

Coalition letter to the US government urging constructive engagement in the UN review process of the Standard Minimum Rules (SMR) for the Treatment of Prisoners

December 7, 2012

The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Madam Secretary:

In 2010, the United Nations General Assembly tasked the UN Office of Drugs and Crime (UNODC) in Vienna to “exchange information on best practices (...) and on the revision of existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional science and best practices”. The process has since gained momentum and a resolution was adopted by the UNODC in April 2012 that paved the way for targeted revisions in a preliminary list of areas identified in the report of the first Inter-Governmental Expert Meeting (IGEM) and extended the work of the IGEM which will meet again in Buenos Aires, Argentina, from 11 to 13 December.¹

In an effort to provide expert and civil society input for this meeting, Essex University and Penal Reform International convened a meeting of independent experts in early October to draft recommendations on how the rules could be revised. The outcome document of this meeting was released on 21 November and proposed concrete revisions based on current international norms and standards in the areas proposed for possible reform. The document also identified outdated language and gaps in the Standard Minimum Rules for the Treatment of Prisoners (“SMR”) that exist as a result of international legal developments that have taken place since the Rules’ adoption in 1955.²

The undersigned organizations fully support the Essex document and call on the United States government to adopt the document’s proposed changes to the SMR. We also endorse the American Civil Liberties Union (ACLU) recommendation for specific targeted revisions on the use of solitary confinement, as well as the Amnesty International (AI) recommendation to include “sexual orientation” and “gender identity” as prohibited grounds for discrimination in prisons.³

¹ A working paper drafted by the UNODC Secretariat in preparation for the meeting in Buenos Aires is available here: http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM-SMR_II_Working_paper_prepared_by_the_Secretariat.pdf

² The Essex document is available at PRI’s website, alongside a Joint NGO Briefing on the process of the SMR Review thus far: <http://www.penalreform.org/news/55-years-modernising-un-standard-minimum-rules-treatment-prisoners>

³ Expert Group Meeting on the Standard Minimum Rules for the Treatment of Prisoners Buenos Aires, Dec. 11-13, 2012, Revising the Standard Minimum Rules for the Treatment of Prisoners: Amnesty International Briefing Recommending Inclusion of 'Sexual Orientation' and 'Gender Identity' as Prohibited Grounds for Discrimination in Prisons, U.N. Doc. UNODOC/CCPCJ/EG.6/2012/NGO/3 (Nov. 26, 2012), available at <http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/NGO-3-AI.pdf>.

Coalition letter to the US government urging constructive engagement in the UN review process of the Standard Minimum Rules (SMR) for the Treatment of Prisoners

While we recognize the United States' ongoing participation in this process, we write to urge the United States delegation to the meeting in Buenos Aires to take a more active role in supporting progressive revisions to the SMR. Previously, input from the United States to this process has been lacking at best, and has fallen short of its human rights commitments.⁴

In 2010, the U.S. government committed to using its Universal Periodic Review (UPR) at the Human Rights Council to “deliver the progress [its] people demand and deserve” on human rights. Through the UPR, the administration formally committed to take a number of concrete steps to improve U.S. human rights performance at home. In the area of criminal justice, the United States committed, among other things, to “ensure the full enjoyment of human rights by persons deprived of their liberty, including by way of ensuring treatment in maximum security prisons in conformity with international law.”⁵

The SMR review process offers the United States an opportunity to put muscle behind its rhetoric and make significant steps toward fulfilling its UPR commitment through constructive engagement. We urge the United States to support progressive revisions to the SMR that would prohibit the use of solitary confinement for juveniles, pregnant women, women with infants and breastfeeding mothers, and persons with mental illnesses. We also call on the United States to support more robust protections against the use of long-term solitary confinement in Rule 31, as outlined in the attached ACLU statement.

We thank you for your continued commitment to and work in support of human rights, and for your consideration of this urgent request. For any questions, please contact Jamil Dakwar, ACLU's Human Rights Program Director at: jdakwar@aclu.org or David Fathi, ACLU's National Prison Project Director and who will be attending the meeting in Buenos Aires at: dfathi@npp-aclu.org.

