



# MONITORING SOLITARY CONFINEMENT IN PRISON



A Handbook for National Preventive Mechanisms





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# Monitoring Solitary Confinement in Prison

– A Handbook for National Preventive Mechanisms –

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This Handbook was written by Federica Brioschi and Claudio Paterniti Martello of the Associazione Antigone. It was written in the framework of the EU Project “Improving judicial cooperation across the EU through harmonised detention standards – the role of National Preventive Mechanisms”, implemented by the Ludwig Boltzmann Institute of Fundamental and Human Rights (Austria) and in cooperation with the Hungarian Helsinki Committee (Hungary), the Bulgarian Helsinki Committee (Bulgaria) and the Associazione Antigone (Italy).

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## EXECUTIVE SUMMARY

Solitary confinement can be broadly defined as the separation of a detainee from the general prison population. The prisoner is housed alone in a cell for the greater part of a day; international standards usually indicate 22 hours as the minimum to consider a situation as solitary confinement. However, it is important to highlight that there is no unique definition for this practice, and that human rights bodies approach the issue of the definition of solitary confinement in different ways.

The objective of this Handbook is to strengthen the capacities of European Union (EU) National Preventive Mechanisms (NPMs) in monitoring solitary confinement. With this

objective in mind, the Handbook focuses is divided into four chapters.

The first chapter lists and briefly analyses the different types of solitary confinement measures employed in EU penitentiary systems and presents a selection of the main critical issues related to the use of solitary confinement, such as its excessive use, the excessive duration of individual measures, and the lack of meaningful social contacts that would help to mitigate the negative effects of solitary confinement.

The second chapter is a collection of international standards regulating solitary confinement such as the Mandela Rules (SMR), the European

# *Monitoring the use of isolation is an important part of prison monitoring*

Prison Rules (EPR) and other standards set by international human rights bodies.

The contents of the third chapter are a practical guide to monitor isolation. It is based on good practices that emerged from interviews and meetings with NPMs and experts, with particular attention to physical visits to the penitentiary institute. It is divided into phases (preparation of the visit, carrying out of the visits, follow-up) and, like the other chapters, into thematic subchapters (study of prison registers, role of doctors, interviews, material conditions, etc.)

The specific monitoring of solitary confinement requires the widest possible collection of information prior to the visit. The handbook explains how some NPMs collect them.

The handbook also illustrates the various moments and aspects of the visit. The first step to identify any critical issues related to isolation consists of the examination of prison records/registers on sections, critical events, disciplinary measures, medical records (collective or individual medical records) and the individual file of the detainee. The study of records can reveal the average duration of the isolation measures, as well as show if the isolation of detainees is mitigated by meaningful social contacts, what type of contacts they are, and who carried them out. Prison

records may also point to indicators of possible ill-treatment or violence and other aspects that the handbook tackles in other sections.

The monitoring of solitary confinement cannot be done without interviewing prisoners. Interviews may reveal critical information regarding the way the medical examination is carried out, material conditions, the regime to which detainees are subjected, whether they know how long their isolation measure will last, which contacts they have with prison staff (and how the prison staff treats them), family members and/or their lawyer, whether they know of a complaint mechanism and how it works, whether they had the possibility to defend themselves in the disciplinary hearing, whether they have suffered any abuse or ill-treatment or if they know whether other isolated detainees have suffered them, how they feel, and whether they think solitary confinement is affecting their mental and physical health.

Isolation has particularly harmful effects on those who are subjected to it. While

desirable to always include medical professionals within NPM delegations, it is possible for anyone to recognise at least some signs indicating the deterioration of detainees' physical and mental health, which can be observed at different degrees and times, depending on the person. This handbook summarizes some of these.

One aspect to be monitored concerns the actual possibility for the person in solitary confinement to participate in the decision-making process on the isolation measure. The NPM should verify whether the person detained in solitary confinement has been informed about the outcome of the decision and the possibility to appeal against it in writing, and whether in practice s/he can appeal against it. The handbook also points out the possible procedural obstacles to the exercise of their rights and that the NPMs can monitor.

Poor material conditions in isolation is also a very common problem that must be closely monitored. The most frequently monitored aspects by NPMs, and those which should be kept in

mind by others for future purposes: the frequency and duration of access to the open air (which should be for at least one hour a day), the presence of an outdoor area, the presence in the cell of a table, a chair, a bed, a bathroom, sufficient light and air, the size of the cell, the possibility of calling a staff member from inside the cell, access to books and newspapers, and access to the same food, hygiene and cell conditions as other detainees.

Finally, because of the particularly serious effects that solitary confinement has on isolated prisoners, effective monitoring by medical authorities operating in prisons is of critical importance. In this area NPMs should start by monitoring the following issues: did a visit take place before the application of the solitary confinement measure? Do doctors conduct daily visits? Do visits take place in the cell? Do smooth cells exist? Do doctors prescribe confinement in smooth cells as a way to prevent self-harm or suicide? Were the visits long enough? Finally, the handbook takes into account the issue of recommendations, follow-up and

possible actions that NPMs can take to act as an agent of change.

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***“Solitary confinement can cause serious health problems to the isolated person.”***

## 1. INTRODUCTION

### Project background

This Handbook has been written in the framework of the EU Project “Improving judicial cooperation across the EU through harmonised detention standards – the role of National Preventive Mechanisms”, implemented by the Ludwig Boltzmann Institute of Fundamental and Human Rights, and in cooperation with the Hungarian Helsinki Committee, Bulgarian Helsinki Committee and the Associazione Antigone.

The latest case-law of the European Court of Human Rights (ECtHR) as well as recommendations by international and national torture prevention bodies show that no European Union (EU) Member State has eradicated the problem of ill-treatment in prisons, and that there are significant disparities between penal systems within the EU.<sup>1</sup> This raises a major challenge for EU cross border cooperation. Judges must verify that fundamental rights, especially the prohibition of torture and ill-treatment, are respected before they can implement mutual recognition instruments.<sup>2</sup> The latest available statistics concerning the European Arrest Warrant

1. See ECtHR, The European Court of Human Rights in Facts and Figures: 2019 (2020) <[https://www.echr.coe.int/Documents/Facts\\_Figures\\_2019\\_ENG.pdf](https://www.echr.coe.int/Documents/Facts_Figures_2019_ENG.pdf)> pp 10–11. There are 180 cases of violations of Art 3 ECHR in the Council of Europe Member States, 70 of which (as correctly stated in the text) concern EU countries. Those 70 cases translate into 55 direct cases of torture or ill-treatment (under Art 3), 10 cases where states have not conducted effective investigations (under Art 3) and 5 cases where a conditional violation was found (under Art 2/3).

2. Relevant EU instruments are: the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures (2002/584/JHA), Recital 12; and the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, Recital 13 and Art 3. See also CJEU, Aranyosi and Căldăraru; Joined Cases C-404/15 and C-659/15 PPU, 5 April 2016; CJEU, *ML*, C-220/18 PPU, 25 July 2018; CJEU, Dumitru-Tudor Dorobantu. C-128/18, 15 October 2019; and for a more detailed overview *EUROJUST*, ‘Case law by the Court of Justice of the European Union on the European Arrest Warrant’ (2020) <[https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-03\\_Case-law-by-CJEU-on-EAW\\_EN.pdf](https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-03_Case-law-by-CJEU-on-EAW_EN.pdf)>.

(EAW) are exemplary: EU Member States have refused execution on grounds of fundamental rights issues in close to two hundred cases throughout 2017–18 alone.<sup>3</sup> The compatibility of prison conditions with fundamental human rights is thus a problem that goes beyond national contexts, and has practical relevance for the EU.

EU binding minimum standards for detention conditions are urgently needed. However, as the political will to implement such change is currently lacking, this Project looks at alternative paths for facilitating the consolidation and harmonisation of detention standards, at least to the extent it is realistically possible without actions from the EU. The Project thus explores the role of NPMs in improving detention conditions across the EU, departing from the assumption that improving detention conditions “at home” can contribute to increased mutual trust between the Member States (MSs).

NPMs are in an ideal position to observe the implementation of international standards that support and reinforce the prohibition of torture and ill-treatment. Their role is all the more important because with their strong powers to access places, documentations, and persons, NPMs are able to assess if these standards are met in law and practice.<sup>4</sup>

Further, according to the SPT *“the prevention of torture and ill-treatment embraces – or should embrace – as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring. Such an approach requires... that attention also be paid to the whole range of other factors relevant to the experience and treatment of persons deprived of their liberty and which by their very nature will be context specific.”*<sup>5</sup> This means that NPMs have a broad mandate that allows them to identify all factors that may be relevant for the prevention of torture and ill-treatment in concrete cases and, thus, have all it takes to investigate the root causes of the problems.

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3. European Commission, ‘Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2018’, SWD(2020)127 final, July 2020, § 6.

4. Subcommittee on Prevention of Torture (SPT), ‘The Approach of the Subcommittee on Prevention of Torture to the Concept of Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (2010), CAT/OP/12/6, § 4.

5. Ibid, § 3.

For these reasons, NPMs can and should go beyond mere inspection and monitoring of compliance. Rather they should offer recommendations on how to reduce the likelihood or risk of torture or ill-treatment that aim to support the State in the identification of forward-looking solutions and achieving change. As a result, NPMs can be a key player in upholding and harmonising EU standards on detention conditions.

### **Project objectives**

To facilitate their work, this Project produced a series of Handbooks for NPMs. These Handbooks collect relevant international standards and provide guidance on monitoring detention conditions. They are intended as a practical tool for NPMs to get a better understanding on:

- The thematic issues and risks for the prevention of torture and ill-treatment connected to them
- The existing international standards on selected thematic issues
- How to apply these international standards in practice and monitor selected thematic issues

Overall, the Project aims to support NPMs in putting forward recommendations on how to reduce the likelihood or risk of torture or ill-treatment and, ultimately, contribute to prison conditions in full compliance with fundamental rights in the EU.

### **Project methodology**

The EU-funded Project began in January 2019 and covered four thematic issues, identified on the basis of results from previous projects and in direct consultations with EU NPMs. Under the overall coordination of the Ludwig Boltzmann Institute of Fundamental and Human Rights, each Project Partner was responsible for research on one particular thematic issue, namely: the Ludwig Boltzmann Institute of Fundamental and Human Rights for prison violence; the Hungarian Helsinki Committee for requests and complaints; the Bulgarian Helsinki Committee for persons in a situation of vulnerability; and the Associazione Antigone for solitary confinement.

The Project started with a desk research phase on existing international

standards related to the four thematic issues, as well as on how EU NPMs monitor and contribute to the development of the standards in these thematic areas.<sup>6</sup> The research began after a brief initial consultation with NPMs to refine the project focus.<sup>7</sup> Within the framework of the Project, several consultations took place. Representatives of NPMs and other experts exchanged experiences and best practices at four workshops – one per each thematic issue – as well as in a final conference, which took place on 3 and 4 November 2020.<sup>8</sup> In addition, each Project Partner conducted several bilateral interviews with representative of NPMs, as well as other national or international experts and practitioners.

The Project findings resulted in four thematic Handbooks. While there are strong interlinkages between them, the Consortium found it necessary to have four separate Handbooks in order to address the specific international standards and monitoring challenges for each thematic issue in depth. Accordingly, each Handbook was authored by the staff of the respective Project Partner.

## **Introduction to the Handbook**

Solitary confinement can be broadly defined as the separation of a detainee from the general prison population. The prisoner is housed alone in a cell for the greater part of a day; international standards usually indicate 22 hours as the minimum to consider a situation as solitary confinement. However, it is important to highlight that there is no unique definition for this practice, and that different human rights bodies approach the issue of the definition of solitary confinement in different ways.

International human rights bodies, especially those involved in the fight against torture, place solitary confinement at the top of their priorities.

