

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Review by: The Human Rights Special Interest Group humanrights.sig@gmail.com : Susan Sherer (PA); Savanna Mapelli (PA); Kathleen Montgomery (CA); Jill Follows (VA); Sheila Denn (NC); Anu Sahai (VA); Michele Thorne (IL)

This review is the next in a series of reviews of United Nations human rights conventions and treaties. The members of the Human Rights Special Interest Group (HR-SIG), a team of League of Women Voters members from across the country, research and write all reviews. We are inspired by the League's history of human rights advocacy and motivated to start a fresh dialogue about the impact these historical UN conventions have today on the League's principle of **Empowering Voters ~ Defending Democracy**.



THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (commonly known as UNCAT)

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> was adopted by the UN General Assembly on December 10, 1984. It follows from the Universal Declaration of Human Rights, Article 5, and the International Covenant on Civil and Political Rights, Article 7, which both stipulate that “no one shall be subject to torture or to cruel, inhuman, or degrading treatment or punishment.”

The Convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the

instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” (Article 1)

- Article 10 of this convention states that “Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials, and other person who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”
- Article 11 requires “Each State Party shall keep under systematic review interrogation rules, instructions, methods, and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.”
- Articles 12 and 13 require prompt and impartial investigation, ensuring any individual who alleges torture the right to have his or her case promptly and impartially examined by competent authorities of the State party.
- Article 16 extends these rights to other acts of cruel, inhuman, or degrading treatment or punishment, which do not amount to torture, when such acts are at the instigation of or with the consent or acquiescence of a public official or someone acting in an official capacity.

Part II of the Convention establishes a Committee Against Torture, elected by the State Parties, consisting of “ten experts of high moral standing and recognized competence in the field of human rights” to review any information regarding the systematic practice of torture in a territory of a State Party, and to conduct an examination.

The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment was adopted by the UN General Assembly in 2002 to establish a preventive system of regular visits to places of detention. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

It requires each State Party to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman, or degrading treatment or punishment, a national preventive mechanism.

The UNCAT Convention itself was ratified by the United States in 1988, one of only five human rights treaties that the U.S. has ratified, even though subject to reservations. However, the United States has not signed the UNCAT Optional Protocol <https://indicators.ohchr.org/>.

(The other treaties ratified by the U.S. are the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; and the two Optional Protocols to the Convention on the Rights of the Child, one on the involvement of children in armed conflict and the other on the sale of children, child prostitution and child pornography <https://indicators.ohchr.org/>.)

Synergy of the UNCAT Convention with LWV Positions: The League of Women Voters’ *Impact on Issues 2018-2020* (pg. 6) states that “The League of Women Voters believes...no person or group should suffer legal, economic, and administrative discrimination.” In June 2020, the League issued a statement in support of the 2020 Justice in Policing Act to transform how police abuse is handled. See <https://www.lwv.org/newsroom/press-releases/lwv-statement-justice-policing-act>, <https://www.lwv.org/league-sends-comments-us-house-judiciary-committee-oversight-hearing-policing-practices-and-law>, and <https://www.congress.gov/bill/116th-congress/house-bill/7120>.

At its National Convention in June 2020, the League of Women Voters delegates passed the following motion (1094 yay, 32 nay votes):

Motion #2020-136: We Resolve First, That the League advocates against systemic racism in the justice system and, at a minimum for preventing excessive force and brutality by law enforcement. We also call for prompt actions by all League members to advocate within every level of government to eradicate systemic racism, and the harm that it causes:

We Resolve Second, that the League help our elected officials and all Americans recognize these truths to be self-evident that Black, Indigenous and all people of color (BIPOC) deserve equal protection under the law; and that we demand solutions for the terrible wrongs done, so that regardless of race, ethnicity, religion, disability, and gender identity or sexual orientation we may truly become a nation “indivisible, with liberty and justice for all”.

Scroll through to find #2020-136 <https://www.lwv.org/league-management/council-convention/2020-convention-daily-briefing>

Additional Guidelines on Treatment of Prisoners:

In addition to UNCAT, the United Nations has issued guidelines on the treatment of prisoners which are not legally binding but provide States with practical guidance.

- **The United Nations Standard Minimum Rules for the Treatment of Prisoners** (the Nelson Mandela Rules) were adopted in 1957 and most recently revised by the UN General Assembly in 2015. Rule 1 states in part, “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.”

https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

- Additional guidance is found in three more UN documents. First, the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** was adopted by the UN General Assembly in 1988.

<https://www.unescwa.org/body-principles-protection-all-persons-under-any-form-detention-or-imprisonment>

Second, the **Basic Principles for the Treatment of Prisoners** were adopted by the UN General Assembly in 1990.

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx> Third, the

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) were adopted by the UN General Assembly in 1985.

