



Statement by Amnesty International USA

Prepared for the Hearing on Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences, before the U.S. Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

June 18, 2012

Chairman Durbin, Ranking Member Graham, and Members of the Subcommittee:

Amnesty International is a Nobel Peace Prize-winning grassroots activist organization with more than 3 million supporters, activists and volunteers in more than 150 countries campaigning for human rights worldwide. The organization investigates and exposes abuses, educates and mobilizes the public, and works to protect people wherever justice, freedom, truth and dignity are denied. Amnesty International USA is the largest country section of the organization, with nearly 250,000 members who work for human rights independently, through national online networks, or with high school, college or community groups.

Amnesty International USA (AIUSA) welcomes this opportunity to address the U.S. Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights on the issue of solitary confinement in the United States.¹ Amnesty International has for years monitored maximum security conditions in the U.S., including in Arizona, California, Colorado, Illinois, New York, Virginia and Texas. Last November, Amnesty International toured the Security Housing Units in three prisons in California, where in July and October of last year, thousands of prisoners went on hunger strike to protest conditions in the state's

¹In a recent report on this issue, reviewing the practice internationally, the UN Special Rapporteur on Torture defined solitary confinement as the "physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day". Amnesty International uses the term "solitary confinement" and "isolation" interchangeably to describe circumstances in which prisoners are confined to small, usually single (but sometimes double) cells for 22 hours or more a day, with no group activities and only limited contact. States use a variety of terms to describe their "super-maximum" isolation units, including "Special Management Units" and "Security Housing Units" – all such units are covered by the concerns outlined in this statement.

Amnesty International is a Nobel Peace Prize-winning grassroots organization with more than 3 million supporters, activists and volunteers campaigning for human rights worldwide. For information, contact Adotei Akwei at 202-544-0200 or aakwei@aiusa.org, or visit www.amnestyusa.org.



Security Housing Units.² Last month, Amnesty released a report on maximum security prisons in Arizona, entitled *USA: Cruel isolation – Amnesty International’s concerns about conditions in Arizona maximum security prisons*.³ Attached as an appendix is a sampling of Amnesty International’s concerns regarding maximum security isolation in prisons in Arizona, California and Illinois, as well as our concerns about pre-trial prisoners in U.S. federal custody.

The U.S. stands virtually alone in the world in incarcerating thousands of prisoners in long-term or indefinite solitary confinement.⁴ More than 40 states are believed to operate “super-maximum security” units, collectively housing at least 25,000 prisoners.⁵ This number does not include the many thousands of other prisoners serving shorter periods in punishment or administrative segregation cells. In a few states, such as California, prisoners have spent decades in indefinite isolation.

While prison authorities have always been able to segregate prisoners for their own protection or as a penalty for disciplinary offenses, super-maximum security facilities differ in that they are designed to isolate prisoners long-term as an administrative control measure. It is a management tool that is increasingly under question, by human rights experts and others, both for the inhumanity of the conditions of confinement as well as the effectiveness of such systems.

Amnesty International believes that holding any individual in long-term isolation absent a severe, continuing threat that cannot be contained by alternative means, is disproportionately harsh. International and regional human rights organizations and experts have called on states to limit the use of solitary confinement and impose it only in

²“USA: Amnesty International calls for urgent reforms to California security housing units as prison hunger strike resumes”, 4 October 2011: <http://www.amnesty.org/en/library/asset/AMR51/085/2011/en/01f5bb3c-3076-46db-b472-61cdb614e724/amr510852011en.pdf>

³ <http://www.amnesty.org/en/library/asset/AMR51/023/2012/en/6a0fe437-9362-47fd-af51-7b7c4cda05bf/amr510232012en.pdf>

⁴<http://www.amnesty.org/en/news/isolated-and-dehumanised-inmates-arizona-s-isolation-units-2012-04-03>

⁵ Daniel P. Mears, “Evaluating the Effectiveness of Supermax Prisons,” Urban Institute Justice Policy Center, March 2006, p. ii, available at http://www.urban.org/UploadedPDF/411326_supermax_prisons.pdf



exceptional circumstances, for as short a time as possible.⁶ The American Bar Association (ABA) in its standards on the treatment of prisoners⁷ has stated that segregation for more than one year should be imposed only if the prisoner poses a “continuing, serious threat” (23-2.7), and that all prisoners in segregated housing should be provided with “meaningful forms of mental, physical and social stimulation”, including, where possible, more out-of-cell time and opportunities to exercise in the presence of other prisoners (23-3.8). The ABA standards also state that segregation in “protective custody” should take place “in the least restrictive setting possible (23-5.5).

