



## **United States' Widespread and Systematic Practices of Torture by the Use of Abusive, Long Term Solitary Confinement**

A Report of the Campaign for Alternatives to Isolated Confinement prepared for the United Nations Committee Against Torture Regarding United States Compliance with the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)

Founded in 2013, the Campaign for Alternatives to Isolated Confinement (CAIC) consists of organizations and individuals who are working for sweeping reform of isolated confinement policies and practices in New York State. The leadership of the campaign includes individuals who have been directly affected by solitary confinement – people who themselves experienced solitary, and people who have family members or loved ones who are currently in solitary. It also includes concerned community members, lawyers, and individuals in the human rights, health, and faith communities throughout New York State.

We welcome the opportunity to provide information and comment for your 53<sup>rd</sup> Session, on November 12 and 13, 2014 in which a periodic review of the United States compliance with the Convention Against Torture (CAT) is scheduled. We also welcome the opportunity to reply to the August 12, 2013 report of the United States, primarily to the United States' response to Question 37 in the List of Issues.

### **The Problem**

The United States, all states within the United States, and many localities are currently engaged in systematic torture of incarcerated persons through the use of solitary confinement and other forms of extreme isolation in prisons, jails, and detention centers. The United States is therefore in clear violation of CAT's prohibition on torture and cruel, inhuman, or degrading treatment or punishment.

The conditions of solitary confinement are inhumane. The use of isolation is an extension and perpetuator of mass incarceration and a paradigm focused on punishment and dehumanization rather than rehabilitation, treatment, and support. In New York prisons and jails, as across the country, people are confined in a cell the size of an elevator for 22 to 24 hours a day, without any meaningful human contact, programs, or therapy. The one or two hours out of cell, if provided and utilized, take place alone in a recreation cage. In New York State prisons, people in solitary confinement are not even allowed to make phone calls.

Far too many people are subjected to these inhumane and counterproductive conditions. Researchers have estimated that across the country about 80,000 people are in solitary confinement. The US Bureau of Prisons houses about 215,000 people, of whom they acknowledge that 7%, or about 15,000 individuals are in isolated confinement. And, in New York State prisons alone, on any given day, there are around 3,800 people in one form of isolation, Special Housing Units (SHU), while many other people are in keeplock. In addition to the New York state prisons, thousands more people are held in solitary confinement in city and county jails, including New York City jails.

Disproportionately, the people in solitary confinement are people of color. Although African Americans represent only around 18% of the total population of New York State, 50% of the people in NYS prisons are African American, and even more disproportionately, 60% of people in the SHU in NYS prisons are African American.<sup>1</sup>

People are most often subjected to solitary confinement for non-violent conduct. In New York, five out of the six sentences that result in SHU sentences are for non-violent conduct. The most egregious examples include people having too many postage stamps, talking back to officers, refusing to give back a food tray, or speaking up for one's own or others' rights. In other parts of the country there are reports of people being put in solitary based on claims of gang membership, for possessing political literature critical of the government, or publishing political opinions or news articles critical of prison policies.

People are held in solitary confinement for far too long. The United Nations Special Rapporteur on Torture has concluded that holding any person in solitary beyond 15 days amounts to cruel, inhuman, or degrading treatment, or torture.<sup>2</sup> Yet, in New York State, as around the country, it is regular practice to hold people in isolation for months and years, and sometimes even for decades.<sup>3</sup> In New York, the majority of individual SHU sentences are for 90 days or more, and many people receive additional SHU time while in solitary, again leading to regularly holding people in solitary for months and years.

People are in solitary confinement who are particularly vulnerable either to the effects of isolation itself or to additional abuse while in isolation. Young people, elderly people, people with disabilities, people with mental health or addiction needs, pregnant women, and members of the LGBTI community are subjected to solitary confinement. In New York State, as of the latest available data, around 400 youth under the age of 21 are in isolation at any given time, and around 17% of the people in SHU are on the mental health caseload.

Prisons, and in turn solitary confinement units, have become de facto mental health centers because appropriate treatment facilities are not available. There are now three times as many men and women

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<sup>1</sup> See, e.g., New York Civil Liberties Union, *Boxed In – The True Cost of Extreme Isolation in New York's Prisons*, p. 24 (2012) ("*Boxed In*"), available at: <http://www.nyclu.org/publications/report-boxed-true-cost-of-extreme-isolation-new-yorks-prisons-2012>.

<sup>2</sup> United Nations General Assembly, *Interim Report of the Special Rapporteur of the Human rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, p. 21, 23, Aug. 2011, available at: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> ("*UN Rapporteur Report*").

