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Featured Topic: Solitary Confinement

Monitoring and Evaluating Solitary Confinement

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Solitary confinement is one of the oldest and most universally used prison practices, and one of the harshest and most damaging ones. It is also a highly controversial practice which rarely fails to evoke strong reactions. For lay people, drawing on depictions of the practice in films such as [Murder in the First](#), or [Escape from Alcatraz](#), the term 'solitary confinement' conjures up images of half-naked, half-crazed individuals, lying in a dark dungeon, muttering to themselves, suffering this ill treatment at the hands of sadistic, brutal guards. Such torturous treatment, according to this view, is either a historical practice or one which only takes place in repressive regimes. Those more familiar with the prison world and the prevalence of solitary confinement tend to either condemn the practice as inhumane and barbaric, or support it as an unavoidable tool in the arsenal available to prison administrators in managing difficult and often volatile populations. The former point to the [literature documenting the harmful health effects of solitary confinement](#), while the latter claim that solitary confinement is no more damaging than imprisonment itself, and any accounts by prisoners or claims to the contrary by health professionals are misguided at best, and untruthful at worst.

In [debates](#) reminiscent of the 19th century [pamphlet wars](#) between those promoting the 'separate penitentiaries' (where all prisoners were held in complete separation from each other and worked inside their cell) and those promoting the 'silent penitentiaries' (where prisoners were separated at night but worked alongside each other in the day, in complete silence), each 'side' accuses the other of ignorance, naivety, exaggeration, or indifference to the pain of others (prison staff or prisoners, depending on the speaker). The issue is often presumed to be a zero sum game, with supporters of the practice suggesting that those who oppose it are 'for' prisoners and 'against' staff, and vice versa.

Solitary confinement and the Nelson Mandela Rules

Considering the extremity of solitary confinement and its [potential health and human rights implications](#), it is perhaps surprising that, until fairly recently, international human rights law offered little guidance. With the exception of the UN Basic Principles for the Treatment of Prisons (1990) which stated that “Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use should be undertaken and encouraged”, international human rights law mostly remained silent on how to ascertain if, when and under which conditions, what was seen as an undesirable, but perhaps not entirely avoidable practice, became a form of prohibited treatment. In fact, it was not even clear what exactly constituted ‘solitary confinement’.

All this changed with the adoption of the revised (2015) UN Standard Minimum Rules for the Treatment of Prisoners (SMR, renamed the [Nelson Mandela Rules](#)) which, for the first time, include an entire section dedicated specifically to solitary confinement. The Nelson Mandela Rules (hereafter NMR) are a ‘soft law’ instrument – that is to say, they are not legally binding, but they do represent the most up to date, comprehensive international expert opinion on the practice and principles of human rights law, and are increasingly used by monitoring bodies and courts worldwide, contributing to their status as customary law. This has meant that not only do the revised Rules represent current thinking and sensibilities on the subject, but also that they are practical and realistic in their understanding of how prisons operate. I have also found, in my own work in [England](#) and in [New Zealand](#) , that the Mandela Rules provide an excellent framework for inspecting and assessing conditions of confinement in general and solitary confinement units in particular.

Defining solitary confinement

A key contribution of the NMR is the introduction of a definition of solitary confinement. This definition aims to resolve the issue of the many different names given to what is essentially the same practice (e.g. segregation; separation; isolation) and to the units where solitary confinement takes place (including special management; control units; care and separation; special security and; supermax security, to name a few). Shifting the narrative away from titles and names, the definition in Mandela Rule 44 focuses on what the practice actually entails:

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

This definition is important as it makes clear that, when a prisoner is confined to a cell for 22 hours or more, that constitutes solitary confinement, regardless of the reason for this confinement or its name. The definition also hints at the detrimental effects of solitary confinement by setting acceptable timeframes for the practice: no longer than 15 consecutive days. Beyond this time frame it may

constitute inhuman or degrading treatment, and hence [prohibited under international law](#) .

What constitutes 'humane conditions' and 'meaningful human contact'?

The Nelson Mandela Rules, alongside a long list of human rights treaties and conventions, make it clear that all prisoners, including those in solitary confinement, retain their basic human rights, including the right to be treated with dignity and respect. One aspect of this are physical conditions, which are often very poor in solitary confinement units. Evaluating these is straightforward: how big is the cell? Is it clean? Does the prisoner have access to sufficient natural and artificial light? Is there a window? Is there an alarm bell in the cell? Does it work? Are prisoners penalised if they use it? Is there a basin with drinking water? Is there a toilet? Is it separate from the main cell area? Do toilets have a lid, and a seat? Can prisoners keep personal belongings inside the cell?

