Testimony for US Congress

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Focus area:
- Solitary confinement,
- Children in detention,

Excessive use of solitary confinement in prisons around the world is becoming an increasing concern.
Some form of short-term isolation from the rest of the prison population is used almost everywhere as punishment for breaches of prison discipline. However, many states use solitary confinement more routinely and for longer periods of time.

States justify their use of solitary confinement in a number of different ways. It may be used as disciplinary punishment for convicted prisoners, to protect vulnerable prisoners or considered to help prison staff to 'manage' certain individuals. It is used to isolate a detainee during the pre-trial stage of investigation, often as part of coercive interrogation, and it can be used to lock away prisoners who have – or are perceived to have – mental illnesses.

While there is no universally agreed definition of solitary confinement – often also called 'segregation', 'isolation', 'lockdown' or 'super-max' – it is commonly understood to be the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day, and allowed only minimal meaningful interaction with others.

Contact with family or visitors is often restricted or denied altogether, despite the fact that contact with family in particular, has been shown to be an important factor in successful rehabilitation.

Medical research shows that the denial of meaningful human contact can cause 'isolation syndrome', the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide. Prolonged isolation can destroy a person's personality and their mental health and its effects may last long after the end of the period of segregation. Solitary confinement increases the risk of torture or ill-treatment going unnoticed and undetected, and it can in itself constitute torture and ill-treatment, in particular where it is prolonged or indefinite.

Any form of isolation should be used only in very exceptional circumstances, as a last resort, for as short a time as possible, and with appropriate procedural safeguards in place. Where solitary confinement is used, prison regimes must ensure that prisoners have meaningful social contact with others, for example by: raising the level of staff-prisoner contact; allowing access to social activities with other prisoners and more visits; arranging in-depth talks with psychologists, psychiatrists, religious prison personnel and volunteers from the local community; maintaining and developing relationships with family and friends; and by providing

meaningful in cell and out of cell activities.

Key facts

1. Contrary to popular belief, **solitary confinement is not reserved only for the most dangerous prisoners**. Often it is imposed to isolate detainees during the pre-trial stage of investigation, including as part of coercive interrogation. Solitary confinement for pre-trial detainees has, for example, been part of Scandinavian prison practice for many years. It is also used to lock away prisoners with – or who are perceived to have – mental illnesses.
2. The **routine use of solitary confinement has been growing**, and is becoming an increasingly common feature of high-security and 'super-max' prisons designed to hold prisoners who are deemed high-risk or difficult to control. Restricted housing – forms of housing involving a substantial amount of isolation – and these units are becoming more common elsewhere too.
3. Many countries use **prolonged periods of solitary confinement or semi-isolation for those serving a life sentence**, often separating them from the rest of the prison population for the entirety of their sentence. In countries still using the death penalty, and in those where it was only recently abolished, death row prisoners are also typically held in strict solitary confinement.
4. The UN Rules for the Protection of Juveniles Deprived of their Liberty, and the Bangkok Rules for the Treatment of Women Prisoners, **absolutely prohibit the use of solitary confinement for children and pregnant women**, women with infants and breastfeeding mothers in prison respectively. The Istanbul Statement on the use and effects of solitary confinement explicitly recommends that solitary confinement should not be applied to death row and life-sentenced prisoners. The UN Basic Principles for the Treatment of Prisoners state that efforts to abolish solitary confinement as a punishment, or to restrict its use, should be undertaken and encouraged.
5. The revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) state that 'Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the **prison system shall not**, except as incidental to justifiable segregation or the maintenance of discipline, **aggravate the suffering inherent in such a situation**.' (Rule 3). They define solitary confinement as 'confinement of prisoners for 22 hours or more a day without meaningful human contact'. Beyond an absolute prohibition of its indefinite or prolonged use (in excess of 15 days), 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 the authorization by a competent authority'. Furthermore, they call on measures to alleviate the potential detrimental effects of separated confinement for the prisoners concerned.
6. In his report to the UN General Assembly in 2011, the **UN Special Rapporteur on Torture recommended a ban on prolonged or indefinite solitary confinement** as a punishment or extortion technique. Such treatment runs contrary to the prohibition on torture and other ill-treatment and is a 'harsh' measure, undermining the goals of rehabilitation, the primary aim of a criminal justice system.

Children/ Juveniles

Africa

- Many children are held in police stations for longer than 24 hours before being brought to court.
- Many children do not have age records and cannot establish whether they are under the age of criminal responsibility.
- Police officers do not always identify themselves to arrested and detained children, or specify the reason for arrest.
- One third of the children interviewed said they had been tortured or subject to violent and inhumane treatment.
- Children's families were not always notified of their arrest.
- Children were not always kept separately from adults – and conditions were generally poor.

