



ENDING SOLITARY CONFINEMENT OF CHILDREN: A GLOBAL ACTION PLAN

POSITION PAPER



Terre des hommes
Helping children worldwide.



CFJ-EN
Child Friendly Justice
European Network

Ending Solitary Confinement of Children: A Global Action Plan

POSITION PAPER

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“

“No information about rights given, length of stay, rules. Rules only mentioned when I get in trouble.”

TESTIMONY (M/17/1: WEOG) IN UN GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY,
CHAPTER 5.3.: VIEWS AND PERSPECTIVES OF CHILDREN DEPRIVED OF LIBERTY:
CHILDREN'S EXPERIENCES OF THEIR RIGHTS WHEN DEPRIVED OF LIBERTY, 11 JULY 2019, A/74/136.

“I felt so desperate and lonely. It was not suitable for a human being.”

TESTIMONY OF MOHAMMAD Q., 17, ARRESTED JULY 26 2017, IN DCI PALESTINE, ISOLATED
AND ALONE, P. 10, ACCESSIBLE ON: https://www.dci-palestine.org/isolated_and_alone

I. Abstract

More than 7 million children are deprived of liberty around the world¹. Of those, at least 410,000 are detained because they are accused or convicted of an offence,² which means that many of them are potentially at risk of experiencing solitary confinement or its equivalent under another name, for some portions of their confinement. Solitary confinement or similar practices which consist of “physical and social isolation of persons who remain confined to their cells between 22 and 24 hours a day”, is recognised by the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment as a harmful practice³. Examples of isolation include the “lack of meaningful social contact, whether by means of interaction with other inmates or penitentiary staff, visits, or participation in work, educational, and leisure activities, or sports.”⁴ Science-based studies demonstrate that these practices are particularly detrimental to a child’s mental and physical health, both in the short and long run. The signatory organisations call for the abolition of solitary confinement in favour of non-violent practices that are respectful of the fundamental rights of the child and in line with the principles of child justice.

The signatory organisations, specialists in children's rights from different regions of the world, come together to address the following joint appeal to all States and stakeholders:

We urge governments to end the isolation of children in favour of non-violent practices that respect their fundamental rights and dignity.

To pave the way, the present policy paper offers a global overview of existing international law and standards and of the situation of child solitary confinement in different regions of the world, it also encourages to move forward by implementing proposed alternatives and recommendations.

The present document gives an overview of the use of solitary confinement on children and young adults around the world and an analysis of the practice in relation with international and regional human rights standards.

¹ United Nations. (2019). UN Global Study on Children Deprived of Liberty. (A/74/136).

https://www.chr.up.ac.za/images/publications/UN_Global_Study/United%20Nations%20Global%20Study%20on%20Children%20Deprived%20of%20Liberty%202019.pdf

² Id.

³ Juan E. Mendez, *Seeing into Solitary: A Review of Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees*, p.2, available on:

https://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf; DCI Palestine, *Isolated and Alone*, p. 4, available on: https://www.dci-palestine.org/isolated_and_alone; UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Rule 45, U.N. Doc. A/RES/70/175 (Jan. 8, 2016).

⁴ Juan E. Mendez, *Seeing into Solitary: A Review of Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees*, p.2, available on:

https://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf.

To support the abolition of solitary confinement in favour of non-violent practices the paper presents examples of such alternatives and proposes **eight actionable recommendations**:

1. End the practice of solitary confinement by any name
 2. Encourage the adoption of alternatives to isolation practices that are appropriate for children and their development
 3. Prevention of tensions between peers, and staff in detention centres
 4. Ensure appropriate training of staff in detention centres and appropriate settings
 5. Create a framework for meaningful inclusion of the child's perspectives
 6. Guarantee procedural safeguards and fundamental rights of children
 7. Ensure greater accountability through systematic and detailed data collection and dissemination
 8. Identify the different challenges posed in adult and privately run facilities
-

II. Acronyms

The following table lists the various abbreviations and acronyms used throughout the policy paper.

ACEs	Adverse Childhood Experiences
CCRA	Correction Condition Release Act
CFJ	Child Friendly Justice
CFJ-EN	Child Friendly Justice European Network
CPT	CoE Committee for the Prevention of Torture
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CRIN	Child Rights International Network
DCI	Defence for Children International
EC	European Commission
ECHR	Convention for the Protection of Human Rights and Fundamental (commonly known as European Convention of Human Rights)
EU	European Union
GSIA	Global Sustainable Investment Alliance
JJI	Justicia Juvenil Internacional
NCLS	National Conference Of State Legislatures
OJJDP	Office of Juvenile Justice and Delinquency Prevention
Tdh	Terre des hommes
UN	United Nations
UNCRC	The UN Convention on the Rights of the Child

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IV. Context

This policy paper is based on the outcomes of the 2018 World Congress on Justice With Children which took place in Paris at the UNESCO, in particular the Workshop on Inhuman Sentencing and the official consultation carried out during the World Congress for the 2019 UN Global Study on Children Deprived of Liberty. On 22 and 23 of June 2022, DCI Spain, GSIA and JJI Mexico held a series of webinars to complete the work done. The present policy paper represents one among other positions during those events and does not necessarily represent the view of all institutions and members present at that time. It is published in the context of the fourth anniversary of the UN Global Study in Children Deprived of Liberty.

V. Protect children's integrity: the urgent need to abolish solitary confinement

Placing a child in solitary confinement is a harmful practice⁵ that increases and exacerbates the already traumatic experience of detention. There is a widespread consensus among experts regarding the negative impact of isolation, especially on children and young adults, even for short periods of time, and there is growing public criticism.

Solitary confinement is defined as *"the involuntary placement of a youth alone in a cell, room, or other area for any reason other than as a temporary response to behavior that threatens immediate physical harm."*⁶ The same negative practice is known by other terms such as administrative segregation, separation, isolation, secure housing, room confinement, involuntary commitment or involuntary hospitalization. They are all equivalent practices and equally harmful in their effect. The present call to abolish the practice addresses all these terms equally, regardless of the terminology, as they all use the isolation of a child which can cause severe and often irreparable harm.⁷

⁵ Juan E. Mendez, *Seeing into Solitary: A Review of Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees*, p.3, available on:

https://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf;

⁶ Stop Solitary for Kids Campaign. (2019). <https://stopsolitaryforkids.org/>

⁷ Int'l Psychological Trauma Symposium, Istanbul Statement, (Dec. 9, 2007), available at:

<http://www.solitaryconfinement.org/istanbul>

A. Solitary confinement of children in detention

Solitary confinement refers to physical and social isolation⁸

In this policy paper solitary confinement, physical and social isolation will be used as synonyms. Isolation is mainly used on children in detention centres as a disciplinary or preventive measure. Some practitioners state that the justification for the practice is to sanction the child or prevent immediate harm to themselves or others. Other more recent justifications include health and sanitation where, during high peaks in the COVID 19 epidemics, many children were systematically placed in solitary confinement upon their arrival or during the course of their detention for health and sanitation. Children can, at times, find themselves in de facto isolation due to a combination of allocation criteria applied in institutions. This isolation can occur as an automatic disciplinary response to specific behaviours or for administrative purposes, such as during shift changes.

Solitary confinement is a uniquely harmful form of deprivation of liberty for children. The present paper focuses on the use of solitary confinement on children accused or convicted of an offence, although the practice is not limited to the youth justice or criminal law setting. The use of solitary confinement is also widespread and a source of grave children's rights violation in other settings such as hospitals, mental health facilities, care institutions, detention centres for people in migration, alternative settings for children in conflict with the law, etc. In all these settings, the use of solitary confinement must be investigated and condemned. Of the more than 7 million children deprived of liberty around the world, at least 410,000 are detained because they are accused or convicted of an offence. These children are the focus of this paper because so many of them are likely to be subjected to solitary confinement in many different contexts and for a variety of reasons that are never justifiable nor aligned with children's rights regardless of the offence or case at hand.

B. Negative impacts of solitary confinement on integrity of the person

The detrimental effects of solitary confinement on children and young adults have been well-documented. The Istanbul Statement on the Use and Effects of Solitary Confinement, adopted in 2007 at the International Psychological Trauma Symposium, denounced the practice of child confinement. The Istanbul Statement recommends the absolute prohibition of solitary confinement for children under the age of 18, based on findings that "solitary confinement may cause serious psychological and sometimes physiological ill effects" in up to 90 percent of individuals who are subjected to it.⁹ According to the Istanbul Statement, the "*central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and well-being.*"¹⁰

⁸ Supra, Seeing into Solitary.

⁹ Istanbul Statement, supra note 1, at 2.

¹⁰ Id.

