

The use of solitary confinement in RSDL as a method of torture

With the detention and placement into ‘Residential Surveillance at a Designated Location’ (RSDL) of foreign citizens by China in several high-profile cases, such as Michael Kovrig, Michael Spavor and Yang Hengjun, it merits a closer look at the use of solitary confinement within China’s RSDL system, and if and if so why, it constitutes torture under international law, in particular the Convention Against Torture, one of the few key human rights treaties both signed and ratified by China.

Due to the detention of foreign citizens often, but not always, done either by China’s Ministry of State Security (MSS) (as in all three cases named above), or by Police at higher levels, and the fact that their detention can have an impact on China’s foreign affairs, their treatment, compared to those of Chinese nationals, tend – from data that is available – to be far better. It seems from the limited data available that otherwise common features of RSDL such as physical torture, is either not used or used on a much more limited scale. However, China and the RSDL system employs many methods that constitute torture under relevant international law, one of which is solitary confinement.

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For more information on both physical and psychological methods of torture used, including in the RSDL system, please see [Safeguard Defenders](#) report [Battered and Bruised: Why torture continues to stand at the heart of China’s judicial system](#).

For more information on torture inside China’s RSDL system, see Safeguard Defenders [joint submission to the United Nations](#) from May 16, 2018.



Solitary confinement and relation to torture

The use of solitary confinement (SC) in general may amount to either torture, maltreatment or neither of the two, as defined by the Convention Against Torture (CAT). To establish whether Solitary confinement amounts to Torture according to International law, one must first separate short vs long-term confinement, and if confinement is disciplinary or non-disciplinary. On top of that, the existence of intent is also key.

Article 1.1 of the Convention Against Torture; *"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person"*.

Disciplinary use is understood as being used to issue punishment against an individual for a wrongdoing, in which case the placement into SC is intentional as a form of punishment. **Non-discriminatory** use is

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normally for purpose of managing prison populations, and not carried out with the purpose of punishing the victim, and also include protective custody, pre-trial isolation, and administrative segregation.

Short-term SC is usually, including by the Special Rapporteur on Torture, considered to be 15 days or less, while anything beyond 15 days is classified as **long-term**¹, and it is after this period that harm that is caused by SC is considered to possibly becoming *irreversible*.

SC, in any form, have negative consequences on the victim, but the CAT does allow for certain exceptions; if the placement into SC is lawful, and when no injury is intentional, should such injury occur nonetheless, it is considered an exception and does not fall under the CAT.

In general, Solitary confinement is usually understood to isolate prisoners from contact with other prisoners, the outside world, and prison staff, in an attempt to control and manage them. Usually, one is kept in solitude for at least 22 hours per day, with limited or no access to outdoor exercise or sometimes even natural light. They often have limited or no personal privileges, such as access to mail, books, or television.

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A key aspect to understanding whether placement into SC constitutes torture relies on **intent**. To meet the intent standard, the actor must simply intend to inflict suffering for a prohibited purpose. These purposes include obtaining information or a confession, punishment, intimidation, and discrimination.

Even though the CAT is not specific, the Special Rapporteur has stated that acts constituting torture include beating, suffocation, exposure to intense loud noises and bright lights, and “prolonged denial of rest, sleep, food, sufficient hygiene, or medical assistance, and **prolonged isolation and sensory deprivation**.” Furthermore, under article 1 of the Convention against Torture, the U.N. considers disciplinary solitary confinement to be torture. It does however not provide clear statements on use of non-disciplinary SC as torture, unless such have intent to punish². Because solitary confinement’s harms—including severe negative effects on prisoners’ mental health—exist even when it is not used for punishment, non-disciplinary solitary confinement’s effects are largely indistinguishable from those of disciplinary solitary confinement. The difference in the end is one of whether intent to punish exist.