Children and young persons

The UN Special Rapporteur on the Independence of Judges and Lawyers stated in 2015 that, 'because of their unique vulnerability, children in conflict with the law require higher standards and broader safeguards to be applied to them, particularly at the sentencing stage in criminal proceedings'. She argued that judges and prosecutors must be aware of the specific negative effects of criminal sanctions on children, in particular those involving deprivation of liberty: prosecutors and judges must primarily consider the best interests of the child when requesting and imposing sanctions on children and this includes making an individual analysis of the circumstances of both the offence and the child. Prosecutors and lawyers should always first consider alternative measures to detention, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes, to ensure that children are treated with full respect for their needs and rights, as well as for their well-being and development'. The Special Rapporteur has also called on, 'the competent authorities to be extremely vigilant when imposing pre-trial detention on children, which, as in instances of deprivation of liberty ordered at the end of a trial, they must justify in writing, having shown that they took into account the child's special needs, rights and best interests'.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has highlighted that, 'children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment'. He further stated that, 'even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder'. Finally, he noted that a number of studies had shown that, 'regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development'.

The impact can be particularly damaging for girls. The Special Representative of the UN Secretary- General on Violence against Children has reported that, 'girls in detention are not only vulnerable to sexual violence. Under certain prison regimes,

physical abuse and punishment is a daily occurrence, and in countries where inhuman forms of punishment are still condoned, girls may be sentenced to fogging or death by stoning or lashing on the grounds of perceived immoral behaviour'.

As a result of their vulnerability, children in detention are considered by the Special Rapporteur on torture to need specific attention and modifed standards in relation to such matters as the disciplinary system and use of segregation, opportunities for rehabilitation and the training of personnel. Developments in the treatment of children have been mixed. The Indian Juvenile Justice Act has been changed to enable children aged between 16 and 18 years old who have been accused of heinous crimes to be tried as adults. Juvenile Justice Boards will determine whether the child ought to be treated as a 'child' or 'adult'. Brazil has also approved a constitutional amendment that reduces the age of criminal responsibility from 18 to 16 years of age. In the USA, meanwhile, reforms to the way children are treated by the criminal justice system have dramatically cut the number of young people in state prisons. A new draft law in Cambodia aims to provide rehabilitation opportunities for children, rather than simple prison sentences. A new juvenile justice code in Georgia has established specialised police prosecutors and courts and reduced lengths of detention as well as limiting a child's criminal record.

As far as institutions for children are concerned, in Europe, the European Committee for the Prevention of Torture (CPT) has noted 'progress in ensuring that juveniles who are sent to prison are not held together with adults but in juvenile-only units', but the quality of regimes in many of these units are still impoverished. The use of pre-trial detention and the use of isolation for minors in Sweden has been criticised by the UN Committee against Torture. An internal report at a juvenile prison in Izmir, Turkey, has exposed sexual abuse and bullying of minors by older prisoners. Outside Europe, a Zambian Health Ministry spokesman has announced that the government is building and renovating cells for juvenile prisoners at prisons across the country so that juveniles will no longer be held with adult prisoners. In Dubai, the Public Prosecution and Dubai Courts are reportedly working with public and government institutions to replace prison sentences with vocational training.

Non-prison institutions can be a cause for concern in many countries too. Nearly 40 per cent of juvenile offenders in India live in conditions 'like or even worse than' adult prisons, according to a scathing judicial report that studied the state of children's homes across the country. A PRI study in Central Asia found that conditions in institutions for children in conflict with the law were poor and children were subject to violence inflicted by other children or staff. A quarter of children said they had been abused by staff, and significant numbers of children are held in custody longer than domestic law permits.

There appears to be a growing consensus that adolescence continues well beyond a person's 18th birthday. Some countries already treat young people up to 21 as juveniles (eg. Japan, where the age range is 14-20 years). The work of the Transition to Adulthood Alliance (T2A) in the UK has proved influential. Drawing on research from criminology, neurology and psychology, T2A argues that young adults are a distinct group with needs that are different both from children under 18 and adults older than 25. T2A promotes a distinctive approach by police, prosecutors, courts, probation and prison systems, which takes account of the developmental

maturation process that takes place
in this age group.

RECOMMENDATION

As well as seeking to ensure that children under 18 are kept out of institutions as far as possible, countries should put in place distinct arrangements for young people over the age of 18 who are still developing towards adult maturity, which is often not acquired until young people reach their mid-twenties.