

Solitary confinement

An introduction to The Istanbul Statement on the Use and Effects of Solitary Confinement

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The use of imprisonment has been on the rise in many states during recent years and it has been estimated that more than nine million people are currently incarcerated worldwide.¹ This poses many problems in terms of monitoring prison conditions and inmate treatment, since human rights violations tend to occur in this type of institution. Another obvious problem is the possible side effects of imprisonment and the risk of isolating, marginalizing, and alienating large groups in society.

However, even within prison communities there are those who are marginalized and isolated even further than most of their fellow inmates. One such group is prisoners who are kept in solitary confinement. Here they often spend around 23 hours in their cells each day, only interrupted by a short period of exercise, which is typically also carried out in isolation. Such prisoners are in a sense *in a prison within a prison* and thus suffer an extreme form of exclusion, which clearly supersedes normal imprisonment. This is especially the case when the use of solitary

confinement is prolonged. Furthermore, due to their isolation, these prisoners can easily slip out of sight of justice, and safeguarding their rights is therefore often difficult, even in societies traditionally based on the rule of law.

Unfortunately, recent years have seen an increase in the use of strict and often prolonged solitary confinement practices in prison systems in various jurisdictions across the world. Even to the point where whole prisons have been created based upon a model of strict isolation of prisoners. Paradoxically, at the same time a growing number of studies have substantiated that large groups of those subjected to solitary confinement will suffer detrimental health effects. An increasing number of inmates are, in other words, placed in a position where they risk having their rights violated and their health damaged.

Inspired by this development, a number of experts on solitary confinement have for some years been involved in various attempts to address this issue in different parts of the world. One way to go about such matters is to produce declarations in

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1) Estimate made by Andrew Coyle (Professor in Prison Studies, Kings College, London) during a talk given at The Danish Institute for Human Rights, 9. May 2005.

international contexts and thus attempt to change standards and influence both relevant international legal paradigms and national penal policies. Last spring, 2007, I was approached by the Human Rights Foundation of Turkey who asked me to participate in arranging a conference “task group” on solitary confinement, and I decided that it was time to attempt to produce an international expert statement on the use and effects of solitary confinement. Together with Dr. Sharon Shalev from The London School of Economics I wrote a draft statement, which we presented at the International Psychological Trauma Symposium in Istanbul in December 2007. Through a number of extensive “task group” working sessions, together with several prominent experts in the field of solitary confinement, prisons, and torture, we discussed the statement and the relevant issues in great detail. After an intense three days and a lot of hard work we were able to produce a finished statement on the final day of the conference. I would very much like to thank all the “task group” participants for their spirited and professional contributions.²

In the following I will provide a brief introduction to the subject of solitary confinement and thereby to the actual Istanbul Statement on the Use and Effects of Solitary Confinement, which is printed as the following piece in this issue of Torture.

2) For great help during the conference in the final process of finding relevant references, criticizing, and writing up the final version of the statement I would very much like to thank, especially, Sharon Shalev, Jonathan Beynon, Monica Loyd, Türkcan Baykal, and Manfred Nowak.

3) Peter Scharff Smith “A religious technology of the self. Rationality and religion in the rise of the modern penitentiary” in *Punishment and Society* vol. 6(2), 2004, p. 206

The history of solitary confinement

Historians generally agree that the so-called *modern penitentiary system* broke through internationally from the later decades of the 18th century until the around the middle of the 19th century. A central feature of this system was a belief in the ability to rehabilitate criminals through, among other things, the use of isolation. With the construction of the Auburn and Pennsylvania prison models in the United States in the 1820s the modern penitentiary found its most characteristic institutional form, which was copied all over the western world. While inmates in Auburn facilities were allowed to work together during the day (under a regime of total silence) there was no compromise with the ideal of isolation in Pennsylvania-model institutions, and the prisoners spent almost all their time in the cell, where they also did their work. Here the inmate was supposed to turn his thoughts inward, to meet God, to repent his crimes and eventually to return to society as a morally cleansed Christian citizen.³ Prisoners had to wear hoods when transported around the prison and in many Pennsylvania facilities the prison church was constructed with isolation booths. In principle, inmates were not allowed to even see the face of another prisoner during their incarceration.