6. The Project covered 22 EU Member States. 4 EU Member States (Belgium, Ireland, Latvia and Slovakia) were not covered because they have not yet ratified the OPCAT; 2 EU Member States (Denmark and the United Kingdom) were not covered because they do not participate in the European Commission Justice Programme. It is also worth noting that the United Kingdom withdrew from the EU on 31 January 2020 and therefore since 1 February 2020 is no longer an EU Member State.

7. The online survey was conducted in March 2019. 14 out of 22 NPMs participated.

8. The first Workshop “Treatment of certain groups of prisoners in a situation of vulnerability Goal” took place in Sofia on 18 – 19 November 2019; the second Workshop “Isolation and solitary confinement in prison” took place in Rome on 27 – 28 January 2020; the third Workshop “Requests, complaint procedures and the right to information in prisons” took place online due to the Covid-19 pandemic on 27 – 30 April 2020; the fourth Workshop “Preventive Monitoring of Violence in Prisons” took place also online on 20, 27 May and 3 June 2020. Moreover in July 2020 an online consultation on the Systemic Approach to NPM work was held.

This is due to the grave and relevant effects that solitary confinement can cause on the mental and physical health of isolated prisoners. Solitary confinement can be found in more than one type of closed institution, such as in facilities for mentally-ill people, places of detention of migrants and, of course, in prisons. For the purposes of this handbook, the field of application will be the penitentiary system and “isolation” will be used as a synonym of “solitary confinement”.

In recent years, the use of prison isolation has increased in many jurisdictions. At the same time, an increasing number of studies have highlighted the harmful effects on physical and mental health. This has led to the need for renewed action on this issue by European NPMs. The objective of this Handbook is to strengthen the capacities of European NPMs in monitoring solitary confinement and provide them greater knowledge of the phenomenon in its various aspects. Further, it wants to provide a collection of international regulations and standards on isolation, and finally to be a practical guide to the monitoring of isolation, based on the contents emerging during the seminars and interviews with different European NPMs.<sup>9</sup>

The first chapter lists and briefly analyses the different types of solitary confinement measures employed in EU penitentiary systems: disciplinary solitary confinement, isolation for preventive purposes (such as in the case of those who are considered dangerous detainees), and solitary confinement for protective purposes (as in the case of prisoners in situations of vulnerability.) The same chapter also presents a selection of the main critical issues related to the phenomenon of solitary confinement: its excessive use and the excessive duration of individual measures, the role of medical staff, the criticalities of procedural guarantees, the meaningful social contacts that would help mitigate the negative effects of solitary confinement, the frequent degradation of the cells and sections in which isolation takes place, and the banalization

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9. For the purposes of this project, interviews were carried out with NPMs from Italy, France, Denmark, and Germany.

of this instrument to manage prisoners who have caused, or are judged likely to cause, serious harm to others, or who present a very serious risk to the safety or security of the prison.

The second chapter is a collection of international standards on solitary confinement such as the Mandela Rules (SMR), the European Prison Rules (EPR) and other standards set by international human rights bodies. The standards are divided by theme, available to the NPMs to monitor isolation in their own country, and develop their own standards adapting them to the national context in which they operate. These soft law tools are not binding for the State authorities, but they mark the direction to follow, and are objectives to pursue in the path towards change of which the NPM can be an important actor.

The contents of the third chapter are a practical guide to monitor isolation. They are based on good practices emerging from the interviews, and meetings with NPMs and experts, with particular attention to physical visits to the penitentiary institute. It is divided into phases (preparation of the visit, carrying out of the visits, follow-up) and, like the other chapters, into thematic chapters (study of prison registers, role of doctors, interviews, material conditions, etc.).



*“European prison administrations massively use solitary confinement.”*

## 2. BACKGROUND

### 2.1. Solitary confinement: definition and purposes

Solitary confinement can be broadly defined as the separation of a detainee from the general prison population. The prisoner is housed alone in a cell for the greater part of a day; international standards usually indicate 22 hours as the minimum to consider a situation as solitary confinement. However, it is important to point out that there is no unique definition for this practice; section 3.3 of this Handbook highlights the different approach of the revised European Prison Rules to this specific issue.

Solitary confinement is a response that the prison administration uses in a variety of prison situations.<sup>10</sup> For this reason, it can be used in different ways: as a form of punishment for disciplinary offenses, as a protective measure for detainees finding themselves in a situation of vulnerability (e.g. sex offenders, LGBTIQ detainees, juveniles), or as an administrative tool to handle specific groups of prisoners.

It can be used as a health instrument, e.g. to prevent the spread of contagious diseases. It can also be imposed by a court decision during pre-trial detention, in order to protect the undergoing investigation, or it can be the result of a court judgement, which imposes solitary confinement as part of prison sentence. Finally, in several jurisdictions there also is voluntary solitary confinement that also poses several problems from different points of view.

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10. One comprehensive handbook is Sharon Shalev's sourcebook on solitary confinement, freely available online: Shalev S (2008) A Sourcebook on Solitary Confinement. Mannheim Centre for Criminology, London School of Economics: London. online at: [www.solitaryconfinement.org/sourcebook](http://www.solitaryconfinement.org/sourcebook)

### ***2.1.1. Solitary confinement as a disciplinary punishment and banalization of the measure***

Solitary confinement is used as the most severe disciplinary punishment to be used as a last resort. In practice, however, this is often not the case. The maximum duration of solitary confinement for disciplinary reasons changes drastically between countries. Many countries have set the limit well beyond the 15 days prescribed by international standards. In this and other cases, there is a problem of standardisation and the banalization of isolation, which lead to its systematic use and a failure to look for alternatives.

### ***2.1.2. Court-imposed solitary confinement***

Solitary confinement can be imposed by a court decision either in the case of pre-trial isolation, or isolation as part of prison sentence. The isolation of remand detainees is usually applied in order to protect the undergoing investigation. In some countries, the placement of a pre-trial detainee in isolation was almost automatic, but in the last few years, several countries are taking steps to address this problem, and reduce the use of pre-trial isolation. The isolation of prisoners as part of a sentence is also an issue of concern, because it is now accepted that prison detention is the punishment. Isolation constitutes a further punishment that violates the principle that states that detainees are sent to prison as a punishment, and not to receive a punishment. Furthermore, the isolation of detainees should never be decided on the basis of the crime they committed.

### ***2.1.3. Solitary confinement as an administrative tool***

Solitary confinement can also be used as an administrative tool for preventive purposes. The aim of such confinement is to manage the so-called dangerous detainees who present, according to the prison administration, a very serious risk to the safety or security of the prison. Some European states began to use “small group isolation”, which is a form of imprisonment used to manage particularly dangerous or high-risk prisoners. Usually, detainees under this form of imprisonment are confined in isolation in their cells. Only during their outdoor time are they allowed to associate with one or two other

prisoners undergoing the same regime. This is a particularly problematic type of isolation. Very often the procedural safeguards for the protection of isolated persons are lower than those for disciplinary solitary confinement. Unlike the latter, there are very often no defined time limits, and in many cases it is prolonged for months and years.

#### ***2.1.4. Solitary confinement as a protective measure***

Solitary confinement is also used for protective purposes. In order to protect some groups of prisoners who might be endangered because of the crime they committed, because of their collaboration with the police, because of their sexual orientation or gender identity, or in some cases because they suffer from behavioural disorders that make it difficult to live with the rest of the prison population. Isolation for protective purposes may also involve, albeit for shorter periods, those who have attempted suicide or committed acts of self-harm, and often takes place on the decision of the health authorities. In cases where isolation is used as a protective measure by prisoners who feel threatened, alternatives should be found, and it should be possible for detainees to spend some hours of the day with others, or at a workplace or within activities where they are safe.

#### ***2.1.5. Voluntary solitary confinement***

Some jurisdictions allow the placement in solitary confinement at the request of a detainee. The reasons behind these requests are several: prisoners might not be able to receive protection from the prison administration in any other way, or it could be a reaction to overcrowded cells, and this might be the only way to have a single cell for oneself. Even in this case, it is important to remember that the detainee may still suffer from the detrimental effects of solitary confinement even when s/he voluntarily chose to be isolated, and it is important to look for alternatives.

In all these cases when faced with a request for protection, the administration often responds with isolation. Instead of adding something in order to support the regime of a person in difficulty, the response goes in the opposite direction: solitary confinement.

## 2.2. Main critical issues

European prison administrations massively use – to different degrees – solitary confinement. International human rights bodies such as the European Committee against the Prevention of Torture (CPT) or the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) place it at the top of their agenda due to the:

- The detrimental effect it has on the physical and mental health of isolated detainees;
- The increased risk of becoming victims of violence and torture due to frequent separation of solitary confinement sections from the rest of the institution;
- The decreased frequency of visits by directors and prison staff in general to these sections;
- The inhuman or degrading treatment or even the torture that prolonged isolation may constitute in itself;
- The material conditions of the cells and other spaces, which are generally severely degraded compared to the rest of the institution;
- The risk of a de-facto, non-formalised isolation, which may be combined with special regimes, such as high-security regimes;
- The criticalities of procedural safeguards.<sup>11</sup>

### 2.2.1. Duration

The maximum duration of solitary confinement varies greatly from country to country, from a few days to more than one month. There are many countries (e.g. France and Denmark) where the limit is set well beyond the 15 days identified by the Mandela Rules (SMR). Many jurisdictions prohibit the practice of imposing several disciplinary sanctions of solitary confinement in a row – but not all of them, and sometimes the time between one sanction and another is too short. In some jurisdictions, due to the length of solitary confinement exceeding two weeks, when the staff observe that the detainee is not able to bear it anymore, they break up the

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11. Among the documents that address the theme of solitary confinement with a global view, see this text prepared by Penal Reform International and the APT, in particular on pp. 13–17. Penal Reform International and the Association for the Prevention of Torture, *Balancing security and dignity in prisons: a framework for preventive monitoring, second edition*, 2015, available at: [http://www.tortureprevention.ch/content/files\\_res/thematic-paper-4\\_balancing-security-and-dignity-in-prisons-en-1.pdf](http://www.tortureprevention.ch/content/files_res/thematic-paper-4_balancing-security-and-dignity-in-prisons-en-1.pdf)

measures in several parts and let the prisoner recover from the negative effects of isolation, before resuming measures in order to enforce them. This is undoubtedly a discretionary practice, which takes place where the limits of solitary confinement exceed those set by international standards, thus seriously endangering the health of isolated people.

### **2.2.2. Material conditions**

There is a clear problem with the material conditions of solitary confinement, and this is particularly true for disciplinary isolation. Very often cells used for disciplinary confinement do not meet national and international standards with regard to size, light, ventilation, and furniture. The same also often applies to outdoors areas. In many cases, isolation is carried out in unfurnished cells, with only a bed without mattress, no blankets, no bedlinen, no hygienic facilities besides a squat toilet visible from the peephole or via CCTV equipment (which sometimes is the norm also for non-isolated detainees, without guaranteeing their privacy). There are also cases in which detainees are kept naked or with single-use paper underwear. Harsh conditions may also include no windowpanes and no heating. Facilities are frequently inadequate, narrow, poorly illuminated. If there are attached outdoor areas, they might be small and/or covered by a net. In some countries, no books are allowed other than religious books, and the detainee has to prove that he is a religious person.

### **2.2.3. Effects on mental health**

Solitary confinement can have a very detrimental effect on the mental and physical health of detainees. There is extensive research<sup>12</sup> on the physical and psychological harm that solitary confinement can cause, and the central harmful feature is the lack of meaningful human contact, which is lack of interactions with other human beings.

Since all human beings are different, all people react differently to

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12. Smith, P. S., *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, Crime and Justice, 2006, Vol. 34, No. 1, pp. 441-528

Lobel, J. and Smith, P. S., *Solitary Confinement. Effects, Practices, and Pathways Toward Reform*, Oxford University Press, 2019, (ebook).