Sincerely,

American Civil Liberties Union (ACLU)
Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center
Amnesty International USA
Casa Esperanza (Bound Brook, NJ)
Center for Constitutional Rights
Criminal Defense Clinic, CUNY School of Law
Human Rights Defense Center
Human Rights in Criminal Sentencing Project, Center for Law and Global Justice, University of San Francisco School of Law
International Center for Advocates Against Discrimination
International CURE

⁴ See, for example, the response of the United States Government submitted to the Open-Ended Intergovernmental Group of Experts in preparation for the December meeting in Buenos Aires, *available at* <http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/USA-GOV-34-En.pdf>. The United States Government also submitted a second response, *available at* <https://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/USA-ADD1.pdf>.

⁵ www.humanrights.gov, Accepted UPR Recommendations (March 2012) ¶ 177, *available at* <http://www.humanrights.gov/wp-content/uploads/2012/03/USAAcceptedRecommendations-2010UPR.pdf>.

Coalition letter to the US government urging constructive engagement in the UN review process of the Standard Minimum Rules (SMR) for the Treatment of Prisoners

International Human Rights Clinic, Santa Clara School of Law

Just Detention International

Justice Strategies

Labour Health and Human Rights Development Centre

Maria Baldini-Potermin & Associates, PC

National Center for Lesbian Rights

NC Immigrant Rights Project

Pennsylvania Council of Churches

Political Asylum/Immigration Representation Project

The Advocates for Human Rights

The Woodhull Sexual Freedom Alliance

US Human Rights Network



Revising the Standard Minimum Rules for the Treatment of Prisoners: Statement of the American Civil Liberties Union on Solitary Confinement

Introduction

The American Civil Liberties Union (ACLU) submits this statement to the 2nd Meeting Open-ended Intergovernmental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners (henceforth “SMR”), to take place in Buenos Aires, Argentina from 11-13 December 2012, pursuant to United Nations General Assembly Resolution 65/230 of 21 December 2010.

Having participated in the Expert Meeting on the SMR at the University of Essex and in subsequent discussions regarding the outcome document of that Meeting, the ACLU has endorsed that document¹ as well as Amnesty International’s recommendation to include ‘sexual orientation’ and ‘gender identity’ as prohibited grounds for discrimination in prisons.² The purpose of this statement is to highlight a single issue: the need for more robust protections in Rule 31 against the use of long-term solitary confinement.

Current Wording and Recommended Changes

Rule 31 currently reads:

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

The ACLU recommends that this Rule be revised to read as follows:

31. (1) Corporal punishment, prolonged confinement without sustained and meaningful daily human contact, punishment by placing in a dark cell, the suspension or restriction of

¹ University of Essex, Expert Meeting at the University of Essex on the Standard Minimum Rules for the Treatment of Prisoners Review, Summary (2012), available at http://www.penalreform.org/files/Summary%20of%20Expert%20Meeting%20at%20the%20University%20of%20Essex%20on%20the%20SMR%20%20November%202012_0.pdf.

² Expert Group Meeting on the Standard Minimum Rules for the Treatment of Prisoners Buenos Aires, Dec. 11-13, 2012, Revising the Standard Minimum Rules for the Treatment of Prisoners: Amnesty International Briefing Recommending Inclusion of 'Sexual Orientation' and 'Gender Identity' as Prohibited Grounds for Discrimination in Prisons, U.N. Doc. UNODOC/CCPCJ/EG.6/2012/NGO/3 (Nov. 26, 2012), available at <http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/NGO-3-AI.pdf>.

water or food and all other cruel, inhuman or degrading punishments shall be completely prohibited.

(2) Solitary confinement shall only be used in exceptional cases when deemed absolutely necessary **to prevent death, serious bodily injury, or a major breach of prison security. Solitary confinement shall in all cases be used** for as short a time as possible and **shall be** subject to regular, substantive independent review. **Solitary confinement exceeding 30 days in duration shall be presumed to be inconsistent with this Rule.**

(3) Solitary confinement of juveniles, of pregnant women, women with infants and breastfeeding mothers in prison and of persons with mental illness shall be prohibited.

(4) All punishments shall be duly recorded.³

This submission focuses solely on explaining the rationale for the ACLU's recommendations (1) to add a requirement that solitary confinement be used only when absolutely necessary to prevent death, serious bodily injury, or a major breach of prison security, and (2) to add a presumption that solitary confinement exceeding 30 days in duration is impermissible. With the exception of these recommendations, the changes recommended here to Rule 31 are fully consistent with those of the Essex Meeting experts; those changes are found in its outcome document to which the ACLU is a party and are explained and justified there.

