

# The Relevancy of Solitary Confinement in the Current Criminal Justice System

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**Abstract:** Solitary Confinement is all about the practice or condition of imprisonment where by a person is placed in isolated small cell for average of twenty two up twenty four hours a day out of human contact, for whatever is reason and form may be and for whatever period of time. Solitary Confinement as one form of imprisonment is now in use by different countries prison system. Even some countries like United States have prisons which are solely constructed for Solitary confinement purpose. Currently the use of Solitary Confinement is increasing. Countries resort to it to achieve various purposes with the ultimate aim of maintaining legitimate public safety. There is unequivocal evidence that demonstrate the negative health, economic and social effects of Solitary Confinement. The extent of mental and physical damage of Solitary Confinement depends on the individual prisoner background, the reason of his isolation, its duration and the conditions of confinement. Concerning the legal regime and legality of Solitary Confinement, there are no international as well as regional human right instruments which absolutely and expressly make Solitary Confinement illegal. The binding international human right laws such as ICCPR, ICESCR, CAT and regional binding instruments such as ACHPR, ECHR and ACHR let alone prohibiting Solitary Confinement they does not use even a related terms to Solitary Confinement. Whereas the non-binding instrument and documents such as SMR, Basic Principle for Treatment of Prisoners, the Istanbul Statement, European Prison Rules (EPR) and the American Best and Basic Principles for Protection of Prisoners Deprived of their Liberty have used the term Solitary Confinement and any other similar terminology. Some of them call for the restriction of its use by resorting to it only as a last option. Thus, it is possible to conclude that in today's international and regional human rights system, Solitary Confinement is not clearly and absolutely prohibited and it remains un-prohibited. Domestic law of some countries like Ethiopia, U.K, Pakistan and Peru has incorporated Solitary Confinement as legitimate form of punishment or prison management and it can be used when it is found necessary. When we say Solitary Confinement is not prohibited by international and regional human right instrument it does not necessarily mean that such instrument have no relevancy in dealing with and regulating Solitary Confinement. All the provisions of such instruments related to, for instance, to right to health, dignity, due process, food, clean environment and right against torture, or other cruel, inhuman or degrading treatment or punishment play significant role in regulating Solitary Confinement regime and to bring a legal action against use of it in manner contrary to the above mentioned rights. Whether Solitary Confinement is relevant or not in the current criminal justice system is important question. It is important because the answer for the question will tell us either to stop or to continue using it. The international community and legislative organ of each country will take its own position and react accordingly. Based on the discussion made before on various grounds which are relevant for the determination of whether Solitary Confinement is relevant or otherwise in the current criminal justice system, my finding finally rests, as a rule in the negative. Though we have no binding human rights laws which prohibit Solitary confinement, it is irrelevant in today's criminal justice system. Countries shall take all appropriate measures to exhaust all other means of maintaining public safety in and outside prisons. So that prisoners human right can fully be realized, unnecessary costs can be eliminated, the inmates can better be rehabilitated and socially re-integrated, the public trust and confidence on the criminal justice system can be increased. And by avoiding abuse and over use of Solitary Confinement fair, efficient and effective criminal justice system can be built. However, there may be a rare case in which very crucial exceptional circumstances can be tolerated. This is when any other mechanisms or alternatives are already exhausted and nothing except Solitary Confinement can be the right solution. In this case, a modified form of Solitary Confinement can be relevant as last resort, for shorter time as possible (i.e. not more than days) and up on the fulfillment of certain conditions. I said 'a modified form' due to the new conditions attached to it. These conditions are the fact that the Confinement does not infringe the right of the inmates which are recognized and protected under the ICCPR, ICESCR and CAT. The detail of the situations which will constitute the crucial exceptional circumstances and the conditions that must be respected when Solitary Confinement is employed in the above mentioned exceptional circumstances is given in my recommendations.

**Keyword:** solitary confinement, criminal justice, human right, relevancy

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**Acronyms and Abbreviations**

- ACHR- American Convention on Human Rights  
PBPPDL-Principles and Best Practices for Protection of Persons Deprived of Liberty in America  
BOP-Basic Principles for Treatment of Prisoners under Any forms of Detention or Imprisonment  
CAT-Convention Against Torture  
ECHR- European Human rights Convention  
ECTHR-European Court of Human Right  
EPR-European Prison rules  
ICCPR- International Covenant on civil and Political Rights  
ICESCR-International Covenant on Economic, Social and Cultural right  
SMR-United Nation Standard minimum Rules for the Treatment of prisoners  
UDHR- Universal Declaration of Human Rights  
U.K-United Kingdom

U.S- United States

WHO- World Health Organization

## Chapter One: Introduction

### 1.1 Background Information

Every government needs some sort of mechanisms to punish criminals in order to maintain peace and order of the state which is entrusted to it. The government has proposed different mechanisms among of which and the most important means is imprisonment. The discussion concerning imprisonment is beyond the scope of this work as the title indicates. The general purpose of this work is to give insight on the special form of imprisonment called Solitary Confinement. In the contemporary world where human rights are given great institutional and media attention, Solitary Confinement becomes controversial issue. Consequently, different positions on the issue are held by different groups and states. Is Solitary Confinement relevant in the current criminal justice system is the basic research question of the paper. And since the main purpose of the paper is to determine the relevancy of Solitary Confinement, much emphasis is given to its theoretical aspect.

Over the last two decades correction systems have increasingly relied on Solitary Confinement as a prison management tool even to the extent of building an institutions called “supermax prison ” which stands for super maximum security prison, where prisoners are held in conditions of isolation, sometimes for years or decades.<sup>1</sup> Due to such increase use many questions as to whether it is effective, humane and legal form of punishment has been forwarded. As I mentioned above, my concern is judging the relevancy or other wise of Solitary Confinement in the current criminal justice system or in another way, should it be maintained as part of the current criminal justice system. Such judgment depends on various grounds such as its compatibility with human right instruments, the very purpose of criminal justice system and punishment, the presence of other alternatives and so on.

Indeed, there are no international or regional binding human right instruments that explicitly neither allow nor prohibit Solitary Confinement. Nevertheless, I can say that there are binding and non binding instruments which deal with it directly or indirectly and explicitly or implicitly.

In this paper, I tried to touch as many issues as possible which can help me in addressing the basic research questions.

So far I attempted to give a short view about Solitary Confinement and general background of the paper. For much more detail, it requires to make further reading in to four chapters.

### 1.2 Statement of the Problem

Solitary confinement is taken as one and special form of imprisonment used for different reason in different parts of the world. And states are increasingly using it for the past two decades.<sup>2</sup> Absence of express authoritative definition and determination of its legality under international law can be mentioned as a problem. However, the main problem that gave raise to my study of the subject is question of its relevancy in the current criminal justice system. Today, we have a lot of international and regional human right instrument which recognize and protect human right in various aspect of life including human dignity, mental and physical health of person. On the other hand, we have this increasing trend on use of Solitary confinement.

Therefore, through my study I will try to provide a justifiable response to the problem and try to make a logical conclusion as to whether Solitary confinement is relevant or not in the current criminal justice system.

### 1.3 Basic Research Questions

My area of study touches different issues so as to reach at what basically intended to be achieved. Accordingly, the following questions are dealt with the study of relevancy of Solitary confinement in current criminal justice system.

1. What constitute Solitary confinement?

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<sup>1</sup> Juan Mendez, ACLU Briefing paper: The Dangerous over use of solitary Confinement in the U.S., (2011), P.1 (available at <http://www.aclu.Org/files/pdfs/prison/stop-solitary-brifing-paper.pdf>) accessed on June, 2012.

<sup>2</sup> Ibid

2. Do we have various forms of Solitary confinement or does it take always one form?
3. What are the likely effects of Solitary confinement in a broader perspective?
4. What are the rational for using Solitary confinement?
5. It there any international human right instrument that explicitly use the term and prohibit or allow it?
6. What is the stand of human right organs on the subject?
7. What is the place of Solitary confinement under the Ethiopian law?
8. Is Solitary confinement relevant in the current criminal justice system? If yes, how much and why? If no, why is that? Is it totally irrelevant or relevant?

#### **1.4 Significance of the Study**

The outcome of this study will contribute lot significance for me in the first place and to the legal system in general including prison system, legal professionals, ordinary readers and potential researchers.

For me, it will be my graduate thesis which I cannot graduate without it and will enable me to increase my knowledge on the subject matter.

In addition, the result of the findings will be helpful for the responsible bodies such as prison officials, prison policies, law makers, and other stake holder to take the necessary measure as per the recommendation. Finally, it will also be a basis for potential researchers who wish to conduct further studies.

#### **1.5 Study Objectives**

##### **1.5.1 General Objective**

The general objective of the study is to critically examine and determine the relevancy of Solitary confinement in the current criminal justice system after putting good background.

##### **1.5.2 Specific Objectives**

- To provide basic concept about Solitary confinement including nature, type and purpose
- At least to clearly state the basic element of the term if coming up with comprehensive definition is not possible
- To identify and discuss related points under international instruments.
- To investigate and describe the extent to which the international human right instruments and Ethiopia law addressed the issue
- To provide some recommendations based on the outcome of the study

#### **1.6 Scope of the Study**

The scope of the study is limited on the theoretical aspect of the concept in determining whether it is relevant or not in the current criminal justice system. The study does not aim at providing comprehensive overview and discussion on the international, regional and national laws which have direct or indirect connection with Solitary confinement and prisoners.

However, the important principles and rules which provide protection and special treatment for prisoners as well as the current application of Solitary confinement in some selected countries are more or less expected to be included under the study.

#### **1.7 Methodology**

In order to arrive at reliable findings, I collected various types of data related to the study under consideration. Review of available literature and documents will also be carried out. The relevant human right instruments, articles, books and reports will be used as source of information.

##### **1.7.1 Literature Review**

The primary sources including Source Books on Solitary confinement by Sharon Shalev, Solitary confinement and International Human Right by Elizabeth Vaslides, Treatment of Prisoners under International Law by Nigel N. Rodley, different international human right instruments such as ICCPR, CAT, SMR as well as national laws mainly the FDRE Constitution, Criminal Code of Ethiopia and Prison Commission Establishment Proclamation No- 365/2003 will be used.

Secondary sources which may be published or unpublished including reports, articles, and journals will also be used.

### 1.7.2 Sampling Method

The research is doctrinal which does involve neither questioner nor interview. However, concerning the current application of Solitary Confinement United States and United Kingdom are selected. They are selected based on the fact that they have long time experience on issue and the availability of materials. The Ethiopian law perspective is discussed to give the paper more sense and meaningfulness. Without mentioning the law and practice of Ethiopia the paper would be incomplete.

### 1.8 Structure of the Thesis

The thesis is consists of four chapter. The first chapter as it preceded is simply an introductory chapter which are relevant for the reader to build background knowledge.

The second chapter will try to identify the definition, history, types and purpose of Solitary Confinement.

The third chapter is devoted to show the effect of Solitary Confinement on the person subjected to it and beyond that in brief. The provisions of international human right instrument such as ICCPR, CAT and SMR as well as relevant Ethiopian laws are discussed. Furthermore, the current application of Solitary Confinement on some selected countries is also given attention here.

In the main and last chapter of this paper, the relevancy of Solitary Confinement in the current criminal justice system will be in focus. Besides, I tried to show the conclusion and point out possible recommendations as to what countries in general, legislatures and prison systems in particular have to do and what human right laws ought to be.

## Chapter Two: The Concept of Criminal Justice system and Solitary confinement in General

### 2.1 Meaning of Criminal Justice System

Black law dictionary has defined criminal justice system as “the collective institutions through which an accused offender passes until the accusations have been disposed of or the assessed punishment concluded.<sup>3</sup> It further mentions that the system typically has three components. These are law enforcement (police, sheriffs, marshals), the judicial process (judges, prosecutors, defense lawyers), and corrections (prison officials, probation officers, and parole officers). The criminal justice system is also termed as law enforcement system. Whereas, criminal justice is defined as the method by which a society deals with those who are accused of having committed crimes.<sup>4</sup> Thus, criminal justice system is system and includes large number of public institutions and actors in the enforcement of criminal law.

Another definition suggested for the term is that criminal justice system is a set of legal and social institutions for enforcing the criminal law in accordance with a defined set of procedural rules and limitation.<sup>5</sup> From the very nature of substantive law, they are meaningless unless accompanied by procedural rules to bring well functioning criminal justice system in the country. The Criminal justice system consists of three parts. The first contact an offender has with the criminal justice system is usually with the police who investigate and make the arrest. Courts are the second part of criminal justice system which serves as the venue where disputes are settled, and justice is administered. Judges, prosecutor, and the defense attorney are the work group of court room. If accused has been found guilty during the court hearing, an offender is then turned over to the correctional authorities. Like all other aspects of criminal justice, the administration of punishment has taken many different forms throughout history. The most publicly visible form of punishment in the modern era is the prison. Early prisons were used primarily to sequester criminals and little thought was given to living conditions within their cells. In America, the Quaker movement is commonly credited with establishing the idea that prison should be used to reform criminals.<sup>6</sup>

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<sup>3</sup> Bryyan A. Garner, *Black's Law Dictionary*, (Washington: West Publishing Co., 8<sup>th</sup> ed., 2004), P 403.

<sup>4</sup> Ibid

<sup>5</sup> Yohans Tesfa and Tilahun Weldie, *Criminal procedure Law*, (2010), P.2

<sup>6</sup> Id,pp.3-4

A criminal justice system has dual purposes.<sup>7</sup> These are protection of the public against criminal harm and the suspects or accused against unfair treatment along the process. It is not easy to reconcile these two competing values. But, state is expected to strike a balance between the two through achieving absolute balance is not possible.<sup>8</sup>

## 2.2 Models of Criminal Justice System

Generally there are two models of criminal justice system. The most successful attempt to come up with models of the criminal process was achieved by American legal scholar Herbert packer. These models are “Due process” and “Crime control”.<sup>9</sup>

The former gives priority to fairness of the procedure and protecting the accused from wrong full conviction, accepting that a high level of protection for suspects make it more difficult to convict the guilty, and that some guilty people will therefore go free. The later give high attention on convicting guilty, taking the risk that sometimes some innocent people will be convicted. Most Criminal Justice system tends to seek to strike a balance between the two.<sup>10</sup> Due process aims at safeguarding constitutional right which are the due process right of the suspect where as the crime control aims at protecting public security even at the expense of some innocents so as to achieve the purpose of criminal law.

## 2.3 Meaning of Solitary Confinement

Like other legal terminologies, there are various definitions given for the term Solitary Confinement which are formulated by writing of scholars in their books, articles, legal dictionaries and other documents. Some of these definitions are purpose oriented while other are nature oriented or consists both.

Solitary Confinement has been described in many terms, such as Administrative Segregation, Control Unit, The Hole, Intensive Management Unit, Lock Down, Punitive Segregation, SHU (special housing units, segregated housing units, security housing units) and Supermax(super maximum security confinement).<sup>11</sup>

The Black law dictionary defines Confinement as “act of imprisonment or restraining someone, the state of being imprisoned or restrained”. Confine is also defined as “person held in confinement”. The term Solitary Confinement is again defined as “a separate confinement that gives a prisoner extremely limited access to other people, especially, the complete isolation of prisoners.”<sup>12</sup> It can be inferred from the definition that the meaning is associated the concept of Solitary Confinement with the nature of cell and condition of imprisonment that is separate and give a limited access to external and internal world. It gives limited access because he/she is required to pass almost all hours of the day in the cell. There might also be a limitation on access to family visit, outside exercises, entertainment and contact with other prison inmates.

- The other definition given for the term is that Solitary Confinement is “a punishment imposed on a person whereby he is kept in isolation from the external world whether or not kept in designated jail.”<sup>13</sup> It further stated that Solitary Confinement is resorted when a person is expected to cause a problem when permitted to communicate with others.<sup>14</sup>
- Broader definition is given for the term. Accordingly “Solitary Confinement is the practice of placing a person alone in a cell for twenty two up to twenty four hours a day with little human contact or interaction reduced or no natural light; restriction or denial of reading material, television, radio or other property, severe constraints on visitation; and the inability to participate in group activities, including eating with other.”<sup>15</sup>

Even if the specific conditions of Solitary Confinement may vary, generally this definition explains it in better and comprehensive manner. Almost similar definition is given by Sharon Shalev, an author of a book “Source Book on Solitary Confinement.”

