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Solitary Confinement in the U.S. Criminal Legal System: U.N. Convention Against Torture Implications

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By: Catherine Naas



Not only does the U.S. have one of the highest incarceration rates worldwide—causing the U.S. to have the largest prison population in the world—but the U.S. also uses solitary confinement (prolonged social and physical isolation) as a punishment in its prison system much more often than other countries. [1] The U.S. criminal legal system uses solitary confinement despite it being a form of torture that has severe mental health effects on the individuals that are isolated, leading many of these individuals to a general decline in mental health and sometimes to suicide.[2] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . punishing him for an act he . . . has committed or is suspected of having committed, or intimidating or coercing him . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. . . . [3]

Viewed this way, the U.S. not only violates prisoners' human rights under international law through the use of solitary confinement as a punishment, but arguably also violates its own law under amendment VIII of the U.S. Constitution, which prohibits the use of cruel and unusual punishment.[4] Action needs to be taken in order to limit the use of solitary confinement and protect prisoners' mental health.

When prisoners are in solitary confinement, they are usually placed into a small cell, which sometimes lacks natural light; this cell is where they will eat, sleep, and use the toilet.[5] Prisoners are usually in the solitary confinement cell for about 23 hours each day, leaving 1 hour of the day outside solitary, which is usually allotted so that the isolated prisoner may exercise, usually while alone in a small cage.[6]

There is no way to tell for sure exactly how many U.S. prisoners are in solitary confinement due to the lack of statistics about the U.S.'s usage of solitary confinement; however, it has been estimated that as many as 100,000 U.S. prisoners are in solitary confinement daily.[7] It has also been estimated that over a one year period, one in five U.S. prisoners will have been placed in solitary confinement, and about half of the population that has been in solitary confinement spent thirty days or longer in solitary confinement.[8] Despite the knowledge that solitary confinement usually leads to worsening mental health and the U.S. prison population having a much higher prevalence of mental health illnesses than the general population, the U.S. still uses solitary confinement for punishment in its prison system.[9]

Solitary confinement commonly leads to the development or worsening of mental illnesses.[10] Unfortunately, when the U.S. uses solitary confinement, healthcare professionals are frequently forced to treat prisoners inadequately and without privacy through cell-side bars or through openings in doors made out of solid metal due to security.[11] The U.S. has at times also denied prisoners in solitary confinement access to inpatient psychiatric treatment.[12] The lack of counseling when transitioning out of solitary confinement further hinders the mental health of prisoners.[13] The denial of access to proper medical treatment for prisoners in excessive solitary confinement (and the harsh conditions, both physically and mentally) are a clear violation of the human rights of prisoners in the U.S.

Through the use of solitary confinement as a common form of punishment in U.S. prisons,[14] the U.S. violates the CAT: specifically, part I, article 1, which as stated above, defines "torture." [15] There has been a report against the U.S. under the CAT about solitary confinement, which argued that the U.S. caused torture and harm on prisoners through the use of solitary confinement, resulting in the CAT governing body saying the lengths of time the U.S. used for solitary confinement were unacceptably long. In particular, the report was concerned about the extensive use of solitary confinement as a form of punishment and the usage of solitary confinement in juvenile and mentally ill populations.[16]

The lack of statistical data about the U.S.'s use of solitary confinement was also noted by the CAT governing body.[17] The CAT governing body suggested the following in relation to U.S. use of solitary: limiting the use of solitary confinement and only using it as a last resort for short periods of time with strict supervision and potentially judicial review; prohibiting solitary confinement in the juvenile, intellectual, or psychosocial disabled, and new and expecting mothers populations; banning the use of solitary confinement regimes in prisons; and collecting and publishing comprehensive data on solitary confinement, including data related to suicide attempts and self-harm.[18]

The U.S. is also in violation of the International Covenant on Civil and Political Rights (ICCPR),[19] which states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation"[20] through allowing prisoners' mental health to degrade by subjecting prisoners to cruel inhuman punishment, which solitary confinement is considered to be.[21] Because the U.S. has signed and ratified both the CAT and the ICCPR, these violations must be corrected by implementing stricter policies related to use of solitary confinement and initiating better access to mental health resources and treatment for prisoners in solitary confinement.

By subjecting prisoners to solitary confinement, the U.S. is arguably also in violation of its own constitutional law, which prohibits the use of cruel and unusual punishment.[22] The Fourth Circuit has even affirmed a district court's judgment, which held, in enjoining reinstatement of the conditions of confinement, That [the] conditions of confinement on Virginia's death row violated the Eighth Amendment . . . The district court held that the death row inmates' long-term detention in conditions amounting to solitary confinement created a "substantial risk" of psychological and emotional harm and that State Defendants were "deliberately indifferent" to that risk.[23]

What follows from the above is clear: the U.S. needs to change its solitary confinement policies in order to comply with international laws and its own law.

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[1] Tracie A. Todd, *Mass Incarceration: The Obstruction of Judges*, 82 Duke Univ. L. & Contemp. Probs. 191, 192 (2019); *Highest to Lowest – Prison Population Total*, World Prison Brief, https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All (last visited Nov. 6, 2021).

[2] Cyrus Ahalt et al., *Reducing the Use and Impact of Solitary Confinement in Corrections*, 13 Int'l J. of Prisoner Health 41, 43 (2017).

[3] G.A. Res. 39/46, United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, pt. I art. 1 (Dec. 10, 1984).

[4] U.S. Const. amend. VIII.

[5] Ahalt et al., *supra* note 2, at 41.

[6] *Id.*

[7] *Id.* at 42.

[8] *Id.*

[9] *Id.* at 43.

[10] *See Solitary Confinement as a Public Health Issue*, Am. Pub. Health Ass'n (Nov. 5, 2013), <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue>; Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 Crime & Just. 365, 368 (2018).

[11] *See* Am. Pub. Health Ass'n, *supra* note 10.

[12] *Id.*

[13] Ahalt et al., *supra* note 2, at 44-45.

[14] *Id.* at 41.

[15] G.A. Res. 39/46, *supra* note 3, at pt. I art. 1.

[16] Comm. Against Torture, Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, Fifty-Third Session, U.N. Doc. CAT/C/USA/CO/3-5 (2014), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuLMmIdNURtE47fFHU%2bcDW3YqC%2f3zHkM7HdrMe8Ha0T3LrxFZw2DBuPPjJtmrR1GUBC%2fjzvD8gcT%2fCPPgMygXRPgJd4yWY90dyGDoPyZiQO4>.

[17] *Id.*

[18] *Id.*

[19] International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (Dec. 16, 1966).

[20] *Id.* pt. III art. 7.

[21] Ahalt et al., *supra* note 2, at 41.

[22] U.S. Const. amend. VIII.

[23] *Porter v. Clarke*, 923 F.3d 348, 353 (4th Cir. 2019).