<https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

Solitary Confinement:

Regarding the issue of solitary confinement, please direct your attention to the following relevant international human rights conventions:

International Covenant on Civil and Political Rights (ICCPR)

Convention against Torture (ICT)

International Convention on all forms of Racial Discrimination (CERD)

Convention on the Rights of the Child (CRC)

Convention on the Rights of Persons with Disabilities (CRPD)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

In 2011, Juan Mendez, the UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment presented an interim report on solitary confinement to the UN General Assembly, which defined prolonged solitary confinement as solitary confinement exceeding 15 days. This definition was adopted by the UN Commission on Crime Prevention and Criminal Justice in May 2015, adopted as the “Nelson Mandela Rules” by the UN General Assembly in December 2015. The Special Rapporteur acted as an expert witness in a U.S. District Court Case in California (<https://www.theatlantic.com/politics/archive/2015/09/scaling-back-solitary/403441/>)

on the international standards applicable to solitary confinement based upon this 2011 report.

<https://www.ohchr.org/EN/HRBodies/SP/Pages/Humanrightsstandardsetting.aspx>

There are many interpretations of rights related to solitary confinement by treaty bodies, UN Agencies, and special rapporteurs. These can be found at

<https://www.prisonlegalnews.org/media/publications/International%20Human%20Rights%20Law%20on%20Solitary%20Confinement%2C%20HRF%2C%202015.pdf>

Here is a summary of the key components:

1. Due Process, Medical Rights and Internationally Required Standards: Persons held in solitary confinement must have access to legal counsel, subject to independent judicial review, have outside contact and/or social contacts, receive adequate medical attention, and solitary confinement must have limited use.
2. Duration of solitary confinement influences whether it constitutes torture or cruel, inhuman or degrading treatment or punishment (CIDT)
3. The purpose behind solitary confinement influences whether it constitutes torture or CIDT
4. Detention conditions and characteristics influence whether solitary constitutes torture or CIDT
5. Prohibitions on solitary confinement for certain populations including juveniles, women, LGBT, persons with disabilities, death row inmates, migrants

An overview of solitary confinement reforms in the U.S. can be found at <https://www.themarshallproject.org/2014/12/23/shifting-away-from-solitary>

ACLU Case Regarding Solitary Confinement in Pennsylvania. The ACLU was recently successful in a class action lawsuit, *Reid et al vs. Wetzel*, claiming that Pennsylvania's Department of Corrections violated the Eighth and Fourteenth Amendments by the automatic, irrevocable practice of holding all people sentenced to death in permanent solitary confinement, confined alone 22 hours a day in the size of a parking spot.¹ Although Pennsylvania has a moratorium on the death penalty, 136 prisoners are on death row. At settlement, the Department agreed to house prisoners who have been sentenced to death in the same manner as the prisons' general population,² and pay half a million dollars in attorneys' fees and costs due to the litigation and settlement, which were discounted as part of the negotiations.³ Violating the U.S. Constitution and fundamental principles of human rights is expensive to taxpayers and requires intense legal resources to remedy.

As found in the ACLU's press releases in 2019 on the settlement, the Department of Corrections agreed that: The department will still house people who are sentenced to death in specific prisons, but has agreed to reforms to offer the rights and privileges afforded to people in other state facilities, including:

- At least 42.5 hours out-of-cell activity every week, including yard and outdoor time, law library time, congregate meal time, treatment or counseling meetings, congregate religious worship, work assignment, and phased in contact visitation;
- Permission to use the phone on a daily basis for at least 15 minutes per usage;
- Incarcerated people will not be subjected to strip-searches, shackling, or other restraints, unless security measures are required in response to a temporary, emergent situation;
- Contact visits with family, lawyers and religious advisors; and

¹ Complaint. https://www.aclupa.org/sites/default/files/field_documents/1_complaint.pdf

² Settlement Agreement. https://www.aclupa.org/sites/default/files/field_documents/reid_settlement_agreement_-_signed_with_exhibits.pdf

³ Order, pages 11-12 https://www.aclupa.org/sites/default/files/field_documents/144_order_approving_class_settlement.pdf

- Resocialization assistance for individuals psychologically damaged by long periods in solitary confinement to help them in the transition to living in a general population setting, as well as physical and mental health baseline evaluations due to years of neglect.

<https://www.aclu.org/press-releases/settlement-reached-end-permanent-solitary-confinement-people-sentenced-death>

In summary, at least with respect to solitary confinement cases of death row prisoners, Pennsylvania was brought into the modern age, at great cost. There is still much room for improvement, and hopefully the human rights principles outlined here will provide guidance to advocates in Pennsylvania. This case will help the League of Women Voters, as well as the state of Pennsylvania, move ever forward on the long, yet unwavering, arc toward justice and human rights.