In 2020, the UN Special Rapporteur on Torture, Nils Melzer, expressed his concern about the continued “excessive use of solitary confinement” due to the psychological suffering it causes. He stated that the “severe and often irreparable psychological and physical consequences of solitary confinement and social exclusion are well documented and can range from progressively severe forms of anxiety, stress, and depression to cognitive impairment and suicidal tendencies.” The Special Rapporteur expressed deep concern that the continued use of these practices “trigger and exacerbate psychological suffering, in particular in inmates who may have experienced previous trauma or have mental health conditions or psychosocial disabilities.”¹¹

The prevalence of neurological disabilities and mental health conditions is considerably higher among individuals, both young and adult, involved in the criminal justice system compared to the general population. This heightened prevalence further increases the vulnerability of these individuals to the detrimental consequences of solitary confinement. The existing procedures to prevent the inclusion of neurologically disabled children within these systems are insufficient. This is concerning given that having a neurological disability significantly elevates the risk of becoming entangled in such systems. The prevalence of mental illness is very high among children in the justice system and even more so among children deprived of their liberty¹². A surprising proportion of children who have been found guilty of criminal offenses have encountered a brain injury during their lifetime, accounting for roughly 30% of this group.¹³ Additionally, 32% of these children exhibit a mild intellectual disability (with an IQ range of 70 to 79), while another 14% display a potential intellectual disability (with an IQ under 69).¹⁴ These figures are compounded by the noteworthy incidence of children who have undergone substantial emotional distress during their formative years, referred to as adverse childhood experiences (ACEs).

11 Information available at : <https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture?LangID=E&NewsID=25633>

12 Terre des hommes Lausanne Foundation (2021). Policy Paper: Brain Science and How It Affects Children Accused Of Crimes. Global Initiative on Justice With Children.

13 Farrer, T.J., Frost R.B., Hedges, D.W. (2013). Prevalence of traumatic brain injury in juvenile offenders: a meta-analysis. *Journal of Child Neuropsychology*, 19(3) 225 - 234.

14 Indig, D., Vecchiato, C., Haysom, L., Beilby, R., Carter, J., Champion, U., Gaskin, C., Heller, E., Kumar, S., Mamone, N., Muir, P., van den Dolder, P. Whitton, G. (2011) 2009 NSW Young People in Custody Health Survey: Full Report, Sydney: Justice Health and Juvenile System.

Detailed psychological, physical, social and relational impacts on the child¹⁵

Based on the analysis of the results of various studies led around the world, a recent study by Defence for Children International - Spain lists catalogued the published research on the harmful impacts identified on children subject to solitary confinement.

Amongst psychiatric and psychological impacts of the measure on children are¹⁶: self-harming behaviour and suicidal thoughts, visual and auditory hallucinations, feelings of depression, anxiety, fear, anger, paranoia, boredom, stress, panic attacks, obsessive thoughts, apathy, changes in sleep patterns or nightmares, traumatic memories.

Various physical impacts of isolation on children have also been identified such as impairment of the development of secondary sexual characteristics¹⁷, alterations in the synapse development and brain growth¹⁸ and other problems such as hair loss or absence of menstruation¹⁹. Moreover, isolation places the young person in a vulnerable position to suffer abuse and violence²⁰.

Social and relational damage is caused by lack of social stimulation, education, recreation, family contact and lack of physical contact²¹.

These deprivations can affect the development of a healthy and functional social identity²² and might even hinder the eventual reintegration of the young person into society, acting as a risk factor for recidivism²³.

C. International mobilisation and call to abolish solitary confinement

Although there has been some public and governmental awareness to end, find alternatives and set thresholds for solitary confinement of children, several countries around the world have used or continue to use this practice on children and young adults to some extent.

For example, in Ontario, a class action lawsuit alleged that children as young as 12 years old have been held in solitary confinement. Furthermore, in Latin America, for example in Mexico, it has been reported that children deprived of their liberty often spend more than 20 hours a day in their cells due

¹⁵ Defensa de Niñas y Niños Internacional España, CONCEPTUAL NOTE, An actualized approach to disciplinary segregation in Spain and Europe.

¹⁶ Results extracted from: American Civil Liberties Union (2013), Children's Commissioners Promoting and protecting Children's Rights (2015), Dimon (2014), Gallagher (2014), and Human Rights Watch and American Civil Liberties Union (2012).

¹⁷ American Civil Liberties Union (2013) and Gallagher (2014).

¹⁸ Feireman et al. (2017) and Lee (2016).

¹⁹ Human Rights Watch and American Civil Liberties Union (2012).

²⁰ Defensa de Niñas y Niños Internacional España, CONCEPTUAL NOTE, An actualized approach to disciplinary segregation in Spain and Europe, p. 8.

²¹ Feireman et al. (2017), Ardiel and Rankin (2010), and Muir (2016).

²² Feireman et al. (2017).

²³ Conley (2013).

to a lack of resources and staff. The United States was horrified by the story of Kalief Browder, wrongfully arrested for robbery when he was 16 years old, held for two years in solitary confinement on New York's Rikers Island and released without ever being tried. The result of this treatment was the young man took his own life shortly after he was released. Prior to October 2018, 16 and 17-year-olds were routinely sent to Rikers Island as a standard practice.²⁴ Although 16- and 17-year-olds are no longer incarcerated on the Island, and solitary confinement is supposedly no longer permitted, euphemistically named substitutes such as Enhanced Supervision Housing and Secure Unit punitively segregate 18- to 21-year-olds. And when they are allowed out of their cells in ESH, these young adults are often shackled to desks.

Combining efforts and advocacy is essential to end solitary confinement, exemplified by the impactful CRIN campaign.²⁵ CRIN, alongside partners, is actively campaigning to stop inhuman sentencing of children worldwide. This involves engaging international bodies like the General Assembly and leveraging influential reports such as the 2006 UN Study on Violence Against Children. CRIN's consistent actions, including submissions to the Universal Period Review and international mechanisms, as well as conducting national campaigns underscore the power of collaborative endeavours for driving global change.

VI. Abolishing solitary confinement, implementing human rights of children

Deprivation of liberty itself is harmful to children. This is why international Human Rights standards, particularly the United Nations Convention on the Rights of the Child (CRC), mandates that detention shall be used only as a measure of last resort and for the shortest appropriate period of time (art. 37a). Despite being accused or even convicted of an offense, children maintain the right to be treated with dignity, in a way that takes into account their age and which promotes the child's reintegration and capacity to assuming a constructive role in society (CRC, art.40). The Beijing Rules (United Nations Standard Minimum Rules for the Administration of juvenile Justice), adopted by the General Assembly in 1985, state that *"the juvenile justice system shall emphasize the well-being of the children and young adults and shall ensure that any reaction to children and young adults' offenders shall always be in proportion to the circumstances of both the offenders and the offence."* In this context, the implementation of international standards and therefore the respect of the fundamental rights of the child implies, first and foremost, that children accused or convicted of an offence are mainly subject to other measures than deprivation of liberty, which should be as rare and short as possible.

The international principle against placing children in solitary confinement is based on their right to be protected from torture or other cruel, inhuman or degrading treatment or punishment. Such treatment is universally prohibited by a number of legal instruments, including the UNCRC, the Convention Against Torture and the International Covenant on Civil and Political Rights and regional human rights standards. For children, treatment must be analysed in light of the different standards

²⁴ American Civil Liberties Union (ACLU). (2023). Retrieved from <https://www.aclu.org/news/prisoners-rights/rikers-puts-mentally-ill-teens-box>

²⁵ Inhuman sentencing. (2015) Child Rights International Network (CRIN) <https://archive.crin.org/en/home/campaigns/inhuman-sentencing/solution.html>

applied to adults for what constitutes torture, cruel, inhuman or degrading treatment or punishment because - even if children do not constitute a homogeneous group - their young age and incomplete development makes them more vulnerable to ill-treatment. In 2015, the Special Rapporteur on torture recalled that *“children experience pain and suffering differently to adults owing to their physical and emotional development and their specific needs. In children, ill-treatment may cause even greater or irreversible damage than for adults. Moreover, healthy development can be derailed by excessive or prolonged activation of stress response systems in the body, with damaging long-term effects on learning, behaviour and health.”*²⁶

To this end, international standards, supported by a broad consensus of experts, specify that **solitary confinement should not be used on children.**

According to Rule N°44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) solitary confinement refers to the confinement of adult prisoners for 22 hours or more a day without meaningful human contact. However, for children and in accordance with their specific vulnerability, in 2011 the Special Rapporteur on torture Mendez concluded toward the UN General Assembly that *“the imposition of solitary confinement, of any duration, on juvenile is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.”*

Indeed, numerous resolutions and rules have been adopted at UN level in the last 25 years that further support the prohibition of solitary confinement for children. In 1990, the UN explicitly addressed the issue of children and young adults solitary confinement for the first time in the Havana Rules (United Nations Rules for the Protection of Children and Young Adults Deprived of their Liberty), which state that *“All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including...closed or solitary confinement.”*²⁷ Later, in December 2010, the UN General Assembly adopted the “Bangkok Rules” (United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders). These rules focus on women, children and young adults females in prison, and it is highlighted again that *“punishment by close confinement or disciplinary segregation shall not be applied.”*²⁸ In 2015, the Nelson Mandela Rules (Standard Minimum Rules for the Treatment of Prisoners) condemned the practice of children and young adults’ solitary confinement by directly citing the Havana Rules, saying, *“The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply.”*²⁹

²⁶ UN Human Rights Council, Report of and other cruel, inhuman or degrading treatment or punishment, 5 March 2015, A/HRC/28/68, available at: <https://www.refworld.org/docid/550824454.html>.

