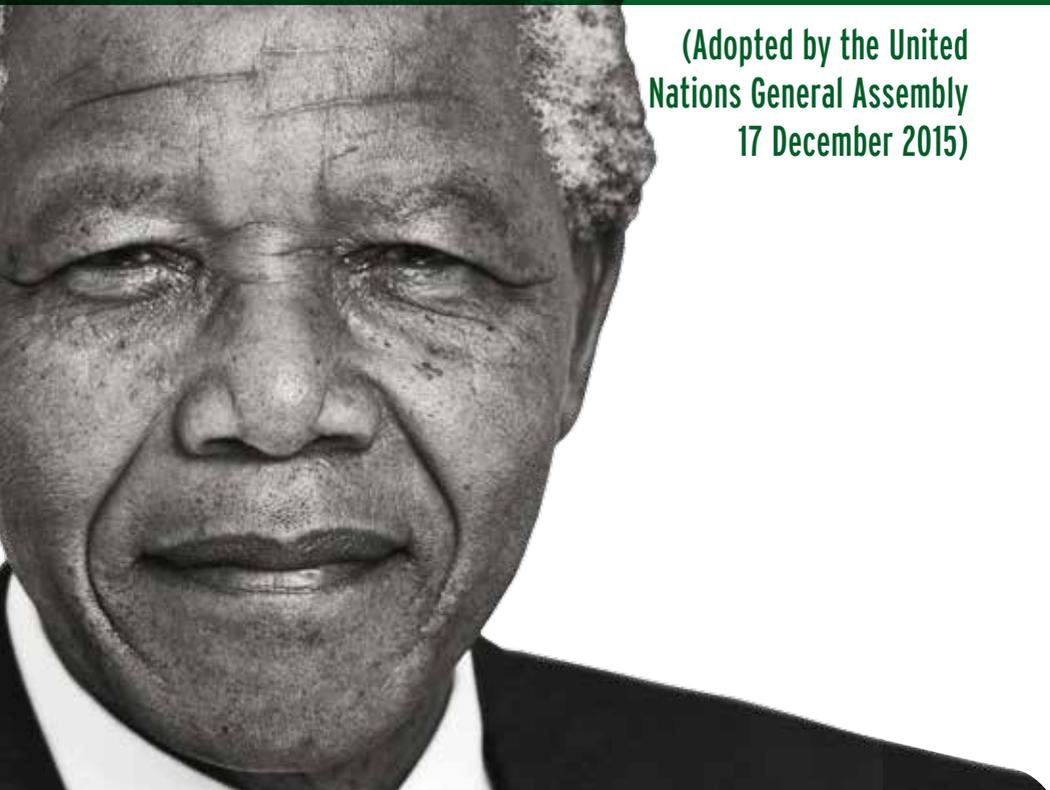


***IMPLEMENTATION
STRATEGY:***

***Revised Standard Minimum
Rules for the Treatment of
Prisoners:
"The Nelson Mandela Rules"***

(Adopted by the United
Nations General Assembly
17 December 2015)





PREAMBLE

NOTING the “reaffirmation by the United Nations General Assembly as extracted from the Nelson Mandela Rules (thereafter to be referred to as the Rules):

“in the context of the adoption of the revised rules, that the preliminary observations to the Nelson Mandela Rules, underscores the non-binding nature of the Rules, acknowledges the variety of Member States’ legal frameworks, and in that regard recognizes that Member States may adapt the application of the Rules in accordance with their domestic legal frameworks, as appropriate, bearing in mind the spirit and purpose of the Rules” (paragraph 8 of the rules).

NOTING the Preliminary observation 2 as extracted from the Rules:

In view of the great variety of legal, social, economic and geographical conditions in the world, 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” (page 7);

ACKNOWLEDGING that South Africa (SA) is bound by the resolution on collaboration between the African Commission on Human and Peoples’ Rights (ACHPR) and partners on promoting the revised Nelson Mandela Rules;

ACKNOWLEDGING that SA will utilise the rules as guidelines to apply a human rights approach in the management of the arrested and detained persons;

MINDFUL that the departments that have a responsibility to review their legal and policy framework to give effect to the revised rules under the leadership of their Administrative Heads are Correctional Services (DCS), Social Development (DSD), the South African Police Service (SAPS), the Defence (DOD) and Home Affairs (DHA);