United Nations General Assembly, *The Istanbul Statement on the Use and Effects of Solitary Confinement, addendum dell'Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/63/175, 28 July 2008.

isolation.<sup>13</sup> Some may experience forms of isolation panic only after a few hours of solitary confinement, others may be totally unaffected by the lack of human contacts even after a long period of time. For this reason, the time limit of 15 days that defines prolonged solitary confinement can be considered arbitrary, in fact some people might break down earlier, while others even later.<sup>14</sup> The long term risk is gradual damage resulting in social death. This means that after being out of solitary confinement, detainees may continue to behave like in solitary confinement and suffer from 'sociophobia' because they lose the ability to interact with other human beings. This is the opposite of what prison systems have to achieve, which is the inclusion of detainees in the society, and their resocialization.<sup>15</sup>

Studies indicate that the risk of subjecting a detainee to a certain degree of suffering is always present during solitary confinement and have identified a form of isolation syndrome that can manifest itself through one or more symptoms. The following are the effects of solitary confinement that can be noticed<sup>16</sup>: sleep disturbance, appetite disturbance, anxiety, panic, rage, loss of control, paranoia, hallucination, and self-mutilation etc. The following are the psychiatric symptoms of solitary confinement that detainees reported when they were asked: negative attitudes, negative affect, insomnia, anxiety, panic, withdrawal, hypersensitivity, ruminations, cognitive dysfunction, loss of control, irritability, aggression, rage, paranoia, hopelessness, lethargy, depression, sense of impending emotional breakdown, self-mutilation, suicidal ideation and behaviour.

Isolated detainees are also subjected to higher levels of stress, and are

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13. Grassian, S., *Psychopathological effects of solitary confinement*, *American Journal of Psychiatry*, 1983, Vol. 140, No. 11, pp. 1453-1454.

Smith, P. S., *Solitary confinement. An introduction to The Istanbul Statement on the Use and Effects of Solitary Confinement, Torture: quarterly journal on rehabilitation of torture victims and prevention of torture*, 2008, Vol.18(1), p. 61;

Haney, C., *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, *Crime and Delinquency*, 2003, Vol. 49, No. 1, p.132;

14. Haney, C., *Solitary Confinement, Loneliness, and Psychological Harm in Lobel, J. and Smith, P. S., "Solitary Confinement. Effects, Practices"*, Oxford University Press, 2019, (ebook).

Mendez, J. E., *Torture, Solitary Confinement, and International Law*, in Lobel, J. and Smith, P. S., *"Solitary Confinement. Effects, Practices"*, Oxford University Press, 2019, (ebook).

15. Haney, C., *Solitary Confinement, Loneliness, and Psychological Harm in Lobel, J. and Smith, P. S., "Solitary Confinement. Effects, Practices"*, Oxford University Press, 2019, (ebook)

16. Haney, C., *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, *Crime and Delinquency*, 2003, Vol. 49, No. 1, pp.130-131;

more often diagnosed with hypertension and heart problems.<sup>17</sup> Further studies<sup>18</sup> suggest that the lack of stimuli may cause certain areas of the brain to function less, which could even lead to the atrophy of some nerve cells. It is clear why detainees in a situation of vulnerability should never be isolated: pre-existing mental conditions could be exacerbated, women with small children and pregnant women would be subjected to levels of stress that would be dangerous in their condition, minors would be highly affected by the detrimental effects of isolation, and detainees at risk of suicide would be left alone with their suicidal thoughts.

Problems were recorded also in the post release phase. Recent research<sup>19</sup> has shown that prisoners isolated for at least one week during their imprisonment were 60% more at risk to die within 5 years from the end of their sentence than detainees who were not isolated. Another downside of the massive use of solitary confinement as a disciplinary measure is its negative impact on the relationship between the prison administration/ staff and the prisoner. In fact, in one interview carried out for the project, one NPM pointed out that even if disciplinary solitary confinement was strengthened to respond to increasing cases of violence in prison, the number of cases of violence has not decreased.

#### **2.2.4. Meaningful social contacts**

Because of the damage that solitary confinement can cause on an isolated detainee, the 2020 European Prison Rules (EPR) recommend offering detainees in isolation at least two hours of meaningful human contact

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17. Hawkey, L., *Social Isolation, Loneliness, and Health*, in Lobel, J. and Smith, P. S., "Solitary Confinement. Effects, Practices", Oxford University Press, 2019, (ebook)

18. Akil, H., *The Brain in Isolation. A Neuroscientist's Perspective on Solitary Confinement* in Lobel, J. and Smith, P. S., "Solitary Confinement. Effects, Practices", Oxford University Press, 2019, (ebook).

Williams, B., Ahalt, C., *First Do Not Harm. Applying the Harms-to-Benefits Patient Safety Framework to Solitary Confinement* in Lobel, J. and Smith, P. S., "Solitary Confinement. Effects, Practices", Oxford University Press, 2019, (ebook).

Castro, S. L., J. D. Jaumotte, L. H. Sanders, R. J. Smeyne, M. J. Zigmond, *Environmental Isolation Impairs Measures of Brain Health*, Annual Meeting of the Society for Neuroscience, San Diego, 2016.

Zigmond, M. J., Smeyne, R. J., *Use of Animals to Study the Neurobiological Effects of Isolation: Historical and Current Perspectives*, in Lobel, J. and Smith, P. S., "Solitary Confinement. Effects, Practices", Oxford University Press, 2019, (ebook)

19. Wildeman C., Andersen L. H., *Solitary confinement placement and post-release mortality risk among formerly incarcerated individuals: a population-based study*, *The Lancet Public Health*, Volume 5, Issue 2, 2020, Pages e107–e113, ISSN 2468-2667, <https://www.sciencedirect.com/science/article/pii/S2468266719302713>

every day.<sup>20</sup> For human contact to be meaningful, it cannot be incidental or taking place only because of prison routine, it is a real face-to-face conversation taking place between two people at eye-level (see sections 3.6 and 4.3.8 for more details). As a matter of fact, sensory deprivation and social isolation are harmful while meaningful human interaction has a preventive effect at counterbalancing or mitigating the harmful effects of solitary confinement. Indeed, meaningful human interaction is very important because it is necessary for reality testing, for the definition of one's own personality, and to evaluate one's own behavioural and emotional responses to external stimuli.

### **2.2.5. Effectiveness of procedural safeguards**

There is often a problem of effectiveness of the procedural safeguards available to isolated persons. Those placed in solitary confinement should be able to take part in the procedure regarding the decision on the application of the measure. If it is the outcome of a disciplinary committee, they should be able to defend themselves through their lawyer or the person representing them and their rights. The isolated person should be given the order in writing, and it should be clear about how s/he can oppose this measure. The arrangements for opposing the measure should be effective, not just formal.

### **2.2.6. Role of medical staff**

Daily medical visits of isolated detainees are crucial. Medical staff have the capacities to detect and report to the prison director if a prisoner is showing signs of the effects of solitary confinement. According to several human rights bodies (Mandela Rules<sup>21</sup>, SRT<sup>22</sup>, CPT<sup>23</sup>, EPR<sup>24</sup>), they should advise the director on the termination of the measure, or they should have

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20. EPR 53.A.f.

21. Mandela Rules 46.

22. United Nations General Assembly, 2011, §§100-101.

23. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 21th *General Report of the CPT*. 2010-2011, Strasbourg, §§62-63.

24. EPR 43.3, 53.A.i, 60.6.b

the authority to directly terminate it. The reality of prison regulations and prison life shows that regulations do not always prescribe visits from medical staff, that prison doctors are often not aware of their obligation to daily visit detainees, or of the possible effects of solitary confinement. Because they are warned of the possible dangerous nature of detainees or because of other reasons, often visits from medical practitioners take place from behind bars or from outside the steel door; at times prisoners, to avoid being visited in this way, directly refuse the visit.

The trust between doctor and patient can also be broken in those cases when the doctor is part of the disciplinary committee and has a saying in the decision of the placement of a detainee in isolation, which should never be the case. Another issue is the risk of medical staff growing accustomed to prison operations, and feeling obliged to agree with the prison administration, or to mistrust detainees reporting health issues because of the fear of being used by them. This is also where NPMs could help to build a common culture among prison staff in different areas of expertise.

### **2.3. Solitary Confinement as a cultural issue**

The excessive use of isolation is a legal problem but also the product of a widespread culture. As far as legislative shortcomings are concerned, the NPM can influence lawmakers to address the gap between national legislation and international standards. However, only in some residual cases is the problem just legal. In fact there can be grey areas where the decision of the prison warden, informal laws or prison customs apply instead of the State's penitentiary law. The consequences of the existence of grey areas may include the violation of the minimum standards on detention conditions on solitary confinement, the lack of a review mechanism, high levels of violence and a great discretionary power of the prison warden. The possibilities of action of the NPM are also within these extra-legal areas.

#### **2.3.1. Lack of a common legal ground in the prison staff**

In different countries, among some staff members, internal regulations (secondary legal sources) are considered more binding than international

conventions, even if they are not consistent with international laws or even Constitutional laws. Also, different professionals have a different view of prison life. The lack of a common culture among prison staff members, and in particular, a culture that takes into account international standards, are among the the factors contributing to the increased use of solitary confinement and its banalization. For these reasons, it is necessary to build a dialogue with the various actors involved in the process of deprivation of liberty, to reason with them about the causes of isolation, to make it a real problem and to look for alternatives. In short, the overarching ideal is to promote a culture more respectful of human rights.

In order to do so it can also be useful to invest human resources and energy to build a common legal ground with prison staff. The prison administration should organize common training sessions for all staff together, and not separate trainings. The training sessions should not be only legal, but should also include how to tackle practical difficult situations, issues and cases in the field. Training sessions must include also medical issues; prison guards must have the same basic scientific knowledge as medical staff.

### ***2.3.2. Solitary confinement and organisation of prison administration***

The prevention of torture is also connected to the organisation of prison administration, for example the advancements in careers and the power of the penitentiary guards, and of trade unions. It is important to get in contact with them and to find a common background also with them, which can be, for example, workers' rights. It is also important to build an alliance with prison doctors, who – with time – might pick up the same mentality of the prison guards. Thus, it is important to ensure that prison doctors uphold the international law against the culture of the prison. This is very true especially in the case of solitary confinement, where many times the problems are the doctors themselves.

**“Solitary confinement should be used as a measure of last resort and for the shortest possible time”**

### 3. STANDARDS

#### 3.1. Definition of solitary confinement

The definition of solitary confinement was endorsed by the Special Rapporteur on Torture by referring to the Istanbul Statement on the Use and Effects of Solitary Confinement. The Statement is the product of three days of working sessions by the most important experts in the penitentiary field, and which was presented on the last day of the International Psychological Trauma Symposium that took place in Istanbul at the end of 2007.<sup>25</sup> In 2015, this definition of solitary confinement was included in the Mandela Rules, which state that solitary confinement is “the confinement of prisoners for 22 hours or more a day without meaningful human contact”, while prolonged solitary confinement was defined as the imposition of the measure for more than 15 consecutive days.<sup>26</sup>

At the regional level, the CPT gives a definition of solitary confinement that applies to several situations. The detainee can, for instance, “be held on his/her own”, but the CPT underlined that its standards set for this measure also apply when the detainee is “accommodated together with one or two other prisoners”. Moreover, the CPT adds that solitary confinement can be imposed “as a result of a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or for the protection of the prisoner concerned”.<sup>27</sup> The revised European Prison Rules (EPR) of 2020 envisage solitary confinement only as a disciplinary

25. United Nations General Assembly, ‘The Istanbul Statement on the Use and Effects of Solitary Confinement’, annex to the Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/63/175, 28 July 2008.

