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Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2015/07/17/uns-mandela-rules-to-set-new-international-standards-for-treatment-of-prisoners-including-limits-on-solitary-confinement/>

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by [Aylin Manduric](#) | July 17, 2015

The United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs) are being given several long-awaited revisions this year. Among them is a provision that solitary confinement shall be used only in exceptional cases as a last resort for as short a time as possible and subject to independent review. The rules also prohibit indefinite solitary confinement and prolonged solitary confinement defined as more than 15 consecutive days as well as the solitary confinement of people with mental or physical disabilities where isolation would exacerbate their conditions.

David Fathi, Director of the American Civil Liberties Union's National Prison Project, called the new rules on solitary confinement a tremendous step forward, particularly given that the original rules were silent on the issue. The ACLU participated actively throughout the revisions process, and is a leading force in the fight to end solitary confinement in the United States.

Originally drafted in 1955, the SMRs served as guidelines for many countries regulatory frameworks for prison administration, and remained largely unchanged until the UN General Assembly decided to [initiate](#) a revisions process in 2010.

The revisions were the product of four open-ended intergovernmental expert group meetings attended by representatives of states, experts from research institutions, and a number of non-governmental organizations (NGOs), including several prisoners rights advocacy groups. These organizations were [central](#) to the revisions process, and contributed heavily to the identification of best practices, and the decision to revise the rules rather than merely commenting on them.

In a [joint statement](#), the NGO group also asked that the new SMRs be called the Mandela Rules, after the South African activist and president who spent 27 years in prison before becoming the country's first president after apartheid. This designation was approved, along with a provision for naming tomorrow, Mandel's birthday, Mandela Prisoner Rights Day.

On May 22nd, the UN Commission on Crime Prevention and Criminal Justice (the Crime Commission) passed a [resolution](#) approving the revised standards for adoption by the General Assembly later this year. Yury Fedotov, the head of the UN Office of Drugs and Crime (UNODC), [called](#) the approval of the Mandela rules an important step in promoting and safeguarding the humane treatment of prisoners and affirmed the UNODC's support for any penal reform efforts related to the application of the Mandela Rules in practice.

During the six decades following the adoption of the original SMRs, new developments in social norms and technology had left the rules [out-of-date](#), making them less effective as tools for protecting the rights people in prison, in particular LGBTQ individuals and people with mental illnesses. The rules were also out of touch with recent developments in human rights norms, such as the [2011 report](#) from UN Special Rapporteur on Torture Juan E. Mndez, which concluded that periods of solitary confinement exceeding 15 days constitute torture, and also recommended that juveniles and the mentally disabled be exempt from solitary confinement altogether. These developments, as well as others relating to healthcare and prison discipline, are better reflected in the revised version of the rules, which contains updates in nine areas of the original SMRs.

The ACLU's David Fathi highlighted the power of the Mandela Rules focus on human rights in changing attitudes about incarcerated people, whether they be legislators, prison staff, the public at large, or people currently serving sentences. The Mandela Rules [emphasize](#) that people in prison, like everyone else, are subjects of human rights, and so should be protected from torture or inhuman and degrading treatment and punishment. Together with the Special Rapporteur on Torture's report, this language has important implications for solitary confinement.

The U.S. government's full support for the Mandela Rules, according to Fathi, could be a sign that change in the federal prison system may be on the way. Civil society, of course, has an important role to play in ensuring that the public and decision makers are both aware of the rules and see them as a national priority. Here, the Mandela Rules can provide a common reference point for NGOs and activists looking to evaluate their states performance. As Fathi put it, The Rules are only as good as their implementation.

While the addition of human rights language might seem like a matter of semantics, it is important to note that these rules are [often the](#)

[primary](#) and sometimes the only frame of reference for those legislating and monitoring prison conditions around the world. Like the original SMRs, the Mandela Rules are to serve as a foundational framework for national prison policies, and so it is essential that they remain consistent with current norms in human rights and criminal justice. Without human rights language, the international standard would appear to exclude people sentenced to prison from the benefits of human rights protection.

The advocacy group Penal Reform International was at the [forefront](#) of the group of NGOs who participated in the [four-year](#) revisions process. Andrea Huber, PRI's Policy Director, was present at the commission, and released her remarks on the Mandela Rules and the revisions process in a podcast following the approval of the rules. Huber described the Mandela Rules as being relevant not only to improving the lives of the world's 10 million prisoners, but also to easing the pressure off of prison staff. The new rules explicitly outline what is and isn't permitted in terms of detention conditions, and provide a detailed framework for solitary confinement standards, in line with the UN special rapporteur on torture's 2011 report on the issue.

Huber also discussed the obstacles that might stand in the way of the Mandela Rules being put into practice. Some of the biggest obstacles, according to Huber, are related to common attitudes about people in prison, including the idea that it is justifiable to mistreat them because they have been convicted of crimes, and so their legal status removes them from the realm of human rights protection. Many states take an extremely punitive approach to prison management which rarely prioritizes the human rights of those inside. Lack of political will to offer better treatment to prisoners stems primarily from these attitudes, but can also be a product of ignorance on the part of policymakers and leaders, most of whom have never been to prison.

This lack of awareness about what life is like for people subjected to degrading or abusive prison conditions prevents decision-makers from fully understanding the importance of a human rights based approach to penal reform. As Huber put it, it is much easier to run prisons where detainees have [the] respect of prison staff and where their basic rights are protected. Huber also refers to the unnecessary suffering caused by inhumane prison conditions as a sort of double jeopardy in which those sentenced to one punishment, prison time, are subjected to two.

The greatest significance of these changes lies in the reconciliation of human rights norms with criminal justice standards. Every person, regardless of their legal status, is equally a subject of human rights, and although many nations may not currently run their prisons according to the new standard, the approval of the Mandela Rules was an important first step towards meaningful penal reform.

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