

**Report:
Recommendations Concerning
the Practice of Solitary Confinement in Hong Kong**




Picture by Shannon O'Toole

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Table of Contents

1. INTRODUCTION	4
1.1 WHAT IS SOLITARY CONFINEMENT AND HOW IS IT USED IN HONG KONG?	4
2. WHY IS SOLITARY CONFINEMENT PROBLEMATIC?	8
2.1 SOLITARY CONFINEMENT IS A HEALTH HAZARD	8
2.2 SOLITARY CONFINEMENT IS A VIOLATION OF HUMAN RIGHTS	9
2.3 SOLITARY CONFINEMENT IS AN INEFFECTIVE ADMINISTRATIVE STRATEGY	10
2.4 SOLITARY CONFINEMENT IS A SOCIAL AND ECONOMIC DISASTER	11
3. RECOMMENDATIONS	14
3.1 REVISE THE PRACTICE OF SOLITARY CONFINEMENT	14
3.2 PUSH FOR ALTERNATIVE METHODS OF PRISONER MANAGEMENT	16
3.3 INCREASE TRANSPARENCY AND PROTECTION	17
4. REFERENCES	19
APPENDICES	21
APPENDIX 1: STATISTICS ON THE USE OF SOLITARY CONFINEMENT (2000-2015)	21
APPENDIX 2: ANALYSIS OF PRISON RULES CAP 234A ON SOLITARY CONFINEMENT	23
APPENDIX 3: CASE EXAMPLES OF SOLITARY CONFINEMENT	26

A dark, narrow prison cell with a brick wall and a small opening in the upper left corner. The lighting is dim, highlighting the texture of the brick wall and the shadow of the opening.

There is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days failed to result in negative psychological effects.

(Haney & Lynch, 1997)

STOP SOLITARY CONFINEMENT TODAY!

1. Introduction

Solitary confinement is an outdated and counterproductive practice that directly is causing Hong Kong's social and economic development to slow down. It poses serious health risks to all prisoners who are subject to it, goes against any modern notion of human rights, flies in the face of research on how to most effectively administrate a prison, and contributes to severe social and economic losses, as it is harmful to prisoners' rehabilitation and increases recidivism.

As such, Society for Community Organization as instigated this report to investigate the issue related to the practice of solitary confinement and how Hong Kong from a policy standpoint should react to this information. This has culminated in this report and a call for a reformation of the current prison rules. We believe that this is an absolutely necessary step in assuring that Hong Kong maintains its current position as one of the leading territories in Asia in terms of social and economic development.

1.1 What is Solitary Confinement and how is it used in Hong Kong?

Solitary confinement refers to the act of placing a prisoner in a special housing unit, wherein the prisoner is segregated from other prisoners. In this small cell, the prisoner will be isolated for 22 or 23 hours a day – having only one hour of exercise outside the cell.

The official grounds for solitary confinement in Hong Kong are broadly explained one of three reasons (for a more detailed analysis of the specific prison rules; please refer to Appendix 2):

- 1) **Punishment:** Isolation functions as a punishment for a prisoner's misconduct following a disciplinary hearing¹ via Prison Rule 63(B). This type of isolation cannot extend beyond 28 days (CSD, 2015).
- 2) **Management:** Isolation can also easily be used in the overall management of the prison, if it is seen as “desirable, for the maintenance of good order or discipline or in the interests of a prisoner” by the prison administration (CSD, 2015). This is

¹ It should noted that although a disciplinary hearing is require, then disciplinary hearings does not include a impartial and independent third party.

usually imposed through an internal process governed by the administration or through a disciplinary hearing¹ via Prison Rule 58, 68 or 68B (CSD, 2015). However, this type of isolation does not include any type of time limitation.

- 3) **Protection:** Isolation can also be used to protect prisoners such as sex offenders, police informants or prisoners who may be harmed by other prisoners. This is operated via Prison Rule 68A or 68B and also does not include any time limitation (CSD, 2015).

Conclusively, the prison rules on solitary confinement are extremely vague and under-regulated – and there is no independent third-party reviewing the details of any cases. Due to the current structure of the prison rules, it is today way too easy for the prison administration to abuse and misuse solitary confinement. **This has resulted in solitary confinement not only being grossly overused, but also abused and misused to punish prisoners in a destructive and unjust fashion.** Even prisoners who make reasonable complaints about prison conditions or human rights issues are subject to being labelled as “troublemakers”, and in turn solitary confined (see case 1). If favourable, then it is far too easy for prison administration to completely avoid any type of disciplinary hearing or review in relation to a sentence of solitary confinement despite how harsh a punishment it is. This is possible via Rule 68B, which leaves the prisoner in solitary confinement without any real possibilities to appeal the cruel punishment.

