

THE NELSON MANDELA RULES: THE REVISED UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS – SHORT REVIEW

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”
Nelson Rolihlahla Mandela

Abstract

The author of the paper provides a brief review of the structure of the new ‘Nelson Mandela Rules’ - The Revised United Nations Standard Minimum Rules for the Treatment of Prisoners with the emphasizes of the most important revisions and amendments of the previous United Nations Standard Minimum Rules for the Treatment of Prisoners from 1955. The Standard Minimum Rules for the Treatment of Prisoners were adopted in 1955, and constitute since then the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners. The Rules were revised in nine substantive areas to reflect standards that have emerged in correctional science and human rights since 1955, which are now called the Nelson Mandela Rules. This designation was made to honor the legacy of the late President of South Africa, Nelson Rolihlahla Mandela, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace. These rules represent an updated blueprint for prison management in the 21st century which upholds and promotes prisoners' dignity.

Key words: prison, right of prisoners, Nelson Mandela, standard minimal rules, treatment, United Nations.

I. INTRODUCTION

The Standard Minimum Rules for the Treatment of Prisoners (SMRs) were adopted in 1955, and constitute since then the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners, and have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world.^{1/2}

Considering the advances in international law and correctional science, the UN General Assembly decided, in 2011, to establish an open-ended intergovernmental Expert Group to review and possibly revise the SMRs. After an analysis process that involved five years of intense work by government experts, civil society and academics, the UN General

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¹<https://www.unodc.org/ropan/en/PrisonReform/the-nelson-mandela-rules--an-updated-guide-for-prison-management-in-line-with-human-rights.html>

https://www.unodc.org/documents/justice-and-prison-reform/Brochure_on_the_UN_SMRs.pdf Accessed on 10.5.2017.

² Arnaudovski, Lj. and Gruevska Drakulevski, A. (2011) "Law on Execution of Sanctions: integral text with an introduction, brief explanations and registry of terms with appendix", Skopje: "Studiorum" - Center for Regional Studies and Cooperation. [Арнаудовски, Љ. и Груевска-Дракулевски А. (2011) „Закон за извршување на санкциите: интегрален текст со предговор, кратки објаснувања и регистар на поимите со прилози“, Скопје: „Студиорум“ - Центар за регионални истражувања и соработка.]

Assembly adopted in December 2015, the revision of the Standard Minimum Rules for Treatment of Prisoners, which are now called the Nelson Mandela Rules (NMRs).³

This designation was made to honour the legacy of the late President of South Africa, Nelson Rolihlahla Mandela, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace. It was also decided that the Nelson Mandela International Day, which falls on July 18,⁴ should be used to promote decent conditions of detention, raise awareness of the fact that persons deprived of their liberty are an integral part of society and value the work prison staff and social service of particular importance.⁵

UN member states recognised that the Standard Minimum Rules were out-dated and did not reflect major developments in human rights and criminal justice since their adoption 60 years ago.

On the other hand, a large number of prison systems around the world are at a stage of crisis, with serious effects on prisoners, their families and societies as a whole. The ultimate purpose of imprisonment – the protection of society from crime – is undermined in prisons which are overstretched and poorly managed.⁶ Many are overcrowded, others are inadequate. Across the world, prisoners face health risks, violence, high rates of recidivism, as well as emerging threats, such as violent extremism in prisons. All of these challenges have added to the complexity of combining security, safety and human dignity within prison systems. Not to forget that this affects the often forgotten prison population of over 10.3 million people worldwide, as well as to those entrusted with their custody.⁷

Hence, after a careful analysis of the advances in international law, correctional science and best practices since 1955, the Expert Group revised the Standard Minimum Rules in nine substantive areas to reflect standards that have emerged in correctional science and human rights. These nine areas are: Prisoners' inherent dignity as human beings; Vulnerable groups of prisoners; Medical and health services; Investigation of deaths and torture in custody; Restrictions, discipline and sanctions; Access to legal representation; Complaints and inspections; Terminology and Staff training. Altogether, around 35 per cent of the rules have been revised and/or relocated.