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<sup>7</sup> Aderagew Teklu and kedir Mohammed, Ethiopian criminal procedure, (March,2009), P.36

<sup>8</sup> Ibid

<sup>9</sup> Yonas and Tilahun, Supra note 5, p.6

<sup>10</sup> Catherine Elliot and Frances Quian, English Legal System (England: Pearson Education Limited, 6<sup>th</sup> ed., 2005), P.338

<sup>11</sup> Ken Strutin, Solitary confinement, (August, 2010) (available at [http:// www//lrx.com/features/solitary confinement](http://www//lrx.com/features/solitary%20confinement)) accessed on July, 2012.

<sup>12</sup> Bryyan, supranote 3, p. 1428.

<sup>13</sup> Legal explanation. Com (available at [http://www.Legal explanation. Com/ definitions/solitary\\_ confinement. htm](http://www.Legal%20explanation.com/definitions/solitary%20confinement.htm)) accessed on May, 2012.

<sup>14</sup> Ibid

<sup>15</sup> Juan Mendez, Supra note 1, P. 2



- Solitary Confinement is also defined as “the practice of isolating inmates in closed cells from twenty two up to twenty four hours a day, virtually free from human contact, for periods of time ranging from days to decades.”<sup>16</sup>

For the purpose of this paper, the final definition I would like to discuss is the one which is found in the Istanbul statement on use and effects of Solitary confinement adopted by international medical or health experts on 9 December 2007 at international psychological trauma symposium in Istanbul. It is not legal document and hence, not binding. The document defines Solitary Confinement as “... the physical isolation of individuals who are confined to their cells from twenty two twenty four hours a day. In many jurisdictions across the world prisoners are allowed out of their cells for one hour of solitary exercise. Meaning full contact with other people is typically reduced to a minimum.”<sup>17</sup> The definition indicated the possibility of outside exercise for one hours and minimal human contact. However, we can infer from it that it is not the case for all jurisdictions which practice Solitary Confinement but for many of them. Such exercises may not even necessarily be together with other inmates. Another point from this definition is we can validly conclude that presence of minimum human contact or at least one hour outside exercise may not prevent us from calling that special form of imprisonment as Solitary Confinement.

By taking in to account the above definitions, we can drive the following important conclusions in relation to the concept of Solitary Confinement:

First, notwithstanding the different meanings attached to the term, it is used and being used interchangeably with the term isolation, segregation, lockdown, SHU and Soon.

Secondly, there is no binding and universally accepted definition for the term under any of human right instruments.

Thirdly, Solitary Confinement is a special form of imprisonment in which a prisoner is isolated from human contact in separate cell with some limited exceptions. It will be more isolating when physical contact with family, prison inmates and staff is prohibited and when the communication is made through video cameras and intercoms.

Fourthly, the very purpose of the particular confinement and the amount of time person spends in Solitary Confinement does not matter in the definition of the term.<sup>18</sup> The purpose may vary. For instance it could be imposed for protection of others or the inmate himself. Again he may spend a days, years or decades there. Other specific conditions such as width and length of the cell, from what it is made may differ.

Generally, based on the above elements we can define Solitary Confinement in comprehensive manner as the practice or condition of imprisonment where by prisoner is placed in a separate cell for average of twenty two up to twenty four hours a day out of human contact, for whatever reason, period until release and form the confinement is made.

#### **2.4 The Link between the Models of Criminal Justice System and Solitary Confinement**

As per the discussion on criminal justice system and its models, criminal justice system in not only about police or court, it also encompass sentencing and punishment of offenders which will be effective with best cooperation of correctional institutions. It is also established that we do have “Due Process” and “Crime Control” model.

Based on the previous backgrounds it is possible to create a link between models of criminal justice system a country mainly follows and practice of Solitary Confinement as follows:

The fact that a given criminal justice system adopted either of the two or both may have its own implication as to the place and degree of acceptance of Solitary confinement as on form of punishment. The more a given legal system adopts the Crime Control model, due to its inherent nature the more it will resort to Solitary Confinement and the more a given legal system adopts the Due Process model, the less it will resort to Solitary Confinement. This shows the existence of link between the types of models of criminal justice system and use of Solitary Confinement. To give an illustration, if the model is Due process any pre-trial and pre-charge detains will not be subjected to Solitary confinement since they does not exhaust their procedural rights. And those prisoners who are subjected to Solitary Confinement will also have a secured absolute right to get their sentence reviewed within reasonable

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<sup>16</sup> Sal Rodriguez, Solitary confinement: FAQ, (March, 2012), p. 1 (available at <http://www/solitarywatch.com/faq>) accessed on June 2012.

<sup>17</sup> The Istanbul statement on use and Effect of solitary confinement, adopted on 9, December 2007 at International psychological Trauma symposium, Istanbul, (available at <http://www.univie.ac.at/.../topic8-istanbul-statement-on-use-and-effect-of-solitary-confinement.pdf>) accessed on May, 2012.

<sup>18</sup> Here, the amount of time which is treated as irrelevant for the definition is not the time prisoner spent in the confinement cell per a day rather it refers to a day a person spent in solitary confinement until his release.

time. Furthermore, in the criminal justice system which is guided by the due process model all necessary step will be taken as much as possible to avoid liability of person and resort to Solitary Confinement.

On the other hand, where the model of the criminal justice system is crime control pre-trial and pre-charge detains may be subjected to Solitary Confinement when it is believed that it can contribute for the repression of criminal conduct and maintenance of security, just like the case of UK on person suspected of terrorism.<sup>19</sup> Besides, procedural and substantive rights of the accused or the inmates who violates prison rules may not be given a due consideration before Solitary confinement is resorted as a punishment when such confinement is believed to be necessary to avoid or reduce criminal conduct and maintain the security of the prisons.

Therefore, the type of model of criminal justice system a given state adopted have relationships with and tell us the more likely position of the country on use of Solitary Confinement.

## **2.5 Brief Historical Development of Solitary Confinement**

Everything which exists has beginning, so does Solitary Confinement. Though over last two decades prison system are increasingly using it, it is one of the oldest and most enduring prison practice.<sup>20</sup>

The notion of controlling inmates by isolating them was first developed in the late 1700's by Quaker prison reformers, who saw it as a humane way to help offenders realize the error of their ways.<sup>21</sup> In 1790, Philadelphia's walnut street jail becomes the first to isolate violent offenders. In 1820, the states of Pennsylvania created the eastern state penitentiary, where prisoners were kept in Solitary Confinement. Other countries also followed this way.<sup>22</sup>

In Europe and North American between 18<sup>th</sup> and 19<sup>th</sup> centuries, the approach to criminal punishment shifted significantly and starts to use imprisonment as its feature.<sup>23</sup> A belief in the ability to rehabilitate criminals through the use of isolation regimes become a corner stone of these modern prison systems.<sup>24</sup>

Latter (in the 19<sup>th</sup> century) discovered that rather than being reformed by the Solitary Confinement many prisoners become mentally ill and there was a little evidence that shows the newly built, expensive prisons were successful than their predecessor in reducing offenders.<sup>25</sup> Due to the above critics and over growing prison population, activates for dismantling the isolation system in most countries take place in late 19<sup>th</sup> century.<sup>26</sup>

At the end of 20<sup>th</sup> century and at the beginning of the 21<sup>st</sup>, the use of long term and large scale Solitary Confinement returned in the form of super maximum security and special security prisons for prisoners who are classified as high risk and difficult to control, particularly in United States (the federal government and 44 states). One example is the Guantanamo, were detains have been held in super max without any charge, without trial and in secret detention.<sup>27</sup>

To sum up, Solitary Confinement has been used as one form of imprisonment for longer period of time since the establishment of U.S prison systems by Quakers.

## **2.6 Nature of Solitary Confinement**

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<sup>19</sup> Shalev Sharon, A Source Book on Solitary confinement, (October, 2008), p.26 (available at <http://www.solitary confinement.org/source book>) accessed on June, 2012.

<sup>20</sup> Id, P.2

<sup>21</sup> \_\_\_\_\_, Solitary confinement: History and Controversy (2011), (available at [http://crime museum.Org/solitary\\_ confinement](http://crime museum.Org/solitary_ confinement)) accessed on June, 2012.

<sup>22</sup> Ibid

<sup>23</sup> Peter Scharff Smith, Solitary confinement, practice, and Human Standards (2009), (available at [http://www. hm prison service. gov .UK\) assets/documents/ 100043 E4solitary confinement. Pdf](http://www. hm prison service. gov .UK) assets/documents/ 100043 E4solitary confinement. Pdf)) accessed on July, 2012

<sup>24</sup> Ibid

<sup>25</sup> Shalev, supra note 19, p. 2

<sup>26</sup> Ibid

<sup>27</sup> Shalev, supra note 19,p.2

Solitary Confinement is mainly known for the isolation of inmate in separate cell. However, the matter does not end there. There are many issues and specific condition in relation to the manner of confinement, the cell, the identify of person placed in, for how long a person will spend in and so on. The answer of all this issues however may not always be the same.

### 2.6.1 Who is placed in Solitary Confinement?

Theoretically, it is prisoner who is considered as dangerous to others inmates or prison staffs or suspected of organized or being engaged in illegal activities outside of the prison are subject to Solitary Confinement.<sup>28</sup>

Practically, those who are not dangerous and violent may also be subjected to it. Many of them join it because they possess contraband, testing positive for drug use, ignoring orders or have unsavory political belief.<sup>29</sup> Those prisoners who are at the risk of being harmed by other inmates, like Javelins, mentally ill, elder or other individual who are vulnerable for attack may also be subjected to Solitary Confinement mainly for their own protection.<sup>30</sup>

### 2.6.2 How Long People Spent in Solitary Confinement?

As a rule, there is no clear cut and fixed time as to how long people spent in Solitary Confinement which can be inferred from the practice of states as well as their law. Terms in Solitary Confinement may extends form days to several decades depending on various reason attributable to behavior of the inmate or reason of his confinement or at discretion of prison officials.<sup>31</sup> As far as the time spent per day is concerned the average time of twenty two up to twenty four hours is somehow seems conventional, at least based on the definitional element I have collected and analyzed.

Many states prison systems in the U.S have made information available. Accordingly, the average term in Solitary Confinement in California, Arizonian, Texas and Colorado prison system is 6,8,5,4 Years and 18 months respectively.<sup>32</sup> In the federal system, Thomas silver stein (described as American's most isolated man) has been held in under no human contact order for 28 years.<sup>33</sup>

To mention the Ethiopian scenario, the Criminal Code of FDRE 2005 under Article 112 (2) states that "Solitary Confinement... may not exceed there months."<sup>34</sup>

Absence of a fixed standard as to the maximum and minimum terms of Solitary Confinement does not affect the definition of the term so long as other elements are fulfilled, as discussed before.

### 2.6.4 What the Conditions Look Like in the Cell?

Solitary Confinement is all about living in separate cell alone the whole day with only one, two or three hours allotted for exercise, if any. Usually even such exercise takes place alone in the exercise room or a fenced area. Some of prisoners have shower under shackle and may or may not be allowed to leave their cells for visits and to make a telephone calls.

The cell generally measure from 6x9 to 8x10 feet. Usually they have solid metal doors. Meals and communications with prison staff come through slots in those doors. Inmates are denied the opportunity to work or to attend prison programs.<sup>35</sup> Family visits are limited and almost all human contact occurs while the prisoner is in restraints and behind some barriers.<sup>36</sup>

Generally, conditions in Solitary Confinement are characterized by social isolation, less environmental stimulation and absence of control over many aspects of one's daily life.<sup>37</sup> This is because there is high level of control over all aspects of prisoner's life. All these together have a capacity to make life in Solitary Confinement severe.

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<sup>28</sup> Juan Mendez, supra note 1, p. 6

<sup>29</sup> Rodriguez, Supra note 16, p.2

<sup>30</sup> Juan Mendez , supra note 1, p. 3

<sup>31</sup> Id, p. 2

<sup>32</sup> Rodriguez, Supra note 16, pp. 3-4

<sup>33</sup> Id, p. 4

<sup>34</sup> The Criminal Code of FDRE, (2005), proc. No- 414/2004, Art.112(2)

<sup>35</sup> Rodriguez, Supra note 16, p. 3

<sup>36</sup> Juan Mendez, supra note 1, p. 2

<sup>37</sup> Shalev, supra note 19, p. 17

## 2.7 Forms of Solitary Confinement

From my reading and analysis on the subject I can say that there is no internationally accepted classification of Solitary Confinement. But still it does not mean that Solitary Confinement took only one form in all cases. Scholars in the field use different classification in their writings, directly or by inference. Prison systems also may have their own trend. However, the commonly used classification and forms of Solitary Confinement are discussed below.

### 2.7.1 Based on the Purpose of the Confinement

#### 2.7.1.1 Administrative segregation

Administrative segregation is one form of housing which involve substantial social isolation.<sup>38</sup> It is used when prisoners are deemed to be a risk to the safety of other inmates or prison staff. Prisoners in administrative segregation are placed in to isolation for month or years. Such types of segregation deprive normal human interaction and result suffers of mental health problems.<sup>39</sup>

It is also said that administrative segregation relies on a system of classification rather than actual behavior and often constitutes a permanent placement, extending from years to decades.<sup>40</sup>

According to Elizabeth Vasliades, at least theoretically Administrative segregation is not intended as punishment. Inmates are placed in here not because they have done something wrong, but for the purpose of maintaining safety, security and order in the prison.<sup>41</sup>

#### 2.7.1.2 Disciplinary segregation

It is considered as punishment when inmates break the rules such as steal a cell mate's radio. During disciplinary segregation, an inmate is segregated from other inmates for a specific period of time.<sup>42</sup>

Disciplinary segregation also referred as a time spent in Solitary Confinement for violating prison rules, and usually lasts from several weeks to several years.<sup>43</sup>

In United Kingdom the intensive management units are akin to the disciplinary segregation where by inmates is placed for disciplinary issues no longer than three weeks.<sup>44</sup>

#### 2.7.1.3 Involuntary Protective Custody

Like its predecessors involuntary protective custody involves social isolation and especially applicable for juveniles in adults prisons and other prisoners who are at risk of being affected by other inmates despite they have done nothing wrong, just for their own protection.<sup>45</sup>

As far as the organ or person who is mandated to decide whether person is subject to one form of Solitary Confinement or not is concerned, it varies. In some countries such as Pakistan and Peru courts are mandated with it.<sup>46</sup> While in other countries including Ethiopia as stated under the criminal code<sup>47</sup> and UK<sup>48</sup>, it is the prison officials who are given this mandate. In UK in certain

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<sup>38</sup> Juan Mendez, supra note 1, p. 2

<sup>39</sup> Kirsten Weir, Alone, in "the hole", (May, 2012) (available at <http://www.apa.org/monitor/2012/05/solitary.aspx>.) accessed on June, 2012)

<sup>40</sup> Rodriguez, Supra note 1, p. 1

<sup>41</sup> Vasliades, Elizabeth. Solitary confinement and International Human Rights: Why the U.S. prison system Fails Global standards, America University International law review (AUILR), vol. 21, no.1 (2005), p.75

<sup>42</sup> Kirsten, supra note 39

<sup>43</sup> Rodriguez, supra note 16, p. 1

<sup>44</sup> Id, p. 8

<sup>45</sup> Id, p. 1

<sup>46</sup> Shalev, supra note 19, p. 25

<sup>47</sup> Criminal code of FDRE, supra note 34, Art 112 (2)

<sup>48</sup> Elisa Mosler, Solitary confinement in Great Britain: Still Harsh, But Rare, (January, 2012), (available at [http://www.solitarywatch.com/2012/01/19/solitary\\_confinement](http://www.solitarywatch.com/2012/01/19/solitary_confinement)) accessed on July, 2012.

circumstance the law itself allow suspect to be held in isolation without being charged, for few hours or days such as in case of terror suspect.<sup>49</sup>

## 2.7.2 Based on the Duration of the confinement

### 2.7.2.1 Long term or Prolonged Solitary Confinement

The long term segregated housing or Solitary Confinement is a segregated housing that is expected to extend or does extend for a period of time exceeding thirty days.<sup>50</sup>This kind of Solitary Confinement is designed for isolation of prisoners classified as high risk or difficult to control. The use of prolonged solitary confinement has increased in recent years in the context of war on terror at Guantanamo Bay without any charge and trial, where isolation is an integral part of interrogation practices.<sup>51</sup>

I do not see any rationality as to why the thirty days are the parameter for the American Bar Association. Thus, I argue that unless there is authoritative and sound ground in this regard it is subjective and everybody may use his own parameter as long as it is reasonable and convincing.