26. United Nations General Assembly, *Standard Minimum Rules for the Treatment of Prisoners (Revised Mandela Rules)*, Resolution 70/175, A/RES/70/175, 17 December 2015, Rule 44.

27. European Committee for the Prevention of Torture, 2011, §54.

punishment, and define it as “the confinement of a prisoner for more than 22 hours a day without meaningful human contact”.<sup>28</sup> For all other forms of conduct for which solitary confinement is sometimes used (e.g. for security or safety reasons<sup>29</sup> – see section on specific groups of prisoners in a situation of vulnerability) the 2020 Rules allow only on “separation”.<sup>30</sup> Prisoners subject to such separation must always have at least two hours of meaningful social contact a day.<sup>31</sup> This represents a great step forward on this specific topic.

### **3.2. When does solitary confinement amount to inhuman and degrading treatment or torture?**

As a general principle, all human rights bodies agree that solitary confinement should be used as a measure of last resort and for the shortest possible time. Its use should be exceptional and not the rule, it should not be imposed on arbitrary grounds, it should be duly regulated and subjected to judicial review (CAT<sup>32</sup>, SPT<sup>33</sup>, SRT<sup>34</sup>, Mandela Rules<sup>35</sup>, ECtHR<sup>36</sup>, CPT<sup>37</sup>, EPR<sup>38</sup>). Effective remedies (with suspensive effects – HRC<sup>39</sup>) against solitary confinement as a disciplinary measure should be available, also the reasons of the imposition of the sanction should be recorded along with its duration (SRT<sup>40</sup>, Mandela Rules<sup>41</sup>, CPT<sup>42</sup>, EPR<sup>43</sup>).

Because of its severe adverse health effects, the UN Special Rapporteur on

28. EPR 60.6.a.

29. EPR 53A and following.

30. EPR 53 and 53A

31. EPR 53A.1.

32. Committee against Torture, *Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR)*, CAT/C/51/4, 16 December 2013, §32.

33. Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit of the Subcommittee on Prevention of Torture and other cruel, *inhuman or degrading treatment or punishment to Argentina*, CAT/OP/ARG/1, 27 November 2013, §67.

34. United Nations General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/66/268, 5 August 2011, §75.

35. Mandela Rules 45.

36. European Court of Human Rights, *Case of Ramirez Sanchez v. France*, Application no. 5608/05, 16 October 2008, §145.

37. European Committee for the Prevention of Torture, 2011, §53.

38. EPR 53A.c, 60.6.c, 61.

39. Human Rights Committee, *Report of the Human Rights Committee. Volume I*, A/58/40, New York, 2003, §83(16).

40. United Nations General Assembly, 2011, §§75, 87, 89–91, 93, 95–99..

41. Mandela Rules 39.

42. European Committee for the Prevention of Torture, 2011, §§56–57.

43. EPR 60.6.c

Torture (SRT) has stated that **solitary confinement in itself can amount to a violation of Article 7 of the ICCPR, and of Article 1 or of Article 16 of the CAT**; however the existence of a such a breach should be assessed on a case-by-case basis and take into consideration: the purpose of the application of solitary confinement, the conditions, length and effects of the treatment and, of course, the subjective conditions of each victim that make him or her more or less vulnerable to those effects. In general, the longer the time a detainee spends in solitary confinement, the wider the possibilities that his/her health might be compromised, which could constitute cruel, inhuman or degrading treatment or even torture, depending on the circumstances of the case. The SRT also states that **any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment**, depending on the circumstances of the case.<sup>44</sup>

Also, the SRT also affirms that the imposition of solitary confinement of any length on **children under the age of 18, and on people with mental illnesses** constitutes a cruel, inhuman or degrading treatment, which violates Article 7 of the ICCPR and Article 16 of the CAT, and which should be completely prohibited.<sup>45</sup> Also, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty stated that the “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” should be “strictly prohibited”.<sup>46</sup> It is also worth mentioning that the Committee on the Rights of the Child (CRC), in General Comment No. 10 of 2007 on Children’s rights in juvenile justice, absolutely prohibits the use of “closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned”.<sup>47</sup>

According to the Special Rapporteur on Torture, using **solitary confinement**

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44. United Nations General Assembly, 2011, § 58, 59, 70-71, 76, 79, 80.

45. United Nations General Assembly, 2011, §§33, 68, 77, 78, 81, 86.

Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, §22.

46. United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Resolution 45/113, A/RES/45/113, 14 December 1990, §67.

47. Committee on the Rights of the Child, *General Comment No. 10 of 2007 on Children’s rights in juvenile justice*, CRC/Cc/GC/10, 25 April 2007, §89.

as a tool to extort a confession from a detainee awaiting trial is a clear form of torture and such a confession should be inadmissible in court.<sup>48</sup>

On the other hand, the jurisprudence of the European Court of Human Rights (ECtHR) does not consider a prisoner's segregation as amounting to inhuman treatment in itself.<sup>49</sup> In fact, in order to assess whether a violation of Article 3 takes place with regard to solitary confinement, the ECtHR considers the particular conditions of the case, the stringency of the measure, its duration, the objective pursued, and its effects on the person concerned. Moreover, the duration of such confinement is analysed by the ECtHR in conjunction with its justification, the need for the measures taken and their proportionality with regard to other possible restrictions, the guarantees offered to the applicant and the measures taken by the authorities to ensure that the applicant's physical and psychological condition allowed him to remain in isolation.<sup>50</sup> However, according to the ECtHR, **complete sensory isolation coupled with total social isolation is regarded as a form of inhuman treatment**, as it can destroy the personality of the detainee and cannot be justified by the requirements of security or any other reason.<sup>51</sup>

In its 21st General Report, the CPT states that the use of solitary confinement has to be justified in light of the extra restrictions imposed on the already highly limited rights of people deprived of their liberty. In order to assess the justification for the imposition of solitary confinement, the CPT uses a framework elaborated by the ECtHR, which analyses five elements: **proportionality** (of the measure as compared to the harm that the detainee has or is likely to cause, or to the potential harm that could be done to the prisoner by other detainees), **lawfulness** (it has to be regulated by domestic law, which should state the procedure for the imposition, the authorities who can impose the measure, mechanisms of review and of appeal, rights of the detainee, and a clear differentiation between each type of solitary confinement), **accountability** (full records should be maintained of all decisions to isolate detainees and of all reviews of the decision), **necessity**

48. United Nations General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/71/298, 5 August 2016, §46.

49. European Court of Human Rights, Case of *Öcalan v. Turkey* (No. 2), Applications nos. 24069/03, 197/04, 6201/06 and 10464/07, 18 March 2014, §104.

50. European Court of Human Rights, Case of *X v. Turkey*, Application no. 24626/09, October 2012, §40.

51. European Court of Human Rights, Case of *Öcalan v. Turkey* (No. 2), §107.

(the restrictions applied during the regime of solitary confinement should be those strictly necessary in the circumstances of the case), **non-discrimination** (authorities should not take into consideration irrelevant matters upon deciding on the imposition of solitary confinement, e.g. sexual orientation).<sup>52</sup>

### 3.3. Duration of solitary confinement

After the introduction of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) in 2015, human rights bodies often refer to the Mandela Rules as the international standard regarding the duration of solitary confinement. In this regard, Rule 44 of the Mandela Rules indicates that prolonged solitary confinement, i.e. the confinement of a detainee for more than 15 days, should be prohibited. Also, subsequent measures of solitary confinement which de facto prolong the time spent by the detainee under this measure, should be prohibited (CAT<sup>53</sup> , SRT<sup>54</sup> , CPT<sup>55</sup> , EPR<sup>56</sup> ) along with prolonged and indefinite solitary confinement (Mandela Rules<sup>57</sup> , ECtHR<sup>58</sup>). In the case of disciplinary solitary confinement, the CPT recommends 14 days as the maximum time limit, and adds that sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period should be prohibited.<sup>59</sup> The 2020 revised version of the EPR does not directly set a specific maximum number of days for solitary confinement as a disciplinary measure, but specifies that it should be set by national law.<sup>60</sup> When setting a maximum, a national government has to set a period that would not be so long that it would amount to inhuman or degrading punishment and thereby infringe article 3 of the ECHR (freedom from torture). In evaluating where the set period meets this test one can rely on the 14 and 15 day maxima set respectively by the CPT, and the Nelson Mandela rules.<sup>61</sup> Any maximum period of much

52. European Committee for the Prevention of Torture, 2011, §55.

53. Committee against Torture, *Report of the Committee against Torture, A/69/44*, New York, 2014, §61(12).

54. United Nations General Assembly, 2011, §§75, 87, 89-91, 93, 95-99.

55. European Committee for the Prevention of Torture, 2011, §§56-61.

56. EPR 60.6.e.

57. Mandela Rules 45.

58. European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §145.

59. European Committee for the Prevention of Torture, 2011, §§56-61.

60. EPR 60.6.d.

61. See the Commentary to Rule 60.6.d of the 2020 EPR.

longer than 15 days is likely to infringe Art 3 of the ECHR. It is worth emphasising that the 2020 EPR allow solitary confinement only of prisoners convicted of disciplinary offences. For all other forms of conduct for which solitary confinement is sometimes used, the 2020 Rules allow only on “separation”.<sup>62</sup> Prisoners subject to such separation must always have at least two hours of meaningful social contact a day.<sup>63</sup>

When a detainee has been in isolation for disciplinary reasons already for the maximum amount of time set by national law, and is given another measure of solitary confinement for another disciplinary offence, the detainee should be given a sufficient amount of time to recover from the previous measure.<sup>64</sup> This means that according to the EPR, subsequent measures of solitary confinement should not be allowed without the elapse of such a period of time. Also, the decision on the application of solitary confinement should always take into account the state of health of the prisoner concerned, and should be terminated or suspended if the mental or physical health of a detainee shows signs of deterioration.<sup>65</sup>

The ECtHR does not set a specific time limit for the imposition of solitary confinement, but it measures the level of social isolation. The level of social isolation of the isolated detainee is measured by the ECtHR by considering access to information (e.g. newspapers, television, phone calls), communication with the prison staff (e.g. visits from a medical practitioner and degree of communication with the prison staff), with other prisoners (e.g. possibility to engage in collective activities), with family, lawyer, and other persons (through visits or mail). Depending on these factors, social isolation can be relative or total.<sup>66</sup>

Solitary confinement, even when it entails only relative isolation, cannot be imposed on a prisoner indefinitely.<sup>67</sup> When social isolation is imposed for extended periods of time (e.g. in the case of special regimes for dangerous prisoners who are assessed to pose a risk to others), it has to be justified.

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62. EPR 53 and 53A.

63. EPR 53A.1.

64. EPR 60.6.e.

65. EPR 60.6.b.

66. European Court of Human Rights, *Case of Öcalan v. Turkey* (No. 2), §§116–136, 145.

67. European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §145.

The measures taken have to be necessary and proportionate in light of available alternatives, safeguards have to be available to the detainee, and the physical and mental health of the prisoner has to be assessed in order to ensure that they are compatible with his continued solitary confinement.<sup>68</sup>

As time passes, the motivations for the imposition of the measure have to be more detailed and compelling (see also CPT<sup>69</sup>), the decision on the prolongation of the measure has to consider any changes in the prisoner's circumstances, situation or behaviour, and the detainee's physical and mental health should be regularly monitored in order to ensure that his condition is compatible with continued solitary confinement.<sup>70</sup> The lack of a specific maximum number of days in the ECtHR standards (which found no violation of Art. 3 of the ECHR even for year-long solitary confinement) is one of the problematic issues encountered by NPMs when advocating with the authorities for the reduction of the time spent in isolation by detainees. Another critical point is represented by the fact that ECtHR measures social isolation taking into account other elements other than human interaction, which is the most important element in order to maintain a good state of mental health. Since the 2020 version of the EPR states that all separated detainees should get at least two hours of meaningful social contact, the ECtHR could consider this as a new standard to evaluate the level of social isolation of the prisoner.