As illustrated in *Appendix 1*, solitary confinement is a widespread practice in Hong Kong’s prisons. The estimated average number of solitary confinement cases in Hong Kong is at about **8.000 cases every year from 2000-2015**. However, this does not account for the total number, as the Correctional Services Department does not maintain data on solitary confinement under Rule 58, Rule 68 and Rule 68A of the prison rules. In reality, the real number of solitary confinement cases is likely to be well beyond 8.000 every year. On average this means that there is **at least one person sent to solitary confinement once every hour of the day – 365 days a year.**

The lack of data on solitary confinement is another serious concern to us, as it severely reduces transparency and increases the risks of abuse of solitary confinement. It adds to the notion that solitary confinement still is a rather unregulated and undocumented type of punishment that easily can be used in a corrupt or an unjustified manner. There is still a far too great number of people who remain in far too long periods confined solitarily. **As for example in 2014, where about 500 cases of people in solitary confinement**

lasted for a duration of between 72 hours and 4 months. This is beyond acceptable and does not benefit anyone. However, the duration of time in which people are subject to solitary confinement is yet another area that still remains undocumented and hidden from public eye.

2. Why is Solitary Confinement Problematic?

We have thoroughly examined and methodologically scrutinized over 30 scientific empirical studies, systemic literature reviews and reports. This was adapted in order to establish a systemic and fulfilling overview of what the current scientific landscape tells us about the effects of solitary confinement. The findings of this systemic review can be divided into four groups:

- **Solitary Confinement is a Health Hazard**
- **Solitary Confinement is a Violation of Human Rights**
- **Solitary Confinement is an Ineffective Administrative Strategy**
- **Solitary Confinement is a Social and Economic Disaster**

The details of these four issues will be further explained in the subsequent five pages.

2.1 Solitary Confinement is a Health Hazard

Solitary confinement is an outright dangerous practice that has severe effects on the health of affected people in custody. If one carefully examines the vast amount of research that has been conducted into the effects of solitary confinement, there is no doubt that **the practice indeed does pose very serious health risks** (see for example: Andersen, et. al., 2000; Andersen, et. al. 1994; Gordon, 2014; Grassian, 2006; Grassian, 1983; Haney, 2001; Haney & Lynch, 1997; Metzner & Fellner, 2010; Shalev, 2008; Smith, 2006). And although each individual person reacts differently to solitary confinement, then researchers from across the globe have time and time again documented health hazards of solitary confinement. The list of health risks includes everything from **panic attacks** to **suicide, anxiety, self-mutilation, unprovoked anger, insomnia, hallucinations, paranoia, psychosis** and many more (ibid.). For example, one study in California from 2006 showed that 69% of suicides that occurs in prison took place in isolation cells, despite the fact that the isolated prison population is far smaller than the general prison population (Shalev, 2008).

Another problem with the practice of solitary confinement is that mental disorders are significantly more prevalent in prison populations than in the general population. This makes the practice of solitary confinement even more hazardous to use in prisons, as

people with pre-existing mental disorders are particularly vulnerable to the health risks of solitary confinement (Lovell, Johnson, & Cain, 2007; Smith, 2006).

Lastly, studies have also shown that particularly those prisoners who are in solitary confinement involuntarily and those who have not been informed about the duration of their solitary confinement are additionally vulnerable to the health risks it poses. The sense of helplessness and uncertainty will often result in both internal and external hostility and aggression, as well as other severe side effects (Shalev, 2008; McCleery, 1961). This makes solitary confinement additionally problematic in Hong Kong, as most cases of solitary confinement are involuntary and the prison rules in most cases makes it very difficult for prisoners to retain information on the length of their solitary confinement.

2.2 Solitary Confinement is a Violation of Human Rights

The UN Committee Against Torture (CAT) has strongly criticized the practice of solitary confinement across the world and has recommended that it be abolished (Smith, 2006). However, they have also consistently appointed critique towards Hong Kong for its widespread and under-regulated usage of solitary confinement. As remarked in their most recent report on Hong Kong in February 2016:

“The Committee is also concerned that [solitary confinement] can be imposed on vague grounds [...] without upper limit “(CAT, 2016)

As such, and per international human rights standards, they among other things suggests that Hong Kong immediately:

“Reduce the maximum duration of solitary confinement and limit its use as a measure of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review, in line with international standards. Hong Kong, China should establish clear and specific criteria in its regulations for decisions on solitary confinement, indicating the conduct, type and maximum duration; “ (CAT, 2016)

They are especially concerned with the nature of Prison Rule 68B, as its criteria are vague and do not define a limitation to the length of solitary confinement.

