

Summations of two reports by Special Rapporteur (2011 and 2016)

1) October 2011 UN Special Rapporteur on solitary Confinement as torture

18 October 2011 – A United Nations expert on torture today called on all countries to ban the solitary confinement of prisoners except in very exceptional circumstances and for as short a time as possible, with an absolute prohibition in the case of juveniles and people with mental disabilities.

“Segregation, isolation, separation, cellular, lockdown, Supermax, the hole, Secure Housing Unit... whatever the name, solitary confinement should be banned by States as a punishment or extortion technique,” UN Special Rapporteur on torture Juan E. Méndez [told](#) the General Assembly’s third committee, which deals with Segregation, isolation, separation, cellular, lockdown, Supermax, the hole, Secure Housing Unit... whatever the name, solitary confinement should be banned by States as a punishment or extortion technique, humanitarian and cultural affairs, saying the practice could amount to torture.

“Solitary confinement is a harsh measure which is contrary to rehabilitation, the aim of the penitentiary system,” he stressed in presenting his first interim report on the practice, calling it global in nature and subject to widespread abuse.

Indefinite and prolonged solitary confinement in excess of 15 days should also be subject to an absolute prohibition, he added, citing scientific studies that have established that some lasting mental damage is caused after a few days of social isolation.

“Considering the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment, during pre-trial detention, indefinitely or for a prolonged period, for persons with mental disabilities or juveniles,” he warned.

The practice should be used only in very exceptional circumstances and for as short a time as possible, he stressed. “In the exceptional circumstances in which its use is legitimate, procedural safeguards must be followed. I urge States to apply a set of guiding principles when using solitary confinement,” he said.

<http://www.ohchr.org/Documents/Issues/SRTorture/A-HRC-19-61.pdf>

UN Report Compares Solitary Confinement Practices in the U.S. and Around the World

By [Joshua Manson](#)

October 28, 2016

Last week, the UN Special Rapporteur on Torture, Juan E. Méndez, presented a report to the General Assembly detailing and comparing solitary confinement practices around the world. The report, notably, was Mendez’s last as Special Rapporteur, as was his appearance before the UN.

The report, [Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees](#) was the subject of a UN event on October 17 featuring speakers from the ACLU, National Religious Campaign Against Torture, and Vance Center for International Justice, among others.

The report includes within its scope 35 jurisdictions, including eight U.S. states (California, Colorado, Florida, Illinois, Maine, New York, Pennsylvania, and Texas) and twenty-six countries, including the U.S. federal prison system and immigration detention system.

Seeing into Solitary builds on a prior groundbreaking report by Méndez, presented to the UN in 2011, that for the first time declared that solitary confinement may amount to cruel, inhuman, or degrading treatment and in some cases torture, and may thus, under certain conditions, be prohibited under international law. In that 2011 report, Méndez further called for a categorical ban on subjecting juveniles and people with mental illness to solitary confinement, and to end the practice of prolonged and indefinite solitary confinement.

The 2016 report contains six substantive areas of focus:

- the ostensible purposes of solitary confinement across jurisdictions,
- how the practice is authorized,
- whether and how its imposition can be challenged or appealed legally,
- what limits are in place,
- regulations pertaining to physical conditions such as the use of restraints, and
- general trends or developments toward reform.

Purpose

The report found that seven of the thirty-five jurisdictions analyzed allow for solitary confinement to be used only for disciplinary purposes, one of which is the U.S. state of Colorado. It further found that solitary confinement is often imposed in response to remarkably minor offenses. According to research from the Vera Institute of Justice cited in the report, 85 percent of people held in solitary confinement in Illinois' state prison system were sent there "as punishment for minor infractions, such as abusive language." Méndez has long opposed the use of even short-term solitary for punishment, as opposed to safety reasons.

The other thirty-two jurisdictions claim other justifications, usually in addition to discipline, for using solitary confinement. The most common, according to the report, are for "protection of vulnerable people," to maintain security, or "as a method of prison administration and managing cell space." However, consideration of specific policies, many from the United States, prove that these justifications are similarly disproportionate or arbitrary. In both the U.S. immigration detention and federal prison systems, for example, people can be held in solitary confinement for the sole reason that they will be released, removed, or transferred within 24 hours. Also under U.S. federal law, people can be held in solitary confinement if they are HIV-positive and there is "reliable evidence" that they may "pose a health risk" to others.