### 3.4 Material conditions and regime

All cells, including those for solitary confinement, should be large enough for single occupancy (around 6 square meters according to the CPT and the ECtHR) with a window allowing in the cell natural light and air, and provided with artificial light, (EPR<sup>71</sup>, CPT<sup>72</sup>, ECtHR<sup>73</sup>). The placement of detainees in cells without lights, windows or ventilation (HRC<sup>74</sup>) or in a

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68. European Court of Human Rights, *Case of Öcalan v. Turkey* (No. 2), §§138-140.

69. European Committee for the Prevention of Torture, 2011, §§56-57.

70. European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §§136-139.

71. EPR 18.1.

72. European Committee for the Prevention of Torture, 2011, §§58-60

73. European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §§12, 127, 130.

74. Human Rights Committee, *Report of the Human Rights Committee. Volume I, A/56/40*, New York, 2001, §78(14)

dark or constantly lit cell is prohibited (Mandela Rules<sup>75</sup>, EPR<sup>76</sup>). Cells should also be adequately furnished with a bed, table and chair, sanitary facilities (ECtHR<sup>77</sup>, CPT<sup>78</sup>) and means of communication with the prison staff; when the cell is not used for disciplinary solitary confinement, it should be furnished as a regular cell (CPT<sup>79</sup>). Those who are kept in solitary confinement should be given access to at least one hour of outdoor exercise (SPT<sup>80</sup>, CPT<sup>81</sup>, EPR<sup>82</sup>) and the area for outdoor exercise should be sufficiently large to enable detainees to genuinely exert themselves and should have some means of protection from the elements (CPT<sup>83</sup>). Some general living conditions that cannot be withdrawn, which include those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space; in general a cell for solitary confinement should look like a regular cell (Mandela Rules<sup>84</sup>, EPR<sup>85</sup>, CPT<sup>86</sup>). A physician or a public health official should monitor these conditions (Mandela Rules<sup>87</sup>, SRT<sup>88</sup>, EPR<sup>89</sup>).

The ECtHR also considers other factors of the regime such as access to television, books (which should not be limited to religious texts), and newspapers, the possibility, duration and equipment to exercise indoor and/or outdoors, and whether the detainee has access to in-cell or out-of-cell activities (alone or with other detainees).<sup>90</sup>

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75. Mandela Rules 43..

76. EPR 60.3.

77. European Court of Human Rights, *Case of Öcalan v. Turkey* (No. 2), §§110-112.

European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §§12, 127, 130.

78. European Committee for the Prevention of Torture, 2011, §§58-60.

79. European Committee for the Prevention of Torture, 2011, §§58-60.

80. Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment to Sweden*, CAT/OP/SWE/1, 10 September 2008, §127.

81. European Committee for the Prevention of Torture, 2011, §§58-60.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Imprisonment*. Extract from the 2nd General Report of the CPT, Strasbourg, 1992, §48

82. EPR, Rule 53.A.g

83. European Committee for the Prevention of Torture, 2011, §§58-60.

European Committee for the Prevention of Torture, 1992, §48

84. Mandela Rules 42..

85. EPR Rule 53.A.e and Rule 53.A.g.

86. European Committee for the Prevention of Torture, 2011, §§58-60

87. Mandela Rules 35.

88. United Nations General Assembly, 2011, §§100-101.

89. EPR 44.

90. European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §128.

### 3.5 Role of medical staff

The role of the medical personnel is very important, as it has the duty to check the mental and physical health of the detainees prior to their placement in solitary confinement, and once per day for the whole duration of the measure. As a general rule, the medical staff should not be involved in the imposition of disciplinary sanctions (Mandela Rules<sup>91</sup>, CPT<sup>92</sup>), and should monitor daily those who are subjected to solitary confinement (HRC<sup>93</sup>, Mandela Rules<sup>94</sup>, CPT<sup>95</sup>, EPR<sup>96</sup>). If the examination demonstrates that the detainee's mental or physical health is worsening, the medical personnel should advise the prison director on the termination of the measure, and review of the measure should take place (Mandela Rules<sup>97</sup>, SRT<sup>98</sup>, CPT<sup>99</sup>, EPR<sup>100</sup>).

### 3.6 Meaningful human contacts

Isolated detainees should be visited daily by a member of the medical staff (see section on the role of the medical staff) and by the prison director or a member of staff acting as the prison director (CPT<sup>101</sup>, EPR<sup>102</sup>). In several cases, human rights bodies recommend that prison administrations should actively counteract the detrimental effects of solitary confinement by providing necessary stimuli, such as meaningful human contact and/or activities (Mandela Rules<sup>103</sup>, ECtHR<sup>104</sup>, CPT<sup>105</sup>, EPR<sup>106</sup>). The EPR state that in case of the separation of detainees for safety reasons, or as a high security measure, they should be offered at least two hours of meaningful human contact.<sup>107</sup> Also, as all other detainees, those who are undergoing solitary confinement should be able to meet their lawyer (SRT<sup>108</sup>, CPT<sup>109</sup>)

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91. Mandela Rules 4.6.

92. European Committee for the Prevention of Torture, 2011, §§62-63.

93. Human Rights Committee, 2009, §85(21)

94. Mandela Rules 4.6

95. European Committee for the Prevention of Torture, 2011, §§62-63

96. EPR 4.3.2 and 60.6.f

97. Mandela Rules 4.6.

98. United Nations General Assembly, 2011, §§100-101.

99. European Committee for the Prevention of Torture, 2011, §§62-63.

100. EPR 4.3.3, 53.A.i, 60.6.b

101. European Committee for the Prevention of Torture, 2011, §§56-61

102. EPR 60.6.f., 53.A.h

103. Mandela Rule 3.8.

104. European Court of Human Rights, *Case of Horych v. Poland*, Application No. 13621/08, 17 April 2012, §98.

105. European Committee for the Prevention of Torture, 2011, §§56-61.

106. EPR 53.A.f.

107. EPR 53.A.a.

108. United Nations General Assembly, 2011, §§75, 87, 89-91, 93, 95-99.

109. European Committee for the Prevention of Torture, 2011, §§56-61

and their families (CPT<sup>110</sup>, EPR<sup>111</sup>). Contacts with the family should not be prohibited (CPT<sup>112</sup>).

### 3.7. Specific and groups of detainees in a situation of vulnerability

There are certain groups of detainees who are in particular situations of vulnerability and who should never be isolated.

Group of detainees not to isolate	Source
<p style="text-align: center;"><b>Juveniles</b></p>	<p>Committee on the Rights of the Child, CAT, HRC, SPT, Mandela Rules, EPR, Tokyo Rules.</p> <p>The SRT also adds that the imposition of solitary confinement of any length on children under the age of 18 constitutes a cruel, inhuman or degrading treatment which violates Article 7 of the International Convention on Civil and Political Rights (ICCPR) and Article 16 of the CAT and should be completely prohibited.</p> <p>The CPT, while recognizing the danger that solitary confinement can pose to children’s physical and mental well-being, allows solitary confinement for disciplinary reasons to be used only as a last resort and for no more than three days. Isolation for prevention or protection purposes is allowed only when absolutely no other solution can be found, and with the adequate safeguards in place. In all cases, while undergoing the measure, juveniles should be provided with socio-educational support and appropriate human contact. Finally, the CPT considers the use of calming-down rooms for the placement of a violent and/ or agitated juvenile only in highly exceptional circumstances, for a few hours, and with the health care staff alerted.</p>

110. European Committee for the Prevention of Torture, 2011, §§56-61.  
 111. EPR 60.4  
 112. European Committee for the Prevention of Torture, 2011, §§56-61.

Group of detainees not to isolate	Source
Pregnant, breastfeeding mothers and mothers with small children	Bangkok Rules, Mandela Rules, EPR (regarding disciplinary solitary confinement)
Detainees with mental health problems, or with intellectual and psychosocial disabilities	<p>This group of detainees should never be isolated because their mental state could further deteriorate because of isolation (CAT, HRC, SPT, SRT, Mandela Rules, EPR).</p> <p>According to the Special Rapporteur of Torture, any imposition of solitary confinement of any length on people with mental illnesses constitutes a cruel, inhuman or degrading treatment, which violates Article 7 of the ICCPR and Article 16 of the CAT.</p> <p>The ECtHR stated that the placement of mentally ill people in solitary confinement for prolonged periods of time inevitably affects their mental state, and that it may be incompatible with Art. 3.</p>
Death-row detainees	CAT, HRC
Solitary confinement as part of the prison sentence	CAT, Special Rapporteur on Torture, HRC, Mandela Rules, CPT. Also, the CPT has recently stated that this use of solitary confinement is a punitive and anachronistic measure which does not have any penological justification.

Human rights bodies also protect other groups in a situation of vulnerability.

Another group in a situation of vulnerability is represented by **pre-trial detainees** who in some countries are isolated for long periods of time without meaningful activities. Human rights bodies underline that also in their case solitary confinement should be used only in exceptional circumstances, for a limited period of time (HRC<sup>113</sup>, SPT<sup>114</sup>), and only if

113. Human Rights Committee, *Report of the Human Rights Committee. Volume I, A/61/40*, New York, 2006, §81(13)

114. Subcommittee on Prevention of Torture, 2008, §§125, 127.

there is direct evidence that the administration of justice would not be effectively carried out if the prisoner concerned associates with particular detainees or others in general (CPT<sup>115</sup>).

Also, solitary confinement should not be used as a form of protection in the case of **LGBTIQ detainees or former police officers** (SPT<sup>116</sup>, SRT<sup>117</sup>) but alternatives should be found.<sup>118</sup> According to the Special Rapporteur on Torture<sup>119</sup>, the placement of LGBTIQ detainees in solitary confinement as a form of protection could constitute an act contrary to the CAT. The ECtHR found a violation of the prohibition of discrimination<sup>120</sup> in conjunction with the prohibition of torture<sup>121</sup>, when the State could not prove that the difference of treatment based on the sexual orientation of the detainee (in this particular case the detainee was subjected to harsh solitary confinement) was necessary in the specific circumstances of the case.<sup>122</sup>

States should resort to solitary confinement only when there is absolutely no other way of ensuring the safety of the prisoner concerned and all the alternatives to solitary confinement (e.g. transfer to another prison, mediation etc.) have been tried. If the prisoner wishes to go back to the general population, s/he should be allowed to do so if this can be safely done. When this is not possible, an effort should be made so that s/he can safely associate with other selected detainees and engage in situations where it would be possible to bring her/him out of the cell (CPT<sup>123</sup>).

**Detainees who have caused, or are judged likely to cause, serious harm to others or who present a very serious risk to the safety or security of the prison** (sometimes called “high-risk”) are also a group in a situation of vulnerability since they can be held in special regimes in conditions

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115. European Committee for the Prevention of Torture, 2011, §§57, 61.

116. Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/C/57/4, 22 March 2016, §§64,78.

