

*The City University of New York*

CUNY SCHOOL OF LAW

*Testimony Before the New York City Board of Correction Regarding Proposal for  
Enhanced Supervision Housing Units and Policies on Solitary Confinement*

**The Youth Justice Project of the International Women's Human Rights Law Clinic,  
City University of New York School of Law**

**December 19, 2014**

## **Introduction**

The Youth Justice Project of the International Women’s Human Rights Law Clinic works to remind government officials of their obligation to respect the human rights of young people in relation to the justice system. We are resubmitting a report (attached to this testimony) that we recently shared with the New York City Board of Correction (BOC) about international human rights standards regarding youth in detention, as well as mental health and solitary confinement. Our testimony today briefly reiterates some of these standards, and highlights standards related to due process and other rights in discipline. We believe ongoing use of solitary confinement, the proposed new punitive “Enhanced Supervision Housing Units,” and the new “Transitional Repair” solitary units for youth, contravene efforts to bring the city into compliance with international human rights standards. While our focus today is primarily on youth, we support calls by community advocates to reject solitary confinement and the ESHUs, and to expand human rights for all people in the city jails.

It is positive, particularly in the wake of the DOJ’s revelations of extreme abuse of young people held at Rikers, that the Commissioner and Mayor have voiced recognition of the dire need for change in the jails, but we believe the proposed BOC rule is inadequate and will decrease adherence to human rights standards. In general, international human rights standards call for governments to diminish the use of detention and increase services for youth. Where youth detention is unavoidable, governments should create conditions of detention that help youth flourish, by serving their unique developmental needs and respecting their inherent dignity as human beings. While sentencing policy is outside the BOC’s purview, it is relevant to note that New York’s policy of treating some youth as adults in administration of justice contravenes international human rights standards. The U.N. Human Rights Committee has specifically recommended that states like New York that automatically exclude 16 and 17 year-olds from juvenile court jurisdiction change their laws.<sup>1</sup> Additionally, juvenile justice policies and programs should apply, at minimum, up to the age of 18, and international human rights monitors encourage governments to apply them to youth aged 18 up to at least age 21.<sup>2</sup> To begin to meet human rights standards, the BOC should utilize the rulemaking powers it does have to ensure that conditions of youth confinement reflect appropriate juvenile detention practices.

## **Protections for Youth Deprived of Their Liberty**

### **a. Separation from Adults**

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<sup>1</sup> UN Human Rights Committee (HRC), *Concluding Observations on the Fourth Periodic Report of the United States of America*, ¶ 23 U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014) [hereinafter HRC, 2014 Concluding Observations United States].

<sup>2</sup> Committee on the Rights of the Child, General Comment No. 10, *Children’s rights in juvenile justice*, ¶ 38, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007) [hereinafter CRC General Comment No. 10]; Inter-Am. Comm’n on Human Rights, Rapporteurship on the Rights of the Child, *Juvenile Justice and Human Rights in the Americas*, ¶ 427, OEA/Ser.L/V/II Doc. 78 (July 13, 2011).

Under international human rights standards, detained youth should be held separately from adults.<sup>3</sup> As explained by the Inter-American Commission on Human Rights, imprisoning youth with adults threatens youths' physical integrity,<sup>4</sup> encourages recidivism,<sup>5</sup> and makes impossible the "aim of reform and social rehabilitation;" which is to be the essential purpose of deprivation of liberty under human rights standards.<sup>6</sup> UN human rights bodies have repeatedly criticized the U.S. for failing to ensure this basic human right.<sup>7</sup>

### **b. Physical space and Visiting**

The physical conditions under which youth are detained must ensure respect for their human rights and their inherent dignity as human beings, and account for their particular needs as youth.<sup>8</sup> Human rights standards call for governments to establish open facilities for detaining youth, meaning facilities "with no or minimal security measures."<sup>9</sup> Additionally, the physical space where youth are detained should facilitate individualized programming and education,<sup>10</sup> with architecture that is consistent with the socio-educational and rehabilitative aims of the juvenile justice system.<sup>11</sup> Youth should be permitted to communicate with and receive frequent visits from family and friends,<sup>12</sup> and visitation should be conducive to family bonding.<sup>13</sup>

### **c. Education and Programming**

The particular developmental, emotional and educational needs of youth call for distinct treatment and a supportive approach.<sup>14</sup> The "treatment model" advocated by Cardozo

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<sup>3</sup> International Covenant on Civil and Political Rights (ICCPR) art. 10(2)(b), 10(3) Dec. 16 1966, 999 U.N.T.S. 177; Convention on the Rights of the Child (CRC) art. 37(c), Nov. 20, 1989, 1577 U.N.T.S. 3, available at <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>; Organization of American States, American Convention on Human Rights, art. 5, 19, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, available at <http://www.refworld.org/docid/3ae6b36510.html>.

<sup>4</sup> Inter-Am. Comm'n on Human Rights, *supra* note 2, at ¶ 411.

<sup>5</sup> *Id.*, at ¶ 409.

<sup>6</sup> International Covenant on Civil and Political Rights, *supra* note 3, at art. 10(3); Inter-Am. Comm'n on Human Rights, *supra* note 2 at ¶ 08.

<sup>7</sup> UN Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations: United States of America*, U.N. Doc. CERD/C/USA/CO/7-9 (2014), ¶ 21; HRC, 2014 Concluding Observations United States, *supra* note 1 at ¶ 23; UN Committee Against Torture (CAT), *Concluding Observations on the Third to Fifth Periodic Reports of the United States of America*, ¶ 23 U.N. Doc. CAT/C/USA/CO/3-5 (Nov. 28, 2014) [hereinafter CAT, 2014 Concluding Observations United States].

<sup>8</sup> International Covenant on Civil and Political Rights, *supra* note 3, at art. 10(1); Convention on the Rights of the Child, *supra* note 3, at arts. 37(c), 40(1); United Nations Rules for Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, U.N. Doc. A/RES/45/113, R. 12-13 (Dec. 14, 1990), available at <http://www.un.org/documents/ga/res/45/a45r113.htm> [hereinafter UNRPJDL].

<sup>9</sup> UNRPJDL, *supra* note 8, at R. 30.

<sup>10</sup> Inter-Am. Comm'n on Human Rights, *supra* note 2, at ¶ 520.

<sup>11</sup> *Id.*, at Rec. 19(h).

<sup>12</sup> UNRPJDL, *supra* note 8, at Rs. 59, 60.

<sup>13</sup> Inter-Am. Comm'n on Human Rights, *supra* note 2, at ¶ 401.

<sup>14</sup> CRC General Comment No. 10, *supra* note 2 at ¶ 10; International Covenant on Civil and Political Rights, *supra* note 3, at art. 10(3).

Law School in its recent report<sup>15</sup> to the New York Board of Corrections on alternative treatment for youth at Rikers is in line with international human rights standards regarding programming for detained youth. Detained youth have a right to education that accounts for their individual needs and abilities. Their educational instruction must be well integrated with that of the educational system of the broader community,<sup>16</sup> reflect the same required hours and content,<sup>17</sup> should occur outside the institution wherever possible and be provided by qualified instructors. Detained youth with cognitive or learning disabilities have a right to special education.<sup>18</sup> In addition to education, human rights experts underscore that recreation is critical for youth deprived of liberty, particularly because they are still growing and maturing.<sup>19</sup>

#### **d. Discipline, Due Process, and Prohibition of Solitary**

International human rights standards call for governments to observe the principles of due process, non-discrimination, and possibility for judicial review in applying disciplinary measures with detained youth.<sup>20</sup> The UN Human Rights Committee and UN Committee Against Torture have called for review by an independent body in disciplinary decisions of people deprived of liberty.<sup>21</sup> Under human rights standards, youth should also be permitted to receive assistance of counsel for their defense.<sup>22</sup> Human rights experts note that employing broad, generic categories to describe offenses for which detained youth can be punished encourages abuse by prison officials and violation of due process rights.<sup>23</sup> Under international standards, staff at youth detention facilities should be trained in working with youth in conflict with the law so that disciplinary issues are more effectively prevented.<sup>24</sup> Any disciplinary measure should serve the youth's best interest and must be appropriate, necessary and proportional.<sup>25</sup>

International human rights law is absolutely clear that youth under eighteen must not be subject to solitary confinement, and UN human rights bodies have specifically criticized the United States for subjecting juveniles to solitary confinement.<sup>26</sup> Given that international human rights experts encourage expansion of juvenile justice practices to youth older than eighteen, this would suggest that the U.S. should take steps to prohibit solitary for those other young people as well. Other forbidden disciplinary measures for youth include deprivation of food, restricting or denying contact with family, and

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<sup>15</sup> CARDOZO LAW, RETHINKING RIKERS (2014), available at [https://cardozo.yu.edu/sites/default/files/YJCFeb2\\_1.pdf](https://cardozo.yu.edu/sites/default/files/YJCFeb2_1.pdf).

<sup>16</sup> UNRPJDL, *supra* note 8, at R. 38; CRC General Comment No. 10, *supra* note 2, at ¶ 89.

