

International Human Rights Law on Solitary Confinement

Prepared by Human Rights First – Summer 2015

Contents

Relevant International Instruments and Provisions	4
TREATIES	4
International Covenant on Civil and Political Rights (ICCPR):	4
Convention against Torture (CAT):	4
International Convention on the Elimination of All Forms of Racial Discrimination (CERD):	5
Convention on the Rights of the Child (CRC):	5
Convention on the Rights of Persons with Disabilities (CRPD):	5
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):	5
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)	6
OTHER NON-BINDING INSTRUMENTS (U.N. GENERAL ASSEMBLY RESOLUTIONS, ETC.):	6
Mandela Rules (May 2015)	6
Interpretation of Rights Related to Solitary Confinement by Treaty Bodies, UN Agencies, and Special Rapporteurs	9
DUE PROCESS, MEDICAL RIGHTS, AND INTERNATIONALLY REQUIRED SAFEGUARDS	9
Persons held in solitary confinement must have access to legal counsel and their confinement must be subject to independent judicial review.....	9
Because the absence of witnesses increases the risk of harm, persons held in solitary must have outside contact and/or social contacts.....	9
Persons held in solitary confinement must receive adequate medical attention, certification, and monitoring.	10
Solitary confinement must have limited use, for the shortest possible time, only in exceptional circumstances, and with appropriate safeguards in place.	11
Limiting the use of solitary confinement and installing safeguards in the U.S.....	12
THE DURATION OF SOLITARY CONFINEMENT INFLUENCES WHETHER IT CONSTITUTES TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CIDT).....	12
Defining solitary confinement, prolonged solitary confinement, and CIDT	12
Depending on the circumstances, the imposition of short-term solitary confinement can amount to torture or CIDT.....	13
Prolonged solitary confinement (in excess of 15 days) <i>per se</i> constitutes torture or CIDT and must be absolutely banned.....	14

Indefinite solitary confinement <i>per se</i> constitutes torture or CIDT and must be absolutely banned.	15
.....	
Prolonged or indefinite solitary confinement in the U.S.	15
THE PURPOSE BEHIND SOLITARY CONFINEMENT INFLUENCES WHETHER IT CONSTITUTES TORTURE OR CIDT.	15
Solitary confinement is properly imposed only for the purpose of avoiding collusion or preventing harm to the detained or other inmates.	15
If used for punishment, solitary confinement likely constitutes torture or CIDT.	16
If used for obtaining information, extortion, intimidation, or coercion, solitary confinement likely constitutes torture or CIDT.	16
Improper purposes of solitary confinement in the U.S.	17
DETENTION CONDITIONS AND CHARACTERISTICS INFLUENCE WHETHER SOLITARY CONSTITUTES TORTURE OR CIDT IN A PARTICULAR INSTANCE.	17
Solitary confinement in pre-trial detention likely constitutes torture or CIDT.	17
Physical conditions of detention in solitary confinement can amount to torture or CIDT.	17
Prohibitions on Solitary for Certain Populations.....	18
JUVENILES	18
Because solitary confinement <i>per se</i> amounts to torture or CIDT for juveniles, it must be prohibited in all cases.	18
On the record of the U.S.	19
WOMEN	20
Solitary confinement for pregnant women, women with infants, and breastfeeding mothers must be banned.	20
On the record of the U.S.	21
LGBT INDIVIDUALS	21
PERSONS WITH DISABILITIES / PERSONS WITH MENTAL ILLNESS	21
Because solitary confinement <i>per se</i> amounts to torture or CIDT for persons with mental disabilities, it must be prohibited in all cases.	21
On the record of the U.S.	23
Procedural and medical safeguards must exist for persons with mental disabilities subjected to isolation or administrative segregation.	23
DEATH ROW INMATES	24
INDIVIDUALS IN IMMIGRATION DETENTION / MIGRANTS	24
Regional Bodies and Instruments	25

INTER-AMERICAN SYSTEM	25
Relevant Treaties and Documents	25
Inter-American Commission on Human Rights.....	26
Inter-American Court of Human Rights Cases:	29
EUROPEAN SYSTEM	30
Relevant Treaties and Documents	30
European Court of Human Rights Cases:	30
Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	31
AFRICAN SYSTEM	32
Relevant Treaties and Documents	32
African Commission on Human and Peoples' Rights	32
APPENDIX I: Authority in U.S. Courts	33

Relevant International Instruments and Provisions

Treaties

The weight of authority afforded to each treaty depends on whether the U.S. has signed and ratified it. Provisions which are considered peremptory norms, which cannot be derogated from even in emergency situations, are identified as such. For further discussion of the weight of the international documents cited herein in U.S. courts, see Appendix I (beginning on page 33).

International Covenant on Civil and Political Rights (ICCPR):

Adopted with [Reservations, Understandings, and Declarations](#)

International Covenant on Civil and Political Rights art. 7, *ratified* June 8, 1992, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

- **Relevant provisions:**
 - Art. 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ...”
 - Art. 4(2) establishes this as a non-derogable peremptory norm; *see also* Human Rights Committee, [General Comment 29, States of Emergency \(article 4\)](#), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).
 - Art. 10(1): “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”
 - Art. 10(3): “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation....”
- **With respect to juveniles:**
 - Art. 10(2)(b): “Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.”
 - Art. 10(3): “...Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”
 - Art. 14(4): In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

Convention against Torture (CAT):

Adopted with [Reservations, Understandings, and Declarations](#)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment art. 16, *ratified* Oct. 21, 1994, 1465 U.N.T.S. 85 (entered into force June 26, 1987) [hereinafter CAT].

- Art. 1(1): “For the purposes of this Convention, the term ‘torture’ means 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 or a third person has committed ... 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.”
- Art. 16(1): “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.”
- **Related/precursor documents:**

- [Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), G.A. Res. 3452 (XXX), Annex, ¶ 1, U.N. Doc. A/RES/3452(XXX) (Dec. 9, 1975).
 - See Art. 1, 2, and 3
- [Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment](#), G. A. Res. 3453 (XXX), U.N. Doc. A/RES/3453(XXX) (Dec. 9, 1975).

International Convention on the Elimination of All Forms of Racial Discrimination (CERD):

[Adopted with [Reservations, Understandings, and Declarations](#)]

International Convention on the Elimination of All Forms of Racial Discrimination art. 1, *ratified* Oct. 21, 1994, 660 U.N.T.S. 211 (entered into force Jan. 4, 1969) [hereinafter CERD].

Convention on the Rights of the Child (CRC):

not ratified by U.S. [persuasive authority] (the U.S. signed the CRC in 1995 but has not ratified)

Convention on the Rights of the Child art. 37, Feb. 16, 1995, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC].

- Art. 37: requires that State Parties ensure that: “(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment ... (b) ... Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age”
- In *Roper v. Simmons*, the U.S. Supreme Court recognized that the CRC is relevant to the interpretation of Eighth Amendment protections for juveniles even though the U.S.—joined only by Somalia—has not ratified the treaty. See *Roper v. Simmons*, 543 U.S. 551, 576 (2005).

Convention on the Rights of Persons with Disabilities (CRPD):

not ratified by U.S. [persuasive authority] (the U.S. signed the CRPD in 2009 but has not ratified)

Convention on the Rights of Persons with Disabilities art. 15, July 17, 2009, 2515 U.N.T.S. 1 (entered into force May 3, 2008) [hereinafter CRPD].

- Art. 12(4): “States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.”
- Art. 13(2): “In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”
- Art. 15: “(1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ... (2) States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):

not ratified by U.S. [persuasive authority] (the U.S. signed CEDAW in 1980 but has not ratified)

Convention on the Elimination of All Forms of Discrimination Against Women, July 17, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

NEITHER signed nor ratified by U.S. [persuasive authority]

G.A. Res. 57/199, Annex, U.N. Doc. [A/RES/57/199](#) (Dec. 18, 2002).

Other non-binding instruments (U.N. General Assembly Resolutions, etc.):

All of these documents are persuasive authorities; they may influence or comprise customary international law.

Mandela Rules (May 2015) [U.N. Revised Standard Minimum Rules for the Treatment of Prisoners] United Nations, Econ. & Soc. Council, Comm. on Crime Prevention and Criminal Justice, Argentina, Austria, Brazil, Chile, Ecuador, El Salvador, France, Italy, Lebanon, Mexico, Nicaragua, Panama, Paraguay, Poland, South Africa, Thailand, United States of America and Uruguay: revised draft resolution, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), U.N. Doc. [E/CN.15/2015/L.6/REV.1](#) (May 21, 2015).

Must be adopted by the full General Assembly this fall before going into effect. Press release for new rules available [here](#).

- Rule 43: “1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement; (c) Placement of a prisoner in a dark or constantly lit cell...”
- Rule 44: “For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.”
- Rule 45: “(1) 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. It shall not be imposed by virtue of a prisoner’s sentence. (2) The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply.”
- **Related documents and recommendations leading up to the new rules:**
 - “The revised text contains a specific prohibition on the use of prolonged solitary confinement, which is defined as that exceeding 15 days. My mandate has consistently advocated for an end to the practice of prolonged or indefinite solitary confinement, which was the subject of an in-depth examination in my 2011 interim report (A/66/268) to the General Assembly.”
Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, Open letter to the Chair of the 24th Session of the UN Commission on Crime Prevention and Criminal Justice (May 18, 2015), <http://www.ohchr.org/Documents/Issues/SRTorture/OpenLetterUNCommission18Mai2015.doc>.
 - U.N. Expert Group on the Standard Minimum Rules for the Treatment of Prisoners, Report on the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Cape Town, South Africa, from 2 to 5 March 2015, U.N. Comm’n on Crime Prevention and Criminal Justice, U.N. Doc. [E/CN.15/2015/17](#) (Aug. 3, 2015).