All other international standards and recommendations agree that the usage of solitary confinement should be severely reduced. Namely, the Istanbul Statement on the Use and

Effect of Solitary Confinement² claims that solitary confinement should be used only in exceptional cases and as a last resort. They also argue that the duration of solitary confinement always should be as short as possible (Ayan, 2008).

Also, the United Nations' Human Rights Committee has commented that:

Solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with [ICCPR's article 10(1) and article 7]³ (UN Human Rights Committee, 1976).

They further remark that solitary confinement may amount to torture, cruel, inhuman or degrading treatment and punishment.

Lastly, the European Court of Human Rights (ECHR) has ruled that solitary confinement must be ordered only in exceptional circumstances and that there must exist genuine grounds for confinement, both at the beginning and during each extension of the order. Also, as time goes by and the confinement is prolonged, the statement of reasons should be increasingly detailed and compelling. Finally, according to the ECHR, there should be a system of regular monitoring to ensure that the measures remain appropriate as time goes on (ECHR, 2010).

2.3 Solitary Confinement is an Ineffective Administrative Strategy

The old myth that harsher prison conditions lead to more responsive and well-behaved prisoners is exactly that – a myth (ACLU of Maine, 2013; Chen & Shapiro, 2007; Kupers, Dronet, & Et al., 2009). Solitary confinement has in several studies and reports been proven to be **not only an ineffective and expensive administrative tool, but also a cause of increasing misconduct and violence amongst people in custody** during and after imprisonment (ACLU of Maine, 2013; Haney & Lynch, 1997; Kupers, Dronet, & Et al., 2009; Lovell, Johnson, & Cain, 2007; Mears & Bales, 2009).

² To address the increasing use of solitary confinement and its harmful effects, a working group of 24 international experts adopted on December 9th 2007 the Istanbul Expert Statement on the Use and Effects of Solitary Confinement, calling on States to limit the use of solitary confinement to very exceptional cases, for as short a time as possible, and only as a last resort.

³ (Article 10(1)): Persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person (UN Human Rights Committee, 1976).

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation (UN Human Rights Committee, 1976).

On the other hand, alternative methods of managing prison populations, such as **therapeutic communities and incentive programs have proven themselves much more effective in reducing unwanted behaviour**, whilst still maintaining safety and order of the prison (ACLU Of Maine, 2013; Rawlings, 1998).

One example of this is Maine State Prison (State of Maine, US). Previously, solitary confinement was used prolifically, alike the current practice in Hong Kong, until they decided to reform their prison rules. However, it should be duly noted that even before the reform of Maine State Prison, the conditions were still considerably worse in Hong Kong than in Maine. The result of the reformation was a significant drop in cases of solitary confinement; meanwhile the prison actually has become safer.

Solitary confinement is now only used as an absolute last resolve and the overall criteria to be transferred to solitary confinement are much higher than previously. Furthermore, as a report evaluating the reform notes:


Even in situations where prisoners are sent to solitary confinement, corrections staff is required to work with prisoners to develop a road map of behavior that will lead back to the general population (ACLU Of Maine, 2013).

Such initiatives combined with additional training programs for the guards that supported their ability to de-escalate difficult situations has lead to even fewer prisoners having to endure solitary confinement. The effects it has had on the prison are significant. It has in particular saved the prison money, as it is much cheaper to rely on incentives, de-escalating strategies and other less severe types of punishment as a tool of management than solitary confinement (ACLU of Maine, 2013). Furthermore, there have been no measured negative effects of the change and the prison remains even safer and orderly (ACLU of Maine, 2013).

2.4 Solitary Confinement is a Social and Economic Disaster

There are severe social and economic costs to the practice of solitary confinement, even if one were to completely disregard the feelings, suffering and rights of people in custody. There is a solid empirical foundation in the scientific literature on solitary confinement that supports the fact that **solitary confinement leads to an increased rate of (particularly violent) recidivism and reduces the chances of a successful rehabilitation and reintegration after prison** (Chen & Shapiro, 2007; Grassian, 2006; Grassian, 1983; Haney, 2001; Haney & Lynch, 1997; Lovell, Johnson, & Cain, 2007; Lowen, Isaacs, & Williams, 2012; Smith, 2006; Mears & Bales, 2009; Shalev, 2008).