<sup>17</sup> Inter-Am. Comm'n on Human Rights, *supra* note 2, at Rec. 19(d).

<sup>18</sup> UNRPJDL, *supra* note 8, at R. 38; CRC General Comment No. 10, *supra* note 2, at ¶ 89.

<sup>19</sup> Inter-Am. Comm'n on Human Rights, *supra* note 2, at ¶ 511.

<sup>20</sup> Inter-Am. Comm'n on Human Rights, *supra* note 2, at ¶ 550.

<sup>21</sup> Belgium, ICCPR, A/59/40 vol. I (2004) 56 at paras. 72(20); Belgium, CAT, A/58/44 (2003) 49 at paras. 131 (h).

<sup>22</sup> Inter-Am. Comm'n on Human Rights, *supra* note 2, at ¶ 550.

<sup>23</sup> *Id.*, at ¶ 569.

<sup>24</sup> *Id.*, at ¶ 570.

<sup>25</sup> *Id.*, at ¶ 570.

<sup>26</sup> HRC, 2014 Concluding Observations United States, *supra* note 1 at ¶; CAT, 2014 Concluding Observations United States, *supra* note 7 at ¶ 20.

multiple sanctions for the same infraction.<sup>27</sup> Detained youth should also never be subjected to violence or other cruel, inhuman or degrading treatment; and to the extent that their rights are abused, the government must facilitate their access to justice.<sup>28</sup>

## **II. The Transitional Repair Units (TRUs) and Enhanced Supervision Housing Units (ESHUs) do not Meet Human Rights Standards for Youth**

The provision of the proposed BOC rule that would exclude 16 and 17 year-olds from solitary is a positive step towards meeting human rights standards. However, it is our understanding that the new Transitional Repair Units for youth that Mayor DeBlasio mentioned in the Wednesday press conference entail twenty hours of daily lock-down. We also understand there is no written directive for implementation that would describe the standards for placement in or removal from the units, for how long youth will be held in them, or for the services that youth in them might receive. To the extent that youth are being held separate from adults and receiving appropriate services, these elements are positive, but subjecting them to 20 hours of lock-down with no due process contravenes human rights standards for detaining youth. With an apparent 2-1 guard to youth ratio for the units, there seems to be no reason not to permit the regular fourteen hours out of cell time.

Language similar to the “most dangerous” category being used to justify the ESHUs is also being used for the TRUs, which may further belie public promises that youth will not be subjected to either solitary or ESH-style units. In fact, there is no language in the proposed rule that excludes youth and other vulnerable populations from the ESHUs. This is especially troubling because the ESHU proposal does not follow human rights standards for youth in terms of creating a rehabilitative environment that furthers their educational, physical and psychological development and wellbeing; or in terms of guaranteeing youth proper due process. Placement in the ESHU is not reviewed by a body independent of the DOC, and language for placement includes broad categories such as people who “otherwise present[] a significant threat to the safety and security of the facility if housed in general population housing.”

## **III. The ESHU Proposal Does Not Meet Human Rights Standards**

International human rights standards call for the treatment of detained people to “emphasize not their exclusion from the community, but their continuing part in it,” and minimize “differences between prison life and life at liberty.”<sup>29</sup> The Committee of

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<sup>27</sup> CRC General Comment No. 10, *supra* note 2, at ¶ 89.

<sup>28</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. 40/34, annex, 40 U.N. GAOR. Supp. (No. 53), U.N. Doc. A/40/53 (1985) [hereinafter Declaration of Basic Principles of Justice]; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005); see also AMERICAN CIVIL LIBERTIES UNION, SLAMMING THE COURTHOUSE DOOR 6, 12-13 (2010).

<sup>29</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, E.S.C. Res. 663C, Annex I, at R. 60, 61, U.N. ESCOR, 24th Sess., Supp. No. 1, U.N. Doc. A/CONF/611 (July 31, 1957), amended by

Ministers of the Council of Europe has recommended that even with regard to people deemed “dangerous,” governments should still “apply, as far as possible, ordinary prison regulations.”<sup>30</sup>

As part of this approach, human rights standards call for detained people of any security category to have access to an adequately stocked library that they are encouraged to make full use of.<sup>31</sup> Regarding discipline, due process and respect for human rights are key principles under international human rights standards,<sup>32</sup> and due process should include the right to review of disciplinary decisions by an independent body.<sup>33</sup> Addressing restrictive security measures, the European Court of Human Rights has found that “routine strip searches before and after each visit as part of a regime of strict control ... amount[s] to inhuman or degrading treatment.”<sup>34</sup> A handbook on human rights for prison staff that is utilized widely in management of places of detention throughout the globe recommends that physical restraints “not be used as a matter of course when a prisoner is being transferred from one location to another, either within a prison or outside the prison.”<sup>35</sup>

Because of its restrictive measures, lack of due process, and ultimately isolating approach, the proposal for ESHUs does not meet the spirit of these international human rights standards. The proposal has limited to no adequate due process mechanisms. It also calls for shackling of detainees during any out-of-cell movement, as well as restrictions on library access. Finally, the excessive hours of lock-down do not send the message that people detained in the ESHUs are still part of the wider community to which they will likely return after their time in detention.

#### **IV. Prohibitions on Solitary Confinement**

The approach by human rights monitoring bodies and the international community to solitary confinement as applied to anyone of any age reflects widespread understanding that the practice can cause mental and physical harm, and that it should therefore be dramatically diminished or abolished. In 1990 the United Nations (UN) General

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E.S.C. Res. 2076, at 35, U.N. ESCOR, 32nd Sess., Supp. No. 1, U.N. Doc. E/5988, at R. 10 (May 13, 1977), available at <http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf> [hereinafter Standard Minimum Rules].

<sup>30</sup> Council of Europe, *Recommendation No.R (82) 17 of the Committee of Ministers of the Council of Europe to Member States concerning the Custody and Treatment of Dangerous Prisoners* (Sept. 24, 1982).

<sup>31</sup> Standard Minimum Rules, *supra* note 29 at R. 40.

<sup>32</sup> Standard Minimum Rules, *supra* note 29 at Rs. 29, 30; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173 (9 Dec. 1988), Principle 30; IACtHR- Basic Principles and Best Practices , Principle XXII 2. Due Process of Law <http://www.cidh.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>

<sup>33</sup> UN Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of Belgium*, ¶¶ 72(20) U.N. Doc. A/59/40 vol. I (2004) 56; UN Committee Against Torture, *Concluding Observations on the First Periodic Report of Belgium*, ¶131 (h), U.N. Doc. A/58/44 (2003).

<sup>34</sup> Lorsé v Netherlands (no 52750/99) Eur. Ct. H. R. (4 Feb 2003) ¶¶ 70-4; Van der Ven v Netherlands (no 50901/99) Eur. Ct. H. R. (2003-II) ¶¶ 58-63.

<sup>35</sup> ANDREW COYLE, INTERNATIONAL CENTER FOR PRISON STUDIES, A HUMAN RIGHTS APPROACH TO PRISON MANAGEMENT, HANDBOOK FOR PRISON STAFF, 2ND ED. 65 (2009).

Assembly called on governments to phase out solitary confinement,<sup>36</sup> and the UN Special Rapporteur on Torture has recommended it be ultimately abolished.<sup>37</sup> Prolonged solitary confinement can violate international human rights law prohibitions on cruel, inhuman and degrading treatment, and in certain circumstances, may constitute torture.<sup>38</sup> The UN Committee Against Torture has specifically expressed concerns about use of solitary for indefinite periods of time in the U.S. and has emphasized that solitary confinement might only be used “as a measure of last resort, for as short a time as possible.”<sup>39</sup>

Because solitary confinement is widely recognized as a potential cause of physical and mental health problems,<sup>40</sup> its use has implications for detained peoples’ human right to health. International human rights standards prohibit disciplinary punishments that cause physical or mental harm to people deprived of liberty,<sup>41</sup> and call instead for governments to ensure that imprisoned people are provided treatment for any physical or mental illness that may hamper their rehabilitation.<sup>42</sup> Punishments that harm detainees’ mental health contravene the rehabilitative and reformatory aims that are to be the purpose of imprisonment under the ICCPR.<sup>43</sup> UN human rights bodies have emphasized repeatedly that the U.S. should prohibit the use of solitary confinement against individuals with intellectual or psychosocial disabilities, including serious mental illness.<sup>44</sup>

## Recommendations

The BOC should take steps to eliminate solitary confinement in the jails. The Department of Correction’s moves toward eliminating the use of solitary for youth should not be contingent on the BOC’s acceptance of the proposed harsh new ESHU regime. The abolition of solitary confinement for youth, and the end of the RHUs should instead be

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<sup>36</sup> United Nations Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, U.N. Doc. A/Res/45/111, at R. 7 (Dec. 14, 1990), available at <http://www.un.org/documents/ga/res/45/a45r111.htm>.

<sup>37</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 80, U.N. Doc. A/63/175 (Jul. 28, 2008) (by Manfred Nowak); Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 84, 85, 87, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez) available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

<sup>38</sup> UN Human Rights Committee, General Comment No. 20, *Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, ¶ 6 (Sep. 30, 1992); CAT Concluding Observations United States, *supra* note 7, at ¶ 36; HRC, 2014 Concluding Observations United States, *supra* note 1, at ¶¶ 20, 23; UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General, U.N. Doc. A/63/175, July 28, 2008, p. 18-21.

