

“It is not good for human beings to be alone.”

Addressing U.S. use of prolonged solitary confinement from a Jewish human rights perspective

Submission regarding the compliance of the United States with the Convention Against Torture

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T'ruah: The Rabbinic Call for Human Rights brings together rabbis and cantors from all streams of Judaism, together with all members of the Jewish community, to act on the Jewish imperative to respect and advance the human rights of all people. Grounded in Torah and our Jewish historical experience and guided by the Universal Declaration of Human Rights, we call upon Jews to assert Jewish values by raising our voices and taking concrete steps to protect and expand human rights in North America, Israel, and the occupied Palestinian territories. T'ruah is the leading Jewish organization addressing the issue of prolonged solitary confinement in U.S. sites of detention.

Issue Summary

The United States currently detains approximately 80,000 prisoners in solitary confinement in every possible site of detention: prisons, jails, and immigration detention centers, federal, state, and local sites, public and privately run institutions.¹ This form of incarceration typically involves being held in a cell without meaningful human contact for between 22-24 hours a day, with occasional time outside for recreation and showers. U.S. prisoners face these conditions for extremely long periods of time: months, years, even decades. The case of the Angola Three in Louisiana concerns men held in solitary for more than forty years; while two have been released, one was released just days before dying of cancer.² For most inmates in isolation, their confinement is not part of their sentence for their crime but punishment for a disciplinary infraction, most often a non-violent infraction, while incarcerated. In immigration detention and in jails, solitary confinement can be imposed on persons not yet convicted of a crime. The debilitating long-term effects

¹ Angela Browne, Alissa Cambier, Suzanne Agha, Prisons Within Prisons: The Use of Segregation in the United States, 24 FED'L SENTENCING REPORTER 46 (2011)

² <http://www.theguardian.com/world/2014/sep/04/angola-three-albert-woodfox-lawsuit-louisiana-prison>

of solitary confinement both physical and mental are well documented.³ A disproportionate share of suicides and suicide attempts in prison occur in isolation units.

As rabbis and members of the Jewish community, we feel compelled to speak out against this form of torture. The very first two chapters of our Torah teach us that every human being is created in the image of God, and that no human being should be alone. The practice of solitary confinement violates these principles and diminishes the divine image. It also violates one of the Torah's central moral teachings, expressed in Leviticus 19:18, that one should "Love your neighbor as yourself." The rabbis explain that this is taught so that no one can justify degrading treatment of a member of their community: "No one should say: "Because I have been dishonored, let my fellow person be dishonored." Rabbi Tanhuma taught, "If you do thus, know that the person you have dishonored was created in the image of God."⁴

As rabbis, many of us have visited congregants in prison, or served as prison chaplains. These pastoral experiences have taught us the degradation prisoners feel, the loneliness of being in prison, and the desperation of those unable to maintain normal human relationships while living in isolation. Through T'ruah, many of us have also visited solitary confinement units on interfaith fact-finding missions. At Sing Sing Prison, we listened in pain as the inmates called out: Where are you from? How can we write you? Will you tell people what you have seen here? At Riker's Island, those of us who spent a few moments in a solitary cell felt the panic and the constriction that inmates in isolation experience for weeks and years on end. We understood better than ever before the pain of Psalm 118, "From the narrow place, I called to God." Jewish tradition understands instinctively that humans are social creatures.⁵ In a story about a character who outlives his family, friends, and study partners, the Talmud teaches "Either companionship or death."⁶ Life alone is unbearable. Jewish law warns against excessive punishment "lest your brother be degraded before your eyes." (Deuteronomy 25:3) Even a person who has committed a horrific crime must be regarded as a member of one's own family, and therefore deserving of dignity. Because Jewish criminal justice law seeks to inspire *teshuvah*—repentance, the person who has completed punishment regains his or her status as a full member of the community. Thus:

"Your brother will be degraded before your eyes." From the moment he is flogged, he is your brother. . . Rabbi Chananya ben Gamliel said, "all day, the text calls him

³ See e.g., Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 INT'L J.L. & PSYCHIATRY 49 (1986); Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE 477-570 (1997); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124 (2003).

⁴ Genesis Rabbah 24.