117. Human Rights Council, 2016, §35.

118. European Committee for the Prevention of Torture, 2011, §§56-61.

119. Human Rights Council, 2016, §35

120. Art. 14 of the ECHR.

121. Art. 3 of the ECHR.

122. European Court of Human Rights, *Case of X v. Turkey*, Application no. 24626/09, October 2012, §§40, 50, 53, 57.

123. European Committee for the Prevention of Torture, 2011, §§56-61.

that entail isolation (or de-facto isolation) and serious restrictions to their rights. The ECtHR does not consider these special regimes as contrary to Article 3 ECHR per se, but evaluates the conditions of detainees on a case-by-case basis. Even if it states that these kinds of security-driven regimes should be used only exceptionally with all safeguards and precautions, that mitigating measures should be in place and alternatives to isolation should be found, the ECtHR still justifies harsh isolation when the detainee is linked to organised crime, terrorism, and mafia-type organisations.<sup>124</sup>

Upon judging these cases, the ECtHR thoroughly checks whether the State has made an evaluation of the specific personal circumstances of the inmate (including the effects of the regime on mental health), and whether it has balanced “the degree of the applicant’s relative isolation on the one hand, and the degree of compensating measures on the other”. Among the others, the analysis of compensating measures includes the activities that the isolated inmate is allowed to carry out, the visits s/he can receive, and the level of interaction with staff members.<sup>125</sup> On the side of procedural safeguards, detainees should have an effective remedy at their disposal (ECtHR<sup>126</sup>). They should be able to appeal against their placement in solitary confinement, there should be a mechanism of review of the measure, and the penitentiary system should aim at their placement in progressively less restrictive custody (SPT<sup>127</sup>). In several cases that ended up in front of the ECtHR, there was no way to complain against the measure. In others, only one magistrate in the country examined the appeals, with the result that sometimes this was done once the measure was over (explaining why the ECtHR found in several instances that Italy had infringed the ECHR.<sup>128</sup>). As these special regimes involve the use of solitary confinement, their imposition, continuation, and termination

124. European Court of Human Rights, *Case of Horych v. Poland*, §94.

European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §146.

125. European Court of Human Rights, *Case of Fjotolf HANSEN v Norway*, Application no. 48852/17, 29 May 2018, §§148–152.

126. European Court of Human Rights, *Case of Messina v. Italy* (No. 2), Application no. 25498/94, September 2000.

127. Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment to Maldives*, CAT/OP/MDV/1, 26 February 2009, §§197–198.

128. European Court of Human Rights, *Case of Messina v. Italy* (No. 2).

need to take in consideration the changes in the reasons for the application of the regime and the effects of the application of such a regime on the isolated detainee; moreover, the authorities should be in a position to adjust the regime to the individual security needs of the detainee, and to reduce the negative impact of isolation.<sup>129</sup>

The CPT is also particularly concerned with prisoners who have caused, or are judged likely to cause, serious harm to others or who present a very serious risk to the safety or security of the prison. These detainees are often placed in a kind of solitary confinement that the CPT calls “administrative”. The CPT is greatly concerned with this kind of isolation since it is potentially the longest lasting type of solitary confinement and often the one with the fewest procedural safeguards. The time may vary from as short as a few hours or for as long as a period of years depending on the danger posed by the detainee. For these reasons, it recommends stringent controls, such as: the authorisation of the measure to be done only by the most senior member of the staff, a scrupulous reporting mechanism to be in place, as well as particular care from the medical staff. Solitary confinement should be terminated as soon as the reason for the imposition of the measure has been resolved. In the case of the imposition of a longer measure, efforts should be made to achieve the reintegration of the detainee in the general prison population through an individualised plan.<sup>130</sup> The path for the release of a detainee from solitary confinement needs to start from the day he is put in solitary confinement. When the measure ends, the detainee needs to debrief with prison staff on the reasons why he was isolated. Interviews with detainees and staff allow the NPM to verify if this procedure takes place.<sup>131</sup>

The 2020 EPR address the isolation of “dangerous detainees” with a new approach. In fact, they state that if a detainee is separated from the general prison population (Rule 53.A and following) for special high security

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129. European Court of Human Rights, *Case of Horych v. Poland*, §102.

European Court of Human Rights, *Case of Piechowicz v. Poland*, Application no. 20071/07, 17 April 2012, §177.

130. European Committee for the Prevention of Torture, 2011, §§56–61.

131. Alan Mitchell, Working towards harmonized detention in Europe – the role of NPM (NPM standards), Rome seminar on solitary confinement, Rome, via IV Novembre 149, 27–28 January 2020.

or safety measure, he should be given at least two hours of meaningful human contact per day (the definition of meaningful human contact being left to each country). The decision on separating the detainee concerned shall take into account his/her state of health and any disabilities, and there should not be any other restriction beyond those necessary for the purposes of the separation.

Detainees should have at their disposal judicial remedies to challenge the placement in such an accommodation. The duration of the separation should be the shortest possible, should be regularly reviewed and suspended (and replaced with a less restrictive measure) if the mental health of the detainee is negatively affected by the measure. As the separation of the detainee gets longer, the more steps the administration has to take to mitigate the negative health effects of the separation, and provide activities, reading materials and the opportunity to exercise at least one hour per day. Living conditions should be the same as a regular cell, and separated detainees should be visited daily by the director or by a member of staff acting on behalf of the director of the prison and medical staff.

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*“To investigate the root causes of isolation and search for alternative solutions NPMs can adopt a systemic approach”*

## 4. THE ROLE OF NPMs - PREVENTIVE MONITORING OF SOLITARY CONFINEMENT

### 4.1. The NPM as a catalyst for change

Solitary confinement requires the NPM to monitor and try to address the already mentioned critical issues. What means does the NPM have at its disposal to meet these challenges? To some extent, monitoring visits are a key tool. But monitoring visits alone are not enough.<sup>132 133</sup>

More generally, NPMs should strive to go beyond monitoring prison life against national and international standards, but rather seize the opportunities that their mandate gives them to become a catalyst for change, both regarding norms and practices. To succeed in this endeavour NPMs could consider adopting a systemic approach<sup>134</sup> to effectively push for a reduction in the use of isolation and a strengthening of rights and guarantees connected to it.

In practice, applying such an approach also means investigating the root causes of isolation and searching for alternative solutions. In order to have an overall understanding, it is necessary to ask what solitary confinement is used for. So NPMs could start by investigating the following points:

132. Between 2014 and 2018, the Norwegian Ombudsman made 20 visits to Norway's high security prisons, where many people are held under a solitary confinement regime. The NPM then collected in a report the findings of his observation, together with general considerations on the solitary confinement and specific recommendations addressed to different components of the Norwegian public administration.

Sivilombudsmannen, Norwegian Parliamentary Ombudsman, Special report to the starting on solitary confinement and lack of human contact in Norwegian prisons, 2019, available here: [https://www.sivilombudsmannen.no/wp-content/uploads/2019/08/SOM\\_S%C3%A6rskilt-melding\\_ENG\\_WEB.pdf](https://www.sivilombudsmannen.no/wp-content/uploads/2019/08/SOM_S%C3%A6rskilt-melding_ENG_WEB.pdf)

133. The Danish association DIGNITY, whose members carry out visits with the NPM as medical experts, has dealt with the topic of solitary confinement, which can be freely consulted online: <https://www.youtube.com/watch?v=EyK5cNRahHc>

134. See “A systemic approach to human rights practice”, Moritz Birk and Walter Suntinger, in Neuer Wissenschaftlicher, Verlag 2019

- Is it a prison life management tool to deal with “problematic” prisoners?
- Is it used to respond to problems of understaffing?
- Is it an easy alternative to the need to protect prisoners in a situation of vulnerability, instead of the complex solutions that this would require?
- Is it a means to punish violations of the prison regulation?

Using a systemic approach also means acting upon the identified root causes by suggesting alternative solutions. To reduce the use of solitary confinement the NPM should ask itself – and the prison administration – whether there are any alternative solutions to solitary confinement and more specifically:

- Are there less stringent measures to be used to deal with detainees who are judged likely to cause, serious harm to others or who present a very serious risk to the safety or security of the prison?
- Are there alternative ways of responding to understaffing problems that do not entail the solitary confinement of prisoners?
- Are there any other options that can be considered in the case of isolation for protective or health reasons?
- Are there no other sanctions that can be considered in the case of isolation for disciplinary reasons?

The reduction of the use of isolation is also achieved through the **promotion of alternatives**, which are the result of a shared path between the actors. Isolation requires specific attention. The international standards presented in this handbook are an operational tool for NPMs. But NPMs can also develop their own standards, and can deepen and detail what is left vague in the international standards. NPMs can still use international standards to push legislators to bring the national legislation closer to these standards.

#### ***4.1.1. Challenges posed to prison monitoring by SARS-CoV-2 (Covid-19)***

The Coronavirus (Covid-19) is posing new challenges to prison systems and prison monitoring. During the latest meeting with NPMs and other prison experts that took place within the project, two different problematic aspects were raised. One problematic aspect that was pointed out was that Covid-19 has changed several aspects on how NPMs monitor prison

conditions. Indeed, to respect the principle of “do no harm” many NPMs decided to limit or altogether suspend prison visits or, in a few cases, have been prohibited from entering by penitentiary authorities. This has meant looking for alternative ways to monitor the situation in penitentiary institutes and other places of deprivation of liberty. For example, some NPMs have used the tool of confidential phone calls with staff and detainees to assess the situation in prison. Other NPMs have continued to carry out monitoring visits while adopting preventive measures against the spread of the virus, such as tests for Covid-19 for all monitors entering the prisons, and the use of personal protective equipment up until full hazmat suits. Another solution was to hold interviews with detainees in the meeting areas for lawyers situated in prisons; this solution, even if it did not allow the monitoring of prison conditions, allowed the NPM to receive information and complaints from detainees and at the same time safeguarded their health.

The second problematic aspect that was pointed out was that the use of solitary confinement for public health purposes has increased and that in some cases detainees did not even have the possibility to shower, exercise in open air, access their lawyer, or benefit from all the necessary procedural safeguards. Also for NPMs, these are the most difficult people to reach at this time. In some instances, monitoring bodies have visited these inmates in hazmat suits, even if they render very difficult the possibility of having a confidential conversation with detainees.

In the past few months, several human rights bodies<sup>135</sup> have issued some statements or handbooks related to people deprived of liberty. For example, the CPT in its Statement of principles of 20 March<sup>136</sup> reminded

135. The WHO published an interim guidance on how to deal with the Coronavirus disease (COVID-19) in prisons and other places of detention: <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/preventing-covid-19-outbreak-in-prisons-a-challenging-but-essential-task-for-authorities>

OHCHR, WHO, UNAIDS and UNODC issued a joint statement to urgently draw the attention of political leaders to the heightened vulnerability of prisoners and other people deprived of liberty during the COVID-19 pandemic, and urge them to take all appropriate public health measures in respect of this vulnerable population: [https://www.ohchr.org/Documents/Events/COVID-19/20200513\\_PS\\_COVID\\_and\\_Prisons\\_EN.pdf](https://www.ohchr.org/Documents/Events/COVID-19/20200513_PS_COVID_and_Prisons_EN.pdf) The SPT issued a statement that included measures to be taken by authorities concerning all places of deprivation of liberty to face Covid-19 and measures to be taken by NPMs during their monitoring mandate: <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

136. European Committee for the Prevention of Torture, Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19)

all actors of the absolute prohibition of torture and ill-treatment and advised all monitoring bodies to “take every precaution to observe the ‘do no harm’ principle, in particular when dealing with older persons, and persons with pre-existing medical conditions”. Regarding the specific use of solitary confinement, the CPT states in principle 8 that “in cases of isolation or placement in quarantine of a detained person who is infected or is suspected of being infected by the SARS-CoV-2 virus, the person concerned should be provided with meaningful human contact every day”.

More recently, in a Follow-up statement<sup>137</sup>, the Council for Penological Co-operation Working Group pointed out that because of the negative impact of solitary confinement “such confinement for sanitary and safety reasons should be coupled with counterbalancing activities, such as increased number of free-of-charge phone calls, books and other reading material, TV and other media, in-cell educational, training and recreational activities and others. Such periods of solitary confinement should be ended immediately with the end of the reason for their imposition”.