<sup>39</sup> CAT Concluding Observations United States, *supra* note 7 at ¶ 20.

<sup>40</sup> Council of Europe, *21<sup>st</sup> General Report of the European Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment (1 August 2010-31 July 2011)*, ¶ 53 (2011), available at <http://www.cpt.coe.int/en/annual/rep-21.pdf>, citing SHARON SHALEV, A SOURCEBOOK ON SOLITARY CONFINEMENT 9-23 (2008), available at [www.solitaryconfinement.org](http://www.solitaryconfinement.org).

<sup>41</sup> Standard Minimum Rules, *supra* note 25, at R. 32(2).

<sup>42</sup> *Id.*, at R. 62.

<sup>43</sup> International Covenant on Civil and Political Rights, *supra* note 2, at art. 10(3).

<sup>44</sup> CAT Concluding Observations United States, *supra* note 7 at ¶ 20; HRC, 2014 Concluding Observations United States, *supra* note 1 at ¶ 23.

written into the BOC's rules. Alternatives to solitary should be promoted and the directive for the second chance housing program, if it does in fact meet human rights standards, should also be written into the BOC's rules.

If the TRUs are to continue in use, they must be transformed to meet international human rights standards regarding youth in detention. This means they cannot follow a solitary regime. Instead youth should receive fourteen hours out of cell time, with adequate recreation, complete access to education and vocational training, access to medical and mental health treatment, and food adequate to meet their nutritional needs as youth. The BOC should clearly delineate these standards in its rule-making.

Any segregated housing or disciplinary measures should entail legitimate due process regulations, all written into the BOC's rules. Youth should receive a hearing before an independent body, representation at the hearing, means to appeal, and regular review of their status if held under disciplinary measures.

The BOC should **reject** the proposal for ESHUs and instead research practices that will actually change the culture of violence that the DOJ found was being encouraged at Rikers.

If the BOC fails to reject the EHSU proposal, it should dramatically modify it in its rulemaking. The proposal must explicitly exclude youth and other vulnerable populations, and it must create genuine due process mechanisms and eliminate retroactive application. There should be a cap on the number of units and on the amount of time people are held in them. The regimen must resemble as closely as possible, that of the rest of the jail, and people held in the ESHU must have full access to library services, medical and mental health treatment, education, and vocational training.

Correctional staff assigned to work with youth must be adequately trained to meet the particular emotional and therapeutic needs of youth, and this training must be written into the BOCs rules.

*The City University of New York*

CUNY SCHOOL OF LAW

***Report for the New York City Board of Corrections:*** International Human Rights  
Standards Regarding Youth in New York City Jails

**The Youth Justice Project of the International Women's Human Rights Law Clinic,  
City University of New York School of Law**

**November 18, 2014**

*International Women's Human Rights Law Clinic*

Widely recognized for its expertise and contributions to gender jurisprudence and human rights practice, the International Women's Human Rights Law Clinic at the City University of New York School of Law (IWHR) advocates before international and regional human rights bodies, national and local courts, and other legal institutions, to expand human rights protections internationally and domestically. Its youth justice project collaborates with legal, academic, and community-based organizations throughout the United States, encouraging compliance with human rights law and standards for youth, including by ensuring that youth in conflict with the law are treated as youth.

## I. Background and Introduction

This report is meant to help inform the New York City Board of Correction's (BOC) rulemaking, by providing information on key international human rights standards regarding detention of youth. Pursuant to its mandate, which includes establishing minimum standards regarding conditions of confinement for City correctional facilities, the BOC is conducting a new rulemaking process. This comes in the wake of a recent U.S. Department of Justice (DOJ) report revealing widespread and systematic abuse of adolescents in New York City jails—abuse that contravenes basic international human rights protections.

International human rights standards call for governments to diminish the use of detention, increase services for youth, and create conditions of detention that help youth flourish, by serving their unique developmental needs and respecting their inherent dignity as human beings. These standards are widely accepted internationally and represent the culmination of findings on best practices by human rights experts in international human rights treaty bodies, the United Nations (UN) General Assembly, the UN Human Rights Council; as well as by regional human rights monitoring and enforcement bodies, such as the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the European Court of Human Rights.

The United States government has signed and ratified major international human rights treaties that provide protections to people deprived of liberty, and has since restated its commitment to meeting its obligations under those instruments.<sup>45</sup> The minimum standards and guidance provided by the UN Standard Minimum Rules on the Treatment of Prisoners (SMR) are widely considered a primary universal guide on treatment of prisoners, and in some countries have even been enacted into law or constitute the foundation for national prison regulations.<sup>46</sup> In the U.S., the State Department conveyed the government's commitment to promote the principles and practices set forth in the SMR.<sup>47</sup> Additionally, in a move that reflects the link between treaty obligations and guidance produced by the UN General Assembly, The UN Human Rights Committee, the body that monitors government compliance with the International Convention on Civil and Political Rights, a treaty that the U.S. has ratified, called on the U.S. to uphold its obligations under the treaty, in part by adhering to guidance in the SMR.<sup>48</sup>

Our hope is that the New York City Board of Correction will strive to meet and exceed international human rights standards in creating regulations on the city's treatment of youth who are in conflict with the law.

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<sup>45</sup> U.S. Dep't State, Bureau of Democracy, Rights & Labor, *Fact Sheet: U.S. Human Rights Commitments and Pledges* (April 16, 2009) <http://www.state.gov/j/drl/rls/fs/2009/121764.htm>.

<sup>46</sup> SHARON SHALEV, A SOURCEBOOK ON SOLITARY CONFINEMENT 5 (2008), available at [www.solitaryconfinement.org](http://www.solitaryconfinement.org).

<sup>47</sup> Committee Against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure: 3rd to 5th periodic reports of States parties due in 2011: United States of America*, ¶ 208, U.N. Doc. CAT/C/USA/3-5 (2013).

<sup>48</sup> Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of the United States of America*, ¶ 20, 23, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).

While not the focus of this report, the clear link between justice administration and confinement make it worth pointing out that New York's policies regarding administration of justice contravene international human rights standards. Under these standards, youth should only be deprived of their liberty as a measure of last resort, and for the minimum period possible.<sup>49</sup> Furthermore, in the administration of justice, youth in conflict with the law, including sixteen and seventeen year olds, should not be in the adult criminal justice system.<sup>50</sup>

As the scope of the BOC's mandate does not include arrest and sentencing policy, this report focuses solely on international human rights standards specific to conditions of confinement for youth,<sup>51</sup> and does not address these other critical components. The section following this introduction describes international human rights standards regarding the segregation of youth and adult populations, including standards applicable to youth 18 up to at least 21 years of age. The third section contains international human rights standards for conditions of confinement for youth, including specific information on physical facilities, visiting, hygiene, and nutrition. Section four outlines those standards applicable to programming for detained youth, specifically regarding education, job training and recreation. Standards on medical and mental health care for detained youth are in the fifth section. Section six discusses limitations on the use of force. Section seven describes international human rights standards related to discipline of youth deprived of their liberty. Within that section is a discussion on solitary confinement that covers the prohibition of solitary confinement for youth, general restrictions on solitary confinement, and protections related to mental health and solitary confinement. The final section lists some recommendations.

## **II. Segregating Youth and Adult Populations**

Imprisoning or jailing youth in adult facilities violates human rights treaty provisions that specifically require the separation of juveniles from adult detainees, both before

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<sup>49</sup> Convention on the Rights of the Child, art. 37(b), Nov. 20, 1989, 1577 U.N.T.S. 3, available at <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>; United Nations Rules for Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, U.N. Doc. A/RES/45/113, at R. 2 (Dec. 14, 1990), available at <http://www.un.org/documents/ga/res/45/a45r113.htm> [hereinafter UNRPJDL]; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), G.A. Res. 40/33, U.N. Doc. A/RES/40/33, at R. 13, 19 (Nov. 29, 1985), available at <http://www.un.org/documents/ga/res/40/a40r033.htm> [hereinafter Beijing Rules].

<sup>50</sup> International Covenant on Civil and Political Rights, art. 10(2)(b), 999 U.N.T.S. 177, Mar. 23, 1976; Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of the United States of America*, ¶ 20, 23, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014); Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, ¶ 21, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014).