It should be emphasized that “the following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems

³ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Resolution adopted by the General Assembly on 17 December 2015 [*on the report of the Third Committee (A/70/490)*]. Accessed on 10.3.2017.

⁴ “On the occasion of the Nelson Mandela International Day, a group of human rights experts with a mandate relating to detention have hailed the adoption of the Nelson Mandela Rules, the revised Standard Minimum Rules for the Treatment of Prisoners, which were adopted on 17 December 2015. The United Nations Special Rapporteur on Torture, Juan Méndez; the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, Med Kaggwa; the Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights, President James Cavallaro, and the Council of Europe Commissioner for Human Rights, Nils Muižnieks, welcomed the Nelson Mandela Rules as a historic step and one of the most significant human rights achievements in recent years.” (<https://www.coe.int/en/web/commissioner/-/leading-human-rights-experts-call-for-speedy-implementation-of-the-nelson-mandela-rules-on-nelson-mandela-international-day> Accessed on 10.5.2017.).

⁵<https://www.unodc.org/ropan/en/PrisonReform/the-nelson-mandela-rules--an-updated-guide-for-prison-management-in-line-with-human-rights.html> Accessed on 10.5.2017.

https://www.unodc.org/documents/justice-and-prison-reform/Brochure_on_the_UN_SMRs.pdf Accessed on 10.5.2017.

⁶http://www.unodc.org/documents/justice-and-prison-reform/SMRbrochures/16-00403_Mandela_rules_infographic.pdf Accessed on 10.5.2017.

⁷<https://www.unodc.org/ropan/en/PrisonReform/the-nelson-mandela-rules--an-updated-guide-for-prison-management-in-line-with-human-rights.html> Accessed on 10.5.2017.

of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management”.⁸

Next, “it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations. On the other hand, the rules cover a field in which thought is constantly developing. Also, it will always be justifiable for the central prison administration to authorize departures from the rules in this spirit”.⁹

“The rules do not seek to regulate the management of institutions set aside for young persons such as juvenile detention facilities or correctional schools, but in general part I would be equally applicable in such institutions. 2. The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.”¹⁰

In the following text, the author gives a brief review of the structure of the new `Nelson Mandela Rules` - The Revised United Nations Standard Minimum Rules for the Treatment of Prisoners with the emphasizes of the most important revisions and amendments of the previous United Nations Standard Minimum Rules for the Treatment of Prisoners from 1955.

II. THE STRUCTURE OF THE `NELSON MANDELA RULES`: THE REVISED STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

The `Nelson Mandela Rules` (NMRs) have 122 Rules (unlike the SMRs with 95 Rules) divided into two major parts. The first part is “**Rules of general application**” (Rules 1-85) and the second part is “**Rules applicable to special categories**” (Rules 86-122).

Part I of the rules covers the general management of prisons, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to “security measures” or corrective measures ordered by the judge. Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.¹¹

The first part, “**Rules of general application**”, regulates: Basic principles (Rule 1-5), Prisoner life management (Rules 6-10), Separation of categories (Rule 11), Accommodation (Rules 12-17), Personal hygiene (Rule 18), Clothing and bedding (Rules 19-21), Food (Rule 22), Exercise and sport (Rule 23), Health-care services (Rules 24-35), Restrictions, discipline and sanctions (Rules 36-46), Instruments of restraint (Rules 47-49), Searches of prisoners and cells (Rules 50-53), Information to and complaints by prisoners (Rules 54-57), Contact with the outside world (Rule 58-63), Books (Rule 64), Religion (Rules 65-66), Retention of prisoners` property (Rules 67), Notifications (Rules 68-70), Investigations (Rules 71-72), Removal of prisoners (Rules 73), Institutional personnel (Rules 74-82), Internal and external inspections (Rules 83-85).

⁸ https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf Accessed on 10.5.2017.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

The second part, “**Rules applicable to special categories**”, has five sections, *Section A. Prisoners under sentence* (Rules 86-108); *section B. Prisoners with mental disabilities and/ or health conditions* (Rules 109-110); *section C. Prisoners under arrest or awaiting trial* (Rules 111-120); *section D. Civil prisoners* (Rule 121) and *section E. Persons arrested or detained without charge* (Rule 122).

