

THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

– AN UPDATED BLUEPRINT FOR PRISON MANAGEMENT IN THE 21ST CENTURY –

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I. WHY AND HOW WAS THE REVIEW PROCESS OF THE SMRS INITIATED?

The Standard Minimum Rules for the Treatment of Prisoners (1955)¹ constitute 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. In recognition of the advances in international law and correctional science since 1955, however, the General Assembly decided, in 2011, to establish an open-ended intergovernmental Expert Group to review and possibly revise the SMRs. Civil society and relevant United Nations bodies were equally invited to contribute to the process.

II. HOW DID THE REVIEW PROCESS OF THE SMRS PROCEED?

In the course of three meetings (2012-14) closely accompanied by the UN Office on Drugs and Crime (UNODC), the intergovernmental Expert Group, made progress in identifying thematic areas and specific rules for revision, while closely adhering to the overall parameters of the revision process determined by the General Assembly: (i) Any changes to the rules should not lower any of the existing standards but should improve them so as to promote safety, security and human conditions for prisoners; and (ii) The revision process should maintain the existing scope of application of the SMRs.

At its 4th meeting held in Cape Town, South Africa, in March 2015, the Expert Group reached consensus on all of the rules opened for revision. In May 2015, the Commission on Crime Prevention and Criminal Justice (CCPCJ) endorsed the revised rules and submitted the entire set of the revised SMRs for approval by the Economic and Social Council (ECOSOC) and subsequent adoption by the General Assembly as the “UN Standard Minimum Rules for the Treatment of Prisoners”.

III. WHY ARE THE RULES TO BE KNOWN AS THE NELSON MANDELA RULES?

The 4th meeting of the Expert Group recommended the revised SMRs to be also known as the Nelson Mandela Rules in order to honour the legacy of the late President of South

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¹ As adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

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. Nelson Mandela International Day (18 July) was further recommended to be also utilised to promote humane conditions of imprisonment, raise awareness about prisoners' being a continuous part of society and value the work of prison staff as a social service of particular importance.

IV. WHICH AREAS OF THE STANDARD MINIMUM RULES HAVE BEEN REVISED (OVERVIEW)?

After a careful analysis of the advances in international law, correctional science and best practices since 1955, the Expert Group opted for targeted revisions of the Standard Minimum Rules in the nine thematic areas as listed below. Altogether, around 35% of the rules have been revised and/or relocated.

V. WHICH AREAS OF THE STANDARD MINIMUM RULES HAVE BEEN REVISED (HIGHLIGHTS)?

A. Prisoners' Inherent Dignity and Value as Human Beings

§ refer to Rules 1 to 5 of the UN SMRs

Part I, which is applicable to all categories of prisoners, now includes an extended set of five "Basic Principles", which outline the overall spirit under which the rules should be read. Some of these principles have been relocated, in amended form, from Part II.A, which is reserved for sentenced prisoners. Other fundamental principles have been added in reflection of advances in international law. These include, in particular, an obligation to:

- treat all prisoners with the respect due to their inherent dignity and value as human beings;
- prohibit and protect prisoners from torture and other forms of ill-treatment; and to
- ensure the safety and security of prisoners, staff, service providers and visitors at all times.

B. Vulnerable Groups of Prisoners

§ refer to Rules 2(2), 5, 39(3) and 109-110 of the UN SMRs

The impartial application and the prohibition of discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property and birth included in the old version of the SMRs have been expanded to include "any other status". Importantly, putting into practice the principle of non-discrimination has been interpreted to include an active obligation to:

- take account of the individual needs of prisoners, in particular the most vulnerable categories;

- protect and promote the rights of prisoners with special needs; and to
- ensure that prisoners with physical, mental, or other disabilities have full and effective access to prison life on an equitable basis, and are treated in line with their health conditions.

C. Medical and Health Services

§ refer to Rules 24-27, 29-35 of the UN SMRs

The revised rules emphasise that the provision of health care for prisoners is a State responsibility, and add significant detail to the overall principles, scope and composition of health-care services in prisons. Duties and prohibitions of health-care professionals are enhanced in line with the principle that their relationship with prisoners is governed by the same ethical and professional standards as those applicable to patients in the community. More specifically, these include:

- ensuring the same standards of health care that are available in the community and providing access to necessary health-care services to prisoners free of charge without discrimination;
- evaluating, promoting, protecting and improving the physical and mental health of prisoners, including prisoners with special health-care needs;
- adhering to the principles of clinical independence, medical confidentiality, informed consent in the doctor-patient relationship and continuity of treatment and care (incl. for HIV, tuberculosis, other infectious diseases and drug dependence);
- an absolute prohibition of health-care professionals from engaging in torture or other forms of ill-treatment, and an obligation to document and report cases of which they may become aware.

D. Restrictions, Discipline and Sanctions

§ refer to Rules 36-39, 42-53 of the UN SMRs

Explicit reference is made to the principle that no use of restriction or disciplinary punishment may amount to torture or other forms of ill-treatment, and that all general living conditions continue to apply to prisoners subjected to disciplinary sanctions. New provisions further define and restrict the use of solitary confinement as well as the use of instruments of restraint, regulate searches of prisoners and cells, and clarify the role of health-care professionals in the context of disciplinary proceedings. In particular, the revised rules:

- define (prolonged) solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact (for more than 15 consecutive days), and restrict the use of solitary confinement as a measure of last resort to be used only in exceptional circumstances;

- prohibit indefinite or prolonged solitary confinement, the placement of a prisoner in a dark or constantly lit cell, the reduction of a prisoner's diet or drinking water as well as the use of instruments of restraint which are inherently degrading or painful, such as chains or irons;
- provide detailed guidance on searches of prisoners and cells as well as on the legitimate use of instruments of restraint in line with the need to ensure security and safety in the prison as well as the respect for the inherent human dignity of prisoners;
- confirm that health-care professionals should pay particular attention to involuntarily separated prisoners, but exclude their involvement in the actual imposition of disciplinary sanctions;
- encourage prison administrations to use, to the extent possible, conflict prevention, mediation or other alternative dispute resolution mechanisms to prevent or resolve conflicts.

