

# 4 | Design, physical conditions and regime in solitary confinement units

## 4.1 Introduction

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The design layout and ‘hardware’ of a prison building- including building materials, colour schemes and surveillance mechanisms- have a great impact on the way in which the prison is managed, on its regime, on the daily experiences of prisoners and staff and on the relationship between them. The specific design features of any prison are determined by many factors including its age, size, construction and operating budgets, its mission statement and the prevailing penal policies and attitudes and managerial theories at the time. By extension, the design of segregation units varies greatly, not only between one State and another, but also within the same jurisdiction, affording prisoners different levels of interactions, sensory stimulation, comfort, privacy, and so on.

Although the architectural design of isolation units and cells varies between prisons and jurisdictions, they typically share some common features including: location in a separate or remote part of the prison; the absence of, small, or partially covered windows; sealed air quality; stark appearance and dull colours; toughened cardboard or other tamper proof furniture bolted to the floor; and, small and barren exercise cages or yards. These features constitute a claustrophobic and monotonous environment, which has health implications for both prisoners and, to some extent, staff who work in these units. Such health implications are made worse by the lack of opportunities for social, vocational and recreational activities which also characterise these units.

Newly built isolation units tend to adopt the ‘small pod’ design where cells are grouped together in small clusters (or ‘pods’) of 6-8 single cells, arranged around a centralised control room from which prisoners are supervised. These units are designed to increase surveillance and to enable prolonged solitary confinement and minimise contact between prisoners and staff. Cells are self contained with a toilet and a wash-basin. Other measures, such as feeding-slots built into cell-doors, are taken to ensure that most services can be provided to prisoners inside their cells, reducing prisoner movement in and outside the unit. Typically, physical conditions in the new, purpose built isolation units are better than those in segregation units in older prisons, which were not designed for prolonged solitary confinement. Conversely, since in the newer purpose-built units most prisoner services can be provided in the cell or at the cell-front, prisoners enjoy even less stimulation and opportunities for interaction than in older segregation units. In some of the newly built isolation units, cells are also soundproofed and/or do not have windows, further reducing sensory stimulation.

The design of the prison is closely linked to its regime. Together they have great impact on prisoners' experience of the prison and their wellbeing. The section which follows examines international standards regarding prison conditions and regime, with a special emphasis on solitary confinement units.

## 4.2 International standards regarding prison conditions and regime

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Human rights instruments form the guiding principles and minimum standards for the humane treatment of prisoners. The daily running of prisons is governed by national laws and prison rules which include detailed practical provisions, but they must in all cases conform to the overarching international human rights standards ensuring that prisoners are held in a humane manner in a sanitary and healthy environment. Indeed, monitoring bodies and the courts pay particular attention to the physical conditions in which prisoners are held and will be more inclined to find a violation of human rights law where these fall below the required minimum standards.

Having regard to the diversity in resources, laws and cultures of states, Article 2 of the UN Standard Minimum Rules (SMR) stipulates that standards should *“serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations”*. In its General Comment 21, on the interpretation of what is meant by treating all persons deprived of liberty with *“humanity and with respect for their inherent dignity”* (ICCPR, Article 10), the UN Human Rights Committee made clear that such treatment is fundamental, and *“cannot be dependent on the material resources available in the State party”* (Human Rights Committee General Comment 21, Article 10 of the International Covenant on Civil and Political Rights (44th Session 1992)). In other words, these minimum requirements must be observed, *“even if economic or budgetary considerations may make compliance with these obligations difficult”*<sup>56</sup>.

As their title implies, the Standard Minimum Rules (and other similar instruments) set out the base-level minimum requirements for the operation of prisons globally. The standards examined below are generic and apply to all prisons and to all sections of the prison, but they take on a particular importance in solitary confinement units. Conditions which fall below these minimum standards may constitute cruel, inhuman or degrading treatment or punishment. Adherence to, or even improvement on, the standards discussed below still does not mean that solitary confinement necessarily becomes any less damaging. But ensuring humane conditions and access to meaningful human contact may help mitigate some of its harmful effects.

### A. Physical conditions

As noted above, instruments such as the UN Standard Minimum Rules (SMR) and European Prison Rules (EPR) prescribe minimum standards of physical conditions in all places of confinement. These include:

## Cells

Rule 10 of the UN SMR stipulates that:

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

The European Prison Rules (2006 revisions) use similar language, adding the importance of privacy (Article 18.1). Article 18.3 of the EPR stipulates that specific minimum requirements shall be set in national law.