### 2.7.2.2 Short Term Solitary Confinement

Arguably, we can say everything has an opposite. If there is long term Solitary Confinement by them we do have short term. As a matter of fact, I did not come across literatures which define what short term Solitary Confinement constitutes except using the term in the literature. Though it is a circular definition short term Solitary Confinement is a form of confinement or isolation of prisoner in separate cell for term of not exceeding thirty days.

Therefore, from the above discussion we can note that Solitary Confinement may not necessarily take one form. Shortly, the very reason and period of time inmates join Solitary Confinement are the two common parameters used to classify Solitary Confinement as Administrative, disciplinary and involuntary protective custody as well as long and short term respectively.

## 2.8 The Common Purpose of Solitary Confinement

The Use of Solitary Confinement as one form of imprisonment is not free from opposition. It has been a source of controversy. However, despite the controversy the proponents of solitary confinement are practicing it for various reasons they think can justify its use. Basically, the decision to put a person in Solitary Confinement may be made to achieve one or more of the following most common purpose.

1. Solitary Confinement as punishment: As I tried to discuss in the previous section Solitary Confinement is used as form of punishment for misconduct or breaking order while they are in custody. It also used as a punishment for crime they committed outside the custody. According to law of some countries like Peru and Pakistan Solitary Confinement may be imposed as punishment through judicial sentencing.<sup>52</sup>
2. Solitary Confinement as means of protection: protection is one purpose of Solitary Confinement as it is justified by its proponents. A person may be subjected to Solitary Confinement for his own protection simply because he is javelin, elder, mentally ill, former police or prison official. They may or not be allowed to associate each other.<sup>53</sup>
3. Solitary Confinement as substitute for proper medical or psychiatric care: prisoners may also be sometimes subjected to Solitary Confinement because there are no appropriate alternatives available for mentally ill prisoners.<sup>54</sup>
4. Solitary Confinement as an administrative or prison management tool: Solitary Confinement may also be used as an administrative tool for managing prisoners which are deemed to be dangerous for other inmates or prison staff so as to maintain peace and security of prisons in advance.<sup>55</sup>

To conclude, the use of Solitary Confinement is justified by its proponents by many reasons. The most common justifications for the practice of Solitary Confinement are its use as form of punishment, protection, prison management tool and substitutes

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<sup>49</sup> Shalev, supra note 19, p.26

<sup>50</sup> Juan Mendez, supra note 1, p. 2

<sup>51</sup> Shalev, supra note 19, P. 3

<sup>52</sup> Id, p. 26

<sup>53</sup> Id, pp. 25-26

<sup>54</sup> Id, p. 26

<sup>55</sup> The Istanbul statement, supra note 17

for institutional problems. In fact, there are also other reasons such as using Solitary Confinement as means of facilitating interrogation in the process of pre-trial and pre-charge investigation.

### Chapter Three: The Effect and Legal Regime of Solitary Confinement

#### 3.1 The Effects of Solitary Confinement

In order to research on and determine the relevancy of Solitary Confinement in today's criminal justice system it is a must to consider the impact of implementing Solitary Confinement.

Many researches, interviews, books, journal and reports have disclosed the effect of Solitary Confinement from different perspective. These are: mental and physical health effect, social and economic cost of Solitary Confinement.

Under this topic I came up with a holistic and brief approach to deal with the effects of practicing Solitary Confinement from the above perspectives.

##### 3.1.1 The Health Effects of Solitary Confinement

The most famous and modern definition of health was created during the adoption of preamble to the constitution of WHO by international health conference on New York.<sup>56</sup> According to the definition provided in the preamble to the constitution of WHO, health refers to a state of complete physical, mental and social well being and not merely the absence of disease or infirmity.<sup>57</sup>

The Istanbul statement on use and effect of Solitary Confinement (adopted on December, 9<sup>th</sup> 2007 by international medical experts) recognized the fact that there are convincing documented occasions that Solitary Confinement causes psychological and physiological ill effects on the prison inmate even after only a few days in confinement.<sup>58</sup> In this regard Sharon Shalve also states that "There is unequivocal evidence that Solitary Confinement has a profound impact on health and wellbeing. The extent of psychological or mental damage varies depending on personal background of each confine, environmental factor, and regime such as degree of human contact, the purpose and duration of the confinement.<sup>59</sup> To elaborate it, a prisoner who is minor or young and those prisoners who have experienced mental illness previously are more affected as compared to adult prisoners and those who have never been experienced mental illness. And those who are subjected to long-term Solitary Confinement suffer from massive mental and physical harm than short term confines.

###### 3.1.1.1. Mental Effect

Prisoners subjected to solitary segregation have difficulties severe enough to cause near permanent mental and emotional damage. The lack of or minimal social contact and environmental stimulation often results in extreme psychological problems such as extraordinary malaise and increased violent tendencies.<sup>60</sup>

After an extensive interview with pelican solitary prison inmates in 1993, Dr. Stuart Grassian found that Solitary Confinement induces a psychiatric disorder characterized by hypersensitivity to external stimuli, hallucinations, panic attacks, cognitive deficits, obsessive thinking, paranoia, and other physical and psychological problems.<sup>61</sup> Psychological assessments of pelican solitary confined prisoners indicated high rates of anxiety, nervousness, obsessive ruminations, anger, violent fantasies, night mares, trouble sleeping and heart palpitations.<sup>62</sup>

Professor Stuart Grassian more specifically has noted that:

"There are substantial differences in the effect of Solitary Confinement up on different individuals. These most severely affected are often individuals with evidence of neurological or attention deficit disorder, or with some other vulnerability. These individuals suffer severe hallucinatory confusion, disorientation and paranoia. Individuals so affected do not recall

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<sup>56</sup> Preamble to Constitution of WHO, as adopted by International Health Conference, Network, 19 June -22 July 1946, Signed on 22 July 1946, official records of WHO, No. 2, P. 100 and entered on force on 7 April 1948 (available at [http:// www. who. int/ suggestions. faq/en/index. html](http://www.who.int/suggestions.faq/en/index.html)) accessed on June, 2012.

<sup>57</sup> Ibid

<sup>58</sup> The Istanbul statement, Supra note 17

<sup>59</sup> Shalev, supra note 19, p. 10

<sup>60</sup> Vasliades, supra note 41, pp. 71-72

<sup>61</sup> Rodriguez, Supra note 16, p. 4

<sup>62</sup> Ibid

events which occurred during the course of the confessional psychosis. Individuals with more stable personalities and great ability to modulate their emotional expression and behavior as well as individual with stronger cognitive functioning are less severely affected. However, all of these individuals will still experience obsession thinking, agitation, and difficulty of tolerating external stimuli.”<sup>63</sup>

While explaining the specific psychiatric symptoms of Solitary Confinement among inmates of Solitary Confinement Grassian stated:

“Inmates of Solitary Confinements are characterized by hyperresponsivity to external stimuli (inability to tolerate ordinary stimuli), perceptual distortions, illusions, and hallucinations (like hearing voice), Panic attack, difficulties with thinking, concentration and memory.”<sup>64</sup> (Emphasis added).

Generally, anxiety, depression, anger, cognitive disturbance, perceptual distortions, paranoia, psychosis, self harm and suicide are most common psychological effects of Solitary Confinement.<sup>65</sup>

### 3.1.1.2 Physical Effects

Normally we may say that Solitary Confinement is just one form of imprisonment as we put prisoner in a separate cell without beating him, so there is no physical problems which is likely to be caused on the prisoner. But this is rough and quick conclusion. Even if the most common and apparent effect of Solitary Confinement are the psychological or mental one, there are also physical problems associated with it, mainly due to the condition of the cell and duration of the segregation.

It can cause problem on the physical condition of inmates since it is characterized by lack of access to fresh air, sunlight and long period of inactivity.<sup>66</sup> Grassian and Friedman (1986) mention cardiovascular, gastro intestinal, genito-urinary, headaches and profound fatigue as physical effects of solitary confinement.<sup>67</sup> Heart palpitations (strong and rapid heartbeat), diaphoresis (sudden excessive sweating), back and other joint pains, deterioration of eyesight, poor appetite, weakness, feeling cold, tremulousness (shaking) and aggravating of pre-existing medical problems are also other sign and symptoms of physical effects of Solitary Confinement recorded by different studies.<sup>68</sup>

Coming to the effect of Solitary Confinement on mentally ill persons in particular, in a 2003 report human rights watch estimated, based on available data, that one third to one half of inmates in isolation a some form of mental illness.<sup>69</sup> Let alone those people with mental illness Solitary Confinement is difficult even for relatively healthy individuals. When people with mental illness are subjected to Solitary Confinement they deteriorate dramatically. Many of them engage in acts of self in jury and suicide.<sup>70</sup> It is not also unusual for them to cut their flesh, repeatedly smash their heads against walls, swallow harmful objects, or attempt to hang themselves and by then they sustain a physical harm.<sup>71</sup>

### 3.1.2 Social and Economic Effects of Solitary Confinement

In addition to the mental and physical effects, Solitary Confinement has an impact on the social wellbeing of person subjected to it and the economy of the country which are increasingly using it. As discussed before, social isolation is the most important element of Solitary Confinement. The Istanbul statement on use and effect of Solitary Confinement explained the social effect as central harmful feature of Solitary Confinement that reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and wellbeing.<sup>72</sup>

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<sup>63</sup> Stuart Grassian, *Psychiatric Effects of solitary confinement*, (2006), Journal of law and policy, vol. 22:325, P.333 (available at [http://www.law.wustl.edu/Journal/22/p325 grassian. pdf](http://www.law.wustl.edu/Journal/22/p325%20grassian.pdf)) accessed on January, 2013.

<sup>64</sup> Id, P. 335

<sup>65</sup> Shalev, Supra note 19, p. 15

<sup>66</sup> Ibid

<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> Rodriguez, supra note 16, p. 4

<sup>70</sup> Juan Mendez, Supra note 1, p. 4

<sup>71</sup> Ibid

<sup>72</sup> The Istanbul statement, Supra note 17

Though the lists are not mutually exclusive the social effect of Solitary Confinement are summarized by Craig Haney in the following manner:<sup>73</sup>

- a. The prisoner will become highly dependent up on the institution to organize their daily exercise. Many prisoners gradually lose the ability to initiate or to control their own behavior in dealing with other peoples.
- b. Since they have been prevented of any opportunity to organize their own lives for a particular activity and purpose for significant period of time they suffer opposite reaction. That is refusing to do something for themselves or others.
- c. The experience of social isolation leads to social withdrawal. Some prisoners more form being starved for social contact to eventually being disoriented and frightened by it. After release they will be unfamiliar and uncomfortable with their social integration
- d. The absence of regular normal interpersonal contact and meaningful social context creates a feeling of unreality that pervades one's existence in these places. It also leads to an undermining of the sense of self and a disconnection of experience from meaning.

Therefore, because of the deprivation of meaning full social contact and interaction with other, the prisoner in Solitary Confinement may refrain from being sociable and deal with other after they join the community. They will be uncomfortable in the social situation. This in effect will contribute for their unsuccessfulness in future life.

Solitary Confinement is criticized by many because of high cost associated with it. Supermax prisons are considerably more costly to build and operate, and sometimes costing two or three times as much as conventional prisons. Staffing costs are also much higher. Because, prisons are usually required to be escorted by two or more officers any time they leave their cells, and works that in other prisons would be performed by prisoners such as cooking and cleaning must be done by paid staff.<sup>74</sup> For all these reasons, Solitary Confinement is a very costly form of imprisonment which shares significant amount of criminal justice resource such as financial budget and the police force or security guards.

Despite many researches and documents<sup>75</sup> on the effects of Solitary confinement such as health, social and economic effects, countries which are using it tired to justify their practice by different reasons which are discussed in the previous chapter.

As one recent comprehensive survey of the psychiatric research on Solitary Confinement concluded, "Solitary Confinement can have serious psychological, psychiatric, and sometime physical effects on many prison inmates. A long list of possible symptoms from insomnia and confusion to hallucinations and outright insanity has been documented."

### **3.2 The Legal Regime of Solitary Confinement and Basic Standards for the Protection and Treatment of Prisoners.**

Prisoners are entitled to rights and protection under human right instruments as well as standards for treatment of prisoners since they are human being and prisoners respectively. Therefore, we can safely conclude that there are various instruments which have direct or indirect implication on the conditions of Solitary Confinement irrespective of its forms. The International covenant on civil and political rights (here in after ICCPR), Convention against torture and other cruel, in human or degrading treatment or punishment (here in after CAT) and the United Nation standard minimum rules for the treatment of prisoners (here in after SMR) are among the instruments which have some sort of relevancy in dealing with Solitary Confinement.

Countries have their own national laws to regulate the functioning of prisons and treatment of prisoners which may vary from jurisdiction to jurisdiction. These national laws, however, must be compatible with both international and regional human rights laws which provide basic rights for prisoners such as right to private life, right to adequate food and shelter, right to health and the right to education.<sup>76</sup>

From my study of different related instruments I do not come across with any provisions of instruments which explicitly outlawed or legitimized the use of solitary confinement. Here, I tried to examine the rule of related international human right instruments, documents and the position of some human right bodies on practice of Solitary Confinement.

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<sup>73</sup> Craig Haney, Mental Health Issues in Long Term solitary and "Super max" confinement, (2003), crime and Delinquency, pp. 20-22 (available at [http://www. capdefnet. Org/pdf-library/.../Haney- C% 26D-final- Draft-R. pdf](http://www.capdefnet.Org/pdf-library/.../Haney-C%26D-final-Draft-R.pdf)) accessed on January, 2013.

<sup>74</sup> Juan Mendez, *Supra* note 1, p. 7

<sup>75</sup> Jules Lobel, prolonged solitary confinement and constitution, (December, 2008), Journal of constitutional law, Vol. 11, no.1, pp.117-118 (available at [http://www. Law. upenn. edu/.../Lobel11u.pa.J.const. L. 115\(2009\). Pdf](http://www.Law.upenn.edu/.../Lobel11u.pa.J.const.L.115(2009).Pdf)) accessed on June, 2012.

<sup>76</sup> Shalev, *Supra* note 19, p. 3



Bearing in mind that most of related regional human rights are almost similar with the international standards and the need for managing the size of the paper with the time schedule at hand, I preferred to touch up on only the very relevant instruments in brief. Furthermore, the stand of Ethiopian law on the issue is under consideration.

### 3.2.1 The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is a key international human right treaty, providing a wide range of protections for civil and political rights. ICCPR together with UDHR and ICESCR, are considered as international Bill of rights. The convention was adopted by the U.N General Assembly in 1966 and Come in to force in 1976.<sup>77</sup>

Up on ratification countries has obliged themselves to respect and implement the treaty. It is also become part and parcel of domestic law of the ratifying states. So, it is legally binding on them.

The provisions of ICCPR are interpreted and its implementation is monitored by the UN human rights committee (HRC). Two articles of the ICCPR related directly to the treatment of prisoners and prison conditions and indirectly through interpretation they encompass Solitary Confinement. Article 7 of the ICCPR states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.....”<sup>78</sup>

The Human rights committee has interpreted Article 7 of mean.

“The aim of the provisions of Article 7 is to protect both the dignity and the physical and mental integrity of the individual. The text allows no limitation or exceptions even in time of emergency... no justification or mitigating circumstances may be invoked to excuse a violation of Article 7 for any reason.”<sup>79</sup>

The term cruel, inhuman or degrading treatment or punishment, should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.<sup>80</sup> This argument and interpretation definitely can apply to Solitary Confinement. Because, previously I mentioned that in Solitary Confinement there is no or little human contact, the cells are windowless and there may be light which is not switched of almost all day or a dark cell. That means such cases of Solitary Confinement amount to inhuman or degrading treatment.

Article 10 ICCPR also stipulates that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.... the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.” According to this provision inmates in Solitary Confinement shall be treated humanely and their dignity must be maintained. In addition, this Article has a message as to what should be the purpose of putting a person in Solitary Confinement since it is one methods of depriving liberty of person. Usually the purpose intended by employing solitary confinement is incapacitation or retribution because he is dangerous, or to protect him because he is vulnerable to attack.<sup>81</sup> In all above cases the reformation and rehabilitation requirements of Article 10 is missing. Therefore, we can conclude that Solitary Confinement in which the elements of reformation and rehabilitation of inmates are missed runs contrary to this provision of ICCPR. By definition Solitary Confinement deprives the individual form human contact and social interaction. Thus, it can be argued that since having a human contact and social interaction are inherent nature of human being depriving him from exercising his natural rights like through use of Solitary Confinement affects inherent dignity and right to be treated with humanity. This in effect may constitute breach of article 10 of ICCPR.