²⁷ G.A. Res. 45/113, Havana Rules, ¶ 67, (Dec. 14, 1990).

²⁸ G.A. Res. 70/175, Bangkok Rules, ¶ 22 (Dec. 17, 2010).

²⁹ G.A. Res. 70/175, Nelson Mandela Rules, ¶ 43 (Dec. 17, 2015).

Most recently, the Committee on the Rights of the Child published General Comment No. 24 on 18 September, 2019, emphasizing that in all cases of deprivation of liberty, *“any disciplinary measure must be consistent with upholding the inherent dignity of the children and young adults and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including...closed or solitary confinement.”*³⁰ The Committee enunciates that *“Any separation of the child from others should be for the shortest possible time and used only as a measure of last resort for the protection of the child or others. Where it is deemed necessary to hold a child separately, this should be done in the presence or under the close supervision of a suitably trained staff member”*.³¹ In 2019, the Committee of experts thus joined the position of many other international authorities establishing as **a human rights standard that isolation of a child should never be used as a disciplinary measure and any separation of a child from the group used to prevent immediate danger (protective measure) should be a measure of last resort implemented with protective guarantees.**

In the Global Study on Children Deprived of Liberty presented to the UN General Assembly in July 2019 it was recommended that States *“adopt comprehensive National Strategies aimed at drastically reducing the number of children detained in the administration of justice(...) and prohibit and sanction the use of physical or psychological violence or solitary confinement as means of discipline.”*³²

Over 29 years after the General Assembly first condemned the use of solitary confinement against children and young adults, **it demonstrates a continuing consensus against the practice.**

The prohibition of solitary confinement is central to all other standards for the protection of children's rights in detention that must also be applied. Strict implementation of procedural safeguards surrounding any disciplinary or preventive measure taken for a child in detention are crucial to avoid *de facto* isolation or other harmful practices such as restraint mechanisms. The Committee on the Rights of the Child reminds us that restraint or force should never be normal practice. It should only be used *“when the child poses an imminent threat of injury to himself or herself or others, and only when all other means of control have been exhausted”* and there are strict conditions for its use in medical treatment that requires significant training of staff³³.

VII. Children in solitary confinement around the world:

Overview of national and regional contexts

In accordance with international standards, countries around the world should undertake comprehensive legislative reform to end to solitary confinement for children and young adults deprived of liberty. This requires that legal safeguards be in place to protect children in all types of

³⁰ Council of Europe. (2012) Children's rights and the European Committee for the Prevention of Torture. P 12.

³¹ UNCRC GC 24, para.95 (h)

³² Manfred Nowak, (Former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), the united nations global study on children deprived of liberty, executive summary(Aug.2020) p. 36

³³ U.N. Committee on the Rights of the Child, General Comment n°24, §95f

facilities, ensuring that the best interests of the child and rehabilitative goals are at the centre of all procedures.

At the regional level, solitary confinement cases have a matter of concern and some legal standards have been also developed.

A. Sub-Saharan Africa

The African Charter on Human and Peoples' Rights (1986), in its article 5 states *"All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."* Also, the African Charter on the Rights and Welfare of the Child (1999) states in its article 16§1 that *"States Parties shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture."* In its complimentary article 17§2-a concerning the administration of children and young adults justice mentions that *"States parties shall ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment."* Although solitary confinement is not specifically mentioned in these charters, experts agree that it is a form of torture and inhuman and degrading treatment because of the psychological and emotional trauma it might cause.³⁴

The absence of dedicated regulations and national laws aimed at safeguarding children in conflict with the law in certain African nations unfortunately results in the adoption of disciplinary measures such as solitary confinement within the detention centres where child offenders are placed. In **Benin**, for example, the practice of imprisoning children comports neither with international standards, nor with the current law. The Beninese national children's code refers to the use of imprisonment as a measure of last resort for children and young adult offenders, according to article 14 of the code which also states that imprisonment should only be imposed for the shortest possible period of time³⁵. Nevertheless, solitary confinement is considered by prisons staff to be an "effective" method and a guarantee of the "effectiveness" of the sentence, which is compromised if children receive visitors³⁶. Currently, there is no policy or legislation that fully prohibits solitary confinement as a method of punishment for children and young adult offenders and adult prisoners in general in this country. Additionally, due to the challenges faced in establishing or verifying age, children and adults are not separated in Benin. The report "On the Conditions of Children's Deprivation of Liberty in Benin" by the World Organization Against Torture brings attention to a distressing reality - the imprisonment of children as young as 12 years old.³⁷ This urgent issue underscores the need for improved age determination methods and heightened efforts to protect the rights of children within the justice system.

³⁴ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. (2016). (Report No. A/HRC/31/57). Para 22 Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/000/97/PDF/G1600097.pdf?OpenElement>

³⁵ Law n° 2015-08 on the code of the child in the Republic of Benin, Art 14. p.5

³⁶ OMCT – ESAM, Juillet (2011). Report on the conditions of children's deprivation of liberty in Benin. The issue of violence against children deprived of liberty. p. 7

³⁷ OMCT – ESAM, Juillet 2011. Report on the conditions of children's deprivation of liberty in Benin. The issue of violence against children deprived of liberty. p. 9

In **Togo**, on the other hand, the law appears to prevent the practice for the youngest children, yet the practice remains. The Children's Code (2007), states in its section about the child offender and the prison administration, that no child detained or deprived of his/her liberty shall be subjected to torture, cruel or degrading treatment³⁸ and according to the national legislation, children under 14 years of age are criminally irresponsible. However, there is no specific section mentioning any provision prohibiting solitary confinement as a method of punishment and detention remains used as one of the main methods on children. From the outset of the judicial process, children in Togo face difficulties, particularly with regard to conditions of detention, legal representation, the length of time it takes to process their case and their reintegration into society. In recent years, the State party has opted for a repressive approach to juvenile crime through almost systematic and sometimes prolonged incarceration.³⁹ In some prisons, these children share the same yard as adults, which exposes them and does not protect them from violence, mistreatment and abuse, or even from a negative influence that will reduce their chances of reintegration.⁴⁰

The **Senegalese** code of criminal procedure establishes that no action may be taken regarding children and young adults who are offenders under 18 years of age.⁴¹ The same code also states that children over 13 years of age may be temporarily placed in an detention centre if this measure seems essential, otherwise children might be confined in a special section or, failing that, kept in isolation at night⁴².

B. North America

In America, on one side, the Inter-American Convention to prevent and punish torture (1987) on its article 2 mentions that *"torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of (...) as personal punishment, as a preventive measure, as a penalty, or for any other purpose."* As well, the Principles and Best Practices on the Protection of Persons Deprived of Liberty (2008), states in principle XXII§3 that "the law shall prohibit solitary confinement in punishment cells" and besides "it shall be strictly forbidden to impose solitary confinement to children deprived of liberty and that it should be a disposition of last resort and for a strictly limited time."⁴³

Some years ago, in North American countries, attention was focused on cases of solitary confinement of children in conflict with the law because urgent action was needed. In **Canada**, for instance, around 2015, comprehensive federal legislation governing solitary confinement for children and young adults was lacking. Some provinces, however, adopted legislation allowing for the use of isolation techniques, for example: British Columbia's Youth Justice Act includes a provision specifically with the use of "separate confinement," limiting it to 72 hours and describing the specific circumstances

³⁸2007. Law N°2007-017 Togo Children's Code, Art 347

³⁹ See Supra OMCT – ESAM, Juillet 2011

⁴⁰ Id

⁴¹ 1965. Senegalese Code of Criminal Procedure, Art 565

⁴² Id. Art. 576

⁴³ Oas.org. 2008. Principles and best practices on the protection of persons deprived of liberty in the Americas. Principle XII- 3§3 Available at: <https://www.oas.org/en/iachr/mandate/Basics/principles-best-practices-protection-persons-deprived-liberty-americas.pdf>

in which it may be used. Although solitary confinement was not outrightly banned for children and young adults by the federal government, in late 2015, Prime Minister Justin Trudeau introduced reforms to reduce its use, especially for vulnerable groups. Notably, Canada's federal correctional institutions have replaced administrative and disciplinary segregation with Structured Intervention Units (SIUs).⁴⁴ Furthermore, the Ontario Provincial Advocate for Children and Youth has called for an immediate ban on solitary confinement of children and young adults lasting more than 24 hours.⁴⁵

As the issue of solitary confinement had not had the same degree of publicity in Canada as it had in the United States, a number of high-profile cases have gained national attention. A profound example is the case of Ashley Smith, a teenager who committed suicide after spending hundreds of days in solitary confinement resulting in significant public outrage. As another example, media attention in 2016 was devoted to a 16 year old Syrian refugee who was immediately placed in solitary confinement for three weeks upon arrival by The Canada Border Services Agency, even though he had committed no crime and posed no discernible threat.⁴⁶ Such cases gained national attention and paved the way for the fact that on November the 30th 2019 solitary confinement, better known there as "disciplinary segregation," was eliminated in federal correctional institutions and was replaced by the Structured Intervention Units (SIUs)⁴⁷.