Section A in particular regulates Guiding principles (Rules 86-90), Treatment (Rules 91-92), Classification and individualization (Rules 93-94), Privileges (Rule 95), Work (Rules 96-103), Education and recreation (Rules 104-105), Social relations and aftercare (Rules 106-108).

The 122 Rules cover all aspects of prison management and outline the agreed minimum standards for the treatment of prisoners – whether pre-trial or convicted. The NMRs apply from admission to release.

The first part, “**Rules of general application**” in twenty two sections regulates the legal status of persons sentenced to imprisonment.

In the first section of the first part, “*Basic principles*”, Rules 1-5 provide the following basic principles:

- Prisoners must be treated with respect for their inherent dignity and value as human beings.
- There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected. Prisoners should be treated according to their needs, without discrimination.
- The prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.
- The purpose of prison is to protect society and reduce reoffending.
- The prison regime should seek to minimize any differences between prison life and life at liberty.

The next section, “*Prisoner file management*”, provides a standardized prisoner file management system which may be an electronic database of records or a registration book with numbered and signed pages. All records shall be kept confidential and made available only to those whose professional responsibilities require access to such records.

The third section, “*Separation of categories*”, provides that different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.

The fourth section “*Accommodation*” provides rules for accommodation of prisoners, minimal standards for conditions of accommodation premises shall meet (all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation). All parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

“*Personal hygiene*” is the fifth section that determines the general standards for maintaining personal hygiene of prisoners. Every prison must have clean bathroom facilities

in the interests of dignity and hygiene. Access to water, toilet items (including sanitary towels for women), adequate clothing and bedding must also be provided.¹²

The next section “*Clothing and bedding*”, determines the standards regarding the clothing of prisoners and bedding. Namely, every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

“*Food*” is the seventh section that provides standards for food and providing drinking water for prisoners. Prisoners must be provided with nutritious food of wholesome quality and also drinking water whenever they need it. Food and water cannot be restricted as a disciplinary sanction and must be provided without exception.¹³

Attention shall be paid to sport and sport activities which is regulated in the eighth section, “*Exercise and sport*”. Opportunities for sport should be provided and at least one hour per day of outdoor exercise permitted.

A special attention in the rules has the provisions relating to the health care of prisoners. These rules are provided in the ninth section, “*Health-care services*”. These rules are subject of the revision in the NMRs, and are provided in Rules 24-35 compared to five rules in the previous SMRs.

Among other provisions, it is stipulated that the provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status. Particular attention shall be paid to prisoners with special healthcare needs or with health issues that hamper their rehabilitation. A prisoner may appoint a third party to access his or her medical file. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. In women’s prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. A decision to allow a child to stay with his or her parent in prison shall be based on the best interests of the child concerned. A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. The physician shall report to the prison director whenever he or she considers that a prisoner’s physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment. If, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority.

Discipline and order should be maintained with rigor, but with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well-ordered community life. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman and degrading punishments shall be completely prohibited as punishments for

¹² Penal Reform International (2016) “Short guide to the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). www.penalreform.org. Accessed on 30.3.2017.

¹³ *Ibid.*

disciplinary offenses.¹⁴ These rules and a number of other rules take place in the tenth section titled “*Restrictions, discipline and sanctions*”. This section is also subject of major amendments in the revised NMRs. In the NMRs are regulated in 11 rules, five more than in the previous SMRs. Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts. No prisoner shall be sanctioned except in accordance with the terms of the law or regulation and the principles of fairness and due process. Prison administrations shall ensure proportionality between a disciplinary sanction and the offence for which it is established, and shall keep a proper record of all disciplinary sanctions imposed. Any allegation of a disciplinary offence by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay. It is particularly stressed that in no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. 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. 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. Health-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner.

The eleventh section, “*Instruments of restraint*”, is also subject of the amendments in the new revised NMRs. In three rules, it provides in particular that the use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited. Other instruments of restraint shall only be used when authorized by law and in specific circumstances.

