# Module 2. The Nelson Mandela Rules

## 2.1 What are the Nelson Mandela Rules?

These materials will help participants to understand what are the Nelson Mandela Rules and what are they focus on.

Prisoners' rights encompass the fundamental human rights and dignities afforded to individuals within the confines of a correctional facility. Over the last 80 years, a different set of standards and rules have been developed providing guidelines on how to ensure the human treatment of individuals in custody. Standard Minimum Rules for Treatment of Prisoners, Nelson Mandela Rules, or Tokyo Rules are some of examples of key standards aimed to protect prisoners rights.

The rules are non-biding in their nature meaning that they are not legally obligatory or enforceable in a strict legal sense. Countries are encouraged to adopt and implement these rules voluntarily, but they are not bound by international law to do so. The rules serve as guidelines and recommendations to promote humane and fair treatment of prisoners, and their implementation depends on the willingness of individual nations to incorporate them into their legal and prison systems.

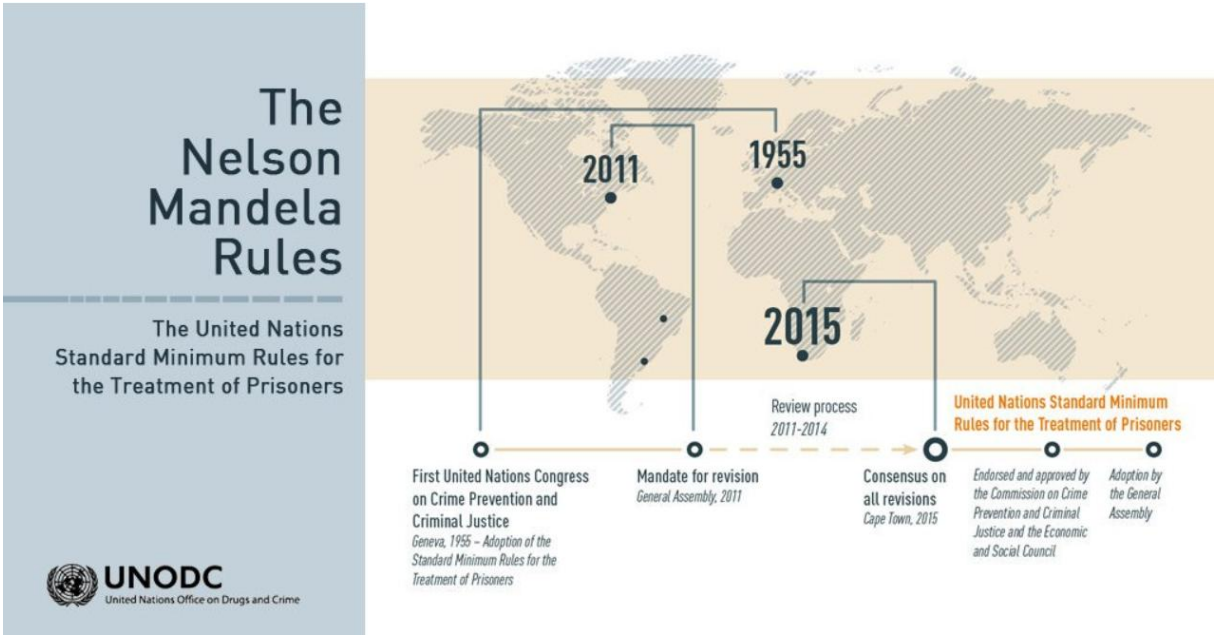
**The Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)**

In 2010, the United Nations Commission on Crime Prevention and Criminal Justice established an open-ended intergovernmental expert group to exchange information on the revision of the SMR (Standard Minimum Rules for Treatment of Prisoners) so that they reflected advances in correctional sciences and best practices. Finally, after a five-year negotiation process, the revised UN Standard Minimum Rules for the Treatment of Prisoners were adopted by the United Nations General Assembly, on 17 December 2015 (Peirce, 2018). The rules were named the 'Mandela Rules' to honour the late South African President Nelson Mandela, who was known for his imprisonment and his long-standing struggle for human rights and against apartheid in South Africa (McCall-Smith, 2016).

The negotiation process that preceded the adoption of the Mandela Rules involved four International Expert Group Meetings (IEGMs), organised by the UNODC from 2012 to 2015, and preparatory meetings organised by NGOs and universities (Peirce, 2018). The Mandela Rules are an example of a new generation of soft law international norms. They are voluntary standards and oversight mechanisms built collaboratively by many

countries within the UN structure, with the goal of solving a complex global problem (Peirce, 2018). Juan Mendez, the UN Special Rapporteur against Torture, was crucial for the negotiation process. Furthermore, the negotiation process greatly benefitted from the expert input of NGOs and think tanks, including the so-called 'Essex meetings' (Peirce, 2018). Evidence-based approaches played an important role during the revision process. Whereas the primary rationales were based on international laws and norms, social science evidence appeared in complementary ways, mainly on health and solitary confinement issues (Peirce, 2018).