ACKNOWLEDGING that the DCS, the DSD, the SAPS, the DOD, and the DHA participated in the development of this strategy and committed to its implementation;

MINDFUL that the implementation of the revised rules will be done progressively by each department responsible for the detention of arrested persons;

NOTING that the Nelson Mandela Foundation endorsed the adoption of the Nelson Mandela Rules;

ACKNOWLEDGING the following paragraph as extracted from the preamble of the Rules:

“Recommendation that Member States continue to endeavour to reduce prison overcrowding and, where appropriate, resort to non-custodial measures as alternatives to pre-trial detention, to promote increased access to justice and legal defence mechanisms, to reinforce alternatives to imprisonment and to support rehabilitation and social reintegration programmes, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)” (paragraph 12).

NOTING that the United Nations Office of Drugs and Crime (UNODC) as the custodian of the international standards and norms in crime prevention and criminal justice, including the United Nations SMRs, is available, upon request, to assist South Africa (as a member state) in applying these standards and norms in practice and to use the tools that are available and accessible in its website; and

4 IMPLEMENTATION STRATEGY

ACKNOWLEDGING that this strategy will be managed as one of the Criminal Justice System Reform (CJSR) policies therefore coordination for reporting will be facilitated by the secretariat of the CJSR office.

SUMMARY OF THE RULES

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 the following sections:
 - o sections B (Mental disabilities and /or health conditions);
 - o section C (Arrested or awaiting trial) and
 - o section D (Civil prisoners);

provided they do not conflict with the rules governing those categories and are for their benefit.

TABLE OF CONTENT

PREAMBLE	3
SUMMARY OF THE RULES	5
ABBREVIATIONS	7
1. INTRODUCTION	8
2. RATIONALE FOR THE REVISION OF THE RULES	9
3. PROCESSES FOLLOWED	9
4. CONSULTATION PROCESSES	11
4.1. General Consultation	11
4.2. Consultation in South Africa	11
5. POSITION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS (ACHPR)	12
6. OBSERVATION BY MEMBER COUNTRIES: CONSIDERATION FOR LEGISLATION AND POLICY REVIEW	13
7. IMPLEMENTATION OF THE RULES: PROPOSED PROCESS	14
8. ORGANISATIONAL AND PERSONNEL IMPLICATIONS	17
9. FINANCIAL IMPLICATIONS	18
10. COMMUNICATION IMPLICATIONS	18
11. LIST OF ANNEXURES	18
11.1. Annexure A: The revised rules: Nelson Mandela Rules (2015) 16	18
11.2. Annexure B: The UN Office of Drugs and Crime copy on revised areas	18
11.3. Annexure C: Audit Form (Guide for developing an implementation plan)	18
11.4. Annexure D: What is Mandela Day versus the scope of extension of the Mandela International Day and the logos	18
11.5. Annexure E: The resolution on the African Commission on Human and Peoples' Rights and partners on promoting the revised Nelson Mandela Rules	18
12. LINK FOR THE CHECKLIST	18

ABBREVIATIONS

ACHPR:	African Commission for Human and Peoples' Rights
DCS:	Department of Correctional Services
DHA:	Department of Home Affairs
DIRCO:	Department of International Relations and Cooperation
DOD:	Department of Defence
DSD:	Department of Social Development
GCIS:	Government Communication and Information System
RSA:	Republic of South Africa
SA:	South Africa
SAPS:	South African Police Service
SMRs:	Standard Minimum Rules
UN:	United Nations
UNODC	United Nations Office on Drugs and Crime

1. INTRODUCTION

- 1.1 The Standard Minimum Rules (SMRs) for the treatment of prisoners have been the universally acknowledged minimum standards for the detention of prisoners and have been of significant value and influence, as a guide, in the development of correctional laws, policies and practices since their adoption by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in 1955.
- 1.2 The revised rules were adopted unanimously on 17 December 2015 by the UN General Assembly and *set out the minimum standards for good prison management, including ensuring that the rights of prisoners are respected.*
- 1.3 The adoption includes the following:
 - (a) approval of the recommendation of the Expert Group that the Rules should be known as “the Nelson Mandela Rules”, 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; and
 - (b) Invitation to Member States, regional organizations and organizations of the United Nations system to celebrate in an appropriate manner the Nelson Mandela International Day, observed each year on 18 July as follows:
 - (i) to promote humane conditions of imprisonment;
 - (ii) to raise awareness about prisoners being a continuous part of society; and
 - (iii) to value the work of prison staff as a social service of particular importance.
- 1.4 In summary, the revised rules are not entirely new, but an updated version of the 1955 SMRs for the Treatment of Prisoners.