AI has reviewed conditions in isolation facilities across the United States, and considers many of them to fall far short of minimum standards for humane treatment. Most prisoners are held in solitary cells 22-24 hours a day, in conditions of reduced sensory stimulation. Some cells have no windows to the outside and no or limited access to natural light, which is in direct contravention of the United Nations Standard Minimum Rules for the Treatment of Prisoners. Article 11 of the Standard Minimum Rules states: “In all places where prisoners are required to live or work, (a) windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.”⁸

Amnesty International recognizes that it may be necessary at times to segregate prisoners who have committed serious rule violations or who are an ongoing threat to the safety of staff or other prisoners. However, international standards provide that all prisoners, whatever their custody status, are entitled to humane treatment. Article 10 of the International Covenant on Civil and Political Rights,⁹ which the United States has ratified, provides that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”, a standard which the United Nations

⁶ This was reiterated by the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment in his report to the UN General Assembly in October 2011 (supra at note 2), which referred to the consistent recommendations of international and regional human rights treaty bodies, organizations and experts over the years. The Special Rapporteur defined solitary confinement as the “physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day”.

⁷ ABA Criminal Justice Standards on Treatment of Prisoners, approved by the ABA House of Delegates, February 2010.

⁸ <http://www2.ohchr.org/english/law/treatmentprisoners.htm>

⁹ <http://www2.ohchr.org/english/law/ccpr.htm>



Human Rights Committee, the treaty monitoring body, has stressed is a “fundamental and universally applicable rule”.¹⁰

BACKGROUND

Prisoners in super-maximum units have few possessions and no access to work or rehabilitation programs. Contact with staff and other prisoners is minimized, and they are held behind barriers at all times, even during medical or psychological consultations, which can serve to dehumanize prisoners and hinder communication. Contact with the outside world is also far more limited than for other prisoners: inmates in super-maximum units can be held for decades never touching another person. Many states do not provide the minimum amount of outside exercise required under the Standard Minimum Rules¹¹, or if they meet this standard, Amnesty International is told it is often routinely denied through lack of staffing. When there is outdoor exercise, this is usually taken alone, often in an enclosed yard with little access to sunlight and no view to the outside, compounding isolation and sensory deprivation.

Although the Standard Minimum Rules do not have the binding force of a treaty, they are internationally agreed minimum standards for the living conditions and treatment of prisoners worldwide. The provisions relating to light and air are fundamental quality of life requirements that apply to all prisoners regardless of their custody status.

Standards set out by the American Correctional Association (ACA) also require that “all inmate rooms/cells provide access to natural light” and that “segregation housing units provide living standards that approximate those of the general population”.¹²

MEDICAL AND MENTAL HEALTH CONCERNS

¹⁰ Human Rights Committee General Comment 21 on Article 10 (concerning humane treatment of persons deprived of liberty).

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3327552b9511fb98c12563ed004cbe59?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3327552b9511fb98c12563ed004cbe59?Opendocument)

¹¹ “21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.” <http://www2.ohchr.org/english/law/treatmentprisoners.htm>

¹² Standards for Adult Correctional Facilities, 4th Edition (4-4147-148, 4-4140). The ACA standards appear to allow for a natural light source within 20 feet of a cell rather than directly into the cell itself. As Amnesty International has noted elsewhere, this standard may have been acceptable for old-style facilities with open barred cells but is not an adequate standard for modern, closed-cell units where little light enters the cells.