Therefore, as far as Solitary Confinement under ICCPR is concerned we have a general rules which also applies to it. Such as, inmate in the confinement shall not be subjected to torture, cruel, inhuman and degrading treatment or punishment. He should be treated with humanity and due respect for his dignity. Any confinement which violates one of these rules can be illegal.

<sup>77</sup> International Covenant on Civil and Political Rights, G.A Res. 2200, at 52, U.N. GAOR, 21<sup>st</sup> sess., Supp. No. 16, U.N. Doc. A/6316 (1966).

<sup>78</sup> *Id*, Art. 7

<sup>79</sup> Shalev, *supra* note 19, p. 5

<sup>80</sup> *Id*, p. 4

<sup>81</sup> Istanbul statement, *supra* note 17

As to whether Solitary Confinement amount to torture, cruel, inhuman or degrading treatment or punishment will be discussed under the next chapter of the paper.

The UN Human Right Committee was established to monitor the implementation of ICCPR. It is composed of 18 independent experts with recognized competence in the field of human rights.<sup>82</sup>The committee has criticized the practice of Solitary Confinement which affects the physical and mental health of persons deprived of freedom and which amounts to cruel, inhuman and degrading treatment.<sup>83</sup>

In two cases brought against Uruguay, the Human right committee found that holding a detainee for one month in a small windowless cell where artificial light is left on the whole day violated Article 7 and 10 (1) of the ICCPR.<sup>84</sup>

The committee further expressed the view that Solitary Confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need. The use of Solitary Confinement other than in exceptional circumstances and for limited period according to the committee is inconsistent with Art 10 (1) of the ICCPR and may amount to torture, cruel, inhuman or degrading treatment which is clearly prohibited by Article 7 of the covenant.<sup>85</sup> Concerning prolonged Solitary Confinement the committee totally does not support it with any exception even in urgent cases. It have said even it may amount to torture.<sup>86</sup>

### 3.2.2 The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (CAT)

A number of prior treaties and declarations condemned and/or prohibited torture, CAT appears as the first international agreement to actually give a definition to the term.

The convention against torture was adopted by the UN general Assembly on December 1984 and entered in to force on 26 June 1987. The implantation of the convention by the state parties is monitored by body of independent experts, the Committee Against Torture.<sup>87</sup>

CAT requires signatory parties to take measure to end torture within their territorial jurisdiction and to criminalize all act of torture.<sup>88</sup> The CAT expanded the protection of prisoners. CAT generally defines torture for the purpose of the convention as:

“ Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such suffering or pain is inflicted by or at the instigation of or with the consent of acquiescence of a public official or other person acting in an official capacity...”<sup>89</sup>

Thus, for CAT torture is infliction of severe physical or mental suffering committed under the cover of the law. CAT allow for no circumstances or emergencies where torture could be permitted.

Having a clear understanding on what constitute torture is important to determine whether Solitary Confinement may amounts to torture or not. In this regard, the European commission on Human Rights report in the Greek case (1969) states the elements of torture. Accordingly, torture to occur:<sup>90</sup>

First: there must be a degrading treatment (treatment aimed at humiliation or action against the person will or conscience).

Second: there must be inhuman treatment which means that:

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<sup>82</sup> ICCPR, supra note 78, Art 28 and 29

<sup>83</sup> Shalev, Supra note 19, p. 51

<sup>84</sup> Ibid

<sup>85</sup> Id, p. 33

<sup>86</sup> Shalev, supra note 19, p. 5

<sup>87</sup> Convention Against Torture and other cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 46, at 197, U.N. GAOR, 39<sup>th</sup> Sess., Supp No. 51, U.N. Doc. A/39/51 (1984).

<sup>88</sup> Id, Art 4 and 5

<sup>89</sup> Id,Art.1

<sup>90</sup> Nigel S. Rodley, The Treatment of Prisoners Under International Law, (2<sup>nd</sup> ed, 1999), Oxford University press Inc., New York, pp. 77-78.

- a) The punishment or treatment must cause mental or physical suffering.
- b) The suffering must be severe
- c) Must be deliberately inflicted and
- d) It has to be unjustifiable in the particular situation.

Third: It must be an aggravated form of inhuman treatment, inflicted for certain purposes.

The justifiability requirement in defining torture by the commission gave raise to controversy. Because it seemed to be saying that torture or other ill treatment might in certain circumstances be justifiable, despite the fact that there is absolute prohibition without any derivability exception.<sup>91</sup> Latter, aware of the difficulties with the notion of “Justifiability,” the commission in the Northern Ireland case (1976) state clearly that the prohibition on Article 3 of European Human right convention and international law on torture is absolute and can never be justified.

When we create a link, Solitary Confinement for whatever purpose shall not be undertaken in violation of Article one of CAT. Based on the definitional element of Solitary Confinement discussed before placing a person from twenty two up to twenty four-hour per a day in narrow, either in dark or whole day light, windowless cell without fresh air and little or no family visit may constitute degrading treatment since it is humiliating and against person will or conscience. It also may constitute inhuman treatment. Because, previously we have see that Solitary Confinement can cause mental or physical suffering even after a short confinement.<sup>92</sup> The inmates subjected to it will fell in to a semi-fatuous condition, from which it was next to impossible to arouse them, and other become violently insane, others still, committed suicide, while those who stood the ordeal better were not generally reformed.<sup>93</sup> The justifiability criterion is already abolished by the court itself. And obviously countries resort to Solitary Confinement to achieve certain purpose whatever it is.

Therefore, based on this legal framework and recalling the meaning and nature of Solitary Confinement, it may constitute torture and more likely inhuman or degrading treatment (since there requirement is lesser) and in effect may result breach of Article 1 of CAT. Hence, Article 1 of CAT play significant role in regulating Solitary Confinement.

The UN Committee against Torture (CAT) has found a violation of the prohibition against inhuman or degrading treatment or punishment in several cases involving the use of Solitary Confinement. For example, it found that isolation in cold and damp cells measuring one point five to two meters without proper beading or sanitation in Bolivia, and the strict isolation in sound proof cells in high security prisons in Peru amounted to torture.<sup>94</sup>

Solitary Confinement may also constitute degrading treatment when the physical conditions are clearly below internationally established standards regarding the particular conditions of confinement, its duration and whether the prisoner had minimal possibility for human contact and other conditions.

The Committee and the UN Special Rapporteur on Torture have criticized the Supermax prison in the U.S and state that the conditions of confinement in these prisons may amount to cruel, in human or degrading treatment in violation of international human rights law.<sup>95</sup> The Committee against Torture together with the European and Inter American human right courts have also emphasized that Solitary Confinement should be an exceptional measure of limited duration that is subject to strict judicial review both when it is applied and when it is prolonged. Hence, it shows that Solitary Confinement is not absolutely prohibited.<sup>96</sup>

The Universal Declaration of Human Rights of 1948 which is adopted by UN General Assembly in resolution 217 A (III) has incorporated rules on prohibition of torture or cruel, inhuman or degrading treatment or punishment<sup>97</sup> and right to a standard of living which is adequate for the health and well being of person.<sup>98</sup> Further discussion here will be redundancy. So, it is advisable to remember the previous discussion.

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<sup>91</sup> Id, P. 98

<sup>92</sup> Juan Mendez, supra note 1, p. 1

<sup>93</sup> Ibid

<sup>94</sup> Shalev, supra note 19, p. 51

<sup>95</sup> Id, p. 31

<sup>96</sup> Lobel, supra note 75, p. 130

<sup>97</sup> Universal Declaration of Human Right, G.A. Res. 217 A, at 71, U.N. GAOR, 3<sup>rd</sup> sess., 1<sup>st</sup> plen. mtg., U.N. Doc. A/810( 1948), Art 5.

<sup>98</sup> Id, Art 25

The International Covenant on Economic, Social and Cultural Rights (here in after ICESCR) have its own implication on the practice of Solitary Confinement (though not directly). It requires state parties to take all appropriate steps to ensure that every person get adequate living standard including food, cloth and house as well as to enable everyone to enjoy the highest attainable standard of physical and mental health.<sup>99</sup> Solitary Confinement cells employed by many countries continued affecting the mental and physical health of prison inmates<sup>100</sup> due to lack of clean house and other condition which can contribute for improvement of health and living condition of inmates.

Hence, in certain circumstances countries use of Solitary Confinement while they can exploit other alternatives may run against their obligation stipulated under Article 11 and 12 of ICESCR.

### 2.3 The UN Minimum Rules for the Treatment of Prisoners (SMR)

The most widely known and comprehensive international document regulating prison conditions and prisoners treatment around the world is the united Nation minimum rules for the treatment of prisoners (SMR).<sup>101</sup>

The SMR was adopted by the first UN congress on the prevention of crime and the treatment of offenders in 1955. And it is approved by the UN economic and social and cultural council in 1957.<sup>102</sup> The standard rules stipulates how prisons should operate and treat there prisoners. An additional article 95 was added in 1977 to ensure that persons arrested or imprisoned without charge should benefit from most provisions of the SMR.<sup>103</sup>

The whole idea of the 95 articles of SMR can be summarized in to three fundamental human rights principles. Firstly, a prisoner's sense of dignity must be respected and maintained through the entire course of their imprisonment. Secondly, the suffering that results from the loss of liberty and freedom by itself is enough punishment. Finally, prisons should not be punishing places; rather, they should help prisoners rehabilitate themselves.<sup>104</sup>

The SMR is not per se a legally binding instrument, since ECOSOC has no power to legislate. It is more of political and moral recommendation to implement it. This can be inferred from rule 2 of SMR.

Although it is not legally enforceable human right instruments it provides guidance in interpreting the other human right instruments such as ICCPR and CAT.<sup>105</sup>

Rule 31 of the SMR prohibits punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments. The term "placing in a dark place" is more likely to refer a feature of Solitary Confinement. Rule 32 acknowledges the possibility of "close confinement" provided that the medical officer has certified in writing that the prisoner can resist it. The term "Close Confinement" is not defined. For the purpose of argument it can be understood or interpreted to include Solitary Confinement since Solitary confinement involves closing over inmate in a separate cell. So, it appears that Solitary Confinement is not absolutely prohibited in SMR, but in no case such punishment be in contradiction with or departs from the principle stated in rule 31 of SMR.

Nigel Rodley former Special Rapportur on torture stated that:

"Beyond a limit provided in the SMR, Solitary Confinement may amount to ill treatment. Further, it is evident that prolonged Solitary Confinement may be incompatible with the provisions of the ICCPR."<sup>106</sup> [Emphasis added].

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<sup>99</sup> International covenant on Economic, Social and cultural Rights, G.A Res. 2200A (1966)

<sup>100</sup> Shalev, *Supra* note 19, pp. 15-17

<sup>101</sup> The United Nations Standard Minimum Rules for the Treatment of prisoners (December, 2012), correctional service Canada. (available at [http://www.csc.scc.gc.ca/text/pblct/rht-drt/07-eng.shtm/UN\\_S.M.R\\_\(1975\)](http://www.csc.scc.gc.ca/text/pblct/rht-drt/07-eng.shtm/UN_S.M.R_(1975)) accessed on January, 2013

<sup>102</sup> UN standard Minimum Rules for the Treatment of prisoners, E.S.C. Res. 2076, U.N. ESOR, 62d sess., supp. No. 1, UN doc. E/5988 (1977).

<sup>103</sup> Rodley, *supra* note 91, p. 279

<sup>104</sup> SMR, *supra* note 102

<sup>105</sup> Rodley, *Supra* note 91, p. 281

<sup>106</sup> *Id*, 294

The SMR requires the purpose and justification of any form of imprisonment or other similar measures depriving liberty including Solitary Confinement to be as far as possible ensuring up on his return to the society the offender is not only willing but able to lead a law-abiding and self-supporting life.<sup>107</sup>

Generally, the minimum rules mainly related to physical conditions in all places of confinement such as size of cell, windows, access to natural and artificial light sufficient manner. It also related to the general prison environment such access to prison programmes, written and broad cast media, contact without side world with necessary supervision and other important standards which are contrary with definitional elements of Solitary Confinement.

### 3.3.4 Basic Principles for Treatment of Prisoners

Basic principles for treatment of prisoners was adopted and proclaimed by General Assembly resolution 45/111 of 14, December, 1990.<sup>108</sup> It is a body of international law governing the treatment of prisoners in vary general manner. Though not legally binding like the SMR, the principles can be considered as internationally agreed (may not necessarily be by all states) minimum conditions for the treatment of prisoners.

The unique feature I come across in this instrument is that the term Solitary Confinement is expressly used as opposed to other international laws. Principle 7 proclaims that:

“Efforts addressed to the abolition of Solitary Confinement, or to the restriction of its use, should be undertaken and encourage.”<sup>109</sup>

Thus, this principle make it clear that Solitary Confinement is still in practice at least until the adoption of the principles and that it is not clearly prohibited by international law. That is why it calls for states to work for its abolishment or reduction of its application. The right of prisoners to retain all human rights and fundamental freedoms set out in the UDHR, ICCPR and ICESR is also recognized under the principle.<sup>110</sup> The rights set recognized in the above mentioned instruments among other things include protection against torture, any kinds of cruel, inhuman and degrading treatments and right to dignity, right to due process and right to health.

### 3.2.5 The Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment (BOP).

The Body of principle for the protection of all persons under any form of detention or imprisonment (here in after BOP) is adopted by the General Assembly in resolution 47/173 on 9 December 1988.<sup>111</sup>

Had this body of principles are legally binding; many problems which are prevalent in relation to prison and treatment of prisoner including Solitary Confinement would have been solved. Most of the provisions hit the nail at its head. Means, they have proposed a solution for almost all issues in the area.

The Bop recognized those rights of prisoners incorporated under ICCPR, CAT, ICESR and SMR. It prohibited the infliction of torture, or cruel, inhuman or degrading treatment. Impliedly this prohibition requires provision of sufficient food, cloth, human contact and sanitation. It also requires that the reason and period of time that he/she is to be held in detention, the timing of judicial review, identity of the relevant detaining body and place of detention shall be documented and provided to the detainee himself or to his attorney.<sup>112</sup> Therefore, according to this principle every inmate including those held in Solitary Confinement shall be given these minimum rights.

The Bop also define the term “cruel, inhuman or degrading treatment or punishment” by illustration in a broader manner so as to include wider protections against physical or mental abuses. Based on the definition, the holding of detained or imprisoned person in conditions which deprive him, temporarily or permanently, the use of any of his natural senses such as sight or hearing, or of his

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<sup>107</sup> UN SMR, supra note 103, rule 58

<sup>108</sup> Basic principles for the Treatment of prisoners (1990) G.A. Res. 45/171. U.N. GAOR, supp. No. 491, at 200, UN Doc. A/45/49 (1990).

<sup>109</sup> Id, principle 7

<sup>110</sup> Id, principle 4

<sup>111</sup> UN Body of principles for protection of All person under Any Forms of Detention or Imprisonment, G.A Res. 93/173. UN. GAOR, 43<sup>rd</sup> sess,) supp. No. 49 at 297, U.N. Doc A/43/173 (1988).

<sup>112</sup> Id, principle 6, 11, 12, 13 and 19

awareness of place and the passing of time<sup>113</sup> constitute cruel, inhuman or degrading treatment. Even if the term Solitary Confinement is not employed in the wording of the definition, it is apparent that Solitary Confinement is not excluded from it. Because, as discussed before Solitary Confinement by definition, at least temporarily prevent use of natural sense as the consequence of sound proof cells and very little or no human contact. In effect, there is possibility of practicing cruel, in human or degrading treatment while resorting to Solitary Confinement as per the Bop foot note number one of principle six.

To this end, the Bop has relation with the concepts and application of Solitary Confinement.

### 3.2.6 The Istanbul Statements on Use and Effects of Solitary Confinement

The Istanbul statement on use and effect of Solitary Confinement is another international document which have important and direct link with Solitary confinement.