“*Searches of prisoners and cells*” is also a new section in the revised NMRs. According to the rules the laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity. Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Body cavity searches shall be conducted only by qualified health-care professionals other than those primarily responsible for the care of the prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety.

Subject of major revision is the thirteenth section, “*Information to and complaints by prisoners*”. Promptly upon arrival, prisoners need to be given information about prison regulations, their rights and obligations, disciplinary sanctions and how to access legal advice (including legal aid). This information must be provided in an understandable language and format. When prisoners arrive, they must be given information about the prison regime, including prison rules and how to access legal advice – in a language and manner they understand. It can be concluded that the Rules recognise that understanding rights and obligations is key for day-to-day prison management. Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff

¹⁴ Arnaudovski, Lj. and Gruevska Drakulevski, A. (2011) "Law on Execution of Sanctions: integral text with an introduction, brief explanations and registry of terms with appendix", Skopje: "Studiorum" - Center for Regional Studies and Cooperation. [Арнаудовски, Љ. и Груевска-Дракулевски А. (2011) „Закон за извршување на санкциите: интегрален текст со предговор, кратки објаснувања и регистар на поимите со прилози“, Скопје: „Студиорум“-Центар за регионални истражувања и соработка.]

member authorized to represent him or her. It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.

“Contact with the outside world” is the title of the fourteenth section that provides that prisoners are allowed to receive visits and to contact their family and friends through other means such as by phone or letters. Visiting restrictions must not be used as a disciplinary measure, particularly for women prisoners and their children. If a near relative or spouse/partner falls seriously ill or dies, the prisoner should be authorised to visit or attend the funeral. Conjugal visiting rights should apply without discrimination. Also, prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the prison administration.

Every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it, is a rule of the next section, *“Books”*.

The right to respect the religious beliefs of prisoners and to be allowed to practice their religion is regulated in the sixteenth chapter, *“Religion”*.

“Retention of prisoners` property” is the next issue that NMRs regulates. Any property or money taken from a prisoner on admission must be returned to them on release, and should have been kept in good condition. The prisoner should sign a receipt for property returned.

The eighteenth section, *“Notifications”*, provides that every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. In the event of a prisoner’s death, the prison director shall at once inform the prisoner’s next of kin or emergency contact. The prison administration shall inform a prisoner at once of the serious illness or death of a near relative or any significant other. This section is subject of amendments in the revised NMRs.

Another issue that was subject to revision is the next section, *“Investigations”*. Prisons must report any death in custody, disappearance, serious injury and if they have reasonable grounds to believe that torture or inhuman treatment may have occurred, irrespective of a formal complaint. Reporting should be to an independent authority that is mandated to conduct an investigation. Prison management and staff must fully cooperate with such investigations and ensure that all evidence is preserved. Implicated persons must not have any involvement in the investigation. The prison administration shall treat the body of a deceased prisoner with respect and dignity. The body of a deceased prisoner should be returned to his or her next of kin as soon as reasonably possible, at the latest upon completion of the investigation. The prison administration shall facilitate a culturally appropriate funeral if there is no other responsible party willing or able to do so and shall keep a full record of the matter.

Section twenty, “*Removal of prisoners*”, provides that prisoners should be transported in adequate conditions, and should be exposed to public view as little as possible. If a prisoner is moved to another prison, their medical files should also be transferred.

Special attention is paid to the rules concerning the staff of the institution. The section is named “*Institutional personnel*” and is subject to major revision in the new NMRs. Prison staff should be appointed on a full-time basis and should have civil service status with security of tenure, subject only to good conduct, efficiency and physical fitness. To support prison staff in their job, prisons should employ an adequate number of specialists, including psychiatrists, psychologists, social workers and teachers. Salaries must be adequate to attract suitable prison staff and the employment benefits and working conditions must be favourable in view of the demanding nature of the work. As prison management is a difficult task, careful selection of prison staff is required because professional prisons depend on their integrity, humanity, professional capacity and personal suitability. Only female staff should supervise women prisoners. To enable them to professionally fulfil their duties, prison staff need continuous training opportunities. Such training should reflect evidence-based best practice, must be provided before and during their employment, and should include the use of force, working with certain categories of prisoners, and the concept of dynamic security. A dynamic security approach combines positive staff-prisoner relationships with fair treatment and purposeful activities for prisoners that contribute to their future reintegration into society. The Rules describe the duties of prison directors and the qualifications they should hold.¹⁵