There is a significant body of evidence, both in the United States and elsewhere, that isolation in conditions of reduced environmental stimulation, even for relatively short periods of time, can cause serious psychological harm, including anxiety and depression, perceptual distortions and psychosis.¹³ As U.S. courts have recognized, such conditions can have negative effects on individuals with no pre-existing illness and can be particularly harmful in the case of those who already suffer from mental illness. The severe negative psychological consequences of isolation are reflected in studies and data from various jurisdictions¹⁴ indicating that suicides occur more frequently in segregation units than in the prison population at large.

International and U.S. professional standards provide that all prisoners should have access to care to meet their serious medical or mental health needs, and that prisoners who are mentally ill should be treated in appropriate mental health facilities. In recognition of the serious psychological harm that isolation can have on people with mental illness or disabilities, U.S. courts have increasingly found that housing prisoners with serious mental illness in high security isolation units is cruel and unusual punishment in violation of the Eighth Amendment. International treaty bodies and human rights experts have called for a complete ban on housing people with mental disabilities in solitary confinement, finding such conditions to constitute cruel, inhuman or degrading treatment and contrary to the goals of rehabilitation. A growing number of U.S. states have moved to exclude the seriously mentally ill from being held in maximum security isolation units, as a result of litigation or through policy or legislative changes.

International standards, and those set by U.S. professional organizations, also recognize that all prisoners in isolation require careful monitoring due to the health risks of such confinement. The UN Standard Minimum Rules require daily monitoring of prisoners placed

¹³ Findings of studies published in numerous articles, e.g. Stuart Grassian, "Psychiatric Effects of Solitary Confinement", *Journal of Law and Policy*, and in court rulings and testimony.

¹⁴ E.g. White T. Schimmel D, Frickey R: A comprehensive analysis of suicide in federal prisons: a fifteen year review. *Correctional Health Care* 9:321-23, 2002; *Confronting Confinement. A Report of The Commission on Safety and Abuse in America's Prisons*, Gibbons J. de B. Katzenbach N, 2006, cites a study showing 70% of suicides in California prisons in 2005 occurred in segregation units (Thompson 2006) and a national study finding two-thirds of suicides in U.S. jails took place in a control unit (Hayes and Rowan 1988). Data from various U.S. states in recent years, including Oregon and Ohio, have shown suicide rates occurred disproportionately in segregation units.



in “close confinement” (isolated cellular confinement) as punishment, as with any other punishment that “may be prejudicial to the physical or mental health of the prisoner” (Rule 32). The U.S. National Commission for Correctional Health Care (NCCHC) has observed that conditions in super-maximum security isolation facilities “Even for the most stable individuals ... may precipitate mental health or health difficulties” and that “daily contact by medical staff and at least weekly contact with mental health staff is required”, noting that “Health monitoring contacts must be meaningful and allow sufficient interaction for such assessments to take place”.¹⁵ The NCCHC standards (designated “essential”) require prisoners held in “extreme isolation” to be monitored daily by health staff and at least weekly by mental health staff; segregated inmates with “limited contact with staff or other inmates” require monitoring by health or mental health staff three days a week; and inmates who are separated from the general population but have social contact among themselves require weekly checks by health or mental health staff (NCCHC Standard P-E-09).

U.S. OBLIGATIONS UNDER INTERNATIONAL STANDARDS

In raising the above concerns, Amnesty International does not seek to minimize the challenges faced by prison personnel when called upon to deal with disruptive, dangerous or disturbed individuals. However, all security and disciplinary measures must be consistent with states’ obligation under international law to treat all prisoners humanely.