The main reason that necessitates the adoption of the statement is the increasing use of strict and often prolonged Solitary Confinement in prison systems in various jurisdictions across the world as explained by the word of one of the drafter of the statement, Petter Schaff.<sup>114</sup>

Petter Schaff was asked by Human Rights foundation of Turkey to participate in arranging a conference “task group” on Solitary Confinement. And in the conference he produced a draft of an international expert statement on the use and effect of Solitary Confinement together with Dr. Sharon Shalev from London school of Economic.<sup>115</sup> The document was presented at the international psychological trauma symposium in Istanbul in December 2007. Extensive discussion has been made together with several prominent experts in the field of Solitary Confinement, prisons, and torture. After three days hard work a finished statement was produced on the final day of the conference. Finally, the statement was adopted on December 9<sup>th</sup> 2007 by the same symposium in Istanbul.<sup>116</sup>

The purpose of the statement is to influence the existing international and national standards and bring a reform so as to limit the use of Solitary Confinement to very exceptional cases when necessary, for as short a time as possible, and only as a last resort.<sup>117</sup>

The Istanbul statement is neither a legal document nor binding. It is simply a document adopted by international experts. However, it could have greater persuasive value as far as the assertions made by the statements regarding physical, mental and social effects of Solitary Confinement are concerned.

The statement deals with the definitional aspect and the likely negative effect of Solitary confinement. It also affirms that the trend of relying on Solitary Confinement as prison management tool is increasing. The human right and policy implication of Solitary Confinement are also given attention in the substantive part of the statement.

Apart from this, the Istanbul statement like the predecessor documents has no any express rules and principles which prohibit the use of Solitary Confinement. After all, it is not a legal document.

### 3.2.7 The Regional Human Rights Regime and Solitary Confinement

Regionally we have the European, Inter-American and African Human Right systems having their own human right conventions and monitoring organs. Generally speaking, the European convention on Human right under Art 3, the American contention on human right as well the African charter on Human and people rights under art 5, all of them proclaims the prisoners right against torture, in human or degrading treatment or punishments. The prohibition is absolute and cannot be derogated in any circumstance.

Specifically, in each human right system we found a separate rules and principles which are directly or indirectly applicable for the protection and better treatment of prisoners within the region. A brief discussion will follow.

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<sup>113</sup> Id, foot note number 1 of principle 6

<sup>114</sup> Petter Schaff, Solitary confinement An Introduction to the Istanbul statement on use and effect of solitary confinement, (2008), Journal on Rehabilitation of torture victims and prevention of torture, Vol. 8, no. 1, p. 56 (available at [http:// www. human right. dk/files/pdf/ English K/ International/ Solitary- confinement. Pdf.](http://www.humanright.dk/files/pdf/English%20K/International/Solitary-confinement.Pdf)) accessed on Jaunty, 2013.

<sup>115</sup> Id, pp. 56-57

<sup>116</sup> Ibid

<sup>117</sup> The Istanbul statement, supra note 17

### 3.2.7.1 The European Human Right System

To begin with the European human right system, there is the European prison rules (EPR). The EPR contain 108 Rules, affirming that prisoners retain their human rights and set some standards which can be used as guide for prison administration, prison discipline and on other issues. Like the UN SMR, the EPR are not legally binding but they do set out minimum standards.<sup>118</sup> Rule 38 (1) of Revised EPR requires that “punishment by disciplinary confinement shall only imposed if the medical of officer after examination certifies in writing that the prisoner is fit to sustain it” and Rule 38 (3) requires the medical officer to observe prisoners in such confinement daily, monitoring any change in their psychological state which leads to immediate termination or alteration of punishment.<sup>119</sup>

The European court of Human Right has entertained and decided many cases involving Solitary Confinement as it disclosed in its fact sheet on January 2013. In the case between Ilascu and others V. Moldova and Russia (application no 48787/99), Ilie Ilascu a Moldovan opposite party politician at the time, was detained in very strict isolation in region of Moldova, before his conviction for a number of terrorist related offences. Finally he was released in 2001. While he was in Solitary Confinement, he had no contact with other persons, no news from the outside since he was not permitted to send or receive mail or to contact his lawyer or visited by family. It was also proved that he was deprived of food and he was able to take showers only very rarely. These conditions and lack of medical care caused his health to deteriorate. The court held that a whole conditions amounted to torture, in violation of Article 3 of the European convention on Human rights (here in after ECHR) which prohibit torture.<sup>120</sup> I another cases, XV. Turkey (no. 24626/09) a homosexual prisoner who complained about acts of intimidation and bullying by his fellow inmates was placed in Solitary Confinement for over eight months in total. The court took the view that those detention conditions had caused him mental and physical suffering, together with a feeling that he had been stripped of his dignity, thus it represent inhuman or degrading treatment in breach of Article 3 of the convention.<sup>121</sup>

In 2007 the court also entertained another case involving Solitary Confinement between Modarca v. Moldova (no.14437/05). In this case, Vladimir who suffers from osteoporosis spent nine months of his pre-trial detention in 10 m<sup>2</sup> cell. The cell had very limited access to daylight, was not properly heated or ventilated; electricity and water supplied were repeatedly discontinued. He was deprived of prison clothes, the dining tables were close to the toilet. The court concluded that cumulative effect of conditions of Mr. Modarca’s detention and time he was forced to endure them amounted to a violation of Article 3 of ECHR.<sup>122</sup>

In Europe, there is also a convention for the prevention of torture and inhuman or degrading treatment or punishment adopted in 1987 and come in to force in February 1989. The convention created European Committee for Prevention of Torture (CPT). This committee had made it clear that the use of Solitary Confinement may constitute torture, inhuman or degrading treatment depending on the specific circumstances of the case, and the condition and duration of detention. The CPT has also recommended either abandoning it or limiting its use to exceptional circumstances.<sup>123</sup>

### 3.2.7.2 The Inter- American Human Right System

Coming to special relevant law on Solitary Confinement, the Inter-American Commission on Human Rights adopted principles and best practices on the protection of prisoners deprived of liberty in the Americas for members of organization of American state (Hereinafter PBPP).<sup>124</sup> In its preamble, it recognizes that prisoners have fundamental rights to humane treatment, and to have their dignity, as well as their physical, mental and moral integrity respected and ensured. According to this document the essential purpose of punishment is to reform, social re-adaptation and personal rehabilitation of those convicted.<sup>125</sup> By definition Solitary Confinement

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<sup>118</sup> Council of Europe, Recommendation No. R (87)3 as revised by recommendation (2006) 2. (available at [http://www.coe.int/T/E/Legal-affairs/Legal-affairs/Legal-co-operation/prisons and alternatives/ legal-instruments/ Rec. R \(87\) 3. asp.](http://www.coe.int/T/E/Legal-affairs/Legal-affairs/Legal-co-operation/prisons%20and%20alternatives/legal-instruments/Rec.R(87)3.asp)) accessed on January, 2012.

<sup>119</sup> Id, rule 38 (1) and (3)

<sup>120</sup> European court of Human Rights, Fact sheet- Detention conditions and treatment of prisoners, (January, 2013), (available at [http://www.echr.coe.int/NR/.../FICHES-conditions \\_de\\_ detention EN. Pdf](http://www.echr.coe.int/NR/.../FICHES-conditions_de_detention_EN.Pdf)) accessed on January, 2013.

<sup>121</sup> Ibid

<sup>122</sup> Ibid

<sup>123</sup> The Istanbul statement, supra note 17

<sup>124</sup> Principles and Best practices on the protection of persons deprived of Liberty in the America, (2008), adopted by the Inter-American commission on Human Rights during its 131<sup>st</sup> regular period of secessions , March 3-14, 2008(available at :[http://www.cidh.org/basics/english/Basics21.a principles and Best practices PDL.htm](http://www.cidh.org/basics/english/Basics21.a%20principles%20and%20Best%20practices%20PDL.htm) )accessed on January,2013

<sup>125</sup> Id, paragraph 2 and 4 of the preamble

whether it is used as form of punishment or prison management tool or as means of protection, it go against the above requirements since the elements of social re-adaptation and personal rehabilitation of the inmate is missing.

The PBPP has incorporated the same rule like the previous instruments. That is prohibition against torture, other cruel, inhuman or degrading treatment. And no exception such as state of war, emergency situation and internal instability can be invoked in order to evade the obligations imposed by international law to respect and ensure the right to human treatment of all persons deprived of liberty. This includes those who are held in Solitary confinement.<sup>126</sup> They shall not be treated inhumanly or in manner that degrades their dignity. The due process, judicial control and supervision of punishments of any kind are also the essential part of the principle as per principle 5 and 6.

Surprisingly, unlike almost all of the previous instruments and documents, the PBPP, though not binding, strictly regulate Solitary Confinement by using the term expressly. It stipulates when Solitary Confinement, over whom, for how much time should be imposed and other relevant issues. Principle 22 (3) of the principles and best practices on the protection of prisoners deprived of liberty read as:-

Measures of Solitary Confinement:

- The law shall prohibit solitary confinement in punishment cell
- It shall be strictly forbidden to impose Solitary Confinement to pregnant women, mothers who are living with their children in the place of deprivation of liberty and children deprived of liberty.
- Solitary Confinement shall only be permitted as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution's internal security and to protect fundamental rights such as the right to life and integrity of person deprived of liberty or the personnel.
- In all cases, the disposition of Solitary Confinement shall be authorized by the competent authority and shall be subject to judicial control, since its prolonged, inappropriate or unnecessary use would amount to acts of torture, or cruel, inhuman, or degrading treatment or punishment.
- In case of involuntary seclusion of prisoners with mental disabilities, it shall be ensured that the measure is authorized by competent physicians carried out in accordance with officially approved procedures; recorded in the patient's individual medical records and immediately notified to their family or legal representatives and must always be under the case and supervision of qualified medical personnel.

Such kind of strict regulation of Solitary Confinement is important in order to reduce the physical and mental effects of Solitary Confinement. The principles under paragraph three has accepted that Solitary Confinement can still be used as a last resort up on strict conditions as to its duration and grounds of imposition.

As far as cases on Solitary Confinements are concerned, in 1990, the U.S Supreme Court delivered its opinion in case of Colorado resident James Medley, who had been convicted of killing his wife and sentenced by lower court to be held in Solitary Confinement until his execution. Medley appealed his case to the higher court and finally decision is passed in his favor as to the decision solitary confinement. The Supreme Court in this case has recognized the adverse mental health effects of Solitary Confinement.<sup>127</sup> Various Solitary Confinements which happened within the Inter-American human right systems are also entertained by the UN human rights commission. To mention some, in one case Larrosa v. Uruguay (88/1981), as reported by the committee found violation of Article 7 and 10 (1) of ICCPR because Gustavo Larrosa has been frequently punished at prison and from October 1980 to March 1981. He was allowed to receive only one family visit.

He was also been held in prison wing of small cells without window, where the artificial light is left on 24 hours a day and the prisoner has kept in Solitary confinement for over a month.<sup>128</sup> The committee also ruled inhuman as per Article 7 and violation of Article 10 (1) of ICCPR in case between Polay Compos V. Peru (577/1994) where Polar Compos was in total isolation for a year with restriction correspondence with his family.<sup>129</sup> The final case of Solitary Confinement I want to mention here is the Gomez de voituret v. Uruguay (109/198) case. In this case, Teressa Gomez, a medical doctor had been arrested in 1980 in Uruguay. And he was kept in Solitary Confinement for several months in conditions which failed to respect the inherent dignity of the human person, according to the committee findings. That condition was that her cell was almost without natural light and that she was not allowed

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<sup>126</sup> Id, principle 1

<sup>127</sup> Lobel, Supra note 75, p. 119

<sup>128</sup> Rodley, Supra note 91, p. 294

<sup>129</sup> Id, p. 295



to go out. Thus, the committee decided that Article 10 (1) of ICCPR is violated.<sup>130</sup> When we collect all the grounds the committee has used to rule on the violation of article 7 or/and 10 (1) of ICCPR, it will give us the following conclusion:

Denying or highly restricting family visit, putting inmate in windowless cells, putting inmate in cell where the artificial light is left on 24 hours a day, and placing inmate in cell almost without natural light could result breach of Article 7 and 10 or one of them of the ICCPR.

The Inter-American court of Human Rights has also stated that the prolonged Solitary Confinement constitutes a form of cruel, inhuman or degrading treatment prohibited under Article 3 of the American convention on Human Rights.<sup>131</sup> So, there is a clear cut position on prolonged Solitary Confinement by the court. Once it is proved that it is prolonged then it is cruel inhuman or degrading treatment.

### 3.2.7.3 The African Human Right System

As compared the European and American Human Right System, the conditions of prisons and prisoners in African Human Right System is characterized by inadequacies including poor physical health, and sanitary condition, inadequate recreational and rehabilitation programs, restricted contact with the outside world, among others.<sup>132</sup>

At regional level in addition to African Charter on Human and Peoples Right relevant provisions, in 1996 and 2002 the Kampela Declaration on prison conditions in African and the Ouagadougou declaration on Accelerating Penal and Prison Reform in Africa were adopted respectively.<sup>133</sup> Both of them aim at improving the conditions of African prisons. The preamble of the latter declaration in its paragraph three states that the declaration can be considered as supplementary to the UN SMR. Both documents are declaration and not binding.

There is one exemplary Solitary Confinement case within the African human right system. The case was between Marais and Madagascar (Marais v. Madagascar case 49/1979). The UN Human rights committee has found that Article 7 and 10 (1) had been violated because of the inhuman conditions in which Dave Marais has been held in prison in Madagascar in isolation since December 1970. Specifically, it concluded that in December 1979 Dave Marais was transferred from the Antananarivo prison to a cell measuring 1m by 2m in the basement of the political police prison at Ambohibao and has been held incommunicado for 3 years, except for the brief transfers to Antananarivo for trial proceedings.<sup>134</sup>

### 3.2.8. The Place of Solitary Confinement under Ethiopian Law and Brief Practical Account

The right of prisoners under Ethiopian criminal Justice system is recognized directly and indirectly. The FDRE Constitution of 1995, the Criminal Code of the FDRE and Federal Prisons Commission Establishment Proclamation No. 365/2003 are the most important laws which deserve to be discussed here.

#### 3.2.8.1 The FDRE Constitution

As per Article 9 (1) of the FDRE Constitution all international agreements ratified by Ethiopia are integral part of law of the land.<sup>135</sup> In this regard the fact that Ethiopia is party to the binding international instruments such as UDHR, ICCPR, ICESR and CAT plays significant role in expanding the right of prisoners including treatment and protection throughout the criminal justice system. In addition to this catching basket, the Constitution under chapter three stipulates specific provisions which recognize fundamental human rights and freedoms.

The Constitution has a prohibition of torture, cruel, inhuman or degrading treatment or punishment.<sup>136</sup> This provision applies for both prisoners and non-prisoners. Article 21 (1) provided the right to treatments respecting their human dignity, particularly for

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<sup>130</sup> Ibid

<sup>131</sup> The Istanbul statement, supra note 17

<sup>132</sup> Jeremy Sarkin, *Prisons in Africa: An evaluation from Human Right Perspective*, (March 26, 2009), Sur International Human Rights Journal, vol. 9, pp.22-49 (available at <http://SSRN.com/abstract=1368922>) accessed on January, 2013.

<sup>133</sup> Ibid

<sup>134</sup> Rodley, Supra note 91, pp. 294-295

<sup>135</sup> *The constitution of Federal Democratic Republic of Ethiopia*, proc. No. 1/1994, Art. 9 (4)

<sup>136</sup> Id, Art 21 (1)

prisoners. Furthermore, the right to communicate with and to be visited by their family, religious councilors, medical doctors and their counsel is expressly stipulated.<sup>137</sup>

The Constitution have no a clear mention about Solitary Confinement. However, we have the above provisions which are relevant to regulate it. To illustrate the link, as we can infer from all of the definition given for Solitary Confinement discussed in chapter two, it isolate prisoner in a separate cell with little or no human contact let alone with family or counsel even with other fellow prisoners. Thus, Article 21 which require family visit has relevance in this case. The same is true for any form of Solitary Confinement which causes the prisoner to suffer either physical or mental health problems. The constitution is there to safeguard their rights to physical and mental wellbeing.

To avoid redundancy, since as far as prisoners right is concerned all international human right instruments ratified by Ethiopia mutants mutandis are applicable together with the FDRE constitution relevant provision, all arguments and discussions made relating to the instruments also works here. Thus, any form of Solitary Confinements which contravene either those ratified convention or specific provisions of the constitution are unconstitutional.

### 3.2.8.2 The Criminal Code of Ethiopia

The Criminal Code of Federal Democratic Republic of Ethiopia (FDRE) was adopted as proclamation No. 419/2004 as of 9<sup>th</sup> may 2005.<sup>138</sup> The code aims at maintain public peace and security through due notice principle and punishment. The purpose of punishment under criminal code is to deter the particular offender and the public or to reform the offender and as last resort to incapacitate him to prevent the commission of further crimes.<sup>139</sup> So, the retributive or retributions theory of purpose of punishment is not a guiding rule of punishment in Ethiopian criminal justice system.