E. Investigation of Deaths and Torture in Custody

§ refer to Rules 6-10, 68-72 of the UN SMRs

Independent investigations are now foreseen in all cases of custodial death as well as in other situations of serious concern. For transparency and accountability purposes, the information to be registered for all prisoners has been expanded, as have been the notifications which the prison administration must give to prisoners or outside parties in far-reaching situations. More specifically, the revised rules:

- specify information to be entered in the file management system upon admission of every prisoner and in the course of imprisonment, and clarify that these shall be kept confidential;
- detail the right of prisoners or outside parties (family or designated contact persons) to be notified about imprisonment, transfer to another institution, serious illness, injury or death;
- require any custodial death, disappearance or serious injury of a prisoner to be reported to a competent authority independent of the prison administration mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases;
- require similar procedures whenever an act of torture or other ill-treatment may have been committed in prison, irrespective of whether a formal complaint has been received.

F. Access to Legal Representation

§ refer to Rules 41, 54-55, 58-61, 119-120 of the UN SMRs

The right to be visited by and consult with a legal advisor which was restricted to untried prisoners and for the sole purpose of their defence in the original SMRs, has been extended to

all prisoners and to any legal matters in the revised rules. A qualified right of prisoners to have access to legal advice has further been established in case of disciplinary proceedings. Finally, a new rule provides guidance on entry and search procedures applicable to visitors. Accordingly, prison administrations are required to:

- inform prisoners, upon admission, about authorized methods of seeking access to legal advice, including through legal aid schemes;
- provide adequate opportunity, time and facilities to all prisoners to be visited by and communicate with a legal advisor of their own choice, or to a legal aid provider, on any legal matter without delay, interception or censorship and in full confidentiality;
- grant prisoners the right to defend themselves in person or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges;
- abstain from search and entry procedures for visitors which are degrading or in any way less protective than those outlined for searches of prisoners and cells.

G. Complaints and Inspections

§ refer to Rules 54-57, 83-85 of the UN SMRs

The revised rules strengthen the right of prisoners or their legal advisors to safely submit requests or complaints regarding their treatment, all of which shall be promptly dealt with by the prison administration and replied to without delay. An important advance has been achieved in the field of monitoring and inspections in the form of a two-fold system of regular internal and external inspections of prisons and penal services. More specifically, the new provisions:

- extend the right to file complaints to a prisoner's relatives or any other person who has knowledge of the case when a prisoner or his or her legal advisor are not able to do so;
- require the implementation of safeguards to ensure that requests and complaints can be submitted in a safe and, if so requested, confidential manner, without any risk of retaliation, intimidation or other negative consequences;
- establish a twofold system for regular inspections consisting of internal or administrative inspections conducted by the central prison administration and external inspections conducted by a body independent of the prison administration.
- grant prison inspectors key entitlements to effectively assume their tasks, including access to prison(er) records, unannounced visits at their own initiative as well as private and fully confidential interviews with prisoners and prison staff.

H. Terminology

§ updated throughout the UN SMRs

The revised content of the SMRs also replaced outdated terminology, which was no longer acceptable in light of recent advances in international law, and to ensure the consistent use of terminology throughout the document. In particular, revisions under this thematic area focused on:

- updating health-related terminology;
- rendering the revised rules a gender-sensitive document.

I. Staff Training

§ refer to Rules 75-76 of the UN SMRs

The revised rules provide detailed guidance on tailored staff training to be delivered both upon admission as well as in-service with a view to give all prison staff the ability and means to carry out their complex duties in a professional manner. Prison staff who are assigned specialised functions should benefit from training with a corresponding focus. Induction training should include theoretical and practical tests for admission into the prison service, and should cover the following subjects, at a minimum:

- relevant national legislation, regulations and policies as well as international or regional instruments which are to guide the work and interaction of prison staff with prisoners;
- overall rights and duties of prison staff in the exercise of their functions, including respect for the human dignity of prisoners and the prohibition of torture or other forms of ill-treatment;
- security and safety, including dynamic security as well as the use of force and instruments of restraint, with due consideration of preventive and defusing techniques; and
- first aid, addressing the psychological needs of prisoners as well as social care and assistance.

VI. WHAT IS THE ROLE OF THE UNODC IN PROMOTING THE APPLICATION OF THE NELSON MANDELA RULES?

Within the UN system, the UNODC is the custodian of the international standards and norms in crime prevention and criminal justice, including the UN SMRs, and has therefore acted as Secretariat throughout the SMR review process. Building on its mandate to assist Member States, upon request, to apply these standards and norms in practice, the UNODC has built extensive experience in providing technical guidance and implementing assistance programmes in the field of prison reform. More recently, the UNODC has developed a strategic approach to address global prison challenges, which envisages an enhanced

engagement in (i) reducing the scope of imprisonment; (ii) improving prison conditions and prison management; and (iii) supporting the social reintegration of offenders upon release.²

Given the above, the UNODC is ideally placed to assist Member States in applying the Mandela Rules in practice. Accordingly, it has been requested to ensure broad dissemination of the Mandela Rules, to design guidance materials and to provide technical assistance and advisory services to Member States in the field of penal reform, in order to develop or strengthen penitentiary legislation, procedures, policies and practices in line with the Rules.

² <http://www.unodc.org/unodc/en/justice-and-prison-reform/tools.html?ref=menuaside>.