2. RATIONALE FOR THE REVISION OF THE RULES

- 2.1 The United Nations member states recognised that the SMRs were outdated and did not reflect major developments in human rights and criminal justice since their adoption in 1955.
- 2.2 The UN General Assembly at its 12th United Nations Congress on Crime Prevention and Criminal Justice mandated an Inter-governmental Expert Group to revise the Rules in terms of resolution 65/230 of 21 December 2010:

“Recalling its resolution 65/230 of 21 December 2010, entitled “Twelfth United Nations Congress on Crime Prevention and Criminal Justice”, in which it requested the Commission on Crime Prevention and Criminal Justice to establish an open-ended intergovernmental expert group to exchange information on best practices, as well as national legislation and existing international law, and on the revision of existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional science and best practices” (Page 3).

3. PROCESSES FOLLOWED

- 3.1 Member states agreed on the process and revisions. The UN bodies, intergovernmental organisations, civil society and academics participated in the process.
- 3.2 The Expert Group first met in 2011 and decided on a so-called ‘targeted revision’, updating the most outdated areas and rules, but leaving the structure and many rules unchanged. Revised text was negotiated at three subsequent meetings (Buenos Aires: 11 to 13 December 2012; Vienna: 25 to 28 March 2014; and Cape Town; 2 to 5 March 2015).

3.3 The areas that were revised are:

- (a) Respect for prisoners' inherent dignity and value as human beings (rules 6, para. 1; 57-59; and 60, para. 1);
- (b) Medical and health services (rules 22-26; 52; 62; and 71, para. 2);
- (c) Disciplinary action and punishment, including the role of medical staff; solitary confinement and reduction of diet (rules 27, 29, 31 and 32);
- (d) Investigation of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners (rule 7 and proposed rules 44 bis and 54 bis);
- (e) Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances (rules 6 and 7);
- (f) The right of access to legal representation (rules 30; 35, para. 1; 37; and 93);
- (g) Complaints and independent inspection (rules 36 and 55);
- (h) The replacement of outdated terminology (rules 22-26, 62, 82 and 83 and various others) and
- (i) Training of relevant staff to implement the Standard Minimum Rules (rule 47).

3.4 The Rules have also been re-numbered for accommodation of the substantial changes.

3.5 The revised SMRs is a consolidated document on criminal justice and human rights standards on protecting the rights of prisoners, and also provides guidance for prison staff and administrations.

4. CONSULTATION PROCESSES

4.1. General Consultation

4.1.1 The preamble of the SMRs acknowledges the extensive consultative process which took place over a period of five years culminating in the recommendations of the Expert Group. These consultations took place in the form of technical and expert pre-consultations, meetings in Vienna, Buenos Aires and Cape Town, active participation and input of Member States from all regions.

4.1.2 Assistance was also provided by representatives of the United Nations crime prevention and criminal justice programme network and other United Nations entities, including the following:

- (a) Office of the United Nations High Commissioner for Human Rights;
- (b) The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (c) The United Nations Office on Drugs and Crime;
- (d) Intergovernmental organizations, (including the International Committee of the Red Cross);
- (e) Specialized agencies in the United Nations system, including the World Health Organization; and
- (f) Non-governmental organizations and individual experts in the field of correctional science and human rights.

4.2. Consultation in South Africa

4.2.1 In South Africa the following departments participated in the consultation session held in Cape Town:

- (a) Department of Correctional Services (DCS);
- (b) Department of Justice and Constitutional Development (DoJCD); and
- (c) The Department of International Relations and Cooperation's (DIRCO).

- 4.2.2 The DSD, the SAPS, the DOD and the DHA participated in the development of this implementation strategy.
- 4.2.3 The Mandela Foundation was consulted with regard to the proposal for naming the revised SMRs after late the South African icon and late President “Nelson Mandela” and the extension of the scope of the Nelson Mandela International Day {as per paragraph 1.3 (b)}.