#### **4.2. Preparation of the visit**

Specific monitoring of solitary confinement requires the widest possible collection of information prior to the visit. For some NPMs, preliminary data analysis is easier than for others. The Italian NPM for example, has direct access to the centralized system of the penitentiary administration where data from all the penitentiary institutes are centrally recorded. Thus for this NPM it is easy to examine the number of disciplinary measures currently in progress and those issued in the past, their duration and the internal placement of prisoners (i.e. the type of regimes and sections and the number of people accommodated within them), the number of critical events that occurred before the visit and their type. When NPMs do not have direct access to these data, they can request them. This is usually the case for the French NPM, which requests them by email prior to the visit. The Danish NPM in the weeks before each visit, requires the

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pandemic, 20 March 2020, available at: <https://rm.coe.int/16809cfa4b>

In July the CPT issued a Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing COVID-19 pandemic, available here: <https://rm.coe.int/16809ef566>

137. Council for Penological Co-operation Working Group, *Follow-up Covid-19 related statement by the Council for Penological Co-operation Working Group*, 14 October 2020, available at: <https://rm.coe.int/pc-cp-2020-10-e-rev-follow-up-to-pc-cp-wg-statement-covid-19/16809ff484>

prison administration to provide them with data on the prison and several reports from the different types of professionals working there in order to have a better understanding of the dynamics of the prison. This allows on one hand the institution to better prepare the visit, but on the other hand precludes carrying out unannounced visits.

The data from the prison administration, combined with information from reports from the CPT or other human rights bodies as well as from NGOs, and the information received from prisoners or their families, can also help to identify the existence of “grey areas” where informal solitary confinement is carried out. Some NPMs extract from the file with this information a summary that they bring with them during the visit. In addition to the summary, it is common for NPMs (e.g. the Italian NPM) to use a checklist divided into paragraphs corresponding to the items to be monitored (conditions of the cells, showers, procedural safeguards, medical supervision, meaningful contacts, critical events, etc.), with the indication of the main legal standards next to each item.

Finally, the Danish NPM pointed out that a very good practice is to set up a diverse team to visit places of deprivation of liberty bringing along legal, medical, human rights experts and other professionals that can help to view an issue from different angles.

### **4.3. The visit<sup>138</sup>**

#### **4.3.1. *The immediate visit to isolation sections***

Several NPMs explained that they usually start the monitoring visit from the sections where isolation takes place. In some cases, the delegation breaks up into two teams: the first one goes immediately to these sections, while the other team carries out the interview with the director. Other NPMs, in order to get a picture of all isolated people, even those who are not formally isolated, ask the director for a list of persons who are held on their own for 22 hours a day or more.

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138. Among the good practices of the NPMs, the guide prepared by the United Kingdom's NPM (for the various NPM delegations of the country) for the monitoring of solitary confinement should certainly be included. The guide covers various types of isolation, but specific attention is given to prison isolation. UK National Preventive Mechanism, Guidance: isolation in detention, 2017, available at: <http://www.nationalpreventivemechanism.org.uk/app/uploads/2017/02/NPM-Isolation-Guidance-FINAL.pdf>

Often, the information that leads to the monitoring of certain aspects of solitary confinement comes from isolated detainees, whom the NPM meets, even if at the time of the visit they are no longer isolated. In such cases, it is a good practice to initially ask the prison administration for a list of all detainees and their location within the institution. Afterwards the NPM can interview the detainee who sent the information along with many others, so that the choice of interviewees appears random in order to avoid the risk of retaliation. Another good practice is to request the internal regulation regarding the isolation section(s), if there is one.

During the visit, it is good practice for NPMs to access all places in the facility, also those which look unused. Spaces have to be investigated not only if they are used, but also if they are empty, in order to understand why they are empty, and if they might be places where informal isolation might take place.

#### **4.3.2. Prison records**

The first step to identify any critical issues related to isolation consists of **the examination of prison records/registers on sections, critical events, disciplinary measures, medical records (collective or individual medical records), and the individual file of the detainee along with his plan to leave a situation of isolation and reintegrate him/her in the general prison population (if there is one)**. To also have an overview of the past situation of the penitentiary institute, many NPMs examine a sample of past cases of prisoners who were isolated. Some examine the latest ones or those who were isolated for the longest time, others all those from the previous year.

The study of the records reveals the **average duration of the isolation measures**. In the case of disciplinary solitary confinement, this makes it possible to measure the gap between the average length of the measure and the maximum duration set by the law (in many cases, prison administrations decide to give the maximum duration provided by the law without following any criteria of proportionality). The records make it possible to identify the

**presence of consecutive disciplinary isolation measures**, which lead to a de facto prolonged isolation. Some of the NPMs pointed out the presence of anomalies. For example, records have shown detainees put in isolation before a formal disciplinary order, which, when issued, merely confirms the period of solitary confinement that the detainee has already spent in isolation, thus giving it formal legitimacy.

Regarding the monitoring of **meaningful social contacts** that each isolated prisoner should maintain, from the records of the isolation section (where there is one) it should be possible to note who enters the section and for how long, and then question these professionals on the kind of contact they have with isolated prisoners. Among them there should be doctors, for whom the records show the frequency and duration of visits. Several NPMs have reported that not only are visits not carried out every day, as required by international standards, but that at times even the national legislation is not respected on the frequency of the visits to isolated prisoners.

Prison records may also reveal indicators of **possible ill-treatment or violence**, which require further investigation. An NPM reported a case in which a blanket was brought to the prisoner in the isolation section 3 days after the beginning of the isolation measure: an investigation was necessary to understand if the person did not have any blanket up until that moment, or if it was an additional blanket. Another NPM reported the case of an isolated person whose name had been written next to the crime for which s/he was being held, which could be interpreted as a **possible communication between officers to harass the detainee**.

In some cases, NPMs study the medical records of isolated individuals. This also makes it possible to assess the extent to which the medical staff orders isolation as a response to suicide attempts or self-inflicted acts. This is a totally inappropriate solution, since it is necessary to give more support to those who express such distress instead of taking away activities and human contacts. Documentation should show the measures taken to address the issue of self-inflicted violence and suicide attempts

(whether the measure was taken, when and why no other possibility than solitary confinement was possible).

From the examination of prison records it is possible to find out:

- What is the average duration of the isolation measures?
- Were consecutive disciplinary measures applied?
- Were there meaningful social contacts?
- Did isolated detainees have access to a doctor in line with international standards?
- Did the records document the introduction of specific items in the isolation cells that could be an indication of a possible ill-treatment (e.g. delay in providing the prisoners with a blanket)?
- Do medical records show the use of solitary confinement as a response to self-harm acts or suicide attempts?

It is very important, however, to cross-check the accuracy of prison records, wherever it is possible to do so.

### **4.3.3. Interviews**

The monitoring of solitary confinement cannot be done without interviewing prisoners. In order to avoid the risk of reprisals, several NPMs interview all (or almost all) people in solitary confinement. To locate a person who has shared valuable information in the past but is no longer in solitary confinement, the Italian NPM has identified that it is good practice to ask the prison director for the list of all detainees held in prison and their location so there is no need to endanger a prisoner by asking his/her specific location.

Interviews can take a significant amount of time. It is important not to rush the process. The interviewed NPMs have talked about an average of half an hour for each interview. In most cases interviews are conducted by two people, one taking notes and the other talking. They generally have the following structure: the delegation introduces itself, the work and the mission of the NPM and informs the person of the absolute confidentiality of the information exchanged during the interview. There is no questioning of the reasons why the person is detained, unless the detainee reveals it.

When interviews take place in the cell that the detainee is occupying (e.g. an isolation cell), it is possible to also note the conditions s/he is subjected to. Interviews can also take place in other appropriate areas. Detainees should be unrestrained and should not be divided from the interviewer by any partition (e.g. bars or glass).

Some NPMs organise the first part of the interview with open questions to give the opportunity to detainees to say what they think to be most important. Afterwards, the NPM can ask specific questions to review the various aspects of solitary confinement, such as:

- The way the medical examination is carried out;
- The material conditions of detention facilities;
- The regime to which they are subjected (daily exercise in open air, medical treatment, smoking, personal objects...)
- Whether they know how long their isolation measure will last;
- Which contacts they have with prison staff (and how the prison staff treats them), family members and their lawyer (to measure meaningful social contacts);
- Whether they know of a complaint mechanism and how it works;
- Whether they had the possibility to defend themselves in the disciplinary hearing;
- Whether they have suffered any abuse or ill-treatment or if they know whether other isolated detainees have suffered them.
- How they feel and whether they think solitary confinement is affecting their mental and physical health.

With regard to **interviews with staff**, it has emerged as a good practice that some NPMs hold initial group meetings with staff without the presence of the director, and in that context they raise the issue of isolation and discuss with them their problems and any possible alternatives. Another good practice that was pointed out during the online conference for the presentation of the Handbook is also to have individual meetings with members of prison staff (all types of professionals). Indeed a one-on-one meeting (even in a casual setting) can better bring to the surface not only what an individual really thinks, but also the dynamics, the way the

prison in run and other valuable information that would not be accessible otherwise. A casual setting also helps set a less confrontational and more cooperative attitude that helps better understand the problems faced by prison staff and by prisoners with regard to solitary confinement.

One NPM also pointed out that it can be the prison director to point out the members of staff to interview because they need to be sensitised to the topic of solitary confinement. Interviewing the prison chaplain is also very important because they can be a valuable source of information to often identify problems. Interviews with staff can bring to surface the hidden reasons for solitary confinement such as:

- Conflict management
- Understaffing
- Inter-prisoner violence
- Underestimating health consequences
- Perceived lack of alternatives to solitary confinement

#### ***4.3.4. Monitoring effects of solitary confinement on isolated people***

As illustrated, isolation has particularly harmful effects on the people who are subjected to it. If the NPM cannot visit the isolation sections with the help of a medical professional (even if it would be desirable to always include one in the NPM delegation), it is possible to recognize some of the signs that might indicate the deterioration of the physical and mental health of a detainee, which can be observed at different degrees and times depending on the person.

Upon speaking with isolated detainees, it is important to notice whether they present any of these symptoms and effects of solitary confinement<sup>t139</sup>, (see background for more details on the effects of solitary confinement). Some may present these effects in a very dramatic way while others may be more subtle:

- Difficulty maintaining eye contact (e.g. detainees look at the floor when talking to the monitoring body)
- Evasive contact (detainees try to avoid contact)

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139. Pétur Hauksson, Working towards harmonized detention standards in Europe – the role of NPMs, Rome workshop on solitary confinement, Rome, via IV November 149, 27-28 January 2020.

- Delayed response (after asking a question, it takes several seconds for the detainee to answer)
- Insecure response (detainees appear not to know if what they say is true or right)
- Difficulty finding the words they need to express themselves
- Emotional imbalance
- Limited body movement (e.g, mostly looking down)
- Obsessive preoccupation for minor details (this is something that is recorded in terminally ill people)
- The person seems “broken” and unable to function.

A doctor from the Danish association DIGNITY also pointed out that if the interview takes place in the cell, it might be helpful to also notice whether:

- The cell is in order
- The curtains are closed even if it is the middle of the day
- The detainee looks depressed
- S/he just got out of bed or was still sleeping
- Is dressed or still in pyjamas
- Looks like someone who had a shower or his/per person shows signs of lack of personal hygiene.

#### **4.3.5. The effectiveness of procedural safeguards**

One aspect to be monitored concerns the actual possibility for the person in solitary confinement to participate in the decision-making process on the isolation measure. In the case of a disciplinary measure, the presence of the defence lawyer should be guaranteed as required by international standards. The NPM can verify how often lawyers are actually present and to what extent the practical arrangements for the disciplinary proceedings facilitate their presence. To monitor whether the right of access to a lawyer in disciplinary proceedings is respected, in practice some NPMs observe and monitor all disciplinary commissions – as well as to the commissions that decide on isolation for non-disciplinary reasons held during their visit.