<sup>51</sup> While international human rights standards make clear that youth under eighteen years of age must be treated as youth in criminal processing and in detention, international human rights bodies also call for governments to apply juvenile justice rules and regulations to people aged 18 up to at least 21. See infra, § II.

adjudication and following sentencing.<sup>52</sup> Just this year, both the UN Human Rights Committee<sup>53</sup> and the UN Committee on the Elimination of Racial Discrimination<sup>54</sup> called on the U.S. to ensure that youth are separated from adult detainees during pre-trial detention and after sentencing. In 2006, the UN Committee Against Torture also criticized the practice in some parts of the U.S. of incarcerating youth in adult jails and prisons.<sup>55</sup> As explained by the Inter-American Commission on Human Rights (IACHR), imprisoning youth with adults denies them the special protection as minors that they are afforded under human rights law.<sup>56</sup> Further, it threatens youths' physical integrity, and exposes them "to conditions highly prejudicial to their development and makes them vulnerable to others who, as adults, could prey on them."<sup>57</sup> Because of the various deprivations that accompany the "total institution" of incarceration, governments have a special obligation to protect people deprived of liberty from circumstances that could detrimentally impact their rights to life, health, and personal integrity.<sup>58</sup> According to the IACHR, failure to separate youth and adults also makes impossible the "aim of reform and social rehabilitation;" which is to be the essential purpose of deprivation of liberty,<sup>59</sup> and places youth in an environment that encourages recidivism.<sup>60</sup>

The definition of "youth" in this context is important to consider. Human rights standards make clear that juvenile justice rules must be applied to anyone under 18. However, international and regional human rights standards recognize that it may be appropriate to also provide protection to youth 18 and older rather than automatically pushing them into the adult system when they turn 18. International and regional human rights bodies encourage governments to apply juvenile justice rules and regulations to persons aged 18 up to at least 21.<sup>61</sup> This includes youth who attain the age of majority while serving a custodial sentence.<sup>62</sup> The IACHR and UN Committee on the Rights of the Child suggest applying a "best interests of the child" standard in deciding where a youth in custody who turns 18 will serve any remaining period of confinement.<sup>63</sup> This

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<sup>52</sup> International Covenant on Civil and Political Rights, *supra* note 6, at art. 10(2)(b), 10(3); Convention on the Rights of the Child, *supra* note 5, at art. 37(c); Organization of American States, American Convention on Human Rights, art. 5, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, available at <http://www.refworld.org/docid/3ae6b36510.html>.

<sup>53</sup> Human Rights Committee, *supra* note 4, at ¶ 20, 23.

<sup>54</sup> Committee on the Elimination of Racial Discrimination, *supra* note 6, at ¶ 21.

<sup>55</sup> Committee Against Torture, *Conclusions and Recommendations of the Committee Against Torture: United States of America*, ¶ 34, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006).

<sup>56</sup> Inter-Am. Comm'n on Human Rights, Rapporteurship on the Rights of the Child, *Juvenile Justice and Human Rights in the Americas*, ¶ 408, OEA/Ser.L/V/II Doc. 78 (July 13, 2011).

<sup>57</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶411, quoting "Juvenile Re-education Institute" v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., Series C No. 112, ¶ 175 (September 2, 2004).

<sup>58</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶442.

<sup>59</sup> International Covenant on Civil and Political Rights, *supra* note 6, at art. 10(3); Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 408

<sup>60</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 409.

<sup>61</sup> Committee on the Rights of the Child, General Comment No. 10, *Children's rights in juvenile justice*, ¶ 38, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007); Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 427.

<sup>62</sup> *Id.*, at para. 86.

<sup>63</sup> Committee on the Rights of the Child, *supra* note 17, at ¶ 86; Inter-Am. Comm'n on Human Rights,

means accounting for the best interests of the 18 year-old youth, as well as those of the younger children in the facility. For children who attain the age of majority while serving a custodial sentence the IACtHR recommends that states undertake a hearing to determine if the person in question should remain incarcerated or be released, or whether the remaining portion of the custodial sentence can be commuted and replaced with a non-custodial measure.<sup>64</sup>

### **III. Conditions of Confinement Regarding Physical Facilities, Visiting, Hygiene, & Nutrition**

Under international human rights standards regarding the protection of juveniles deprived of liberty, the conditions under which youth are detained must ensure respect for their human rights and for their inherent dignity as human beings, and account for their particular needs as youth.<sup>65</sup> Human rights experts recognize that the nature of imprisonment places governments in the position of guarantor of life and physical integrity of all people deprived of liberty, thus obligating governments to protect detainees from circumstances harmful to their rights to life, health or physical integrity.<sup>66</sup> These rights should in fact be afforded to any person deprived of liberty,<sup>67</sup> however, youth in particular are entitled to special protections by virtue of their age and special developmental needs.<sup>68</sup>

One of governments' primary obligations regarding detained youth is to provide physical facilities that ensure their health and dignity.<sup>69</sup> Human rights standards call for governments to establish open facilities for detaining youth, meaning facilities "with no or minimal security measures."<sup>70</sup> Sleeping accommodations provided to youth should not entail large, barracks-style dormitories, but instead should "normally consist of small group dormitories or individual bedrooms," and each individual youth should be provided with adequate, clean bedding.<sup>71</sup> Under international human rights standards, youth should have access to the facilities and resources to maintain proper hygiene for general health and cleanliness. They should have easy access to sanitary and private hygienic facilities and be allowed a regular bath or shower, at a comfortable temperature.<sup>72</sup> Facilities must

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<sup>64</sup> *supra* note 12, at ¶ 427

<sup>65</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 433.

<sup>66</sup> International Covenant on Civil and Political Rights, *supra* note 6, at art. 10(1); Convention on the Rights of the Child, *supra* note 5, at 37(c), 40(1); UNRPJDL, *supra* note 5, at R. 12, 13.

<sup>67</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 442.

<sup>68</sup> International Covenant on Civil and Political Rights, *supra* note 6, at art. 10(1); Organization of American States, *supra* note 8, at art. 5(2).

<sup>69</sup> International Covenant on Civil and Political Rights, *supra* note 6, at art. 10(3); Convention on the Rights of the Child, *supra* note 5, at 37(c), Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 3, 519.

<sup>70</sup> UNRPJDL, *supra* note 5, at R. 12, 13, 31, & 87(f); Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 520.

<sup>71</sup> UNRPJDL, *supra* note 5, at R. 30.

<sup>72</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 522; Council of Europe, European Rules for juvenile offenders subject to sanctions or measures, CM/Rec(2008)11, R. 65.2, 65.3 (Nov. 5, 2008).

include adequate floor space, lighting, clean drinking water, heating, and ventilation, and should permit youth to receive daily exposure to natural light.<sup>73</sup>

Additionally under human rights standards, the physical space where youth are detained should facilitate individualized programming and education,<sup>74</sup> with architecture that is consistent with the socio-educational and rehabilitative aims of the juvenile justice system.<sup>75</sup> Youth should have sufficient space and equipment for study and for meaningful educational and recreational activities and programs, including accessible open-air recreation space.<sup>76</sup> Additionally, facilities should be adapted to meet the needs of youth with disabilities who are deprived of liberty.<sup>77</sup>

Under international human rights standards, youth should be permitted to communicate with and receive frequent visits from family and friends.<sup>78</sup> As human rights experts point out, the more community and familial ties youth maintain in detention, the more effortless re-integration will be when they are released from custody.<sup>79</sup> International human rights standards provide that visitation should not be restricted to immediate family members. Facilities should encourage visits from extended family, friends, and various members of the community. To accommodate youths' rights, detention facilities must be both geographically as close to their families and communities as possible and have visiting facilities that allow for privacy.<sup>80</sup> This means that if governments detain youth, they should do so in small, decentralized centers near the youth's homes.<sup>81</sup> It is governments' obligation to ensure family visitation is conducive to family bonding.<sup>82</sup> International human rights standards prohibit restriction or denial of contact with family members for detained youth.<sup>83</sup>

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<sup>73</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, E.S.C. Res. 663C, Annex I, at 11, U.N. ESCOR, 24th Sess., Supp. No. 1, U.N. Doc. A/CONF/611 (July 31, 1957), amended by E.S.C. Res. 2076, at 35, U.N. ESCOR, 32nd Sess., Supp. No. 1, U.N. Doc. E/5988, at R. 10 (May 13, 1977), available at <http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf> [hereinafter Standard Minimum Rules]; see also Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 522; Inter-Am. Comm'n on Human Rights, Res. 1/08, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Approved 131st regular period of sessions, Principle XII (Mar. 13, 2008), available at <http://www.cidh.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm> [hereinafter Inter-Am. Comm'n on Human Rights, *Principles and Best Practices*].

<sup>74</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 520.

<sup>75</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at Recommendation 19(h).

<sup>76</sup> UNRPJDL, *supra* note 5, at R. 12, 13, 47; see also Committee on the Rights of the Child, *supra* note 17, at ¶ 89; Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 511, 522.

<sup>77</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 534.

<sup>78</sup> UNRPJDL, *supra* note 5, at R. 59, 60.

<sup>79</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 390, 403.

<sup>80</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 393; UNRPJDL *supra* note 1, at R. 30, 60.

<sup>81</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 393.

<sup>82</sup> *Id.*, at ¶ 401.

<sup>83</sup> UNRPJDL, *supra* note 5, at R. 67.