According to The Corrections and Conditional Release Act (CCRA) amended in November 2019, in its section 32(1) the purpose of a structured intervention unit was to *"provide an appropriate living environment for an inmate who cannot be maintained in the mainstream inmate population for security or other reasons."*⁴⁸ In addition, in the section 34 is established that the staff member may authorize the transfer of an inmate to a structured intervention unit only if the officer is satisfied that there is no reasonable alternative to confinement for the inmate.⁴⁹ Moreover, section 36 mentions the obligation of the service that the Service shall provide an inmate in a SIUs an opportunity to spend a minimum of four hours outside the inmate's cell,⁵⁰ and the opportunity to interact, for a minimum of two hours, with others.⁵¹

In the **United States**, the federal government took steps to limit the use of solitary confinement against children and young adults in federal facilities, but state facilities are handled very differently. The Sentencing Reform and Corrections Act of 2015, prohibited children and young adults' solitary confinement except as a temporary response where the child poses a serious threat of physical harm⁵². In early 2016, President Obama issued a ban on the solitary confinement of children and young adults in federal facilities, based on a Justice Department review and condemnation of the practice due to the negative health and psychological consequences. While the public nature of the

⁴⁴ See Correctional service Canada (2021). Structured interventions Units. Available at: <https://www.csc-scc.gc.ca/acts-and-regulations/092/005006-3002-en.pdf>

⁴⁵ Available at: https://provincialadvocate.on.ca/documents/en/SIU_Press_Release_En.pdf

⁴⁶ For more information, see: <http://www.theglobeandmail.com/opinion/an-inexcusable-travesty-canada-sent-a-syrian-minor-to-solitary-confinement/article28781118/>.

⁴⁷ Supra Correctional service Canada (2021).

⁴⁸ Laws-lois.justice.gc.ca. 2022. Corrections and Conditional Release Act. 32(1) [online] Available at: <https://laws-lois.justice.gc.ca/eng/acts/c-44.6/page-4.html#docCont>

⁴⁹ Id, 34(1)

⁵⁰ Id 36(1) (a)

⁵¹ Id, 36(1) (b)

⁵² Sentencing Reform and Corrections Act of 2015. (2015). Available at: <https://www.congress.gov/bill/114th-congress/senate-bill/2123>>

ban might come to exert a normative influence on state legislation and policy, there were less than 30 children and young adults housed in federal facilities at the time of the announcement. The vast majority of incarcerated children and young adults were in state facilities, and thus state-level legislation and policies must be addressed as well.

An encompassing view of the current situation reveals a concerning statistic: at any given time in the United States, approximately 37,000 child and young adult offenders are incarcerated, primarily within youth detention and commitment facilities.⁵³ In 2010, the OJJDP (Office of Juvenile Justice and Delinquency Prevention) published findings from a ground-breaking survey known as the Survey of Youth in Residential Placement (SYRP). This survey drew upon data collected in 2003 through confidential interviews with youth in placement. The SYRP unveiled that 35% of youth reported experiencing isolation, which involved being confined alone in a room with no contact with other residents. A significant majority of these isolated youth (87%) indicated that this isolation lasted for more than 2 hours, and over half (55%) endured isolation for longer than 24 hours.⁵⁴ In 2009, a study by Lindsay Hayes, commissioned by the OJJDP, identified a 'strong link between juvenile suicides and room confinement,' with findings revealing that 50% of the victims were in solitary confinement at the time of their tragic deaths.⁵⁵

There is a national campaign in the U.S. called *Stop Solitary for Kids*, created by the Center for Children's Law and Policy, the Center for Juvenile Justice Reform at Georgetown University, the Council of Juvenile Justice Administrators, and the Justice Policy Institute.⁵⁶ The campaign aims to work with local and state governments and facilities to make isolation of the child a measure of last resort, and for the most limited period of time possible. *Stop Solitary for Kids* has identified a number of successful reforms in various states which have ended or severely reduced the use of solitary confinement against children and young adults, including Ohio, Indiana, Massachusetts, and Oregon. The *Stop Solitary for Kids* campaign has gained wide support, including from the United States Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP). In April 2016, the OJJDP explicitly denounced the practice of placing children and young adults in solitary confinement, and urged facilities at the local and state levels to adopt their guidelines and recommendations.⁵⁷

More recently, in January 2021, title 18 of the United States Code⁵⁸ was amended to impose conditions on the use of solitary confinement in federal detention centres. This solitary confinement was defined as follows:

Confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for

⁵³ ACLU. (2013, November 1). Rikers Puts Mentally Ill Teens in "the Box". ACLU. <https://www.aclu.org/news/prisoners-rights/rikers-puts-mentally-ill-teens-box>

⁵⁴ Office of Juvenile Justice and Delinquency Prevention (OJJDP). (2010). Conditions of Confinement: Findings from the Survey of Youth Residential Placement. OJJDP Juvenile Justice Bulletin.

⁵⁵ Hayes, L. (2009). Juvenile Suicide in Confinement: A National Survey. Office of Juvenile Justice and Delinquency Prevention (OJJDP).

⁵⁶ For more information, visit the website at: <http://www.stopsolitaryforkids.org/>

⁵⁷ For more information, see: <https://www.justice.gov/opa/blog/ojjdp-supports-eliminating-solitary-confinement-youth>

⁵⁸ Available at: <https://www.congress.gov/bill/117th-congress/house-bill/176/text>

approximately 20 hours or more per day, with severely restricted activity, movement, and social interaction.

In addition, the second section of the code mentions in § 4015 (3) that an inmate shall not be placed in solitary confinement prior to receiving a completely personal and thorough medical and mental health examination by a clinician and that a medical staff member shall conduct a pre-examination 12 hours prior to confinement and the clinical examination shall be conducted within 48 hours of confinement.

This development of legislation and policies has also been progressing in Latin American countries. New regulations protecting children in conflict with the law and against detention, in particular against solitary confinement, have been enacted. Furthermore, by April 2023, 39 out of the 50 states in the U.S. had implemented restrictions on the use of solitary confinement for youth. According to the National Conference of State Legislatures (NCSL), "24 states and the District of Columbia have passed legislation that either restricts or outright bans the practice of solitary confinement, while in other states, limitations have been imposed through administrative regulations, policies, or court rulings."⁵⁹

C. Latin America

In **Mexico**, there are efforts to equalize treatment across all states with one national approach to the treatment of children in conflict with the law. In 2022, Mexico adopted a new national law⁶⁰ addressing all children and young adults' justice, replacing the system of state-based laws that had considerable variation. This national law attempted to regulate the children and young adults' justice systems of all states equally, and focuses on alternatives to deprivation of liberty. In combination with the Mexican Constitution, this makes deprivation of liberty a **measure of last resort**,⁶¹ and **emphasizes a respect for due process**⁶² and **children and young adults-specific guarantees**.⁶³

Mexico's national law specifically prohibited the use of "incommunicado" detention, the practice of detaining a child without contact with family, legal representatives, or the outside world. The law attempted to limit the use of other types of isolation, only allowing them in cases where it is strictly necessary and for a limited time. Within this limitation, staff were required to inform a judge within 24 hours of placing any child in isolation. While this law covered all children and young adults' detention facilities in Mexico, the actual implementation of the law and operation of the facilities was still a responsibility of state governments. In 2016, in the context of children and young adults criminal justice, a law entitled "*national law on the integral system of criminal justice for adolescents*" (Ley

⁵⁹ National Conference of State Legislatures (NCSL). (2022, July 8). States that Limit or Prohibit Juvenile Shackling and Solitary Confinement. National Conference of State Legislatures (NCSL) website. <https://www.ncsl.org/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement>

⁶⁰ Congreso de la Unión. (2016) Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes. <https://www.diputados.gob.mx/LeyesBiblio/pdf/LNSIJPA.pdf>

⁶¹ Id, Art 31

⁶² Id, Art 40

⁶³ Id, Art 12

Nacional Del Sistema Integral De Justicia Penal Para Adolescentes)⁶⁴ was also issued. It stressed in art. 15 that "*Corporal punishment, confinement in a dark cell or solitary confinement is prohibited, as well as any other sanction or disciplinary measure contrary to the human rights of the adolescent.*" Article 54 mentioned that only in those cases in which it is strictly necessary to prevent acts of generalized violence in which the adolescent is directly involved, the adolescent may be isolated for the shortest possible time, and this measure shall never exceed twenty-four hours (...) In no case shall isolation imply solitary confinement.