The social and economic costs of a person in custody becoming sick and more prone to social isolation, paranoia, violence and crime on the outside of prison (as a result of solitary confinement) are very high. A person that suffers from mental disorders related to solitary confinement may neglect or be a burden to his family and friends, and **particularly children are vulnerable to the mental issues that solitary confinement has left on their parent** (Haney, 2001). Likely, this will influence the child the rest of his/her life. Furthermore, much evidence supports the idea that **a person subject to solitary confinement may have severe difficulties in sustaining a job and social relationships** after his/her release from prison (Gordon, 2014; Grassian, 2006; Haney, 2001; Lovell, Johnson, & Cain, 2007; Lowen, Isaacs, & Williams, 2012; Mears & Bales, 2009). **From a governmental point of view, this is detrimental, as it not only means that this person most likely never will be able to contribute with taxes, but also that they likely will be forced to seek public welfare services in order to survive.** In turn, one could argue that solitary confinement is a policy that fosters increased public expenditures and dependence on welfare. Additionally, there is the cost related to possible (violent) crimes that people suffering from mental disorders because of solitary confinement may inflict. This includes everything from the legal costs of prosecution and conviction, the additional costs associated with a new imprisonment, hospital bills and other costs a victim might experience in relation to their injuries, including possible loss of ability to work. Solitary confinement is a very costly affair, not only to prisoners, but especially also to Hong Kong's public and government. In other words, solitary confinement is in no way beneficial compared to its overwhelming costs.



**“As soon as I got in
I started cutting my wrists.
I figured it was the only way
to get out of here.”**

(Grassian, 2006)

STOP SOLITARY CONFINEMENT TODAY!

3. Recommendations

A complete abolishment of involuntary solitary confinement is preferable, however, we recognize that this most likely is not feasible considering the current state of Hong Kong's correctional institution. Until such a point, Society for Community Organization proposes three changes to the Prison Rules, as to best diminish the numerous negative effects of solitary confinement. The overall aim of these changes would be to:

1: Revise and Amend the Prison Rules

- I. Reclassification of the Criteria for Solitary Confinement
- II. Improvement of the Conditions under Solitary Confinement
- III. Solitarily Confined Prisoners must be Re-Integrated

2: Push for Alternative Methods of Prisoner Management

- I. Incentive Programs
- II. De-Escalation Training
- III. Therapeutic Communities

3: Increase Transparency and Protection

- I. Documentation of Solitary Confinement
- II. An Independent Third-Party must Review all Cases
- III. Public Statistics

These recommendations are based on the advocacy of the UN Committee Against Torture; countless of other international experts and organisations; the experiences of other prisons that have successfully eliminated or diminished the usage of solitary confinement; and the findings of the scientific literature on solitary confinement. It is our belief that these three recommendations will be instrumental and necessary in reducing the negative effects of the current practice of solitary confinement in Hong Kong. However, the long-term goal must be that no prisoner in a Hong Kong Prison is subject to the horrors and suffering of solitary confinement.

3.1 Revise the Practice of Solitary Confinement

We need to move solitary confinement from being an overused and abused administrative measure to an absolutely last and temporary resort that *only* is applicable in extraordinary situations.

3.1.1 Reclassification of the Criteria for Solitary Confinement

The wide discretion of administration and staff to isolate prisoners at their slightest desire must be completely abolished in order to avoid abuse of power and de-incentivise staff from using solitary confinement at convenience. In practice, this means that we need to reevaluate the way we classify people as eligible to solitary confinement. Especially Prison Rule 68B is critical to this change. The rule must be reconfigured as to only apply in extreme circumstances by implementing more concrete criteria. The experiences at Maine State Prison serves as sufficient example. Here the prison rules goes much more into depth about the requirements needed to be eligible of placement in solitary confinement and a prisoner must be “placed under Emergency Observation Status in their usual housing environment” first. If solitary confinement still is deemed necessary, the prisoner have to fulfill a list of criteria before they can be considered eligible to be sent in solitary confinement (ACLU of Maine, 2013).