Under international human rights standards, overcrowding in juvenile facilities must be prohibited; and adequate physical space should be provided.<sup>84</sup> Human rights experts note that overcrowding is one of the factors that increase incidents of violence in prisons, leading to long-term, irreversible psychological and physical harm,<sup>85</sup> and thus violating governments' obligations to protect youths' wellbeing and physical integrity. International human rights experts additionally find that in overcrowded facilities, staff report they feel the need to resort to more repressive measures in order to maintain control.<sup>86</sup>

International human rights standards require *every* prisoner to be provided with "food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served."<sup>87</sup> Yet, the dietary requirements of adults and youth are distinct. The food prepared for youth should be of nutritious quality and of adequate quantity to satisfy their specific dietary needs.<sup>88</sup> Youth should receive at least three meals a day and at reasonable intervals,<sup>89</sup> and the reduction of diet should be prohibited for any purpose, including as a disciplinary measure.<sup>90</sup> Human rights experts recognize that youths' right to food that is "adequate for health and sufficient for strength" is essential because they are still growing.<sup>91</sup>

International human rights experts recognize that in some instances, governments may need to set medium- and long-term goals in order to ensure that conditions of confinement meet human rights standards. However, governments must take immediate actions, particularly with regard to detained youth, "that guarantee [their] physical, mental and moral integrity...as well as their right to life and their right to enjoy the minimum conditions for a decent life."<sup>92</sup>

#### **IV. Programming— Education, Job Training, & Recreation**

Youth in conflict with the law must be treated differently from adults and with their best interests in mind, based on a recognition that the particular developmental, emotional and educational needs of youth, among other differences, call for distinct treatment and a supportive approach.<sup>93</sup> The "treatment model" advocated by Cardozo Law in its recent

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<sup>84</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 522; *see also* Inter-Am. Comm'n on Human Rights, *Principles and Best Practices*, *supra* note 25, at Principle XVII.

<sup>85</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 535.

<sup>86</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 532.

<sup>87</sup> Standard Minimum Rules, *supra* note 29, at R. 20.

<sup>88</sup> UNRPJDL, *supra* note 5, at R. 37

<sup>89</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 473; Council of Europe, *supra* note 24, at R. 68.1, 68.2.

<sup>90</sup> UNRPJDL, *supra* note 5, at R. 67.

<sup>91</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 469.

<sup>92</sup> Matter of Children Deprived of Liberty in the Complexo Do TaTuapé of FEBEM, Provisional Measures Regarding Brazil, Order, Inter.-Am. Ct. H.R. Point 10, (Jul. 3, 2007)

<sup>93</sup> Committee on the Rights of the Child, *supra* note 13, at ¶ 10; International Covenant on Civil and Political Rights, *supra* note 6, at art. 10(3).

report<sup>94</sup> to the New York Board of Corrections on alternative treatment for youth at Rikers is in line with international human rights standards regarding programming for detained youth.

## **Education and Job Training**

Human rights experts recognize that education for youth deprived of liberty is critical and that deprivation of adequate education “limits [youths’] chances of actually rejoining society and carrying forward their life plans,” with the impact being particularly felt by youth from marginalized sectors of society.<sup>95</sup> Thus, governments must not abandon the formal education of detained youth.<sup>96</sup>

Under international human rights standards, detention facilities must make provisions for the further education of all detained people, with the curriculum fully integrated with and recognized by the educational system outside of prison.<sup>97</sup> Detained youth of compulsory school age have a right to education that accounts for their individual needs and abilities, and their educational instruction must be well integrated with that of the educational system of the broader community.<sup>98</sup> Requirements for content and for hours of attendance must match those required for youth who are not deprived of liberty.<sup>99</sup> Instruction should occur outside the institution wherever possible and should always be provided by qualified instructors. Detained youth with cognitive or learning disabilities have a right to special education instruction.<sup>100</sup> The education youth receive while incarcerated must prepare them to return to society,<sup>101</sup> and diplomas and educational certificates should not in any way indicate that they were incarcerated.<sup>102</sup> International human rights standards also provide for youth above compulsory school age to be permitted and encouraged to continue their education, with every effort made to ensure they receive access to appropriate educational instruction.<sup>103</sup> The aim should be for youth to be able to continue their education with ease upon release from detention.<sup>104</sup>

International human rights standards call for all detained people, and especially youth, to receive vocational training in useful trades.<sup>105</sup> With the protections of all national and international child labor standards in mind, detained youth should have the specific right to pursue vocational training in the type of work they wish to perform and in occupations

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<sup>94</sup> CARDOZO LAW, RETHINKING RIKERS (2014), available at [https://cardozo.yu.edu/sites/default/files/YJCFeb2\\_1.pdf](https://cardozo.yu.edu/sites/default/files/YJCFeb2_1.pdf).

<sup>95</sup> Inter-Am. Comm’n on Human Rights, *supra* note 12, at ¶ 495.

<sup>96</sup> Inter-Am. Comm’n on Human Rights, *supra* note 12, at ¶ 510.

<sup>97</sup> Standard Minimum Rules, *supra* note 29, at R. 77(1), (2).

<sup>98</sup> UNRPJDL, *supra* note 5, at R. 38; Committee on the Rights of the Child, *supra* note 13, at ¶ 89.

<sup>99</sup> Inter-Am. Comm’n on Human Rights, *supra* note 12, at Recommendation 19(d).

<sup>100</sup> UNRPJDL, *supra* note 5, at R. 38; Committee on the Rights of the Child, *supra* note 13, at ¶ 89.

<sup>101</sup> Committee on the Rights of the Child, *supra* note 13, at ¶ 89; Beijing Rules, *supra* note 1, at R. 26.6; UNRPJDL, *supra* note 5, at R. 38.

<sup>102</sup> UNRPJDL, *supra* note 5, at R. 40.

<sup>103</sup> *Id.*, at R. 39.

<sup>104</sup> *Id.*, at R. 38.

<sup>105</sup> Standard Minimum Rules, *supra* note 29, at R. 71(5).

likely preparing them for future employment.<sup>106</sup> Where possible, youth should have the right to perform work for equitable remuneration as a complement to vocational training, within the local community, in a way that permits them to save money for their use upon release, and without subordinating their training to the pursuit of profit by the detention facility or a third party.<sup>107</sup> In this effort to prepare for future conditions of normal occupational life, organization and methods of work offered to the youth should mimic as best as possible those of the work in the community.<sup>108</sup>

Detained youth should be in facilities with an adequately stocked library carrying instructional, recreational, and periodical materials that they are encouraged and able to fully use.<sup>109</sup> Both education and job training must take cultural diversity into account and should be applicable to, and recognized outside the institutional setting.<sup>110</sup> The aim of education, job training and programming for youth should be to develop skills, learning and other capacities; as well as to promote human dignity, self-esteem and self-confidence, accordingly empowering youth and enabling them to develop their personalities, talents and abilities so they may live full and satisfying lives within society.<sup>111</sup>

## Recreation

Particularly because they are still growing and maturing, youth deprived of their liberty must have access to recreation programs.<sup>112</sup> Accordingly, international human rights standards call for detained youth to be guaranteed meaningful activities and programs that promote and sustain their health and self-respect.<sup>113</sup> Facilities detaining youth should be designed to allow them physical exercise and leisure-time activities.<sup>114</sup> Daily, as the weather permits, and with adequate space, installations, and equipment, youth should be given a suitable amount of time in the open air for exercising and participating in recreational and physical training.<sup>115</sup> Youth should also have daily access to other leisure activities, including for arts and crafts skill development should the youth wish to participate in them.<sup>116</sup> Remedial physical education and therapy should also be offered, under medical supervision, for those who need it.<sup>117</sup>

Recreation should be designed to ensure contact between youth and their families and communities.<sup>118</sup> That is, detention facilities should facilitate opportunities for imprisoned

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<sup>106</sup> UNRPJDL, *supra* note 5, at R. 42-45.

<sup>107</sup> *Id.*, at R. 45, 46.

<sup>108</sup> *Id.*, at R. 45.

<sup>109</sup> *Id.* at R. 41.

<sup>110</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 493.

<sup>111</sup> Committee on the Rights of the Child, *supra* note 13, at ¶ 2; See also Convention on the Rights of the Child, *supra* note 5, at art. 29.1(a).

<sup>112</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 511.

<sup>113</sup> UNRPJDL, *supra* note 5, at R. 12.

<sup>114</sup> UNRPJDL, *supra* note 5, at R. 32; Committee on the Rights of the Child, *supra* note 13, at ¶ 89.

<sup>115</sup> UNRPJDL, *supra* note 5, at R. 47.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 511.

youth to be able to socialize, play, relax, and participate in health and education programs, arranged with the community.<sup>119</sup> These activities should not be limited to the confines of the secure facilities.<sup>120</sup> Particularly as a youth nears release, participation in these activities should increase as a means of facilitating re-assimilation into the family and the community.<sup>121</sup>

## V. Medical and Mental Health Treatment

### Medical Care

In accordance with international human rights standards, all detained persons have the right to the highest possible level of physical and social wellbeing,<sup>122</sup> and the government's obligation to respect their physical integrity and inherent dignity "includes guaranteeing access to proper medical care."<sup>123</sup> Youth must receive "regular medical supervision that would ensure the ... normal growth and development so essential to their future."<sup>124</sup> According to international human rights experts, depriving detained people access to proper medical care can become a form of unlawful cruel or inhuman treatment in situations where their health or wellbeing deteriorates.<sup>125</sup>

All youth have a recognized human right to the "enjoyment of the highest attainable standards of health and to facilities for the treatment of illness and rehabilitation of health."<sup>126</sup> All detained youth have "the right to special protection, care and aid,"<sup>127</sup> including for those youth with disabilities, those living with HIV/AIDS, and for young women or girls "during pregnancy and the nursing period."<sup>128</sup> International human rights standards regarding detained youth call for governments to provide adequate preventive and remedial medical care, including dental care, ophthalmological care, and medically indicated pharmaceutical products and special diets.<sup>129</sup> All facilities where youth are detained must have "immediate access to adequate medical facilities and sufficient equipment," as well as "staff trained in preventive health care and the handling of

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 474.