Additionally, the Special Rapporteur found in 2011 that, even if disciplinary solitary confinement is not torture (article 1), it still violates article 16, which addresses and condemns³ harmful practices that fall short of its definition of torture (meaning it constitutes maltreatment, but not torture). This determination has been echoed in recent years by the U.N. General Assembly, which in 2015 adopted a revised version of the *Standard Minimum Rules for the Treatment of Prisoners*, a set of minimum standards for the

¹ U.N. Secretary-General, Torture and Other Cruel, Inhuman or Degrading Punishment: Note by the Secretary General, U.N. Doc. A/66/268 (Aug. 5, 2011).

² U.N. Secretary-General, Torture and Other Cruel, Inhuman or Degrading Punishment: Note by the Secretary General, U.N. Doc. A/66/268 (Aug. 5, 2011).

³ Article 16 differs from Article 1 because it includes harsh treatment inflicted without a specific purpose under its general intent requirement, as opposed to Article 1’s elevated intent standard. States have fewer enforcement obligations for Article 16 practices, and there is no mention of the prohibition of emergency or exceptional circumstances that exists for Article 1 practices.

treatment of prisoners also known as the “Mandela Rules.” The new Mandela Rules tightened the U.N.’s restrictions on solitary confinement and recommended that solitary confinement “be used only in exceptional cases as a last resort, for as short a time as possible.”⁴

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Solitary confinement causes negative effects, including hallucinations, panic attacks, paranoia, and uncontrollable intrusive violent thoughts, among prisoners who are placed into isolation.⁵ Prisoners frequently suffer from post-traumatic stress disorder (PTSD) following isolation due to the severe psychological harm it inflicts.⁶ The then Special Rapporteur on Torture further stated in 2008 report to the General Assembly in that;

*The weight of accumulated evidence to date points to the serious and adverse health effects of the use of solitary confinement: from insomnia and confusion to hallucinations and mental illness. The key adverse factor of solitary confinement is that socially and psychologically meaningful contact is reduced to the absolute minimum, to a point that is insufficient for most detainees to remain mentally well functioning. Moreover, the effects of solitary confinement on pre-trial detainees may be worse than for other detainees in isolation, given the perceived uncertainty of the length of detention and the potential for its use to extract information or confessions. Pre-trial detainees in solitary confinement have an increased rate of suicide and self-mutilation within the first two weeks of solitary confinement.*⁷

The serious possible harm done by prolonged solitary confinement has also led the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to recommend that a medical officer should visit the victim every day, to monitor their health.⁸ The minimal stimulation experienced during solitary confinement can also lead to a decline in brain activity in individuals after seven days. One study found that “up to seven days, the [brain activity] decline is reversible, but if deprived over a long period this may not be the case”⁹.

⁴ G.A. Res. 70/175, U.N. Doc. A/Res/70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (Dec. 17, 2015) [hereinafter the Mandela Rules].

⁵ Stuart Grassian, Psychiatric Effects of Solitary confinement, 22 WASH. U. J. L. & POL’Y

⁶ Bruce A. Arrigo & Jennifer Leslie Bullock, The Psychological Effects of Solitary confinement on Prisoners in Supermax Units, 20 INT’L J. OF OFFENDER THERAPY. COMP. CRIMINOLOGY 1, 10

⁷ Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with General Assembly resolution 62/148. "Annex : Istanbul Statement on the Use and Effects of Solitary Confinement", 28 July 2008, A/63/175 <https://www.refworld.org/docid/48db99e82.html>

⁸ .N. Secretary-General, Torture and Other Cruel, Inhuman or Degrading Punishment: Note by the Secretary General, U.N. Doc. A/66/268 (Aug. 5, 2011).

⁹ ⁹ Stuart Grassian, Psychiatric Effects of Solitary confinement, 22 WASH. U. J. L. & POL’Y

Solitary confinement in RSDL

The use of solitary confinement in RSDL is by design, and is not likely, but guaranteed. All those in RSDL must be kept in solitary confinement and are held incommunicado, and the facilities they are kept in must, according to law, be designed to prevent self-harm. By law, those in RSDL must be kept in suicide-proofed cells. RSDL facilities varies between two extremes; one consist of custom-built prisons, legally not allowed to be called as such, but having the appearance and function of one, and refurbished rooms inside military, police or party run guesthouses or training centers, unmarked but used as cells.