Cell size and fixtures are of particular importance where prisoners spend most of their day inside the cell in solitary confinement. While international instruments do not specify a minimum size for cells intended for solitary confinement, one can infer from judgements and reports what constitutes an acceptable standard. The European Committee for the Prevention of Torture (CPT) found that solitary confinement cells measuring 8 sq. m. (CPT re Germany, 1993) and 9 sq. m. (CPT re the Netherlands, 1993) to be of a 'reasonable size' for single occupancy, and cells measuring 11 sq. m. to be of a 'good size' (CPT re Netherlands, 1998). The European Court of Human Rights judged a cell measuring 6.84 sq. m. to be 'sufficiently large' for single occupancy (*Ramirez v. France*, Judgement of 27/1/2005). Clearly, any cell should be large enough to allow sufficient area for sleeping, eating and studying, whilst keeping the lavatory area separate.

## Windows and light

The use of dark cells as punishment is prohibited under international human rights law (SMR 31; EPR 62.3). International standards also require that in all places where prisoners live or work:

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation (SMR Rule 11a).

Windows are particularly important where prisoners spend most of their day alone in the cell. The existence of windows, or lack thereof, as well as access to natural light for prisoners held in solitary confinement, have been important factors in the assessment of prison conditions by human rights bodies and the courts, and can tip the balance between acceptable conditions and inhuman treatment. In addition to natural light, international instruments also require that:

Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight (SMR Rule 11b)

Cell fittings should enable prisoners to control artificial light inside their cells. In no case should cell lights be left on continuously.

### ***Sanitary fixtures and personal hygiene***

Articles 12 and 13 of the UN SMR stipulate that

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.
13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

The standard set by European Prison Rules is for prisoners to be allowed to shower daily if possible, and at least twice a week (EPR Rule 19.4). Cells used for solitary confinement should, at a minimum, have an in-cell lavatory and wash-basin installed, and where possible, also a shower. These should be situated in a far corner of the cell and screened-off to afford the prisoner privacy. Prisoners should be provided with water and the necessary toiletries to maintain personal cleanliness (SMR Rule 15; EPR Rule 19.6), and with cleaning materials to maintain the cleanliness of their cells. More generally, all areas used by prisoners including showers, exercise areas and corridors should be clean and well maintained.

### ***Other environmental features***

The monotonous and claustrophobic environment of segregation units can be improved by some additional design features including<sup>57</sup>:

- Good ventilation and comfortable temperatures, ideally controlled by the prisoner
- Low noise levels
- ‘Soft materials’ for cell furnishings
- Colourful environment
- Privacy
- Alarm button

### ***Physical design and conditions: country examples***

The importance of good prison design and adequate physical provisions is perhaps best illustrated by examples of segregation units which fail to meet international standards. The selection below is drawn from reports on physical conditions in segregation units in various countries.

## Physical conditions in segregation units: case studies

### The 'S' security cells in Staubing prison (Germany)

*Once inside the cell with all the doors closed, prisoners could not hear any of the usual prison sounds. The cells were located at the intersection of the wings of a building and were reached through a door opening onto a corridor, which served as a form of antechamber and where the showers were also situated. Each corridor contained two cells. In principle, there were no guards in the corridors and the occupants of the cells had no opportunities for visual or other forms of sensory contact with other prisoners or prison officers [CPT report 1993, par. 74-75.]*

### The isolation cells in Komotini prison (Greece)

*Were also not in a fit condition to hold prisoners... [cells were] hot and filthy, with a putrid smell; there was poor ventilation, no bed (only a dirty mattress on the ground), no wash basin (hands were washed in the toilet) and minimal access to natural light [CPT report 2006, par. 41].*

### The disciplinary cells at Sremska Mitrovica prison (Serbia)

*Were equipped with only a wooden platform (with a mattress and bedding), a box for personal belongings, a sink and an Asian-type toilet ... access to natural light and artificial lighting were at best mediocre [CPT report 2006, par.133].*

### Cells in Section 209 of Evin prison (Iran)

*Were placed in the basement ... Cells measured about one meter by two meters, with a ceiling height of about four meters. A light at the top of the cell is on twenty-four hours a day. Cells had a toilet and a sink. The floor was made of... chalk [and] the walls were all white. Some prisoners were granted twenty minutes per day in a caged outdoor area, but others never saw the open air... [Human Rights Watch, "Like the Dead in Their Coffins" Torture, Detention and the Crushing of Dissent in Iran; June 2004, Vol. 16, No.2 (E)]*