The Auburn model became the most popular in the United States, but the Europeans on the other hand favoured the Pennsylvania system and thereby the most severe form of isolation. A large scale use of solitary confinement therefore became the reality in many European states during the 19th century, as well as in Pennsylvania in the United States and in a number of states in South America.⁴

The Pennsylvania model received quite intense criticism and was on the way out in some places during the second half of the nineteenth century, but in other places it

persisted throughout the 19th century and even well into the following century. This was the case in Scandinavia, Holland, and Belgium where large scale isolation was practiced according to the Pennsylvania system, and thereby as an integral part of a rehabilitative regime, way into the 20th century.⁵

From the 1950's and onwards large scale solitary confinement has not been perceived as a tool in a process of rehabilitating criminals. But different kinds of isolation practices have been used in different prison contexts for the last couple of centuries. Solitary confinement has, for example, traditionally been used as a disciplinary punishment involving different conditions and different time spans. Furthermore, some countries have a practice of using solitary confinement during pre-trial, while others isolate prisoners on death row. Another variant can be found in some prison systems where a number of prisoners, for example sex offenders, are allowed, or encouraged, to choose voluntary solitary confinement in order to protect themselves from fellow inmates. Some of these solitary confinement practices, along with a few others, have been used in various ways and with varied intensity throughout the history of the prison.

4) See for example Peter Scharff Smith "A religious technology of the self. Rationality and religion in the rise of the modern penitentiary" in *Punishment and Society* vol. 6(2), 2004, p. 205 ff. See also Ricardo D. Salvatore and Carlos Aguirre "The birth of the penitentiary in Latin America" in Salvatore and Aguirre (ed.) *The birth of the penitentiary in Latin America. Essays on criminology, prison reform, and social control, 1830-1940*", p. 9ff.

5) Concerning Holland see Pieter Spierenburg "Four centuries of prison history" in Norbert Finzsch and Robert Jütte (ed.) *Institutions of Confinement*, Cambridge 1996, p. 30, and concerning Belgium see Norman Johnston *Forms of Constraint: a history of prison architecture*, Chi-

Current practices – a few examples

Most prison systems feature solitary confinement among their repertoire of disciplinary punishments for prisoners. There are countless variations in this regard but typically, although not always, such punishment will last for a limited number of days or perhaps weeks. In Denmark, for example, the maximum duration of placement in isolation as a punishment for violating prison rules is four weeks.⁶ In addition to that there will often be a limited number of inmates in a given prison system, which authorities continuously find it very difficult to handle and do not wish to accommodate under normal conditions. Special regimes involving prolonged solitary confinement are often designed for this particular group of prisoners. Such a practice is technically speaking not punishment but is typically referred to as administrative isolation of inmates who are deemed at risk of escaping or disturbing prison order.⁷ Reasons for being thus segregated may vary but the level of psychiatric morbidity tends to be high among this group of inmates. Recent years have in some jurisdictions has witnessed a tendency towards an increasing use of solitary confinement as an administrative tool for managing specific groups of prisoners. The probably most well

cago 2000, p. 104. Concerning Scandinavia see Peter Scharff Smith "Prisons and human rights: the case of solitary confinement in Denmark and the US from the 1820s until today" in Stéphanie Lagoutte, Hans-Otto Sano and Peter Scharff Smith (eds.) *Human Rights in Turmoil. Facing threats, consolidating achievements*. Martinus Nijhoff Publishers, 2006, pp. 221-248.

6) Hans Jørgen Engbo "Straffuldbyrdsret" 2. edition, Copenhagen 2005, p. 264.

7) Peter Scharff Smith "The effects of solitary confinement on prison inmates: a brief history and review of the literature" in Michael Tonry (ed.) *Crime and Justice*, vol. 34, 2006, p. 451ff.

known example of this are the so-called Supermax prisons in the United States.

The history of the American Supermax is normally traced back to the October 1983 lockdown in the federal Marion penitentiary. A lockdown, which followed the killing of two prison guards, was never lifted and led to the creation of a regime of continuous solitary confinement, later termed Supermax.⁸ This inspired state jurisdictions and today there are more than 50 Supermax prisons in the United States.⁹ Conditions in these facilities typically include solitary confinement 22.5 to 24 hours each day in a barren environment, under constant high-tech surveillance, with exercise being carried out in isolation and without access to recreational equipment. Inmates are sometimes able to shout to each other but otherwise have no social contact. Visits and phone calls are infrequent and severely restricted, if allowed at all. Placement in Supermax can be indeterminate and go on for years and even decades.¹⁰ Supermax prisons have been described as “the ultimate form of exclusion”¹¹ in which “inmates are immobilized, infantilized, and subjected to arbitrary rules and decisions”.¹²

8) Sharon Shalev Solitary control and punitive isolation: “new” forms of solitary confinement in Supermax prisons of the USA, Ph.d. thesis, London 2005, p. 48. See also Roy King “The rise and rise of supermax: an American solution in search of a problem?” in *Punishment and Society* (1), 1999.

9) Different authors cite various numbers: 57 (Brief of Amici Curiae Human Rights Watch et al., *Wilkinson v. Austin*, 8), more than 60 (Lorna Rhodes *Total Confinement. Madness and reason in the maximum security prison*, 2004).