3.1.2 Improve the Conditions under Solitary Confinement

We need to amend the prison rules, as to institute more precisely declarations of the required minimum conditions of solitary confinement in order to avoid conditions that may result in additional mental or physical health problems. This includes clear directives concerning items such as: toothbrush, comb or brush, soap, deodorant, feminine hygiene items (as gender appropriate), toilet paper, shaving implements, drinking cup, towel, bed sheet, pillow case, blankets, pillow, mattress, pants and shirt or one-piece suit, complete set of underwear, socks, footwear, access to a jacket or coat, hat, and gloves for outdoor exercise or transport (when seasonally necessary) (inspired by prison rule 15.2 of Maine State Prison).

We also need to prohibit all types of indefinite and uninformed solitary confinement, so that all prisoners subject to solitary confinement are aware of the details to the exact duration and reasoning during the whole process of being confined solitarily.

3.2.3 Solitarily Confined Prisoners must be Re-Integrated

In the exceptional case where solitary confinement is deemed necessary, correction staff must be required to work with the prisoners to develop a road map of behavior that will lead them back to the general population, similarly to how it was instituted in Maine State Prison (ACLU Of Maine, 2013). This will also require the prison staff that work with

solitarily confined prisoners to receive training in how to best manage prisoners under these special and vulnerable circumstances.

3.2 Push for Alternative Methods of Prisoner Management

Solitary confinement is an ineffective, unsustainable and shortsighted solution to complex issues that only makes the problem worse. We need to shift the prison administrations heavy reliance on solitary confinement towards alternative methods of management and disciplinary sanctions. This includes everything from incentive programs, de-escalation training and therapeutic communities.

3.2.1 Incentive Programs and Other forms of Punishment

This type of management is already established in Hong Kong's prisons. However, the prison management should make more use of such programmes and rely on this practice both in order to avoid the negative effects of solitary confinement, but also because they are much more effective. The programmes work by motivating the prisoners towards a certain type of behaviour by means of both various rewards and punishments. The rewards and punishments usually consist of giving or taking away a prisoner right, such as limiting contact visits; restricting the visitors allowed to immediate family; loss of work opportunities; etc.

3.2.2 De-Escalation Training

There exist various types of de-escalation methods. Two of the most renowned ways are "verbal Aikido" and "verbal Judo". These are methods that consist of techniques designed to prevent, de-escalate or end attempts of conflict and assault. The methods particularly focus on body language, posture, tone of voice, and the choice of words. An implementation of this training would be very effective in Hong Kong and has previously been proven very effective in the case of Maine State Prison (ACLU of Maine, 2013).

3.2.3 Therapeutic Communities

There exist primarily two schools of therapeutic communities: Democratic therapeutic communities and hierarchical therapeutic communities. However, as hierarchical therapeutic communities in general have been more prone to deal successfully with

aftercare of prisoners post-release, then this section will primarily be focused towards democratic therapeutic communities.

Democratic therapeutic communities are broadly built around four principles:

- 1) **Democracy/empowerment**, which means that the prisoners are encouraged to voice their opinions (and listened to) about important issues regarding their community without comprising the rules and orders of the prison (Rawlings, 1998);
- 2) **Permissiveness/support**, which refers to an institutionalised openness and tolerance of misconduct in the prison, based on the belief that prisoners must be allowed to make “mistakes” to a certain degree, which they then can examine therapeutically and deal with (Rawlings, 1998);
- 3) **Communalism/responsibility**, which refers to “the development of a community which works together, shares feelings and problems and in which members take responsibility for each other's behavior and learning” (Rawlings, 1998);
- 4) **Reality confrontation**, which can be summarized as a continuous feedback loop prisoners in-between about how they perceive and are affected by each other's behavior, as (Rawlings, 1998).

Democratic therapeutic communities are also often characterised by hosting regular large group meetings, frequent smaller and more intimate group meetings, as well as art and drama therapy. Democratic therapeutic communities have proven very effective in lowering reconviction rates and in improving behaviour and psychiatric symptoms during imprisonment (Rawlings, 1998).

The totality of these three alternatives has in many other prisons been effective in rendering solitary confinement obsolete (ACLU Of Maine, 2013; Kupers, Dronet, & Et al., 2009; Rawlings, 1998). The Prison Rules must de-incentivise administration and staff from utilising solitary confinement and instead shift the focus towards these much more effective administrative strategies, both for the prisoners' health and rights, but also for the prison's success and Hong Kong as a whole.

3.3 Increase Transparency and Protection

To avoid ineffective and abusive use of power in relation to solitary confinement, the prisons must increase what they do to keep the procedures of the prison transparent and protective of the prisoners in their custody.