During interviews, NPMs should ask detainees if they are aware of the possibility of appealing against the decision to isolate them, as well as check the accessibility of the procedures. A problematic aspect that has emerged in some countries during the seminar, concerns the time needed

by the commission that decides on the imposition of solitary confinement. In some cases, there is too much delay: one consequence of this is that it may happen to a detainee to be isolated for a given period of time and after the measure has ended, it is confirmed *ex post* by said commission. In other cases the disciplinary measure of isolation comes long after the facts that led to the adoption of the measure itself. In one case, the length of the procedure and the high number of disciplinary measures applied in the institution meant that cases were heard by the disciplinary board six months after the alleged violation of the regulation and the application of the isolation measure. It is a *de-facto* isolation with a procedure that gives no safeguards to the concerned detainee.

The NPM should also verify whether the person detained in solitary confinement has been informed about the outcome of the decision and the possibility to appeal against it in writing, and whether in practice s/ he can appeal against it.

#### **4.3.6. Material conditions**

All the interviewed NPMs stressed the problem of the material conditions in which isolation takes place, which are almost always significantly worse than the rest of the penitentiary institute.

The most monitored aspects are:

- The frequency and duration of access to the open air (which should be for at least one hour a day);
- The presence of an outdoor area where detainees can exercise, the presence of means of protection from the weather and the absence of barriers that obstruct the view of the sky in said outdoor area;
- The presence in the cell of a table, a chair, a bed, a bathroom, sufficient light and air;
- The size of the cell;
- The possibility of calling a staff member from inside the cell;
- Access to books and newspapers;
- Access to the same food, hygiene and cell conditions as other detainees;
- Even if international standards require cells to have access to natural light, if a solitary confinement cell is not lit by natural light, some

NPMs ask staff how prisoners can tell the passing of time (and specifically whether or not they have access to a watch).

#### **4.3.7. Role of medical staff**

Because of the particularly serious effects that solitary confinement has on isolated people, effective monitoring by the medical authorities operating in prisons is of critical importance. Many NPMs stressed that often doctors lack the necessary awareness regarding their role and highlighted the need to strengthen it also through specific training. A first problem relates to the **visit of a medical doctor, which should take place prior to isolation** to verify whether the detainee is in conditions to be able to cope with it: NPMs found that frequently this visit does not take place.

A second issue that needs to be verified by NPMs is whether **doctors visit all persons placed in isolation daily**. In some cases, NPMs found that this is true only for prisoners who are isolated for disciplinary reasons. If the national legislation does not provide for an obligation to visit all isolated detainees, the NPM may appeal to the basic obligations of medical personnel.

Another aspect to be monitored concerns the **way the visits are carried out**. They should take place inside the cell, and also allow the doctor to assess the living conditions of the person examined. They should not take place outside the accommodation section, e.g. in the infirmary, and not outside the cell, through the steel door. Visits by doctors often take place through the hatch of the door. A meaningful interaction cannot take place through the hatch of the door since it does not guarantee the privacy and confidentiality of the visit and, more generally, it is disrespectful to interact in this way.

A further problematic aspect (that may emerge from the study of the medical records of isolated persons and interviews) concerns cases where isolation measures are carried out in so-called smooth cells (bare cells without furniture or only with a mattress often placed on the floor). This form of isolation is **prescribed by medical staff as a reaction to acts of self-harm or suicide attempts**. It is a totally inadequate reaction, as there

should be a specific procedure to deal with detainees at risk of suicide or who commit acts of self-harm; also, more support should be given in such cases along with more opportunities of contacts with others instead of depriving the patient of other human contacts.

One NPM pointed out the difficulty of monitoring the way visits of health personnel are carried out because there are no specific guidelines to establish what form the visit should adopt, how much time they should take or what questions they should ask. The doctor's visit should surely be a meaningful social contact because it is the only way to assess the health of another person. Doctors also need to take time to speak properly with isolated detainees and should not only open the door, ask how they are doing and leave. Since interaction with some prisoners may take longer than the norm, it is not possible to give a minimum time for a visit.

Monitoring medical visits of isolated detainees:

- Did a visit take place before the application of the solitary confinement measure?
- Do doctors conduct daily visits?
- Do visits take place in the cell?
- Do smooth cells exist?
- Do doctors prescribe confinement in smooth cell as a way to prevent self-harm or suicide?
- Were the visits long enough?

#### ***4.3.8. Meaningful social contacts and contact with the outside world***

A further aspect to be monitored concerns the possibility for isolated people to have meaningful social contacts. Meaningful social contact is a real conversation that takes place between two people and the two people remember what they told each other. The two people are on the same eye-level and the conversation is a real interaction.

The records of the isolation section usually show who enters and for how long. Cross-interviews with detainees and staff allow further verification. The problem has emerged of foreign prisoners who do not speak a common language with staff members, and who therefore hardly can have meaningful social contacts. It is necessary for the administration to find appropriate solutions, for example through translators or video or phone

translation services. If detainees do not want to engage in a conversation with staff, it is not possible to compel meaningful social contact but it would be important to investigate the reasons behind the refusal of contact. One NPM suggested that there may be several reasons, such as peer pressure or fear. If it is possible to intervene by changing the personnel, this should be done in order to ensure the health of the detainee.

Regarding communications with the external world, it is important that NPMs verify if while in isolation the prisoner can maintain communications with his/her lawyer and family. The right to communicate with the outside world should not be automatically taken away only because the detainee is isolated, but should be justified only in the case of a threat to the security of the prison. The right to communicate with one's lawyer should not be subjected to any restriction in any case.

#### Definitions of meaningful human contact:

The Essex Group (formed by Penal Reform International and the University of Essex's Human Rights Centre) established – on the basis of “relevant documents from international human rights bodies” – the characteristics that meaningful human contact should have:

“The term has been used to describe the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and well-being. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.”<sup>140</sup>

Some jurisdictions have also adopted their own definition. For example on 29th June 2017, Irish Minister for Justice and Equality, Charles Flanagan TD, introduced in the Prison Rules a definition of meaningful human contact as an “interaction between a prisoner and another person of sufficient proximity so as to allow both to communicate by way of conversation”.<sup>141</sup>

140. Penal Reform International and the Essex Human Rights Centre, *Essex paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules*, February 2017, available at: [https://rm.coe.int/16806f6f50\\_pp.88-89](https://rm.coe.int/16806f6f50_pp.88-89)

141. Irish Penal Reform Trust, Minister introduces Amendment to Prison Rules: “Meaningful Human Contact”, 7 July 2017, <https://www.iprt.ie/latest-news/minister-introduces-amendment-to-pris->

#### **4.3.9. Closed Circuit Television (CCTV)**

CCTV often gives the illusion of oversight. The fact that CCTV monitoring is used does not mean that a detainee is being monitored and cared for. At times, CCTV might even mean that the prisoner has even less interaction with staff, who do not have to physically check on him/her. For these reasons, it is necessary to go beyond the way CCTV monitoring is currently used. Another issue is represented by the fact that often a person that is monitored via CCTV cannot decide to have this kind of monitoring. CCTV is more common in private prisons because it allows them to function with fewer staff members. However, CCTV is not a substitute for staff. It is important to have it in the corridors or the common areas, but when it is used in the cells, it interferes with the right to privacy of the prisoner and may make solitary confinement more harmful than it otherwise would be. The cases in which it is acceptable to have CCTV in the cells are very limited and usually refer to the need of protecting a detainee at risk of self-harm. Even in this case CCTV should be used for a very short amount of time and should not cover the entire cell and allow some spaces of privacy to the inmate at least in the bathroom (or at least resorting to blurring out the toilet area).

#### **4.4. Follow-up activities**

Follow-up activities of various kinds identified during the Rome seminar on solitary confinement and interviews with NPMs work from different angles to identify and tackle the many issues concerning solitary confinement that can be found during the visits.

The first kind of follow-up is the **feedback on the visit** (and subsequent report). On this topic, several NPMs have stressed the importance of asking for feedback not only from the prison director but also from other professionals working in the prison; it is important to involve them in the reporting mechanism because it helps to raise awareness to the fact that they are involved in the fundamentals rights of the detained person whose life and well-being is temporarily entrusted to them.

[on-rules-meaningful-human-contact/](#)

If possible, where the NPM detected irregularities and mentioned them in the oral feedback to the prison director, it would be important to go back for a quick visit to the involved inmate to find out if there were reprisals.

Of great importance is **open communication** with the penitentiary administration. The first form of communication takes place thanks to the **recommendations** that the NPM can issue at the end of each visit/report. Some NPMs address recommendations to individual prisons, others to the head of the prison administration. This second practice has the advantage of making some changes possible in penitentiary institutions that were not visited by the NPM but which have similar or identical problems to those raised by the NPM after a specific visit. In fact, the central administration may send an order to address a specific issue to all penitentiary institution. The Rome seminar recognised the need for making ambitious but realistic recommendations in order not to seem detached from reality in front of the administration.

Participants in the seminar highlighted that in cases where there is the need to address a systemic problem (e.g. the overuse of solitary confinement and the need to explore valid alternatives) and that the **cooperation with the penitentiary administration** is critical in these cases.

In order to address systemic issues it may be effective if the NPM has an active role in the **training** of prison personnel. Indeed, several practices related to solitary confinement that violate human rights standards might not be the product of the legislation, but rather reflect the shared culture of the prison staff, who are often accustomed to the use of this tool and consider it a normal part of prison life instead of the exception. For a culture of human rights to flourish among prison staff – and to ensure that there is less recourse to isolation – it is necessary for (parts of) the staff to have a minimum human-rights oriented professional training. Currently, this is generally not the case: the cultural and legal background of the different components of prison staff is often highly diverse and has few or no components related to the respect of human rights.

A challenge for NPMs is to participate in building a widespread and shared culture, oriented to the respect and promotion of human rights in which all aspects and problems connected to isolation are present. This means participating in the training of prison guards, medical staff, educators and supervisory judges. Isolation can be the subject of specific training modules prepared by the NPM, but it can also be the subject of discussion at conventions and conferences. Cultural changes can lead to a reduction of the use of isolation, even with unchanged regulations.

**Awareness-raising actions** are another angle to promote change regarding the issue of solitary confinement. These actions are more effective if they reach as many stakeholders as possible, such as doctors and judges, but also influence wider public opinion, which is closely linked to political decision-makers. For this reason, it is important to dedicate specific resources to communication, make the contents as user-friendly as possible, work on the accessibility of the NPM's website, and invest resources in the use of social networks. It can be useful also to inform journalists, especially judicial reporters.<sup>142</sup> Specific thematic reports or chapters on solitary confinement in annual reports are also very useful to draw attention to the topic and address its main issues.

Effective and systemic action also needs the support of a wide **network of actors** that may include civil society organizations (CSOs) promoting rights in the prison system. In addition to being a source of information for NPMs, CSOs can be drivers of change through strategic litigation action before national and international courts. Their field of action is distinct but complementary to that of the NPM. Sometimes soft law instruments such as EPR do not have concrete effects, but the rulings of the ECtHR, which can be the result of a strategic litigation, can produce change. The network could also include volunteers, health institutions or organizations (such as organizations of doctors or nurses), associations of magistrates who oversee the serving of the sentence, local ombudspersons and prison guards' unions. These professionals can be used to identify situations of isolation that are beyond the NPM's sight or that do not reach the NPM quickly enough.

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<sup>142</sup>. For example, in Italy journalists are required to attend training courses each year.

Finally, it could be useful to be able to adopt **different points of view** in order to generate change. The rights of prisoners can be addressed along with the point of view of the management of an institution or the need of employees. It could be important to consider the extent to which reducing isolation can lead to better management of the institution, for example in terms of the quality of prison staff's work, the rational use of resources, and so on. This can help make the prison administration see isolation as a problem and to think more about its causes. For example, where there are many disciplinary measures due to violations of the prison rules regarding the communications with the outside world, ensuring better access to the means of communication could not only be a way to safeguard the right of prisoners, but also a way to improve the prison environment and thus the working environment of prison staff.

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# A Handbook for National Preventive Mechanisms