<sup>3</sup> Solitary Watch for example has documented the experiences of people incarcerated in NYS who have served as many as 10 years, 14 years, and 26 years in isolated confinement. See *Voices from Solitary*, Solitary Watch, available at: <http://solitarywatch.com/2013/03/11/voices-from-solitary-a-sentence-worse-than-death/>; <http://solitarywatch.com/2013/06/03/voices-from-solitary-the-loneliest-place-in-the-world/>; <http://solitarywatch.com/2013/05/01/voices-from-solitary-you-are-solitary-confinement/>.

with mental illness in United States prisons as there are in mental health hospitals. In New York, by the state's own estimate, nearly 8,500 people in prison and over 650 people in isolated confinement are recognized as needing treatment for mental illness. However, appropriate treatment is rarely provided in isolated confinement. And, because security staff are insufficiently trained in how to work effectively with people with the most serious needs or the most problematic behaviors, they tend to rely on punishment and isolation. These conditions are known to exacerbate rather than effectively address people's mental health needs or the underlying causes of their behavior.

Some individuals are put in solitary confinement not as punishment but presumably “for their own protection” but they are not then protected. This may include children who are tried as adults and sent to adult prisons. Or it may include transgender women who are housed in prisons for men. The conditions in protective custody generally resemble conditions in the SHU or other forms of isolated confinement. Moreover, often the isolation that is connected with such confinement may lead to additional abuse by staff, rather than protection. A recent study by Solitary Watch of transgender women currently or previously in solitary confinement reported that about half of those women interviewed disclosed having been sexually assaulted by guards while they were in isolation and described the psychological distress of enduring such brutality while locked up alone.<sup>4</sup>

The processes resulting in solitary confinement are often arbitrary and unfair, involve under-equipped staff, and take place with little transparency or accountability. The hearings or administrative procedures that result in placement in solitary confinement are not conducted by judges or other supposedly non-biased neutral decision-makers, but rather by corrections staff. In New York, approximately 95% of the people who are charged with the most serious rule violations that can result in isolated confinement are found guilty.

Extreme isolation has been proven to often cause deep and permanent psychological, physical, and social harm. Some of the reported symptoms include: heightened anger and aggression; increased anxiety; appetite and sleep disturbances; loss of impulse control; thought disturbances; concentration and memory problems; severe depression and hopelessness; fear of human contact; extreme paranoia; and hallucinations. Self-harming behaviors and suicide are also noted. Research on the effects of isolation on the brain have made it clear that the changes are not just behavioral or experiential, but that the brain itself may be changed. It is important to note that the suffering resulting from solitary confinement lasts beyond the individual's time in isolation. It is still there when the person reenters the community. This is especially true for those who spent long periods in isolation and those released directly from solitary to the community.

### **Prior Statements and Recommendation of Other Human Rights Bodies**

Several recent reports of international human rights bodies have addressed the issue of solitary confinement<sup>5, 6, 7, 8</sup>. They have recommended: abolition of the use of solitary confinement for juveniles

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<sup>4</sup> Aviva Stahl, *Transgender Women in New York State Prisons Face Solitary Confinement and Sexual Assault*, Solitary Watch, August 7, 2014, available at: <http://solitarywatch.com/2014/08/07/transgender-women-in-new-york-state-prisons-face-solitary-confinement-and-sexual-assault/>.

<sup>5</sup> Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, March 11, 2013, pages 122-123, 130-131 - [http://www.boxedinnny.org/wp-content/uploads/2013/03/Report\\_Observations\\_Govt\\_Communications\\_Replies\\_2014.pdf](http://www.boxedinnny.org/wp-content/uploads/2013/03/Report_Observations_Govt_Communications_Replies_2014.pdf)

and persons with mental disabilities; elimination of the use of prolonged or indefinite isolation; the use of solitary confinement only in highly exceptional circumstances; and the need for safeguards to reduce the chances that the use of solitary confinement will be arbitrary or excessive, or reflective of racial discrimination. The United Nations Special Rapporteur on Torture has specifically called upon the United States and individual states, including New York State, to take substantial action to address the use of solitary confinement and end all prolonged solitary confinement.<sup>9</sup>

## **A Response to the Periodic Report of the United States of America**

The 2006 Human Rights Committee review of the United States' compliance with the Convention Against Torture focused on the treatment of people detained at Guantanamo, Bagram and black sites. It also dealt at length with the conditions in the United States Immigration Detention Centers. While many of the issues that were raised therein are applicable to the question of solitary confinement, the one issue that was raised that is most directly relevant to our concerns was about the extremely harsh regime imposed on detainees in "supermaximum security prisons" particularly the practice of prolonged isolation. As we have noted above, the harsh practice of prolonged isolation is not only in the supermaximum security prisons, but is prevalent throughout the United States. It goes by many names – solitary confinement, Administrative Segregation, Secure Housing Units or Special Housing Units (SHU), Protective Custody, and keeplock among them. While the United States has claimed in its letter of November 30, 2011 to the Special Rapporteur on Torture that the use of solitary confinement is not systematic, solitary confinement is in fact being systematically employed and its prevalence makes it a crucial subject for the review of torture in the United States.