- “The Rules should prohibit the use and imposition of indefinite solitary confinement either as part of a judicially imposed sentence or a disciplinary measure, and alternative disciplinary sanctions should be introduced to avoid the use of solitary confinement.”
Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 61, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).
- “The Rules should also prohibit prolonged solitary confinement and frequently renewed measures that amount to prolonged solitary confinement. The Rules should establish a maximum term of days beyond which solitary confinement is considered prolonged.”
Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 61, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).
- **Formerly Standard Minimum Rules for Treatment of Prisoners (SMRs) (1955, 1957, 1977)**
Relevant rules in that version: 27, 31, 32, 37, 39
Standard Minimum Rules for the Treatment of Prisoners, First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. [A/CONF/6/1](#), Annex I, A (Aug. 30, 1955), E.S.C. Res. 663C1, U.N. Doc. [E/3048](#) (July 24, 1957), *amended* E.S.C. Res. 2076, U.N. Doc. [E/5988](#) (May 13, 1977).

Torture and other cruel, inhuman or degrading treatment or punishment (2013)

G.A. Res 68/156, ¶ 28, U.N. Doc. [A/RES/68/156](#) (Dec. 18, 2013).

- ¶28: “*Emphasizes* that conditions of detention must respect the dignity and human rights of persons deprived of their liberty,...calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment, and notes in this regard concerns about solitary confinement, which may amount to torture or other cruel, inhuman or degrading treatment or punishment”

U.N. Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (2010) (the Bangkok Rules)

G.A. Res. 65/229, ¶ 22, U.N. Doc. [A/RES/65/229](#) (Dec. 21, 2010).

- Rule 22: “Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.”

Istanbul Statement on the Use and Effects of Solitary Confinement (2007):

International Psychological Trauma Symposium, Istanbul, Turk., Dec. 7-9, 2007, *Istanbul Statement on the Use and Effects of Solitary Confinement* (Dec. 9, 2007).

Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. [A/63/175](#), Annex (Dec. 9, 2007).

- “The use of solitary confinement should be absolutely prohibited in the following circumstances:
 - For death row and life-sentenced prisoners by virtue of their sentence.
 - For mentally ill prisoners.
 - For children under the age of 18.”
- “Furthermore, when isolation regimes are intentionally used to apply psychological pressure on prisoners, such practices become coercive and should be absolutely prohibited.”
- “As a general principle solitary confinement should only be used in very exceptional cases, for as short a time as possible and only as a last resort.”

Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004):

Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 145(m), Professional Training Series No. 8, Rev. 1 (2004).

- ¶145(m) lists the following as torture methods:
“Conditions of detention, such as a small or overcrowded cell, solitary confinement, unhygienic conditions, no access to toilet facilities, irregular or contaminated food and water, exposure to extremes of temperature, denial of privacy and forced nakedness;”

Basic Principles for the Treatment of Prisoners (1990)

G.A. Res. 45/111, ¶ 7, U.N. Doc. [A/RES/45/111](#) (Dec. 14, 1990).

- “Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.” (¶7)

UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)

G.A. Res. 45/113, ¶ 67, U.N. Doc. [A/RES/45/113](#) (Dec. 14, 1990).

- “All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.” (¶ 67)

U.N. Guidelines for the Prevention of Juvenile Delinquency (1990) (“The Riyadh Guidelines”)

G.A. Res. 45/112, ¶ 54, U.N. Doc. [A/RES/45/112](#) (Dec. 14, 1990).

- ¶54: “No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.”

Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988)

G.A. Res. 43/173, at 6, U.N. Doc. [A/RES/43/173](#) (Dec. 9, 1988).

- Principle 1: “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.”
- Principle 6: “No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment. The term ‘cruel, inhuman or degrading treatment or punishment’ should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.”
- Principle 15: “Notwithstanding the exceptions...communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”
- *See also* Principle 33 on exercising right to a complaint if facing torture or CIDT

Universal Declaration of Human Rights (1948)

Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. [A/RES/217\(III\)](#) (Dec. 10, 1948).

- Art. 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Interpretation of Rights Related to Solitary Confinement by Treaty Bodies, UN Agencies, and Special Rapporteurs

DUE PROCESS, MEDICAL RIGHTS, AND INTERNATIONALLY REQUIRED SAFEGUARDS

Persons held in solitary confinement must have access to legal counsel and their confinement must be subject to independent judicial review.

Special Rapporteur

- “Persons held in solitary confinement should always be allowed to challenge the reasons and the length of the regime, and should always have access to legal counsel and medical assistance.” Office of the High Commission for Human Rights News, US: “Four decades in solitary confinement can only be described as torture” – UN rights expert (Oct. 7, 2013), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832&LangID=E#sthash.jaL4PRh6.dpuf> (quoting Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Juan Mendez).
- “Given the harmful effects of indefinite solitary confinement, its potential use to extract information or confession during pretrial detention, and the fact that uncertainty prevents the use of remedies to challenge it, the Special Rapporteur finds that indefinite imposition of solitary confinement violates the right to due process of the concerned individual (article 9 of the Covenant, articles 1 or 16 of the Convention, and article 7 of the Covenant).” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 75, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

Because the absence of witnesses increases the risk of harm, persons held in solitary must have outside contact and/or social contacts.

Special Rapporteur

- “In all circumstances, the person deprived of liberty should have the right to inform his or her family of the arrest (Rules 44 (3) and 92) and place of detention within 18 hours ([E/CN.4/2003/68](#), paras. 26 (g) and (i)). These rules should apply also to decisions to restrict the personal freedom of an inmate further, for instance by placing him or her in isolation or solitary confinement.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 41, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).
- “In no case may a detainee’s contact with the outside world be dependent on his or her cooperativeness, be used as a disciplinary sanction or form part of the sentence. In accordance with principle 19 of the Body of Principles, access to the outside world can only be denied subject to reasonable conditions and restrictions as specified by law (see [E/CN.4/2004/56](#), para. 43).” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 41, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).

- “Because of the absence of witnesses, solitary confinement increases the risk of acts of torture and other cruel, inhuman or degrading treatment or punishment.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 70, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).
- “Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner-prison staff contact, allowing access to social activities with other prisoners, allowing more visits and providing access to mental health services.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶83, U.N. Doc. [A/63/175](#) (July 28, 2008) (by Manfred Nowak).
- In no case may a detainee’s contact with the outside world be dependent on his or her cooperativeness, be used as a disciplinary sanction or form part of the sentence. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Civil and Political Rights, Including the Questions of Torture and Detention*, ¶ 43, Comm’n on Human Rights, U.N. Doc. [E/CN.4/2004/56](#) (Dec. 23, 2003) (by Theo van Boven). *See also* ¶¶ 37, 38, 41, 47, 48.

Persons held in solitary confinement must receive adequate medical attention, certification, and monitoring.

Human Rights Committee (CCPR)

- “The State party should ensure the right of detainees to an effective remedy, with suspensive effect, against all disciplinary measures of solitary confinement and should guarantee that detainees are monitored daily by fully qualified medical staff during solitary confinement.” Human Rights Comm. [CCPR], *Concluding Observations of the Human Rights Committee on Portugal*, ¶ 16, U.N. Doc. [CCPR/CO/78/PRT](#) (Sept. 17, 2003).

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)

- “...The medical officer should visit prisoners held in solitary confinement every day, on the understanding that such visits should be in the interests of the prisoners’ health. Furthermore, prisoners held in solitary confinement for more than 12 hours should have access to fresh air for at least 1 hour each day.” Subcomm. on Prevention of Torture [SPT], *Report on the visit of the Subcomm. on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Para.*, ¶ 184 and 294, U.N. Doc. [CAT/OP/PRY/1](#) (June 7, 2010).
- “The SPT notes that solitary confinement should only be ordered on the basis of a medical certificate testifying, following proper examination of the detainee, that he or she is able to bear this punishment.” Subcomm. on Prevention of Torture [SPT], *Report on the visit of the Subcomm. on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Para.*, ¶ 294, U.N. Doc. [CAT/OP/PRY/1](#) (June 7, 2010).

Solitary confinement must have limited use, for the shortest possible time, only in exceptional circumstances, and with appropriate safeguards in place.

Special Rapporteur

- “Solitary confinement should be imposed, if at all, in very exceptional circumstances, as a last resort, for as short a time as possible and with established safeguards in place after obtaining the authorization of the competent authority subject to independent review.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 60, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).
- “The use of solitary confinement can be accepted only in exceptional circumstances where its duration must be as short as possible and for a definite term that is properly announced and communicated.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 75, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).
- “The Special Rapporteur reiterates that solitary confinement should be used only in very exceptional circumstances, as a last resort, for as short a time as possible. He emphasizes that when solitary confinement is used in exceptional circumstances, minimum procedural safeguards must be followed. These safeguards reduce the chances that the use of solitary confinement will be arbitrary or excessive, as in the case of prolonged or indefinite confinement. They are all the more important in circumstances of detention where due process protections are often limited, as in administrative immigration detention. Minimum procedural safeguards should be interpreted in a manner that provides the greatest possible protection of the rights of detained individuals.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 89, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).
 - In the same report, the SR lists guiding principles, internal safeguards, and external safeguards that states should implement re: solitary confinement to remain compliant with international standards (¶¶90-101)
- “...the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶83, U.N. Doc. [A/63/175](#) (July 28, 2008) (by Manfred Nowak).