5. POSITION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS (ACHPR)

- 5.1 The African Commission at its 58th Ordinary Session, held in Banjul, the Islamic Republic of Gambia, from 6 to 20 April 2016, developed the resolution which states that the Commission:
- (a) notes the Resolution UN-Doc A/Res/70/175, adopted by the UN General Assembly on 17 December 2015, adopting the UN revised SMRs for the Treatment of Prisoners (the Mandela Rules) as a source of standards relating to treatment in detention, and as the key framework used by monitoring and inspection mechanisms in assessing the treatment of prisoners; and
 - (b) Supports the adoption by the UN of the revised SMRs for the Treatment of Prisoners (the Nelson Mandela Rules).
- 5.2 The Commission encourages all stakeholders to draw inspiration from the Mandela Rules in order to fill the existing gaps in the applicable laws, policies and practice with the view to enhance a better treatment for detainees.
- 5.3 The Commission commits itself through the work of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, to collaborate with Partners and other stakeholders to promote and disseminate the Nelson Mandela Rules).

6. OBSERVATION BY MEMBER COUNTRIES: CONSIDERATION FOR LEGISLATION AND POLICY REVIEW

6.1 The following observations are included in the SMRs and have implications for the legislative and policy decisions for the countries that are signatories to the UN including South Africa:

- (a) *The 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 of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.*
- (b) *On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. **It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.***
- (c) *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.*
- (d) *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.*

7. IMPLEMENTATION OF THE RULES: PROPOSED PROCESS

7.1 Section 231 of the Constitution of RSA, on international agreements provides that -

- (a) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time section {section 231(3)};
- (b) The Nelson Mandela Rules cannot be classified as an international agreement as there is no intention displayed to create a legally binding relationship between parties through the Nelson Mandela Rules;
- (c) The Nelson Mandela Rules will however be tabled in line with Rule 337(a) the National Assembly on Tabling of written instruments in the Assembly -

“The Speaker must table the following instruments without delay, or if the Assembly is in recess, on its first day when the Assembly resumes its sittings:

(a) all reports and other written instruments submitted by a member of the national executive or in terms of legislation for tabling in the Assembly”.

7.2 South Africa was one of the 51 founding member of the United Nations in 1945; however the UN General Assembly on 12 November 1974 suspended South Africa from participating in its work, due to international opposition to the policy of apartheid. South Africa was re-admitted to the UN in 1994 following its transition into a democracy. Since 1994 the democratically elected government has pursued a foreign policy based on the centrality of the UN in the multilateral system.

7.3 The implementation of the rules will be done by the relevant departments as follows:

- (a) Auditing for determination of whether the revised areas in the rules are catered for in the existing legislative and policy framework at a departmental level under the guidance of the relevant Administrative Heads in consultation with their executive heads.
- (b) The current laws and policies including protocols are as follows:

Overarching laws:

- Constitution of the Republic of South Africa (Bill of Rights: section 35): All departments
- Criminal Procedure Act (Act 51, 1977): All departments
- Child Justice Act (Act 75, 2008): SAPS, DCS and DSD
- Correctional Services Act (Act 111, 1998): DCS
- The Criminal Law (Forensic Procedures) Amendment Act, 6 of 2010 regarding fingerprints and biometric measures: SAPS
- Immigration Act (Act 13, 2002): DHA
- Defence Act (Act 42, 2002): DOD
- The Prevention and Combating of Torture of Persons Act (Act 13, 2013): All departments
- The Extradition Act (Act 67, 1962): SAPS and DCS
- Health Act: All departments
- Legal Aid South Africa Act (Act 39, 2014): All departments
- Military Disciplinary Bill

Broad Policies and Operational Policies:

- National Development Plan - 2030;
- National Crime Prevention Strategy;
- White Paper on Remand Detention in South Africa (2014);
- White Paper in Corrections (2005);
- White Paper on National Defence for the RSA
- Detention Barracks Regulations;