The United States has ratified the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture, both of which prohibit torture or other cruel, inhuman or degrading treatment or punishment. Article 10 of the ICCPR further requires that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. The UN Human Rights Committee, the ICCPR treaty monitoring body, has further emphasized that the absolute prohibition of torture or cruel, inhuman or degrading treatment under international law “... relates not only to acts that

¹⁵ <http://www.ncchc.org/resources/spotlight/17-3.html>. In this article on the standards, the NCCHC refers to conditions of “extreme isolation” which appear similar to those existing in Arizona’s SMU: individuals who are seen by staff or other inmates fewer than three times a day, are confined to single cells, frequently do not talk with officers who deliver meals, who recreate alone and must be restrained when they leave their cells.



cause physical pain but also to acts that cause mental suffering ..." and that prolonged solitary confinement may amount to torture or other ill-treatment.¹⁶

Both the Human Rights Committee and the UN Committee against Torture (the monitoring body of the Convention against Torture) have criticized the excessively harsh conditions of isolation in several U.S. high security facilities as incompatible with humane treatment.

As noted above, the UN Special Rapporteur on Torture, reviewing the findings of UN treaty bodies, regional human rights organizations and other human rights experts, as well as studies on the severe negative psychological and physical effects of solitary confinement, has called on states to limit their use of solitary confinement, applying it "only in exceptional circumstances and for the shortest possible period of time". He has also called for the absolute prohibition of solitary confinement in the case of children under 18 and persons with mental disabilities, on the ground that its imposition in such cases, for any duration, is cruel, inhuman or degrading treatment.

A BETTER WAY FORWARD

A number of states have reduced their super-maximum security populations, or closed down long-term isolation units altogether, following court orders to improve conditions and criteria for placement, or in order to reduce the high cost of such confinement. In so doing, they have freed up resources for more effective programs without compromising safety or security. Amnesty International believes it would be far better to redeploy resources to provide effective treatment and rehabilitation programs, create opportunities for some social contact, encourage inmates to maintain family relations and otherwise prepare them to function in society after they are released.

In 2007, the corrections department in Mississippi tightened its criteria for assigning prisoners to its long-term isolation facility, leading to an 80% reduction of prisoners held in solitary confinement. The facility (Unit 32 at the Mississippi State Penitentiary at Parchman) was converted in stages to provide group recreational activities and congregate dining and educational classes for prisoners who were formerly confined to cells for 23 hours a day,

¹⁶ Human Rights Committee General Comment 20 on Article 7 of the ICCPR:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument)



allowing their eventual reintegration into general population facilities; gang leaders who remained in segregation were also given opportunities to interact so that their behavior could be assessed. The changes led to significant improvements in prisoner behavior and reduction in violence and the use of force; in 2010 the unit was closed altogether, reportedly saving the state more than \$5m.¹⁷

In 2011, Maine, whose Special Management Unit housed many prisoners who repeatedly cut themselves and had chronic behavioral or mental health problems, reduced the numbers in isolation by about 60% without compromising security. Other states, including Colorado and Illinois, are also working to reduce the numbers in solitary confinement.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS

Amnesty International calls on all states to:

- Reduce the number of prisoners in isolation or maximum custody confinement to ensure that only prisoners who are a serious and continuing threat are held in maximum custody isolation facilities.
- Provide a route out of segregation through incentive or step-down programs so that prisoners are not held long-term or indefinitely in isolation.
- Improve conditions for prisoners in isolation or maximum custody facilities so that they are not confined in windowless cells or denied access to natural light; have more out of cell time and better exercise facilities with appropriate equipment.
- Provide meaningful programs, including education and rehabilitation programs, for all prisoners in isolation and maximum custody confinement.

¹⁷The changes were initiated as a result of a lawsuit filed by the ACLU challenging inhumane conditions and inadequate medical and mental health care in Unit 32 and were taken on board by Mississippi Corrections Commissioner Christopher Epps who set in place a series of reforms. See also, Emmitt Sparkman, Mississippi Department of Corrections Deputy Commissioner, on Reducing the use of segregation in prisons, posted on 31 October 2011, on the Vera Institute of Justice website, <http://www.vera.org/project/segregation-reduction-project>; Prisons Rethink Isolation, Saving Money, Lives and Sanity, Erica Goode, New York Times, 10 March 2012.