## B. Prison regime

While it is generally accepted by human rights and monitoring bodies that certain restrictions may be unavoidable in segregation units where solitary confinement is imposed as a short-term disciplinary punishment, prison authorities are nonetheless required to provide prisoners with minimal regime provisions, as prescribed in international instruments. Where prisoners are held in longer term solitary confinement, international bodies make it clear that they must be afforded access to prison programmes and meaningful human contact. The minimal regime provisions prescribed by international instruments include some of the following:

### Access to outdoor exercise

- 27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.
- 27.2 When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise. (European Prison Rules (2006 rev.); SMR Rule 21(1))

The requirement for prisoners to have at least one hour of open-air exercise daily is generally accepted as an absolute minimum (CPT/Inf(93)15 at para.95). Where possible, prisoners should be allowed to associate with each other during recreation time (see also EPR 27.7). For prisoners held in solitary confinement, the exercise period is the only opportunity they have to get fresh air and a glimpse of the world outside their cells. This requirement is therefore of particular importance and should be strictly adhered to with a view to extending recreation times and enabling prisoners to exercise together. The lack of opportunity for outdoor exercise combined with the lack of access to natural light was found by the European Court of Human Rights to amount to degrading treatment in violation of Article 3 of the ECHR<sup>58</sup>.

Designated exercise yards in segregation and special high security units often comprise a small and barren concrete enclosure (see various CPT Country Reports). In some jurisdictions the area is covered with metal mesh obstructing the view of the sky. This should be avoided. Exercise yards should be of sufficient size to enable prisoners to exert themselves and, so far as possible, should be equipped with appropriate equipment. Efforts should also be made to modify the bleakness of exercise yards through, for example, painting the area or planting greenery.

### Exercise yards: good practice example

Exercise yards at the Extra Security Unit (EBI) in Vught prison (the Netherlands) were “*large enough for prisoners to exert themselves physically*” and had a ‘running strip’ for prisoners who “*wished to engage in more strenuous physical activities*”. Exercise could take place with between one to three other prisoners. Prisoners also had access to a large and well equipped gymnasium. [CPT Report, 1998, CPT/Inf(98)15.]

### Access to programmes

Provisions shall be made for the further education of all prisoners capable of profiting thereby ... the education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration (SMR Rule 77; EPR (2006 Rev) Rule 28)

Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners (SMR Rule 78)

All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality (Basic Principles for the Treatment of Prisoners, Principle 6)

Programme provision in prisons has many obvious advantages for prisoners’ wellbeing and personal development as well as for their prospects of successful reintegration upon release. Research also strongly suggests that access to programmes in prison positively affects behaviour, whereas the lack of things to do may result in increased violent behaviour. A literature review of over ninety studies of the impact of prison programmes concluded that:

*“Research shows a fair amount of support for the hypothesis that adult academic and vocational correctional education programs lead to fewer disciplinary violations during incarceration, reductions in recidivism, increases in employment opportunities, and to an increase in participation in education upon release” (Gaes et al. 1999:411).*

Prisoners held in disciplinary segregation for a short period of time may be excluded, as part of their punishment, from participation in prison programmes. However, programme provision is crucial for prisoners who are isolated for longer periods of time, as they enjoy little or no social contact, experience substantially reduced sensory stimulation, and have very few means to occupy themselves inside their solitary cells. As Chapter Two demonstrated, these factors have negative health effects and may also lead to behavioural problems. To counteract such effects, research suggests that it is crucial for prisoners to have access to an adequate programme of activities in custody, particularly in high security prisons: *“the greater the security of an institution, the more intense must be its activity program. Maximum prison lock-up without an appropriate activity program is detrimental to the inmate’s health and his rehabilitative prognosis”* (Scott & Gendreau, 1969:341). CPT Standards elaborate:

*“The existence of a satisfactory programme of activities is just as important – if not more so – in a high security unit than on normal location. It can do much to counter the deleterious effects upon a prisoner’s personality of living in the bubble-like atmosphere of such a unit. The activities provided should be as diverse as possible (education, sport, work of vocational value, etc.). As regards, in particular, work activities, it is clear that security considerations may preclude many types of work which are found on normal prison location. Nevertheless, this should not mean that only work of a tedious nature is provided for prisoners”* (CPT Standards, CPT/Inf/E(2002)1 Rev. 2006, par.32).