The Criminal Code Article 112 have mentioned Solitary Confinement as one means of changing the condition of imprisonment to make it more server than the degree of severity the imprisonment had during court sentence.

The prison administrators, without a need to apply or inform the court has the power to impose Solitary Confinement on prison inmates whether he is previously sentenced by the court to simple or rigorous imprisonment. No distinction is also made as to the age, sex or mental state of person who can legitimately be subjected to Solitary Confinement by a mere decision of prison administrators.

Article 112 of the Criminal Code tried to put four conditions to impose Solitary Confinement.<sup>140</sup> These are:

1. The imposition must be made only when the prison administrators have a view that the Solitary Confinement has the capacity of reforming the prisoner, so that after release he will safely start his normal social life.
2. It can be impose only at the beginning or during the course of the execution of the sentence, whenever it appears necessary. So, no Solitary Confinement imposition is possible after the sentence is executed.
3. The duration of such measure shall be fixed after consultation with a medical doctor and where necessary, a psychiatrist.
4. The duration shall not exceed a maximum of Three months. The rational for limiting the duration of the isolation to Three months could be a belief that after this period the isolation may be harmful for inmate's mental and physical health.

The problem in this provision is that it gives a sole discretionary power for the prison Administration. They can pass a decision to place inmates in Solitary Confinement cell without a need to require the view/opinion of courts. Whether there is an internal administrative tribunal in each prison or not to review the decision of the prison administrations in this respect is another issue which by itself needs a research. If there exists such a tribunal, its impartiality is questionable. In addition, it allows prison administration to impose Solitary Confinement 'whenever if appears as necessary' without defining it or without putting what factors and circumstance may leads to its imposition. Thus, it is open for misuse and over use of Solitary Confinement at the wish of prison administrators. It would have been better had the provision is constructed in a detailed and clear manner.

### 3.2.8.3 The Federal Prison Commission Establishment Proclamation

The Federal Prison Commission Establishment Proclamation is cited as proclamation No. 365/2003. As per the preamble of the proclamation, its purpose is to establish an organ of federal prisons that adheres to the constitution and to make them capable to

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<sup>137</sup> Id, Art. 21 (2)

<sup>138</sup> Criminal Code of FDRE, Supra note 34

<sup>139</sup> Id, Art. 1

<sup>140</sup> Id, Art. 112

undertake the functions of the custody, reform and rehabilitation of prisoners in order to duly contribute their part in crime prevention.<sup>141</sup>

Part four of the proclamation deal with the manner of treatment of prisoners. However, the rules are almost the extension of the FDRE Constitution and UN Standard for the Treatment of Prisoners (SMR). Particularly, it recognized prisoner's right to be treated with respect for human dignity aimed towards rehabilitating them, right to healthy premises and compounds, right to fresh air and sufficient light within the cell. Food and health care as well as access to visitors are among the right of prisoner.<sup>142</sup>

Unlike the criminal code, the proclamation failed to discuss about Solitary Confinement clearly. This does not necessarily mean that Solitary Confinement conditions are left without being regulated by the proclamation. This is because inmates in Solitary Confinement has the right to enjoy all the above mentioned rights and humane treatment with due respect to human dignity. Any missing right may leads to violation of the proclamation, the FDRE constitutions and international standards for treatment of prisoners.

After having discussion on place of Solitary Confinement under the Ethiopian law, we can drive the following conclusions based on the provisions of the above laws:

- In the Ethiopian criminal justice system Solitary Confinement is not absolutely prohibited. It can be practiced up on the fulfillment of certain conditions.
- Solitary Confinement is neither provided as a punishment for a certain crime in the special part of the code nor can the court pass a decision of placing convicted person in Solitary confinement. It is the mandate of each prison administration.
- The drafter of the code in fixing 3 month as a maximum duration may consider it as short term solitary confinement. But as per the standard issued by American Bar Association, any segregation above thirty days is long-term.<sup>143</sup> So, if the prison administrators fix less than 30 days it is short term and if it is above it is long term Solitary Confinement. Any solitary confinement cannot exceed 3 months period.
- The Solitary Confinement as per the Criminal Code may be imposed at the beginning or in course of executing of sentence. Hence, when the solitary confinement has started from the time prisoner join the prison it cannot be called disciplinary segregation or confinement rather it is an administrative segregation since disciplinary segregation presupposes the violation of internal rules of the prison. And in the course of the execution of the sentence both of them can be imposed.
- Involuntary protective custody which is one form of Solitary Confinement has no place in Ethiopia. Because, the Criminal Code Article 112 allows Solitary Confinement only when it can contribute in reforming the prisoner and enable him to start normal social life after his release. And in our case, in involuntary protective custody a person will be placed in Solitary Confinement in order to protect him from attack by other prisoners because he is elder, mentally ill, former police or any other. The purpose here is not to reform the vulnerable prisoner. In effect, it is not recognized by the criminal code. The prison administration is expected to find other alternatives for such group of persons.

The legal frameworks related to prisoners treatment and protection as well as the relation with Solitary Confinement is already discussed. And it is important to see some practical accounts on the issue.

Gelawdewos Araia has stated: "Despite his popularity, the Ethiopian church turned against Tewodros, and in retaliation the Emperor incarcerated the patriarch in Solitary confinement at Meqdella. At this state, Tewodros increasingly become paranoid and his mental capacity become questionable."<sup>144</sup> This statement tells us the fact that Solitary confinement has been used in the history of Ethiopia.

As part of a program in the late 1970's to expand and improve the Ethiopian prison system, the Cuba government reportedly constructed new prisons that included facilities for Solitary Confinement.<sup>145</sup> Regarding Maekelawi detention center a report wrote to Washington government by the late Ambassador of U.S.A in Ethiopia Mr. Donald Yamamoto has disclosed that the Jail is divided in to two sections, 'the open side' and the 'underground'. In 'the open side', there are 12 cells, six on each side of an open court yard

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<sup>141</sup> Federal prisons commission Establishment proclamation, No. 365/2003

<sup>142</sup> *Id*, Art 22. 26, 27 and 29.

<sup>143</sup> The ABA Criminal Justice Standards on the Treatment of Prisoners, (2010) (available at <http://abanet.Org/crimjust/policy/midyear2010/102i.pdf>.) accessed on July,2013

<sup>144</sup> Ghelawdewos Araia, The Great Unifier: Emperor Tewodros II of Ethiopia (2006), Institution of Development and Education for Africa (IDEA), Inc, 2006 (available at <http://www.Africanidea.Org/emperor-tewodros.Pdf>), accessed on January 2013.

<sup>145</sup> , Ethiopian Prisons (Date as of 1991), (available at <http://www.mongabay.Com/history/ethiopia-prisons.htm>) accessed on July, 2012.

about two meters wide. There are eight toilets and two showers. In the ‘underground’ side, there are two types of Solitary Confinement cells one type of cell is reportedly not physically comfortable, while the other type of cell is extremely small and prisoners are forced to stand.<sup>146</sup>

According to the same report, political and other prisoners in Ethiopia are subjected torture in detention center in attempts by police and security officials to get confession before cases go to trial.<sup>147</sup> This torture includes being blind fold, bound by chains, held in Solitary Confinement for several days to week or months, and subjected to mental torture such as harassment and humiliation.<sup>148</sup>

On June 27, 2007 Professor Negussay Ayele wrote that an innocent Mrs. Birtukan Mideksa was sent to Solitary Confinement on 29 December, 2008.<sup>149</sup>

Whether there is really a practice of Solitary Confinement or not, how it looks like in Ethiopian prisons, are the prison administrators complying with the conditions provided in the Criminal Code, are issues which by themselves require practical research. And it is out of the scope of this study.

### 3.2.9 The Current Application of Solitary Confinement

It is not true to say today all countries are stopped using Solitary Confinement and it is not true to say that it is only the United States which is now using it in Guantanamo and in other supermax prisons. Here, I tried to discuss the current use Solitary Confinement in some areas of United State of America (here in after U.S) and United Kingdom (here in after U.K) due to their leading experience on the subject and the availability of materials.

#### 3.9.1 Solitary Confinement in the U.S.A

Solitary Confinement as a technique for prison management and rehabilitation has been used in the United States starting from the establishment of U.S. penitentiaries nearly two hundred years ago.<sup>150</sup> The U.S prisons are criticized for its use of Solitary confinement and prolonged segregation.<sup>151</sup>

The Justification that is given by prison officials for the use of Solitary Confinement in particular the prolonged one in the U.S is the need for security. Prison officials claim that certain gang members or leaders, prisoners who engage in violence against other prisoners, or terrorists cannot be housed in less restrictive conditions because of the danger they pose to other prisoners or prison officials or will be in communication with their violent associates outside of prison.<sup>152</sup> Moreover, prison officials claim that the very restrictive conditions do not afford prisoners any opportunity to misbehave since they are essentially sitting alone in their cell the entire day.<sup>153</sup>

America is currently known for its super maximum (supermax) security prison which is more restrictive than the traditional Solitary Confinement cells. The history of supermax of America traced back to the October 1983 lock down in the federal Marion penitentiary.<sup>154</sup> A lockdown, which followed the killing of two prison guards, was never lifted and led to the creation of regime of continuous Solitary confinement, later termed as supermax.<sup>155</sup> This inspired states and today there are more than fifty supermax prisons in United States. The placement in supermax can extend for years and even decades.<sup>156</sup>

The U.S constitution has no explicit prohibition on use of Solitary confinement like constitution of other state including Ethiopia. There is in fact a prohibition against cruel and unusual punishment. The Eight Amendment protects individual from “cruel and

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<sup>146</sup> Assaman, Atrocious Torture and Inhuman Treatment in pre-trial and Arbitrary Detention in Ethiopia, (January 11, 2013), (available at <http://dandi4130.wordpress.com/tag/atrocities-in-ethiopia>) accessed on January, 2013.

<sup>147</sup> Ibid

<sup>148</sup> Ibid

<sup>149</sup> Negussay Ayele, Three Generations of prisoners in Ethiopia Today (June 27, 2009), (available at <http://www.ethiopians.com/professor-Negussay-Ayele-on-Birtukan-Mideksa.Pdf>) accessed on January 2013.

<sup>150</sup> Vasliades, supra note 41, p. 73

<sup>151</sup> Id, p. 98

<sup>152</sup> Lobel, supra note 75, p. 131

<sup>153</sup> Ibid

<sup>154</sup> Petter Schaff, supra note 115, p. 59

<sup>155</sup> Ibid

<sup>156</sup> Ibid

unusual punishments.”<sup>157</sup> However, the language used in the eight amendment and that of ICCPR, or CAT have two differences. One is, the Amendment protects against “cruel and unusual punishment,” while the treaties protects against “cruel, inhuman, or degrading treatment.” Second, the Amendment does not mention prohibitions against treatment, while the treaties recognize prohibition against cruel, inhuman, or degrading treatment as well as punishment.<sup>158</sup>

The meaning of the Word “unusual” was a source of debate in the U.S Supreme Court. Later Justice Scalia has defined it as any punishment which is not authorized by the legislature and which does not regularly and customarily employed. The Eight Amendment does not protect the prisoner from cruel or unusual treatment since it does not include treatment with punishment as a constitutional protection.<sup>159</sup>

The U.S ratified the ICCPR and CAT with reservation of specific provisions so as to maintain its own serious specific types of punishment including Solitary Confinement. The reservation on ICCPR Article 7 binds the U.S only to the extent of the understanding submitted with its ratification. For instance, according to the understanding, mental torture to exist the victim must suffer “prolonged mental harm.”<sup>160</sup> The department of justice at one point interpreted “prolonged mental harm” as significant psychological harm of significant duration which lasted for months or even years. However, this requirement is not contained in the torture convention.<sup>161</sup> Under this definition, placement of person let alone the short term even in the prolonged Solitary Confinement whether he is previously mentally ill or become mentally ill after he join it will not constitute torture unless the mental harm suffered is proved to be prolonged. In U.S all from of Solitary confinements are being practiced by different U.S states. Long term, short term, Administrative, disciplinary and involuntary protective custody, all of them are still in use. This can be inferred from solitary watch fact sheet.<sup>162</sup>

### **3.2.9.2 Solitary Confinement in UK**

The use of Solitary Confinement in UK is comparatively low than U.S.A. Not every prison has segregation facilities and the supermax trend is still non-existent. There are a very few prisoners in long-term segregation, and those have a carefully adopted programs that encourage good behavior and social engagement. UK has not reached the levels or the conditions that in U.S prison segregation. In the UK Solitary Confinement is used fairly for limited number of reasons.<sup>163</sup>

In UK there are two types of isolation units; one is Intensive Management which is also called Segregation and the second is long term units which also called close Supervision Centers. In the former case, inmates placed for disciplinary issues may be held no longer than three weeks.<sup>164</sup> The mandate to decide as to whether person should be subject to isolation is almost exclusively left for prison officials. The latter type applies in very rare situations.<sup>165</sup>

Unlike the practice in U.S each prison in the U.K has an Independent Monitoring Board (IMB) consisting of local volunteers who perform inspections of the facilities and submit an annual report. Prisons must notify the IMB of every decision to place inmates in isolation within twenty four hours and the IMB is obliged to visit the facility within seventy two hours of notification.<sup>166</sup>

In the UK, there is UK prison rule. Rule 45 and one bill introduced by the government provide the possibility of imposing Solitary Confinement on prison inmates by prison officials.<sup>167</sup> The rules also recognize the same against pre-charge and pre-trial detainees who are suspect of terror.<sup>168</sup>

Hence in UK, we do have laws which permit Solitary Confinement, but it is applied in specific situations and even subjected to monitoring by non-governmental body called Independent Monitoring Board (IMB).

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<sup>157</sup> Vasliades, supra note 41, p. 85

<sup>158</sup> Id, pp. 85-86

<sup>159</sup> Id, p. 86

<sup>160</sup> Lobel, supra note 75, p. 136

<sup>161</sup> Ibid

<sup>162</sup> Rodriguez, supra note 16, pp. 1-4

<sup>163</sup> Mosler, supra note 48

<sup>164</sup> Rodriguez, supra note 16, p. 8

<sup>165</sup> Mosler, supra note 48

<sup>166</sup> Ibid

<sup>167</sup> Ibid

<sup>168</sup> Shalev, supra note 19, p. 26

## Chapter Four: The Relevancy of Solitary Confinement in the Current Criminal Justice System

This chapter is different from the previous chapter due to the fact that the previous chapter tried to show only what the international, regional and national laws have said about Solitary Confinement and the position held by different human right organs on it in different circumstances. This chapter focus on determining whether Solitary Confinement is relevant or irrelevant in the current criminal justice system so that, we should continue or stop using it. For this purpose, in addition to the discussion made before, I tried to create a link between Solitary Confinement and some important rights which are at risk of being endangered by it. Thus, Solitary Confinement as a challenge to human rights, its purpose in light of international human right instruments, its financial cost, effectiveness, presence of other alternatives and other grounds will be considered to determine relevancy or otherwise of it in the current criminal justice system.

### 4.1 Solitary Confinement a Challenge to Human Rights

Solitary Confinement is a challenge to human rights. Because, it mitigate or compromise the effective implantation of human right instruments and the full realization of individual human rights as intended by the instruments. The use of Solitary confinement may constitute a violation of various human rights which are recognized and protected by human rights instruments.

The most vulnerable of these rights are the right to health, right against torture, cruel inhuman and degrading treatment or punishment, the right to dignity and due process.

#### 4.1.1 The Right to Health

The U.N Committee on Economic, Social and Cultural Rights, an independent expert body which monitors state compliance with the obligation under the ICESCR, has stated, "Health is a fundamental human right indispensable from the exercise of other human rights." On this basis, the health status of prisoners can be a measure to assess the degree to which the rights of prisoner in detention are fulfilled or denied.<sup>169</sup>

Human right laws recognized mental and physical health as right of every one irrespective of his status. Thus, solitary Confinement which affects such protected rights is violation of human right laws.