The last section of the NMRs provides rules on “*Internal and external inspections*”. In recognition that inspections are an integral part of any professional and transparent prison system, the Rules require a two-fold system to be put in place that includes internal monitoring by the central prison administration as well as external, independent monitoring. The purpose of such monitoring is to ensure that prisons are managed in accordance with the laws and regulations, and for the protection of the rights of prisoners. The Rules list the authority inspectors should have and clarify the reporting and follow-up procedures.¹⁶

The second part of the NMRs, “**Rules applicable to special categories**”, has five sections: *Section A. Prisoners under sentence* (Rules 86-108); *section B. Prisoners with mental disabilities and/ or health conditions* (Rules 109-110); *section C. Prisoners under arrest or awaiting trial* (Rules 111-120); *section D. Civil prisoners* (Rule 121) and *section E. Persons arrested or detained without charge* (Rule 122).

Section A., “**Prisoners under sentence**”, in particular regulates *Guiding principles, Treatment, Classification and individualization, Privileges, Work, Education and recreation, Social relations and aftercare*.

The first subsection, “*Guiding principles*”, provides the basic aims of these guiding principles, namely, the spirit in which penal institutions should be administered and the purposes at which they should aim in accordance with the declaration made under preliminary observation of these rules. It is emphasized that prison and other measures that have the effect of isolating the perpetrator of a crime from the outside world are themselves hard, and the purpose and justification of a sentence of imprisonment or a similar measure of deprivation of liberty is ultimately to protect the society from crime. Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. The treatment of prisoners should emphasize not their exclusion from the community but their continuing part in it. The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of

¹⁵ Penal Reform International (2016) “Short guide to the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). www.penalreform.org. Accessed on 30.3.2017.

¹⁶ *Ibid.*

classifying prisoners in groups. It is desirable that the number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed 500. In open prisons the population should be as small as possible. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies for post-penal assistance of prisoners.

The next subsection, "*Treatment*", provides that the treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility. To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.

Special attention is paid to "*Classification and individualization*" of prisoners and establishing a system of "*Privileges*" in order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of prisoners in their treatment.

The fifth subsection "*Work*", determines the rules of work engagement of prisoners as a type of treatment. Servitude, slavery or requiring prisoners to work for the personal or private benefit of any prison staff is prohibited. Any work should be useful for a prisoner's job prospects after release or be remunerated, and take place in safe and legal conditions. Prisoners must not be employed in a disciplinary capacity.¹⁷

As education plays an important role in preventing recidivism, learning opportunities should be provided to prisoners. Classes offered should be of the same level as the community education system and available to all prisoners. For illiterate or young prisoners, education is compulsory. Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners.¹⁸ This is provided in the next subsection, "*Education and recreation*".

The last subsection is "*Social relations and aftercare*". Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both. Services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society, should be provided.

Section B. refers to "**Prisoners with mental disabilities and/or health conditions**". This section is subject to revision in the new NMRs. It provides that persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare.

The section C. refers to "**Prisoners under arrest or awaiting trial**". In more details the rules provide the conditions under which detention is conducted and the procedure for detainees. It specifically emphasizes the principle of presumption of innocence of the

¹⁷ *Ibid.*

¹⁸ *Ibid.*

detainee according to which unconvicted prisoners are presumed to be innocent and shall be treated as such. These prisoners shall benefit from a special regime. Untried prisoners shall be kept separate from convicted prisoners. Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate. If they so desire, they can have their food procured at their own expense from the outside. They shall be allowed to wear his or her own clothing if it is clean and suitable. An untried prisoner shall always be offered the opportunity to work, but shall not be required to work. If he or she chooses to work, he or she shall be paid for it. An untried prisoner shall be allowed to be visited and treated by his or her own doctor or dentist if there are reasonable grounds for the application and he or she is able to pay any expenses incurred. Every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her. They are also entitled to legal aid.