⁵ For a deeper discussion of these texts, see http://www.truah.org/images/stories/Jonathan_Crane_Solitary_Confinement.pdf

⁶ Babylonian Talmud Tractate Ta'anit 23a.

‘wicked,’ as it says ‘if the wicked person is subject to lashes’ (Deuteronomy 25:2). But from the time that he is flogged, the text calls him ‘your brother.’⁷

Classical Jewish law does not use imprisonment as a standard form of punishment, though semi-autonomous Jewish communities in the medieval period passed communal enactments permitting imprisonment for certain crimes. Still, rabbinic legal authorities have maintained an insistence that prison should lead to repentance. For example, in considering the possibility of shortening a sentence for someone ready to repent, Rabbi Yom Tov Ishbili (1250-1330) writes:

If by cancelling it, he will return to being good. . .you may lift the decree which you have decreed upon him so that he may do *teshuvah*, and so he will not go astray to a life of evil—neither him nor others on his behalf. For in the case of all sinners who sinned and then repented, we accept them forever, as it says “Return my backsliding children.”⁸

The Talmud occasionally permits solitary confinement, but only in the most egregious of crimes, and in the case in which a person has committed the same capital crime multiple times without any sign of repentance. The rabbis of the Talmud understand that solitary confinement for any significant period of time will be lethal.⁹ There is no reason to believe that solitary confinement was ever used in the Talmudic period; rather, it seems to be a theoretical punishment for the worst criminals.

In the modern period, Rabbi Ben Zion Meir Chai Uziel, the first Sephardic chief rabbi of Israel warned against the negative effects of long-term imprisonment:

The prison and the uniform of a prisoner, and the degraded and ugly living conditions in the prison, their tables and their beds, and all the more so when they are accompanied by hard labor, degrade the prisoner in his own eyes and in the eyes of his children and his wife and family. The moral degradation of a person in his own eyes removes his feelings of embarrassment and therefore he gives himself over to sin, from which he will never return. The opposite is the case, he will continue to sin in order to free himself from the worry for his support and the support of his children and wife all of his time in prison, when he is dependent upon those who provide him with food and water. . . there should be none of the contempt for and degradation of the soul of a person and their dignity when they sit in jail.¹⁰

One of the most troubling aspects of solitary confinement is that prison staff usually may employ this mode of punishment without granting the prisoner a fair hearing. Jewish law,

⁷ Sifrei, Ki Tetze Piska 286

⁸ Ritva, 159, Trans. Rabbi Jill Jacobs.

⁹ Talmud, *Sanhedrin* 81b.

¹⁰ Rabbi Ben Zion Meir Chai Uziel “The Law of Punishment,” in Rabbi Eliezer Yehudah Waldenburg, ed. *Hilchot Medinah* vol. 3 (1952 pp. 312-314) Trans. Rabbi Aryeh Cohen.

like U.S. law and international law, insists on the need for a fair trial before sentencing a person to any form of punishment.

The Jewish tradition thus teaches us a few principles that should govern the prison experience:

1. No matter his or her crime, the prisoner should be seen as our “brother or sister” and treated with dignity.
2. No human being should be alone for extended periods of time. Isolation diminishes the human being, and can even be deadly.
3. Prisons should seek to rehabilitate the prisoner, and not simply to degrade him or her.
4. A prisoner should have a fair trial before being placed in solitary confinement. Therefore, solitary confinement cannot be used for those in pre-trial detention.

Legal Framework

Prolonged solitary confinement constitutes a violation of both U.S. and international law. Under the U.S. Constitution, the Eighth Amendment prohibits cruel and unusual punishment. The Fifth and Fourteenth Amendments guarantee the right to due process. Article 1 of the UN Convention Against Torture prohibits policies and practices that ‘constitute cruel, inhuman or degrading punishment.’ Article 2 states that “no exceptional circumstances whatsoever” may be used to justify the use of torture. Article 4 requires that each State Party “ensure that all acts of torture are offenses under its criminal law” and be “punishable by appropriate penalties which take into account their grave nature” Under Article 16, each State Party must “undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment.”