The term 'meaningful human contact' is less straightforward, and since the adoption of the Mandela Rules we have already seen some debate around what constitutes 'meaningful contact'. A group of experts (of which I was part), convened for the purpose of providing [guidance on the interpretation and implementation of the Mandela Rules](#) , suggested that

" Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity. " (pp 88-89)

In other words, giving a prisoner their food tray or escorting them to the exercise yard do not constitute 'meaningful contact'. Developing a relationship with them, and interacting with them in a respectful way and treating them as the human beings they are - asking how they are, chatting to them about their family, football, the weather - do. When monitoring and evaluating solitary confinement units I find that meaningful contact is one of those things that you recognise in its absence. As well as observing whether staff practice [dynamic security](#) and their interactions with prisoners, chatting to staff helps to ascertain the degree to which they are familiar with the prisoners and their particular needs, issues and triggers.

Beyond being treated with respect for their human dignity, isolated prisoners should be provided with means to occupy themselves through access to programmes, education, and vocational training, where possible alongside others. Visits should be encouraged and facilitated. Time in solitary confinement should be used constructively and address some of the issues which led to the individual's placement. This can be assessed by looking at the daily regime and time out of cell offered to prisoners; their personal management plan; the setting of targets for progression out of solitary confinement and so on.

Placing breaks on the use of solitary confinement

Mandela Rule 43 prohibits altogether the use of prolonged (longer than 15 days) and indefinite solitary confinement as punishment. Within the permitted timeframe, Rule 45(1) further elaborates:

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, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.

The placement of a prisoner in solitary confinement must be lawful and subject to independent review. This can be ascertained through the paperwork accompanying the placement and is fairly straightforward. The terms 'exceptional cases' and 'last resort' require more digging around. The records must demonstrate why it was decided that there was no other choice than to segregate the individual prisoner, and document any other avenues which had been tried and failed. The number of prisoners in the unit, and the reasons for their placement, should help ascertain if solitary confinement is used routinely or if it is reserved for a handful of exceptional cases. The collection of good quality data and analysing it for trends is of course crucial.

The [Committee for the Prevention of Torture \(CPT\)](#) ^[1] helpfully developed a set of five tests for [assessing solitary confinement](#) in any one case, summarised as PLANN. Was the placement:

- **Proportionate** (is the harm/potential harm caused by, or to, the prisoner sufficiently serious to warrant solitary?)
- **Lawful** (competent authority? procedures followed? prisoner able to make representations?)
- **Accountable** (are there full records of the decision process and the daily regime?)
- **Necessary** (are only the least restrictive measures applied? are these individualised and flexible?)
- **Non-discriminatory** (is solitary confinement used disproportionately with a specific group of prisoners?)

Additional guidance can be found in the United Nations Office on Drugs and Crime's (UNODC) helpful [checklist for assessing compliance](#) with the Nelson Mandela Rules, and the [Association for the Prevention of Torture](#) and Prison Reform International's series of practical guides to assist monitors in assessing prison conditions in general, and solitary confinement in particular.

If all these tests have been met, the placement of a person in solitary confinement may be acceptable treatment. However, people belonging to one of a number of categories listed Mandela Rule 45(2) must never be isolated:

The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary

confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply.

These prohibitions are well grounded in the literature highlighting the particularly [devastating health effects](#) of solitary confinement on these populations, and are backed by other [international human rights](#) instruments.

Finally, the Rules establish a system of internal and external oversight, and set out the role of [health professionals in solitary confinement units](#) (Rule 46)- to closely monitor the health of isolated prisoners, but to take no part in its imposition.

In conclusion

The fact that solitary confinement has been with us since the early days of the prison must not blind us to its harms, nor to its limited utility in achieving much beyond physically containing the individual separately from others. For too long prison managers and administrators have resorted to its use simply because it was there . Rather than arguing about the exact extent of the damage caused by solitary confinement, we must ask what if any are its advantages, and what exactly is hoped to be achieved by its imposition. The Nelson Mandela Rules remind us that we need to reserve it as a tool of last resort, when all else has failed and when no lesser restrictive method can achieve the purpose of the isolation. And then it must only be used for a very short time, whilst respecting the prisoner's basic rights and treating them with dignity and respect. They also remind us that if it looks and feels like solitary confinement, it probably is solitary confinement, no matter what it is called. They require us to recall that solitary confinement is an extreme and damaging practice. This much, as a the Ontario Superior Court of Justice observed in a recent judgement, is indisputable:

“In the record there is ample evidence from Mr. Roberts that the long term confining of him in segregation had serious psychological consequences for him. But even if he had not deposed to that fact, it could today be taken as a matter of judicial notice. One does not need an affidavit to say that a gunshot to the arm hurts the arm; likewise, one does not need an affidavit to say that over a year in segregation, with almost no yard or other recreational time and simply sitting alone in a small cell for up to 23 hours a day, will turn a person into himself and create anxiety in dealing with others. Of course Mr. Roberts was adversely impacted by spending 426 days in segregation.”

(R. v. Roberts, 2018 ONSC 4566, 27/07/18)

Footnotes

[1] The CPT is a Council of Europe body mandated to carry out monitoring visits in prisons and other closed institutions throughout Europe.