The Mandela Rules expand the SMR and build upon the international human rights documents that have emerged since the first adoption of the minimum prison standards in 1955. The human rights documents that influenced the revision include the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of all Forms of Discrimination against Women; the Convention on the Rights of the Child; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment; and the Common Article 3 of the Geneva Conventions (McCall-Smith, 2016). As a result, the Mandela Rules synthesise a range of international laws that are relevant to ensuring the inherent dignity of all imprisoned individuals.

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The inviolability of human dignity is a common thread in the Mandela Rules: "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings" (**Rule 1**). This is directly linked to the prohibition against torture or other cruel, inhuman, or degrading treatment of prisoners (McCall-Smith, 2016). The

reinforcement of human dignity and the prohibition of torture lead to six broad considerations: holistic health and well-being; disciplinary procedures; in-custody complaints and investigations; legal representation; protection of vulnerable prisoners; and appropriate staff selection and training (McCall-Smith, 2016).

## 2.1 The key elements of Nelson Mandela's Rules?

**The Nelson Mandela Rules focuse on nine thematic areas including:**

- **Prisoner's dignity**
  To make sure prisoners are treated with respect, the Mandela Rules suggest that prisons should have a standard way of keeping records, quickly deal with any problems prisoners have, and let prisoners talk to their families and friends regularly. Record-keeping can be done on a computer or by hand, and it's meant to stop anyone from looking at or changing prisoners' files without permission.
  If prisoners have questions or concerns, these should be sorted out without delay. If things are taking too long, prisoners can talk to someone who has the power to help. There should also be measures to keep these conversations private.
  If prisoners claim they've been treated badly or tortured, a special national group should look into it right away. And if possible, prisoners should be placed in a jail close to where they live.

- **Medical and health services**
  To ensure that prisoners stay healthy in body and mind, the Mandela Rules say prisons must give them good food and water regularly. Prisoners should also get one hour of outdoor exercise each day when the weather is okay. The rules also say that the government must provide healthcare for prisoners, and it should be as good as what people get outside of prison. This healthcare should cover medical issues like HIV, tuberculosis, and drug problems. Every prison should have a healthcare team that includes doctors who know about both physical and mental health.
  The Mandela Rules suggest that searches where they check prisoners' bodies should only happen when necessary. These searches should be done privately by a qualified medical person or someone trained by a medical expert.

- **Disciplinary action and punishment**
  The Mandela Rules define solitary confinement as locking up prisoners for most of the day without meaningful human contact. Prolonged solitary confinement means doing this for more than 15 days in a row. They say that solitary confinement should only be used in rare cases, as a last option, and for the

shortest time possible. Putting a prisoner in solitary should be checked independently and must be approved by the right authority.
The rules also say you can't put prisoners with mental or physical problems in solitary if it will make their conditions worse. They also repeat the rules that women and children shouldn't be put in solitary confinement and similar measures.

- **Investigations of deaths in custody and allegations of torture**
  The Mandela Rules suggest that if someone dies, disappears, gets seriously hurt, or claims they were treated badly in prison, the prison boss should call an independent group to look into it. Even if the prisoner doesn't complain officially, the prison boss should still contact this independent authority if they have a good reason to think there was torture or mistreatment.

- **Protection of vulnerable groups**
  The Mandela Rules say that before people can be put in prison, there must be a proper legal order. The prison should also keep a record for each prisoner, including details like how they see their gender, any injuries they have, if they've been mistreated before, the names of their family, and emergency contact info for their next of kin.

- **Access to legal representation**
  The Mandela Rules say that when someone enters prison, they should get written information about the rules and their rights. This should include how to get legal help, like from legal aid groups, and how to ask for things or make complaints. This info should be in the languages most prisoners use, and if someone doesn't understand those languages, they should get an interpreter. If a prisoner can't read, they should get this info spoken to them. And if a prisoner has trouble with their senses, they should get information that suits their needs.

- **Complaints and independent inspections**
  The Mandela Rules say that a competent authority in the prison should decide what actions are considered bad in prison, how long and what kind of punishments can be given for these actions, and who can give these punishments. This authority should also decide when it's okay to separate a prisoner from the general prison population, like in solitary confinement.
  To protect prisoners' rights, the Mandela Rules suggest that prisoners should get written info about prison rules, their rights, and what they should do. This should include details about how to make requests and complaints.

- **Replace outdated terminology**
  The Mandela Rules recommend updating outdated terminology by the revisions.
- **Train staff to implement Mandela Rules**
  The Mandela Rules also talk about training staff to follow the rules. They say you can't use chains and irons, and only prison directors can order the use of restraints in certain situations.

  Lastly, the Mandela Rules have a section with specific rules for different groups of people in prison, such as those serving sentences, those with mental or health issues, those awaiting trial, civil prisoners, and those help.

## References

McCall-Smith, K. (2016). United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). International Legal Materials, 55(6), 1180-1205.

Peirce, J. (2018). Making the Mandela Rules: Evidence, Expertise, and Politics in the Development of Soft Law International Prison Standards. Queen's Law Journal, 43(1), 263–296.