In recent years considerable attention has finally been given to the issue of solitary confinement and the fact that it is inhumane, extremely harmful and counterproductive. Some reforms have been implemented. Several states have reduced the use of solitary confinement and have found as a result that the safety and security of the prisons have improved. And several more states have initiated legislative action that would reduce or eliminate the use of solitary confinement for youth or for mentally ill individuals. All of these are important and worthy first steps. At the same time they are insufficient because of their limited scope. Many other people need those same protections but these laws do not address the torture of solitary confinement for all the affected individuals.

Additionally, most of the reforms have been spurred by lawsuits and resultant court decisions or by investigations of allegations of misuse of solitary confinement by the Department of Justice (DOJ). Thus the report of the United States correctly refers to such legal decisions and to investigations that have called for changes. But, these decisions typically refer only to the state or prison which was investigated or sued. This is another way in which the scope of the reforms is limited. There are many people in solitary confinement in the prisons of all 50 states of the union as well as in prisons run by the federal government itself. Most of them are not covered by these decisions.

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<sup>6</sup> International covenant on civil and political rights, 10-28 July 2006 <http://uhri.ohchr.org/Document/File/3a072d3b-b17e-4752-ae7-5ec3c2231415/dddd18fd-4c24-4755-874a-c6658a4656bf>

<sup>7</sup> Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>

<sup>8</sup> IACHR Expresses Concern over Excessive Use of Solitary Confinement in the United States, July 18, 2013 [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/051.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/051.asp)

<sup>9</sup> Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, March 11, 2013, pages 122-123, 130-31.

Furthermore, existing reform legislation will cover only a very small percentage of the people in solitary confinement even in those locales where the reforms apply because they are too limited either in their actual scope or in the restrictive nature of their application. Thus, for example, a law which speaks about eliminating the use of solitary confinement for people with severe mental illness runs into the problem of defining which mental health conditions are “severe.” Often these laws are only talking about schizophrenia or other psychotic disorders. But there are clearly other people with psychiatric disorders who are extremely vulnerable to the potential damages that prolonged and extreme isolation can cause. These may include, for example: individuals with mood disorders; individuals with drug addiction problems that usually have underlying psychological illnesses or histories of abuse; and people with problems of limited cognitive ability. Often too, the prisons might refuse to recognize diagnoses that were made prior to an individual’s incarceration. It is clear, therefore that laws reforming the use of solitary confinement for mentally ill people must include standards for diagnoses.

Furthermore, the Eighth Amendment’s prohibition against “cruel and unusual punishment,” is violated by correctional facility administrators who subject incarcerated people to solitary confinement with deliberate indifference to resulting serious harm, including suicides, suicide attempts, and serious self-injury. In this past year alone, several people have died in solitary confinement due to the indifference, neglect or abuse of prison staff. Several such incidents occurred here in New York. In fact, a recent study published in the American Journal of Public Health found that people in solitary confinement in New York City jails were nearly seven times more likely to commit self-harm than people in the general jail population.<sup>10</sup>

The United States report, referring to the court decisions further states that “Inmates cannot be subjected to solitary confinement absent an administrative hearing and other procedures protective of their right to due process.” But, as we have noted above, the procedures resulting in solitary are often biased, unfair, and carried out by non-neutral decision-makers. Incarcerated persons facing solitary confinement also are not allowed to have legal representation. Taken together, there is no real “due process.”

In the report of the United States it is also claimed that the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 “prohibit the use of solitary confinement in a manner that discriminates on the basis of disability instead of making reasonable modifications to provide persons with disabilities access to services, programs, and activities, including mental health services.” Even if it is not a matter of discrimination on the basis of disability but a response to disruptive behaviors, the large numbers of disabled persons in solitary confinement needs to be addressed and corrected. As a start, it must be recognized that for people who suffer from mental illness, the disruptive behaviors are very often symptoms of the mental illness, and therefore should not be responded to with punishment. While access to services, programs and activities is essential for the well-being, the rehabilitation, and the preparation of all people in prison for release into the community, including people with both mental and physical disabilities, it is rarely the case that people in solitary confinement have such access. As noted they are kept isolated in their cells 22 to 24 hours a day, without any meaningful human contact, programs, or therapy.

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<sup>10</sup> Homer Venters, et. al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, American Journal of Public Health, Mar. 2014, Vol. 104, No. 3, available at: <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742>.

The United States further argues that the Prison Rape Elimination Act (PREA) establishes conditions for placement in segregated housing of adults who are at high risk for sexual victimization and that these conditions include access to programs, education, work opportunities, and other services. But, the requirements of PREA only apply to a small segment of the incarcerated population and are not being implemented in many jurisdictions,<sup>11</sup> so that most individuals in solitary still do not have the required access to programs and services.