10) Concerning Supermax conditions see, for example, Shalev 2005, p. 9. See also Jesenia Pizarro and Vanja M.K. Stenius “Supermax prisons: Their rise, current practices, and effect on inmates” in *The Prison Journal* 84(2), 2004. Leena Kurki and Norval Morris “The purposes, practices, and problems of supermax prisons” In Michael Tonry

Solitary confinement is sometimes also found to be an integral part of regimes on death row. Such a situation was uncovered by the CPT (The European Committee for the Prevention of Torture) during their 1995 visit to Bulgaria. In a specific prison two death row inmates were kept isolated in their cells and only allowed one hour exercise and 15 minutes use of sanitary facilities each day, while visits were limited to one per month. In addition, the prisoners were not allowed to work, to go to the library or attend communal activities. The CPT has similarly criticised death row arrangements in Ukraine.¹³

Other groups of prisoners can also be singled out for solitary confinement. According to Human Rights Watch this has, for example, been the case with a group of political prisoners in Tunisia. In 2005 it was thus described how forty political prisoners had been subjected to prolonged solitary confinement for several years and up to eleven years in one particular case.¹⁴

Another well known use of solitary confinement is during pre-trial where isolation of individuals can be instigated in order to protect an ongoing criminal investigation.

(ed.) *Crime and Justice: A review of Research*, Chicago, vol. 28, 2001. Craig Haney “Mental health issues in long-term solitary and ‘supermax’ confinement” in *Crime & Delinquency* 49(1), 2003.

11) Shalev 2005, p. 10.

12) Lorna Rhodes “Supermax prisons and the trajectory of exception” 2007 (forthcoming – manuscript which will be published in Austin Sarat (ed.) *Studies in Law, Politics & Society*).

13) See Jim Murdoch *The treatment of prisoners. European standards*, Strasbourg 2006, p. 236f.

14) Human Rights Watch “Tunisia. Crushing the person, crushing a movement. The solitary confinement of political prisoners”, April 2005, vol. 17, No 4(E).

While it is normal that restrictions are applied on a remand prisoners regime for exactly this reason, it is not standard practice to use prolonged solitary confinement. However, some nations apparently have a special history in this regard. In a European context the practice of pre-trial isolation has thus been termed a “Scandinavian phenomenon”,¹⁵ and Denmark, Norway, Sweden, and to some extent Iceland, has received international human rights criticism on that account during the last decades.¹⁶ In Denmark the use of strict solitary confinement during pre-trial was originally adopted following the Danish 1846 jail regulations, which prescribed the construction of single cells in jails nationwide. By the 1870s most Danish jails were able to isolate their remand prisoners and this practice continued more or less unchanged during the next 100 years. Since the 1970s the use of solitary confinement in pre-trial detention has declined, but it remains a feature of Danish prison practice. Between 2001 and 2006 between 7.7 and 9.8 % of all Danish remand prisoners have each year been subjected to strict solitary confinement for a yearly average period ranging from 28 to 37 days, but sometimes for periods exceeding half a year.¹⁷

15) Malcolm Evans and Rod Morgan describe pre-trial solitary confinement as a “... peculiarly Scandinavian phenomenon...” in *Preventing Torture*, 1998, p. 247.

16) Peter Scharff Smith “Varetægtsfængsling i isolation – en besynderlig Skandinavisk tradition?” in *Social Kritik*, no. 99, June 2005.

17) See “Statistik om isolationsfængsling”, Justitsministeriets Forskningsenhed, April 2007 (statistics from the Ministry of Justice); “Rigsadvokaten informerer. 19-2007. Statistiske oplysninger om isolationsfængsling”, appendix B.2 and C.1 (downloaded 110208 from www.rigsadvokaten.dk/Default.aspx?id=62&recordid62=1122).

When used during pre-trial, solitary confinement can sometimes pressure prisoners into confessing or giving evidence regardless of the motives behind imposing the isolation. This is, technically speaking, illegal in the case of Denmark, where the above described use of solitary confinement is subject to judicial supervision and can only be imposed to avoid collusion.¹⁸ But solitary confinement can also be used purposely as a part of coercive interrogation. This can be during pre-trial detention, as was sometimes the case in the former Soviet Union and in South Africa during Apartheid. Such practices are also used together with other forms of detention, for example, in connection with war scenarios and various kind of covert intelligence work. It is well known how the United States, during recent years, have used solitary confinement, along with several other techniques, as a coercive measure in order to gain intelligence from detainees at Guantanamo and in facilities in Iraq and Afghanistan.¹⁹

The debate over the effects of solitary confinement

Historically speaking one could say that an international debate over the effects of soli-

18) Unfortunately this does not remove the element of pressure since pre-trial detainees subjected to judicially supervised solitary confinement in Denmark can still relieve themselves of this regime – which can damage their health – by confessing and giving evidence. Because if the case is solved in this manner there will no longer be any legal grounds for upholding their solitary confinement.

