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**OPEN-ENDED INTERGOVERNMENTAL EXPERT GROUP
ON THE STANDARD MINIMUM RULES FOR THE
TREATMENT OF PRISONERS**

VIENNA, AUSTRIA, 25 – 28 March 2014

**STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION ON
SOLITARY CONFINEMENT¹**

Prepared by
The America Civil Liberties Union²

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Statement of the American Civil Liberties Union on Solitary Confinement

Submitted to the Third Meeting of the Intergovernmental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners

Vienna, Austria, 25-28 March 2014

Introduction

The American Civil Liberties Union (ACLU) submits this statement to the meeting of the Open-ended Intergovernmental Expert Group (henceforth “Expert Group”) on the Standard Minimum Rules for the Treatment of Prisoners (henceforth “SMR”), to take place in Vienna, Austria from 25-28 March 2014, 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 document.¹ 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.**

The 2nd meeting of the Expert Group, held in Buenos Aires, Argentina from 11-13 December 2012, in which the ACLU also participated, identified various restrictions on solitary confinement as issues for revision.² Since that meeting, several human rights bodies have recommended new prohibitions and strict limits on the use of solitary confinement:

- The U.N. Committee against Torture has reiterated its “long-standing recommendation” that “solitary confinement might constitute torture or inhuman treatment and should be regulated as a measure of last resort to be applied in exceptional circumstances, for as short a time as possible, under strict supervision including being subjected to judicial review.”³
- The U.N. Committee on the Rights of Persons with Disabilities has recommended that solitary confinement “should never be used on a person with disability, in particular with a psychosocial disability or if there is danger for the person’s health in general.”⁴
- The Inter-American Commission on Human Rights has stressed that “in essence, solitary confinement should only be used on an exceptional basis, for the shortest amount of time possible and only as a measure of last resort. Additionally, the instances and circumstances in which this measure can be used must be expressly established by

law (as provided in Article 30 of the American Convention), and its use must always be subject to strict judicial oversight. In no instance should the solitary confinement of an individual last longer than thirty days.”⁵ Moreover, at the conclusion of a thematic hearing on *Solitary Confinement in the Americas* the Commission expressed the view that members of the Organization of American States (OAS) “must adopt strong, concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances … [T]his practice may never constitute a legitimate instrument in the hands of the State. Moreover, the practice of solitary confinement must never be applied to juveniles or to persons with mental disabilities.”⁶

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 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.⁷

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.⁸ 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.⁹ 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.¹⁰ These harmful effects are most starkly illustrated by the significantly higher rates of 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,¹¹ 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.¹² 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.”¹³

Despite this growing body of evidence, indefinite and long-term solitary confinement exists in many states.¹⁴ While some authorities recommend that solitary confinement be imposed only for the shortest possible time,¹⁵ 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.”¹⁶ The U.N. Special Rapporteur on Torture has called for “an absolute prohibition on solitary confinement exceeding 15 consecutive days.”¹⁷ 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 Amy Fettig, the ACLU’s National Prison Project Senior Staff Counsel who will be attending the meeting in Vienna at: afettig@aclu.org, or Jamil Dakwar, the ACLU’s Human Rights Program Director at: jdakwar@aclu.org.

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/wp-content/uploads/2013/05/Summary-of-Expert-Meeting-at-the-University-of-Essex-on-the-SMR-20-November-2012_0_0-11.pdf. The ACLU has also endorsed Amnesty International’s recommendation to include ‘sexual orientation’ and ‘gender identity’ as prohibited grounds for

discrimination in prisons. 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>

² See E/CN.15/2013/23, paragraph 18.

³ Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), CAT/C/51/4 (16 December 2013), paragraph 32.

⁴ Observations on the Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. UNODC/CCPCJ/EG.6/2014/NGO.4 (29 November 2013), paragraph 12. See also Observations by the SPT concerning the Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. UNODC/CCPCJ/EG.6/2014/INF/1 (25 September 2013), paragraph II.3 ("Special attention must also be given to solitary confinement; it may only be used as an exceptional disciplinary sanction of last resort, strictly time-restricted and both its use and the manner of its implementation must be subject to stringent controls"); Centro de Estudios Legales y Sociales (CELS) and Conectas Derechos Humanos, Contributions for the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. UNODC/CCPCJ/EG.6/2014/NGO.3 (14 January 2014), pages 9-13 (discussing solitary confinement).

⁵ http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM_Brazil_Jan_2014/IACHR_English.pdf.

⁶ http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp.

⁷ Text in bold represents proposed additions to the revised text of Rule 31 recommended by the Essex Meeting.

⁸ 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).

⁹ 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); *Prieto v. Clarke*, 2013 WL 6019215 (E.D. Va. 2013) (prisoners sentenced to death automatically held in solitary confinement) (United States).

¹⁰ 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 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).

¹¹ See American Civil Liberties Union, *Out of Sight, Out of Mind: Colorado's continued warehousing of mentally ill prisoners in solitary confinement* (2013) (United States); Human Rights Watch and American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012) (United States).

¹² 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).

¹³ *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).

¹⁴ See CAT/C/JPN/CO/2, 2013, para. 14 (Japan) ("extensively prolonged without a time limit"); CAT/C/PER/CO/5-6, 2013, para. 10 (Peru) ("prolonged solitary confinement"); *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).

¹⁵ 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."

¹⁶ 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.*

¹⁷ First interim report to the General Assembly, 5 August 2011, UN Doc A/66/268, para. 76. See also Inter-American Commission on Human Rights, "IACtHR Expresses Concern over Excessive Use of Solitary Confinement in the United States," July 18, 2013, available at http://www.oas.org/en/iachr/media_center/PReleases/2013/051.asp ("The Commission subscribes to the opinion of the UN Rapporteur on Torture that beyond a period of 15 days, the harmful psychological effects of isolation can become irreversible").