3.3.1 Documentation of Solitary Confinement

Every case of solitary confinement needs to be documented. After each placement of a prisoner in solitary confinement, prison administration must immediately chronicle in writing the time, the date and the rationale behind the decision to segregate the prisoner. This document must be read to the prisoner, as soon as it has been drafted. Furthermore, the prison staff must encourage the prisoner to document his/her own account of the events leading up to solitary confinement in writing via help from prison staff. Also suicides, self-harm and other issues related to the solitary confinement must be documented.

3.3.2 An Independent Third-Party must Review all Cases

We need to implement an independent third-party monitoring mechanism to review all cases of solitary confinement. It is vital that this independent third-party serves to uphold and protect the rights of the prisoners to ensure that solitary confinement only is used under the right circumstances and in the proper manner. Prisoners often believe that they in fact do not have rights and this can easily be abused in the system. Strict monitoring, medical safeguards and legal protection are an absolute necessity to assure this does not happen and that the remaining needs for solitary confinement happens under relatively fair terms in line with the prison rules. Such an independent third-party must also be easily and conveniently accessible for prisoners to appeal their stay in solitary confinement to ensure fair practice of solitary confinement.

3.3.3 Public Statistics

Meanwhile, we also need to increase transparency on solitary confinement to the public. Statistics on total number of people sent to solitary confinement, number of suicides, number of self-harm incidence and other relevant statistics needs to be made publically available to ensure that the prison can be held accountable by the public.

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Appendices

Appendix 1: Statistics on the use of solitary confinement (2000-2015)

Year	Rule 58	Rule 63(b)	Rule 68B	Rule 68	Rule 68A	Total Number	Prison Population
2001	N/A	~3428	N/A	N/A	N/A	3428*	N/A
2002	N/A	~3428	N/A	N/A	N/A	3428*	N/A
2003	N/A	~3428	N/A	N/A	N/A	3428*	N/A
2004	N/A	~3428	N/A	N/A	N/A	3428*	N/A
2005	N/A	~3428	N/A	N/A	N/A	3428*	12 390
2006	N/A	~3428	~626	N/A	N/A	4054*	11 849
2007	N/A	~3428	~626	N/A	N/A	4054*	11 601
2008	N/A	~3428	~626	N/A	N/A	4054*	10 882
2009	3744	~3000	1452**	N/A	N/A	8196	10 615
2010	3360	~3000	1668**	N/A	N/A	8028	10 196
2011	3648	2477	1856**	N/A	N/A	7865	9 702
2012	3360	2508	1671**	N/A	N/A	7538	9 285
2013	N/A	2423	1382**	N/A	N/A	3805*	9 240
2014	N/A	2715	1417***	N/A	N/A	4132*	8 830
2015	N/A	2905	1267	N/A	N/A	4172*	N/A

Notes:

1. The data is combined from UN CAT's report on Hong Kong and CSD.
2. *Important to note that the data of the table in no way accounts for the total number of solitary confinement cases, as the government does not regularly maintain statistics on Rule 58, Rule 68 and Rule 68A of the prison rules. Again showcasing how unregulated the practice of solitary confinement is in Hong Kong.

3. Rule 58: Awaiting disciplinary hearings.
4. Rule 63(b): Punishment for prisoners found guilty in disciplinary hearing.
5. Rule 68B: Removal from association.
6. Rule 68: Temporary confinement of refractory or violent prisoner.
7. Rule 68A: Medical officer ordering prisoner to protected roo.
8. Daily average prison population.
9. **For 2009-2012 under prison rule 68B regarding the duration of solitary confinement, the percentage of cases were the following: 60% of the cases lasted for 72 hrs or less, 30% of the cases lasted for 72 hrs – 1month, 10% of the cases lasted for more than 1 month, and 3 of the cases lasted for were 4 months or more.
10. ***Duration: 63% of the cases lasted 72 hours or less and 35% between 72 hours-4 months.

Appendix 2: Analysis of Prison Rules Cap 234A on Solitary Confinement

There are 5 different Rules under the Prison Rules Cap 234A that can be applied in order to isolate a prisoner (CSD, 2015). Below is an analysis of the different rules concerning important aspects of the confinement.

Rule 58: Segregation of a prisoner against whom a report has been made

Purpose: To segregate a prisoner who has been reported for a disciplinary offence.

Punishment/administrative: Administrative

Authority: Superintendent

Medical certification: The rule does not mention a medical officer to certify whether the prison is fit for isolation. It is unclear whether Rule 144(f) applies, that is whether a medical officer should make daily visits.