Ideally, programmes should be provided outside the cell and in association with others. Where this is not feasible, prisoners should, as a minimum, be provided with in-cell or at-cell-door programme delivery.

### **Access to activities: good practice example**

The Close Supervision Centre (CSC) at Whitemoor prison (UK) has a communal area with table tennis and pool tables, a classroom equipped with a computer, a trolley of books and a stock of board games, and a workshop. It also has a well equipped fitness suite with free weights and an outside exercise yard which contained a greenhouse and a secure garden. [HMCIP, Extreme Custody, June 2006]

### **Access to meaningful human contact within the prison**

It is crucial for isolated prisoners, particularly those isolated for longer periods, to have regular and meaningful human contact. The potential health effects of social isolation have been discussed in detail in Chapter Two but here it should be noted that every effort should be made to ensure that the prisoner has some degree of interaction with other human beings. This may mean, for example, allowing some association between prisoners during meal or recreation times, encouraging contact between the prisoner and educational, health and religious staff, allowing visits by ‘prison visitors’

and so on. Informal interactions with custodial staff should also be encouraged. Monitoring bodies and the courts pay particular attention to the level and quality of human contact afforded to isolated prisoners and will be more inclined to find a violation of human rights law where these are lacking.

### **Contact with the outside world**

Human rights law emphasises the importance of enabling prisoners to maintain contact with the outside world. This requirement covers visits by family and friends, access to written and broadcast media and various forms of communication including letters and the telephone. Where prisoners are held in solitary confinement and enjoy little human interaction and few social contacts, these requirements become all the more important. Contacts with family, friends, and the community are not only important factors for prisoners' wellbeing, but have also been shown to be important factors in positively influencing prisoners' behaviour and improving their chances of successful reintegration upon release from prison<sup>59</sup>.

### **Family contacts**

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) stipulates that

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence...

The right to family life is also protected under Article 11 of the American Convention on Human Rights and Article 8 of the European Convention on Human Rights. It has been established that, notwithstanding limitations inherent in prison life, prisoners retain the right to family life and prison authorities have a duty to assist them in maintaining close family contacts (*Messina (No.2) v. Italy*, 2000).

Prisoners' right to respect for their family life through visits and communications is further established in several international instruments:

Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits (SMR Rule 37. See also: SMR Rule 79; Principle 19 of the Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment; EPR (2006 Rev) Rule 24).

To encourage family ties, where possible, prisoners should be housed in a prison close to their home (Body of Principles, Principle 20). Visits should take place in specially designated areas which should be appropriately furnished, clean and well maintained. It is good practice to allow for contact visits (i.e. not held through a glass partition) between the prisoner and their visitor(s), particularly when the visitor is a child. Visitors should be treated with respect and must not be subjected to unnecessary security procedures.

## Access to written and broadcast media

Prisoners shall be kept informed regularly of ... items of news by reading newspapers... by hearing wireless transmissions ... or by any similar means (SMR Rule 39)

This requirement, again, is particularly important when the prisoner is held in prolonged solitary confinement with little access to the outside world. Knowledge of, and interest in, current and community affairs will not only assist the prisoner's eventual transition back to life as a free member of society, but may also have a positive effect on his mental wellbeing during his time in isolation. For these reasons, it is also recommended that, so far as possible, prisoners held in solitary confinement, particularly for prolonged periods, have television sets and radios in their cells.

### *Impoverished regimes: country examples*

The main component of solitary confinement regimes, of course, is that the detainee or prisoner is held alone in their cell for up to 24 hours a day. The specific provisions which prisoners are entitled to whilst in segregation, and the degree and level of contact that they have with the outside world, however, varies from one jurisdiction to another. As noted earlier, in addition to 'regular' segregation units, some jurisdictions now also operate regimes specifically designed to place further restrictions on certain categories of prisoners who are in solitary confinement. Some examples of such regimes are set out below.

### **Impoverished solitary confinement regimes: case studies**

#### **Italy**

Prisoners may be placed in solitary confinement for the duration of their sentence under a 'special regime' for reasons of public order and security, in particular offences relating to Mafia activities. They are held in single cells and allowed to mingle with between three to five others during exercise period. Some of the additional measures which may be applied under this regime, at the discretion of prison staff, include:

- A ban on visits by persons other than family members, a cohabitant or a lawyer;
- A maximum of one family visit lasting one hour each month;
- No access to a telephone or a maximum of one telephone call per month;
- Censorship of all correspondence except for privileged correspondence;
- No more than two hours per day to be spent outdoors;
- No extra visits allowed for good conduct;
- No more than two parcels per month;
- No sums of money to be received from outside prison or sent out;
- No handicrafts;
- No conversation or correspondence with other prisoners.