In its letter to the Special Rapporteur on Torture about conditions in the ADX facility, the United States argued that those conditions do not amount to solitary confinement because the people incarcerated there: can speak with (but not touch) one another in the recreation yards; can communicate with the incarcerated persons housed on either side of their cells; can speak to staff when they make their rounds; or can receive visits from medical, educational, religious and mental health staff when requested. These possibilities do not constitute meaningful social interaction or communication and do not do nearly enough to mitigate the devastating harm caused by isolation.

### **Recommended Questions**

In light of the well-documented harms of extreme isolation, what is the United States doing to change the uses and conditions of solitary confinement in prisons, jails, and detention facilities, and to create more humane and effective alternatives? What is being done to: establish limits to the time spent in solitary confinement; prohibit the use of solitary confinement for particularly vulnerable individuals; ensure that solitary confinement is only used when absolutely needed to quell violence; reduce the overuse and arbitrary sentencing procedures that result in the disproportionate number of people of color in solitary confinement; and introduce genuine due process and accountability into procedures leading to placement in solitary confinement?

Please provide comprehensive data on the people in solitary confinement in US prisons, jails, and juvenile detention facilities broken down by: age, sex, gender identity, medical and mental health status, pregnancy status, race and ethnicity, length of sentence to solitary, duration of time spent in solitary, and the nature of the infraction for which the person was placed in solitary.

### **Suggested Recommendations**

The use and abuse of solitary confinement across the United States is in need of a fundamental transformation. CAIC has been working for sweeping reform of isolated confinement policies and practices in New York State. We have done this by working with our state legislators for passage of The Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A. 8588A / S. 6466A – legislation that provides one example of a comprehensive approach toward ending the torture of solitary confinement in a humane and effective manner.<sup>12</sup> We recommend that the following underlying

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<sup>11</sup> See, e.g., Texas Governor Rick Perry, *Letter to the Attorney General, US DOJ*, March 28, 2014, available at: <https://docs.google.com/file/d/0B6HJLeMEu3hIUUctaWxnQWVUeDA/edit>.

<sup>12</sup> For a more thorough explanation of the provisions of the HALT Solitary Confinement Act and the reasons why those provisions are necessary, please see, e.g., Report on Legislation by the Corrections and Community Reentry Committee and International Human Rights Committee, *New York City Bar*, A.8588-A/S.6466-A, available at: <http://www2.nycbar.org/pdf/report/uploads/20072748-HALTSolitaryConfinementReport.pdf>; Testimony by the Correctional Association of New York, Before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil

principals be recommended for adoption by the United States in its own federal prisons and detention centers, and in state and local prisons, jails, and detention facilities across the country.

First, there needs to be a fundamental transformation from a focus on punishment, isolation, and deprivation, to a focus on accountability, rehabilitation, and treatment. Appropriate treatment and access to programs and recreation must be provided. If there are individuals who need to be separated from the rest of the general prison population because they pose a serious threat to the safety of others that separation does not have to be isolation. Rather, people must be given many hours of out-of-cell time per day, as well as access to meaningful programs and services aimed at addressing their underlying needs.

Second, there needs to be a drastic restriction in the criteria that can result in someone being separated from the general prison population and placed in long term isolation up to 15 days. These should be limited to serious threats to the safety of incarcerated people and staff.

Third, there must be an end to long term solitary confinement. Given that the UN Special Rapporteur on Torture has concluded that solitary confinement for all people should be banned after 15 days because the devastating psychological effects of solitary can become permanent after that period of time, localities, states, and the federal government should never place someone in solitary for more than 15 days.

Fourth, people from certain vulnerable groups -- young people, elderly people, people with disabilities, people with mental health needs, pregnant women and new mothers, and members of the LGBTI community -- should never be placed in solitary confinement for any length of time because isolation itself can have more devastating effects on them and because they are more vulnerable to abuse while in isolation.

Fifth, staff must be better equipped to work with people who are incarcerated, including those with the most serious needs or who engage in the most difficult behaviors, and the processes that result in solitary confinement must be fairer, more transparent, and conducted with more accountability.

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Rights, and Human Rights Reassessing Solitary Confinement, *available at:* <http://solitarywatch.com/wp-content/uploads/2014/02/Correctional-Association-testimoney-for-Congressional-Hearing-2-25-14-with-attachment.pdf>; Testimony by the Campaign for Alternatives to Isolated Confinement (CAIC), Before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Human Rights Reassessing Solitary Confinement, *available at:* <http://solitarywatch.com/wp-content/uploads/2014/02/Testimony-of-the-NY-Campaign-for-Alternatives-to-Isolated-Confinement-2014.pdf>.