Following a submission by Safeguard Defenders, 10 different mandate holders of the Special Procedures of the OHCHR stated, in a letter to China on August 24, 2018, that *“these conditions of detention are analogous to incommunicado and secret detention and tantamount to enforced disappearance; they expose those subjected to RSDL to the risk of torture and other inhuman and degrading treatment and other human rights violations.”*¹⁰

In RSDL, the confinement is different from how SC is thought of when issued as punishment for a prisoner, in that it is monitored in form. Specifically, within RSDL, the detainee is never physically left alone, whether sleeping, sitting in their cell, or using the toilet. However, the two guards that are present inside the cell 24/7, often working in teams, does not deny RSDL as a form of SC, because the victim is denied any meaningful interaction. The *Mandela Rules*¹¹, adopted in 2015, makes clear that it nonetheless qualifies as SC. In fact, victims have spoken of the presence of two guards, who are not allowed to communicate or interact with the detainee, and found it to exaggerate the suffering of isolation – as they are there to monitor the detainee’s every movement and sound, but without communicating with them. In effect, they stare at the victim from a close distance and take notes on every movement, sound or similar.

Placement into RSDL are **long-term**, lasting for up to six months. Based on data collected by Safeguard Defenders, a third of all known incidences of RSDL (discounting those currently ongoing) last for the full 180 days, while the average length is 128 days¹². Placement into RSDL for 15 days or less is almost unheard of. As such, almost every single case of RSDL uses solitary confinement long-term, after which negative effects on health may be irreversible.

Likewise, the use of solitary confinement is on the extreme scale, and tend to be up to 24 hours per day (any time not spent in interrogation). From data from Safeguard Defenders, allowance to access outdoor enclosures, or for that matter access to any kind of exercise, even walking outside of the cell, is severely limited – in fact, almost unheard of. Unless the active part of the interrogation have ended, and the victim is kept in RSDL despite no investigative value (which is common), all forms of external stimuli is prohibited, such as books, access to television, communication of any form, etc. As the Special Rapporteur states in

¹⁰ Communication to China, OL CHN 15/2018, 2018-08-24,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23997>

¹¹ G.A. Res. 70/175, U.N. Doc. A/Res/70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (Dec. 17, 2015) [hereinafter the Mandela Rules].

¹² Safeguard Defenders, Submission to 31st Session of UPR, November 2018, third cycle, China, 28 March 2018 <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=5661&file=EnglishTranslation>

his 2011 report to the General Assembly, as part of solitary confinement there is often a “*reduction in stimuli ...not only quantitative but also qualitative*”.¹³

The use of RSDL is for prolonged investigations, pre-trial, and taking place within a legal system that is almost entirely reliant on confessions. RSDL, and therefore the solitary confinement can only end once a detainee is either released or arrested, at which point they are moved to pre-trial detention. To meet the intent standard, the actor must simply intend to inflict suffering for a prohibited purpose. These purposes include obtaining information or a confession, punishment, intimidation, and discrimination. The intent behind the placement of the victim into solitary confinement is entirely to facilitate investigation, in reality, getting a confession, and the use of RSDL falls very squarely within the scope of SC used with **intent**. Placing the victim incommunicado and in solitary confinement is the very purpose of the RSDL system, and is what distinguishes the system from normal detention and investigation through the normal judicial process. The U.N. Special Rapporteur on Torture explicitly found pre-trial solitary confinement to be torture under article 1 of the CAT when used to obtain information or a confession¹⁴.

SC thus constitutes torture either if it is a disciplinary measure to punish, or if it is non-disciplinary but with clear intent. Regardless of definition of RSDL as disciplinary or not, the use of SC in it constitutes torture. Based on the legal code in China, RSDL is not a disciplinary system, but there to facilitate investigations. In reality however, the placement in RSDL is used indiscriminately as a form of punishment itself, which can be seen by how victims are continued to be kept in RSDL even after active investigations have ended despite that in those cases the person should be either arrested and moved to pre-trial detention, or set free.