Time limit: None

Appeal: None

Regular review: Not mentioned

Rule 63(b): Separate confinement

Purpose: Punishment

Punishment/administrative: Punishment

Authority: Superintendent

Medical certification: Medical officer must certify in writing that he is fit for punishment.

Time limit: 28 days.

Appeal: Prison should notify Superintendent within 48 hours that he wishes to appeal to Commissioner (Rule 63(2)), and then afterwards to the Secretary for Security (Rule 63(4)).

Regular review: Not mentioned

Rule 68: Temporary confinement

Purpose: Temporary confinement of a d or violent prisoner.

Punishment/administrative: Administrative

Authority: Superintendent

Medical certification: The rule does not mention a medical officer to certify whether the prison is fit for isolation. It is unclear whether Rule 144(f) applies, that is whether a medical officer should make daily visits.

Time limit: None

Appeal: None

Regular review: Not mentioned

**Rule 68A: Medical officer ordering prisoner to a protected room
to ensure no harm or hardship to himself or other prisoner**

Purpose: Prevention of harm/hardship to prisoner or other prisoners.

Punishment/administrative: Administrative

Authority: Superintendent

Medical certification: The rule does not mention a medical officer to certify whether the prison is fit for isolation. It is unclear whether Rule 144(f) applies, that is whether a medical officer should make daily visits.

Time limit: None

Appeal: None

Regular review: Not mentioned

Rule 68B: Removal from association

Purpose: “Where the Superintendent has reasonable grounds for believing it is desirable, for the maintenance of good order or discipline or in the interests of a prisoner, that such prisoner should not associate with other prisoners, either generally, or for particular purposes, he may order the removal of such prisoner..” Rule 68B(1).

Punishment/administrative: Administrative

Authority: Superintendent/Commissioner of Correctional Services

Medical certification: Medical officer must certify that he is fit for removal

Time limit: Removal from association can be renewed after 72 hours, thereafter every month. There is no upper limit

Appeal: No formal appeal mechanism, but prisoner can make representations to the Superintendent.

Regular review: A Board of Review consisting of the Superintendent, the Medical Officer and other officers selected by the Commissioner reviews the progress of prisoners removed from association and makes recommendations to the Commissioner as to the suitability for further removal or to be returned to association. The review takes place each month.

Conclusion

The above analysis reveals the following:

1. **Administrative:** Most of the rules permit the use of solitary confinement as a purely administrative decision and by discretion of the Superintendent, except for Rule 63(b). No hearings or written detailed reasons for special unit confinement are required. Especially Rule 68B provides for wide discretion to the Superintendent to place a prisoner in isolation since “good order”, “discipline”, and “interest of prisoner” are rather vague terms and provides for the risk of arbitrary use of the rules.

2. **Judicial oversight:** None of the rules requires judicial oversight for placing a person in solitary confinement, except for Rule 63(b), which requires a disciplinary hearing. However, the hearing is internal and not conducted by an independent judicial body. No legal representation is allowed.
3. **Medical certification:** Some of the rules do not require the medical officer to certify that the prisoner is fit for removal and that daily visits from a medical officer will be conducted (Rules 58, 68, 68A). No rules specify that a mental health specialist should monitor the isolation.
4. **Time limit:** Only rule 63(b), where solitary confinement can be imposed as a punishment, specifies an upper time limit of 28 days. All the other rules do not have any upper time limit for isolating a prisoner.
5. **Appeal:** Only Rule 63(b) has a formal appeals procedure if a prisoner wants to appeal the results of the disciplinary hearing. The appeals mechanism is not independent however.
6. **Regular review:** Only Rule 68B includes a Board of Review to review the cases on a monthly basis. However, the Board of Review is not independent.

Appendix 3: Case examples of solitary confinement

Case A:

A is a male prisoner who in 2011 was charged with possession of unauthorized articles. After being charged, he was sent to a special unit (solitary confinement) on administrative grounds. The day after there was a disciplinary hearing, where no legal representative is permitted. He was sentenced to special unit confinement for 21 days. However, after the confinement, he was not released to resume normal association. Instead the CSD continued to confine him administratively in the special unit stating security reasons. He was never told when he would be released. He was not given any written reasons, and his request for a lawyer was rejected. In total he spent more than **100 days** involuntarily in solitary confinement.