The section D. refers to “**Civil prisoners**” and the last section E. refers to “**Persons arrested or detained without charge**”.

According to these rules in countries where the law permits imprisonment for debt or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

Also, without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, 29 persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C, of these rules. Relevant provisions of part II, section A, of these rules shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

III. CONCLUSIONS

To conclude, The Nelson Mandela Rules are not entirely new, but an updated version of the 1955 Standard Minimum Rules for the Treatment of Prisoners (SMRs). The Rules were revised in nine substantive areas to reflect standards that have emerged in correctional science and human rights since 1955.

UN member states recognised that the Standard Minimum Rules were out-dated and did not reflect major developments in human rights and criminal justice since their adoption 60 years ago. Hence, in 2010, a “UN General Assembly resolution mandated an Intergovernmental Expert Group to revise the Rules. Member states agreed on the process and revisions, and UN bodies, intergovernmental organisations, civil society and academics participated in the process. The Expert Group first met in 2011 and decided on a so-called ‘targeted revision’, updating the most out-dated areas and rules, but leaving the structure and many rules unchanged. Revised text was negotiated at three subsequent meetings. The Nelson Mandela Rules have also been renumbered given the substantial changes. The revision process has consolidated criminal justice and human rights standards in one document – protecting the rights of prisoners, and also providing reliable and up-to-date guidance for prison staff and administrations.”¹⁹

¹⁹ More than 10.2 million men, women and children are in prison globally, and around a third are awaiting trial. *Ibid.*

The revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) were adopted unanimously in December 2015 by the UN General Assembly and set out the minimum standards for good prison management, including ensuring the rights of prisoners are respected.

As the negotiations on the revised text were completed at an Inter-governmental Expert Group Meeting in Cape Town, South Africa, it was decided that they should be known as the ‘Nelson Mandela Rules’. This is in honour of the late President of South Africa who spent 27 years in prison and advocated for the rights of prisoners.

Nelson Mandela Rules should be read alongside other UN standards which remain valid, including, but not limited to, the Basic Principles on the Use of Force and Firearms, the UN Bangkok Rules on women prisoners, the UN Beijing Rules on juvenile justice, the UN Tokyo Rules on non-custodial measures and the UN Code of Conduct for Law Enforcement Officials.²⁰

States are now faced with the challenge to properly implement these revised rules in the national legislation, hence, to ensure minimal standards and improvements of the position of prisoners.²¹ “Revising prison standards is a complex task. The implementation of all 122 Rules in full will require time and resources, but with the right governance, training and a culture of respect for human rights, many of the Nelson Mandela Rules can be put into action without significant cost.”²²

At the very end, we would like to stress that on the occasion of the Nelson Mandela International Day, a group of human rights experts with a mandate relating to detention have hailed the adoption of the Nelson Mandela Rules.²³

²⁰ Penal Reform International (2016) “Short guide to the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). www.penalreform.org. Accessed on 30.3.2017.

²¹ As the guardian of the Nelson Mandela Rules, UNODC is responsible for providing technical assistance and advisory services to Member States in the field of penal reform. To achieve this goal, UNODC recently launched a new Global Programme on Addressing Prison Challenges, which aims to reduce the scope of imprisonment; strengthen prison management and improve prison conditions; and facilitate the social integration of prisoners upon release. (<https://www.unodc.org/ropan/en/PrisonReform/the-nelson-mandela-rules-an-updated-guide-for-prison-management-in-line-with-human-rights.html> Accessed on 10.5.2017.).

²² Penal Reform International (2016) “Short guide to the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). www.penalreform.org. Accessed on 30.3.2017.

²³ “The revised Rules represent a universally accepted minimum standard for the treatment of prisoners, conditions of detention and prison management, and offer essential practical guidance to prison administrations,” they noted. “The implementation of the Rules in prisons around the world would significantly improve the treatment of millions of detainees. At the same time, it is useful guidance to help prison staff deliver their important and difficult task in a professional and effective way, benefiting society at large. Speedy and decisive steps towards implementation would truly honour the legacy of the great Statesman and inspirational leader, Nelson Mandela, who spent 27 years in prison.”