Rationale for Requirement that Solitary Confinement be Absolutely Necessary to Prevent Death, Serious Bodily Injury, or a Major Breach of Prison Security

Solitary confinement of prisoners is found, in some form, in every prison system. While it is sometimes used to incapacitate prisoners who are highly dangerous, it is often used as punishment for nonviolent and relatively minor violations of prison rules.⁴ In addition, in some prison systems, certain categories of prisoners (such as those sentenced to death or life imprisonment) are automatically placed in solitary confinement without regard to their conduct in prison.⁵ A requirement that solitary confinement be used only when absolutely necessary to prevent death, serious bodily injury, or a major breach of prison security will make clear that such practices are not consistent with the Rule.

Rationale for Presumptive Limitation of Solitary Confinement to No More Than 30 Days

Since the promulgation of the SMRs in 1955, a substantial body of research has demonstrated the harmful, and sometimes devastating, effects of solitary confinement on physical and mental health.⁶ These harmful effects are most starkly illustrated by the significantly higher rates of

³ Text in bold represents proposed additions to the revised text of Rule 31 recommended by the Essex Meeting.

⁴ American Civil Liberties Union, *Boxed In: The True Cost of Extreme Isolation in New York's Prisons* (2012) (describing solitary confinement as punishment for minor, nonviolent misbehavior) (United States).

⁵ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 3 August 2009, UN Doc A/64/215, para. 53 (prisoners sentenced to life imprisonment held in solitary confinement) (Moldova).

⁶ See, e.g., Sharon Shalev, *A Sourcebook on Solitary Confinement*, London: Mannheim Centre for Criminology, London School of Economics (2008); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140

suicide among prisoners in solitary confinement than among those in the general prison population. While some groups, such as juveniles and persons with mental illness, are particularly vulnerable, the harmful effects of this practice are not limited to these populations.

The harms of solitary confinement are closely tied to its duration. One study found measurable changes in brain activity after only seven days of solitary confinement.⁷ In 2005, a group of psychiatrists and psychologists surveyed the existing literature and concluded that “no study of the effects of solitary ... confinement that lasted longer than 60 days failed to find evidence of negative psychological effects.”⁸

Despite this growing body of evidence, indefinite and long-term solitary confinement exists in many states.⁹ While some authorities recommend that solitary confinement be imposed only for the shortest possible time,¹⁰ such a formulation lacks precision and is open to a wide range of interpretations. Other authorities recommend specific limitations. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommends that in the case of solitary confinement as a disciplinary sanction, “the maximum period should be no higher than 14 days for a given offence, and preferably lower.”¹¹ The UN Special Rapporteur on Torture has called for “an absolute prohibition on solitary confinement exceeding 15 consecutive days.”¹² The inclusion of a specific durational limit in the Rule will provide concrete guidance to prison administrators and discourage the practice of indefinite and long-term solitary confinement.

For any questions, please contact David Fathi, the ACLU’s National Prison Project Director who will be attending the meeting in Buenos Aires at: dfathi@npp-aclu.org, or Jamil Dakwar, the ACLU’s Human Rights Program Director at: jdakwar@aclu.org.

AM. J. OF PSYCHIATRY 1450 (1983); R. Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988); S.L. Brodsky & F.R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988); Craig Haney, *Mental Health Issues in Long Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124 (2003).

⁷ Paul Gendreau, N.L. Freedman, & G.J.S. Wilde, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCH. 54, 57-58 (1972).

⁸ *Wilkinson v. Austin*, United States Supreme Court, No 04-495, Brief of Professors and Practitioners of Psychology and Psychiatry as Amicus Curiae in Support of Respondent, 2005 WL 539137, at *4 (March 3, 2005).

⁹ *A.B. v. Russia*, Application No. 1439/06, European Court of Human Rights, para. 103 (2010) (three years); *Silverstein v. Federal Bureau of Prisons*, 704 F.Supp.2d 1077 (D. Colo. 2010) (United States) (twenty-seven years).

¹⁰ European Prison Rules, Rule 60(5): “Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible.”

¹¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 21st *General Report of the CPT*, 1 August 2010 – 31 July 2011, p. 43. “Further, there should be a prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period.” *Ibid.*

¹² First interim report to the General Assembly, 5 August 2011, UN Doc A/66/268, para. 76.