## The Netherlands

Prisoners who are considered extremely likely to attempt to escape from prison and who, if they succeed, pose an unacceptable risk to society in terms of committing further serious violent crimes or in terms of severe disturbance of public order, may be placed at the extra-security units (EBI and (T)EBI) at Vaught prison, which have a total capacity of 35 cells. The regime and security arrangements at the units include some of the following:

- Two screened telephone calls of up to 10 minutes a week and screening of all non-privileged correspondence;
- Closed, pre-arranged visits with approved visitors (one weekly visit of up to an hour);
- One monthly contact visit with immediate family/spouse lasting an hour (physical contact is limited to a handshake upon arrival and departure; guards remain in close proximity throughout the visit; visitors are subjected to a search ('frisking') prior to visit)
- No educational activities and limited in-cell work opportunities;
- Staff are separated from prisoners by a glass partition; only one prisoner at a time may come into contact with staff, and at least two staff members must be present; on such occasions the prisoner must be handcuffed;
- One hour a day of outdoor exercise with between one and three other prisoners;
- Up to six hours weekly of 'group activities' with no more than three others;
- Weekly cell searches;
- Weekly strip searches.

## United States

Prisoners who are classified as gang members or have been found guilty of a 'serious rule violation' in prison may be held in solitary confinement in the Security Housing Unit (SHU) at Pelican Bay State Prison (California) for periods ranging from two to five years in the case of rule violators and indefinitely in the case of gang members. Once at the SHU, which has capacity of 1056 cells, they spend 23 to 24 hours a day inside their cell and have access to the following:

- Solitary exercise in a small and barren exercise yard for one hour four times weekly;
- A 15 minute long shower in a single shower-cell three times weekly;
- One quarter of the monthly canteen allowance;
- No access to recreational or vocational activities;
- Telephone calls on an emergency basis only, as determined by staff;
- Two 2 hour long no-contact family visits on weekends once a month;
- One annual package, not exceeding 30 pounds in weight;
- One-off special purchase of one television or one radio/television unit;
- Up to ten items of reading materials (magazines and books);
- No hobby or craft materials.

As these examples demonstrate, although provisions for prisoners who are held in solitary confinement regimes vary between States, such regimes typically involve further restrictions and security measures in addition to the physical segregation of prisoners from the general prison population. It is difficult to see what legitimate penal purpose is served by restricting prisoners' access to craft and hobby materials and other in-cell activities, or subjecting them to routine strip searches even when the prisoner had no physical contact with others, and how such practices are conducive to rehabilitation and reintegration purposes or, indeed, to prison security. Such regimes are contrary to international standards and good practice and, in some cases, can be in violation of international law. Moreover, they result in boredom and frustration which may in turn lead to mental health and behavioural problems.

### 4.3 Research findings and recommendations regarding prison design and environmental factors

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There are few studies of the relationship between the prison environment and prisoner behaviour in general, and no studies which focus on segregation units. The sparse literature and few empirical studies reaffirm the fairly obvious: *"the design of the prison environment is crucial to its operation and to the impact it has on the achievement of correctional goals for inmates, staff and public users"* (Fairweather, 2000:47). Environmental conditions in prison also affect prisoners' health and can *"easily exacerbate the symptoms of mental illness for some people. In fact, the prison environment itself can contribute to increased suicide and the inability of inmates with serious mental illness to adjust. Environmental factors can also elicit significant adjustment reactions from inmates who may not have had a previous diagnosis but who become ill while incarcerated"* (Hills et al. 2004:15). Further, design and environmental factors can influence the frequency and severity of violent incidents<sup>60</sup>.

The design of a prison is closely linked to its regime, as the layout of the prison dictates, to a large degree, the activities and human interaction that can take place within it. Studies of the effects of specific prison design features on prisoners and staff indicate that these can have 'negative' or 'positive' effects. Positive design features are those that reduce the institutionalised atmosphere in prisons, lessen stress, aggression and violence, and generally increase prisoners' wellbeing. Negative features are those that foster and increase the above. Some of the design features that are cited as positively influencing behaviour and wellbeing are those which:

#### ***Increase opportunities for social interaction between prisoners and between prisoners and staff***

Clearly, segregation units are not designed for continuous prisoner association. Yet, even in units or prisons designed for solitary confinement the design should allow for some degree of social interaction. This can be done through the inclusion of communal areas for recreational, sports and games facilities and so on.