At the national level, the **Peruvian** prison system is characterized by overcrowding, along with a high rate of admissions to the centres. According to the INPE Information Report dated August 21, 2015, a total of 68 penitentiary establishments housed a prison population of 75,655.⁶⁵

One of the most recent statistical bulletins concerning children and young adults centres has revealed that as of April 2022 there were a total of 2,922 adolescents in Conflict with the Criminal Law. Additionally, there are 10 children and young adult centres nationwide.⁶⁶

*The Peruvian Government, through the Legislative Decree No. 1204, amended the Childhood and Adolescence Code in order to establish and regulate the imposition of sanctions on children and young adult regarding child detention. This decree stipulates that "imprisonment is an exceptional measure and is applied as a last resort. It also includes provisions to regulate the imposition of sanctions on children and young adults' offenders".*⁶⁷ In article 241 (d) of the code, which deals with the rights of adolescents during execution (derechos del (la) adolescente durante la ejecución) there is a provision safeguarding the right not to be subjected to an isolation regime or the imposition of corporal punishments.⁶⁸ Solitary confinement or isolation will be applied exceptionally to prevent acts of violence against the adolescent or third parties. This measure will be communicated to the specialized judge for their awareness and relevant purposes

The **Colombian** government has been transforming their children and young adults' justice based on the best interests of the child, as enshrined in the International Convention on the Rights of the Child (1989). In Colombia until 2006, adolescents could not be criminally sanctioned according to the Code of Childhood and Adolescence (Law 1098 of 2006). In 2018, with the Law 1898, the discussion began, in order to establish parameters that would allow those over 14 years old and under 18 years old who are involved in infractions of the criminal law to be tried. This was what foreshadowed the current System of Criminal Responsibility for Adolescents (SRPA). In the framework of the guidelines of services for measures and sanctions of the SRPA judicial process (lineamiento de servicios para medidas y sanciones del proceso judicial SRPA), isolation, solitary confinement, and segregation are absolutely prohibited in all forms and in all care services. The same guidelines prohibit the existence of isolation areas in the Care Units, under the pretext of sanction, reflection or punishment.

⁶⁴ For more information, visit the website at:https://www.diputados.gob.mx/LeyesBiblio/pdf/LNSIJPA_011220.pdf

⁶⁵ Instituto Nacional Penitenciario. Informe estadístico Agosto 2015. P. 21

<https://www.inpe.gob.pe/revistas/estadistica/2015/agosto2015/files/basic-html/page21.html>

⁶⁶ Ministerio de Justicia y Derechos Humanos. Boletín estadístico Abril 2022 Reporte mensual de datos estadísticos presentados por la UAPISE. P. 1 <https://cdn.www.gob.pe/uploads/document/file/3124061/BOLETIN-ESTADISTICO-004-2022.pdf.pdf?v=1653327166>

⁶⁷ Art 235

⁶⁸ Art 241 d

In **Brazil**, a breakthrough has taken place in legislation and policies to promote and protect children, particularly children in conflict with the law. In the Child and Adolescent Statute there is a distinction made between child offenders under the age of 12, and adolescent offenders between the ages of 12 and 18. Children under 12 committing legal infraction receive protection measures and cannot be imprisoned. In section VII of the same statute, it states that "in no case shall there be solitary confinement". Furthermore, in January 2012, Law 12594/12 was introduced. This legislation establishes the National System of Socio-Educational Attention (Sinase), which lays out comprehensive guidelines for addressing the actions of adolescent offenders.

D. Europe

The European Convention on Human Rights⁶⁹, and the Charter of Fundamental Rights of the European Union⁷⁰, both state the prohibition of torture, inhuman and degrading treatment. The European Prison Rules, amended in July 2020, clearly state in Rule 60.5 that "*solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible.*"⁷¹ Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (adopted in 1989) established the European Committee for the prevention of torture (CPT), an international committee which conducts visits to monitor places where persons are deprived of their liberty by a public authority across the countries of the Council of Europe⁷². Under the CPT, any form of isolation of children is a measure that can compromise their physical and/or mental well-being and should therefore be applied only as a means of last resort.

In Europe, the practice of solitary confinement of children detainees is still used as a disciplinary, preventive or even sanitary measure. For example, during the COVID 19 epidemic, numerous practices of isolation in detention centres were identified, sometimes without procedural guarantees or for very long periods. But the isolation of children in solitary confinement is often not identified as such because practices of isolation regularly have different names. And when the practice is not identified as the extreme condition of "solitary confinement," it results in even fewer procedural safeguards. DCI Spain's analysis of the legislation of 30 European countries reveals the presence of solitary confinement (as a disciplinary sanction) in only four of them, yet in practice, equivalent sanctions to solitary confinement exist in many more. Thus, in the European context, any call to abolish solitary confinement should be understood as one to abolish all practices that have the characteristics of solitary confinement despite their official name.

The situation of solitary confinement has nuances in each country. The following overview reveals the diversity of situations from one country to another concerning solitary confinement, particularly in terms of the name of the measure, the procedural safeguards surrounding it, the maximum duration, and the reasons that may or may not justify the use of solitary confinement (disciplinary or

⁶⁹ European Convention on Human Rights. (1989). Art. 3 "No one shall be subjected to torture or to inhuman or degrading treatment or punishment"

⁷⁰ The Charter of Fundamental Rights of the European Union, Art. 4

⁷¹ These rules only apply to adults and exceptionally to children when they are in adult prison. There is a necessity for drawing up rules for children specifically.

⁷² The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989), Art 1.

preventive). The objectives and philosophy of child justice and detention of children continue to differ from country to country in Europe.

In the case of **France**, for instance, *“children are detained either in the juvenile section of a prison or in a special unit for children within a prison, or in a specialized prison for children.”*⁷³ Children can be sanctioned by being placed in confinement in an ordinary individual cell under the maximum duration of seven days⁷⁴. The code suggests this confinement may not interrupt schooling, training, or meetings with the personnel of the judicial protection of youth⁷⁵. The contradiction is not explained.

In **Germany**, due to the federal system, the rules for solitary confinement for children are different in different federal states. Segregation, room confinement and solitary confinement do exist in some federal states. The so-called *“Absonderung”* (segregation) is designated in most federal states only where needed to prevent an immediate danger, where there is a risk of escape or of violence against persons or property, or where there is a risk of suicide or self-harm. In most cases, the young person's lawyer needs to be informed if the solitary confinement lasts longer than 24 hours. Special permission for the separation might be needed after a certain amount of solitary confinements within a certain period. Only some federal states have a limit on the duration of the solitary confinement.

In **Portugal**, children and young person detained in youth justice Educational Centres can be subjected to containment measures which means physical restraint and precautionary isolation. Precautionary isolation can only be enforced in very strict situations and is defined by the Portuguese youth justice legal framework as a last resort measure for the shortest period of time and under the validation of the Youth Justice Court. It can only be applied in the following cases: to prevent children from committing harmful acts or that endanger their person or others; to prevent escaping from the detention centre; to avoid major damage to the facilities or equipment of the centres; to overcome the violent resistance of children to the orders and guidelines of the staff of the centre in the legitimate exercise of their functions. It cannot last longer than twenty-four consecutive hours and must immediately be communicated to the Court. It may take place in a special room where the child must be observed by the centre's doctor or specialist in psychology or psychiatry.

In **Poland**, the use of solitary confinement differs if a child is imprisoned as a child or as an adult. In the rare cases where a child is tried as an adult, among them a few are condemned to deprivation of liberty, these children hold their sentence in prisons for adults. The few children in prison for adults can be placed in solitary confinement on the same basis as adults, in specific circumstances such as enforcing the behaviour required by law, repelling a direct attack on health or life, and overcoming passive resistance. The use of solitary confinement in detention facilities for children is more restricted: it might be used only in some facilities, only when it is necessary to repel a direct, unlawful attack on the life or health of another person, or whenever it is required to counteract activities leading directly to self-aggression. Moreover, it cannot be used for children under 13 years old (except in situations in which a direct threat to life or health occurred) and has to be applied proportionally to the threat, in a way that causes the least harm: under the law, the staff of detention facilities shall choose the least oppressive coercive measure and discontinue its use whenever it is no longer necessary. It is limited in time: for children younger than 14 years old it might not last longer than 12

⁷³Juvenile Criminal Justice Code , Art. L124-1 amended by Law n°2021-218 of February 26, 2021, art 9.