Human Rights Committee (CCPR)

- “The State party should ensure that solitary confinement, both pretrial and following conviction, is used only in the most exceptional circumstances and for strictly limited periods.” Human Rights Comm. [CCPR], *Concluding Observations of the Human Rights Committee on Norway*, ¶ 11, U.N. Doc. [CCPR/C/NOR/CO/6](#) (Nov. 18, 2011).
- “The State party should put an end to the sentence of solitary confinement ...” Human Rights Comm. [CCPR], *Concluding Observations of the Human Rights Committee on Rwanda*, ¶ 14, U.N. Doc. [CCPR/C/RWA/CO/3](#) (May 7, 2009).
- “...reconsider the practice of solitary confinement and ensure that it is used only in cases of urgent necessity.” Human Rights Comm. [CCPR], *Concluding Observations of the Human Rights Committee on Denmark*, ¶ 12, U.N. Doc. [CCPR/CO/70/DNK](#) (Nov. 15, 2000).

Limiting the use of solitary confinement and installing safeguards in the U.S.

Committee Against Torture (CAT)

- “The [United States] should: (a) Limit the use of solitary confinement as a measure of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review; ... (c) Ban solitary confinement regimes in prisons, such as those in supermaximum security detention facilities; (d) Compile and regularly publish comprehensive disaggregated data on the use of solitary confinement, including related suicide attempts and self-harm.” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶120, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).

Human Rights Committee (CCPR)

- “The [United States] should monitor conditions of detention in prisons, including private detention facilities, with a view to ensuring that persons deprived of their liberty be treated in accordance with the requirements of articles 7 and 10 of the Covenant and the UN Standard Minimum Rules for the Treatment of Prisoners. It should impose strict limits on the use of solitary confinement, both pretrial and following conviction, in the federal system, as well as nationwide...” Human Rights Comm., *Concluding observations on the fourth periodic report of the United States of America*, ¶ 20, U.N. Doc. [CCPR/C/USA/CO/4](#) (Apr. 23, 2014).

THE DURATION OF SOLITARY CONFINEMENT INFLUENCES WHETHER IT CONSTITUTES TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CIDT).

Defining solitary confinement, prolonged solitary confinement, and CIDT

Special Rapporteur

- “...the longer the duration of solitary confinement or the greater the uncertainty regarding the length of time, the greater the risk of serious and irreparable harm to the inmate that may constitute cruel, inhuman or degrading treatment or punishment or even torture.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 58, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).
- “...the Special Rapporteur defines solitary confinement as the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day. Of particular concern to the Special Rapporteur is prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days...because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 126 and 79, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).
- “There is no international standard for the permitted maximum overall duration of solitary confinement. In *A.B. v. Russia*, the European Court of Human Rights held that detaining an individual in solitary confinement for three years constituted a violation of article 3 of the European Convention on Human Rights. By contrast, in the United States of America, it is reported that two prisoners have been held in solitary confinement in a Louisiana prison for 40

years after failed attempts at judicial appeal of the conditions of their confinement. As explained in paragraph 26 above, the Special Rapporteur finds that solitary confinement exceeding 15 days is prolonged.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 61, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

Depending on the circumstances, the imposition of short-term solitary confinement can amount to torture or CIDT.

Special Rapporteur

- “Prison regimes of solitary confinement often cause mental and physical suffering or humiliation that amounts to cruel, inhuman or degrading treatment or punishment.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 60, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).
- “Importantly, short-term solitary confinement can amount to torture or cruel, inhuman or degrading treatment or punishment as well (A/66/268, para. 88). However, unlike prolonged solitary confinement, short-term solitary confinement can be a legitimate practice in other circumstances provided that adequate safeguards are in place, including control and monitoring mechanisms (see A/66/268, paras. 94-101 noting the internal and external safeguards that should be in place under all circumstances).” Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Reply to Questions Raised by Member States during the Interactive Dialogue at the 66th Session of the UN General Assembly*, at 7 (Oct. 18, 2011) (by Juan Mendez).
- “...the social isolation and sensory deprivation that is imposed by some States does, in some circumstances, amount to cruel, inhuman and degrading treatment and even torture.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 20, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).
- “Depending on the specific reason for its application, conditions, length, effects and other circumstances, solitary confinement can amount to a breach of article 7 of the International Covenant on Civil and Political Rights, and to an act defined in article 1 or article 16 of the Convention against Torture. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 80, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

International Criminal Tribunal for the Former Yugoslavia (ICTY)

- “Solitary confinement is not, in and of itself, a form of torture. However, in view of its strictness, its duration and the object pursued, it could cause great physical or mental suffering.” *Prosecutor v. Milorad Krnojelac*, Case No. [IT-97-25-T](#), Judgment, ¶ 183 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 15, 2002).

Prolonged solitary confinement (in excess of 15 days) per se constitutes torture or CIDT and must be absolutely banned.

CIDT is prohibited by Art. 7 of the ICCPR and Art. 16 of the CAT [non-derogable peremptory norms].

Torture is prohibited by Art. 7 of the ICCPR [considered a non-derogable peremptory norm] and by Art. 4 of the CAT [made explicitly non-derogable by Art. 2(2) of the CAT]

Human Rights Committee (CCPR)

- “The [Human Rights] Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7. [...]” Human Rights Comm., *General Comment 20, Article 7 (Forty-fourth session, 1992)*, ¶ 6, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 30, U.N. Doc. [HRI/GEN/1/Rev.1](#) (1994).
- *A. Vuolanne v. Finland*, Commc’n No. 265/1987, at 256, ¶ 9.2, U.N. Doc. [A/44/40](#) (Apr. 7, 1989). (holding that neither Art. 7 nor Art. 10(1) had been violated because the confinement did not produce any adverse physical or mental effects and the record did not establish that Mr. Vuolanne suffered any dignitary harm).
- *T. Gómez de Voituret v. Uruguay*, [Commc’n No. 109/1981](#), at 168, ¶¶ 12.2-13, U.N. Doc. A/39/40 (Apr. 10, 1984) (finding a violation of Art. 10(1) because T. Gómez de Voituret “was kept in solitary confinement for several months in conditions which failed to respect the inherent dignity of the human person”).
- *R. S. Antonaccio v. Uruguay*, [Commc’n No. 63/1979](#), at 119-20, ¶¶ 16-20, U.N. Doc. A/37/40 (Oct. 28, 1981) (holding that both Art. 7 and Art. 10(1) had been violated because the author was held in an underground cell and denied the medical attention his condition required).

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)

- “The SPT points out that prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment and recommends that the State party should severely restrict the use of solitary confinement as punishment for persons deprived of their liberty.” Subcomm. on Prevention of Torture [SPT], *Report on the visit of the Subcomm. on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Para.*, ¶ 185 and 295, U.N. Doc. [CAT/OP/PRY/1](#) (June 7, 2010).

Special Rapporteur

- “The human rights expert urged the US Government to adopt concrete measures to eliminate the use of prolonged or indefinite solitary confinement under all circumstances.” Office of the High Commissioner for Human Rights News, US: “Four decades in solitary confinement can only be described as torture” – UN rights expert (Oct. 7, 2013), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832&LangID=E#sthash.jaL4PRh6.dpuf> (quoting Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Juan Mendez).
- “...the Special Rapporteur concurs with the position taken by the Committee against Torture in its General Comment No. 20 that prolonged solitary confinement amounts to acts prohibited by article 7 of the Covenant, and consequently to an act as defined in article 1 or article 16 of the Convention. For these reasons,...any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 76, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

- “[The Special Rapporteur] calls on the international community to...impose an absolute prohibition on solitary confinement exceeding 15 consecutive days.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 76, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).
 - “...prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition.” *Id.* at ¶ 88.
- “...In the opinion of the Special Rapporteur the prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶177, U.N. Doc. [A/63/175](#) (July 28, 2008) (by Manfred Nowak).

Indefinite solitary confinement per se constitutes torture or CIDT and must be absolutely banned.

Special Rapporteur

- “Indefinite solitary confinement should be abolished.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 87, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

Prolonged or indefinite solitary confinement in the U.S.

Committee Against Torture (CAT)

- “Furthermore, [the Committee] is concerned about the use of solitary confinement for indefinite periods of time.... Full isolation of 22 to 23 hours a day in supermaximum security prisons is unacceptable (art. 16).” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶20, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).
- “The State party should review the regime imposed on detainees in ‘supermaximum prisons’, in particular the practice of prolonged isolation.” Comm. against Torture [CAT], *Conclusions and Recommendations of the Committee Against Torture, United States of America*, ¶36, U.N. Doc. [CAT/C/USA/CO/2](#) (July 25, 2006).

THE PURPOSE BEHIND SOLITARY CONFINEMENT INFLUENCES WHETHER IT CONSTITUTES TORTURE OR CIDT.

Solitary confinement is properly imposed only for the purpose of avoiding collusion or preventing harm to the detained or other inmates.

Special Rapporteur

- “Solitary confinement is legitimately used by a State only where necessary to avoid collusion among persons charged with a crime or where necessary to seek to prevent someone from frustrating investigation of an offence. States should note that the 15 day limit is intended to serve as a clear point of departure from which solitary confinement no longer constitutes a

legitimate tool for State use regardless of the circumstances.” Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Reply to Questions Raised by Member States during the Interactive Dialogue at the 66th Session of the UN General Assembly*, at 7-8 (Oct. 18, 2011) (by Juan Mendez).

If used for punishment, solitary confinement likely constitutes torture or CIDT.

Special Rapporteur

- “Solitary confinement, when used for the purpose of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour and thus constitutes an act defined in article 1 or article 16 of the Convention against Torture, and a breach of article 7 of the International Covenant on Civil and Political Rights. This applies as well to situations in which solitary confinement is imposed as a result of a breach of prison discipline, as long as the pain and suffering experienced by the victim reaches the necessary severity.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 72, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).
- “The Special Rapporteur urges States to prohibit the imposition of solitary confinement as punishment — either as a part of a judicially imposed sentence or a disciplinary measure. He recommends that States develop and implement alternative disciplinary sanctions to avoid the use of solitary confinement.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 84, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

If used for obtaining information, extortion, intimidation, or coercion, solitary confinement likely constitutes torture or CIDT.