The practice of Solitary Confinement could be a violation of International human right laws that protect physical and mental health since the current use of Solitary Confinement creates conditions that leads to mental health deficiency and long term mental damage.<sup>170</sup> Solitary Confinement fails to adequately protect the mental health of its patients. It actually causes mental illness. Prisoner who are placed in it are at greater risk of developing mental illness than prisoners in the general population.<sup>171</sup>

Another violation of right to health comes from the lack of adequate treatment for health problems. Given the large number of prisoners in Solitary Confinement with psychiatric illness, the prisons must provide adequate medical treatment in order to maintain compliance with the human right laws. Because, this laws has impose duty on person who restrict the liberty of another person to provide with him adequate health care.<sup>172</sup> Practically it is lacking since one purpose of Solitary Confinement as described in the Istanbul statement is serving as alternative to medical care for prisoner with mental illness. In any ways, Solitary Confinement is an obstacle for the full enjoyment of right to health by prisoners.

#### 4.1.2 The Right Against Torture

There are three essential elements that generally constitute the condition of torture. In first place, torture assumes the involvement of two parties, the torturer and victim. In the second place, the fact that severe pain is being inflicted on the victim by the torturer and the victim suffers the pain. This suffering can be mental, psychological or physical suffering which definitely can cause him severe pain. Third, it is a deliberate or intentional infliction of pain. The purpose may vary in line with article 1 of CAT.<sup>173</sup>

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<sup>169</sup> Rick Lines, The Right to Health of Prisoners in International Human Rights Law, International Journal of prisoner Health, Vol. 4, (March, 2008), p.5. (available at <http://www.ahrm.net/library-upload/uploadfile/file3102.Pdf>.) accessed on January 2013.

<sup>170</sup> Joshua Hansen-king, Notes on Human Right and solitary confinement: the American story (winter, 2010), Washington under graduate law Review, vol. 3, issue 2, p. 106. (available at <http://www.students.Washington.edu/wulr/archives/winter-2010/Hansen-king-Human-Right-and-solitary-confinment-pdf>.) accessed on September, 2012

<sup>171</sup> Ibid

<sup>172</sup> Ibid

<sup>173</sup> Andargachew Tesfaye, The crime problem and its correction, (2004): vol.2, pp.43-44

The use of Solitary Confinement in general more likely could met the definition of torture constituting the above three elements. To establish torture, the first requirement that two parties, the torturer and victim must exist is satisfied in case of Solitary Confinement since we have the prison administrations which place a person in it and the confine who is subject of the confinement.

The second criterion of torture is also can met by use of Solitary Confinement. The criterion requires evidence showing severe pain. As explained in chapter three of this paper there are a wider range of documented evidence showing the detrimental effects of Solitary Confinement even after a short time confinement. In fact, the degree of severity may vary from person to person depending on the duration they spent there in and their previous mental state.

The third criterion require showing that the pain or suffering is intentionally inflicted. This is the most difficult element in proving that Solitary Confinement constitutes torture. However, it can be argued in this way. If the infliction of mental or physical suffering was not intended by the prison administrators while placing a person in Solitary Confinement they would have stopped using the same methods once they become aware of the numerous studies showing the harm that Solitary Confinement was inflicting or even after looking the same from those who have be confined before. But still the practice has not been restricted.<sup>174</sup>This shows the presence of intention to inflict harm. To the minimum the prison administrators cannot claim to be unaware or ignorant that prisoners have a right to mental and physical health.<sup>175</sup> Therefore, the infliction of mental and physical suffering by holding inmate in Solitary Confinement is intentional since prison administrators in one way or another aware that it will inflict mental illness or pain to inmates.

The definition of torture under Article 1 of CAT last line of sub-one state: “torture does not include pain or suffering arising only from inherent or incidental to lawful sanctions.”<sup>176</sup> There may be countries such as Ethiopia whose domestic law provided solitary Confinement as lawful sanctions. In such case, this article seems trying to justify that torture may not occur even if the above three essential conditions are fulfilled since Solitary Confinement is a lawful action in that country.

However, there is one solution to this problem otherwise we are opening a way for presence of crime of torture which can be justified. The solution is the statement made by the UN Special Rapporture on Torture. Once it stated; “No state should be allowed to perform serious human right violation. Rather the term ‘lawful sanctions’ used in Article 1 of CAT means sanctions which are lawful both under national and international law. Therefore, although a sanction may be lawful under national law, if it violates international standards, including the absolute prohibition against torture, and cruel, inhuman or degrading treatment or punishment, then the sanction is deemed to be prohibited. Any other interpretation would defeat the purpose of the international standards which aim to prohibit torture.”<sup>177</sup>

To strengthen my line of argument I want the statement made by Juan Mendez, the UN Special Rapporture on torture and other cruel, inhuman, or degrading treatment or punishment in August 2011 be read here. He concluded that:

“...even 15 days in Solitary Confinement constitute torture or cruel, inhuman or degrading treatment or punishment, and 15 days is the limit after which irreversible harmful psychological effects can occur.”<sup>178</sup>

#### **4.1.3 The Right Against, Inhuman and Degrading Treatment or punishment**

The right to be protected against cruel, inhumane and degrading treatment or punishment is one of most important right recognized by international, regional and national laws.

It is difficult to determine what constitute inhuman and degrading treatment as there is no internationally binding definition. However, there are two solutions at hand. These are:

One: There is a common acceptable norm for what degradation is. Accordingly, it is unwarranted demotion or reduction of status or rank. This specifically could be applicable for Solitary Confinement since it usually and unjustly without adequate reason strips the prisoners of the characteristics and treatments afforded to human beings. In Solitary confinement, they are denied

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<sup>174</sup> Hansen-king, supra note 171, pp.116-117

<sup>175</sup> Id, p. 117

<sup>176</sup> CAT, supra note 88, Art. 1

<sup>177</sup> Hansen king, supra note 171, p. 115

<sup>178</sup> Torture; The use of solitary confinement in U.S prisons (2011), (available at <http://www.ccrjustice.org/solitary-action>) accessed on October, 2012

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the basic necessities needed to function as a human being, including but not limited to social interaction, sunlight and other essentials. He or she is no longer able to care for his or her own basic needs.<sup>179</sup>

Second: The Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment (BOP) under its foot note for principle 6 provides a guideline of how the term cruel, inhuman or degrading treatment or punishment shall be interpreted. According to this guideline the term should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses such as sight or hearing or of his awareness of place and the passing of time.<sup>180</sup>

After looking the definition of Solitary Confinement and its nature we can easily come to know that the above illustration of the principles is attributable to it. Hence, Solitary Confinement is a threat to right against cruel, inhuman and degrading treatment.

#### 4.1.4 The Right to Dignity

The right of a person to dignity is a human right which is recognized and protected by many human right instruments such as UDHR and ICPR. The right to dignity could also be violated by Solitary Confinement.

The first violation of right to dignity by use of Solitary Confinement could emanate from the restriction it made on other human right. Dignity stems from the respect of other rights and enjoyment of all of his or her rights. It encompass a wide variety of rights like respected standard of living, adequate nutrition, health care and other social and economic achievement. So, since Solitary Confinement in most cases prevents these fundamental rights of prisoner it may infringe the right to dignity.<sup>181</sup>

The second violation of dignity could stems from the conditions that violate prisoner's inherent humanity. The prison system treats inmates of Solitary Confinement as mere physical entities without fundamental human needs. It ignores and deprives them of basic human necessities. The prisoners in Solitary Confinement are merely kept "alive" while being denied the fundamental respect needed to human.<sup>182</sup> The state of being alive with dignity, as constructed through normative human rights standards, exceeds the mere conditions of food, water, and oxygen. The idea of humanity and dignity mandates that all individual be afforded more than just the food and water for continuing existence but a condition that facilitate social interaction and mobility.<sup>183</sup>

Therefore, the right to dignity of person held in Solitary Confinement is at high risk of being not respected. This is due to the minimized level of treatment and respect accorded to the inmates.

#### 4.1.5 Due Process Right

While discussing the forms of Solitary Confinement we have said that person may be subjected to either administrative or disciplinary segregation. In all cases the due process right which includes right to be given notice and be heard must be respected.

The supreme court of United States has held (1983) that prisoners confined in segregation must be accorded meaningful periodic review to ensure that the isolation is not a cover for indefinite confinement. The due process right to meaningful periodic review requires that his or her behavior be re-evaluated at regular intervals.<sup>184</sup> However, the trend is opposite where by certain prisoner is designated for indefinite period or long term Solitary Confinement without meaningful review. When the review is made sometimes, the decision is predetermined.<sup>185</sup>

Prison system may have a hearing process, but these are seldom impartial. Prison officials serve as prosecutors, judges and juries, and prisoners are rarely permitted representation by defense attorneys. Prisoners are nearly always found guilty.<sup>186</sup>

As a result of negative stereotypes prison officials may have towards the person subjected to Solitary Confinement, this due process right such as notice of the reason of the measure, impartial hearing for non pre-determined decision and periodic review of the

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<sup>179</sup> Hansen-king, supra note 171, p.112

<sup>180</sup> BOP, supra note 112, foot note for principle 6

<sup>181</sup> Hansen-king, supra note 171, p. 121

<sup>182</sup> Ibid

<sup>183</sup> Ibid

<sup>184</sup> Lobel, supra note 75, p. 125

<sup>185</sup> Ibid

<sup>186</sup> Rodriguez, supra note 16, p. 3



decision placing him in Solitary Confinement is more likely will not be respected. Due to this and other factors Solitary confinement is again a threat to due process right of prison inmates.

#### 4.2 Rehabilitation and Social Re-integration vs. Other Purpose of Punishments.

When crime is committed, there is public interest which is affected by the commission and there is individual who is victim of the crime. Thus, justice must be served. To get justice served the criminal justice system may punish the offender by sentencing him to different from of imprisonment.

James A. Inclardi (2002) has explained that the objective of the sentencing is based on at least five competing philosophies: retribution, vengeance, incapacitation, deterrence, and rehabilitation.<sup>187</sup> According to him:<sup>188</sup>

- 1) **Retribution:** It is an effort to make the punishment as analogous as possible to the nature of the crime. It involves the creation of equal or proportionate relationship between the offense and the punishment.
- 2) **Vengeance:** It is the desire to punish criminal because society gains some measure of satisfaction from seeing or knowing that the criminals are punished.
- 3) **Incapacitation:** It is simply the removal of dangerous persons from the community. Also referred to as the “restraint” or “isolation” philosophy. Its goal is community protection rather than revenge.
- 4) **Deterrence:** The most widely held justification for punishment is reducing crime. Thus, as sentencing philosophy, deterrence refers to the prevention of criminal act by making examples of individuals convicted of crimes. Deterrence can be both general and specific. The general deterrence seeks to discourage the would be offenders from committing crimes. Special deterrence is designed to prevent a particular convicted offender from engaging in future criminal acts.
- 5) **Rehabilitation:** From humanistic point of view, the most appealing basis for sentencing and justification for punishment is that future crimes can be prevented by changing the offender’s behavior. The Rehabilitation philosophy rests on the premise that people who commit crimes have identifiable reasons for doing so and that these can be discovered, addressed, and altered. It s aim is to modify behavior and reintegrate the law breaker in to the wider society as a productive citizen. The goal of rehabilitation has wider support in contrast with other sentencing philosophies. It takes a positive approach to eliminate offensive behavior.

Under international human right laws the main rational for which the prison systems are established is to create a rehabilitative environment that provides the care and conditions needed to reintegrate the prisoners in to society as health members. This principle has been incorporated first in Article 10 (2) of ICCPR.<sup>189</sup> The UN SMR Rule 58 also states that “The purpose and justification of a sentence of imprisonment or a similar measure depriving of liberty is ultimately to protect the society against crime. This end can only be achieved if the period of imprisonment is used to ensure, as far as possible that up on his return to society the offender is not only willing but able to lead a law abiding and self supporting life.”<sup>190</sup>

Thus, there is a general consensus internationally that prisons should serve to rehabilitate and reintegrate the prisoners in to normal life.<sup>191</sup>

In line with the above principle, the use of Solitary Confinement as per the definition provided in the second chapter of this paper gives neither the conditions nor opportunity for rehabilitation. If you deny opportunity or the chance to act in a certain manner, you cannot know whether person is rehabilitated or not. After his release and when he gets the chance to misbehave he will do it since he was not rehabilitated.

Prison regimes which are based entirely on Solitary Confinement are in inconformity with the two primary goal of imprisonment, namely, rehabilitation and social integration. Solitary Confinement erodes the potential for rehabilitation because it treats the prisoners like caged animals, without or with little social contact and with no respect.<sup>192</sup> Confinement creates mental illness, delusions

<sup>187</sup> James A. Inclardi, *Criminal Justice*, (7<sup>th</sup> ed., 2002), pp.424-425

<sup>188</sup> Ibid

<sup>189</sup> Hansen-king, supra note 171, p.117

<sup>190</sup> UN SMR, supra note 103, principle 58

<sup>191</sup> Hansen king, supra note 171, p. 118

<sup>192</sup> Ibid

and erodes basic capacity to make individual choice. The prisoners struggle to reintegrate themselves in to the normal society after being isolated will be unsuccessful since they lack the ability to deal with social situations.<sup>193</sup>

Therefore, the practice of Solitary Confinement for whatever purpose<sup>194</sup>go against the human right standards that prisons should rehabilitate prisoners so as to enable them to reintegrate with society after release successfully.

#### 4.3 The Economic Cost of Solitary Confinement

Another ground which is important for the determination of the relevancy of solitary confinement in the current criminal justice system is the economic cost associated with its practice.

Although there is little research to support the efficiency of Solitary Confinement as a prison management tool, there is ample evidence that it is the most costly form of incarceration. There are several reasons for this.<sup>195</sup> One, such prisons are considerably costly to build and operate sometimes costing two or three time as much as the conventional facilities. Second, staffing costs are also much higher prisoners are usually required to be protected by two or more officers all times when they leave their cells, and third, works that in other prison could be performed by prisoners such as cooking and cleaning must be done by paid staff.<sup>196</sup>

Thus, with the aim of avoiding crime or punishing offenders governments which relied on Solitary Confinement are spending money that is collected from tax payers by high government budget to construct Solitary Confinement prisons or cells and to implement it. This have its own negative consequence on the role of the government in providing public services such as hospitals, school and transportation channels. The more budget is allotted for such activities the lesser advancement in the public service will be observed.

#### 4.4 Effectiveness of Solitary Confinement

One writer stated that “fairness of criminal Justice system builds trust in the criminal justice system and the trust builds compliance with the law. Thus, what is fairer is more effective, and to be effective it is necessary to be fair.”<sup>197</sup>

Solitary Confinement is said to have a clear connection to an increased rate of recidivism when individuals are released directly back in to the society. Different research on the effect of Solitary Confinement disclosed that it causes serious psychological damage to inmates. Consequently, this psychological damage has been contributing to an increase in recidivism when individuals are released directly back in to the general population.<sup>198</sup> Similarly, there is a growing concern that such facilities are actually detrimental to public safety. Thousands of prisoners of Solitary Confinement are returning to the community after spending months or years in isolation. This means that the society face a huge problem of re-socializing individuals who are poorly prepared to return safely to the community. In many systems, prisoners in Solitary Confinement are released directly to the community.<sup>199</sup>

Despite the significant costs associated with Solitary Confinement, almost no research has been done on the outcomes produced by the increased use of Solitary Confinement. In the research that has been conducted there is little empirical evidence to suggest that Solitary confinement makes prison safer. Indeed, emerging research suggest that Solitary Confinement actually have a negative impact on public security.<sup>200</sup>

Therefore, Solitary Confinement is not achieving the purpose intended by it. And it is not as effective as its harshness and increasing trend.

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<sup>193</sup> Ibid

<sup>194</sup> Such as, as a punishment, as prison administration tool, as means of protecting those who are vulnerable to attack by other inmates or as home for mentally ill by substituting the health care.

<sup>195</sup> Juan Mendez, supra note 1, p.7

<sup>196</sup> Ibid

<sup>197</sup> Lawrence w. Sherman, Trust and Confidence in Criminal Justice, (July, 2001), p.3. (Available at <http://www.ncjrs.gov/pdffiles/1/Jr00248e.pdf>) accessed on October, 2012.

<sup>198</sup> Rachelc Ohen, The Cost of Solitary Confinement, (October, 2012) (available at <http://www.rachelsnotebook.com/201/10/08/the-cost-of-solitaryconfinement>) accessed on December, 2012

<sup>199</sup> Juan Mendez, supra note 1, p.7

<sup>200</sup> Id, p. 2

## 2.5 Building Public Trust and Confidence

It is mentioned before that public trust and confidence in the criminal justice system is important for the effectiveness of the system in doing justice. This trust and confidence of the public comes from the fairness of the system. So, without having a fair system it is unlikely to have effective system. And without having public trust and confidence all things will go wrong or not succeed.