⁷⁴ Id. Article R124-27

⁷⁵ Juvenile Criminal Justice Code, article R124-26

hours and for older children it might be used only for 48 hours. However, a third situation that amount to solitary confinement must also be mentioned: the placement in an adaptation chamber. The law does not qualify such practice as solitary confinement but it can be of similar effect given that the child might be held alone in such a room for a long period of time due to their behaviour. Placement in adaptation chambers has been used for long periods (even 14 days) and is almost not limited (based on the child's behaviour), this practice is therefore criticised by the National Preventive Mechanism and the Helsinki Foundation for Human Rights.⁷⁶

In **Spain**, solitary confinement for children in conflict with the law is called "separation from the group."⁷⁷ According to legislation, it can be imposed following serious or very serious misconducts involving evident aggressiveness or violence, or repeated and serious disruption of the normal coexistence of the prison. This measure can be imposed weekdays or only at weekends. It can last up to seven days or five weekends. The separation from the group's sanction entails the adolescent staying in his or her room, or in another room of similar characteristics, during the prison's activity schedule. The stay in the room may be suspended to attend compulsory education classes, receive visitors and have two hours a day in the open air. The separated adolescent remains in the room during free time, meal times, leisure time, assemblies or any other organized activity. In order to compensate for this situation, the child can be provided with alternative activities to do in the room.⁷⁸

In **Italy**, solitary confinement as a disciplinary sanction is generally disfavoured for children and youth placed in Juvenile Detention Centres. However, three different forms of isolation can take place within Juvenile Detention Centres for sanitary reasons or as a disciplinary measure. Though a child can continue their scholarship and education activities, this exclusion from group and/or recreational activities requires the young person to remain in their room during most part of the day, to have no access to group and/or recreational activities, and to enjoy no visits with family for a maximum of ten days. Isolation is also authorized for suspects and defendants if there are reasons for caution or safety during trial. According to the Italian regulation, recourse to exclusion from recreation activities, must be considered absolutely exceptional and must be modulated by eliminating any additional sanctioning element (such as placement in a cell without furnishings and a television set) and "avoiding that it results in a dangerous state of total isolation". In practice, there is another form of isolation, for protection reasons: in cases where a specific child/young person is at risk within the group (for e.g. situations of extreme bullying or cases of sexual crimes), they can be placed in isolation for their own protection.

In **Austria**, solitary confinement may be imposed to children for a period not exceeding one week. According to the 2022 Austrian national ombudsman institution report, in some instances the legal provision of one week is not respected and children stay in solitary confinement for two weeks. A 2014 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on Austria estimates that "*solitary confinement as a disciplinary*

⁷⁶ Piechowicz v. Poland, [GC] (Application No. 20071/07, § 141 ECHR 2012-IX

⁷⁷ Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores.(2000). Boletín Oficial del Estado, número 11, de 13 de enero de 2000, páginas 1422 a 1441. Article 60 Para 3 letter (a)

⁷⁸ Real Decreto 1774/2004, de 30 de julio, por el que se aprueba el Reglamento de la Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores. Article 66 Para 3

measure should only be imposed on juveniles for very short periods and under no circumstances for more than three days⁷⁹

E. North Africa, Asia, and Middle East: Ongoing Research

We are conducting an ongoing investigation on the regions of North Africa, Asia and Middle East. However, at this point, our research has not produced conclusive results. We will need additional references as we obtain more substantial information.

In the **Asian region**, the member states of the Association of Southeast Asian Nations (ASEAN) have included a position against torture in Article 14 of their Human Rights Declaration,⁸⁰ that would benefit from further development and clarification. Another challenge is the lack of a uniform definition of solitary confinement. Some instances involve children being isolated in bathroom stalls for extended periods, but the facilities argue that this does not constitute solitary confinement, as they interpret it to require a dedicated room for this purpose. There is also a disparity between Western and child-centric definitions of solitary confinement. While Western contexts define it as being alone for 22 to 24 hours daily with minimal human contact, it's argued that even shorter durations should be considered solitary confinement for children due to their different perception of time. However, this perspective is not widely discussed. Therefore, it is challenging to provide comprehensive information on solitary confinement for children in many countries because of these differing interpretations. Additionally, even if solitary confinement is prohibited by law, it may not reflect the reality on the ground.

In **Cambodia**, for example, the 2016 Juvenile Justice Law under article 80 states that a basic right of a child deprived of liberty in detention facilities is to not be subject to forms of torture, including isolation, but this isn't defined or further expanded upon. In the 2011 Prison Law, article 52 allows solitary confinement from 14 to 20 days, which can be renewed, while article 53 prohibits detention in a dark cell, reduction of diet, corporal punishment, and collective punishment. In the Standard Operating Procedures of the new Youth Rehabilitation Centre, the first detention facility only for children in Cambodia, there is a specification of restricting the use of solitary room confinement. This SOP has not yet been adopted, but the topic of solitary confinement has not been a contested one.⁸¹

In the **Middle East**, Article 17 of the Covenant on the Rights of the Child in Islam foresees that States shall take all measures to prevent "all forms of torture or inhuman or humiliating treatment in all circumstances and conditions (...)"⁸². Similarly, national legislation focusing on the 'juvenile system' does not mention the term 'solitary confinement' as such but the prohibition of '*physical or moral*

⁷⁹ Council of Europe: Committee for the Prevention of Torture. (2015). Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014 (CPT/Inf (2015) 34).

⁸⁰ 2012. ASEAN Human Rights Declaration

⁸¹ Child Rights Coalition Asia. (2016). Violence against Children In South East Asia. Available at: https://www.crcasia.org/wp-content/uploads/2017/07/CRC_VACSASIA_FINAL.pdf.

⁸² Organization of the Islamic Conference (OIC). (2005). Covenant on the Rights of the Child in Islam. OIC/9-IGGE/HRI/2004/Rep.Final, available at: <https://www.refworld.org/docid/44eaf0e4a.html>

torture; punishment; or severe, humiliating, and degrading human dignity treatment', for instance, article 7 of the Palestinian Law by Decree No (4) of 2016 on the Protection of Juveniles. In Egypt, corporal punishment is unlawful as a disciplinary measure in prisons. Under Article 42 of the Egyptian Children's Act any person arrested or detained '*shall be treated in the manner concomitant with the preservation of his/her dignity*' and '*no physical or moral harm is to be inflicted upon him/her*'. Article 40 of the Egyptian Code of Criminal Procedure states that any person detained '*shall be treated in a manner that preserves his human dignity, without being be harmed physically or mentally*'⁸³ . Several institutions have demanded a clear prohibition of corporal punishment in Egyptian social care centers where children are deprived of liberty⁸⁴.

Despite the above, human rights institutions have denounced publicly that solitary confinement and torture might have been inflicted on children (e.g. Egypt⁸⁵ and Israel⁸⁶). In 2021 a report by Euro-Med Human Rights Monitor⁸⁷ was published highlighting the issue of torture including solitary confinement in detention centers in the Middle East and North Africa. It includes cases of children in several countries.

VIII. Child friendly justice alternatives to solitary confinement through implementation of child friendly mechanisms

Despite precise knowledge of its harmful effects on children's health and well-being and the numerous calls to abolish solitary confinement, it remains widespread throughout the world. The reason why is both because legal and regulatory frameworks do not completely prohibit it (or maintain it via similar practices by another name) and because it is still considered an indispensable tool for discipline or violence prevention in detention centres.

⁸³ Global Initiative to End All Corporal Punishment of Children. (2019). Corporal punishment of children in Egypt: Briefing for the Universal Periodic Review 34 th session, November 2019 From the Global Initiative to End All Corporal Punishment of Children.

⁸⁴ End corporal punishment. (2021). Corporal punishment of children in Egypt. Available at: <https://endcorporalpunishment.org/reports-on-every-state-and-territory/egypt/>

⁸⁵ Amnesty International (2018). Egypt: Children face shocking violations including torture and enforced disappearance. Available at : <https://www.amnesty.org/en/latest/news/2018/11/egypt-children-face-shocking-violations-including-torture-and-enforced-disappearance-2/>

⁸⁶ Amnesty International (2022). Israel/OPT: End solitary confinement of Palestinian prisoner jailed as a child. Available at: <https://www.amnesty.org/en/latest/news/2022/08/israel-opt-end-solitary-confinement-of-palestinian-prisoner-jailed-as-a-child/>. See also : Reliefweb (2023). Stripped, beaten and blindfolded: new research reveals ongoing violence and abuse of Palestinian children detained by Israeli military. Available at : <https://reliefweb.int/report/occupied-palestinian-territory/defenceless-impact-israeli-military-detention-palestinian-children>

⁸⁷ Reliefweb (2021). Syria in the lead.. Euro-Med Monitor report: Widespread torture in the Arab region. Available at : <https://reliefweb.int/report/syrian-arab-republic/i-cannot-bear-it-anymore-torture-prisons-and-detention-centers-middle>

Actually, ending solitary confinement will therefore come by the adoption and mainstreaming of alternative practices that are both non-violent and based on children's rights. Those alternatives should never include restraint mechanisms (mechanical or chemical) as acceptable alternatives to solitary confinement.