Special Rapporteur

- “If used intentionally for purposes such as punishment, intimidation, coercion or obtaining information or a confession, or for any reason based on discrimination, and if the resulting pain or suffering are severe, solitary confinement even amounts to torture ([A/66/268](#), paras. 76, 87 and 88).” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 60, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).
- “When solitary confinement is used intentionally during pretrial detention as a technique for the purpose of obtaining information or a confession, it amounts to torture as defined in article 1 or to cruel, inhuman or degrading treatment or punishment under article 16 of the Convention against Torture, and to a breach of article 7 of the International Covenant on Civil and Political Rights.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 73, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

International Criminal Tribunal for the Former Yugoslavia (ICTY)

- “To the extent that the confinement of the victim can be shown to pursue one of the prohibited purposes of torture and to have caused the victim severe pain and suffering, the act of putting or keeping someone in solitary confinement may amount to torture.” *Prosecutor v. Milorad*

Krnjelac, Case No. [IT-97-25-T](#), Judgment, ¶ 183 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 15, 2002).

Improper purposes of solitary confinement in the U.S.

Committee Against Torture (CAT)

- “...the Committee remains concerned about reports of extensive use of solitary confinement and other forms of isolation in United States prisons, jails and other detention centres, for purposes of punishment, discipline and protection, as well as for health-related reasons.” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶20, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).
- “The Committee remains concerned about the extremely harsh regime imposed on detainees in ‘supermaximum prisons’. The Committee is concerned about the prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment (art. 16).” Comm. against Torture [CAT], *Conclusions and Recommendations of the Committee Against Torture, United States of America*, ¶136, U.N. Doc. [CAT/C/USA/CO/2](#) (July 25, 2006).

DETENTION CONDITIONS AND CHARACTERISTICS INFLUENCE WHETHER SOLITARY CONSTITUTES TORTURE OR CIDT IN A PARTICULAR INSTANCE.

Solitary confinement in pre-trial detention likely constitutes torture or CIDT.

Special Rapporteur

- “The use of solitary confinement as an extortion technique during pretrial detention should be abolished altogether.” Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Reply to Questions Raised by Member States during the Interactive Dialogue at the 66th Session of the UN General Assembly*, at 8 (Oct. 18, 2011) (by Juan Mendez).

Human Rights Committee (CCPR)

- “The Committee is concerned ... about detainees being held in solitary confinement also in pretrial detention.” Human Rights Comm., *Concluding observations on the fourth periodic report of the United States of America*, ¶ 20, U.N. Doc. [CCPR/C/USA/CO/4](#) (Apr. 23, 2014).
- “The State party should review its legislation and practice in relation to solitary confinement during pre trial detention, with a view to ensuring that such a measure is used only in exceptional circumstances and for a limited period of time.” Human Rights Comm., *Concluding Observations of the Human Rights Comm. on Denmark*, ¶ 11, U.N. Doc. [CCPR/C/DNK/CO/5](#) (Dec. 16, 2008).

Physical conditions of detention in solitary confinement can amount to torture or CIDT.

Special Rapporteur

- “Where the physical conditions of solitary confinement are so poor and the regime so strict that they lead to severe mental and physical pain or suffering of individuals who are subjected to the confinement, the conditions of solitary confinement amount to torture or to cruel and inhuman treatment as defined in articles 1 and 16 of the Convention, and constitute a breach of article 7

of the Covenant.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 74, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

- “...The Special Rapporteur is of the view that where the physical conditions and the prison regime of solitary confinement fail to respect the inherent dignity of the human person and cause severe mental and physical pain or suffering, it amounts to cruel, inhuman or degrading treatment or punishment.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 81, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

Prohibitions on Solitary for Certain Populations

Juveniles

Because solitary confinement *per se* amounts to torture or CIDT for juveniles, it must be prohibited in all cases.

- “In accordance with views of the Committee against Torture, the Subcommittee on Prevention of Torture and the Committee on the Rights of the Child, the Special Rapporteur is of the view that the imposition of solitary confinement, of any duration, on children constitutes cruel, inhuman or degrading treatment or punishment or even torture (see A/66/268, paras. 77 and 86, and A/68/295, para. 61).” *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶44, Human Rights Council, U.N. Doc. [A/HRC/28/68](#), (Mar. 5, 2015) (by Juan Mendez).
 - See also Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum, Mission to Tajikistan*, ¶ 73, U.N. Doc. [A/HRC/22/53/Add.1](#) (Jan. 28, 2013) (by Juan Mendez) (“The Special Rapporteur recalls that juvenile offenders, children or minors should not be subjected to solitary confinement of any duration at all.”).
- “With regard to conditions during detention, the Special Rapporteur calls upon all States: ...(d) To prohibit solitary confinement of any duration and for any purpose [for juveniles.]” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶186(d), Human Rights Council, U.N. Doc. [A/HRC/28/68](#), (Mar. 5, 2015) (by Juan Mendez).
- The Rapporteur emphasized that “the [Standard Minimum] Rules should explicitly prohibit the imposition of solitary confinement of any duration for juveniles [...] (see the... United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 67).” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 60, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).
- “...the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture*

and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶ 77, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

- “States should abolish the use of solitary confinement for juveniles Regarding disciplinary measures for juveniles, the Special Rapporteur recommends that States should take other measures that do not involve the use of solitary confinement. ...” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 86, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).
- United Nations **treaty bodies** consistently recommend that juvenile offenders, children, or minors (persons under the age of 18) should not be subjected to solitary confinement
 - “Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including ... closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned[.]” Comm. on the Rights of the Child, *General Comment No. 10 (2007), Children’s rights in juvenile justice*, ¶ 89, U.N. Doc. [CRC/C/GC/10](#) (Apr. 25, 2007).
 - Human Rights Comm. [CCPR], *Concluding Observations of the Human Rights Comm. on Portugal*, ¶ 16, U.N. Doc. [CCPR/CO/78/PRT](#) (Sept. 17, 2003).
 - In concluding observations from periodic country reports, the CRC has urged states to prohibit and abolish the use of solitary confinement against children:
 - Comm. on the Rights of the Child, *Concluding Observations on Denmark*, ¶¶ 40-44, U.N. Doc. [CRC/C/15/Add.151](#) (July 10, 2011); *see also* Comm. on the Rights of the Child, *Concluding Observations on Denmark*, ¶¶ 58-59, U.N. Doc. [CRC/C/DNK/CO/3](#) (Nov. 23, 2005).
 - Comm. on the Rights of the Child, *Concluding Observations on El Salvador*, ¶ 36(a), U.N. Doc. [CRC/C/15/Add.232](#) (June 30, 2004).
 - Comm. on the Rights of the Child, *Concluding Observations on Singapore*, ¶ 45(d), U.N. Doc. [CRC/C/15/Add.220](#) (Oct. 27, 2003).
 - “...Solitary confinement should not be used in the case of minors....” Subcomm. on Prevention of Torture [SPT], *Report on the visit of the Subcomm. on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Para.*, ¶ 185 and 295, U.N. Doc. [CAT/OP/PRY/1](#) (June 7, 2010).
 - “...persons under the age of 18 should not be subjected to solitary confinement; if applied, it should be limited to very exceptional cases and closely monitored. ...solitary confinement [should remain] in all cases a measure of limited duration and of last resort, in accordance with international standards.” Comm. against Torture [CAT], *Concluding Observations of the Committee against Torture on the Macao Special Administrative Region*, ¶ 8, U.N. Doc. [CAT/C/MAC/CO/419](#) (Jan. 2009).

On the record of the U.S.

- “Furthermore, [the Committee] is concerned about the use of solitary confinement...with respect to juveniles” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶20, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).

- “The [United States] should: ... (b) Prohibit the use of solitary confinement for juveniles...in prison[.]” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶20, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).
- “The Committee... expresses concern at the detention conditions of juveniles, including their placement ... in solitary confinement (arts. 11 and 16).” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶23, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).
- “The State party should take the necessary measures to ensure the proper functioning of the juvenile system in compliance with international standards. In particular, the State party should: ... (c) Prohibit the use of solitary confinement for juveniles[.]” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶23, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).
- “The Committee is concerned about the continued practice of holding persons deprived of their liberty, including juveniles..., in prolonged solitary confinement....” Human Rights Comm., *Concluding observations on the fourth periodic report of the United States of America*, ¶ 20, U.N. Doc. [CCPR/C/USA/CO/4](#) (Apr. 23, 2014).
- “The [United States] should ... abolish the practice in respect of anyone under the age of 18” Human Rights Comm., *Concluding observations on the fourth periodic report of the United States of America*, ¶ 20, U.N. Doc. [CCPR/C/USA/CO/4](#) (Apr. 23, 2014).

Women

Solitary confinement for pregnant women, women with infants, and breastfeeding mothers must be banned.

- “...the [Standard Minimum] Rules should explicitly prohibit the imposition of solitary confinement of any duration for...pregnant women, women with infants and breastfeeding mothers (see the United Nations Rules for the Treatment of Women Prisoners, rule 22,[...][]).” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 61, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).
- “Disciplinary segregation/solitary confinement should always be used as a last resort for all prisoners and for the shortest possible period of time. Prison administrators should demonstrate sensitivity to the distress caused by isolation on female prisoners, the particular risk of self-harm and suicide among women, and use this measure only in exceptional circumstances. Using disciplinary segregation as a punishment for attempted suicide or self-harm, apparently as a means of protection, is unacceptable. Other means of protection and treatment, under the supervision of a mental health specialist should be employed in such cases. (See also section 6.7, ‘suicide and self-harm prevention’.)” U.N. Office on Drugs & Crime, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, at 41, U.N. Sales No. [E.08.IV.4](#) (2008).