In California, people may be subject to isolation just because they are "a relative or associate of a staff member." In Pennsylvania, people may be subject to solitary confinement, against their will and consent, because they are "at a high risk of sexual victimization" if there exists no "alternative means of separation from the likely abuser." Also in Pennsylvania, people may be subject to solitary confinement simply because "there is no other appropriate bed space."

Authorization

The report also highlights another instance in which U.S. states' practices are remarkably out-of-step—representation by legal counsel. In the United States, where solitary confinement is most often applied as a prison administrative measure and not a judicially-sanctioned punishment, a tremendous amount of deference is given to prison officials to impose solitary confinement as they see fit, often without any meaningful transparency or accountability. Under the Prison Litigation Reform Act of 1997, for example, a person held in solitary confinement cannot challenge their isolation in the courts until every possible administrative remedy is first exhausted—and even if they manage to reach the courts, their cases seldom succeed.

As a result of the imposition of solitary confinement being removed from the courts and placed within the power and duties of prison officials, in some U.S. states, including Colorado, Florida, and New York, representation by legal counsel is specifically excluded in administrative proceedings, while in most other states it is simply not provided.

Limits

The report notes that, especially when considering duration of solitary confinement when used as a disciplinary mechanism, the U.S. imposes among the most punitive regimes of solitary confinement in the world. Despite diversity in policies and practices across U.S. states and the federal prison system, the report notes that there is a remarkable similarity across domestic jurisdictions: "Many of these laws are written such that prisoners could be held in solitary confinement indefinitely."

The report cites various state laws that regulate how much time, often in days or months, one person may be subject to in solitary confinement at a time—but, this is essentially made meaningless, as often there are no laws that regulate how many times that regulated duration may be applied consecutively.

In Pennsylvania, for example, there is a 90-day limit per charged violation; however, there is no overall aggregate limit for individuals charged with multiple violations. Maine, Florida, and Illinois similarly lack aggregate limits for disciplinary violations. California has a limit of 60 months, reserved for murder; this 60-day sanctioned can be renewed indefinitely, however. Colorado's limit is 6-12 months, but this can be renewed "in exigent circumstances." In the federal system, the limits are 12, 6, or 3 months depending on the nature of the violation; these terms can be served consecutively, however, subjecting the individual to a far longer period of isolation.

International Context

As the report makes clear, it is difficult to definitively compare the United States with other jurisdictions, as there is a diverse range of variables that can be used to compare countries. While the U.S. stands out among its international peers in certain areas, such as its allowance of indefinite punitive solitary confinement, it is not as stark of an outlier in other areas, such as providing for regulations for the environment—despite allowing for the use of physical restraints.

Further, even with decided variables, there is great variation within the United States. In California, Maine, and Pennsylvania, for example, there are three levels of administrative review of a solitary confinement decision. Other states lack that standard, making it difficult to rank the U.S. as a whole.

The report makes clear that one area in which the United States is increasingly distinguished from its international peers is in reforms advocated by civil society. The report cites several recent developments curtailing the use of solitary confinement in the U.S., including many policy changes. At the federal level, the President has recently banned subjecting juveniles in the federal prison system to solitary confinement; at the state level, Colorado has narrowed the criteria of who may be subject to solitary confinement; and at the city level, New York City recently banned solitary confinement for juveniles and disabled people. It also mentions pending legislation at the state level, including proposed legislation in New York to creative alternatives to solitary confinement, and in Illinois to limit who may be subject to isolation. Lastly, legal settlements have further distinguished the U.S. from its peers, including a agreements in New York and California that have greatly reduced who may be subject to isolation.

Conclusion

The report ends on a largely optimistic note, observing a general trend, though not without exception, toward reform. **Specifically within the United States, it notes a number of policy changes or legal settlements that have chipped away at the use of solitary confinement. These include efforts by the federal government, including President Obama’s announcement that juveniles in the federal prison system will no longer be held in solitary confinement. They also include state-level reforms, such as Colorado policy to reserve the use of isolation for “only the most violent and dangerous offense types,” pending legislation in Colorado and Pennsylvania to lessen the use of solitary confinement, and further reform efforts at more local levels—including New York City’s ban on solitary confinement of those who are under 21 years of age, are seriously mentally ill, or are physically disabled.**

Méndez’s six-year term as special rapporteur comes to an official end on October 31. His successor will be Dr. Nils Melzer, an expert in international human rights law who has been serving as the Human Rights Chair at the Geneva Academy of International Humanitarian Law and Human Rights.

<http://solitarywatch.com/2016/10/28/un-report-compares-solitary-confinement-practices-around-the-world/>