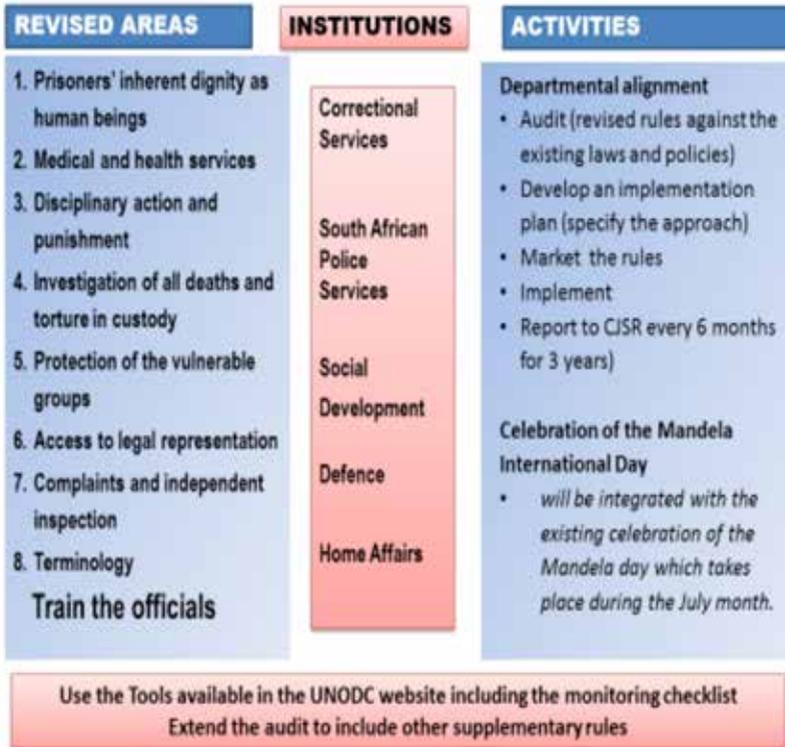
- Policy on South African Military Health Care Services;
 - Blue Print on management of Secure Care Facilities (DSD);
 - Standard Operating Procedures (SAPS);
 - B:Order/Policy Procedures and Manuals (DCS);
 - Strategy for the management of overcrowding in DCS;
 - The Guideline on the reduction of awaiting trial detainees (Prepared by National Prosecuting Authority): DCS, SAPS and DSD; and
 - The JCPS cluster protocols, (to mention a few) -
- (c) If there are gaps in the existing laws and policies each department will decide on the approach to be followed with regard to updating its laws and policies. The audit results will be utilized by each department to develop an implementation plan; and
- (d) Each department will implements its plan and provide feedback every 6 months to the secretariat of the Criminal Justice System Reform Committee for the first 3 years. The committee will thereafter make a review on continuity for reporting.

7.4 Marketing of the revised rules will be done as follows:

- (a) Each department will develop its own marketing plan which may include sharing of booklet on the revised Rules (UN); sharing of the implementation strategy; and media briefing.

7.5 The celebration of the Mandela International day will be integrated with the existing celebration of the Mandela day which takes place during the July month.

7.6 The model for implementation of the rules is reflected in the diagram below:



8. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

- 8.1 The Nelson Mandela Rules are not new, therefore all the departments responsible for the implementation of the rules, will determine their organizational and personnel implications when developing their implementation plans.
- 8.2 Paragraph 14 of the preamble (Rules) encourages the member states to consider allocating adequate human and financial resources to assist in the improvement of prison conditions and the application of the Nelson Mandela Rules.

9. FINANCIAL IMPLICATIONS

- 9.1 A substantial number of the rules are not new and by implication each department has been implementing the rules through the established legislative and policy framework.
- 9.2 Improvements in service delivery which will form part of implementing the revised rules and require additional funding will be included in the Medium Term Expenditure Framework submissions which are done annually. This process will however take place after an audit has been performed and an implementation plan developed by each department.

10. COMMUNICATION IMPLICATIONS

- 10.1 This booklet may be placed on the website of each department / institution responsible for the implementation of the rules.

11. LIST OF ANNEXURES

- 11.1 Annexure A: The revised rules: Nelson Mandela Rules (2015)
- 11.2 Annexure B: The UN Office of Drugs and Crime copy on revised areas
- 11.3 Annexure C: Audit Form (Guide for developing an implementation plan)
- 11.4 Annexure D: What is Mandela Day versus the scope of extension of the Mandela International Day and the logos
- 11.5 Annexure E: The resolution on the African Commission on Human and Peoples' Rights and partners on promoting the revised Nelson Mandela Rules

12. LINK FOR THE CHECKLIST

English: http://www.unodc.org/documents/justice-and-prison-reform/E_ebook_interactive.pdf

The implementing departments in the criminal justice system are:

Department of Correctional Services (Lead department)

Department of Defence

Department of Home Affairs

Department of Police

Department of Social Development

Coordination for Reporting: Criminal Justice System Reform Office situated at the Department of Justice and Constitutional Development