Or, as written by Samuel Fuller in his book *Torture as a Management Practice*; to meet the CAT’s purpose standard [of torture], the act must be committed for one of the specific purposes listed in the treaty: “obtaining . . . information or a confession . . . or intimidating or coercing him [or her] or a third person, or for any reason based on discrimination of any kind.”¹⁵ In addition, in 2011, the U.N. Special Rapporteur on Torture explicitly found pre-trial solitary confinement to be torture under article 1 of the CAT when used to obtain information or a confession¹⁶. The Special Rapporteur has determined that pre-trial solitary confinement is used for its coercive power in order to pressure prisoners to confess or to make false statements to authorities.

China’s Prison law does allow for use of SC as a punishment on prisoners, but limits its use to 7 to 15 days, although it has been shown to be used for longer period if “the danger cannot be eliminated.” It also specifies that even a victim of SC must get an hour of outdoor time per day. The Management Regulations

¹³ U.N. Secretary-General, Torture and Other Cruel, Inhuman or Degrading Punishment: Note by the Secretary General, U.N. Doc. A/66/268 (Aug. 5, 2011).

¹⁴ U.N. Secretary-General, Torture and Other Cruel, Inhuman or Degrading Punishment: Note by the Secretary General, U.N. Doc. A/66/268 (Aug. 5, 2011).

¹⁵ Fuller, Samuel (2018) "Torture as a Management Practice: The Convention Against Torture and Non-Disciplinary Solitary confinement," Chicago Journal of International Law: Vol. 19: No. 1, Article 4.
<https://chicagounbound.uchicago.edu/cjil/vol19/iss1/4>

¹⁶ U.N. Secretary-General, Torture and Other Cruel, Inhuman or Degrading Punishment: Note by the Secretary General, U.N. Doc. A/66/268 (Aug. 5, 2011).

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for Juvenile Reformatories (1999) furthermore specifies that for juvenile detainees SC may last 3 to 7 days, and must include two hours of outdoor time each day. This is also echoed in a white paper on criminal reform issued by the Chinese state as early as 1992, which states that “Prisoners in confinement are let out about an hour or so twice a day for fresh air”.

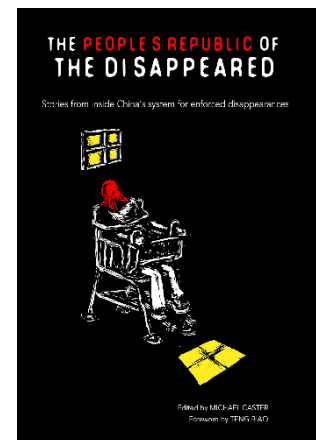
These regulations does not apply to RSDL, but shows that even in Chinese law elsewhere, the issue of SC is taken very seriously and comes with several limitations on how greatly it can be used. For RSDL victims, no such protections exist, and no rules stipulates any form of protection against the use of SC at all. The *Provisions on People’s Procuratorates’ Oversight of Residential Surveillance in a Designated Location*, which came into effect 2016, stipulates that the Procuratorate (Prosecutor’s office) may (but is not required) visit those held in RSDL on a weekly basis, to provide oversight against torture and maltreatment, but in all the cases Safeguard Defenders have collected data on, not one single case having any such visits have ever been found. The same regulation also gives police the right to deny such visits if it may impede their investigation, should the procuratorate actually insist on making such visits.

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To learn more about solitary confinement, please see [The Sourcebook on solitary confinement](#), downloadable as a PDF¹⁷.

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For more information on treatment inside China’s RSDL system, see *The People’s Republic of the Disappeared*, available as [paperback](#) and [kindle](#) on Amazon worldwide, and available for free as [ebook and pdf](#) in Chinese. The book offers both an extensive analysis of Chinese domestic and International law on the issue of enforced/involuntary disappearances, and collects a number of short stories written by victims of China’s RSDL system themselves – showing how they ended up in RSDL, what they experiences inside, and how they got out.



¹⁷ Shalev, S. (2008) A Sourcebook on Solitary Confinement. London: Mannheim Centre for Criminology, London School of Economics. Available online at: www.solitaryconfinement.org/sourcebook