<sup>123</sup> Human Rights Committee, *Concluding Observations, Benin*, U.N. Doc. A/60/40 vol. I (2004) at para. 83(17); American Declaration of the Rights and Duties of Man, Adopted by the Ninth International Conference of American States, 1948, art. XI, O.A.S. Res. XXX, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17; Case of Pedro Miguel Vera Vera (Ecuador)(Application), Inter-Am. Ct. H.R., Case 11.535, ¶ 42 (Feb. 24, 2010).

<sup>124</sup> Juvenile Re-education Institute v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., Series C No. 112, ¶ 173 (September 2, 2004).

<sup>125</sup> Case of Pedro Miguel Vera Vera, Inter-Am. Ct. H.R., ¶ 42 (Feb. 24, 2010); Lori Berenson-Mejia v. Peru, Inter-Am. Ct. H.R., (Ser. C) No. 119, ¶ 100 (Nov. 25, 2004) (Petitioner was subjected to CIDT where she was detained and medical care provided to her was deficient, she had health and vision problems.).

<sup>126</sup> Convention on the Rights of the Child, *supra* note 5, at art. 24(1).

<sup>127</sup> American Declaration of the Rights and Duties of Man, Adopted by the Ninth International Conference of American States, 1948, art. VII, O.A.S. Res. XXX, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17; Inter-Am. Comm'n on Human Rights, *Principles and Best Practices*, *supra* note 25, at Principle X.

<sup>128</sup> Inter-Am. Comm'n on Human Rights, *Principles and Best Practices*, *supra* note 29, at Principle X.

<sup>129</sup> UNRPJDL, *supra* note 5, at R. 28, 49.

medical emergencies.”<sup>130</sup> If youth are ill, complain of illness or otherwise demonstrate symptoms of illness, they should receive prompt medical examination by a qualified doctor.<sup>131</sup> Medical staff should visit those detained people who are sick every day, as well as those who complain of illness, or those whom others signal may be sick.<sup>132</sup> All prison or jail staff must take action to assure medical attention whenever required for detained people.<sup>133</sup>

## Mental Health Care

Governments’ obligation to prohibit cruel or inhuman treatment under international human rights law includes the obligation to assure conditions of confinement do not result in deterioration of detained persons’ mental health.<sup>134</sup> The enjoyment of the highest possible level of mental and social wellbeing for persons deprived of liberty includes adequate psychiatric care and access to free and appropriate treatment and medication.<sup>135</sup> Regarding youth deprived of liberty, governments must ensure that they have access to “mental health, treatment for drug dependent children, special programs to prevent suicide, and others.”<sup>136</sup> According to international human rights standards, “[e]very juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.”<sup>137</sup> Thereafter, detention facilities must assure all youth receive adequate mental health care.<sup>138</sup>

On the right to accessible mental health services, international human rights standards specifically call for the availability of at least one qualified medical officer with some knowledge of psychiatry at every detention facility. Medical services should include adequate services for psychiatric diagnoses and treatment.<sup>139</sup> Medical staff must report to a director if detained person’s mental health has or will be harmed by continued imprisonment or by a particular condition of imprisonment.<sup>140</sup> Under international human rights standards, people determined to suffer from psycho-social disabilities are not to be held in detention facilities, and instead must be moved to mental health care facilities where they can receive necessary observation and treatment.<sup>141</sup> Youth should have access

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<sup>130</sup> *Id.* at R. 51.

<sup>131</sup> *Id.*

<sup>132</sup> Standard Minimum Rules, *supra* note 29, at R. 25(1).

<sup>133</sup> UNRPJDL, *supra* note 5, at R. 87(d).

<sup>134</sup> Case of Pedro Miguel Vera Vera, Inter-Am. Ct. H.R., ¶ 42 (Feb. 24, 2010); Lori Berenson-Mejia v. Peru, Inter-Am. Ct. H.R., (Ser. C) No. 119, ¶ 100 (Nov. 25, 2004).

<sup>135</sup> Inter-Am. Comm’n on Human Rights, *Principles and Best Practices*, *supra* note 25, at Principle X; see also UNRPJDL, *supra* note 5, at R. 51.

<sup>136</sup> Inter-Am. Comm’n on Human Rights, *supra* note 12, at ¶ 480; see also CRC, *Concluding Observations*, Albania, U.N. Doc. CRC/C/ALB/CO/2-4 (2012) at para. 84(b) and (e).

<sup>137</sup> UNRPJDL, *supra* note 5, at R. 50; Inter-Am. Comm’n on Human Rights, *supra* note 12, at ¶ 543.

<sup>138</sup> UNRPJDL, *supra* note 5, at R. 49; Inter-Am. Comm’n on Human Rights, *supra* note 12, at ¶ 475.

<sup>139</sup> Standard Minimum Rules, *supra* note 29, at R. 22(1).

<sup>140</sup> *Id.*, at R. 25(2); UNRPJDL, *supra* note 5, at R. 52.

<sup>141</sup> Standard Minimum Rules, *supra* note 29, at R. 82; Committee on the Rights of People with Disabilities, *Concluding Observations*, Australia, U.N. Doc. CRPD/C/AUS/CO/1 (2013), at ¶ 31, 32(a); UNRPJDL, *supra* note 5, at R. 53.

to the broad range of individualized services necessary for their care, such as trauma services, including for recovery from the trauma of arrest.<sup>142</sup> Furthermore, all facility staff “should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required.”<sup>143</sup>

## VI. Limitations on Use of Force

International law calls for every youth deprived of liberty to be treated with humanity, “and in a manner that takes into account the distinct needs of a person of his or her age.”<sup>144</sup> Torture or other cruel, inhuman or degrading treatment or punishment of youth is prohibited.<sup>145</sup> When dealing with youth, governments must apply the highest standard when determining if a treatment constitutes cruel, inhuman or degrading treatment or punishment.<sup>146</sup> This standard informs both the use of force discussed in this section and the use of discipline discussed below.

Only in the face of imminent threat of injury to the youth or others, and after exhausting all other means of control, can restraint or force be used on a youth.<sup>147</sup> Such restraint should not be used to cause humiliation or to degrade, and should be restricted to the shortest time possible.<sup>148</sup> Given that scientists warn against the use of certain chemical agents against detained youth because such use has led to serious adverse health effects or death,<sup>149</sup> the use of such chemical sprays falls within the set of tactics that compromise the health of youth and should thus be prohibited.

Under international human rights standards, detained youth should never be subjected to violence or other cruel, inhuman or degrading treatment; and to extent that their rights are abused the government must facilitate access to justice.<sup>150</sup> To ensure meaningful access to justice, the government must provide detained youth with access to judicial and administrative mechanisms that are fair, expeditious, affordable, and accessible.<sup>151</sup> The government should also facilitate judicial and administrative processes by taking measures to protect victim safety and privacy, and by providing youth with legal

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<sup>142</sup> Beijing Rules, *supra* note 5, at R. 13.5, commentary to R. 13.

<sup>143</sup> UNRPJDL, *supra* note 5, at R. 87(d).

<sup>144</sup> Convention on the Rights of the Child, *supra* note 5, at art. 37(c).

<sup>145</sup> Convention on the Rights of the Child, *supra* note 5, at art. 37(a).

<sup>146</sup> Inter-Am. Comm’n on Human Rights, *supra* note 12, at ¶ 457.

<sup>147</sup> Committee on the Rights of the Child, *supra* note 13, at ¶ 89; UNRPJDL, *supra* note 5, at R. 64.

<sup>148</sup> UNRPJDL, *supra* note 5, at R. 64.

<sup>149</sup> Douglas E. Abrams, *Lessons from Juvenile Justice History in the United States*, 2004 J. INST. JUST. INT'L STUD. 7, 19 (2004)

<sup>150</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. 40/34, annex, 40 U.N. GAOR. Supp. (No. 53), U.N. Doc. A/40/53 (1985) [hereinafter Declaration of Basic Principles of Justice]; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005); see also AMERICAN CIVIL LIBERTIES UNION, SLAMMING THE COURTHOUSE DOOR 6, 12-13 (2010).