Various alternative practices can be implemented in child detention centres **that are non-violent and respectful of children's rights, in particular:**

- **Be in line with the objectives of child justice:** As stated by international standards such as UNCRC art. 40, which states the right of children suspected, accused of or convicted for a crime *"to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."* We have identified **adapted facilities and resources**, with a specific emphasis on human resources, as indispensable determinants for the effective implementation of alternative measures and the mitigation of resorting to solitary confinement. For instance, easy access to outdoor or separate spaces and an adequate presence of educational staff can help manage crises where a child may pose a danger to themselves or others. These elements can contribute significantly to the facilitation of crisis management situations in which a child may pose a threat to their own well-being or the safety of others. Conversely, the absence of access to these resources may lead to an elevated reliance on restraint methods such as solitary confinement.
- **No form of isolation of the child:** States that have tried to put an end to solitary confinement by adopting new practices including isolation did not reach the goal of protecting children from its harmful effects. It sometimes even had the adverse effect of hiding even more the practice and reducing procedural safeguards.
- **Respect the dignity of the child by avoiding torture, inhuman or degrading treatment:** International standards including recommendations of international, regional and local human rights and monitoring bodies condemn any discipline for children which constitutes torture or degrading or inhumane treatment.
- **Mandate strict procedural safeguards:** Any disciplinary and preventive measure should be conditioned by procedural safeguards such as immediate notification to the judge and lawyer of the child, access to complaint mechanisms, immediate and meaningful education of the child on his/her rights etc. The development of safeguarding protocols specific for children deprived of liberty is a highly relevant practice that decision-makers shall mandate to all institutions where children in contact with the law might be placed.
- **Preserve all children's fundamental rights:**
Alternative measures should not jeopardise implementation of children's rights such as access to education, right to worship, right to health including mental health, etc.;

The following structural measures are also considered as key success factor to support the shift from the harmful practice of solitary confinement (or other harmful preventive and disciplinary measures) towards non-violent and child-right based practices:

- Better implement UNCRC art. 37 which requires that children suspected, accused or convicted for an offence are only **deprived of liberty as a measure of last resort and for the shortest period of time** – In our research we observe a clear link between the preference for detention over non-custodial options and the subsequent use of solitary confinement in detention facilities. This correlation aligns with previous Belgian studies, which indicate that longer periods of detention are associated with a higher likelihood of solitary confinement. Additionally, findings reveal that practices resembling solitary confinement have been identified within settings originally intended to be non-custodial.
- **Ensure adapted facilities and resources (particularly human resources):** This is an essential success factors that can help in implementation of alternatives and preventing recourse to solitary confinement e.g. easy access to an outdoor or separate space and the presence of sufficient educational staff makes it easier to manage a crisis in which the child may be a danger to him/herself or another person, whereas not having access to such resources may increase the use of restraint methods such as solitary confinement. An additional pivotal resource lies in the implementation of programs designed to involve children and youth in pro-social and educational activities. Maximising the involvement and engagement of youth reduces the likelihood of their participation in behavioural incidents that may lead to solitary confinement.;
- Ensure that **prevention of tensions between peers or detention centre staff is properly invested:** The "prevention of tensions" in the context of children held in detention facilities refers to efforts made to minimise or mitigate conflicts, stress, or disruptive behaviour among peers or with staff in such facilities. Preventing tensions before they appear instead of addressing actual tension may allow more child centred approaches. For example, implement early intervention programs that are designed to identify potential sources of tension and conflict among peers and staff in child detention centres. These initiatives encompass a range of programs, such as conflict resolution training, anger management classes, peer mediation, and staff "de-escalation" training. Their collective goal is to equip children and staff with the essential skills required to effectively manage their emotions and resolve conflicts.
- **Address the argument about implementing solitary confinement for the child's own safety and wellbeing, besides it being used as a disciplinary measure:** While there may be arguments made in favour of solitary confinement for a child's own safety and well-being, these are obscure. Solitary confinement can have severe psychological consequences on a child. The isolation and lack of human contact can lead to anxiety, depression, and even long-term emotional trauma⁸⁸. It is counterproductive to claim that isolating a child is in their best interest when the very act can cause lasting harm to their mental health. In addition, children require social interaction and stimulation for healthy development. Isolating a child deprives them of the crucial experiences necessary for their cognitive, emotional, and social growth. Moreover, solitary confinement is often associated with punishment rather than rehabilitation.⁸⁹ If the goal is to help the child learn from their mistakes and grow into a responsible adult, then alternative methods that focus on rehabilitation, education, and counselling should be prioritised over punitive measures. Therapeutic child justice

⁸⁸ Shalev, S. (2008). A Sourcebook on Solitary Confinement. Greater London Group.

⁸⁹ Vera Institute of Justice (2021). Why are People Sent to Solitary Confinement? The Reasons Might Surprise You. <https://www.vera.org/publications/why-are-people-sent-to-solitary->

interventions are significantly more likely to enhance public safety compared to punitive ideologies.⁹⁰ Notwithstanding, there is a lack of empirical evidence to support the argument that solitary confinement is an effective method for ensuring a child's safety and wellbeing. In fact, numerous studies have shown the negative consequences of such practices.⁹¹ There are alternative ways to address safety concerns without resorting to solitary confinement. Increasing supervision, employing trained staff, implementing conflict resolution programs offering counselling and support services, and establishing dynamic school programs are more efficacious strategies for ensuring the safety and well-being of a child. These approaches address the root causes of behaviour issues and provide the child with necessary tools for personal growth, as well as respect their children's rights.

- **Foster the use of de-escalation techniques or positive reinforcement** - The creation of crisis response groups or the construction of sensory rooms for example, with the caution that the success of these alternatives requires specific training of the staff⁹².

To develop and implement such right-based and non-violent alternatives, **inspiration can be found in experience of some countries**. For instance, in countries where practices of isolation have been established as measure of last resorts over the past years interesting alternative practices have emerged.

In **Portugal** for example, the **"Crisis Intervention Manual"** from the DGRSP in use in the services and covers the use of precautionary isolation for cases in which the practice of "time-out" did not produce the desired results, did not allow for a reduction of tension with the verbal approach to the problem, for which reason an assessment should be made of the need to use precautionary isolation. The Manual foresees a sequence of interventions in the crisis that begin with the interview in an "open space", problem and conflict resolution techniques, the use of the "time-out" and finally the precautionary isolation, which lasts for the strictly necessary duration the youth's recovery.

In **Italy**, **restorative justice measures** are used as alternatives to solitary confinement (when it is taken as a disciplinary measure): group meetings, volunteering, workshops on emotion, anger management, legality etc. They can all have positive effects in the group dynamic. In the Juvenile Detention Institute of Airola, restorative justice is used as a disciplinary measure and is activated following a resolution of the disciplinary board. Other disciplinary measures such as small jobs are often used. In the Juvenile Detention Institute in Bari, before any sanctions they use support and clarification interventions and, in some cases, restorative sanctions and conciliation modalities. In the Juvenile Detention Institute in Potenza, activities aimed at repairing the damage caused are used as main disciplinary measure.

We encourage States and heads of detention centres to exchange with others to highlight and learn from alternative practices. In any case, structural measures adopted should always: be time-limited

⁹⁰ See Lipsey, M. W., Howell, J. C., Kelly, M. R., Chapman, G., & Carver, D. (2010). Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice. Centre for Juvenile Justice Reform, Georgetown University.

⁹¹ There is a limited body of credible research on the effects of administrative segregation on facility safety. a 2014 report on segregated housing in federal prisons points out that the existing literature does not definitively establish a causal link between segregation policies and institutional safety. See CNA, 2014.

⁹² Council of Juvenile Correctional Administrators (2016) and Stickrath y Blessinger (2016).

in nature, be monitored and include regular safety checks, include mental health assessments, ensure a safe physical environment, and provide for emergency responses to self-harm indications.”

IX. Recommendations

We call on every State to definitely and effectively put an end to solitary confinement of children. To this end we encourage States to implement the **following eight recommendations and key actions**.

Knowing that solitary confinement is a serious child rights violation that takes place within an already harmful practice which is deprivation of liberty of children, **we encourage States to strictly limit the use of deprivation of liberty of children as a measure of last resort, for the shortest period of time, in respect of children’s rights and objectives of child justice system** (in line with UNCRC art. 37, 40 and General Comment 24 on child justice CRC/G/GC/24).

1. End the practice of solitary confinement by any name

The practice widely recognized as 'solitary confinement' carries an inherent implication of punishment and sanction, regardless of the various names it assumes, including administrative segregation, isolation, secure housing, and room confinement. A greater consistency in terminology across countries would facilitate cross-country comparisons. Additionally, any comprehensive definition or discussion on this matter should account for de facto isolation.

Considering both scientific studies on the short- and long-term harmful consequences of solitary confinement and the fundamental rights of the child and the principles of child justice, signatory organisations urge governments to **end the isolation of children in favour of non-violent practices that do not harm them and instead respect their fundamental rights and dignity**. This plea is especially pertinent when addressing children who exhibit particular vulnerabilities or who experience an intersection of vulnerabilities, such as those with developmental disorders and neurodisabilities, mental health conditions, and who have been subject to trauma, including those in the child welfare system. The practice of subjecting children to solitary confinement should be discontinued in favour of alternative methodologies and practices.

2. Encourage the adoption of alternatives to isolation practices that are appropriate for children and their development

Solitary confinement or other types of isolation are not necessary for a safe and secure detention facility. In fact, some facilities which have eliminated the use of isolation have also seen a reduction in violence among children as well as between children and staff, suggesting that the elimination of such punitive measures may contribute to a broader culture of safety and security.