The United Nations has also undertaken many reviews of the practice of prolonged solitary confinement and found it exceptionally problematic, including declaring it to be a form of torture. In August, 2011, UN Special Rapporteur on Torture Juan Mendez issued a scathing report on solitary confinement and definitively referred to it as a form of torture.¹¹ His report set an international standard for what constitutes prolonged solitary confinement, defining it as isolation that lasts more than 15 days—a true challenge for a country such as the United States where confinement often lasts months, years, or even decades. Having defined this standard, Mendez called for the abolition of solitary confinement over 15 days, and for an all-encompassing prohibition against the use of solitary confinement for juveniles and the mentally ill.

Recommended questions

1) How will you bring the United States territory into compliance with its international human rights obligations under the CAT’s prohibition against torture by prohibiting the use of prolonged solitary confinement for adults, and abolishing solitary confinement for juveniles and the mentally ill?

¹¹ The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, and degrading treatment or punishment, *Interim Report*, 15, delivered to the General Assembly, U.N. Doc. A/66/268 (Aug. 5, 2011).

2) Independent outside monitoring is critical to ensuring the human rights of all. When will you grant UN Special Rapporteur on Torture, Juan Mendez, access to visit U.S. detention sites where solitary confinement is used and what independent monitoring will you establish to ensure that prolonged solitary confinement is ended throughout the territory, in local, state, federal and privately contracted facilities, and ensure that pretrial detainees are not held in solitary confinement? How will you ensure that all private prison contracts come into compliance with these prohibitions?

3) Also critical to ensure compliance with international human rights mechanisms is accurate data. When will the US Government make publicly available all data about the use of solitary confinement in the federal Bureau of Prisons, state departments of correction, and privately contracted facilities?

4) Ending prolonged solitary confinement requires cultural change in U.S. sites of detention, including new training of corrections officials and other prison staff. What mechanism will you put into place to assure training in pro-social nonviolent methods and tools for positive alternatives to isolation?

Suggested recommendations

We believe that U.S. use of prolonged solitary confinement violates the human rights obligations to which the U.S. committed itself under the Convention against Torture. Whether or not the use of isolation in prisons is a deliberate form of torture (Article 1), or merely violates the prohibition against cruel, inhumane, and degrading treatment (Article 16), it is a national moral outrage that we continue the widespread use of a practice known to have such profound physical and psychological consequences for the incarcerated. The use of solitary confinement also flies in the face of the religious teachings that so many United States citizens hold dear. The United States must take immediate steps to address and correct the human rights violations that inherently stem from holding tens of thousands of men, women, and juveniles in prolonged solitary confinement. T'ruah submits the following recommendations:

- 1) Prolonged solitary confinement (as defined by the UN Special Rapporteur on Torture to be isolation in excess of 15 days) should be banned, except in exceptional circumstances. When isolated confinement is deemed the only possible course of action, its duration must be as short as possible and for a definite period of time that is communicated clearly to the incarcerated person. Inmates being sent to solitary confinement for the most serious disciplinary infractions must receive meaningful process prior to being sent to isolation.
- 2) The use of solitary confinement should be abolished for pretrial detainees, youth under the age of 18, pregnant women, and immigrants detained in civil detention.
- 3) Inmates in solitary confinement must receive access to a full range of rehabilitation services, including mental health treatment and counseling. Those expressing interest in religion must have access to chaplains appropriate to their faith tradition.
- 4) The US government must develop standards to ensure that the use of solitary confinement does not discriminate based on categories such as actual or perceived

race, religion, association, political affiliation, vulnerability to sexual abuse and assault, and that prisoners who challenge their conditions of incarceration are not subject to retaliation by being placed in solitary confinement.

Conclusion

On any given day, more than 80,000 people are held in prolonged solitary confinement in the United States' jails and prisons. This practice has well-documented devastating and long-lasting psychological and physical effects. As people of faith, we believe that this practice violates the Jewish prohibition against excessive and degrading punishment. We call upon the US Government to take concrete steps to end the use of prolonged solitary confinement, including that ensuring meaningful process prior to being placed in isolation, developing standards prevent the discriminatory use of solitary confinement. We also urge that all prisoners in solitary confinement be given access to rehabilitation, adequate mental health services, and access to chaplains appropriate to their faith.