### ***Enable direct supervision of prisoners***

The prison's supervision style is determined by both its management approach and its architectural layout, and is cited by researchers as one of the most important factors in affecting behaviour. There are two basic layouts: direct supervision and indirect supervision. In prisons with indirect supervision, staff and prisoners occupy separate territories. Supervision and control are remote and characterised by reliance on distant visual surveillance from secure staff stations, and on patrolling corridors and landings. Indirect supervision is reactive in nature, and tends to alienate prisoners and staff. With direct supervision prisons, staff areas are located inside the unit, so that staff have greater face to face contact with prisoners. These prisons are proactive rather than reactive, as their layout and the presence of staff lessen opportunities for misconduct. Research suggests that direct supervision allows more effective surveillance and better security, and results in a dramatic reduction in prison violence<sup>61</sup>. Direct supervision has also been endorsed by professional bodies, as well as the United Nations, as the best method for managing prisoners, including those classified as dangerous or disruptive.

### ***Allow flexibility/ adaptability in the use of the unit***

Positive architecture allows adaptability to future change. Planning can anticipate, and the design should include, the possibility of future alteration of internal spatial divisions, external additions or subtractions, and 'functional flexibility'. New prefabricated technologies make it possible to design prison units so that they can serve different functions according to actual needs. So, for example, the division of space and design of a unit designated for long-term solitary confinement should not be so inflexible as to preclude the possibility of prisoner association areas or the provision of programmes, should there be a change in policies regarding the prisoners held in the unit or in their individual needs.

### ***Communicate a positive message***

The appearance of the prison communicates to prisoners how they are expected to behave (Wener, 2000:52). If the design and security arrangements in segregation and high security units communicate to prisoners that they are highly dangerous and not fit for human contact, they are more likely to start perceiving themselves as such and behave accordingly. Security arrangements should therefore be as limited and un-intrusive as possible and reflect the fact that segregated prisoners are already secured, individually, in their cells. It is also important to break the monotony of segregation units to allow a degree of sensory stimulation. This can be achieved easily and inexpensively by, for example, colourful wall paint, good lighting, and so on.

## 4.4 Human rights case law regarding regime and physical conditions in segregation units

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States have a duty to ensure that prisoners are “*detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured*”<sup>62</sup>. Where these fall below acceptable standards, prison conditions may amount to inhuman or degrading treatment, in violation of international law.

Human rights bodies pay particular attention to the use of solitary confinement which, as the previous chapter noted, is viewed as an extreme prison practice, which should only be used in exceptional cases and then for the shortest duration possible. The ECtHR has stated that “*complete sensory isolation coupled with complete social isolation can no doubt destroy the personality*”<sup>63</sup> and would constitute treatment in violation of the absolute prohibition on torture, inhuman or degrading treatment enshrined in Article 3 of the European Convention on Human Rights. The Inter American Court of Human Rights has similarly stated in several cases that prolonged solitary confinement, in itself, may violate Article 5 of the American Convention on Human Rights: “*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 right of any detainee to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention...*”<sup>64</sup>. Finally, the UN Human Rights Committee criticised “*... the practice of solitary confinement which affected the physical and mental health of persons deprived of freedom and which amounted to a cruel, inhuman and degrading treatment*”<sup>65</sup>.

In two separate cases brought against Uruguay, the Human Rights Committee found that holding a detainee for one month in a cell where “*rainwater filtered in and one lives in the midst of human excrement*” violated Article 10(1) of the ICCPR but not Article 7, whilst holding a detainee for one month in a small windowless cell where artificial light is left on 24 hours a day violated both Articles 10(1) and 7 of the ICCPR (UN Human Rights Committee, 1990, CCPR/C/OP/2). The UN Committee Against Torture (CAT) has found a violation of the prohibition against inhuman or degrading treatment or punishment in several cases involving the use of solitary confinement. For example, it found that isolation in cold and damp punishment cells measuring 1.5x2 metres without proper bedding or sanitation in Bolivia was “*tantamount to torture*”, and the strict isolation in sound-proof cells of political prisoners in high security prisons in Peru amounted to torture<sup>66</sup>.