On the record of the U.S.

- “The [United States] should: ...(b) Prohibit the use of solitary confinement for...pregnant women, women with infants and breastfeeding mothers, in prison[.]” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶120, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).

LGBT Individuals

- “Lesbian, gay, bisexual and transgender individuals are often subjected to solitary confinement as a form of ‘protective custody’. Although segregation of such individuals may be necessary for their safety, lesbian, gay, bisexual and transgender status does not justify limitations on their social regime, e.g., access to recreation, reading materials, legal counsel or medical doctors.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 69, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

Persons with Disabilities / Persons with Mental Illness

Because solitary confinement *per se* amounts to torture or CIDT for persons with mental disabilities, it must be prohibited in all cases.

- “On the issue of *solitary confinement* it should never be used on a person with disability, in particular with a psychosocial disability or if there is danger for the person’s health in general.” Comm. on the Rights of Persons with Disabilities, *Observations on the Standard Minimum Rules for the Treatment of Prisoners*, ¶ 12 (Nov. 20, 2013).
- “...the [Standard Minimum] Rules should explicitly prohibit the imposition of solitary confinement of any duration for...persons with psychosocial disabilities or other disabilities or health conditions.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 61, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).
- “The mandate has previously declared that there can be no therapeutic justification for the use of solitary confinement and prolonged restraint of persons with disabilities in psychiatric institutions; both prolonged seclusion and restraint may constitute torture and ill-treatment (A/63/175, paras. 55-56).” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 63, U.N. Doc. [A/HRC/22/53](#) (Feb. 1, 2013) (by Juan Mendez).
- “The Special Rapporteur has addressed the issue of solitary confinement and stated that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment (A/66/268, paras. 67-68, 78). Moreover, any restraint on people with mental disabilities for even a short period of time may constitute torture and ill-treatment.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 63, U.N. Doc. [A/HRC/22/53](#) (Feb. 1, 2013) (by Juan Mendez).

- “It is essential that an absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement of people with psychological or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions. The environment of patient powerlessness and abusive treatment of persons with disabilities in which restraint and seclusion is used can lead to other non-consensual treatment, such as forced medication and electroshock procedures.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 63, U.N. Doc. [A/HRC/22/53](#) (Feb. 1, 2013) (by Juan Mendez).
- “The Special Rapporteur calls upon all States to: ... (b) Impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including...the use of restraint and solitary confinement, for both long- and shortterm application.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 89, U.N. Doc. [A/HRC/22/53](#) (Feb. 1, 2013) (by Juan Mendez).
- “...Forced labour, solitary confinement and experimental treatment administered without consent may violate international human rights law, including the right to health and the right to be free from torture, and cruel, inhuman or degrading treatment or punishment.” Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, [Submission to the Committee against Torture regarding drug control laws](#), at 2 (Oct. 19, 2012) (by Anand Grover).
- “The State party should take all necessary measures to ensure that detention conditions in all places of deprivation of liberty are in conformity with the Standard Minimum Rules for the Treatment of Prisoners. It should, inter alia:... (c) Limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review; and (d) Abolish the use of solitary confinement for persons with serious or acute mental illness.” Comm. against Torture [CAT], *Concluding Observations of the Committee against Torture on Canada*, ¶ 19, U.N. Doc. [CAT/C/CAN/CO/6](#), (June 25, 2012).
- “...Given their diminished mental capacity and that solitary confinement often results in severe exacerbation of a previously existing mental condition, the Special Rapporteur believes that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment and violates article 7 of the Covenant and article 16 of the Convention.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 78, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).
- “States should abolish the use of solitary confinement for ... persons with mental disabilities. ... In regard to the use of solitary confinement for persons with mental disabilities, the Special Rapporteur emphasizes that physical segregation of such persons may be necessary in some cases for their own safety, but solitary confinement should be strictly prohibited.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 86, U.N. Doc. [A/66/268](#) (Aug. 5, 2011) (by Juan Mendez).

- “...Solitary confinement should not be used in the case of ... the mentally disabled.” Subcomm. on Prevention of Torture [SPT], *Report on the visit of the Subcomm. on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Para.*, ¶ 185 and 295, U.N. Doc. [CAT/OP/PRY/1](#) (June 7, 2010).
- “...avoid using solitary confinement for prisoners with mental disabilities and never [...] use administrative segregation/isolation units to house prisoners with mental disabilities for long periods.” U.N. Office on Drugs & Crime, *Handbook on Prisoners with special needs*, at 41, U.N. Sales No. [E.09.IV.4](#) (2009).

On the record of the U.S.

- “Furthermore, [the Committee] is concerned about the use of solitary confinement...with respect to...individuals with mental disabilities.” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶20, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).
- “The [United States] should: ...(b) Prohibit the use of solitary confinement for...persons with intellectual or psychosocial disabilities...in prison[.]” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶20, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).
- “The Committee is concerned about the continued practice of holding persons deprived of their liberty, including...persons with mental disabilities under certain circumstances, in prolonged solitary confinement...” Human Rights Comm., *Concluding observations on the fourth periodic report of the United States of America*, ¶ 20, U.N. Doc. [CCPR/C/USA/CO/4](#) (Apr. 23, 2014).
- “The [United States] should ... abolish the practice in respect of...prisoners with serious mental illness.” Human Rights Comm., *Concluding observations on the fourth periodic report of the United States of America*, ¶ 20, U.N. Doc. [CCPR/C/USA/CO/4](#) (Apr. 23, 2014).

Procedural and medical safeguards must exist for persons with mental disabilities subjected to isolation or administrative segregation.

- “Detention conditions should never amount to creating increased suffering to inmates with disabilities. In no case should the disability entail added forms of suffering for persons under detention. To avoid this violation of law, priority should be given to the dignity of the individual and to the preservation of their autonomy in relation to the kind of disability he or she has.” Comm. on the Rights of Persons with Disabilities, *Observations on the Standard Minimum Rules for the Treatment of Prisoners*, ¶ 6 (Nov. 20, 2013).
- “...placing prisoners with mental disabilities in segregation units to punish them for their behaviour cannot act as a deterrent and can dramatically worsen the prisoners’ condition. Strategies need to be developed to reduce or eliminate the use of administrative segregation or any other potentially harmful punitive measures, by emphasizing preventative approaches.” U.N. Office on Drugs & Crime, *Handbook on Prisoners with special needs*, at 36, U.N. Sales No. [E.09.IV.4](#) (2009).

- “Disciplinary isolation should be used as a last resort, if at all, and for the shortest possible period of time. ...prison medical staff, including mental health staff, should have regular access to prisoners held in disciplinary segregation to monitor their physical and mental health condition, to provide any necessary treatment and to ensure that they are immediately removed, if necessary.” U.N. Office on Drugs & Crime, Handbook on Prisoners with special needs, at 37, U.N. Sales No. [E.09.IV.4](#) (2009).
- “The use of segregation units and any form of restraints, including why and how the decisions to segregate or use restraints were taken and the period of their use should be recorded and be subject to reviews.” U.N. Office on Drugs & Crime, Handbook on Prisoners with special needs, at 38, U.N. Sales No. [E.09.IV.4](#) (2009).

Death Row Inmates

- “No prisoner, including those serving life sentence [*sic*] and prisoners on death row, shall be held in solitary confinement merely because of the gravity of the crime.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 61, U.N. Doc. [A/68/295](#) (Aug. 9, 2013) (by Juan Mendez).
- “There is no justification to detain death row prisoners in prolonged solitary confinement or to segregate them as a matter of routine. They should be assessed as all other prisoners and accommodated according to the risk they pose to others, with access to activities in prisons, in line with their classification.” U.N. Office on Drugs & Crime, Handbook on Prisoners with special needs, at 171, U.N. Sales No. [E.09.IV.4](#) (2009).
- “[The Committee] is also concerned that death row inmates are kept in solitary confinement, often for protracted periods, and are executed without prior notice before the day of execution and, in some cases, at an advanced age or despite the fact that they have mental disabilities.” Human Rights Comm. [CCPR], *Concluding Observations of the Human Rights Committee on Japan*, ¶ 16, U.N. Doc. [CCPR/C/JPN/CO/5](#) (Dec. 18, 2008).

Individuals in Immigration Detention / Migrants

All of these recommendations and observations were written about the United States.

- “...While acknowledging the steps taken by the State party to reform the immigration detention system, the Committee remains concerned by reports of substandard conditions of detention in immigration facilities and the use of solitary confinement.” Comm. against Torture [CAT], *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶19, U.N. Doc. [CAT/C/USA/CO/3-5](#) (Dec. 19, 2014).
- “The Special Rapporteur reiterates that the practice of solitary confinement can amount to cruel, inhuman or degrading treatment or torture, due to the punitive nature of the punishment and the pain and suffering it may inflict on the accused. The Special Rapporteur further draws the Government's attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that ‘efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.’ In the absence of contrary evidence, the Special Rapporteur determines that the victims’ rights under the UN

Convention against Torture have been violated, and calls on the Government of the United States to undertake a prompt, independent and effective investigation of these facts, leading to prosecution and punishment of the responsible parties, and to provide redress to the victims.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum: Observations on communications transmitted to Governments and replies received*, ¶179, U.N. Doc. [A/HRC/22/53/Add.4](#) (March 11, 2013) (by Juan Mendez).