While there may be times where a child may need to be removed from others for his or her safety, or for the safety of others, there are ways to do this without resorting to trauma-inducing methods such as solitary confinement. Such measures should be analysed, and best practices should be

developed that focus on the best interests of the child. Furthermore, attention to developing measures which aim to prevent crises in the first place would help diminish the necessity for more restrictive measures, such as isolation.

Solitary confinement should never be used, under any circumstance, as a form of discipline, punishment or any other reason. Disciplinary responses should be promptly administered in a proportionate manner and avoided as much as possible through violence prevention mechanisms.

One pivotal transformation that could prove beneficial involves **transitioning from the exclusive or even occasional use of punitive disciplinary measures for youth management towards an emphasis on the cultivation and reinforcement of positive behaviours through educational methods.**⁹³

3. Prevention of tensions between peers, and staff in detention centres

To end solitary confinement and avoid the necessity of resorting to any form of sanctions, timely and proactive prevention is paramount. It is crucial that we address the root causes of tensions that can emerge among peers and between staff and detainees within child detention centres. By embracing a proactive approach, we can create an environment that not only alleviates the need for punitive measures but also nurtures a culture of understanding, respect, and reinsertion.

Some actions that may prevent tensions and the need of resorting to punitive measures or sanctions.

- A. **Incorporate a variety of de-escalation techniques** and education for both staff and students.
- B. **Offer ways for youth to self-regulate and have outlets for their emotions**, such as a safe room with soft items to take a break, journaling, additional recreation time (such as playing basketball) when needed, etc.
- C. **Propose incentive programs**, allowing youth to access special benefits (such as television or videogames) when they display improvements to their behaviour or good behaviour, which positively reinforces behaviours and makes it more likely that they will engage in favourable behaviours (and not unfavourable ones) in the future.
- D. **Provide for regular individualized, one-on-one mental health treatment** by licensed, qualified mental health professionals to treat their conditions and work through their trauma, as well as appropriate group mental health treatment programming, which will make it less likely that they will act out in the future.
- E. **Implement Early Intervention Programs**: such programs are designed to identify potential sources of tension and conflict among children in detention centres. These programs can

⁹³ Root, B. (2023). Growing Up Locked Down. In Human Rights Watch. <https://www.hrw.org/report/2012/10/10/growing-locked-down/youth-solitary-confinement-jails-and-prisons-across-united#1082>

include conflict resolution training, and sessions aimed at equipping children with the skills to manage their emotions and conflicts effectively.

- F. **Establish Peer Support Groups:** within the detention centre, such groups gave the space for children to share their experiences, emotions, and concerns with each other in a safe and moderated environment and develop coping skills.
- G. **Create accessible and anonymous communication channels:** such channels for children will enable them to voice their grievances, concerns, or suggestions. Encourage regular **feedback and dialogue** between children and detention centre authorities to address issues before they escalate.
- H. **Consider adopting Restorative Justice Practices:** restorative justice enables conflicts to be resolved through dialogue, understanding and reconciliation rather than punitive measures. This approach can help build empathy and repair relationships among peers.
- I. **Invest in educational and recreational activities:** such activities promote teamwork, creativity and social skills. Engaging children in positive and constructive activities can divert their focus away from potential conflicts. Furthermore, the implementation of meaningful education programs, tailored to young people's actual educational needs and employing a trauma-informed and trauma-centred approach, is key to addressing safety and behaviour issues. Such programs are highly effective in reaching children at their individual educational levels, rather than simply at their chronological age, resulting in more engaged and successful educational experiences within detention centres.
- J. **Conduct Regular Assessments:** such assessments of the detention centre's environment and the well-being of the children will help to identify trends, potential sources of tension, and areas for improvement in the prevention of conflicts.

Improving global detention conditions by ensuring appropriate settings and avoiding overcrowding will be a pivotal step in fostering a shift toward improved outcomes resulting from the implementation of these actions.

4. Ensure appropriate training of staff in detention centres and appropriate settings

The competencies of staff in detention facilities must be assessed, including any previous training relating to their interactions with youth. If detention facilities are expected to eliminate or reduce their use of isolation, staff must be equipped with alternative strategies to address behaviour problems and safety concerns. Thus, ensuring staff have received comprehensive training in de-escalation techniques and alternatives to isolation would best protect youth in detention. Youth-specific training relating to mental health issues should be a focus, given the disproportionate use of isolation techniques against individuals with neurodisabilities with mental illnesses. It is equally important that staff operate within environments that prioritise well-being. When employees are in good health and receive proper care, they are better equipped to excel in their roles and promote the necessary therapeutic approach.

It is also crucial that staff be given specialized trauma training, given that many children or young adults in detention come from backgrounds with traumatic experiences, and that the very experience of detention itself is traumatic.⁹⁴ Understanding the underlying trauma that many detained children may have experienced can inform staff behaviour and prevent triggering situations. Furthermore, that trauma-centred training should also be provided to all adults and staff who engage with children in detention, as it has proven effectiveness in addressing the disciplinary deficiencies that often lead to the adoption of extreme and inhumane tactics.

There likely will also need to be shifts in culture that will take persistence to incorporate through policy changes, education, frequent monitoring, and modelling top down.

5. Create a framework for meaningful inclusion of the child's perspectives

The perspective of children and youth must be included in discussions regarding conditions of detention that may affect them.⁹⁵ It is valuable to hear the stories of young people who have experienced isolation,⁹⁶ but it is also important to continue to include their perspective when proposing changes and making decisions. Finding ways to listen to the stories, concerns and thoughts of children and youth currently or previously in detention, is important to ensuring decisions made at the national or regional levels accurately reflect the experiences of those they affect. There must also be robust mechanisms for youth to express and document their concerns about what is happening in the facility (such as improper forms of punishment, abuse, etc.) as well as actually be heard by an impartial person to address the issues.

6. Guarantee procedural safeguards and fundamental rights of children

In the path toward abolition of solitary confinement and similar harmful practices, States should define and implement a holistic plan composed of short-term and medium-term measures to avoid solitary confinement. Those plans should define as well concrete initiatives to reduce the prison population, as overcrowding results in increased friction and stress between individuals. As demonstrated in this paper, inappropriate circumstances lead to behaviour that prison authorities address by placing individuals in solitary confinement.

Whatever the reason for resorting to solitary confinement, its consequences can be severe for persons subjected to it and such measure must therefore be strictly regulated with precise safeguards and use only as last resort for the shortest period of time.

⁹⁴ Justice With Children (2021) Policy Paper: Brain Science and How It Affects Children Accused Of Crimes. Terre Des Hommes. <https://www.tdh.org/en/digital-library/documents/policy-paper-brain-science-and-how-it-affects-children-accused-of-crimes>

⁹⁵ C. Foussard, H.R. Jung, (2023). "Policy paper on Systemic child participation in justice". Global Initiative on Justice With Children.

⁹⁶ See for example the Justice With Children's Child Advisory Board for the WorldWorld Congress presentation video. Justice With Children. (2021). World Congress on Justice with Children 2021 edition [Video]. YouTube. <https://www.youtube.com/watch?v=v1ORCkKnc3A>

7. Ensure greater accountability through systematic and detailed data collection and dissemination.

One of the challenges of studying solitary confinement and developing recommendations for change is the lack of publicly available data on the use of the practice. Collecting and disseminating detailed data on the practice of solitary confinement and understanding its real-world application, even when there are laws or policies in place that prohibit it is imperative.

More comprehensive data would provide insight into which children are being subjected to solitary confinement, and whether more vulnerable groups are disproportionately affected. Studies have shown that individuals with pre-existing neurodisabilities may be subjected to solitary confinement at a higher rate than their counterparts without pre-existing mental illnesses, and better data would allow this trend to be monitored. It would also allow for the documentation of any disparities relating to youth of colour, aboriginal youth, or LGBTI+ youth, and for necessary changes to be made.

To increase accountability, inspections of children and young adults' detention facilities (as well as those adult facilities which house children and young adults' offenders) should be implemented to monitor the way policies are being carried out in practice. In order to ensure maximum effectiveness, these inspections must be unannounced, preventing staff from altering practices or conditions for the purpose of the inspection. They must also be done by an independent group or agency who is able to give a thorough, professional, and unbiased assessment of the conditions of detention.

8. Identify the different challenges posed in adult and privately run facilities.

Another area where staff training is critical is in adult facilities that also house children. Although housing children and (young) adults in the same facility is not supported by international law, it is a reality in some countries today. In such facilities, staff may have only received training relating to adult offenders, but given the different needs and vulnerabilities of youth, specific training is required. This can also be the case in privately-run facilities, which can house youth as an alternative to government facilities, but may not be subject to the same trainings and requirements.

Similarly, these types of facilities may not be designed to house youth offenders, and can thus pose additional concerns. For example, in some adult facilities that also house children and young adult offenders, youth are placed in isolation for their own safety from the general adult population; however, even such "protective" isolation can have the same detrimental effects as other types of isolation.