“The revised Rules are premised on the recognition of prisoners’ inherent dignity and value as human beings, and contain essential new procedural standards and safeguards that will go a long way in protecting detainees from torture and other ill-treatment Special Rapporteur on Torture, Juan E. Méndez noted. “The prohibition of the use of prolonged solitary confinement, defined as that in excess of 15 days, is a particularly important new provision in the Rules. Other key advancements are the recognition of independent healthcare professionals who have a duty to refrain from participating in torture or other ill-treatment and have a vital role in detecting such ill-treatment and reporting it. The recognition of the obligation to promptly, impartially and independently investigate all allegations of torture or other ill-treatment by prisoners is also worth highlighting.”

“Inhumane conditions in prisons are one of the main human rights concerns in the world, including in Europe. The revised Rules are a welcome step forward because they are an additional tool available to governments to transform prisons from mere places of punishment into places of rehabilitation” said Nils Muižnieks, Council of Europe Commissioner for Human Rights. “It is crucial that governments abide by these rules, as well as other regional standards, while, at the same time, implementing measures to reduce overcrowding, such as alternatives to imprisonment. This will make it easier to manage prisons in conformity with states’ obligations in regard to prisoners in their care. There must be a life after imprisonment: better conditions of detention can mean higher chances of reintegrating into society.”

To conclude, these rules represent an updated blueprint for prison management in the 21st century which upholds and promotes prisoners' dignity. Every country should join UNODC in ensuring that these rules make a difference to the lives of prisoners globally, to undertake concrete action to treat them with respect and dignity, including every effort to encourage their rehabilitation.²⁴

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8. Penal Reform International (2016) “Short guide to the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). www.penalreform.org. Accessed on 30.3.2017.

Rapporteur on the Rights of Persons Deprived of Liberty of the IACHR, James Cavallaro, also emphasized the importance of legal alternatives to imprisonment and of rehabilitation and social reintegration programs. With regard to the Nelson Mandela Rules, he stated, “These Rules represent a vital advance in the protection of vulnerable groups, in particular, persons with disabilities deprived of liberty. In this regard, among other provisions, the Rules require prison authorities to make reasonable accommodations to ensure that prisoners with disabilities have full and effective access to detention conditions and resources on an equitable basis”. In general, the provisions regarding reasonable accommodations are more detailed than the standards currently established by the Inter-American Human Rights System.

The Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, Med Kaggwa, also hailed the adoption of the Nelson Mandela Rules and pointed to the recent resolution of the African Commission. It establishes a Follow-up Committee to develop strategies for the promotion and implementation of the Rules. “I am confident that the Nelson Mandela Rules provide an inspiration to prison authorities across the globe to revise and update their systems. The revision is also crucial to monitoring bodies like my Rapporteur ship to assess prison conditions against an up-to-date set of standards. The inherent dignity of prisoners and value as human beings has been mainstreamed throughout the revised Rules, which is what Nelson Mandela was all about.”

The four human rights experts lauded the inclusiveness of the revision process, featuring participation of representatives from intergovernmental organizations, civil society and academia. The constructive spirit of cooperation displayed by Member States in adopting the Rules must now be followed by their effective implementation in domestic legislation and practice, the experts stated.

They welcomed the efforts of civil society in the promotion of the Nelson Mandela Rules, in compiling guidance on the application of the Rules and in supporting states to start a process of implementation. (<https://www.coe.int/en/web/commissioner/-/leading-human-rights-experts-call-for-speedy-implementation-of-the-nelson-mandela-rules-on-nelson-mandela-international-day> Accessed on 10.5.2017.)

²⁴ Statement on Nelson Mandela International Day

<https://www.unodc.org/ropan/en/PrisonReform/the-nelson-mandela-rules--an-updated-guide-for-prison-management-in-line-with-human-rights.html> Accessed on 10.5.2017.

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