- “The Special Rapporteur concludes that imposing seriously punitive conditions of detention on someone who has not been found guilty of any crime is a violation of his right to physical and psychological integrity as well as of his presumption of innocence.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum: Observations on communications transmitted to Governments and replies received*, ¶ 170, U.N. Doc. [A/HRC/19/61/Add.4](#) (Feb. 29, 2012)(by Juan Mendez).
- “The Special Rapporteur calls on the Government to undertake a prompt and impartial investigation on the conditions of detention, solitary confinement and ill-treatment of the immigrants, prosecute and punish those responsible, and ensure that the victims obtain redress, including fair and adequate compensation, and as full rehabilitation as possible.” Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum: Observations on communications transmitted to Governments and replies received*, ¶ 172, U.N. Doc. [A/HRC/19/61/Add.4](#) (Feb. 29, 2012)(by Juan Mendez).

Regional Bodies and Instruments

INTER-AMERICAN SYSTEM

While the United States is a member of the Organization of American States, it has not signed or ratified the American Convention on Human Rights and is not bound by the decisions of the Inter-American Court. The U.S. does participate in the actions of the Inter-American Commission on Human Rights.

Relevant Treaties and Documents

- [Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas](#) (2008)
 - **Solitary confinement should be strictly prohibited in punishment cells:**
“The law shall prohibit solitary confinement in punishment cells. (...) Solitary confinement shall only be permitted as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution’s internal security, and to protect fundamental rights, such as the right to life and integrity of persons deprived of liberty or the personnel. In all cases, the disposition of solitary confinement shall be authorized by the competent authority and shall be subject to judicial control, since its prolonged, inappropriate or unnecessary use would amount to acts of torture, or cruel, inhuman, or degrading treatment or punishment.” Inter-Am. Comm’n H. R., *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XXII(3), [OEA/Ser.L/V/II.131. Doc. 38](#) (Mar. 13, 2008).

- **Women and solitary confinement:** “It shall be strictly forbidden to impose solitary confinement to pregnant women; mothers who are living with their children in the place of deprivation of liberty; and children deprived of liberty.” Inter-Am. Comm’n H. R., *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XXII(3), [OEA/Ser.L/V/II.131. Doc. 38](#) (Mar. 13, 2008).
- **Persons with mental disabilities and solitary confinement:** “In cases of involuntary seclusion of persons with mental disabilities it shall be ensured that the measure is authorized by a competent physician; carried out in accordance with officially approved procedures; recorded in the patient’s individual medical record; and immediately notified to their family or legal representatives. Persons with mental disabilities who are secluded shall be under the care and supervision of qualified medical personnel.” Inter-Am. Comm’n H. R., *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XXII(3), [OEA/Ser.L/V/II.131. Doc. 38](#) (Mar. 13, 2008).
- [The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities](#) (1999)
NEITHER signed nor ratified by U.S. [persuasive authority]
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, June 7, 1999, AG/Res. 1608 (*entered into force* Sept. 14, 2001).
- [Inter-American Convention on Forced Disappearance of Persons](#) (1994)
NEITHER signed nor ratified by U.S. [persuasive authority]
Inter-American Convention on Forced Disappearance of Persons, June 9, 1994, 33 I.L.M. 1429 (*entered into force* Mar. 28, 1996).
- [Inter-American Convention to Prevent and Punish Torture](#) (1985)
NEITHER signed nor ratified by U.S. [persuasive authority]
Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, O.A.S.T.S. No. 67 (*entered into force* Feb. 28, 1987), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82 doc. 6 rev.1 at 83, 25 I.L.M. 519 (1992).
- [American Convention on Human Rights \(“Pact of San José, Costa Rica”\)](#) (1969)
NOT ratified by U.S. [persuasive authority] (the U.S. signed in 1977 but has not ratified)
American Convention on Human Rights, June 1, 1977, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (*entered into force* July 18, 1978), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).
 - ART. 5(1) (Right to Humane Treatment): “[e]very person has the right to have his physical, mental, and moral integrity respected.”
- [American Declaration of the Rights and Duties of Man](#) (1948)
O.A.S. Res. XXX, *adopted by the Ninth International Conference of American States* (1948), *reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).
 - Article XXV: “every individual who has been deprived of his liberty . . . has the right to humane treatment during the time he is in custody.”
 - Article XXVI: every prisoner has the right “to be free from cruel, infamous, or unusual punishment.”

Inter-American Commission on Human Rights

Due Process and Medical Rights around Solitary Confinement

- “...under no circumstances may the solitary confinement of an individual be left exclusively in the hands of the authorities in charge of the centers of deprivation of liberty without proper

judicial oversight.” Inter-Am. Comm’n H.R., *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 412, [OEA/Ser.L/V/II. Doc. 64](#) (Dec. 31, 2011).

- “...prison authorities must immediately report the use of [solitary confinement] to the court under whose orders the inmate is serving. The competent judicial authority must also be empowered to request additional information from prison authorities and to overturn the measure should it believe that there are justifiable reasons to do so.” Inter-Am. Comm’n H.R., *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 412, [OEA/Ser.L/V/II. Doc. 64](#) (Dec. 31, 2011).
- “...the health of the persons who are held in solitary confinement must be monitored on a regular basis by medical staff, particularly for purposes of suicide prevention (on this topic, also see the Chapter III section E of this report). When health care staff deems the individual unfit for solitary confinement or that the use of this method must be stopped, an expert opinion must be submitted to the competent authorities.” Inter-Am. Comm’n H.R., *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 417, [OEA/Ser.L/V/II. Doc. 64](#) (Dec. 31, 2011).
- “Likewise, health care staff at centers of deprivation of liberty should periodically inspect the cells and the places used for solitary confinement of inmates and issue recommendations to the appropriate authorities. Health care staff must act independently and autonomously in performing these monitoring duties, so that the inmates do not lose the trust that they have placed in them and the proper doctor-patient relationship remains intact. The IACHR finds that these medical supervisory obligations stem directly from the duty of the State to ensure inmates’ right to life and humane treatment.” Inter-Am. Comm’n H.R., *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 418, [OEA/Ser.L/V/II. Doc. 64](#) (Dec. 31, 2011).

Prolonged or indefinite solitary confinement amounts to torture or CIDT and must be banned.

- “...the prohibition of torture and cruel, inhuman, and degrading treatment may not be abrogated and is universal. Accordingly, the OAS Member States must adopt strong, concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances.” Press Release, Inter-Am. Comm’n H.R., *IACHR Expresses Concern over Excessive Use of Solitary Confinement in the United States*, [No. 51/13](#) (July 18, 2013).
- “...based on the fact that the prohibition of torture and cruel, inhuman, and degrading treatment may not be abrogated and is universal, the OAS Member States must adopt strong, concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances, and stresses that this practice may never constitute a legitimate instrument in the hands of the State.” Press Release, Annex, Inter-Am. Comm’n H.R., *Annex to the Press Release Issued at the Close of the 147th Session*, [No. 23A/13](#) (April 5, 2013).
- “...it has been widely established in international human rights law that solitary confinement for extended periods of time constitutes at the very least a form of cruel, inhuman and degrading treatment; as does the uncertainty of the duration of the same. In fact, solitary confinement can be utilized as a means of torture...” Inter-Am. Comm’n H.R., *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 413, [OEA/Ser.L/V/II. Doc. 64](#) (Dec. 31, 2011).

Solitary confinement must have limited use, for the shortest possible time, only in exceptional circumstances, and with appropriate procedural and medical safeguards in place.

- “...solitary confinement should only be used in exceptional circumstances, for the shortest period possible and only as a measure of last resort. Furthermore, its application must be subject to strict judicial oversight, take place in cells that meet the minimum conditions according to the international standards, and inmates must undergo strict medical supervision. The Commission subscribes to the opinion of the UN Rapporteur on Torture that beyond a period of 15 days, the harmful psychological effects of isolation can become irreversible.” Press Release, Inter-Am. Comm’n H.R., *IACHR Expresses Concern over Excessive Use of Solitary Confinement in the United States*, [No. 51/13](#) (July 18, 2013).
- “The isolation or solitary confinement of a person deprived of liberty shall only be permitted as a measure that is strictly limited in time, as a last resort, and in accordance with a series of safeguards and guarantees set down in the applicable international instruments.” Inter-Am. Comm’n H.R., *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 319, [OEA/Ser.L/V/II. Doc. 64](#) (Dec. 31, 2011).
- “In essence, solitary confinement should only be used on an exceptional basis, for the shortest amount of time possible and only as a measure of last resort.” Inter-Am. Comm’n H.R., *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 411, [OEA/Ser.L/V/II. Doc. 64](#) (Dec. 31, 2011).
- “The Commission stresses that solitary confinement in a cell as a disciplinary measure should not be used in circumstances that amount to a form of cruel, inhuman and degrading treatment. This means inter alia that the State must ensure that the conditions of the cells used for solitary confinement meet the minimum standards for the accommodations of the inmates being punished. The essential thing is that conditions of the cells used for solitary confinement must adhere to the same international standards for spaces housing the general population of inmates. Not only is there no valid justification for conditions in these punishment cells to be substandard, but such conditions also are tantamount to the improper harshening of the sentence and jeopardize the very health of the person held in solitary confinement.” Inter-Am. Comm’n H.R., *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 414, [OEA/Ser.L/V/II. Doc. 64](#) (Dec. 31, 2011).

For certain populations

- **Juveniles:**
 - “In the hearing on human rights and solitary confinement in the Americas, Juan Méndez, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, recalled that international law prohibits the use of solitary confinement on children, as by definition it constitutes cruel, inhuman, or degrading treatment. The Rapporteur presented very disturbing information about how this measure is applied to children in different countries of the region to ‘soften them up,’ ‘protect’ them, or provide ‘corrective discipline.’ The IACHR urges the States to absolutely prohibit the placement of children in solitary confinement.” Press Release, Annex, Inter-Am. Comm’n H.R., *Annex to the Press Release Issued at the Close of the 147th Session*, [No. 23A/13](#) (April 5, 2013).

