹, and set out principles and guidelines as to "what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions" (SMR preamble). The SMR list a very specific set of guidelines for the treatment of offenders, ranging from basic food, shelter and exercise requirements to guidelines on prisoner classification and the provision of educational and vocational training. The SMR also clearly set out general principles, including Rule 60 which reaffirms that prisoners are entitled to respect due to their dignity as human beings, Rules 64 & 65 which reaffirm that prisoners should be imprisoned as punishment, not for punishment, and Rule 27 which affirms that prisons should operate with "no more restriction than is necessary for safe custody and well ordered community life". Rule 31 addresses solitary confinement directly in prohibiting placement in a dark cell and all cruel, inhuman or degrading punishments for disciplinary offences. Although the SMR are not strictly legally binding on States, they set out minimum standards and recommendations for the operation of prisons which are now widely accepted as the main universal guidance for the treatment of prisoners. This is evidenced by the fact that in some countries they have been enacted into law or form the basis for national prison regulations.

The UN Special Rapporteur on Torture

An independent expert appointed by the UN Commission on Human Rights (now replaced by the Human Rights Council), who is mandated to report on the situation of torture anywhere in the world, regardless of whether or not the country is a signatory of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Successive Rapporteurs have addressed the use of various forms of solitary confinement around the world, and have identified situations where its use constitutes cruel, inhuman or degrading treatment or punishment and sometimes even torture.

B. Regional human rights instruments and bodies¹²

European Convention on Human Rights (ECHR)

The European Convention on Human Rights was adopted by the Council of Europe in Rome in 1950 and came into force in 1953. The **European Court of Human Rights (ECtHR)** monitors compliance with the Convention by Member States.

The ECHR proclaims in its Article 3 that *“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”* The prohibition of torture and ill treatment is absolute. States cannot derogate from it in times of war or other public emergency, and it is expressed in unqualified terms. The threshold which ill treatment has to attain in order to fall within the scope of Article 3 of the ECHR is a relative one; *“It depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim”*¹³. Inhuman treatment *“covers at least such treatment as deliberately causes severe suffering, mental or physical, which, in the particular situation, is unjustifiable”*¹⁴. Prison conditions, and therefore the use of solitary confinement, may also fall within the scope of Article 3. When assessing any one case the Court will take account of the cumulative effects of those conditions, as well as the specific allegations made by the applicant¹⁵.

The European Prison Rules (EPR)

The EPR¹⁶ contain 108 Rules, affirming that prisoners retain their human rights and setting detailed standards to guide the administration of prisons, prison conditions, the provision of health care in prisons, prison discipline, and the conduct of prison management and staff. Like the UN SMR, the EPR are not legally binding but they do set out minimum standards below which prison conditions must not fall.

The Committee for the Prevention of Torture (CPT)

The European Committee for the Prevention of Torture was created under Article 2 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (1987), with a view to providing a non-judicial machinery of a preventive character and strengthening the protection of prisoners and detainees from torture or degrading treatment prohibited by Article 3 of the ECHR, through a system of visits. The CPT may visit any place where people are deprived of liberty within the jurisdiction of State parties. Through developing a set of standards which it applies when carrying-out visits to places of detention, the CPT also plays an important standard-setting role.

Notes

- 1 Prison segregation should be distinguished from isolation or seclusion for medical purposes or in psychiatric settings, which are not discussed in this publication. The Sourcebook focuses mainly on adult, male prisoners and does not address issues relating specifically to other groups, such as women or young offenders.
- 2 The exercise period usually lasts for one hour, which is the minimum required by international law, but in some jurisdictions it may last up to two hours.
- 3 For an excellent account of the thinking behind the isolation prisons of the 19th Century see Evans, R. (1982) *The Fabrication of Virtue: English prison Architecture 1750-1840*. Cambridge: Cambridge University Press. See also: Morris, N. and Rothman, D., eds. (1998) *The Oxford History of the Prison: The Practice of Punishment in Western Society*. Oxford: Oxford University Press; Rothman, D.J. (1980) *Conscience and Convenience: The Asylum and its Alternatives in Progressive America*. Boston: Little, Brown and Company.
- 4 See Human Rights Watch report: *Locked Up Alone: Detention Conditions and Mental Health at Guantanamo*, June 2008.
- 5 Human rights laws include: treaty law (treaties, conventions, covenants), which is legally binding on States which are parties to it and on State agents, including prison officials; customary law, which reflects long established practices that are accepted as unwritten laws, and; human rights declarations, recommendations, principles, codes of conduct and guidelines, which are not in themselves legally binding but nonetheless reflect international norms and customs.
- 6 For a more general discussion of human rights and prisons see: Andrew Coyle (2002) *A Human Rights Approach to Prison Management*, International Centre for Prison Studies, London; Office of the United Nations High Commissioner for Human Rights (2005) *Human Rights and Prisons*, Professional Training Series No.11, available online at: www.ohchr.org
- 7 The Body of Principles was adopted the UN General Assembly in December 1988. It contains 39 principles reaffirming that prisoners and detainees retain their human rights when detained, and lists some of the procedural and substantial principles which should direct the operation of all places of detention universally. Other relevant human rights instruments include the Basic Principles for the Treatment of Prisoners (adopted in 1990, affirming that prisoners retain their fundamental human rights); UN Code of Conduct for Law Enforcement Officials; Principles of Medical Ethics; and, in situations of armed conflict, the Geneva Conventions of 1949 and their Additional Protocols of 1977.
- 8 General comment 20/44 of 3 April 1992.
- 9 See Reyes, H. The worst scars are in the mind: psychological torture, *International Review of the Red Cross*, Volume 89 No. 867 September 2007 pp 591-617.
- 10 United Nations Human Rights Committee General comment 21/44 of 6 April 1992, para. [3].
- 11 Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
- 12 The brief discussion in this chapter is based on European instruments and bodies, but similar provisions are made in other regional instruments including the American Convention on Human Rights (ACHR) which proclaims in its Article 5 that "(1) Every person has the right to have his physical, mental and moral integrity respected. (2) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person".
- 13 *Ireland v UK* A25 (1978) at par. 162
- 14 *The Greek Case*, 5.11.69, *Yearbook of the European Convention on Human Rights*, Vol. 12, 1969, p186.
- 15 *Dougoz v. Greece*, no. 40907/98, 46, ECHR 2001-II
- 16 Council of Europe, Recommendation No R(87)3, revised and replaced by recommendation (2006)2.