- Introduce measures that allow some group interaction and association for prisoners at all stages of isolation or maximum custody confinement, both to benefit their mental health and wellbeing and to provide incentives and allow their behavior to be measured. Prisoners under sentence of death should be included in such measures.
- Remove all prisoners who have been diagnosed as having or being at risk of serious mental illness from isolated confinement and ensure that policies are in place to prohibit such persons from being placed in isolated confinement.
- Ensure that all prisoners receive adequate medical and mental health care.
- Improve systems for monitoring prisoners' mental health while in segregated confinement and provide structured therapeutic programs in group settings as well as private consultations.
- Provide adequate therapeutic treatment for prisoners who are a suicide risk, and ensure humane conditions in suicide watch cells.
- Ensure that no one under 18 years old is held in solitary confinement or in maximum custody isolated confinement, and that all youthful offenders receive treatment appropriate to their age and developmental needs and with the primary goal of rehabilitation, as required under international standards. All children and youthful offenders should have as much out-of-cell time as possible.
- Ensure that all force is employed only when strictly necessary and in a manner designed to minimize damage or injury, in accordance with international standards.

Amnesty International calls on the federal government to:

- Develop national standards to ensure humane conditions in all such units, with adequate review and monitoring procedures.



- Review the conditions in the federal pre-trial Special Housing Unit on the 10th Floor South of the Metropolitan Detention Center (MCC) in New York and ensure that all prisoners, including those deemed to be a security risk, are held in humane conditions and treated in accordance with international standards. They should be provided with adequate exercise and family visits, better conditions both inside and outside of their cells, access to natural light and fresh air, and afforded access to attorneys under conditions which do not impede the preparation of their defense.
- Ensure that all prisoners subjected to Special Administrative Measures, whether convicted or awaiting trial, are held in humane conditions which include adequate opportunity for regular family contact, exercise and out-of cell time, and that prisoners have a meaningful opportunity to have their SAMs conditions reviewed with a view to alleviating conditions of long-term isolation.

Thank you for putting a spotlight on this important issue, and for providing an opportunity for Amnesty International USA to share its concerns and recommendations.



APPENDIX

SAMPLING OF AI'S CONCERNS REGARDING MAXIMUM CUSTODY ISOLATION THE U.S.

Amnesty International considers conditions in maximum custody isolation facilities – including confinement to enclosed or windowless cells, lack of access to natural light and fresh air, lack of exercise, lack of educational and rehabilitation programs, and social isolation – are contrary to international standards for humane treatment; the cumulative effects of such conditions, particularly when imposed for a prolonged or indefinite period, constitute cruel, inhuman or degrading treatment or punishment in violation of international law.

ARIZONA

In April of this year, Amnesty International issued a report on the conditions under which prisoners are confined in the Special Management Units (SMUs) of Arizona State Prison Complex (ASPC)-Eyman and other maximum custody facilities operated by the Arizona Department of Corrections (ADOC). More than 2,900 prisoners are held in Arizona's highest security maximum custody facilities, the majority in the SMUs at ASPC-Eyman. Most are confined alone in windowless cells for 22 to 24 hours a day in conditions of reduced sensory stimulation, with little access to natural light and no work, educational or rehabilitation programs. Prisoners exercise alone in small, enclosed yards and, apart from a minority who have a cellmate, have no association with other prisoners. Many prisoners spend years in such conditions; some serve out their sentences in solitary confinement before being released directly into the community. While the Arizona authorities classify maximum security inmates as those posing the highest institutional security risk, Amnesty International's findings suggest that some prisoners are confined to the units who do not fit this criteria. The organization is further concerned that many of those confined to the units suffer from mental illness or disability and are held in conditions likely to exacerbate their illness or disability.

CALIFORNIA

More than 3,000 state prisoners in California are confined to Security Housing Units (SHUs). They include Pelican Bay State Prison, where more than 1,000 prisoners are currently housed in windowless cells for 22.5 hours a day, in conditions which a court stated in



January 1995 “may press the outer bounds of what most humans can psychologically tolerate”. Thousands of prisoners in California went on hunger strike in July and October of last year to protest cruel conditions of isolation in the state’s SHUs. At the time of the hunger strike, more than 500 prisoners in Pelican Bay had spent at least 10 years in these conditions, and 78 had spent 20 years or more in the SHU. Amnesty International joined others in condemning disciplinary action taken against hunger strikers and urging an end to inhumane conditions.