- “Isolation or solitary confinement shall be strictly prohibited in the case of children and adolescents deprived of their liberty. The mere application of measures of this type to anyone under the age of 18 in itself constitutes a form of cruel, inhuman, or degrading treatment. The segregation and isolation of children or adolescents constitutes an additional risk factor for acts of suicide.” Inter-Am. Comm’n H.R., *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 320, [OEA/Ser.L/V/II. Doc. 64](#) (Dec. 31, 2011).
- **Death row inmates:** “...persons deprived of liberty who are sentenced to death should not be subjected to harsher conditions of imprisonment than those of the rest of the prison population just because of their status. In particular, they should not be subjected to segregation or solitary confinement as a regular condition of imprisonment, but solely as a disciplinary punishment in those instances and under the same conditions in which these measures apply to the rest of the inmates.” Inter-Am. Comm’n H.R., *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, ¶ 517, [OEA/Ser.L/V/II. Doc. 64](#) (Dec. 31, 2011).
- **Persons with mental disabilities:**
 - “Additionally, international human rights law establishes as a standard that the use of solitary confinement should be absolutely prohibited in the following circumstances: for children under the age of 18, for persons with mental disabilities, and for death row and life-sentenced prisoners by virtue of their sentence.” Press Release, Inter-Am. Comm’n H.R., *IACHR Expresses Concern over Excessive Use of Solitary Confinement in the United States*, [No. 51/13](#) (July 18, 2013).
 - “...the solitary confinement to which Mr. Congo was subjected constitutes inhuman and degrading treatment in the terms of Article 5(2) of the American Convention. This violation is aggravated by the fact that he was left in isolation unable to satisfy his basic needs. Consequently, the Ecuadorian State violated the right of Víctor Rosario Congo to ‘be treated with respect for the inherent dignity of the human person.’” [Victor Rosario Congo v. Ecuador](#), Case 11.427, Inter-Am. Comm’n H.R., Report No. 63/99, OEA/Ser.L/V/II.95, doc. 7 rev. ¶ 475 (1998).

Inter-American Court of Human Rights Cases:

- [Montero Aranguren et al. \(Detention Center of Catia\) v. Venezuela](#), Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 150, ¶ 94 (July 5, 2006) (“...solitary confinement cells must be used as disciplinary measures or for the protection of persons only during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality. Such places must fulfill the minimum standards for proper accommodation [*sic*], sufficient space and adequate ventilation, and they can only be used if a physician certifies that that the prisoner is fit to sustain it.”).
- [Cantoral-Benavides v. Peru](#), Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶¶ 62 and 104 (Aug. 18, 2000) (holding that the physical conditions of solitary confinement, when coupled with other forms of physical and psychological aggression, may constitute torture).
- [Loayza-Tamayo v. Peru](#), Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 58 (Sept. 17, 1997) (“isolation in a small cell, without ventilation or natural light, ... [and] restriction of visiting rights ... constitute forms of cruel, inhuman and degrading treatment”).
- [Velázquez-Rodríguez v. Honduras](#), Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 156 (July 29, 1988) (“prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.”).

EUROPEAN SYSTEM

Relevant Treaties and Documents

- [\(Revised\) European Prison Rules of 2006](#)
Council of Europe, Comm. of Ministers, *Recommendation of the Committee of Ministers to member states on the European Prison Rules*, Rec(2006)2 (Jan. 11, 2006).
 - 43.2 “The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.”
 - 43.3 “The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.”
 - 60.5 “Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible.”
- [European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) (1987)
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Nov. 26, 1987, ETS No. 126, *amended by* ETS No. 151 & 152.
- [Convention for the Protection of Human Rights and Fundamental Freedoms](#) (European Convention on Human Rights) (1950)
European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, CETS No. 005, *amended by* ETS No. 44, 45, 55, 118, 140.

European Court of Human Rights Cases:

- *Rzakhstanov v. Azerbaijan*, App. No. [4242/07](#), Eur. Ct. H.R. (July 4, 2013), at ¶ 73 (stating that the Court “wishes to reiterate that prolonged solitary confinement is undesirable”).
- *X v. Turkey*, App. No. [24626/09](#), Eur. Ct. H.R. (Oct. 9, 2012), at ¶ 36 and 45 (holding that the conditions of solitary confinement, which were “capable of causing [the applicant] both mental and physical suffering and feelings of profound violation of his human dignity” constituted inhuman and degrading treatment).
- *Onoufriou v. Cyprus*, App. No. [24407/04](#), Eur. Ct. H.R. (Jan. 7, 2010), at ¶ 80 (holding that the prolonged total prohibition of visitors causes suffering “clearly exceeding the unavoidable level inherent in detention”).
- *A.B. v. Russia*, App. No. [1439/06](#), Eur. Ct. H.R. (Oct. 14, 2010), at ¶ 108 (holding that, in circumstances of prolonged solitary confinement, the justification for solitary confinement must be explained to the individual and the justification must be “increasingly detailed and compelling” as time goes on).
- *Ramírez Sanchez v. France*, [2006-IX Eur. Ct. H.R. 171](#), 222 at ¶ 145 (“...solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely. Moreover, it is essential that the prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement.”)
- *Mathew v. Netherlands*, [2005-IX Eur. Ct. H.R. 57](#), 99-100 at ¶ 199 (“The Court reiterates that conditions of detention may sometimes amount to inhuman or degrading treatment (see *Dougoz v. Greece*, no. [40907/98](#), § 46, ECHR 2001-II). It agrees with the CPT that even for difficult and dangerous prisoners, periods of solitary confinement should be as short as possible (see paragraph 128 above). It has found in the past that complete sensory isolation coupled with total social isolation can destroy the

personality and constitute a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. However, the prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see, among other authorities, *Öcalan v. Turkey* [GC], no. [46221/99](#), § 191, ECHR 2005-IV).”)

- *Ilaşcu and others v. Moldova and Russia*, [2004-VII Eur. Ct. H.R. 179](#), 288 at ¶ 432 (“complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason”).
 - *See also Iorgov v. Bulgaria*, App. No. [40653/98](#), Eur. Ct. H.R. (Mar. 11, 2004), at ¶ 84 (finding a violation of Article 3 of the European Convention where the state party did not provide a security justification for the use of solitary confinement).
 - *See also G.B. v. Bulgaria*, App. No. [42346/98](#), Eur. Ct. H.R. (Mar. 11, 2004), at ¶ 85 (holding that where the damaging effects of solitary confinement on a particular individual are known, the regime cannot continue).
- *Keenan v. the United Kingdom*, [2001-III Eur. Ct. H.R. 93](#), 132-33 at ¶ 113 (“While it is true that the severity of suffering, physical or mental, attributable to a particular measure has been a significant consideration in many of the cases decided by the Court under Article 3, there are circumstances where proof of the actual effect on the person may not be a major factor. ...Similarly, treatment of a mentally ill person may be incompatible with the standards imposed by Article 3 in the protection of fundamental human dignity, even though that person may not be able, or capable of, pointing to any specific ill-effects.”).

Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

- For an exhaustive analysis of solitary confinement: *see generally* European Comm. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *21st General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, at 39-50, [CPT/Inf \(2011\) 28](#) (Nov. 10, 2011).
- “The principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary confinement-type regime, which is a step that can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.” European Comm. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Finnish Government on the Visit to Finland*, ¶ 67, [CPT/Inf \(93\) 8](#) (Apr. 1, 1993).
 - *See also* European Comm. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Icelandic Government on the Visit to Iceland*, ¶ 59, [CPT/Inf \(94\) 8](#) (June 28, 1994).
- “It is generally acknowledged that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long-term, to have damaging effects resulting in deterioration of mental faculties and social abilities.” European Comm. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Finnish Government on the Visit to Finland*, ¶ 73, [CPT/Inf \(93\) 8](#) (Apr. 1, 1993).
- “...any prisoner placed in solitary confinement or whose solitary confinement has been renewed to be informed in writing of the reasons for the decision, unless compelling security requirements dictate otherwise, and to be given an opportunity to present his views on the matter to the relevant authority before any final decision on placement in, or renewal of, solitary confinement is taken.” European Comm. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Finnish Government on the Visit to Finland*, ¶ 74, [CPT/Inf \(93\) 8](#) (Apr. 1, 1993).

- “...the position of a prisoner held in solitary confinement for an extended period to be subject to a full review (including a psychiatric assessment) at least every three months.” European Comm. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Finnish Government on the Visit to Finland*, ¶ 74, [CPT/Inf \(93\) 8](#) (Apr. 1, 1993).

AFRICAN SYSTEM

Relevant Treaties and Documents

- [Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa](#) (2003)
Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, DOC/OS(XXX)247, reprinted in 12 Int'l Hum. Rts. Rep. 1180 (2005).
 - Art. 7 – Right to Humane Treatment
- [African Charter on the Rights and Welfare of the Child](#) (1990)
African Charter on the Rights and Welfare of the Child, July 1990, OAU Doc. CAB/LEG/24.9/49 (*entered into force* Nov. 29, 1999).
 - Art. 5 – Survival and Development
 - Art. 17 – Administration of Juvenile Justice
- [African Charter on Human and Peoples’ Rights](#) (1981)
African Charter on Human and Peoples’ Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (*entered into force* Oct. 21, 1986).
 - Art. 5: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

African Commission on Human and Peoples’ Rights

- Created the [Special Rapporteur on Prisons and Conditions of Detention in Africa \(SRP\)](#) in 1996, who has commented on various regimes of solitary confinement in country reports
- “Ensure that the use of solitary confinement is restricted, and that methods to anticipate crisis situations and de-escalate them without the need to resort to seclusion, restraint or forced treatment are developed and ingrained among law enforcement personnel.” African Comm’n on Human and Peoples’ Rights, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines)*, ¶ 25(f), (May 12, 2014).
- *Krishna Achuthan and Amnesty International (on behalf of Aleke Banda and Orton and Vera Chirwa) v. Malawi*, African Comm’n on Human and Peoples’ Rights, [Commc’ns Nos. 64/92, 68/92 and 78/92](#), ¶ 7 (1995) (holding that “excessive solitary confinement” violated article 5 of the African Charter).
- *Media Rights Agenda (on behalf of Niran Malaolu) v. Nigeria*, African Comm’n on Human and Peoples’ Rights, [Commc’n No. 224/98](#), ¶¶ 70 and 72 (2000) (holding that the victim’s right to respect and dignity and his right to freedom from inhuman and degrading treatment under article 5 were violated when, in addition to having his legs and hands chained to the floor day and night and being refused permission to take a bath during his 147 days of detention, he had also been given food only twice daily and been kept in solitary confinement prior to his trial, in a cell meant for criminals).