In case of Solitary Confinement, the massive increase in its use have led many to controversy and led them to question as to whether it is an effective, human and legal form of punishment among legal and medical experts.<sup>201</sup>

According to Lawrence w. Sherman, public confidence on criminal justice system include at least three possible things. These are: trust and confidence in the integrity and fairness of the institution, confidence that the institution is doing the right thing, and finally, confidence that institutional action will result in public safety.<sup>202</sup> Solitary Confinement has failed behind these parameters since we discussed that its fairness is challenged. Solitary Confinement will make the justice system unfair because it is imposed even on criminal, who commit minor offense, or on those who do not commit crime but need protection and on the mentally ill. It constitutes unfairness because it usually lacks proportionality.<sup>203</sup> The use of Solitary Confinement as a right punishment is also challenged. Many have also tried to rebut that it does not succeed in achieving the public safety. In effect, Solitary Confinement erodes or reduces public trust and confidence in the criminal justice system and it will.

In survey research in Chicago, on the trust of the society in criminal justice system, the researcher concludes that:

“Treatment by legal officials (including prison officials and wards) affects citizen’s level of trust in government, which in turn affects both level of pride in the government and the degree to which individual feel respected by government.”<sup>204</sup> [Emphasis added].

This statement exactly matches with the treatment that prison officials and ward made towards inmates of Solitary Confinement. Inmates are treated poorly as it can be understood from the previous discussions. It is possible to argue that had such official extend better treatment, show respect and give time to listen to prison inmates and accused or convicted in general they would be able to build and increase the public trust and confidence on the criminal justice system. Hence, the increasing use of Solitary Confinement is a danger to public trust and confidence that the government will do justice for them.

## 2.6 Presence of Other Alternatives

A given individual could be placed in Solitary Confinement for various reasons. However, there are other better alternatives which can help the criminal justice system in general or the prison systems in particular to achieve those intended purpose by employing Solitary Confinement. Hence, the presence of alternatives validly can be one ground to determine the relevancy of Solitary Confinement in the current criminal justice system.

Many alternatives are suggested to Solitary Confinement. These are:

- The diversion of mentally ill out of solitary in to a non-disciplinary unit subjecting them to the least restrictive environment consistent with their needs and mental status.<sup>205</sup>
- Provision of mental Health care: Mentally ill prisoners placed in isolation are more likely to react with violence, or by harming themselves. By contrast, prisoners who receive supportive mental health care are less likely to cause problems while in prison and better equipped to re-enter society.<sup>206</sup>
- Special Needs wards: traditionally prisons divided prisoners according to the warden’s perception of the dangers nous of each inmate. However, grouping prisoners by their interests or belief systems can dramatically reduce behavioral problems and make Solitary Confinement unnecessary. Prisons which apply this approach house inmates in dorm setting. They may

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<sup>201</sup> Id, p. 1

<sup>202</sup> Sherman, supra note 198, p. 7

<sup>203</sup> Juan Mendez, supra note 1, p. 6

<sup>204</sup> Sherman, supra note 198, p. 14

<sup>205</sup> Juan Mendez, supra note 1, p. 9

<sup>206</sup> Brenna Davis, Alternatives to Solitary Confinement, (July 11, 2011) (available at [http://www. Alternatives to solitary confinement/eHow.com](http://www.Alternatives to solitary confinement/eHow.com)).Accessed on June,2012

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create religious dorms, dorms for recovering addicts or dorms based on other grounds. In this type of setting, prison violence tends to decrease, and prisoners learn valuable skills they can take back to their communities.<sup>207</sup>

- Pet therapy: some prisons are experimenting with adopting pets from animal shelter, and giving them to inmates. The results have been surprising. Even the most violent prisoners display fewer behaviors problems and many prisoners form friendships based on a shared love of animals. The animals are also gets loving owners.<sup>208</sup>
- Substance Abuse treatment: When prisoners are addicted to drugs or alcohol, the withdrawal associated with prison life can cause violent behavior. Solitary confinement often worsens this behavior. The twelve step programs and other forms of group therapy for substance abuse are an inexpensive alternative, and frequently result in more stable prisoners. Furthermore, research shows that prisoners who receive substance abuse treatment are less likely to commit crime after their release.<sup>209</sup>
- Establishing a juvenile justice system: youth or kids should be kept out of adult facilities and maintain them in juvenile justice system through training, staffing, various programs and activities in which they can invest their energy and attention and reward them for their positive behavior.<sup>210</sup> This is better than putting them in Solitary Confinement either to discipline them or to protect them from attack by adult prisoners. Having a separate facility is also a better alternative for all prison inmates who are placed in Solitary Confinement under the mask of involuntary protective custody.
- Using informal sanctions: prisoners will be subject to Solitary Confinement for breach of prison rules. However, using informal sanctions in order to discipline bad and violent prisoner is advisable as alternative to Solitary Confinement. For example, by taking away recreation privileges.<sup>211</sup> This can best apply specially for prisoners who violate prison rules of minor importance.

By recognizing the inherent problems of Solitary Confinement, the American Bar Association approved standards to reform the use of Solitary Confinement. The ABA criminal justice standards on the treatments of prisoners addressed different aspect of Solitary Confinement and provide a solution. Some of the solutions are:<sup>212</sup>

- a. There must be adequate and meaningful process prior to placing or retaining a prisoner in segregation to be sure that the segregation is warranted.
- b. Decrease extreme isolation by allowing for in cell programming, supervised out of cell exercise time, face to face interaction with staff, access to television or radio, phone calls, and reading material and
- c. Refrain from placing prisoners with serious mental illness in a very restrictive environment. Instead, maintain appropriate and secure mental health housing for such prisoners.

By exhausting the available alternatives, it possible to save huge amount of government budget, reduce bad behavior or violence and contribute for the full realization of human right of prisoners.

## 2.7 Closing Door for Further Abuse and Overuse of Solitary Confinement

Every problem has to be solved at its inception. If not possible, it needs to be solved in the moment it starts to be problematic. Otherwise, the more time we are living with the problem without taking any measure, the more it will expand and its effect will be irreversible.

Theoretically the rational for placing inmates in Solitary Confinement in most of the case is to separate violent and dangerous inmates from the rest of prison population. However, it is discovered that the majority of those in Solitary Confinements where given the punishment for non-violent and low level offences.<sup>213</sup>

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<sup>207</sup> Ibid

<sup>208</sup> Ibid

<sup>209</sup> Ibid

<sup>210</sup> *Growing Locked Down, Youth in Solitary Confinement in Jails and Prisons Across the Us* (October, 2012), p. 81 (available at <http://www.pena.reform.Org/files.10-pt%252.pdf>) accessed on October, 2012.

<sup>211</sup> Rodriguez, Supra note 16, p.7

<sup>212</sup> Juan Mendez, Supra note 1, p.8

<sup>213</sup> Laura Gottesdiern, The Unbelievable Inhumanity of solitary confinement, (available at <http://www.alternet.Org/civil-liberties/unbelievable-inhumanity-of-solitary-confinment.>) accessed on December, 2012.

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The vast majorities are not unmanageably violent criminals; instead many of them are severally ill or cogitatively disabled prisoners, who find it difficult to understand and follow prison rules.<sup>214</sup> Others in Solitary Confinement are the so called “nuisance prisoners” who have broken minor rules, those who file grievances or law suits against the prison or attempt to stand up for their rights or those who simply annoy staff.<sup>215</sup> This all can prove that Solitary Confinement is excessively being used.

People in Solitary Confinement are more likely is subject to the use of excessive force and abuse of power. Correctional officers misuse physical restraints particularly when extracting people from their cells.<sup>216</sup> The main reasons which contribute for and expose prisoner in Solitary Confinement for such kinds of abuses are the fact that Solitary Confinement cells are isolated from the general population prisoners. The administrators will not show sympathy and turn blind to abuses in Solitary Confinement because of the stereotype that those who are placed in Solitary Confinement are violent and dangerous.<sup>217</sup>

To sum up, because of the above mentioned reason and conditions tolerating the use of Solitary Confinement in the prison systems will continue to be the main source of misuse of Solitary Confinement and abuse of prison inmates right.

## 2.8 Solitary Confinement from Point of View of Fair, Efficient and Effective Criminal Justice System

All criminal justice system have its own purpose, which is often to deliver justice for all by convicting and punishing the guilty and helping them to stop offending, while protecting innocent. Such delivery of justice however shall be based on efficiency, effectiveness and fairness.<sup>218</sup>

These three concepts are central goal for the administration of justice system. Efficiency means economically applying available resources to accomplish statutory goals as well as to improve public safety.<sup>219</sup> Solitary Confinement cells are expensive to build and to operate even two times than the normal prison cells as discussed before. This could be a challenge to the first central goal of criminal justice system, efficiency. Since many of inmates who are released from Solitary Confinement and directly join the community found to be recidivist the second goal is defeated.<sup>220</sup> Fairness is usually lacking in course of practicing Solitary Confinement since there is disrespect to the due process right of inmates, and proportionality between the wrong done and the punishment imposed.

Generally, due to many problems associated with the practice of Solitary Confinement in the prison system, efficiency, effectiveness and fairness which are the important goal of criminal justice system while delivering justice could be defeated.

## Conclusion

Solitary Confinement is all about the practice or condition of imprisonment where by a person is placed in isolated small cell for average of twenty two up twenty four hours a day out of human contact, for whatever is reason and form may be and for whatever period of time. Solitary Confinement as one form of imprisonment is now in use by different countries prison system. Even some countries like United States have prisons which are solely constructed for Solitary confinement purpose. Currently the use of Solitary Confinement is increasing. Countries resort to it to achieve various purposes with the ultimate aim of maintaining legitimate public safety.

There is unequivocal evidence that demonstrate the negative health, economic and social effects of Solitary Confinement. The extent of mental and physical damage of Solitary Confinement depends on the individual prisoner background, the reason of his isolation, its duration and the conditions of confinement. Concerning the legal regime and legality of Solitary Confinement, there are no international as well as regional human right instruments which absolutely and expressly make Solitary Confinement illegal. The binding international human right laws such as ICCPR, ICESCR, CAT and regional binding instruments such as ACHPR, ECHR and ACHR let alone prohibiting Solitary Confinement they does not use even a related terms to Solitary Confinement. Whereas the non-binding instrument and documents such as SMR, Basic Principle for Treatment of Prisoners, the Istanbul Statement, European

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<sup>214</sup> Juan Mendez, *Supra* note 1, p. 6

<sup>215</sup> *Ibid*

<sup>216</sup> *Id*, p.4

<sup>217</sup> *Ibid*

<sup>218</sup> Richard Gaside, *Purpose of Criminal Justice system*, (March, 2008), (available at <http://www.cjsonline.gov.uk/>) accessed on December, 2012

<sup>219</sup> *Ibid*

<sup>220</sup> Sal Rodriguez, *Fact sheet; the High Cost of Solitary confinement*, (2011), p. 1 (available at <http://www.solitary.watch.com>) accessed on October, 2012.

Prison Rules (EPR) and the American Best and Basic Principles for Protection of Prisoners Deprived of their Liberty have used the term Solitary Confinement and any other similar terminology. Some of them call for the restriction of its use by resorting to it only as a last option. Thus, it is possible to conclude that in today's international and regional human rights system, Solitary Confinement is not clearly and absolutely prohibited and it remains un-prohibited.

Domestic law of some countries like Ethiopia, U.K, Pakistan and Peru has incorporated Solitary Confinement as legitimate form of punishment or prison management and it can be used when it is found necessary.

When we say Solitary Confinement is not prohibited by international and regional human right instrument it does not necessarily mean that such instrument have no relevancy in dealing with and regulating Solitary Confinement. All the provisions of such instruments related to, for instance, to right to health, dignity, due process, food, clean environment and right against torture, or other cruel, inhuman or degrading treatment or punishment play significant role in regulating Solitary Confinement regime and to bring a legal action against use of it in manner contrary to the above mentioned rights.

Whether Solitary Confinement is relevant or not in the current criminal justice system is important question. It is important because the answer for the question will tell us either to stop or to continue using it. The international community and legislative organ of each country will take its own position and react accordingly.

Based on the discussion made before on various grounds which are relevant for the determination of whether Solitary Confinement is relevant or otherwise in the current criminal justice system, my finding finally rests, as a rule in the negative. Though we have no binding human rights laws which prohibit Solitary confinement, it is irrelevant in today's criminal justice system. Countries shall take all appropriate measures to exhaust all other means of maintaining public safety in and outside prisons. So that prisoners human right can fully be realized, unnecessary costs can be eliminated, the inmates can better be rehabilitated and socially re-integrated, the public trust and confidence on the criminal justice system can be increased. And by avoiding abuse and over use of Solitary Confinement fair, efficient and effective criminal justice system can be built.

However, there may be a rare case in which very crucial exceptional circumstances can be tolerated. This is when any other mechanisms or alternatives are already exhausted and nothing except Solitary Confinement can be the right solution. In this case, a modified form of Solitary Confinement can be relevant as last resort, for shorter time as possible (i.e. not more than days) and up on the fulfillment of certain conditions. I said "a modified form" due to the new conditions attached to it. These conditions are the fact that the Confinement does not infringe the right of the inmates which are recognized and protected under the ICCPR, ICESCR and CAT. The detail of the situations which will constitute the crucial exceptional circumstances and the conditions that must be respected when Solitary Confinement is employed in the above mentioned exceptional circumstances is given in my recommendations.

### **Recommendation**

Based on the key findings of the research, recommendations are forwarded for consideration. Some of the recommendations are concerned on the legal regime of Solitary Confinement and the target groups are the international communities and countries legislative organ. Others are concerned with the procedural safeguards, duration, person who can be and cannot be placed in Solitary Confinement whenever its use is justified in the exceptional circumstances. Still some other recommendations are concerned with the conditions of the confinement. Based on this structure, my recommendations are the followings:

- Solitary Confinement currently has not received the attention it deserves in the international human laws. There is a lacuna in the international safeguard and protection against the misuse and over use of Solitary Confinement. Further development of binding international human right standards is thus necessary. The call of the United Nation in 1990 through the Basic Principles for Treatment of Prisoners to abolish the use of Solitary Confinement should be realized.

Therefore, the international community as well as the domestic legislative organ of each state should make a law which at least as a rule prohibits the practice of Solitary Confinement in its all forms. Prolonged and indefinite solitary confinement, imposition of Solitary Confinement on youths, prisoners with mental illness and pre-charge detainees should totally be prohibited in a manner that it cannot be justified by exceptional circumstances.

They should also limit the wider discretion of prison officials in placing person in Solitary Confinement by adopting laws which provide clear and meaningful grounds and procedures by which a short term exceptional Solitary Confinement can be imposed. Rules which can contribute for the improvement of transparency and accountability in the use of Solitary Confinement are also important and need to be adopted.

- Whenever the use of Solitary Confinement is exceptionally necessary, prison officials should first make sure that all other alternatives to Solitary Confinement are exhausted and that the prisoners is with severe and ongoing threat to safety of others which cannot be managed by less restrictive mechanisms. They also should make sure that the person is not mentally ill or young. Since the uncertainty about the expected duration of Solitary Confinement is likely to increase its adverse effects the duration must be fixed and certain which is known by the prisoner in advance.
- Whenever Solitary Confinement is justified in a manner discussed previously, all the due process right of the person which give him a procedural safeguards should be respected. To his end, the prison inmates must be informed of prison rules of conduct or any offences which will make him subject to Solitary Confinement, notice must be given before taking such measure, the decision to put inmate in Solitary Confinement shall only be made after an impartial hearing at which the prisoner has fair chance to defend himself, fair representation, right to appeal and oppose the decision. In addition, the decision to put prisoner in Solitary Confinement for whatever reason must always be made by competent body and in accordance with due process requirements. The compliance with the entire above procedural requirement will make the decision legal and may also contribute to the prisoner's belief that their placement in Solitary Confinement is legal and fair.
- Finally, when ever Solitary Confinement is justified by the exceptional circumstances, the prison administration or officials have to make sure that the prisoners are held in human conditions with meaningful aces to natural light, human contact, health care, family visit, and programs such as educational and recreational.

Furthermore, the cell must be sufficiently large with windows and sufficient natural and artificial light. The cell must also be clean. In general, the conditions of the confinement should not be contrary to the right of the prisoner provided under ICCPR, ICESCR and CAT. These rights include right to physical and mental health, right to dignity and right against torture, or cruel, inhuman or degrading treatment or punishment. All the above conditions can contribute for the rehabilitation process and mitigating the negative health effects of Solitary Confinement.

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