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Press release

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# 1. Introduction

Based on the report conducted by Society of Community Organization (SoCO, 2016), we call upon the government to amend the Prison Rules related to the practice of solitary confinement. Solitary confinement is an outdated and counterproductive practice that directly is causing Hong Kong’s social and economic development to slow down.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.

## 1.1 What is Solitary Confinement?

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 or two hours of exercise.

## 1.2 How is Solitary Confinement used in Hong Kong?

The official grounds for solitary confinement in Hong Kong are broadly explained one of three reasons:

1. **Punishment:** Isolation functions as a punishment for a prisoner’s misconduct following a disciplinary hearing[[1]](#footnote-1).
2. **Management**: Isolation is also 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.
3. **Protection:** Isolation can also be used to protect prisoners who may be harmed by other prisoners.

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 (see Appendix 2 for a detailed analysis of the respective prison rules). Due to the current structure of the prison rules, it is today way too easy for prison administration to abuse and misuse solitary confinement (see Appendix 3 for case examples)**.** The estimated average number of solitary confinement cases in Hong Kong is at about **8.000 cases every year from 2000-2015** (see Appendix 1 for more detailed statistics). However, this is 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.**

# 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. Based on the findings of our research the issues of solitary confinement can be divided into four groups:

1. **Solitary Confinement as a Health Hazard:**  The list of health risks includes everything from **panic attacks** to **suicide**, **anxiety**, **self-mutilation**, **unprovoked** **anger**, **insomnia**, **hallucinations**, **paranoia**, **psychosis** and many more. Particularly, prisoners that are not informed about the reason and duration and those who already have a mental illness are extremely vulnerable to solitary confinement.
2. **Solitary Confinement as a Violation of Human Rights:** The UN Committee Against Torture (CAT) has criticized the practice of solitary confinement in Hong Kong for being widespread and under-regulated. All other international standards and recommendations agree that the usage of solitary confinement should be severely reduce, such as: The Istanbul Statement on the Use and Effect of Solitary Confinement; The United Nations’ Human Rights Committee; and The European Court of Human Rights.
3. **Solitary Confinement as an Ineffective Administrative Strategy:** Solitary confinement has in several of 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. On the other hand, alternative methods of managing prison populations have proven themselves much more effective in reducing unwanted behaviour.
4. **Solitary Confinement as a Social and Economic Disaster:** Studies have shown that solitary confinement contributes to an increased rate of (particularly violent) recidivism and reduces the chances of a successful rehabilitation and reintegration after prison. 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 often will be forced to seek public welfare services in order to survive. Additionally, there is the cost related to possible (violent) crimes, such as: 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.

# 3. Recommendations

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

## 3. 1 Revise the Practice of Solitary Confinement

1. **Reclassification of the Criteria for Solitary Confinement:** The government needs to amend the classifications required to deem people eligible to solitary confinement to decrease the usage of solitary confinement and make it a last resolve only.
2. **The Conditions under Solitary Confinement:** The government needs to amend the prison rules, as to institute more precise declarations of the required minimum conditions of solitary confinement (see (SoCO, 2016)) for detailed list of necessary declarations). The government must also prohibit all types of indefinite and uninformed solitary confinement.
3. **Solitarily Confined Prisoners must be Re-Integrated:** The prison 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, as soon as they have been solitarily confined.

## 3.2 Push for Alternative Methods of Prisoner Management

1. **Incentive Programs and Other forms of Punishment:** The prison administration needs to rely more on incentive programs and softer forms of punishment, such as: limiting contact visits; rewards for continuous good behaviour; restricting the prisoner to his/her own cell; restricting the visitors allowed to immediate family; gain/loss of work opportunities; etc. to manage the prison population.
2. **De-Escalation Training:** The prison administration needs to rely more on de-escalation training, such as: “verbal Aikido” and “verbal Judo”. These are methods that consist of techniques designed to prevent, de-escalate or end attempts of conflict and assault.
3. **Therapeutic Communities:** The prison administration needs to rely more on values inspired by democratic therapeutic communities. They have proven very effective in lowering reconviction rates and in improving behaviour and psychiatric symptoms during imprisonment (see more detailed explanation in (SoCO, 2016)).

## 3.3 Increase Transparency and Protection

1. **Documentation of Solitary Confinement:** Every case of solitary confinement needs to be documented in writing, including the time, the date and the rationale behind the segregation of the prisoner.The prison rules must encourage the prisoner to document his/her own account of the events leading up to solitary confinement in writing. Suicides, self-harm and other issues related to the solitary confinement must be documented.
2. **An Independent Third-Party must Review all Cases:** It is vital that an independent third-party is implemented to review and accept/reject all cases of solitary confinement.
3. **Public Statistics:** 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 administration can be held accountable by the public.

# 4. References:

SoCO. (2016). *Recommendations Concerning the Practice of Solitary Confinement in Hong Kong.* Hong Kong: Society of Community Organization.

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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: Prisoner 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 room.
8. Prison population refers to the daily average prison population a given year.
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 hours or less, 30% of the cases lasted for 72 hours – 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 roomto 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 it 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 or 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.0**

1. It should noted that although a disciplinary hearing is required, then disciplinary hearings does not include a impartial and independent third party. [↑](#footnote-ref-1)