APPENDIX I: Authority in U.S. Courts

What authority is afforded to instruments and bodies cited in this research guide in U.S. courts?

While advocates argue international law should be afforded binding legal authority in domestic courts in the United States, courts are frequently reticent to agree.¹ Nevertheless, even when a norm of international treaty law does not rise to a right or obligation which is directly enforceable in domestic courts, international law can serve as compelling persuasive authority: a tool of interpretation, a frame of reference, of empirical value, or conveying a community standard.²

There are three primary sources of international law, generally thought to be ranked in the following order: international treaties and conventions, state practice as it informs customary international law (international custom), and judicial decisions and writings. Within these three sources of law, certain obligations or norms may have the status of *jus cogens* or peremptory norms, which are principles of international law considered so fundamental that they override all other sources of law and cannot be derogated from, even in emergencies.

A. TREATIES

According to Article II of the U.S. Constitution, “Treaties made, or which shall be made, under the Authority of the United States, shall be supreme Law of the Land.”³ Therefore, when the U.S. has both signed and ratified a treaty, it should be legally enforceable as binding authority. However, when a treaty is deemed “non-self-executing” by the Executive Branch, Congress, or judicial interpretation, it requires further implementation through federal legislation to confer legal enforceability.⁴ Implementing legislation may enable only certain provisions of a treaty to be enforced. For example, the Convention against Torture was partially implemented through the Torture Victim Protection Act, which established civil liability for individuals who commit torture.⁵

The U.S. has made a habit of including Reservations, Understandings, and Declarations (RUDs) during treaty ratification which claim that the substantive provisions of treaties are non-self-executing, preventing them from obtaining force of law in U.S. courts without codification by Congress.⁶ Moreover, in dicta in a footnote in *Medellin v. Texas*, the U.S. Supreme Court wrote, “Even when treaties are self-executing in the sense that they create federal law, the background presumption is that international agreements, even those directly benefiting private persons, generally do not create private rights or provide for a private cause of action in domestic courts.”⁷ Nevertheless, treaties may still be subject to “interpretive enforcement,” a canon of statutory

¹ See e.g. Oona A. Hathaway et. al., *International Law at Home: Enforcing Treaties in U.S. Courts*, 37 Yale J. Int'l L. 51 (2012); see also John F. Coyle, *The Case for Writing International Law into the U.S. Code*, 56 BCL. Rev. 433 (2015); see also Harold Hongju Koh, *Is International Law Really State Law?*, 111 Harv. L. Rev. 1824 (1998).

² Hathway et. al. add the notions of “indirect enforcement” and “defensive enforcement” as means to enforce treaty rights and obligations in U.S. courts. Hathaway et. al., *supra* note 1, at 76-90.

³ U.S. Const. art. VI, cl. 2.

⁴ Azadeh Shahshahani & Ayah Natasha El-Sergany, *Challenging the Practice of Solitary Confinement in Immigration Detention in Georgia and Beyond*, 16 CUNY L. Rev. 243, 262-64 (2013). See also David Sloss, *The Domestication of International Human Rights: Non-Self-Executing Declarations and Human Rights Treaties*, 24 Yale J. Int'l L. 129, 144-52 (1999).

⁵ Torture Victim Protection Act of 1991 § 2(a), 28 U.S.C. § 1350 note (2006). See also Hathaway et. al., *supra* note 1, at 106.

⁶ Sloss, *supra* note 4, at 152-89. See also David P. Stewart, *Symposium: The Ratification of the International Covenant on Civil and Political Rights*, 42 DePaul L. Rev. 1183, 1188-1205 (1993). See also Mortimer Sellers, *Chapter 2 Universal Human Rights in the Law of the United States*, 16 IUS Gentium 13, 26 (2012).

⁷ *Medellín v. Texas*, 552 U.S. 491, 506 n.3 (2008); see also Hathaway et. al., *supra* note 1, at 70.

interpretation that helps to resolve ambiguity and seeks consistency between U.S. statutes and international law.⁸

Given this backdrop, the treaties with the greatest degree of authority (closest to binding) are those that have been signed and ratified, even though the U.S. has appended RUDs.⁹ Some of these treaties include provisions – like the prohibition on torture and cruel, inhuman or degrading treatment – considered peremptory norms. Those specific provisions should therefore be afforded more weight. Treaties that have been signed but not ratified carry only persuasive authority, but may nonetheless convey community standards, demonstrate moral consensus, or serve as a frame of reference. Those which have been neither signed nor ratified may be used as evidence of community standards or, in some cases, international customary law, but carry no legal precedence.

Signed and ratified, but with RUDs - compelling persuasive authority

- International Covenant on Civil and Political Rights (ICCPR) – RUDs declare the substantive provisions to be non-self-executing
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) – RUDs declare the substantive provisions to be non-self-executing
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) – RUDs declare the substantive provisions to be non-self-executing

Signed but NOT ratified - persuasive authority [customary law]

- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention on the Rights of the Child (CRC)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

NEITHER signed nor ratified – persuasive authority

- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)
- Optional Protocol to the International Covenant on Civil and Political Rights
- Second Optional Protocol to the International Covenant on Civil and Political Rights

NON-BINDING INSTRUMENTS - persuasive authority [customary law]

The Mandela Rules, other General Assembly Resolutions, and the Universal Declaration of Human Rights (UDHR) all carry persuasive authority.¹⁰ It may nonetheless be viable to argue that these documents provide evidence of community standards or international customary law, which may make them more persuasive before a U.S. court.¹¹

B. TREATY BODIES

Every treaty has a monitoring body responsible for reviewing compliance by treaty parties through country reports and, in some cases, adjudicating individual complaints by petitioners. The decisions and reports from treaty bodies carry persuasive authority, although those which stem

⁸ See e.g. Hathaway et. al., *supra* note 1, at 87-88.

⁹ See e.g. Elizabeth Vasiliades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, 21 Am. U. Int'l L. Rev. 71, 83-85 (2005).

¹⁰ Nan D. Miller, *International Protection of the Rights of Prisoners: Is Solitary Confinement in the United States A Violation of International Standards?*, 26 Cal. W. Int'l L.J. 139, 147-49 (1995).

¹¹ “American courts and American public officials have usually weighed foreign evidence of the requirements of universal human rights according to the legitimacy, importance, and probative value of the treaty, judicial decision, custom, or academic opinion advanced to substantiate the suggested universal standard.” Sellers, *supra* note 6, at 22.

from treaties the U.S. has both signed and ratified, and their writings about practices in the U.S. specifically, likely carry greater influence.

Oversight bodies for treaties both signed & ratified - compelling persuasive authority

- Human Rights Committee (CCPR) – monitoring body for the ICCPR
 - The U.S. is not subject to the individual complaints mechanism because the U.S. did not sign or ratify the relevant optional protocol.
- Committee Against Torture (CAT) – monitoring body for the CAT

Oversight bodies for other treaties – persuasive authority [customary law]

- Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) – treaty body for OPCAT
- Committee on the Rights of the Child (CRC) – treaty body for the CRC
- Committee on the Rights of Persons with Disabilities (CRPD) – treaty body for the CRPD
- Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) – treaty body for CEDAW

C. UN AGENCIES

Decisions and reports by charter-based bodies like the **UN Human Rights Council** and agencies like the **UN Office on Drugs and Crime** again constitute **persuasive authority**. Among the mechanisms of the Human Rights Council are the Universal Periodic Review (UPR) – a mandatory State-driven review of each member State’s human rights record that occurs every five years – and Special Rapporteurs – independent experts on particular topics or for particular countries that report to the Human Rights Council and the General Assembly on human rights.

D. INTER-AMERICAN SYSTEM

While the United States is a member of the regional Organization of American States, which governs the documents and bodies listed below, the U.S. has not signed or ratified the American Convention on Human Rights and is therefore not bound by the decisions of the Inter-American Court.¹² The U.S. does participate in the actions of the Inter-American Commission on Human Rights. Having ratified the American Declaration of the Rights and Duties of Man, the U.S. is bound to uphold its provision, and the Commission is competent to receive petitions alleging violations of that instrument by the U.S. by virtue of its ratification of the OAS Charter on June 19, 1951.

- **Inter-American Commission - compelling persuasive authority**
- **American Declaration of the Rights and Duties of Man - compelling persuasive authority**
- **Inter-American Court – persuasive authority**
- **American Convention on Human Rights – persuasive authority**
other regional documents the U.S. has signed and/or ratified may carry more weight

E. OTHER REGIONAL SYSTEMS

Because the United States cannot become a member of bodies or party to documents in the other regional systems, any reports, treaties, and judicial writings from those systems carry only **persuasive authority**. Nevertheless, these documents and decisions may operate as comparative law, serving as a frame of reference or, in some cases, conveying a community standard.

¹² Vasiliades, *supra* note 9, at 82-83.