<sup>151</sup> Declaration of Basic Principles of Justice, *supra* note 101, at R. 4, 5.

assistance.<sup>152</sup> Youth, and where appropriate, family members, should receive restitution and compensation.<sup>153</sup>

## VII. International Standards for Discipline

### Limits to Discipline for Youth

The interest of safety and an ordered community life should be the driving forces behind procedures and measures taken to discipline incarcerated youth.<sup>154</sup> A sense of justice, the inherent dignity of youth, and their basic rights can never be lost to discipline.<sup>155</sup> Punishment that inflicts physical force and is used with the intention of causing some degree of pain or discomfort, including hitting, kicking, and forcibly placing children in uncomfortable positions is necessarily degrading, and thus strictly forbidden.<sup>156</sup> Solitary confinement is also prohibited and discussed in more detail below. Other forbidden disciplinary measures include deprivation of food, restricting or denying contact with family, the use of labor as punishment rather than an educational tool, and multiple sanctions for the same infraction.<sup>157</sup>

International human rights standards call for governments to observe the principles of due process, non-discrimination, and possibility for judicial review in applying disciplinary measures with detained youth.<sup>158</sup> Human rights experts note that employing broad, generic categories to describe offenses for which detained youth can be punished encourages abuse by prison officials and violation of due process rights, as these categories leave youth unclear as to what they can and cannot be sanctioned for.<sup>159</sup> Under international standards, staff at youth detention facilities should be trained in working with youth in conflict with the law so that disciplinary issues are more effectively prevented.<sup>160</sup> Any disciplinary measure should serve the youth's best interest and must be appropriate, necessary and proportional.<sup>161</sup> Further, youth should be permitted to receive assistance of an attorney or family members for their defense.<sup>162</sup>

### Solitary Confinement and Youth

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<sup>152</sup> *Id.*, at R. 6.

<sup>153</sup> *Id.*, at R. 12-17.

<sup>154</sup> UNRPJDL, *supra* note 5, at R. 66.

<sup>155</sup> *Id.*

<sup>156</sup> Committee on the Rights of the Child, General Comment No. 8, *Corporal Punishment and Other Degrading Forms of Punishment*, ¶ 11, 12, U.N. Doc. CRC/C/GC/8 (Aug. 21, 2006); See also Committee on the Rights of the Child, *supra* note 13, at ¶ 89.

<sup>157</sup> Committee on the Rights of the Child, *supra* note 13, at ¶ 89; UNRPJDL, *supra* note 5, at R. 67.

<sup>158</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 550.

<sup>159</sup> *Id.*, at ¶ 569.

<sup>160</sup> *Id.*, at ¶ 570.

<sup>161</sup> *Id.*, at ¶ 570.

<sup>162</sup> *Id.*, at ¶ 550.

Placing people under eighteen in solitary confinement explicitly violates international human rights protections for youth.<sup>163</sup> The UN Special Rapporteur on Torture condemns the use of solitary on people under eighteen due to its harmful physical and psychological effects and the particular vulnerability of youth.<sup>164</sup> The UN Human Rights Committee recently called on the U.S. to abolish the use of solitary confinement for those under the age of 18 and for people with mental illness.<sup>165</sup> Human rights experts recognize that isolation has a range of harmful effects, including moral suffering and emotional trauma, and it has a particularly devastating impact on youth.<sup>166</sup> The trauma youth suffer due to solitary confinement increases their vulnerability, as well as their risk of being abused or mistreated while detained.<sup>167</sup> Not only is solitary confinement of youth considered cruel, inhuman or degrading treatment in violation of international law, but it also goes against the objectives of institutional care.<sup>168</sup>

Solitary confinement should not be used as a tool for “managing” or “protecting” incarcerated youth as it has the same detrimental effects as punitive segregation. If incarcerated youth need to be separated from the adult population for their safety, a better approach would be to move them out of adult facilities. Similarly, solitary confinement should never be used as a method of monitoring a child with suicidal thoughts. In addition to the prohibition on solitary confinement for youth, international standards recognize that solitary confinement is not appropriate for individuals with mental illness.<sup>169</sup> Such individuals should not be held in prison,<sup>170</sup> and proper psychological treatment must be utilized instead.<sup>171</sup>

## General Restrictions on Solitary Confinement

The approach by human rights monitoring bodies and the international community to solitary confinement generally reflects an understanding that the practice can cause mental and physical harm to prisoners, and that it should therefore be dramatically diminished or abolished. In 1990 the United Nations (UN) General Assembly called on

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<sup>163</sup> Convention on the Rights of the Child, *supra* note 5, at art. 37; Committee on the Rights of the Child, *supra* note 13, at ¶ 89.

<sup>164</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 78-85, Annex (Istanbul Statement on the Use and Effects of Solitary Confinement), U.N. Doc A/63/175 (July 28, 2008) (by Manfred Nowak) available at <http://www.unhcr.org/refworld/pfdid/48db99e82.pdf>; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez) available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

<sup>165</sup> Human Rights Committee, *supra* note 2, at ¶ 20.

<sup>166</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 262.

<sup>167</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 262, citing Inter-Am. Comm'n on Human Rights, *Principles and Best Practices*, *supra* note 25, at Principle III.1.

<sup>168</sup> Committee on the Rights of the Child, *supra* note 13, at ¶ 89.

<sup>169</sup> Human Rights Committee, *supra* note 2, at ¶ 20.

<sup>170</sup> Standard Minimum Rules, *supra* note 29, at R. 82.

<sup>171</sup> Inter-Am. Comm'n on Human Rights, *supra* note 12, at ¶ 562.

governments to phase out solitary confinement.<sup>172</sup> The UN Special Rapporteur on Torture has also called for abolition of the use of solitary, whether as punishment or in pretrial detention.<sup>173</sup> Prolonged solitary confinement can violate international human rights law prohibitions on cruel, inhuman and degrading treatment, and in certain circumstances, may constitute torture.<sup>174</sup>

International human rights standards call for solitary to only be used as a last resort in exceptional cases, and for the shortest time possible.<sup>175</sup> In the rare instance where solitary might be used, international human rights experts cap the length at which an adult can be placed in solitary confinement at about two weeks or less before it constitutes cruel, inhuman or degrading treatment. The European Committee for the Prevention of Torture holds that the maximum period of solitary confinement can be no more than fourteen days, but should preferably be less.<sup>176</sup> The UN Special Rapporteur on Torture concludes that fifteen days is the limit, pointing out that some of the harmful psychological effects of isolation may become irreversible after that point.<sup>177</sup> Scientific studies repeatedly find that solitary confinement for more than ten days can cause negative physical and mental health effects, including depression, anxiety, hallucinations, paranoia, and heightened risks of self-harm and suicide.<sup>178</sup> Some studies find that even in a matter of hours or a couple days, people locked in solitary confinement can display

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<sup>172</sup> United Nations Basic Principles Treatment of Prisoners, G.A. Res. 45/111, U.N. Doc. A/Res/45/111, at R. 7 (Dec. 14, 1990), available at <http://www.un.org/documents/ga/res/45/a45r111.htm>.

<sup>173</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 80, U.N. Doc. A/63/175 (Jul. 28, 2008) (by Manfred Nowak); Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 84, 85, 87, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez) available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> [hereinafter Juan Mendez].

<sup>174</sup> UN Committee Against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee Against Torture, United States of America, ¶ 36, UN Doc. CAT/C/USA/CO/2, 2006; UN Human Rights Committee, General Comment 20, Article 7, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), ¶ 6.; UN Human Rights Committee, Consideration of reports submitted by States parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, United States of America, U.N. Doc. CCPR/C/USA/CO/3 (2006); UN Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of the United States of America*, ¶ 20, 23, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014); UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General, U.N. Doc. A/63/175, July 28, 2008, p. 18-21.

<sup>175</sup> Juan Mendez, *supra* note 130 at ¶ 22, 89; Council of Europe, *21<sup>st</sup> General Report of the European Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment (1 August 2010-31 July 2011)*, ¶ 56(b) (2011) available at <http://www.cpt.coe.int/en/annual/rep-21.pdf>; European Prison Rules, adopted Jan. 11, 2006 by the Committee of Ministers of the Council of Europe, Rec.(2006)2 R. 60(5), available at <https://wcd.coe.int/ViewDoc.jsp?id=955747>.

<sup>176</sup> Council of Europe, *supra* note 132 at ¶ 56(b).

<sup>177</sup> Juan Mendez, *supra* note 130 at ¶ 81, 88.

