



Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
Organização para a Reforma da Justiça Criminal em África



Solitary confinement and super-maximum prisons

A South African and international perspective

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History of super-maximum prisons

- Solitary confinement as punishment to reflect on one's crimes:
 - Used in the 18th and 19th century, then abandoned;
- Islands as prisons around the world for the most dangerous prisoners (all closed today):
 - Alcatraz (USA), Devil's Island (France / French Guyana), Mexico (Islas Maria), Robben Island (South Africa);

Rise of super-maximum prisons in 1980s

- Originally in the USA, then spread around the world
- Why?
 - To detain the most dangerous, violent and disruptive prisoners (typically gang leaders, drug lords, terrorists, spies, etc);
 - Risk management in the prison setting (risk of escape, risk of violent behaviour, risk of criminal activity from inside the prison);
 - Resurgence of punitive policies: Long sentences and harsh conditions of detention seen as the most appropriate response to prevent crime;

Universal characteristics of a super-maximum prison

- Harsh detention regime:
 - Single cells, locked up for 23hrs a day, minimum contact with other prisoners and staff, minimum to no amenities/privileges;
- Stringent external and internal security and surveillance measures;
- Specific layout and cell characteristics;
- Types of inmates;
- Effect on inmates:
 - Psychological consequences of prolonged solitary confinement: Hallucinations, paranoia, delusions, self-harm, depression, psychosis, perceptual distortions, etc.
 - Can be irreversible if for longer than 15 days at a time, no reintegration possible;
- Most severe sentence after the death penalty

Universal criticism of prolonged solitary confinement

- UN Special Rapporteur on Torture and OIT, Juan Mendez (2011)
 - *Depending on the specific reason for its application, conditions, length, effects and other circumstances, **solitary confinement can amount to a breach of article 7 of the International Covenant on Civil and Political Rights, and to an act defined in article 1 or article 16 of the Convention against Torture. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged.***
 - *Considering the severe mental pain or suffering solitary confinement may cause when used as a punishment, during pretrial detention, indefinitely or for a prolonged period, for juveniles or persons with mental disabilities, it can amount to torture or cruel, inhuman or degrading treatment or punishment. The Special Rapporteur is of the view that where the physical conditions and the prison regime of solitary confinement fail to respect the inherent dignity of the human person and cause severe mental and physical pain or suffering, it amounts to cruel, inhuman or degrading treatment or punishment.*

Universal criticism of prolonged solitary confinement

- Nelson Mandela Rules (UN Minimum Standards on the Treatment of Prisoners) (2014)
 - Rule 43 (1).: In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. **The following practices, in particular, shall be prohibited: [...]**
 - (b) **Prolonged solitary confinement;**
 - Rules 44-46:
 - Anyone confined for more than 22 hours per day without meaningful human contact, for a time period in excess of 15 consecutive days, is under prolonged solitary confinement;
 - Should be prohibited in the case of prisoners with mental or physical disabilities;
 - Detainees in solitary confinement should be seen by a health care practitioner on a daily basis;

Supermax prisons in other jurisdictions

- 2% of US detainees in super-maximum prisons
- 0.5% of RSA detainees in super-maximum prisons
- 0.05% of UK detainees in super-maximum prisons

Supermax in the US

- One federal super-maximum prison, several state super-maximum prisons;
- Why were super-maximum prisons established?
 - Prison authorities unable to respond to increased prison violence;
 - Public support for “tough on crime”;
 - Profit (privately run);
 - Conservatism/neoliberalist approach to punishment;
 - Careerism;
 - New response to the failure of rehabilitation;

Supermax in the US (cont'd)

- Common characteristics
 - 7x12 feet (2 x 3.5 m);
 - High surveillance and control technology;
 - Higher official to inmate ratio;
 - Locked up 23 hrs/day in single cell;
 - No contact with other inmates;
 - Limited access to amenities;
 - No privacy;
 - No rehabilitation.
- Was found by several US courts to amount to ill-treatment (Madrid vs Gomez (1995))
- Cost: 25,000USD p.a. for a normal cell; 75,000USD p.a. for a supermax cell;
- A study in California found that 1/19 prisoners in supermax were psychotic.

Supermax in the UK

- Importance of knowledge-based policy in developing and managing high security prisons:
 - Long-term solitary confinement is psychologically detrimental;
 - Different management required for prisoners representing a control problem and those representing a security problem;
- 40 spaces in Close Supervision Centres, scattered across several prisons;
- To detain highly dangerous or disruptive prisoners, but willingness not to house them all together (security risk);
- Stringent admission and internal oversight processes:
 - Five admission reports required, 3 months assessment period;
 - Never totally isolated from other prisoners, never deprived of all amenities or rehabilitation programmes;
- Continued external oversight by HMIP over the CSCs.

Supermax prisons in South Africa

- Two supermax prisons:
 - C-Max at Kgosi Mampuru II CC (closed for renovations)
 - Opened in 1997
 - Ebongweni CC:
 - Opened in 2002
 - Capacity of 1440 beds, currently housing +/- 900 inmates
 - Built on US model

Why were super-maximum prisons established?

- To address lifers;
- To address increasing prison violence;
- To curb prison escapes;
- Public demands to be “tough on crime and criminals”.

Conditions of detention at Ebongweni

- Strict security and control measures;
- Three phases: Phase I, Phase II, Phase III
 - No data on percentage of inmates detained under each Phase;
- Phase I:
 - Locked up for 23 hours in a single cell,
 - No contact with other inmates;
 - Minimum or no privileges;
 - Minimum detention period of 6 months;
 - No regular access to mental health professional.
- Jali Commission extremely critical of C-Max.
 - Unconstitutional?

Profile of inmates admitted to Ebongweni

- Adult sentenced males;
 - Very few remand detainees;
- Dangerous and violent offenders, and those who disturb order in a regular CC;
- Must have violated prison rules beforehand:
 - Primarily aimed at the safety of staff and/or other inmates;
 - Punishment?

Challenges with Ebongweni

- Amounts to prolonged solitary confinement:
 - Was condemned by the UN Human Rights Commission when it reviewed South Africa in 2016
- Rehabilitation impossible under supermax conditions of detention;
 - Admitted by two previous Ministers of Correctional Services;
 - Why is access to education denied even in Phase I?
- Several reports of mentally ill inmates detained at Ebongweni;
 - Contrary to international prescripts and to national policy;
 - Insufficient mental healthcare available;
- Insufficient ICCV presence.

International and constitutional compliance?

- Constitutionality of detention regime at Ebongweni is doubtful:
 - Contrary to s. 12(1)(d) and (e) and s. 35(2)(e);
 - CSA sets strict framework for isolated segregation, which is not complied with at Ebongweni.
- Prolonged solitary confinement such as what is in place at Ebongweni falls short of the Nelson Mandela Rules;

Is Ebongweni living up to its promises?

- Impossible to house all lifers at Ebongweni;
- Prison violence did not decrease following the establishment of super-maximum prisons;
- Escapes brought down because of better management by DCS, not because of super-maximum prisons;
- Why are gang leaders not systematically detained at Ebongweni?

“Successful control depends on people rather than infrastructure”

Thank you