But solitary confinement may also constitute inhuman and degrading treatment when physical conditions are not so clearly below internationally established standards. When considering whether solitary confinement constitutes inhuman or degrading treatment in any one case, the courts and monitoring bodies will assess the surrounding circumstances, including: the particular conditions of confinement, the stringency of the measure, its duration, and whether the prisoner had minimal possibilities for human contact<sup>67</sup>. The objective pursued by the measure and its effects on the individual concerned will also be assessed<sup>68</sup>. As some of the cases below, drawn from judgements made by the ECtHR, demonstrate, both the physical conditions in which the

prisoner is held and the degree of human contact he is afforded whilst in solitary confinement will be subjected to particularly close scrutiny. Where, in the Court's view, there are compelling reasons to hold a prisoner in separation from other prisoners, and the physical conditions of confinement are relatively comfortable, provisions are good and the extent of human contact is such that it is arguable whether the prisoner is really isolated, then case law suggests the Court is less likely to find a breach of the Convention<sup>69</sup>.

- The placement of a pre-trial detainee in solitary confinement for just under a year was found not to constitute inhuman or degrading treatment because although *"a period of such a length may give rise to concern because of the risk of harmful effects upon mental health"* the Court considered that the extent of social isolation to which he was subjected did not reach the necessary threshold and while *"he was totally excluded from association with other inmates ... during the day he had regular contact with prison staff, [and] in addition, every week he received lessons in English and French from the prison teacher and he visited the prison chaplain. Also, every week he received a visit from his counsel. Furthermore, during the segregation period in solitary confinement the applicant had contact twelve times with a welfare worker; and he was attended to thirty-two times by a physiotherapist, twenty-seven times by a doctor; and forty-three times by a nurse. Visits from the applicant's family and friends were allowed under supervision"*. The Court also noted that the physical conditions of detention were adequate as the detainee was held in a cell measuring eight square meters equipped with a television set, and had access to newspapers (*Rhode v. Denmark*, Judgement of 21/7/2005, pars. 97-98).
- The Court found that a regime of strict solitary confinement (the prisoner was held alone in his cell for 23 hours a day and was only allowed to mingle with other prisoners for one hour during a daily walk) imposed on a former death row prisoner for over three years, and the material conditions in which he was held (cell measuring 2 by 3 metres with a small window which did not allow sufficient light or fresh air, a heating system which was covered by a layer of bricks and illumination by only one 60-Watt electric bulb which was insufficient for reading) must have *"caused him suffering exceeding the unavoidable level inherent in detention"* and constituted inhuman and degrading treatment in breach of Article 3 of the ECHR (*Jorgov v. Bulgaria*, Judgement of 11/3/2004).

In sum, the extreme nature of solitary confinement and its potential health effects give rise to special human rights concerns, and its use is subjected to close scrutiny by the courts and monitoring bodies. In particular, the physical conditions in which prisoners are held, the regime provisions they enjoy and the degree of human contact they have whilst isolated will be assessed.

Although the human rights view is that solitary confinement is an undesirable prison practice, its use is not prohibited per se. Rather, the practice will be assessed on a case by case basis to determine whether it has violated the prohibition against torture, inhuman or degrading treatment or punishment.

## 4.5 Concluding remarks on regime and conditions of confinement in segregation and high security units

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Isolated prisoners spend up to 24 hours a day inside their cells. They have limited human contact, little or no physical contact with others, few personal possessions, and few ways to occupy themselves inside their cells. Prolonged confinement in these conditions is physically and mentally taxing. We discussed some of the potential health effects of solitary confinement in Chapter Two. These effects can be mitigated, to some degree, by ensuring that isolated prisoners:

- are accommodated in cells which are sufficiently large to enable them to conduct all their daily activities in a clean and humane environment, respectful of their human dignity;
- have daily access to fresh air and exercise;
- have access to meaningful human contact and purposeful activities; and,
- have contact visits with family members.

The deprivations inherent in segregation units should not be made worse by further restrictions on in-cell provisions such as reading materials, craft and hobby materials, personal radios and so on. Wherever possible, prisoners should be allowed to conduct daily activities in association with other prisoners. Where there are compelling reasons not to allow prisoner association, increased contact with staff, particularly non-custodial (religious, educational, health) staff should be encouraged. Custodial staff should also be encouraged to engage informally with prisoners and maintain good relationships and a good atmosphere in the unit. It is thus crucial that staff working in segregation units are carefully selected, well supported and properly trained. In particular, staff should receive training in mental health and de-escalation techniques. Well trained, experienced staff can make a huge difference in segregation units.