Case B: Tai Lam Centre for Women

B, a female prisoner, spent more than **2 1/2 months** in administrative solitary confinement at the end of December 2011, because of pending police investigations. The police said that if she had not been in prison, she would have been released on bail. They said they didn't believe it was necessary for her to stay in solitary confinement. The CSD, however, decided to confine her in a special unit on administrative grounds. Before removing her from association she was not granted any right to a hearing or had any legal representative, nor was she given any detailed reasons for being confined in a special unit.

She also believes that she was unfit to stay in a special unit for such a long period of time because she was being treated for heart disease, diabetes and leg problems. While inside the special unit the pain in her legs got worse. The special unit cell had a very low bed and no chair. Because of her swollen legs, sitting on the low bed caused her further pain. Only after 1 month was she given a chair to sit on during daytime.

While in solitary confinement she felt very depressed and even had suicidal thoughts. No mental health specialist came to see her to review whether she was fit to stay in solitary confinement.

Case C: Pik Uk Prison

C is a Canadian citizen who has now already been released from prison and is back in Canada. In early February 2011, he was charged with being in possession of a scale 1 diet food inside the dining hall in Pik Uk Prison. All he had done was **to swap food with another prisoner**, which is very common among prisoners. Although strictly speaking this is not allowed, according to

many inmates most guards will turn a blind eye to this practice or just give prisoners a verbal warning. When he requested the Canadian Consulate to be present during the hearing it was declined by the CSD. Also he was not allowed to have any lawyer present.

The adjudicating officer awarded two days' separate confinement and withdrawal of privileges.

Case D: Lo Wu Correctional Institution

D is a female prisoner in Lo Wu Correctional Institution. She spent 1 day in administrative solitary confinement and was later sentenced to 3 days' extra sentence because she accidentally **left a prison item in the wrong location.**

Case E: Siu Lam Psychiatric Centre

E was a male prisoner detained in Siu Lam Psychiatric Centre (SLPC) from Feb to April 2012, where he spent 42 days. Before and after SLPC he was admitted to Pamela Youde Nethersole Eastern Hospital for psychiatric treatment. E suffers from bipolar affective disorder.

During his incarceration at SLPC, he was in solitary confinement on four occasions, with the first lasting 2 days, and the other 3 occasions lasting 4 days each, totaling **14 days**. The CSD has stated that the Medical Officer had recommended it to safeguard him from causing harm or hardship to himself and other persons as he had suffered from mental problem.

E lodged a complaint with the Complaints Investigation Unit of the Correctional Services Department in April 2012. He complained that he had been unreasonably detained in solitary confinement and that the conditions were unsatisfactory. The CSD conveyed the results to him during August 2012, stating that it no mistake was made. In September 2012 an application for re-examination was made, but in November 2012, the CSD stated that there was no evidence justifying any change in the original findings.

E had complained about the following in solitary confinement: The unit was a small room padded with foam and he was able to touch each side of the room with his arms stretched. **The lights were on 24 hours a day.** This has been confirmed by the CSD. According to the CSD the light are dim, but according the E the lights were very strong all the time and he had to cover his face in order to sleep. He only had the option to cover his face with a **dirty blanket that stank strongly of urine** given to him by the CSD.

He was given two bucket that he could use as a toilet. The buckets were never emptied immediately and sometimes more than half a day would pass before they were emptied.

Obviously this would make **the room very smelly**. It would also often take long time for them to bring the buckets back, leaving E without any options to go to the toilet. He was provided **no toilet paper** and was **forced to save napkins from his meals in order to clean himself after defecating**.

E also expresses that he felt **very depressed** inside the cell and had very little human contact.

Case F: Lai Chi Kok Reception Centre

A former prisoner was detained in Lai Chi Kok Reception Centre and was in solitary confinement for **69 days**. While solitary confinement was imposed as a punishment at the beginning, onwards he was removed from association under prison rule 68B and it was renewed every 28 days, with the reason for “not maintaining good order and discipline and the institution”.

He claims that he didn't feel well mentally during solitary confinement. He started talking to himself after 1 month of confinement. **He also had thoughts of committing suicide**.

He also claims that his **legs started swelling after 1 month** because he was sitting in the cell for so long. The swelling disappeared after being released from solitary confinement.

Other incidences told by prisoners

- A prisoner was sent to the special unit for a few days because she **mixed food in her tea**.
- Another female prisoner was sent to special unit because she **ate some of a fellow inmates' food**.
- Yet another prisoner was sent to special unit because she was **washing her clothes in her cell**.
- A former prisoner said that he had been very depressed in solitary confinement and started **hurting himself by banging his fist against the wall**.