<sup>178</sup> SHARON SHALEV, A SOURCEBOOK ON SOLITARY CONFINEMENT 21 (2008), available at [www.solitaryconfinement.org](http://www.solitaryconfinement.org); AMERICAN CIVIL LIBERTIES UNION, WORSE THAN SECOND CLASS: SOLITARY CONFINEMENT OF WOMEN IN THE UNITED STATES 5 (2014).

negative mental health impacts.<sup>179</sup> Human rights standards additionally call for the conditions and regime in solitary to largely resemble those required under international standards for prisoners generally, including access to natural light, continued visits, regular prison meals, etc.<sup>180</sup>

Because solitary confinement is widely recognized as a potential cause of physical and mental health problems,<sup>181</sup> its use has implications for prisoners' human right to the highest attainable standard of physical and mental health.<sup>182</sup> International human rights standards prohibit disciplinary punishments that cause physical or mental harm to prisoners,<sup>183</sup> and call instead for governments to ensure that imprisoned people are provided treatment for any physical or mental illness that may hamper their rehabilitation.<sup>184</sup> Punishments that harm detainees' mental health contravene the rehabilitative and reformatory aims that are to be the purpose of imprisonment under the International Covenant on Civil and Political Rights.<sup>185</sup>

## **Medical Decisions Regarding Mental Health and Solitary Confinement**

While international human rights standards initially called for involvement of qualified doctors in decision-making about confining people in isolation as punishment,<sup>186</sup> recent human rights standards recommend that doctors not be involved in those decisions.<sup>187</sup> This new stance results from widespread recognition that solitary confinement causes harm to detainees' health, and that it would violate ethical commitments and international human rights standards for doctors to condone someone's placement in solitary confinement,<sup>188</sup> simply because that person did not exhibit symptoms of mental health disorder.<sup>189</sup> However, people in solitary must still be able to access health care. Under

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<sup>179</sup> Kathryn DeMarco, *Disabled by Solitude: The Convention on the Rights of Persons with Disabilities and Its Impact on the Use of Supermax Solitary Confinement*, 66 U. MIAMI L. REV. 523, 548 (2011).

<sup>180</sup> Council of Europe, *supra* note 132 at ¶ 58.

<sup>181</sup> Council of Europe, *supra* note 132 at ¶ 53, citing SHARON SHALEV, *supra* note 8 at 9-23; General Recommendations of the Special Rapporteur on torture at para. 26, available at: <http://www.ohchr.org/Documents/Issues/SRTorture/recommendations.pdf>.

<sup>182</sup> International Covenant on Economic, Social and Cultural Rights, art. 12(1), 993 U.N.T.S. 3, Dec. 16, 1966; Committee on Economic Social and Cultural Rights, General Comment No. 14, *The Right to the Highest Attainable Standard of Health*, ¶ 3, 33, U.N. Doc. E/C.12/2000/4 (Aug. 12, 2000) (recognizing that the right to health relates to and depends on the right to freedom from torture, and that it prevents governments from interfering with the enjoyment of the right to health).

<sup>183</sup> Standard Minimum Rules, *supra* note 12 at R. 32(2).

[https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf)

<sup>184</sup> *Id.* at R. 62.

<sup>185</sup> International Covenant on Civil and Political Rights, *supra* note 6, at art. 10(3).

<sup>186</sup> Standard Minimum Rules, *supra* note 12 at R. 32.

<sup>187</sup> Council of Europe, *supra* note 132 at ¶ 62.

<sup>188</sup> *Id.*

<sup>189</sup> International standards additionally bar medical staff from condoning or participating in any treatment or punishment that may violate prohibitions on torture or cruel, inhuman and degrading treatment, or that violates any relevant international treaties. Principles of Medical Ethics relevant to the Role of Health Personnel, Particularly Physicians in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/194, Dec. 18, 1982, Principle 2, 4(b); Also prohibited is their participation in restraining prisoners, unless determined to be "in accordance with

international standards, health care staff should visit people in solitary at least once daily, properly remedy any deterioration in detained peoples' health condition, and immediately report to the director of the institution if a confined persons' health is at risk as a result of solitary confinement.<sup>190</sup>

Despite the prohibition on direct involvement of doctors in decisions about solitary, current international human rights standards regarding imprisonment do envisage a role for medical evaluation, which has an indirect tie to decisions about solitary confinement. Under international human rights standards, governments are to ensure that qualified doctors evaluate the mental and physical health of each incoming detained person, in part to determine whether or not they have a mental health disability or a history of psychosocial disability.<sup>191</sup> International standards also prohibit solitary for people with mental illness or psychosocial disabilities.<sup>192</sup> Thus, if prison doctors must determine whether any detainee is mentally ill, and if the presence of mental illness definitively negates the use of solitary under international human rights standards, these standards together raise a question as to what constitutes mental illness such that governments should be forbidden from placing someone suffering it into solitary confinement.

International human rights standards provide no definitive answer to this question. The World Health Organization (WHO) states that mental disorders, of which there are many, with many different presentations, "are generally characterized by some combination of abnormal thoughts, emotions, behaviour and relationships with others."<sup>193</sup> According to the WHO, more common disorders that generally cause severe disability "include depressive disorders, substance use disorders, schizophrenia, epilepsy, Alzheimer's disease, mental retardation, and disorders of childhood and adolescence."<sup>194</sup> For a full list of all mental and behavioral disorders, the WHO points to<sup>195</sup> the International Statistical Classification of Disease and Related Health Problems (ICD-10).<sup>196</sup>

Reflecting the disability rights movement's efforts to move toward a *social* model approach to disability (as opposed to an individualized medical model),<sup>197</sup> the WHO recognizes that "[d]eterminants of mental health and mental disorders include not only

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purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health." *Id.* at Principle 5.

<sup>190</sup> Council of Europe, *supra* note 132 at ¶ 63; European Prison Rules, *supra* note 132 at R. 43.

<sup>191</sup> Standard Minimum Rules, *supra* note 12 at R. 24, 66(2).

<sup>192</sup> UN Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of the United States of America*, ¶ 20 U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014); Juan Mendez, *supra* note 130 at ¶ 86.

<sup>193</sup> World Health Organization, *World Health Report—Mental Health: New Understanding, New Hope* 10 (2001), available at [http://www.who.int/whr/2001/en/whr01\\_en.pdf](http://www.who.int/whr/2001/en/whr01_en.pdf).

<sup>194</sup> *Id.* at 20.

<sup>195</sup> *Id.* at 22.

<sup>196</sup> World Health Organization, *The ICD-10 classification of mental and behavioural disorders: clinical descriptions and diagnostic guidelines* (1992b), available at <http://www.who.int/classifications/icd/en/GRNBOOK.pdf>

<sup>197</sup> World Health Organization, *World Report on Disability* 3, 4 (2011), available at [http://www.who.int/disabilities/world\\_report/2011/report.pdf](http://www.who.int/disabilities/world_report/2011/report.pdf).

individual attributes ... but also social, cultural, economic, political and environmental factors, such as national policies, social protection, living standards, working conditions, and community social supports.”<sup>198</sup> In this vein, the World Network of Users and Survivors of Psychiatry, which made formative contributions to the drafting of the UN Convention on the Rights of People With Disabilities, uses the term “psychosocial disability” to capture the psychological and the social and cultural factors that contribute to this form of disability.<sup>199</sup> Drawing on this logic, the considerations for determining psychosocial disability should involve analysis of both individual symptoms, as well as the social, environmental, and cultural circumstances that exacerbate or fuel those symptoms. These might include the detention environment, the trauma of arrest and imprisonment, and likely psychological impact caused by a disciplinary measure.

#### **IV. Recommendations**

- \* Immediately end solitary confinement for youth, and phase out solitary confinement for all detained people. While ending the practice for 16-17 year-olds will represent a positive step, the next immediate step should be to account for young age in decisions about disciplinary measures for 18-21 year-olds, and ultimately to abolish solitary for that population.
- \* Ensure that all staff assigned to work with youth in detention—including security staff, programming staff, health and mental health professionals, and counselors—are properly trained and qualified to work with and meet the special needs of adolescents in conflict with the law.
- \* End the practice of detaining youth in adult facilities.
- \* Expand access for all youth, including those 18-21, to facilities and programming designed for youth.
- \* Ensure all youth, no matter where held, have access to uninterrupted, high-quality, age-appropriate education, including education tailored to special-needs youth, and including vocational training and higher education where appropriate.
- \* Provide and increase age-specific programming for all detained youth, including community-oriented recreation and educational programs that allow youth to participate as members of the population outside of the jail, without being identified as detained youth.
- \* Incorporate a therapeutic model in facilities where youth are detained, and ensure youth have access to adequate health care, including mental health treatment.
- \* Facilitate youths’ access to justice for abuses committed against them while detained, including by providing clear, accessible instructions and means for filing complaints; providing independent legal counsel and hearings; providing judicial redress; and ending impunity for officials who commit abuses against youth, including excessive use of force.
- \* Permit and encourage detained youth’s contact with their family and community, decentralizing detention facilities so that youth are either in or near the community where they or their parents, guardians and friends live.

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<sup>198</sup> World Health Organization, *Mental Health Action Plan 2013-2020 ¶ 09* (2013), available at [http://apps.who.int/iris/bitstream/10665/89966/1/9789241506021\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/89966/1/9789241506021_eng.pdf).

<sup>199</sup> WORLD NETWORK OF USERS AND SURVIVORS OF PSYCHIATRY, IMPLEMENTATION MANUAL FOR THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES 9 (2008).

- \* Encourage visits by family members, friends and members of the community by establishing flexible visiting hours and setting up comfortable areas that allow for privacy, so that the visits serve to strengthen the family bond and ties to members of the community.
- \* Ensure detained youth are held in a safe, well-maintained facility providing ample space for large indoor and outdoor recreation areas for congregate activity; as well as for classrooms conducive to learning.
- \* Develop and implement an adequate continuum of alternative disciplinary sanctions for rule violations that do not involve isolation, as well as systems to reward and incentivize good behavior.