19) See for example Physicians for Human Rights “Break them down. Systematic use of psychological torture by US forces” 2005; Center for Constitutional Rights (CCR) “Report on torture and cruel, inhuman, and degrading treatment of prisoners at Guantanamo Bay, Cuba” July 2006.

tary confinement seems to have been settled sometime around the 1930s, where both psychiatrists and prison experts described the detrimental effects of this practice.²⁰ During the preceding hundred years, evidence had mounted in that regard and it can be argued that in the United States relatively widespread agreement was reached on this issue already in the 1840's.²¹ Nevertheless a discussion on the effects of isolation was reopened after WWII, apparently without reference to the historical material from the experience with Pennsylvania model imprisonment. This happened especially in connection with experimental psychological research on sensory deprivation, which was carried out at universities all over the world. But the specific issue of solitary confinement in prisons has also become a debated and contested issue.

During recent decades a number of studies on the effects of solitary confinement have been carried out in places like Norway, Denmark, Switzerland, South Africa, Canada, and USA. The vast majority of these studies have argued that solitary confinement has negative health effects but a number of practitioners and researchers have disputed whether or not the gathered data and especially the way they have been analysed were correct. Several authors have

argued that this disagreement has been methodological in nature,²² i.e. essentially a question of who has been adopting on the one hand a strictly positivistic approach or on the other hand a cross-disciplinary or hermeneutic approach. Research and statements by the later group has to some extent been distrusted by the former and vice versa.

Recent thorough attempts to gather and review the available studies have however reached conclusions which in terms of health effects disfavour the use of solitary confinement.²³ Especially by extensively covering material from not only North America but also Europe and other regions it has now become clear that both qualitative and quantitative studies in fact do exist, which a) can satisfy not only qualitative/hermeneutic but also positivistic scientific standards, and b) clearly document how solitary confinement practices in prison have detrimental health effects.²⁴ In that sense the debate can now be considered settled in so far as the basic issue is concerned and it can be concluded that "solitary confinement – regardless of specific conditions and regardless of time and place – causes serious health problems for a significant number of inmates. The central harmful feature is that it reduces meaningful social contact to an absolute minimum: a level of social and

20) Peter Scharff Smith "The effects of solitary confinement on prison inmates: A brief history and review of the literature" in Michael Tonry (ed.) *Crime and Justice*, vol. 34, 2006, p. 466f.

21) Smith 2006, p. 459 ff. Pennsylvania was the only state which kept using the Pennsylvania model and thereby large scale solitary confinement of sentenced prisoners.

22) Morris and Kurki 2001, p. 113, and Michael Jackson *Justice behind the Walls. Human rights in Canadian prisons*, available online at www.justicebehindthewalls.net/ (accessed 2004). See also Smith 2006.

23) Haney 2006; Smith 2006; Henrik Steen Andersen "Mental health in prison populations. A review – with special emphasis on a study of Danish prisoners on remand" in *Acta Psychiatrica Scandinavica Supplementum*, 110(424), 2004.

24) Smith 2006.

psychological stimulus that many individuals will experience as insufficient to remain reasonably healthy and relatively well functioning".²⁵

Policy changes and new legal standards

Given the facts above, reform and policy changes are obviously needed with regard to solitary confinement practices in a number of jurisdictions in different places of the world. To accomplish this, penal policy has to be influenced on many different levels and law makers, prison authorities, and courts can be relevant in that regard. Causes for inadequate protection of isolated and segregated inmates may be found in different parts of the system. Just to mention one example, expert commentators have argued that some courts have been too reluctant to acknowledge the psychological effects of imprisonment, including specifically the effects of solitary confinement.²⁶

The potential for accomplishing reform could be strengthened by both using and improving the existing international human rights standards with regard to solitary confinement. This can be done by promoting existing soft law standards and human rights documents from CAT, CPT, relevant committees, and special rapporteurs, as well as international and regional prison rules, principles etc., in order to gain an increasing impact on actual international and national case law, through which policy makers and prison managers could be influenced. But furthermore there is also a need to align the relevant human rights standards with the latest research in the area of solitary confinement. This arguably entails creating new

standards. In The Istanbul Statement on the Use and Effects of Solitary Confinement we have attempted to do both: promote existing standards and create new standards based on relevant research. The Statement is meant to be used by relevant organisations and individuals in international and national settings. Hopefully the result in the long run will be reduction or abandonment of existing solitary confinement practices and better treatment and protection of those still subjected to isolation regimes.

25) Smith 2006, p. 503.

26) See for example Murdoch 2006, p. 255.