In short, every effort should be made to ensure that the harmful aspects of solitary confinement are mitigated through the provision of decent facilities, sensible regimes and purposeful activities. Adherence to the standards discussed in this chapter is not only legally required, but it also makes good managerial sense. Even when all these mitigating factors are in place, solitary confinement should not, as discussed in Chapter Three, be used for a prolonged time other than in a handful of cases where it may be exceptionally and absolutely necessary.

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## Key points

- Isolated prisoners spend most of their time inside their cell. Cells should therefore be designed to accommodate this regime and, as a minimum, contain a toilet and a wash-basin.
- Allow segregated prisoners to exercise some degree of autonomy and control over their immediate environment.
- Encourage visits by family and friends and ensure that visiting areas are clean and in good decorative order.
- Ensure that isolated prisoners have as much human contact as possible with people from outside the prison and with custodial, educational, religious and medical staff.
- Allow for as many activities as possible, for example meals, to take place in association with other prisoners.
- Where this is not possible, creative solutions should be sought to ease the restrictive monotonous environment and impoverished regime in segregation units.
- Small concessions go a long way. Be flexible and think creatively.
- One size does not fit all. Additional restrictions may be unavoidable for certain prisoners at certain times, but should not be applied as a matter of course.
- The recommendations discussed in this chapter set out *minimum* standards which prison administrations should strive to improve on.
- Further standards and safeguards need to be developed to ensure that prisoners are protected against the harm that solitary confinement causes.

## Notes

- 56 U.N. Doc. CCPR/C/51/D/458/1991; *Mukong v. Cameroon* (August 10, 1994).
- 57 Royal College of Psychiatrists, 1998; Buchanan et al. 1988; Fairweather, 2000.
- 58 *Poltrotsky v Ukraine*, 146 ECHR 2003-V; See also judgements in the cases of *Kuznetsov*; *Nazarenko*; *Dankevich*; *Aliev*; *Kokhlich v Ukraine*, judgments of 29 April 2003, ECHR 2003-V.
- 59 Moyer, 1975:58-60; Fairweather 2000:34. The Royal College of Psychiatrists' Clinical Practice Guidelines propose that staff working with the mentally ill should "Encourage and provide privacy for visits from friends and relatives" as good practice in preventing violence (1998:59).
- 60 Management of imminent violence, Royal College of Psychiatrists OP41 (1998).
- 61 Fairweather, 2000; Bottoms, 1999:243-245; Buchanan et al., 1988:51-54
- 62 *Kudła v. Poland* [GC], no. 30210/96, 92, ECHR 2000-XI
- 63 *Ensslin, Baader and Raspe v. FRG*, DR14 (1978) at Para. 109.
- 64 *Velasquez Rodriguez v. Honduras*, Judgement of 29 July 1988, Series C No.4 at par. 156
- 65 UN Human Rights Committee (2001) A/56/156. November 3rd, 2000, session.
- 66 UN Committee Against Torture (2001) paragraphs 95(g) and 186 respectively.
- 67 *Ensslin, Baader and Raspe v FRG* 14 DR 64 (1978).
- 68 *McFeeley and Others v. the UK*, no. 8317/78, Commission decision of 15 May 1980, DR 20
- 69 The placement of a prisoner, Ilich Ramirez ("Carlos the Jackal"), who, at the time, "was considered to be the most dangerous terrorist in the world", in solitary confinement for more than eight years was found not to violate Article 3. In reaching its decision, the Court took account of the relatively comfortable conditions of his detention (his cell measured 6.84 sq. meters, was equipped with a toilet and washing facilities and had a window which provided natural light. He also had access to a television, newspapers and books), the fact that he was allowed out of his cell two hours daily for outdoor exercise and one hour in a gym, had frequent contact with people from outside the prison (he was visited by a doctor twice a week, by a cleric once a month, and frequently by his 58 lawyers, including 640 times in a period of five years by one of his lawyers, whom he later married), and, by his own testament, was in good physical and mental health. The Court also noted that he was later removed to a normal prison location, whilst reaffirming that in any case, solitary confinement should not be imposed on the prisoner indefinitely (*Ramirez v. France*, Judgement of 27/1/2005).