In March of this year, Amnesty International welcomed proposals by the California Department of Corrections and Rehabilitation to provide a route out of isolation for validated gang members through a step-down process, which would take place in four stages, each lasting a minimum of 12 months. However, Amnesty is concerned that the plan does not appear to include physical changes to the SHUs, nor does it allow any group interaction for at least the first two years.

ILLINOIS

In February of this year, Illinois Governor Pat Quinn announced a proposal to close Tamms Correctional Center as part of a series of measures to cut the state’s budget which will be considered by the state legislature. According to Amnesty International’s information, prisoners at Tamms Correctional Center are confined alone for 23 or 24 hours a day in sparsely equipped concrete cells, with no work or group educational or recreational programs. All meals are taken in the cells. Prisoners exercise alone for a maximum of 5-7 hours a week in a high-walled, bare, partially-covered yard with no view apart from a small section of sky.

Contact with the outside world is also severely restricted, with prisoners denied phone calls and allowed only non-contact visits, conducted through a thick glass screen and intercom system. Prisoners are chained to the floor during visits and some have their wrists shackled together, allowing little movement. Despite the stringent security measures, prisoners are reportedly subjected to strip searches, including body cavity searches, before and after each visit. Because of the conditions imposed, and the remote location of the facility, many prisoners reportedly receive visits only rarely.



The prison was designed to house inmates considered too disruptive or dangerous to remain in the state's general prison population, while providing a means by which prisoners could move back to less restrictive facilities if their behavior improved. However, Amnesty International is concerned by the reported secrecy and lack of transparency in current procedures for transferring prisoners to and from Tamms, and the absence of any external oversight of such decisions. According to prison monitoring bodies, many prisoners are unaware of why they have been denied requests to transfer out of Tamms. More than 80 prisoners (around a third of the total) are believed to have been held in the facility for at least ten years, many since it opened in 1998, without any reasonable means of gaining release from their indefinite solitary confinement.

Amnesty International is concerned by reports that a significant number of prisoners currently housed in Tamms suffer from mental illness or psychological problems which are exacerbated by the harsh conditions of isolation. Prisoners have been described as engaging in disturbed behaviors such as self-mutilation, smearing feces on cell surfaces, throwing bodily liquids or howling. It is alleged that seriously mentally ill prisoners, or those with histories of mental illness, have been sent to Tamms despite regulations which allow for the exclusion of such individuals from the facility.

PRE-TRIAL PRISONERS IN U.S. FEDERAL CUSTODY

Amnesty International has called for a review of conditions in the Special Housing Unit (SHU) of the federal Metropolitan Detention Center (MCC) in New York, where prisoners have sometimes spent long periods confined to small cells with little access to natural light or fresh air. The unit, known as MCC 10th Floor South, comprises six cells where prisoners are confined alone for 23 or 24 hours a day. Amnesty International has been told that the windows in the cells are painted over so that there is no view to the outside and little natural light. Prisoners held in the unit have no contact with other inmates and eat all meals in their cells, which are reportedly furnished only with a concrete bed, toilet and sink. They have no outdoor exercise, contrary to the UN Standard Minimum Rules for the Treatment of Prisoners. The unit has been used to house, among others, pre-trial detainees charged with terrorism-related offences. Most have been placed under Special Administrative Measures (SAMs), rules which impose severe restrictions on communication with other inmates and the outside world.



Amnesty International believes that the combined effects of prolonged isolation and other deprivations in the unit amount to cruel, inhuman and degrading treatment.

Several lawyers who have represented prisoners in MCC 10th Floor South have told Amnesty International that the conditions had a negative impact on their clients' mental state, causing agitation, depression and an inability to focus. They also reported that the non-contact visitation made it difficult to communicate with their clients, particularly when dealing with large amounts of evidentiary materials. This raises concern that such conditions may impair a defendant's ability to assist in his or her defense and thus the right to a fair trial.